

ASSEMBLY BILL NO. 109—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF ATTORNEY GENERAL)

FEBRUARY 4, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes regarding deceptive trade practices. (BDR 52-292)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~for omitted material~~ is material to be omitted.

AN ACT relating to deceptive trade practices; requiring the commissioner to make public, upon request, any assurance of discontinuance accepted by the commissioner or the director; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 598.0979 is hereby amended to read as follows:
2 598.0979 1. Notwithstanding the requirement of knowledge as an
3 element of a deceptive trade practice, when the commissioner or director
4 has cause to believe that a person has engaged or is engaging in any
5 deceptive trade practice, knowingly or otherwise, he may request in
6 writing that the attorney general represent him in instituting an appropriate
7 legal proceeding, including, without limitation, an application for an
8 injunction or temporary restraining order prohibiting the person from
9 continuing the ~~practices.~~ ***deceptive trade practice.*** The court may make
10 orders or judgments necessary to prevent the use by the person of any such
11 deceptive trade practice or to restore to any other person any money or
12 property which may have been acquired by the deceptive trade practice.
13 2. ~~Where~~ ***If*** the commissioner or director has the authority to
14 institute a civil action or other proceeding, in lieu thereof or as a part
15 thereof, he may accept an assurance of discontinuance of any deceptive
16 trade practice. This assurance may include a stipulation for the payment by
17 the alleged violate

of:

1 (a) The costs of investigation and the costs of instituting the action or
2 proceeding;

3 (b) Any amount of money which he may be required to pay pursuant to
4 the provisions of NRS 598.0971 in lieu of any administrative fine; and

5 (c) The restitution of any money or property acquired by any deceptive
6 trade practice.

7 ~~{Except as otherwise provided in this subsection, any assurance of~~
8 ~~discontinuance accepted by the commissioner or director and any~~
9 ~~stipulation filed with the court is confidential to the parties to the action or~~
10 ~~proceeding and to the court and its employees. Upon final judgment by the~~
11 ~~court that an injunction or a temporary restraining order, issued as~~
12 ~~provided in subsection 1 of this section, has been violated, an assurance of~~
13 ~~discontinuance has been violated or a person has engaged in the same~~
14 ~~deceptive trade practice as had previously been enjoined, the assurance of~~
15 ~~discontinuance or stipulation becomes a public record.}~~

16 Proof by a
17 preponderance of the evidence of a violation of an assurance **of**
18 **discontinuance** constitutes prima facie evidence of a deceptive trade
19 practice for the purpose of any civil action or proceeding brought
20 thereafter by the commissioner or director, whether a new action or a
21 subsequent motion or petition in any pending action or proceeding.

22 **Sec. 2.** NRS 598.098 is hereby amended to read as follows:

23 598.098 1. **The provisions of** NRS 598.0903 to 598.0999, inclusive,
24 do not prohibit the commissioner or director from disclosing to the
25 attorney general, any district attorney or any law enforcement ~~{officer}~~
26 **agency** the fact that a crime has been committed by any person, if this fact
27 has become known as a result of any investigation conducted pursuant to
28 the provisions of NRS 598.0903 to 598.0999, inclusive.

29 2. ~~{Subject to the provisions of subsection 2 of NRS 598.0979 and~~
30 ~~except}~~ **Except** as otherwise provided in this section, the commissioner or
31 director may not make public the name of any person alleged to have
32 committed a deceptive trade practice. This subsection does not:

33 (a) Prevent the commissioner or director from issuing public statements
34 describing or warning of any course of conduct which constitutes a
35 deceptive trade practice.

36 (b) Apply to a person who is subject to an order issued pursuant to
37 subsection 5 of NRS 598.0971.

38 3. Upon request, the commissioner ~~{may:}~~ **must:**

39 (a) Disclose the number of written complaints **concerning a person**
40 received by the commissioner during the current or immediately preceding
41 fiscal year. A disclosure made pursuant to this paragraph must include the
42 disposition of the complaint disclosed.

43 (b) Make public any order to cease and desist issued pursuant to
44 subsection 5 of NRS 598.0971.

1 *(c) Make public any assurance of discontinuance accepted by the*
2 *commissioner or director pursuant to subsection 2 of NRS 598.0979.*

3 This subsection does not authorize the commissioner to disclose or make
4 public the contents of any complaint described in paragraph (a) . ~~for the~~
5 ~~record of or any other information concerning a hearing conducted in~~
6 ~~relation to the issuance of an order to cease and desist described in~~
7 ~~paragraph (b).]~~

8 4. The commissioner may adopt regulations authorizing the disclosure
9 of information concerning any complaint or number of complaints
10 received by the commissioner or director relating to a person who has been
11 convicted of violating a provision of NRS 598.0903 to 598.0999,
12 inclusive.

13 **Sec. 3.** NRS 598.281 is hereby amended to read as follows:

14 598.281 As used in NRS 598.281 to 598.289, inclusive, unless the
15 context otherwise requires:

16 1. "Buyer" means a natural person who is solicited to purchase or who
17 purchases the services of an organization which provides credit services.

18 2. "Commissioner" means the commissioner of consumer affairs.

19 3. "Division" means the consumer affairs division of the department of
20 business and industry.

21 4. "Extension of credit" means the right to defer payment of debt or to
22 incur debt and defer its payment, offered or granted primarily for personal,
23 family or household purposes.

24 5. "Organization":

25 (a) Means a person who, with respect to the extension of credit by
26 others, sells, provides or performs, or represents that he can or will sell,
27 provide or perform, any of the following services, in return for the
28 payment of money or other valuable consideration:

29 (1) Improving a buyer's credit record, history or rating.

30 (2) Obtaining an extension of credit for a buyer.

31 (3) Providing counseling or assistance to a person in establishing or
32 effecting a plan for the payment of his indebtedness, unless ~~such~~ *that*
33 counseling or assistance is provided by and is within the scope of the
34 authorized practice of a debt adjuster licensed pursuant to chapter 676 of
35 NRS.

36 (4) Providing advice or assistance to a buyer with regard to ~~either~~
37 subparagraph (1) or (2).

38 (b) Does not include : ~~any of the following:]~~

39 (1) A person organized, chartered or holding a license or
40 authorization certificate to make loans or extensions of credit pursuant to
41 the laws of this state or the United States who is subject to regulation and
42 supervision by an officer or agency of this state or the United States.

1 (2) A bank or savings and loan institution whose deposits or accounts
2 are eligible for insurance by the Federal Deposit Insurance Corporation.

3 (3) ~~{A nonprofit organization exempt from taxation under section~~
4 ~~501(c)(3) of the Internal Revenue Code.~~

5 ~~—(4)}~~ A person licensed as a real estate broker by this state where the
6 person is acting within the course and scope of that license ~~†~~.

7 ~~—(5)}~~ *, unless the person is rendering those services in the course and*
8 *scope of employment by or other affiliation with an organization.*

9 (4) A person licensed to practice law in this state where the person
10 renders services within the course and scope of his practice as an attorney
11 at law, unless the person is rendering ~~{such}~~ *those* services in the course
12 and scope of employment by or other affiliation with an organization.

13 ~~{(6)}~~ (5) A broker-dealer registered with the Securities and Exchange
14 Commission or the Commodity Futures Trading Commission where the
15 broker-dealer is acting within the course and scope of such regulation.

16 ~~{(7)}~~ (6) A person licensed as a debt adjuster pursuant to chapter 676
17 of NRS.

18 ~~{(8)}~~ (7) A reporting agency.

19 6. “Reporting agency” means a person who, for fees, dues or on a
20 cooperative nonprofit basis, regularly engages in whole or in part in the
21 business of assembling or evaluating information regarding the credit of or
22 other information regarding consumers to furnish consumer reports to third
23 parties, regardless of the means or facility of commerce used to prepare or
24 furnish the consumer reports. The term does not include:

25 (a) A person solely for the reason that he conveys a decision regarding
26 whether to guarantee a check in response to a request by a third party;

27 (b) A person who obtains or creates a consumer report and provides the
28 report or information contained in it to a subsidiary or affiliate; or

29 (c) A person licensed pursuant to chapter 463 of NRS.