

ASSEMBLY BILL NO. 431—COMMITTEE ON COMMERCE AND LABOR

MARCH 10, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Provides additional protections to individual buyers, lessees, borrowers and recipients of workers' compensation benefits. (BDR 52-182)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

~

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

AN ACT relating to the protection of certain persons in commercial transactions; providing additional deceptive trade practices; revising the provisions regarding loans in the form of deferred deposits; extending the exemption of workers' compensation benefits from creditors; providing a penalty; 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.** Chapter 598 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 and 3 of this act.
- 3 **Sec. 2.** *A person engages in a “deceptive trade practice” when in the*
4 *course of his business or occupation he:*
- 5 1. *Fails to return to the buyer the full amount of any advance*
6 *payment or payment of any kind, whether the payment is made in the*
7 *form of money, goods, chattels or otherwise, received where merchandise*
8 *was to be furnished, under a purchase order, contract of sale or other*
9 *agreement, upon the condition that the buyer obtain credit at certain*
10 *terms and the credit application of the buyer was rejected.*
- 11 2. *Fails to return to the buyer the full amount of any charge for the*
12 *filing of an application for credit or for the investigation of the credit*
13 *history of the buyer where merchandise was to be furnished, under a*
14 *purchase order, contract of sale or other agreement, upon the condition*
15 *that the buyer obtain credit at certain terms and the credit application of*
16 *the buyer was rejected.*

1 **3. Includes a provision in a purchase order, contract of sale or other**
2 **agreement under which merchandise is to be furnished to a buyer that**
3 **requires the payment of liquidated damages by the buyer where the**
4 **merchandise is to be furnished upon the condition that the buyer obtain**
5 **credit at certain terms and the credit application of the buyer was**
6 **rejected.**

7 **Sec. 3. A person engages in a “deceptive trade practice” when in the**
8 **course of his business or occupation he conducts or negotiates for a**
9 **retail sale or lease of goods or services in a language other than English**
10 **and fails to provide to the other party an unexecuted copy of the contract**
11 **or other written agreement in the other language before the sale or lease**
12 **is consummated. This section does not apply if payment for the goods or**
13 **services was made by credit card issued to the buyer or lessee, whether**
14 **issued by the seller or by a third party.**

15 **Sec. 4.** NRS 598.0903 is hereby amended to read as follows:

16 598.0903 As used in NRS 598.0903 to 598.0999, inclusive, **and**
17 **sections 2 and 3 of this act**, unless the context otherwise requires, the
18 words and terms defined in NRS 598.0905 to 598.0947, inclusive, **and**
19 **sections 2 and 3 of this act** have the meanings ascribed to them in those
20 sections.

21 **Sec. 5.** NRS 598.0905 is hereby amended to read as follows:

22 598.0905 “Advertisement” means the attempt by publication,
23 dissemination, solicitation or circulation to induce, directly or indirectly,
24 any person to enter into any obligation **to lease** or to acquire any title or
25 interest in any property.

26 **Sec. 6.** NRS 598.0915 is hereby amended to read as follows:

27 598.0915 A person engages in a “deceptive trade practice” if, in the
28 course of his business or occupation, he:

29 1. Knowingly passes off goods or services **for sale or lease** as those of
30 another.

31 2. Knowingly makes a false representation as to the source,
32 sponsorship, approval or certification of goods or services **for sale or**
33 **lease.**

34 3. Knowingly makes a false representation as to affiliation, connection,
35 association with or certification by another.

36 4. Uses deceptive representations or designations of geographic origin
37 in connection with goods or services **for sale or lease.**

38 5. Knowingly makes a false representation as to the characteristics,
39 ingredients, uses, benefits, alterations or quantities of goods or services **for**
40 **sale or lease** or a false representation as to the sponsorship, approval,
41 status, affiliation or connection of a person therewith.

6. Represents that goods *for sale or lease* are original or new if he knows or should know that they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.

7. Represents that goods or services *for sale or lease* are of a particular standard, quality or grade, or that *such* goods are of a particular style or model, if he knows or should know that they are of another.

8. Disparages the goods, services or business of another by false or misleading representation of fact.

9. Advertises goods or services with intent not to sell *or lease* them as advertised.

10. Advertises goods or services *for sale or lease* with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.

11. Advertises under the guise of obtaining sales personnel when in fact the purpose is to first sell *or lease* goods or services to the sales personnel applicant.

12. Makes false or misleading statements of fact concerning the price of goods or services ~~to~~ *for sale or lease*, or the reasons for, existence of or amounts of price reductions.

13. Fraudulently alters any contract, written estimate of repair, written statement of charges or other document in connection with the ~~provision~~ *sale or lease* of goods or services.

14. Knowingly makes any other false representation in a transaction.

Sec. 7. NRS 598.0917 is hereby amended to read as follows:

598.0917 A person engages in a “deceptive trade practice” when in the course of his business or occupation he employs “bait and switch” advertising, which consists of an offer to sell *or lease* goods or services which the seller *or lessor* in truth may not intend or desire to sell ~~to~~ *or lease*, accompanied by one or more of the following practices:

1. Refusal to show the goods advertised.

2. Disparagement in any material respect of the advertised goods or services or the terms of sale ~~to~~ *or lease*.

3. Requiring other sales or other undisclosed conditions to be met before selling *or leasing* the advertised goods or services.

4. Refusal to take orders for the *sale or lease of* goods or services advertised for delivery within a reasonable time.

5. Showing or demonstrating defective goods *for sale or lease* which are unusable or impractical for the purposes set forth in the advertisement.

6. Accepting a deposit for the goods or services *for sale or lease* and subsequently switching the purchase order *or lease* to higher priced goods

or services.

1 **7. Tendering a lease of goods advertised for sale or a sale of goods**
2 **advertised for lease or tendering terms of sale or lease less favorable than**
3 **the terms advertised.**

4 **Sec. 8.** NRS 598.092 is hereby amended to read as follows:

5 598.092 A person engages in a “deceptive trade practice” when in the
6 course of his business or occupation he:

7 1. Knowingly fails to identify goods **for sale or lease as being**
8 damaged by water.

9 2. Solicits by telephone or door to door as a **lessor or** seller, unless the
10 **lessor or** seller identifies himself, whom he represents and the purpose of
11 his call within 30 seconds after beginning the conversation.

12 3. Knowingly states that services, replacement parts or repairs are
13 needed when no such services, replacement parts or repairs are actually
14 needed.

15 4. Fails to make delivery of goods or services **for sale or lease** within a
16 reasonable time or to make a refund for the goods or services, if he allows
17 refunds.

18 5. Advertises or offers an opportunity for investment and:

19 (a) Represents that the investment is guaranteed, secured or protected in
20 a manner which he knows or has reason to know, is false or misleading;

21 (b) Represents that the investment will earn a rate of return which he
22 knows or has reasons to know is false or misleading;

23 (c) Makes any untrue statement of a material fact or omits to state a
24 material fact which is necessary to make another statement, considering the
25 circumstances under which it is made, not misleading;

26 (d) Fails to maintain adequate records so that an investor may determine
27 how his money is invested;

28 (e) Fails to provide information to an investor after a reasonable request
29 for information concerning his investment;

30 (f) Fails to comply with any law or regulation for the marketing of
31 securities or other investments; or

32 (g) Represents that he is licensed by an agency of the state to sell or
33 offer for sale investments or services for investments if he is not so
34 licensed.

35 6. Charges a fee for advice with respect to investment of money and
36 fails to disclose:

37 (a) That he is selling **or offering to lease** goods or services and, if he is,
38 their identity; or

39 (b) That he is licensed by an agency of any state or of the United States
40 to sell or to offer for sale investments or services for investments, or holds
41 any other license related to the service he is providing.

1 7. Notifies any person, by any means, as a part of an advertising plan
2 or scheme, that he has won a prize and that as a condition of receiving the
3 prize he must purchase or ~~rent~~ *lease* goods or services.

4 8. Fails to inform customers, if he does not allow refunds or exchanges,
5 that he does not allow refunds or exchanges by:

6 (a) Printing a statement on the face of the *lease or* sales receipt;

7 (b) Printing a statement on the face of the price tag; or

8 (c) Posting in an open and conspicuous place a sign at least 8 by 10
9 inches in size with boldface letters,

10 specifying that no refunds or exchanges are allowed.

11 **Sec. 9.** NRS 598.0923 is hereby amended to read as follows:

12 598.0923 A person engages in a “deceptive trade practice” when in the
13 course of his business or occupation he knowingly:

14 1. Conducts the business or occupation without all required state,
15 county or city licenses.

16 2. Fails to disclose a material fact in connection with the sale *or lease*
17 of goods or services.

18 *3. Violates a state or federal statute or regulation relating to the sale*
19 *or lease of goods or services.*

20 *4. Uses coercion, duress or intimidation in a transaction.*

21 **Sec. 10.** NRS 598.0953 is hereby amended to read as follows:

22 598.0953 1. Evidence that a person has engaged in a deceptive trade
23 practice is prima facie evidence of intent to injure competitors and to
24 destroy or substantially lessen competition.

25 2. The deceptive trade practices listed in NRS 598.0915 to 598.0925,
26 inclusive, *and sections 2 and 3 of this act*, are in addition to and do not
27 limit the types of unfair trade practices actionable at common law or
28 defined as such in other statutes of this state.

29 **Sec. 11.** Chapter 604 of NRS is hereby amended by adding thereto the
30 provisions set forth as sections 12 to 15, inclusive, of this act.

31 **Sec. 12. 1. A registrant, before deferring a deposit, shall deliver to**
32 **the borrower a pamphlet approved by the commissioner that:**

33 *(a) Explains in simple English and Spanish all of the rights of a*
34 *borrower with respect to a deferred deposit;*

35 *(b) Contains a toll-free telephone number to communicate with the*
36 *commissioner concerning complaints or questions of the borrower; and*

37 *(c) Informs the borrower that the commissioner can tell the borrower*
38 *whether the lender is registered, whether complaints about him have*
39 *been filed and how any complaints were satisfactorily resolved.*

40 *2. A registrant, before deferring a deposit, shall provide each*
41 *borrower with a written agreement, approved by the commissioner, which*
42 *the borrower may keep and which contains the following information, in*

1 *English and, if different, in the language in which the loan was*
2 *negotiated:*

3 *(a) The name, address and telephone number of the location where*
4 *the loan is made, the name of the registrant and the name and title of the*
5 *employee who signs the agreement;*

6 *(b) An itemization of the fees and interest to be paid by the borrower;*

7 *(c) Disclosures required for a similar transaction by the federal Truth*
8 *in Lending Act, whether or not that act applies to the particular*
9 *transaction;*

10 *(d) Disclosures required under any state statute or regulation;*

11 *(e) A clear description of the borrower's obligations under the*
12 *deferred deposit; and*

13 *(f) A conspicuous statement immediately above the borrower's*
14 *signature, in at least 14-point bold type that states: "You may be held*
15 *liable in a civil action for collection of this deferred deposit. You cannot*
16 *be prosecuted in criminal court to collect this deferred deposit."*

17 **Sec. 13.** *A registrant who defers deposits shall post at each location*
18 *where he conducts that business a notice in English, Spanish and any*
19 *other language in which a significant amount of that business is*
20 *conducted:*

21 *1. Informing borrowers that a borrower may be held liable in a civil*
22 *action to collect a loan made in the form of a deferred deposit, but that*
23 *criminal prosecution cannot be used to collect such a loan; and*

24 *2. Containing a schedule of the dollar amount of fees and the annual*
25 *percentage rate of interest charged on such loans, with an example*
26 *showing the amounts that would be charged on a loan of \$300 for 14*
27 *days and for 30 days and a statement of the corresponding annual*
28 *percentage rates for the two examples which must be stated as the*
29 *percentage that the total of all fees, interest and other charges bears to*
30 *the amount received by the borrower.*

31 **Sec. 14.** *If a check is not paid upon presentment because of*
32 *insufficient funds, the registrant may collect a fee of not more than \$25.*
33 *Only one such fee may be charged, regardless of the number of times the*
34 *check is presented for payment.*

35 **Sec. 14.5.** *1. If a borrower defaults on a loan made in the form of*
36 *a deferred deposit, the registrant shall, upon default, offer to enter into*
37 *an agreement with the borrower for repayment of the amount due. The*
38 *agreement must provide for the repayment of the amount due within 60*
39 *days after the default, without any further charges or interest.*

40 *2. If the borrower refuses to enter into such an agreement or defaults*
41 *on such an agreement, the registrant may convert the debt to a loan for*
42 *an indefinite term. The amount of the loan for an indefinite term must*
43 *not exceed the amount previously due, including accrued charges and*

1 *interest. Interest may be charged on the loan for an indefinite term at a*
2 *rate equal to or less than the prime rate at the largest bank in the State of*
3 *Nevada, as ascertained by the commissioner on January 1 or July 1, as*
4 *the case may be, immediately preceding the date of default, plus 10*
5 *percent.*

6 **Sec. 15.** *It is unlawful for a registrant to:*

7 1. *Use or threaten to use the criminal process in this or any other*
8 *state, or any civil process not available to creditors generally, to collect*
9 *on a deferred deposit.*

10 2. *Make an unconscionable loan in the form of a deferred deposit. A*
11 *loan that exceeds one-third of the borrower's expected net income during*
12 *the term of the loan is unconscionable unless justified by particular*
13 *circumstances.*

14 3. *Charge to cash a check representing the proceeds of a deferred*
15 *deposit.*

16 4. *Make more than one loan in the form of a deferred deposit to the*
17 *same borrower at one time or make such a loan to a borrower who has*
18 *two or more previous loans outstanding.*

19 5. *Establish or extend the period for the repayment, renewal,*
20 *refinancing or consolidation of an outstanding loan made in the form of*
21 *a deferred deposit to the same borrower beyond 6 weeks after the*
22 *expiration of the initial loan period.*

23 6. *Accept any collateral for a loan made in the form of a deferred*
24 *deposit.*

25 7. *Include in the written agreement required by section 12 of this act*
26 *for a loan made in the form of a deferred deposit:*

27 (a) *A promise by the borrower to hold the lender harmless;*

28 (b) *A confession of judgment by the borrower;*

29 (c) *A waiver by the borrower of his right to a jury;*

30 (d) *A requirement for arbitration;*

31 (e) *An assignment or order for payment of wages or other*
32 *compensation due the borrower; or*

33 (f) *A waiver of any claim or defense arising out of the agreement or a*
34 *waiver of any provision of this chapter.*

35 **Sec. 16.** *NRS 604.090 is hereby amended to read as follows:*

36 604.090 1. *Except as otherwise provided in subsection 2, it is*
37 *unlawful to operate a check-cashing or deferred deposit service without*
38 *being registered with the commissioner.*

39 2. *The provisions of this chapter do not apply to:*

40 (a) *A person doing business pursuant to the authority of any law of this*
41 *state or of the United States relating to banks, savings banks, trust*
42 *companies, savings and loan associations, credit unions, development*

1 corporations, mortgage companies, thrift companies, pawnbrokers or
2 insurance companies.

3 ~~(b) [A person licensed to make installment loans pursuant to chapter 675~~
4 ~~of NRS.~~

5 ~~—(c)]~~ A person who is primarily engaged in the retail sale of goods or
6 services who:

7 (1) As an incident to or independently of a retail sale or service from
8 time to time cashes checks for a fee or other consideration of not more than
9 \$2; and

10 (2) Does not hold himself out as a check-cashing service.

11 ~~[(d)]~~ (c) A person while performing any act authorized by a license
12 issued pursuant to chapter 671 of NRS.

13 ~~[(e)]~~ (d) A person who holds a nonrestricted gaming license issued
14 pursuant to chapter 463 of NRS while performing any act in the course of
15 that licensed operation.

16 ~~[(f)]~~ (e) A person who is exclusively engaged in a check-cashing service
17 relating to out-of-state checks.

18 ~~[(g)]~~ (f) A corporation organized pursuant to the laws of this state that
19 has been continuously and exclusively engaged in a check-cashing service
20 in this state since July 1, 1973.

21 **Sec. 17.** NRS 604.160 is hereby amended to read as follows:

22 604.160 A registrant shall:

23 1. Post in a conspicuous place in every location at which he conducts
24 business under his certificate of registration a notice that states the fees
25 charged for cashing checks . ~~{for entering into a deferred deposit~~
26 ~~transaction.}~~

27 2. Give written notice to each customer of the fees charged for cashing
28 checks . ~~{for entering into a deferred deposit transaction.}~~ The notice must
29 be signed by the customer before ~~{any such services are}~~ *the service is*
30 provided.

31 **Sec. 18.** NRS 604.170 is hereby amended to read as follows:

32 604.170 1. The commissioner may establish by regulation:

33 (a) The fees that may be imposed by a check-cashing ~~{or deferred~~
34 ~~deposit}~~ service for cashing checks ; ~~{for entering into a deferred deposit~~
35 ~~transaction.}~~ and

36 (b) The penalties that may be imposed by the commissioner for a
37 violation of the provisions of this chapter or the regulations adopted
38 pursuant thereto.

39 2. The commissioner shall adopt such other regulations as are
40 necessary to carry out the provisions of this chapter.

1 **Sec. 19.** NRS 482.351 is hereby amended to read as follows:

2 482.351 1. No vehicle dealer or rebuilder may **employ “bait and**
3 **switch” advertising or otherwise** intentionally publish, display or circulate
4 any advertising which is misleading or inaccurate in any material particular
5 or which misrepresents any of the products sold, **leased**, manufactured,
6 handled or furnished to the public.

7 2. **As used in this section, “bait and switch” advertising consists of an**
8 **offer to sell or lease a vehicle or goods or services related to a vehicle**
9 **which the seller or lessor may not intend or desire to sell or lease,**
10 **accompanied by one or more of the following practices:**

11 **(a) Refusal to show the vehicle or goods advertised;**

12 **(b) Refusal to offer or carry out the transaction in the manner**
13 **advertised including as a sale if selling was advertised or as a lease if**
14 **leasing was advertised.**

15 **(c) Disparagement in any material respect of the advertised vehicle,**
16 **goods or services or the terms of the sale or lease;**

17 **(d) Requiring other sales or other undisclosed conditions to be met**
18 **before selling or leasing the advertised vehicle, goods or services;**

19 **(e) Refusal to take orders for the vehicle, goods or services advertised**
20 **for delivery within a reasonable time;**

21 **(f) Showing or demonstrating a defective vehicle or defective goods**
22 **which are unusable or impractical for the purposes set forth in the**
23 **advertisement; or**

24 **(g) Accepting a deposit for the vehicle, goods or services and**
25 **subsequently switching the purchase order or agreement to a higher**
26 **priced vehicle or higher priced goods or services or subsequently**
27 **switching the type of transaction from a sale to a lease or from a lease to**
28 **a sale.**

29 3. The director ~~[, after hearing, may adopt such rules and]~~ **shall adopt**
30 **such** regulations as may be necessary for making the administration of this
31 section effective.

32 **Sec. 20.** NRS 482.36395 is hereby amended to read as follows:

33 482.36395 No motor vehicle manufacturer, distributor, factory branch
34 or representative thereof may:

35 1. Encourage, aid or abet a dealer to sell **or lease** motor vehicles
36 through any false, deceptive or misleading sales or financing practice.

37 2. Refuse to deliver an order of a dealer within 60 days after the order
38 is received in writing unless the inability to deliver the order is caused by
39 shortage or curtailment of material, labor, production capacity,
40 transportation or utility services, or to any labor or production difficulty, or
41 to any cause beyond the reasonable control of the motor vehicle
42 manufacturer or distributor.

3. Coerce, compel or otherwise require any dealer to pay over or to repay any amount of money or other consideration which is in substantiation of or repayment for any advertising, ~~promotion~~ ***promotional*** activity or scheme, or method of implementing the sale ***or lease*** of motor vehicles.

4. Demand or require, directly or indirectly, a dealer to pay any amount of money which is projected or proposed for the advertisement, display or promotion of any motor vehicle which is being sold ***or leased*** pursuant to a franchise, unless the dealer has agreed thereto in writing.

5. Demand or require, directly or indirectly, a dealer to comply with standards which exceed commonly accepted business practices within the automotive industry relating to sales, ***leases*** or service of motor vehicles.

6. Based solely upon the results of a survey of a dealer's customers conducted by or on behalf of a motor vehicle manufacturer which is intended or otherwise purports to measure the performance of a dealer:

(a) Discriminate, directly or indirectly, against a dealer; or

(b) Take any action to terminate a dealer's franchise.

This subsection does not prohibit a motor vehicle manufacturer, distributor, factory branch or representative thereof from conducting a contest or other award program to recognize the performance of a dealer based on reasonable criteria relating to sales, ***leases*** or service of motor vehicles.

Sec. 21. NRS 616C.205 is hereby amended to read as follows:

616C.205 Except as otherwise provided in this section and NRS 31A.150 and 31A.330, compensation payable ***or paid*** under chapters 616A to 616D, inclusive, of NRS, whether determined or due, or not, is not, before the issuance and delivery of the check, assignable, is exempt from attachment, garnishment and execution, and does not pass to any other person by operation of law. In the case of the death of an injured employee covered by chapters 616A to 616D, inclusive, of NRS from causes independent from the injury for which compensation is payable, any compensation due the employee which was awarded or accrued but for which a check was not issued or delivered at the date of death of the employee is payable to his dependents as defined in NRS 616C.505.

Sec. 22. Chapter 675 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A licensee shall not make a loan in the form of a deferred deposit unless the licensee is registered pursuant to chapter 604 of NRS.

2. As used in this section, "deferred deposit" has the meaning ascribed to it in NRS 604.060.

Sec. 23. NRS 675.470 is hereby amended to read as follows:

675.470 Any person and the several members, officers, directors, agents and employees thereof who violate or participate in the violation of

- 1 any provision of NRS 675.060 *or section 22 of this act* are guilty of a
- 2 misdemeanor.
- 3 **Sec. 24.** The amendatory provisions of section 23 of this act do not
- 4 apply to offenses that were committed before October 1, 1999.

~