

The NDPA (effective January 1, 2025) governs certain entities that control (“controllers”) or process (“processors”) and, as applicable, sell, the personal data of Nebraska residents, other than in the employment or business-to-business contexts (“consumers”). It also grants Nebraska residents certain rights with respect to their personal data.

Applicability

The NDPA applies to persons or entities that:

1. conduct business in Nebraska or produce a product or service consumed by Nebraska residents;
2. process, or engage in the sale of, personal data; and
3. are not a small business as determined under the federal Small Business Act, as such existed on January 1, 2024.¹

Practical Application for Businesses

Consumer Rights:

- (1) **Right to Access:** the right to confirm whether a controller is processing personal data and access such data, unless it would require the controller to reveal a trade secret.
- (2) **Right to Correct:** the right to correct inaccuracies in the consumer’s personal data (taking into account the nature of the personal data and the purposes of processing the data).
- (3) **Right to Delete:** the right to delete personal data concerning the consumer.
- (4) **Right to Data Portability:** if the data is available in a digital format and the processing is completed by automated means, the right to obtain the personal data in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the data to another entity without hindrance.
- (5) **Right to Opt Out:** the right to opt out of the processing of personal data for purposes of (i) targeted advertising, (ii) the sale of personal data, or (iii) profiling for decisions that significantly affect a consumer.

Controller Obligations:

- Publish a privacy notice that contains requisite details and is reasonably accessible and clear.
- Obtain consent to collect sensitive data and process sensitive data of any consumers under **13** in compliance with COPPA.
- Provide consumers with sufficient methods to exercise their rights.
- Act on consumer requests within **45 days**; provide notice of extensions and the appeals process as necessary.
- Enter into binding data processing agreements with requisite limitations for third-party processors.
- Limit processing of personal data to that which is reasonably necessary with disclosed purposes.
- Conduct and document a data protection assessment for each processing activity that poses a “heightened risk of harm” to the consumer (e.g., selling personal data, processing sensitive data, or targeted advertising or profiling with certain foreseeable risks).

Recommendations for Controllers:

- Regularly update data maps to detail personal data collection, including sensitive data and targeted advertising.
- Train employees how to handle consumer inquiries and requests.
- Maintain clear and executable data retention policies and procedures.

Penalties:

- The Nebraska Attorney General has exclusive enforcement authority and may seek injunctive relief and civil penalties **up to \$7,500 per violation**.
- There is a 30-day cure period to correct violations following notice from the Nebraska Attorney General.

¹ The Small Business Administration uses detailed industry-level definitions that include employee thresholds and revenue thresholds which should be taken into consideration.