

ENGROSSED LEGISLATIVE BILL 525

Introduced by Jacobson, 42; at the request of the Governor.

A BILL FOR AN ACT relating to law; to amend section 84-712.05, Reissue Revised Statutes of Nebraska; to adopt the Agricultural Data Privacy Act and the Conversational Artificial Intelligence Safety Act; to provide for a public record exception; to provide operative dates; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 10 of this act shall be known and may be cited as the Agricultural Data Privacy Act.

Sec. 2. The Legislature finds that agricultural data is a proprietary business asset that originates from the farm, land, devices, and equipment of agricultural producers. To protect the economic value of this data and the autonomy of Nebraska producers, the sale of such data shall be protected and the security of such data shall be maintained through reasonable safeguards.

Sec. 3. For purposes of the Agricultural Data Privacy Act:

(1) Affiliate means a person or entity that directly or indirectly controls, is controlled by, or is under common control with a controller or processor;

(2) Aggregated data means agricultural data that has been combined with other data from various sources and summarized so that the resulting data cannot reasonably be linked to an identified or identifiable agricultural producer, farm, parcel, device, or equipment;

(3) Agricultural data:

(a) Means any of the following that is collected, produced, or generated in this state and is linked or reasonably linked to an identified or reasonably identifiable agricultural producer: Agronomic data, climate and weather data, land data, livestock data, management data, and sustainability data; and

(b) Does not include any of the following:

(i) Aggregated data;

(ii) Derived data; and

(iii) Any data that is described under subdivision (3)(a) of this section that would otherwise qualify as agricultural data, if such data is made available to the general public by an agency as defined in section 84-901;

(4) Agricultural producer means the person that is the owner, lessee, or renter of the farm, livestock, land, device, or equipment from which agricultural data originates;

(5) Agronomic data means information relating to soil management or crop production, including data relating to any crop, field, planting activity, seed type, yield, disease and pest management, fertilizer type or application, or prescription;

(6) Climate and weather data means information regarding the conditions of the atmosphere at a place and time and how such conditions generally prevail in such place over a long period of time that is collected, produced, or generated by the equipment of an agricultural producer or by devices located on the land of an agricultural producer. Climate and weather data:

(a) Includes the following information: Precipitation type and amount, wind speed and direction, and temperature; and

(b) Does not include information that is made available to the general public by a governmental entity or public source;

(7) Controller means a person who or entity that, alone or jointly with others, determines the purpose and means of processing agricultural data;

(8) Derived data means data that has been significantly modified, processed, analyzed, or compiled. Derived data includes agronomic insights, reports, and predictive models;

(9) Land data means information regarding the physical attributes of a parcel of land, including the types and fertility of soils, the topography, elevation, watershed, and drainage of such parcel, and geospatial information regarding such parcel;

(10) Livestock data means information regarding the production of animals

by an agricultural producer, including animal identification practices, pedigree information, genetic information, and feed consumption information;

(11) Management data means information regarding the management of an agricultural producer's agricultural operations. Farm management data includes:

(a) The finances, taxes, and employment of the agricultural producer;

(b) The price received or paid for any commodity;

(c) Data regarding the compliance of the agricultural producer with any law;

(d) Data regarding the supply chain for a commodity that is produced or used by the agricultural producer; and

(e) Information regarding the tillage and conservation practices of the agricultural producer;

(12) Processor means a person who or entity that processes agricultural data on behalf of a controller;

(13)(a) Sale of agricultural data means the exchange of agricultural data for monetary or other valuable consideration by a controller or processor to a third party; and

(b) Sale of agricultural data does not include any:

(i) Disclosure or transfer of agricultural data to a processor by a controller;

(ii) Use of agricultural data by a processor, if such use is authorized by a controller;

(iii) Disclosure, transfer, or use of agricultural data for the purpose of a controller or processor providing a service to an agricultural producer;

(iv) Disclosure, transfer, or use of agricultural data to an affiliate of the controller or processor;

(v) Disclosure that is expressly directed, initiated, or authorized in writing by an agricultural producer to a designated third party, including any input provider, advisor, lender, insurer, cooperative, or digital platform chosen by the producer;

(vi) Disclosure that is required by a state or federal law, regulation,

subpoena, investigative demand, or court order;

(vii) Disclosure that is required for compliance with a state or federal safety, emissions, or environmental obligation;

(viii) Disclosure of information that an agricultural producer:

(A) Intentionally made available to the general public through a mass media channel; and

(B) Did not restrict to a specific audience;

(ix) Disclosure or transfer of agricultural data by a controller to a third party as an asset in which the third party assumes control of all or a part of the controller's assets and that is part of a proposed or actual:

(A) Merger;

(B) Acquisition;

(C) Bankruptcy; or

(D) Transaction; or

(x) Disclosure, transfer, or use that is reasonably necessary to detect, prevent, or respond to any fraud, abuse, cybersecurity threat, illegal conduct, data integrity issue, or equipment misuse;

(14) Service means any service that is provided by a controller or processor to an agricultural producer and that may be used to maintain, diagnose, repair, support, secure, improve, or provide any equipment, software, device, technology, product, or service to the agricultural producer, including any telematic service, remote diagnostic, predictive maintenance, warranty administration, safety notification, recall activity, cybersecurity service, product improvement, quality improvement, system performance enhancement, internal algorithm training, over-the-air update, or purchase of a commodity from the agricultural producer; and

(15) Sustainability data means information regarding greenhouse-gas emissions, carbon sequestration, and water-quality impact, and any other environmental or conservation practice used to verify sustainability claims.

Sec. 4. (1) For purposes of this section, control means a person has the power to:

(a) Avail substantially all of the benefits from such agricultural data;
(b) Prevent other persons from availing substantially all of the benefits from such agricultural data; and

(c) Transfer a power described in subdivision (a) or (b) of this subsection to another person.

(2) An agricultural producer is the owner, and has control, of the agricultural data that originates from the farm, land, device, or equipment of such agricultural producer.

(3) A controller or processor that collects, stores, or uses agricultural data is deemed to have a nonexclusive right of control over such agricultural data solely for the purpose of providing services, maintaining equipment, or performing data processing authorized by the agricultural producer.

(4) The nonexclusive right of control that is granted to a controller or processor under this section does not include the power to engage in the sale of such agricultural data.

Sec. 5. (1) A controller or processor shall not engage in the sale of agricultural data without the express written consent of the agricultural producer.

(2) Written consent for the sale of agricultural data shall be obtained through a clear and conspicuous disclosure that is separate from the primary terms of service or data use agreement.

Sec. 6. (1) Beginning on January 1, 2027, every new contract or agreement involving the collection or processing of agricultural data in this state shall contain a specific provision stating that the controller or processor is prohibited from engaging in the sale of such agricultural data without the express written consent of the agricultural producer.

(2) Any contract provision that waives or limits the requirements of the Agricultural Data Privacy Act is contrary to public policy and is void and unenforceable.

Sec. 7. (1) Any controller or processor in custody or possession of agricultural data shall establish, implement, and maintain reasonable

administrative, technical, and physical data security practices to protect the confidentiality, integrity, and accessibility of such agricultural data.

(2) Such security practices shall be appropriate for the volume and nature of the agricultural data and protect against unauthorized access, use, disclosure, modification, or loss.

Sec. 8. (1) The Attorney General may bring an action in the district court of Lancaster County against any controller or processor that violates the Agricultural Data Privacy Act to:

(a) Seek injunctive relief; or

(b) Recover a civil penalty in the amount of one thousand dollars for each separate violation. Any such civil penalty that is recovered shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) The Agricultural Data Privacy Act shall not be construed to create any new private cause of action. The enforcement authority granted to the Attorney General under this section shall be the exclusive remedy for violations of the Agricultural Data Privacy Act.

Sec. 9. (1) Prior to bringing an action to recover a civil penalty for a violation of section 6 or 7 of this act, the Attorney General shall provide a controller or processor with a written notice that identifies the specific provision of section 6 or 7 of this act that the Attorney General alleges has been or is being violated.

(2) No such action for a civil penalty shall be initiated if, within forty-five days after receiving the written notice, the controller or processor:

(a) Cures each such alleged violation; and

(b) Provides the Attorney General with a written statement that specifies that each such alleged violation has been cured and that such controller or processor will refrain from further violations of the Agricultural Data Privacy Act.

(3) This section shall not apply to any violation of section 5 of this

act.

Sec. 10. The Agricultural Data Privacy Act shall not be construed to:

(1) Limit or supersede any duty or obligation that is imposed by any federal law or any other law of the State of Nebraska;

(2) Relieve any person from any duty or obligation otherwise imposed by law;

(3) Impair, supersede, or otherwise affect the terms of any private contract that is in existence prior to the operative date of this section; or

(4) Limit or supersede any duty or obligation that is imposed by any natural resources district that is operating pursuant to Chapter 2, article 32, any agency as defined in section 84-901, or any employee or agent of such natural resources district or state agency when acting in performance of a statutory duty.

Sec. 11. Section 84-712.05, Reissue Revised Statutes of Nebraska, is amended to read:

84-712.05 The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

(1) Personal information in records regarding a student, prospective student, or former student of any educational institution or exempt school that has effectuated an election not to meet state approval or accreditation requirements pursuant to section 79-1601 when such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with 20 U.S.C. 1232g, as such section existed on February 1, 2013, and regulations adopted thereunder;

(2) Medical records, other than records of births and deaths and except as provided in subdivisions (5) and (27) of this section, in any form concerning any person; records of elections filed under section 44-2821; and patient safety work product under the Patient Safety Improvement Act;

(3) Trade secrets, academic and scientific research work which is in

progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, complaints or inquiries from residents of this state or other interested persons, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received:

(a) Relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person; or

(b) Relating to the cause of or circumstances surrounding the death of an employee arising from or related to his or her employment if, after an investigation is concluded, a family member of the deceased employee makes a request for access to or copies of such records. This subdivision does not require access to or copies of informant identification, the names or identifying information of members of the public making complaints or inquiries, other information which would compromise an ongoing criminal investigation, or information which may be withheld from the public under another provision of law. For purposes of this subdivision, family member means a spouse, child, parent, sibling, grandchild, or grandparent by blood, marriage, or adoption;

(6) The identity and personal identifying information of an alleged victim of sexual assault or sex trafficking as provided in section 29-4316;

(7) Appraisals or appraisal information and negotiation records concerning

the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

(8) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

(9) Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; lock combinations; or public utility infrastructure specifications or design drawings the public disclosure of which would create a substantial likelihood of endangering public safety or property, unless otherwise provided by state or federal law;

(10) Information that relates details of physical and cyber assets of critical energy infrastructure or critical electric infrastructure, including (a) specific engineering, vulnerability, or detailed design information about proposed or existing critical energy infrastructure or critical electric infrastructure that (i) relates details about the production, generation, transportation, transmission, or distribution of energy, (ii) could be useful to a person in planning an attack on such critical infrastructure, and (iii) does not simply give the general location of the critical infrastructure and (b) the identity of personnel whose primary job function makes such personnel responsible for (i) providing or granting individuals access to physical or cyber assets or (ii) operating and maintaining physical or cyber assets, if a reasonable person, knowledgeable of the electric utility or energy industry, would conclude that the public disclosure of such identity could create a substantial likelihood of risk to such physical or cyber assets. Subdivision (10)(b) of this section shall not apply to the identity of a chief executive officer, general manager, vice president, or board member of a public entity that manages critical energy infrastructure or critical electric

infrastructure. The lawful custodian of the records must provide a detailed job description for any personnel whose identity is withheld pursuant to subdivision (10)(b) of this section. For purposes of subdivision (10) of this section, critical energy infrastructure and critical electric infrastructure mean existing and proposed systems and assets, including a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of such matters;

(11) The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Lottery Division of the Department of Revenue and those persons or entities with which the division has entered into contractual relationships. Nothing in this subdivision shall allow the division to withhold from the public any information relating to:

(a) Amounts paid persons or entities with which the division has entered into contractual relationships;

(b) Amounts of prizes paid; or

(c) The name of any prize winner awarded a prize of less than two hundred fifty thousand dollars, and the city, village, or county where the prize winner resides;

(12) With respect to public utilities and except as provided in sections 43-512.06 and 70-101, personally identified private customer account payment and customer use information, credit information on others supplied in confidence, and customer lists;

(13) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

(14) Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature in whatever form. The lawful custodian of the correspondence, memoranda, and records of telephone calls, upon approval of the Executive Board of the Legislative Council, shall

release the correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature to any person performing an audit of the Legislature. A member's correspondence, memoranda, and records of confidential telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member;

(15) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This section shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act;

(16) Records or portions of records kept by public bodies which maintain collections of archaeological, historical, or paleontological significance which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act;

(17) Library, archive, and museum materials acquired from nongovernmental entities and preserved solely for reference, research, or exhibition purposes, for the duration specified in subdivision (17)(b) of this section, if:

(a) Such materials are received by the public custodian as a gift, purchase, bequest, or transfer; and

(b) The donor, seller, testator, or transferor conditions such gift, purchase, bequest, or transfer on the materials being kept confidential for a specified period of time;

(18) Job application materials submitted by applicants, other than finalists or a priority candidate for a position described in section 85-106.06 selected using the enhanced public scrutiny process in section 85-106.06, who have applied for employment by any public body as defined in section 84-1409. For purposes of this subdivision, (a) job application materials means employment applications, resumes, reference letters, and school transcripts and (b) finalist means any applicant who is not an applicant for a position described in section 85-106.06 and (i) who reaches the final pool of applicants, numbering four or more, from which the successful applicant is to be selected, (ii) who is an original applicant when the final pool of applicants numbers less than four, or (iii) who is an original applicant and there are four or fewer original applicants;

(19)(a) Records obtained by the Public Employees Retirement Board pursuant to section 84-1512 and (b) records maintained by the board of education of a Class V school district and obtained by the board of trustees or the Public Employees Retirement Board for the administration of a retirement system provided for under the Class V School Employees Retirement Act pursuant to section 79-989;

(20) Social security numbers; credit card, charge card, or debit card numbers and expiration dates; and financial account numbers supplied to state and local governments;

(21) Information exchanged between a jurisdictional utility and city pursuant to section 66-1867;

(22) Draft records obtained by the Nebraska Retirement Systems Committee of the Legislature and the Governor from Nebraska Public Employees Retirement Systems pursuant to subsection (4) of section 84-1503;

(23) All prescription drug information submitted pursuant to section 71-2454, all data contained in the prescription drug monitoring system, and any report obtained from data contained in the prescription drug monitoring system;

(24) Information obtained by any government entity, whether federal, state, county, or local, regarding firearm registration, possession, sale, or

use that is obtained for purposes of an application permitted or required by law or contained in a permit or license issued by such entity. Such information shall be available upon request to any federal, state, county, or local law enforcement agency;

(25) The security standards, procedures, policies, plans, specifications, diagrams, and access lists and other security-related records of the State Racing and Gaming Commission, those persons or entities with which the commission has entered into contractual relationships, and the names of any individuals placed on the list of self-excluded persons with the commission as provided in section 9-1118. Nothing in this subdivision shall allow the commission to withhold from the public any information relating to the amount paid any person or entity with which the commission has entered into a contractual relationship, the amount of any prize paid, the name of the prize winner, and the city, village, or county where the prize winner resides;

(26) Records relating to the nature, location, or function of cybersecurity by the State of Nebraska or any of its political subdivisions or any other public entity subject to sections 84-712 to 84-712.09, including, but not limited to, devices, programs, or systems designed to protect computer, information technology, or communications systems against terrorist or other attacks. The Nebraska Information Technology Commission shall adopt and promulgate rules and regulations to implement this subdivision;

(27) Vital event records, unless all information designated as confidential under the Vital Statistics Act or all personally identifiable information is redacted by the Department of Health and Human Services;

(28) Information or records from historical indexes within one hundred years after the event date of the information or record;

(29) The certificate number for any vital event certificate; and

(30) Agricultural data as defined in section 3 of this act, unless prior written consent has been obtained from the owner of such agricultural data under the Agricultural Data Privacy Act.

Sec. 12. Sections 12 to 18 of this act shall be known and may be cited as

the Conversational Artificial Intelligence Safety Act.

Sec. 13. For purposes of the Conversational Artificial Intelligence Safety Act:

(1) Account holder means an individual who has, or opens, an account or profile to use a conversational artificial intelligence service;

(2)(a) Conversational artificial intelligence service means an artificial intelligence software application, web interface, or computer program that is accessible to the general public and that primarily simulates human conversation and interaction through textual, visual, or aural communications.

(b) Conversational artificial intelligence service does not include an application, web interface, or computer program that is any of the following:

(i) Primarily designed and marketed for use by developers or researchers;

(ii) A feature within another software application, web interface, or computer program that is not a conversational artificial intelligence service;

(iii) Designed to provide outputs relating to a narrow and discrete topic;

(iv) Primarily designed and marketed for commercial use by business entities;

(v) Functions as a speaker and voice command interface or voice-activated virtual assistant for a consumer electronic device;

(vi) Used by a business solely for internal purposes; or

(vii) Used by a business solely for customer service or strictly to provide users with information about available commercial services or products provided by the business, customer service account information, or other information strictly related to the business's customer service;

(3) Individual means a natural person;

(4) Minor means an individual that, based upon the circumstance, the operator has actual knowledge or reasonable certainty is younger than eighteen years of age;

(5) Minor account holder means an account holder who is a minor;

(6)(a) Operator means a person who makes available a conversational artificial intelligence service to the public.

(b) Operator does not include mobile application stores or search engines solely because they provide access to a conversational artificial intelligence service;

(7) Person means a natural person or legal entity; and

(8) Sexually explicit conduct and visual depiction have the same meanings as in 18 U.S.C. 2256.

Sec. 14. (1) An operator shall clearly and conspicuously disclose to each minor account holder that such minor account holder is interacting with artificial intelligence:

(a) As a persistent visible disclaimer; or

(b) Both:

(i) At the beginning of each session; and

(ii) Appearing at least every three hours in a continuous conversational artificial intelligence service interaction.

(2) An operator shall not provide a minor account holder with points or similar rewards at unpredictable intervals with the intent to encourage increased engagement with the conversational artificial intelligence service.

(3) An operator shall, for minor account holders, institute reasonable measures to prevent the conversational artificial intelligence service from:

(a) Producing visual depictions of sexually explicit conduct;

(b) Generating direct statements that the account holder should engage in sexually explicit conduct; or

(c) Generating statements that sexually objectify the account holder.

(4) For minor account holders, the operator shall institute reasonable measures to prevent the conversational artificial intelligence service from generating statements that would lead a reasonable person to believe that they are interacting with a human, including:

(a) Explicit claims that the conversational artificial intelligence service is sentient or human;

(b) Statements that simulate emotional dependence;

(c) Statements that simulate romantic or sexual innuendos; or

(d) Role-playing of adult-minor romantic relationships.

(5) An operator shall offer tools for minor account holders, and, when such account holders are younger than thirteen years of age, their parents or guardians, to manage the account holders' privacy and account settings. An operator shall also offer related tools to the parents or guardians of minor account holders thirteen years of age and older, as appropriate based on relevant risks.

Sec. 15. If a reasonable person interacting with a conversational artificial intelligence service would be misled to believe that the person is interacting with a human, an operator shall clearly and conspicuously disclose that the conversational artificial intelligence service is artificial intelligence.

Sec. 16. An operator shall adopt a protocol for the conversational artificial intelligence service to respond to user prompts regarding suicidal ideation or self-harm that includes, but is not limited to, making reasonable efforts to provide a response to the user that refers them to crisis service providers such as a suicide hotline, crisis text line, or other appropriate crisis services.

Sec. 17. An operator shall not knowingly and intentionally cause or program a conversational artificial intelligence service to make any representation or statement that explicitly indicates that the conversational artificial intelligence service is designed to provide professional mental or behavioral health care.

Sec. 18. (1) The Attorney General may enforce the Conversational Artificial Intelligence Safety Act.

(2)(a) The Attorney General may bring a civil action for appropriate relief against an operator for a violation of the Conversational Artificial Intelligence Safety Act, on behalf of the State of Nebraska or on behalf of any person aggrieved by a violation of the act.

(b) In an action under this section, appropriate relief includes:

(i) Such preliminary and other equitable or declaratory relief as may be

appropriate;

(ii) An award of actual damages;

(iii) Civil penalties of at least one thousand dollars per violation, but in no event more than five hundred thousand dollars per operator. Any such civil penalty that is recovered shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska; and

(iv) Reasonable expenses incurred in bringing the civil action, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(3) Nothing in the Conversational Artificial Intelligence Safety Act shall be interpreted as creating a private right of action.

(4) The Conversational Artificial Intelligence Act shall not create liability for the developer of an artificial intelligence model for any violation of the act by a conversational artificial intelligence system developed by a third-party operator to provide a conversational artificial intelligence service for such developer.

Sec. 19. Sections 12, 13, 14, 15, 16, 17, and 18 of this act become operative on July 1, 2027. The other sections of this act become operative on their effective date.

Sec. 20. Original section 84-712.05, Reissue Revised Statutes of Nebraska, is repealed.

PRESIDENT OF THE LEGISLATURE

THIS IS TO CERTIFY that the within LB 525 was passed by the One Hundred Ninth Legislature of Nebraska at its Second Session on the day of 20.....

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR