

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—Revises provisions relating to 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 trade practices; regulating the merchandise sold at informal markets and the records required to be kept; prohibiting certain use of retail sales receipts or Universal Product Code Labels; revising the definition of “organization” for the purposes of determining the applicability of certain provisions relating to deceptive trade practices; providing penalties; and providing other matters properly relating thereto.

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

Section 1. Chapter 597 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this act.

Sec. 2. *As used in sections 2 to 8, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Informal market” means:*

1. *A gathering at which:*

(a) *Two or more persons offer personal property for sale or exchange;*

(b) *A fee is charged for the sale or exchange of personal property; or*

(c) *A fee is charged for admission to the area in which personal property is offered for sale or exchange; or*

2. *A place at which personal property is offered or displayed for sale or exchange on more than six occasions in a period of 12 months, whether held in a building, under cover or in the open air.*

1 **Sec. 4. “Informal merchant” means a person who does not have an**
2 **established retail store in the county and who transports an inventory of**
3 **goods to an informal market and displays the goods for sale, offers them**
4 **for sale at retail or sells them at retail.**

5 **Sec. 5. The provisions of sections 2 to 8, inclusive, of this act do not**
6 **apply to:**

7 1. **The sale or exchange of personal property organized for the sole**
8 **benefit of a religious, educational or charitable purpose, if no part of any**
9 **fee for admission or parking charged to vendors or prospective**
10 **purchasers, or receipts from the sale or exchange, inures to the benefit of**
11 **any private person participating in the organization or conduct of the**
12 **gathering;**

13 2. **Offering for sale or displaying new personal property if all**
14 **participants are manufacturers, their authorized representatives or**
15 **distributors;**

16 3. **Business conducted in an industrial or commercial trade show;**

17 4. **The sale of a vehicle that is required to be registered or is the**
18 **subject of a certificate of title issued in this state;**

19 5. **A farmers’ market or the sale of firewood or livestock;**

20 6. **The sale of the product of the seller’s art or craft;**

21 7. **Property, even if never used, whose style, packaging or material**
22 **indicates that it was not recently manufactured or produced;**

23 8. **A sale by sample, catalog or brochure for future delivery;**

24 9. **The sale or exchange of personal property at an event which is**
25 **held at the residence of the seller or one of the sellers of the personal**
26 **property that is commonly referred to as a “garage sale” or “yard sale”;**
27 **or**

28 10. **Presentation for sale made pursuant to a previous individual**
29 **invitation to the prospective purchaser by the owner or occupant of the**
30 **premises.**

31 **Sec. 6. 1. An informal merchant shall not offer for sale at an**
32 **informal market, or knowingly allow the sale of, infant formula, medical**
33 **devices, nonprescription drugs, cosmetics or products for personal care,**
34 **unless the seller keeps available for public inspection a genuine written**
35 **authorization from the manufacturer or distributor of the product sold.**

36 2. **As used in this section:**

37 (a) **“Infant formula” means food manufactured, packaged and**
38 **labeled for consumption by children who have not attained 2 years of**
39 **age.**

40 (b) **“Medical device” means:**

41 (1) **An article, or any part of an article, required pursuant to federal**
42 **law to bear the label: “Caution: Federal law requires dispensing by or on**
43 **the order of a physician”; or**

1 (2) An article defined by federal law as a medical device which:

2 (I) Is intended for use in the diagnosis of disease or other
3 conditions or in the cure, mitigation, treatment or prevention of disease
4 in man or other animals or to affect the structure or any function of the
5 body of man or other animals;

6 (II) Does not achieve any intended purpose through chemical
7 action within the body; and

8 (III) Does not depend upon being metabolized for the
9 achievement of any intended purpose.

10 (c) "Nonprescription drug" means a nonnarcotic medicine or drug
11 that may be sold without a prescription and is prepackaged for use by the
12 customer or prepared by the manufacturer or producer for use by the
13 customer. The term does not include herbal products, dietary
14 supplements, botanical extracts or vitamins.

15 **Sec. 7. 1.** An informal merchant shall maintain a receipt for each
16 purchase of unused property, containing:

17 (a) The date of the purchase;

18 (b) The name of the person from whom the property was acquired;

19 (c) An identification or description of the property;

20 (d) The price paid for the property; and

21 (e) The signatures of the merchant and the person from whom the
22 property was acquired.

23 2. It is unlawful for a merchant required by subsection 1 to maintain
24 a receipt to:

25 (a) Falsify, obliterate or destroy the receipt;

26 (b) Refuse, or fail upon request, to produce the receipt for inspection
27 within a time reasonable under the circumstances of the request, but an
28 informal merchant need not keep such receipts on his person without
29 reasonable notice; or

30 (c) Fail to maintain the receipt for at least 2 years.

31 3. As used in this section, "unused property" means tangible
32 personal property acquired by an informal merchant directly from the
33 manufacturer, producer, wholesaler or retailer of the property in the
34 ordinary course of business which has never been used since its
35 manufacture or production or which is in its original, unopened package
36 or container.

37 **Sec. 8.** An informal merchant who violates a provision of sections 2
38 to 7, inclusive, of this act is guilty of:

39 1. For the first offense, a misdemeanor.

40 2. For the second offense, a gross misdemeanor.

41 3. For the third or a subsequent offense, a category E felony and
42 shall be punished as provided in NRS 193.130.

1 **Sec. 9. 1. A person who, with intent to cheat or defraud a retailer,**
2 **possesses, uses, utters, transfers, makes, alters, counterfeits or reproduces**
3 **a retail sales receipt or a Universal Product Code Label, is guilty of a**
4 **category E felony and shall be punished as provided in NRS 193.130 and**
5 **by a fine not exceeding three times the value represented on the retail**
6 **sales receipts or the Universal Product Code Labels.**

7 **2. A person who, with intent to cheat or defraud a retailer, possesses**
8 **15 or more fraudulent receipts or Universal Product Code Labels, or**
9 **possesses a device that manufactures fraudulent receipts or Universal**
10 **Product Code Labels, is guilty of a category D felony and shall be**
11 **punished as provided in NRS 193.130.**

12 **Sec. 10.** NRS 598.281 is hereby amended to read as follows:

13 598.281 As used in NRS 598.281 to 598.289, inclusive, unless the
14 context otherwise requires:

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

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

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

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

23 5. "Organization":

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 11. The amendatory provisions of this act do not apply to offenses that were committed before October 1, 1999.