

# **Nebraska Data Privacy Act**

## **Effective January 1, 2025**

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# Privacy Background

## Global Privacy, Local Impacts

- Australian Privacy Act (1988), Australian Privacy Principles
- EU Data Protection Directive (1995)
- EU General Data Protection Regulation (2016)
- CA California Consumer Privacy Act (2018), California Privacy Rights Act (2020)

# Privacy Background

Global Privacy, Local Impacts - Vertical and Horizontal Protections

- GLBA (Financial Data)
- FCRA (Financial Data)
- HIPAA/HITECH (Health Data)
- FERPA (Education Data)
- DPPA (Driver's License Data)
- COPPA (Children's Data)
- BIPA (Biometric Data)

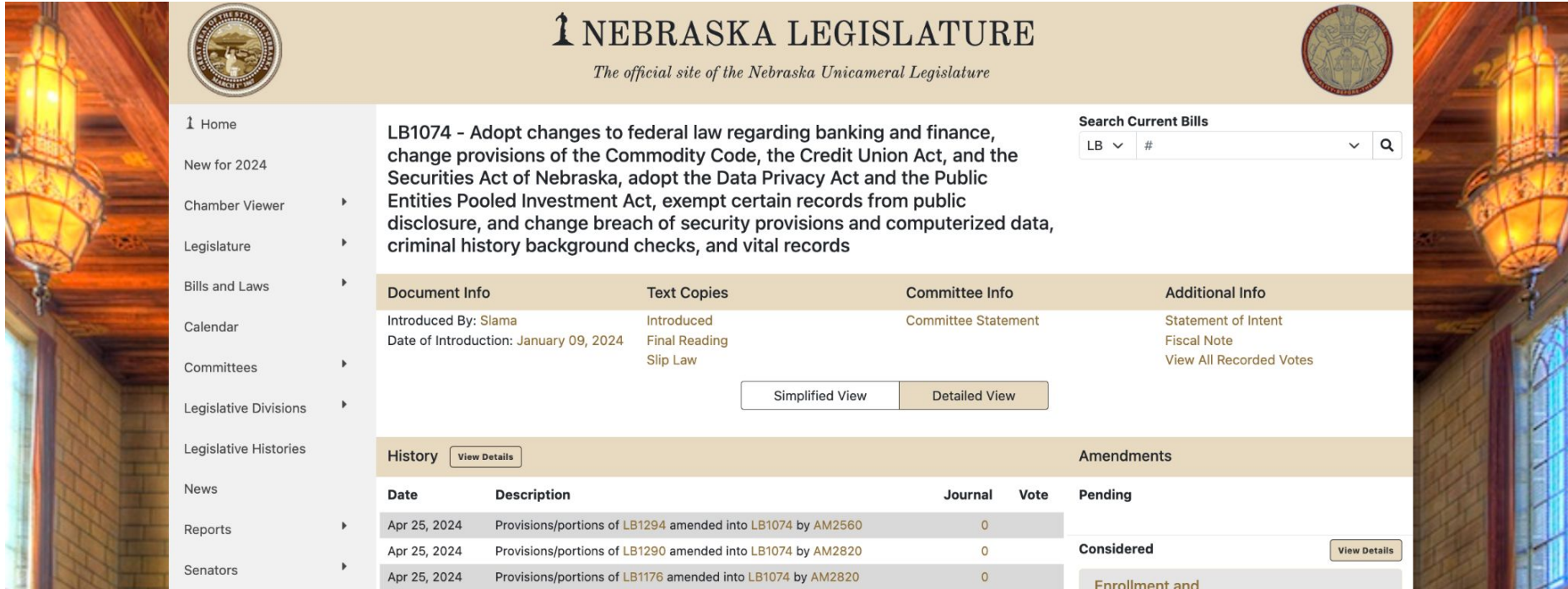
# Privacy Background

Global Privacy, Local Impacts - U.S. States

- 2021, Colorado & Virginia
- 2022, Connecticut and Utah
- 2023, Delaware, Indiana, Iowa, Montana, Oregon, Tennessee, Texas
- 2024, Kentucky, Maryland, Minnesota, New Hampshire, New Jersey, Rhode Island, and...
- Nebraska, passed in 2024, effective January 1, 2025

*Yet... How different, how similar, and how far do we have to go?*

# LB1074 - Nebraska Data Privacy Act (NDPA)



The screenshot shows the official website of the Nebraska Legislature. At the top, the text "NEBRASKA LEGISLATURE" is displayed with the state seal and the tagline "The official site of the Nebraska Unicameral Legislature". A search bar for "Current Bills" is located in the top right corner. The main content area features a detailed description of LB1074, which aims to adopt changes to federal law regarding banking and finance, update the Commodity Code and Securities Act, and implement the Data Privacy Act and Public Entities Pooled Investment Act. Below the description, there are sections for "Document Info", "Text Copies", "Committee Info", and "Additional Info". A "History" section provides a table of amendments, and a "Pending" section lists bills that have been considered.

**NEBRASKA LEGISLATURE**  
*The official site of the Nebraska Unicameral Legislature*

**LB1074 - Adopt changes to federal law regarding banking and finance, change provisions of the Commodity Code, the Credit Union Act, and the Securities Act of Nebraska, adopt the Data Privacy Act and the Public Entities Pooled Investment Act, exempt certain records from public disclosure, and change breach of security provisions and computerized data, criminal history background checks, and vital records**

**Document Info**      **Text Copies**      **Committee Info**      **Additional Info**

Introduced By: Slama      Introduced      Committee Statement  
Date of Introduction: January 09, 2024      Final Reading      Statement of Intent  
Slip Law           Fiscal Note  
View All Recorded Votes

[Simplified View](#)      [Detailed View](#)

**History**      [View Details](#)      **Amendments**

Date	Description	Journal	Vote	Pending
Apr 25, 2024	Provisions/portions of LB1294 amended into LB1074 by AM2560		0	
Apr 25, 2024	Provisions/portions of LB1290 amended into LB1074 by AM2820		0	<b>Considered</b> <a href="#">View Details</a>
Apr 25, 2024	Provisions/portions of LB1176 amended into LB1074 by AM2820		0	<b>Enrollment and</b>

# NDPA - Scope

- Applies to: (i) persons that conduct business in Nebraska or produce products or services consumed by Nebraska residents; (ii) process or engage in the sale of personal data; and (iii) are **not** a small business
- Unlike other states' privacy laws, **not** limited to entities by revenue thresholds or consumer data processing or sales requirements; just the “small business” exclusion
- Small businesses are, however, prohibited from selling sensitive data without consent

# NDPA - Privacy Rights

- Confirm processing of personal data
- Access personal data
- Correct inaccurate personal data
- Delete personal data
- Port personal data
- Opt out of
  - targeted advertising
  - sale of personal data
  - profiling in furtherance of decisions that produce legal or similarly significant effects

# NDPA - Additional Requirements

- Required to establish two or more secure and reliable methods to enable a consumer to submit a request to exercise consumer rights under the Data Privacy Act
- Required to:
  - (i) respond to consumer rights requests within 45 days (with one 45-day extension); and
  - (ii) establish an appeals process to respond to appeals within 60 days and
  - (iii), if the appeal is denied, provide an online mechanism to contact the Nebraska AG to submit a complaint



# **NDPA - Sensitive Data**

Controllers will be required to obtain consent before processing a consumer's sensitive data

Defines sensitive data as personal data that reveals racial or ethnic origin, religious beliefs, a mental or physical health diagnosis, sexual orientation, or citizenship or immigration status, genetic or biometric data processed to uniquely identify individuals, personal data collected from a known child, and precise geolocation data

# **NDPA - Data Protection Impact Assessments**

Requires a Data Protection Impact Assessments (“DPIAs”) for processing activities that involve targeted advertising, the sale of personal data, profiling (in limited circumstances), processing of sensitive data, or would otherwise present a heightened risk of harm to consumers

# NDPA - Information Security

Scant details but ...

- Required to maintain reasonable and appropriate data security practices
- Does not enumerate specific safeguards (such as encryption or multifactor authentication)

# NDPA - Enforcement

- The Nebraska Attorney General has exclusive authority to enforce the Act
- Controllers and processors have a 30-day right to cure that does not sunset

# NDPA - Entity Exemptions



- State agencies and political subdivisions
- Financial institutions subject to the Gramm-Leach-Bliley Act (GLBA)
- Covered entities and business associates subject to the Health Insurance Portability and Accountability Act (HIPAA) and the HITECH Act
- Nonprofits
- Institutions of higher education
- Wholesale and retail suppliers of electricity, natural gas public utilities, and natural gas utilities owned or operated by cities or metropolitan utilities districts

# NDPA - Data Exemptions



- Processing in the course of a purely personal or household activity
- HIPAA
  - Personal health information (PHI) under HIPAA
  - Health records, patient-identifying information, human subjects research, data subject to Health Care Quality Improvement Act
  - Data derived from any healthcare-related data that is de-identified according to HIPAA requirements
  - Data for public health activities and purposes authorized by HIPAA

# NDPA - Data Exemptions



- Data regulated by the federal:
  - Fair Credit Reporting Act
  - Driver's Privacy Protection Act
  - Family Educational Rights and Privacy Act
  - Farm Credit Act
- Data processed or maintained for:
  - Independent contractors for controllers, processors, and third parties and the administration of benefits to them
  - Emergency contact information
- Controllers and processors that comply with verifiable parental consent requirements under the Children's Online Privacy Protection Act (COPPA) are deemed compliant with any obligation to obtain parental consent under the Act

# Data Breach

## Data Classifications

- Whose it is?
- What it is?
- Where it is?
- Why it is?



# Data Breach - Case Study

## Nebraska's Data Protection Act



# **Data Breach - Case Study**

## **Nebraska's Data Protection Act**

### **Definitions**

“7 (a) Consumer means an individual who is a resident of this state acting only in an individual or household context

(b) Consumer does not include an individual acting in a commercial or employment context”

# Data Breach - Case Study

## Nebraska's Data Protection Act

### Definitions

“20 (a) Personal data means any information, including sensitive data, that is linked or reasonably linkable to an identified or identifiable individual, and includes pseudonymous data when the data is used by a controller or processor in conjunction with additional information that reasonably links the data to an identified or identifiable individual.

(b) Personal data does not include deidentified data or publicly available information;”

# **Data Breach - Case Study**

## **Nebraska's Data Protection Act**

### **Definitions**

"29 (a) Sale of personal data means the exchange of personal data for monetary or other valuable consideration by the controller to a third party"

# **Data Breach - Case Study**

## **Nebraska's Data Protection Act**

### **Definitions**

“(10) Dark pattern means a user interface designed or manipulated with the effect of substantially subverting or impairing user autonomy, decision-making, or choice, and includes any practice determined by the Federal Trade Commission to be a dark pattern as of January 1, 2024”

# **Data Breach - Case Study**

## **Nebraska's Data Protection Act**

### Do Any Exemptions Apply?

Consider the two main categories of exemptions under the CDPA: entity-level exemptions and data-level exemptions.



**Exempt from  
classification**

# **Data Breach - Case Study**

## **Nebraska's Data Protection Act**

### **Rights**

Right to access. Right to correct. Right to delete. Right to data portability. Right to opt out. Right to appeal.

- The NDPA fails to provide any exceptions to these rights. No out for hardships or impracticable nature of the request.

# **Data Breach - Case Study**

## **Nebraska's Data Protection Act**

### **Obligations**

Limits on collection. Limits on use. Technical safeguards. Data protection assessments. Data processing agreements. Privacy policy.



# Data Breach - Parting Thoughts

Tabletop Your Incident Response

⇒ *Practice your crisis, don't crisis your crisis*

Third Party Management vs Customer Management

Classifying Data Movements

⇒ *What it is, where it is, what's the risk?*

Controls (internal vs external, audits, reviews, etc.)

⇒ *Close the Loop*

Insurance - *Know Your Coverage*

Risk = Probability X Impact

# Parting Thoughts - Q&A

1. The NDPA was modelled after the Texas DPA, have you seen any enforcement actions tied to Texas that would indicate what enforcement might look like in Nebraska?

**WBW Call Response**: I've not looked into this, but expect that could be a useful exercise.

**WBW Post Call Note**: Texas' law went into effect July 1, 2024, so there has not been a large window for enforcement actions, but the Texas AG has indicated they intend to enforce this vigorously.

# Parting Thoughts - Q&A

## WBW Post Call Note: Texas Data Privacy and Security Act:

<https://capitol.texas.gov/tlodocs/88R/billtext/pdf/HB00004F.pdf#navpanes=0>

<https://www.munsch.com/Newsroom/Blogs/172302/Texas-AG-Signals-Plans-to-Aggressively-Enforce-Texas-New-Data-Privacy-Security-Act>

<https://www.goodwinlaw.com/en/insights/publications/2024/06/alerts-practices-dpc-texas-new-privacy-law-goes-into-effect-enforcement>

<https://www.privacyworld.blog/2024/06/the-eyes-of-texas-are-upon-you-texas-privacy-enforcement-heats-up/> (**NOTE: details enforcement as well of a Data Brokers law requiring registration by March 1, 2024**)

<https://www.texasattorneygeneral.gov/consumer-protection/file-consumer-complaint/consumer-privacy-rights/identity-theft-enforcement-and-protection-act> (**NOTE: Not DPA, but a similar ID protection law**)

# Parting Thoughts - Q&A

2. What are the damages or penalties in the NDPA?

**WBW Call Response:** I had not looked all that closely at that, but under LB1074, Sec 24, the AG can level a civil penalty in an amount not to exceed seven thousand five hundred dollars for each violation.

**WBW Post Call Note:** Companies should watch the individual enforcement actions by the states. It is also likely that action by one state AG will result in compounded action by other states' AGs, and that any notices required as part of a Data Breach law (of which there are 50+) will also result in deeper inspection by the relevant AGs.

# Parting Thoughts - Q&A

3. Is there a mechanism that covers multiple states DPAs?

**WBW Call Response:** Unfortunately, no. Companies are going to have to do their own due diligence on a state-by-state basis as these laws take effect to determine what is required for each states' operational compliance, the consumer rights and their exercise, and their approach to data mapping and management.

**WBW Post Call Note:** See the IAPP resource page for an updated outline of states DPA efforts:

<https://iapp.org/resources/article/us-state-privacy-legislation-tracker/>

# Questions?

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# Reach Out

