

LEGISLATIVE BILL 590

Approved by the Governor June 6, 1997

Introduced by Withem, 14; Brashear, 4; Brown, 6; Hillman, 48; Kristensen, 37; Robinson, 16

AN ACT relating to state government; to amend sections 52-1316, 84-1201, 84-1202, 84-1204, and 84-1220, Reissue Revised Statutes of Nebraska, sections 60-483, 84-713.05, and 84-1227, Revised Statutes Supplement, 1996, and sections 9-411 and 9-420, Uniform Commercial Code; to state intent; to define and redefine terms; to change the membership of the State Records Board; to provide duties for the board relating to dissemination of public records electronically; to provide and authorize fees; to provide for approval of contracts and arrangements relating to electronic access; to require reports; to transfer and eliminate provisions relating to the Task Force on Electronic Access to State Government Information; to harmonize provisions; to repeal the original sections; to outright repeal sections 84-713 to 84-713.04, Revised Statutes Supplement, 1996; and to declare an emergency.

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

Section 1. Section 52-1316, Reissue Revised Statutes of Nebraska, is amended to read:

52-1316. (1) Oral and written inquiries regarding information provided by the filing of effective financing statements may be made at any county clerk's office or the office of the Secretary of State during regular business hours. The fee for furnishing file information ~~in writing~~ shall be two dollars and fifty cents for each debtor name searched by the county clerk or Secretary of State. Written confirmation of an oral or written inquiry shall be mailed no later than the end of the next business day after the inquiry is received.

(2) The Secretary of State shall provide a system that assigns an identifying number to each inquiry made pursuant to subsection (1) of this section. Such number shall be given to the inquiring party at the time of the oral response and shall be included in the written confirmation. The Secretary of State and the county clerks shall maintain a record of inquiries made under this section identifying who made the inquiry, on whom the inquiry was made, and the date of the inquiry.

(3) The Secretary of State may provide for a computerized system for inquiry and confirmation which may be used in lieu of the inquiry and confirmation under subsection (1) of this section. When such a system is implemented and used, it shall have the same effect as an inquiry and confirmation under subsection (1) of this section.

(4) There shall be no fee charged for actual inspection of records of effective financing statements kept by the county clerk for the inspection of ten names or less per day by a single person. There shall be a uniform fee, in addition to any other charge for services payable to the county clerk, of one dollar per name for each inspection in excess of ten names per day by a single person.

(5) The county clerk and Secretary of State and their employees or agents shall be exempt from all personal liability as a result of any error or omission in providing information as required by this section, except in cases of willful misconduct or gross negligence.

(6) Fees received pursuant to this section by county clerks shall be deposited in the county general fund. Fees received pursuant to this section by the Secretary of State shall be deposited in the Uniform Commercial Code Cash Fund. Of the fees received pursuant to this section by the Secretary of State for furnishing file information by electronic or other means, one dollar and fifty cents of each fee shall be deposited in the Uniform Commercial Code Cash Fund and one dollar of each fee shall be deposited in the Records Management Cash Fund.

Sec. 2. Section 60-483, Revised Statutes Supplement, 1996, is amended to read:

60-483. The director shall assign a distinguishing number to each operator's license issued and shall keep a record of the same which shall be open to public inspection. Any person requesting such driver record information shall furnish to the Department of Motor Vehicles the name of the person whose record is being requested, and when the name alone is insufficient to identify the correct record, the department may request

additional identifying information. The department shall, upon request of any applicant, furnish a certified abstract of the operating record of any person and shall charge the applicant a fee of two ~~three~~ dollars per abstract. The department shall remit any revenue generated under this section to the State Treasurer, and the State Treasurer shall credit eight and one-third percent to the Department of Motor Vehicles Cash Fund, fifty-eight and one-third percent to the General Fund, and thirty-three and one-third percent to the Records Management Cash Fund. The department shall remit twenty-five cents of each abstract fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund and shall remit one dollar and seventy-five cents of each abstract fee to the State Treasurer for credit to the General Fund.

The director shall, upon receiving a request and an agreement from the United States Selective Service System to comply with requirements of this section and the rules and regulations adopted and promulgated to carry out this section, furnish driver record information to the United States Selective Service System to include the name, post office address, date of birth, sex, and social security number of licensees. The United States Selective Service System shall pay all costs incurred by the department in providing the information but shall not be required to pay any other fee required by law for information. No driver record information shall be furnished regarding any female, nor regarding any male other than those between the ages of seventeen years and twenty-six years. The information shall only be used in the fulfillment of the required duties of the United States Selective Service System and shall not be furnished to any other person. The director may adopt and promulgate rules and regulations concerning the preparation, transmittal, safeguarding, and disposition of such information.

The director shall also keep a record of all applications for operators' licenses that are disapproved with a brief statement of the reason for disapproval of the application.

The director may enter into an agreement with any person to provide the person information regarding adjudicated traffic citations or administrative actions from the records produced for or developed by the department for purposes related to maintenance of the driver record information data base. The agreement may determine the periodic basis, cost, and media on which the information will be provided.

Sec. 3. Section 84-1201, Reissue Revised Statutes of Nebraska, is amended to read:

84-1201. The Legislature declares that:

(1) That programs Programs for the systematic and centrally correlated management of state and local records will promote efficiency and economy in the day-to-day record-keeping activities of state and local governments and will facilitate and expedite governmental operations;

(2) That records Records containing information essential to the operations of government, and to the protection of the rights and interests of persons, must be safeguarded against the destructive effects of all forms of disaster and must be available as needed; wherefore it is necessary to adopt special provisions for the selection and preservation of essential state and local records, thereby insuring the protection and availability of such information;

(3) The increasing availability and use of computers is creating a growing demand for electronic access to public records, and agencies should use new technology to enhance public access to public records;

(4) There must be public accountability in the process of collecting, sharing, disseminating, and accessing public records;

(5) The Legislature has oversight responsibility for the process of collecting, sharing, disseminating, and providing access, including electronic access, to public records and establishing fees for disseminating and providing access;

(6) Several state agencies, individually and collectively, are providing electronic access to public records through various means, including gateways; and

(7) There is a need for a uniform policy regarding the management, operation, and oversight of systems providing electronic access to public records.

Sec. 4. Section 84-1202, Reissue Revised Statutes of Nebraska, is amended to read:

84-1202. For purposes of the Records Management Act, unless the context otherwise requires:

(1) Agency shall mean means any department, division, office, commission, court, board, or elected, appointed, or constitutional officer, except individual members of the Legislature, or any other unit or body, however designated, of the executive, judicial, and legislative branches of

state government or of the government of any local political subdivision;

(2) Agency head shall mean means the chief or principal official or representative in any such agency or the presiding judge of any court, by whatever title known. When an agency consists of a single official, the agency and the agency head shall be are one and the same;

(3) State agency shall mean means an agency of the state government;

(4) Local agency shall mean means an agency of a local political subdivision, including any entity created by local public agencies pursuant to the Interlocal Cooperation Act;

(5) Local political subdivision shall mean means any county, city, village, township, district, authority, or other public corporation or political entity, whether existing under charter or general law, including any entity created by local public agencies pursuant to the Interlocal Cooperation Act. Local political subdivision shall does not include a city of the metropolitan class or a district or other unit which by law is considered an integral part of state government;

(6) Record shall mean means any book, document, paper, photograph, microfilm, sound recording, magnetic storage medium, optical storage medium, or other material regardless of physical form or characteristics created or received pursuant to law, charter, or ordinance or in connection with any other activity relating to or having an effect upon the transaction of public business;

(7) State record shall mean means a record which normally is maintained within the custody or control of a state agency or any other record which is designated or treated as a state record according to general law;

(8) Local record shall mean means a record of a local political subdivision or of any agency thereof unless designated or treated as a state record under general law;

(9) Essential record shall mean means a state or local record which is within one or the other of the following categories and which shall be preserved pursuant to the act Records Management Act:

(a) Category A. Records containing information necessary to the operations of government under all conditions, including a period of emergency created by a disaster; or

(b) Category B. Records not within Category A but which contain information necessary to protect the rights and interests of persons or to establish or affirm the powers and duties of state or local governments in the resumption of operations after a disaster;

(10) Preservation duplicate shall mean means a copy of an essential record which is used for the purpose of preserving the record pursuant to the act; and

(11) Disaster shall mean means any occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage, or other conditions of extreme peril resulting in substantial injury or damage to persons or property within this state, whether such occurrence is caused by an act of nature or of men humans, including an enemy of the United States;

(12) Administrator means the State Records Administrator;

(13) Board means the State Records Board;

(14) Electronic access means collecting, sharing, disseminating, and providing access to public records electronically;

(15) Gateway means any centralized electronic information system by which public records are provided through dial-in modem or continuous link;

(16) Public records includes all records and documents, regardless of physical form, of or belonging to this state or any agency, branch, department, board, bureau, commission, council, subunit, or committee of this state except when any other statute expressly provides that particular information or records shall not be made public. Data which is a public record in its original form shall remain a public record when maintained in computer files; and

(17) Network manager means an individual, a private entity, a state agency, or any other governmental subdivision responsible for directing and supervising the day-to-day operations and expansion of a gateway.

Sec. 5. Section 84-1204, Reissue Revised Statutes of Nebraska, is amended to read:

84-1204. (1) The A State Records Board, hereinafter called the board, is hereby established. The board shall:

(a) Advise to advise and assist the administrator in the performance of the his or her duties enjoined upon him or her by under the Records Management Act; and to perform

(b) Provide electronic access to public records through a gateway;

(c) Develop and maintain a gateway or electronic network for accessing public records;

(d) Provide appropriate oversight of a network manager;

(e) Approve reasonable fees for electronic access to public records pursuant to sections 8 and 9 of this act and submit contracts for public bidding pursuant to section 10 of this act;

(f) Have the authority to enter into or renegotiate agreements regarding the management of the network in order to provide citizens with electronic access to public records;

(g) Explore ways and means of expanding the amount and kind of public records provided through the gateway or electronic network, increasing the utility of the public records provided and the form in which the public records are provided, expanding the base of users who access public records electronically, and, if appropriate, implementing changes necessary for such purposes;

(h) Explore technological ways and means of improving citizen and business access to public records and, if appropriate, implement the technological improvements;

(i) Explore options of expanding the gateway or electronic network and its services to citizens and businesses; and

(1) Perform such other functions and duties as the act requires.

(2) In addition to the administrator, the board shall consist of:

(a) The the Governor, the or his or her designee;

(b) The Attorney General, the or his or her designee;

(c) The Auditor of Public Accounts, the Chief Justice, the Clerk of the legislature, the or his or her designee;

(d) The State Treasurer or his or her designee;

(e) The Director of Administrative Services or his or her designee;

(f) Three representatives appointed by the Governor to be broadly representative of banking, insurance, and law groups; and

(g) Three representatives appointed by the Governor to be broadly representative of libraries, the general public, and professional members of the Nebraska news media, the Director of the Nebraska State Historical Society, the State Archivist, and the director of the records management program who shall be appointed by the administrator with the approval of the board, or their personally designated representatives.

(3) The administrator or his or her representative shall be chairperson of the board, and the director of the records management program shall be its secretary. Upon call by the administrator, the board shall convene periodically in accordance with its rules and regulations or upon call by the administrator, or his or her personally designated representative.

(4) Six members of the board shall constitute a quorum, and the affirmative vote of six members shall be necessary for any action to be taken by the board. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(5) The representatives appointed by the Governor shall serve staggered three-year terms as the Governor designates and may be appointed for one additional term. Members of the board shall be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Sec. 6. (1) The board may employ or contract with a network manager. A network manager may include an individual, a private entity, a state agency, or another governmental subdivision. The board shall prepare criteria and specifications for the network manager in consultation with the Department of Administrative Services. Such criteria shall include procedures for submission of proposals by an individual, a private entity, a state agency, or another governmental subdivision. Selection of the network manager shall comply with all applicable procedures of the department. The board may negotiate and enter into a contract with the selected network manager which provides the duties, responsibilities, and compensation of the network manager.

(2) The network manager shall direct and supervise the day-to-day operations and expansion of a gateway or electronic network to make public records available electronically, including the initial phase of operations necessary to make the gateway operational. The network manager shall attend meetings of the board, keep a record of all gateway, electronic network, and related operations, which shall be the property of the board, maintain and be the custodian of all financial and operational records, and annually update and revise the business plan for the gateway or electronic network, in consultation with and under the direction of the board.

(3) The board shall finance the operation and maintenance of the gateway or electronic network from revenue generated pursuant to sections 52-1316 and 60-483, section 9-411, Uniform Commercial Code, and section 8 of

this act.

Sec. 7. The board shall establish a technical advisory committee to assist it in the performance of its duties. The committee shall consist of individuals who have technical experience and expertise in electronic access and information technology. The committee shall have three members. The members shall include a representative from a state agency that is responsible for providing public records, a representative from the central data processing division of the Department of Administrative Services, and a representative from the computer services group of the Legislative Council.

Sec. 8. Except as provided in sections 52-1316 and 60-483 and section 9-411, Uniform Commercial Code, the board may establish reasonable fees for electronic access to public records through the gateway. The fees shall not exceed the statutory fee for distribution of the public records in other forms. Any fee established by the board under this section may be collected for a one-year period and shall terminate at the end of the one-year period unless enacted by the Legislature. Any fees collected under this section shall be deposited in the Records Management Cash Fund.

Sec. 9. (1) Any state agency desiring to enter into an agreement to or otherwise provide electronic access to public records through a gateway for a fee shall make a written request for approval to the board. The request shall include, but not be limited to, (a) a copy of the contract under consideration if the electronic access is to be provided through a contractual arrangement, (b) the public records which are the subject of the contract or proposed electronic access fee, (c) the anticipated or actual timeline for implementation, and (d) any security provisions for the protection of confidential or sensitive records. The board shall take action on such request in accordance with section 8 of this act and after a public hearing within thirty days after receipt. The board may request a presentation or such other information as it deems necessary from the requesting state agency.

(2) A state agency may charge a fee for electronic access to public records without the board's approval for a one-time sale in a unique format. The purchaser may object to the fee in writing to the board, and the one-time fee shall then be subject to approval by the board according to the procedures and guidelines established in sections 6 to 10 of this act.

Sec. 10. By September 15, 1997, the board shall submit for public bidding any contract made by a state agency prior to the effective date of this act for providing electronic access to public records for a fee through a gateway. Any such contract in existence on the effective date of this act shall be terminated on January 31, 1998, unless sooner voided or terminated by order of a court of competent jurisdiction.

Sec. 11. The board shall provide quarterly reports to the Executive Board of the Legislative Council on its activities pursuant to sections 6 to 10 of this act.

Sec. 12. (1) If a state agency is required to provide a copy of public records on request, a person requesting a copy of a public record may elect to obtain it in any and all media in which the agency is capable of providing it. No request for a copy of a public record in a particular medium shall be denied on the ground that the custodian has made or prefers to make the public record available in another medium.

(2) A state agency may deny a request for a copy of a public record in a particular medium if:

(a) The request is unreasonably complicated;

(b) The request specifies a medium not regularly used by the state agency and would cause undue time or expense for the state agency to comply with the request; or

(c) The public record is available in the requested medium from another source at a fee equal to or lower than any fee that would be charged by the state agency.

(3) A state agency may not deny a request for paper copies of public records.

(4) The requester may appeal a decision by a state agency to deny a request for a copy of a public record in a particular medium in writing to the board. The denial shall then be subject to the approval of the board based upon its determination of the state agency's compliance with this section.

(5) If a state agency provides copies of public records in a particular medium, the state agency shall provide notice not less than ninety calendar days prior to discontinuing such practice. The notice shall be published at least three times in a newspaper of general circulation.

Sec. 13. Section 84-1220, Reissue Revised Statutes of Nebraska, is amended to read:

84-1220. Sections 84-1201 to 84-1226 84-1227 and sections 6 to 12 of this act shall be known and may be cited as the Records Management Act.

Sec. 14. Section 84-1227, Revised Statutes Supplement, 1996, is amended to read:

84-1227. There is hereby established in the state treasury a special fund to be known as the Records Management Cash Fund which, when appropriated by the Legislature, shall be expended by the Secretary of State for the ~~purpose~~ purposes of providing records management services and assistance to political subdivisions ~~and for development and maintenance of a gateway or electronic network for accessing public records.~~ All fees and charges for the purpose of records management services and analysis received by the Secretary of State from the political subdivisions shall be remitted to the State Treasurer for credit to such fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 15. Section 84-713.05, Revised Statutes Supplement, 1996, is amended to read:

~~84-713-05-~~ (1) The Task Force on Electronic Access to State Government Information is created. The task force shall consist of the following members:

(a) The chairperson of the Executive Board of the Legislative Council;

(b) The Speaker of the Legislature;

(c) The chairperson of the Government, Military and Veterans Affairs Committee of the Legislature;

(d) The chairperson of the Transportation Committee of the Legislature.

(e) Three members of the Legislature appointed by the chairperson of the Executive Board of the Legislative Council;

(f) ~~(e)~~ The Secretary of State; and

(g) ~~(f)~~ Three members appointed by the Governor under subsection (2) of this section.

(2) The task force shall include the following members appointed by the Governor:

(a) One representative appointed by the Governor to be broadly representative of banking, insurance, and law groups;

(b) One representative appointed by the Governor to be broadly representative of libraries, consumer groups, and the general public; and

(c) One representative appointed by the Governor to represent agencies of the executive branch of government.

(3) The chairperson of the Executive Board of the Legislative Council shall be the chairperson of the task force. The members shall be appointed within twenty days after ~~April 16, 1996~~ the effective date of this act.

(4) The task force shall investigate ~~how to best oversee and provide electronic access to public records current statutes and practices by state and local government regarding distribution of public records.~~ The investigation shall include, but not be limited to:

(a) Convening ~~at least three~~ public meetings as determined by the chairperson of the task force for input from the general public and individuals knowledgeable in areas related to electronic access to information;

(b) Exploring technological ways and means of improving access to public records An assessment of current statutes and practices by state agencies regarding distribution of public records in any medium, including fees charged for copies, whether electronic or other forms of distribution;

(c) An assessment of current practices by state agencies regarding the decision to make or not make public records available in a certain medium, whether such decisions have resulted in certain public records being distributed in limited formats and the rationale, if any, for such decisions, whether and in what circumstances access to public records in certain formats has been denied, and whether barriers to agencies exist which discourage agencies from providing public records in a variety of mediums;

(d) A comparative review of other states; and

(e) ~~(d)~~ A comprehensive review of access to public records; and records.

~~(e)~~ A review and analysis of current oversight of electronic access to public records.

The task force shall provide a written report by December 1, 1996 ~~1997,~~ to the Legislature which includes recommendations for any changes to state law that are necessary to ~~best oversee and provide electronic access to public records based on its findings.~~

(5) The task force shall cease to exist on December 31, 1996 ~~1997.~~

Sec. 16. Section 9-411, Uniform Commercial Code, is amended to read:

9-411. Information provided by filing; telephone and written inquiries; filing officer; Secretary of State; duties; fees; liability; when.

(1) Telephone and written inquiries regarding information provided by the filing shall be accepted and answered by the filing officer. When a filing party provides the filing officer with a postage paid addressed envelope and a copy of the filing, the filing officer shall note the time and date of filing on the copy and mail it in the envelope provided. The fee for furnishing file information ~~in writing~~ shall be two dollars and fifty cents for each debtor or trade name searched by the filing officer. If the information request requires attestation by the filing officer, an additional fee of three dollars shall be assessed. The filing officer and his or her employees or agents are exempted from all personal liability as a result of any error or omission in providing information as required by this section, except in cases of willful misconduct or gross negligence.

(2) There shall be a uniform fee, payable to the office at which inquiry is made, for any inquiries made by telephone regarding information provided by the filing. Such fee shall be one dollar per name and shall be in addition to any other charge for services. Except as provided in subsection (3) of this section, there shall be no charge for actual inspection of any public records kept by the filing officer.

(3) There shall be no fee charged for actual inspection of records of a filing kept by the Secretary of State for the inspection of ten names or less per day by a single person. There shall be a uniform fee, in addition to any other charge for services payable to the Secretary of State, of one dollar per name for each inspection in excess of ten names per day by a single person.

(4) The Secretary of State shall ~~on or before January 1, 1986~~ provide twenty-four-hours-a-day seven-days-a-week service for inquiries made by telephone or ~~other~~ electronic media means. The Secretary of State shall provide a printed copy of filing information requested for a fee of fifty cents per page.

Sec. 17. Section 9-420, Uniform Commercial Code, is amended to read:

9-420. Uniform Commercial Code Cash Fund; created; use; Secretary of State; furnish printers.

(1) There is hereby created the Uniform Commercial Code Cash Fund. All funds received pursuant to ~~section 9-403~~ sections 9-403, 9-408, and 9-411, Uniform Commercial Code, and sections 52-1312, 52-1313, 52-1316, and 52-1602 shall be placed in the fund and used by the Secretary of State to carry out subsection (2) of this section, sections 9-401, 9-403, and 9-411 to 9-415, Uniform Commercial Code, and sections 52-1301 to 52-1321, except that transfers from the Uniform Commercial Code Cash Fund to the General Fund may be made at the direction of the Legislature and except as otherwise specifically provided by law.

(2) The Secretary of State shall furnish each county clerk a printer compatible with the centralized computer system established pursuant to section 9-415, Uniform Commercial Code, so the county clerk is able to mail written confirmation of inquiries by the end of the next business day as required by section 52-1316.

Sec. 18. Original sections 52-1316, 84-1201, 84-1202, 84-1204, and 84-1220, Reissue Revised Statutes of Nebraska, sections 60-483, 84-713.05, and 84-1227, Revised Statutes Supplement, 1996, and sections 9-411 and 9-420, Uniform Commercial Code, are repealed.

Sec. 19. The following sections are outright repealed: Sections 84-713 to 84-713.04, Revised Statutes Supplement, 1996.

Sec. 20. Since an emergency exists, this act takes effect when passed and approved according to law.