

## LEGISLATIVE BILL 1278

Approved by the Governor April 18, 2002

Introduced by Brashear, 4; Dierks, 40; D. Pederson, 42

AN ACT relating to monopolies and unlawful combinations; to amend sections 59-806, 59-808 to 59-810, 59-812, 59-815, 59-816, 59-819 to 59-822, 59-824, 59-826 to 59-831, 59-1606 to 59-1611, 59-1614 to 59-1616, 59-1623, and 68-1035, Reissue Revised Statutes of Nebraska, section 59-823, Revised Statutes Supplement, 2000, and section 59-1803, Revised Statutes Supplement, 2001; to provide for illegal overcharge or undercharge actions as prescribed; to authorize indirect damages in certain antitrust actions; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 59-806, Reissue Revised Statutes of Nebraska, is amended to read:

59-806. No corporation, joint-stock company, limited liability company, or other association shall engage in business within this state, a majority of whose stock is owned by or controlled or held in trust for any manufacturing or other corporation, which, in the course of its manufacture or production, conducts its business, or any part thereof, in a manner which would be prohibited by sections 59-801 to ~~59-828~~ 59-831 and section 11 of this act if it were so conducted in the course of such business within this state.

Sec. 2. Section 59-808, Reissue Revised Statutes of Nebraska, is amended to read:

59-808. Any president, director, treasurer, officer, corporator, partner, member, associate, or agent of such corporation, joint-stock company, limited liability company, or other association who does in its behalf anything prohibited by sections 59-801 to ~~59-828~~ 59-831 and section 11 of this act or who supports, votes for, aids and abets, or takes part in doing such action by the corporation, joint-stock company, limited liability company, or other association, or any instrumentality thereof, shall be liable to the penalties by law provided.

Sec. 3. Section 59-809, Reissue Revised Statutes of Nebraska, is amended to read:

59-809. No corporation, joint-stock company, limited liability company, or other association which manufactures or produces any article for sale or transportation within this state and which does any of the acts or things prohibited to be done by sections 59-801 to ~~59-828~~ 59-831 and section 11 of this act shall engage in business within this state.

Sec. 4. Section 59-810, Reissue Revised Statutes of Nebraska, is amended to read:

59-810. Any corporation, joint-stock company, limited liability company, or other association which has been once adjudged to have violated the provisions of sections 59-801 to ~~59-828~~ 59-831 and section 11 of this act by the final judgment of any court having jurisdiction of the question in any civil suit or proceeding in which such corporation, joint-stock company, limited liability company, or other association was a party, which thereafter violates any of such sections or which fails to make the returns herein required at the times specified shall no longer be allowed to engage in business within this state. Such prohibition shall only be enforced after such corporation, joint-stock company, limited liability company, or other association has been enjoined against further engaging in such business on an information or suit brought in a court of competent jurisdiction by the Attorney General in behalf of this state.

Sec. 5. Section 59-812, Reissue Revised Statutes of Nebraska, is amended to read:

59-812. Any corporation, joint-stock company, limited liability company, or other association which is charged with violating ~~any of the provisions of~~ sections 59-801 to ~~59-828~~ 59-831 and section 11 of this act and any president, director, treasurer, officer, limited liability company member, or agent thereof may be joined as a party in any proceeding, civil or criminal, to enforce such sections.

Sec. 6. Section 59-815, Reissue Revised Statutes of Nebraska, is amended to read:

59-815. Any corporation, joint-stock company, limited liability company, or other association, and any president, director, treasurer, officer, corporator, partner, member, associate, or agent thereof who in its

behalf engages in such business in violation of sections 59-801 to ~~59-828~~ 59-831 and section 11 of this act shall for each offense, in addition to such penalty for contempt as the court in case of disobedience to its lawful order may impose, be guilty of a Class IV felony.

Sec. 7. Section 59-816, Reissue Revised Statutes of Nebraska, is amended to read:

59-816. Every president, treasurer, general manager, agent, or other person usually exercising the powers of such officers of any corporation, joint-stock company, limited liability company, or other association who has himself or herself, in its behalf, violated, united to violate, or voted for or consented to the violation of ~~any of the provisions of~~ sections 59-801 to ~~59-828~~ 59-831 and section 11 of this act shall thereafter be personally liable for all the debts and obligations of any such corporation, joint-stock company, limited liability company, or other association created while such person holds such office or agency, whether under the same or subsequent elections or appointments.

Sec. 8. Section 59-819, Reissue Revised Statutes of Nebraska, is amended to read:

59-819. The several courts of record of this state having equity jurisdiction are hereby invested with jurisdiction to prevent and restrain all violations of sections 59-801 to ~~59-828~~ 59-831 and section 11 of this act and especially the offering, granting, giving, soliciting, accepting, or receiving any such rebate, concession, or service by any person or persons and to prevent or restrain any such joint-stock company, corporation, limited liability company, association, or combination which has solicited, accepted, or received any such rebate, concession, or service or which has offered, granted, or given any special prices, inducements, or advantages in order to restrict or destroy competition in particular localities from engaging in commerce within this state. Such proceedings may be by way of complaint setting forth the cause of action and praying that the acts hereby made unlawful shall be enjoined or otherwise prohibited. When the parties complained of are duly notified of such complaint, the court shall proceed as soon as may be to the hearing and determination of the case, and upon such complaint and before final decree the court may at any time make such temporary restraining order or prohibition as shall be deemed just. The court may retain jurisdiction of the ~~cause~~ case after the decree for the purpose of such subsequent modification of the same as may be made to appear equitable and just in the premises.

Sec. 9. Section 59-820, Reissue Revised Statutes of Nebraska, is amended to read:

59-820. Whenever it shall appear to the court before which any civil proceeding under sections 59-801 to ~~59-828~~ 59-831 and section 11 of this act shall be pending that the ends of justice require that other parties shall be brought before the court, the court may cause them to be summoned whether they reside in the county where the court is held or not, and subpoenas to that end may be served in any county by the sheriff thereof.

Sec. 10. Section 59-821, Reissue Revised Statutes of Nebraska, is amended to read:

59-821. Any person who ~~shall be~~ is injured in his or her business or property by any other person or persons, by a violation of ~~reason of anything forbidden or declared to be unlawful by~~ sections 59-801 to ~~59-828~~ 59-831 and section 11 of this act, whether such injured person dealt directly or indirectly with the defendant, may bring a civil action in the district court ~~sue therefor in any court of record in this state,~~ in the county in which the defendant or defendants reside or are found, without respect to the amount in controversy, and shall recover actual damages or liquidated damages in an amount which bears a reasonable relation to the actual damages which have been sustained and which damages are not susceptible of measurement by ordinary pecuniary standards and the costs of suit, including a reasonable attorney's fee.

Sec. 11. In an illegal overcharge or undercharge case in which claims are asserted by both parties who dealt directly with the defendant and parties who dealt indirectly with the defendant or any combination thereof:

(1) A defendant may prove, as a partial or complete defense to a claim for damages under sections 59-801 to 59-831 and this section, that the illegal overcharge or undercharge has been passed on to others who are themselves entitled to recover so as to avoid duplication of recovery of such damages; and

(2) The court may transfer and consolidate such claims, apportion damages, and delay disbursement of damages to avoid multiplicity of suits and duplication of recovery of damages and to obtain substantial fairness.

Sec. 12. Section 59-822, Reissue Revised Statutes of Nebraska, is

amended to read:

59-822. The words person or persons, as used in sections 59-801 to ~~59-828~~ 59-831 and section 11 of this act, shall be deemed to include all corporations, associations, limited liability companies, combinations, or concerns whatsoever.

Sec. 13. Section 59-823, Revised Statutes Supplement, 2000, is amended to read:

59-823. When any suit in equity is brought in any court under sections 59-801 to ~~59-828~~ 59-831 and section 11 of this act in which the state is complainant, the Attorney General may file with the clerk of such court a certificate that, in his or her opinion, the case is of general public importance, a copy of which certificate shall be immediately furnished by such clerk to the judge of the court in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited and be assigned for hearing at the earliest practicable day. An appeal from the final decree of the court shall lie to the Court of Appeals and shall be taken within thirty days after the entry of such decree or final order or within thirty days after entry of the order overruling a motion for a new trial in such ~~cause~~ case.

Sec. 14. Section 59-824, Reissue Revised Statutes of Nebraska, is amended to read:

59-824. In all prosecutions, hearings, and proceedings under ~~the provisions of~~ sections 59-801 to ~~59-828~~ 59-831 and section 11 of this act, whether civil or criminal, no person shall be excused from attending and testifying, or from producing books, papers, contracts, agreements, and documents before the courts of this state, or in obedience to the subpoena of the same, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of ~~him~~ such person, may tend to criminate ~~him~~ such person or subject ~~him~~ such person to a penalty or forfeiture.

Sec. 15. Section 59-826, Reissue Revised Statutes of Nebraska, is amended to read:

59-826. Whoever knowingly swears to a return or report required by sections 59-801 to ~~59-828~~ 59-831 and section 11 of this act that is false in any material particular, or knowingly swears to an answer to any of the requirements of ~~said~~ such sections that is false in any material particular, shall be deemed guilty of perjury, and punished as provided by the laws of this state in reference to perjury.

Sec. 16. Section 59-827, Reissue Revised Statutes of Nebraska, is amended to read:

59-827. Whoever shall knowingly prepare, or cause to be prepared, a report, return, or answer required by sections 59-801 to ~~59-828~~ 59-831 and section 11 of this act that is false, as aforesaid, shall be guilty of subornation of perjury and punished by law.

Sec. 17. Section 59-828, Reissue Revised Statutes of Nebraska, is amended to read:

59-828. (1) It is hereby made the duty of the Attorney General and the county attorney of each county under the direction of the Attorney General to institute and prosecute such proceedings as may be necessary to carry into effect ~~all of the provisions of~~ sections 59-801 to ~~59-828~~, ~~PROVIDED, no~~ 59-831 and section 11 of this act. No person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under ~~said~~ such sections. ~~No~~ ~~AND PROVIDED FURTHER, no~~ person testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

(2) It shall be lawful for any person to institute proceedings pursuant to ~~the provisions of Chapter 59, article 8~~ sections 59-801 to 59-831 and section 11 of this act, at his or her own expense and by his or her own attorney, but in the action so brought by such person no recovery for costs and disbursements shall be had against the state.

Sec. 18. Section 59-829, Reissue Revised Statutes of Nebraska, is amended to read:

59-829. When any provision of sections 59-801 to 59-831 and section 11 of this act ~~59-821, 59-828, 59-829,~~ and sections 84-211 to 84-214 or any provision of Chapter 59 is the same as or similar to the language of a federal antitrust law, the courts of this state in construing such sections ~~59-821, 59-828, 59-829,~~ and ~~84-211 to 84-214 or any provision of Chapter 59 or chapter~~ shall follow the construction given to the federal law by the federal courts.

Sec. 19. Section 59-830, Reissue Revised Statutes of Nebraska, is amended to read:

59-830. No criminal action may be maintained under ~~Chapter 59~~ sections 59-801 to 59-831 and section 11 of this act against any person,

corporation, organization, limited liability company, or association for acting pursuant to and under the authority of any state or federal law. It is the purpose of this section to reaffirm that a person may rely on the validity of any state or federal law until declared invalid.

Sec. 20. Section 59-831, Reissue Revised Statutes of Nebraska, is amended to read:

59-831. When the Attorney General, on behalf of a state agency or political subdivision, is authorized to investigate, file suit, or otherwise take action in connection with violations under sections 59-801 to ~~59-830~~ 59-831 and section 11 of this act, any recovery of damages or costs by judgment, court decree, settlement in or out of court, or other final result shall be subject to the following:

(1) Upon recovery of damages or any monetary payment except criminal penalties, the costs, expenses, or billings incurred by any state agency or political subdivision in any investigation or other action arising out of a violation under sections 59-801 to ~~59-830~~ 59-831 and section 11 of this act shall be sought out in any judgment, court decree, settlement in or out of court, or other final result. Any recovered costs shall be deposited by the Attorney General in the fund from which such costs were expended; and

(2) When the Attorney General makes recovery pursuant to sections 59-801 to ~~59-830~~ 59-831 and section 11 of this act on behalf of a state agency or political subdivision of any money, funds, securities, or other things of value in the nature of civil damages or other, except criminal penalties, whether such recovery shall be by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, such money, funds, securities, or other things of value shall be deposited by the Attorney General in the fund from which the funds which are being recovered were expended.

Sec. 21. Section 59-1606, Reissue Revised Statutes of Nebraska, is amended to read:

59-1606. (1) It shall be unlawful for any corporation to acquire, directly or indirectly, the whole or any part of the stock or assets of another corporation when the effect of such acquisition may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

(2) This section shall not apply to corporations which purchase such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition; nor shall anything contained in this section prevent a corporation from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

(3) In addition to any other remedy provided by ~~sections 59-1601 to 59-1622~~ the Consumer Protection Act, the district court may order any corporation to divest itself of the stock or assets held contrary to this section, in the manner and within the time fixed by such order.

Sec. 22. Section 59-1607, Reissue Revised Statutes of Nebraska, is amended to read:

59-1607. The labor of a human being shall not be a commodity or article of commerce. Nothing contained in ~~sections 59-1601 to 59-1622~~ the Consumer Protection Act shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof.

Sec. 23. Section 59-1608, Reissue Revised Statutes of Nebraska, is amended to read:

59-1608. (1) The Attorney General may bring an action in the name of the state against any person to restrain and prevent the doing of any act prohibited by ~~sections 59-1601 to 59-1622~~, and the Consumer Protection Act. The prevailing party may, in the discretion of the court, recover the costs of such action including a reasonable attorney's fee.

(2) The court may make such additional orders or judgments as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any act prohibited in ~~sections 59-1601 to 59-1622~~ the Consumer Protection Act.

Sec. 24. Section 59-1608.01, Reissue Revised Statutes of Nebraska, is amended to read:

59-1608.01. In the enforcement of ~~sections 59-1601 to 59-1622~~ the Consumer Protection Act, the Attorney General may bring an action in the name

of the state in the district court of the county in which the alleged violator resides or has his or her principal place of business or in Lancaster County.

Sec. 25. Section 59-1608.02, Reissue Revised Statutes of Nebraska, is amended to read:

59-1608.02. When the Attorney General, on behalf of a state agency or political subdivision, is authorized to investigate, file suit, or otherwise take action in connection with violations under ~~sections 59-1601 to 59-1623~~ the Consumer Protection Act, any recovery of damages or costs by judgment, court decree, settlement in or out of court, or other final result shall be subject to the following:

(1) Upon recovery of damages or any monetary payment except criminal penalties, the costs, expenses, or billings incurred by any state agency or political subdivision in any investigation or other action arising out of a violation under ~~sections 59-1601 to 59-1623~~ the Consumer Protection Act shall be sought out in any judgment, court decree, settlement in or out of court, or other final result. Any recovered costs shall be deposited by the Attorney General in the fund from which such costs were expended; and

(2) When the Attorney General makes recovery pursuant to ~~sections 59-1601 to 59-1623~~ the Consumer Protection Act on behalf of a state agency or political subdivision of any money, funds, securities, or other things of value in the nature of civil damages or other, except criminal penalties, whether such recovery shall be by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, such money, funds, securities, or other things of value shall be deposited by the Attorney General in the fund from which the funds which are being recovered were expended.

Sec. 26. Section 59-1609, Reissue Revised Statutes of Nebraska, is amended to read:

59-1609. Any person who is injured in his or her business or property by a violation of sections 59-1602 to 59-1606, whether such injured person dealt directly or indirectly with the defendant, or any person so injured because he or she refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of sections 59-1603 to 59-1606, may bring a civil action in the district court to enjoin further violations, to recover the actual damages sustained by him or her, or both, together with the costs of the suit, including a reasonable attorney's fee, and the court may in its discretion, increase the award of damages to an amount which bears a reasonable relation to the actual damages which have been sustained and which damages are not susceptible of measurement by ordinary pecuniary standards; ~~PROVIDED,~~ except that such increased award for violation of section 59-1602 shall not exceed one thousand dollars. For the purpose of this section, person shall include the counties, the municipalities, and all political subdivisions of this state.

Whenever the State of Nebraska is injured by reason of a violation of sections 59-1603 to 59-1606, it may sue therefor in the district court to recover the actual damages sustained by it and to recover the costs of the suit including a reasonable attorney's fee.

Sec. 27. In an illegal overcharge or undercharge case in which claims are asserted by both parties who dealt directly with the defendant and parties who dealt indirectly with the defendant or any combination thereof:

(1) A defendant may prove, as a partial or complete defense to a claim for damages under sections 59-1602 to 59-1606, that the illegal overcharge or undercharge has been passed on to others who are themselves entitled to recover so as to avoid duplication of recovery of such damages; and

(2) The court may transfer and consolidate such claims, apportion damages, and delay disbursement of damages to avoid multiplicity of suits and duplication of recovery of damages and to obtain substantial fairness.

Sec. 28. Section 59-1610, Reissue Revised Statutes of Nebraska, is amended to read:

59-1610. In the enforcement of ~~sections 59-1601 to 59-1622~~ the Consumer Protection Act, the Attorney General may accept an assurance of discontinuance of any act or practice deemed in violation of ~~sections 59-1601 to 59-1622~~ the Consumer Protection Act, from any person who engages in, or who has engaged in, such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his or her principal place of business, or in Lancaster County.

Such assurance of discontinuance shall not be considered an admission of a violation for any purpose, but proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of ~~sections 59-1601 to 59-1622~~ the Consumer Protection Act.

Sec. 29. Section 59-1611, Reissue Revised Statutes of Nebraska, is amended to read:

59-1611. (1) Whenever the Attorney General believes that any person may be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated, which he or she believes to be relevant to the subject matter of an investigation of a possible violation of sections 59-1602 to 59-1606, ~~he~~ the Attorney General may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon such a person a civil investigative demand requiring such person to produce such documentary material and permit inspection and copying thereof. This + PROVIDED, that this section shall not be applicable to criminal prosecutions.

(2) Each such demand shall:

(a) State the statute and section or sections thereof the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) Describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demanded;

(c) Prescribe a return date within which the documentary material shall be produced; and

(d) Identify the members of the Attorney General's staff to whom such documentary material shall be made available for inspection and copying.

(3) No such demand shall:

(a) Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this state; or

(b) Require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(4) Service of any such demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if such person is not a natural person, to any officer of the person to be served;

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if such person has no place of business in this state, to his or her principal office or place of business.

(5) Documentary material demanded pursuant to the provisions of this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the Attorney General.

(6) No documentary material produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by a district court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof be disclosed to, other than an authorized employee of the Attorney General, without the consent of the person who produced such material, except + PROVIDED, that under such reasonable terms and conditions as the Attorney General shall prescribe, the copies of such documentary material shall be available for inspection and copying by the person who produced such material or any duly authorized representative of such person. The Attorney General or any assistant attorney general may use such copies of documentary material as he or she determines necessary in the enforcement of sections 59-1601 to 59-1622 the Consumer Protection Act, including presentation before any court, except + PROVIDED, that any such material which contains trade secrets shall not be presented except with the approval of the court in which action is pending after adequate notice to the person furnishing such material.

(7) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for or to modify or set aside a demand issued pursuant to subsection (1) of this section, stating good cause, may be filed in the district court for Lancaster County, or in such other county where the parties reside. A petition by the person on whom the demand is served, stating good cause, to require the Attorney General or any person to perform any duty imposed by the provisions of this section, and all other petitions in connection with a demand, may be filed in the district court for Lancaster County, or in the county where the parties reside.

(8) Whenever any person fails to comply with any civil investigative demand for documentary material duly served upon him or her under this

section, or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the county in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one county such petition shall be filed in the county in which such person maintains his or her principal place of business, or in such other county as may be agreed upon by the parties to such petition. Whenever any petition is filed in the district court of any county under this section, such court shall have jurisdiction to hear and determine the matter so presented and to enter such order as may be required to carry into effect the provisions of this section. Disobedience of any order entered under this section by any court shall be punished as a contempt thereof.

Sec. 30. Section 59-1614, Reissue Revised Statutes of Nebraska, is amended to read:

59-1614. Any person who violates section 59-1603 or 59-1604 or the terms of any injunction issued as provided in ~~sections 59-1601 to 59-1622~~, the Consumer Protection Act shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars.

Any person who violates section 59-1602 shall pay a civil penalty of not more than two thousand dollars for each violation, ~~except~~ PROVIDED, that such penalty shall not apply to any radio or television broadcasting station which broadcasts, or to any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium who publishes, prints, or distributes advertising in good faith without knowledge of its false, deceptive, or misleading character and no such good faith publication, printing, or distribution shall be considered a violation of section 59-1602.

For the purpose of this section, the district court which issues any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the state may petition for the recovery of civil penalties.

With respect to violations of sections 59-1603 and 59-1604, the Attorney General, acting in the name of the state, may seek recovery of such penalties in a civil action.

Sec. 31. Section 59-1615, Reissue Revised Statutes of Nebraska, is amended to read:

59-1615. Upon petition by the Attorney General, the court may, in its discretion, order the dissolution, or suspension or forfeiture of franchise, of any corporation which ~~shall violate~~ violates section 59-1603 or 59-1604 or the terms of any injunction issued as provided in ~~sections 59-1601 to 59-1622~~ the Consumer Protection Act.

Sec. 32. Section 59-1616, Reissue Revised Statutes of Nebraska, is amended to read:

59-1616. Personal service of any process in an action under ~~sections 59-1601 to 59-1622~~ the Consumer Protection Act may be made upon any person outside the state if such person has engaged in conduct in violation of ~~sections 59-1601 to 59-1622~~ the act which has had impact in this state which ~~sections 59-1601 to 59-1622 prohibit~~ the act prohibits.

Sec. 33. Section 59-1623, Reissue Revised Statutes of Nebraska, is amended to read:

59-1623. Sections 59-1601 to 59-1622 and section 27 of this act shall be known and ~~designated~~ may be cited as the Consumer Protection Act.

Sec. 34. Section 59-1803, Revised Statutes Supplement, 2001, is amended to read:

59-1803. Issuance of a charitable gift annuity does not constitute:

(1) Engaging in business as a trust company subject to the Nebraska Trust Company Act;

(2) Engaging in the business of insurance subject to Chapter 44;

(3) Engaging in an act in violation of sections 59-801 to 59-831 and section 11 of this act;

(4) Engaging in an act in violation of the Viatical Settlements Act;

or

(5) Engaging in an act in violation of the Uniform Deceptive Trade Practices Act. Conduct other than issuance of a charitable gift annuity, including the marketing of a charitable gift annuity, is not exempt from application of the Uniform Deceptive Trade Practices Act pursuant to this subdivision.

Sec. 35. Section 68-1035, Reissue Revised Statutes of Nebraska, is amended to read:

68-1035. Actions taken pursuant to sections 68-1029 to 68-1036 shall not be subject to the Consumer Protection Act and sections 59-801 to

~~59-829~~ 59-831 and section 11 of this act. It is the intention of the Legislature that vendors and contracts complying with sections 68-1029 to 68-1036 shall be exempted from the application of federal antitrust laws. Nothing contained in sections 68-1029 to 68-1036 shall prohibit contracts between individual vendors and the Department of Health and Human Services Finance and Support.

Sec. 36. Original sections 59-806, 59-808 to 59-810, 59-812, 59-815, 59-816, 59-819 to 59-822, 59-824, 59-826 to 59-831, 59-1606 to 59-1611, 59-1614 to 59-1616, 59-1623, and 68-1035, Reissue Revised Statutes of Nebraska, section 59-823, Revised Statutes Supplement, 2000, and section 59-1803, Revised Statutes Supplement, 2001, are repealed.