(REPRINTED WITH ADOPTED AMENDMENTS)
THIRD REPRINT **A.B. 431**

ASSEMBLY BILL NO. 431–COMMITTEE ON COMMERCE AND LABOR

MARCH 10, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Revises protections provided to individual buyers, lessees, borrowers, guests of public accommodations 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.

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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; requiring an owner or keeper of a hotel, inn, motel or motor court to maintain a printed statement of the charge or rate of charges by the day for lodging and to make that statement available upon request; eliminating the requirement that the rates be posted in every bedroom of the establishment; eliminating the provisions that prohibit such an establishment from requiring a person to pay for a greater number of days than actually requested to secure accommodations; 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:

Section 1. NRS 598.0905 is hereby amended to read as follows:

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

Sec. 2. NRS 598.0915 is hereby amended to read as follows:

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

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

2. Knowingly makes a false representation as to the source, sponsorship, approval or certification of goods or services ~~[.]~~ ***for sale or lease.***

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

4. Uses deceptive representations or designations of geographic origin in connection with goods or services ~~[.]~~ ***for sale or lease.***

5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services ***for sale or lease*** or a false representation as to the sponsorship, approval, 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 ~~[,]~~ ***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. 3. 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 ~~[,]~~ ***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 ~~[.]~~ ***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.

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

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

598.092 A person engages in a "deceptive trade practice" when in the course of his business or occupation he:

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

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

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

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

5. Advertises or offers an opportunity for investment and:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

specifying that no refunds or exchanges are allowed.

Sec. 5. NRS 598.0923 is hereby amended to read as follows:

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

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

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

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

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

Sec. 5.1. Chapter 604 of NRS is hereby amended by adding thereto the provisions set forth as sections 5.2 to 5.5, inclusive, of this act.

Sec. 5.2. ***A registrant, before deferring a deposit, shall provide each borrower with a written agreement, approved by the commissioner, which the borrower may keep and which contains the following information, in English:***

1. The identity of the registrant deferring the deposit and the name of the registrant and the name and title of the employee who signs the agreement;

2. An itemization of the fees and interest to be paid by the borrower;

3. Disclosures required for a similar transaction by the federal Truth in Lending Act;

4. Disclosures required under any applicable state statute or regulation; and

5. A clear description of the borrower's obligations under the deferred deposit.

Sec. 5.3. ***If a check is not paid upon presentment because of insufficient funds, the registrant may collect a fee of not more than $25. Only two such fees may be charged regardless of the number of times the check is presented for payment.***

Sec. 5.4. ***If the borrower defaults on the original loan made in the form of a deferred deposit, or on any extension thereof, whichever is later, the registrant may immediately pursue any available collection proceedings on the amount of the loan made in the form of a deferred deposit and all accrued charges and interest that are then due. The interest charged from the date of the default on the loan made in the form of a deferred deposit, or on any extension thereof, must not exceed a rate equal to or less than the prime rate at the largest bank in the State of Nevada, as ascertained by the commissioner on January 1 or July 1, as the case may be, immediately preceding the date of default, plus 10 percent.***

Sec. 5.5. ***It is unlawful for a registrant to:***

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

2. Make a loan made in the form of a deferred deposit that exceeds one-third of the borrower's expected monthly net income during the term of the deferred deposit unless justified by particular circumstances. A registrant is not in violation of the provisions of this subsection if the borrower presents evidence of monthly net income to the registrant and represents to the registrant in writing that the deferred deposit do not exceed one-third of the borrower's expected monthly net income during the term of the deferred deposit.

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

4. Make more than one loan in the form of a deferred deposit to the same borrower at one time unless the borrower is seeking multiple loans in the form of a deferred deposits that do not exceed the limit set forth in subsection 2.

5. Establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding loan made in the form of a deferred deposit to the same borrower beyond 10 weeks after the expiration of the initial loan period.

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

7. Include in the written agreement required by section 5.2 of this act for a loan made in the form of a deferred deposit:

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

(b) A confession of judgment by the borrower;

(c) An assignment or order for payment of wages or other compensation due the borrower; or

(d) A waiver of any claim or defense arising out of the agreement or a waiver of any provision of this chapter.

Sec. 5.6. NRS 604.160 is hereby amended to read as follows:

604.160 A registrant shall:

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

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

Sec. 5.7. NRS 604.170 is hereby amended to read as follows:

604.170 1. The commissioner may establish by regulation:

(a) The fees that may be imposed by a check-cashing **[**~~or deferred deposit~~**]** service for cashing checks ***;*** **[**~~or entering into a deferred deposit transaction;~~**]** and

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

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

Sec. 6. NRS 482.351 is hereby amended to read as follows:

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

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

3. As used in this section, "bait and switch" advertising consists of an offer to sell goods or services which the seller in truth may not intend or desire to sell, accompanied by one or more of the following practices:

(a) Refusal to show the goods advertised.

(b) Disparagement in any material respect of the advertised goods or services or the terms of sale.

(c) Requiring other sales or other undisclosed conditions to be met before selling the advertised goods or services.

(d) Refusal to take orders for the goods or services advertised for delivery within a reasonable time.

(e) Showing or demonstrating defective goods which are unusable or impractical for the purposes set forth in the advertisement.

(f) Accepting a deposit for the goods or services and subsequently switching the purchase order to higher priced goods or services.

Sec. 7. NRS 482.36395 is hereby amended to read as follows:

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

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

2. Refuse to deliver an order of a dealer within 60 days after the order is received in writing unless the inability to deliver the order is caused by shortage or curtailment of material, labor, production capacity, transportation or utility services, or to any labor or production difficulty, or to any cause beyond the reasonable control of the motor vehicle 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. 8. 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, or chapter 617 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, or chapter 617 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. 9. NRS 651.030 is hereby amended to read as follows:

651.030 1. Every ***owner or*** keeper of any hotel, inn, motel or motor court in this state shall ~~[post,]~~ ***:***

(a) Post in a conspicuous place in the office and in every bedroom of ~~[such establishment,]~~ ***the establishment*** a printed copy of this section and NRS 651.010 and 651.020 ~~[and a]~~ ***; and***

(b) Maintain a printed statement of ***the*** charge or rate of charges by the day for lodging ~~[.]~~ ***and make the statement available for viewing, upon request, at the registration desk or an equivalent location in the establishment.***

2. No charge or sum ~~[shall]~~ ***may*** be collected for any greater or other sum than ~~[he]~~ ***the owner or keeper*** is entitled to ~~[by]~~ ***charge pursuant to*** the general rules and regulations of ~~[such]~~ ***the*** establishment.

3. For any violation of this section, or any provision herein contained, the offender shall forfeit to the injured party 3 times the amount of the sum charged in excess of what he is entitled to charge.

Sec. 10. NRS 651.040 is hereby amended to read as follows:

651.040 1. As used in this section, unless the context otherwise requires:

(a) "Establishment" means any hotel, motel, inn or motor court.

(b) "Owner" or "keeper" means any person, firm, association or corporation.

(c) "Rates" means the total charge levied at the establishment for rooms or accommodations.

2. ~~[Pursuant to NRS 651.030, every owner or keeper of any hotel, inn, motel or motor court in this state shall post, in a conspicuous place in the office and in every bedroom of the establishment, a printed copy of a statement of charge or rate of charges by the day for lodging.]~~ The rates ~~[posted in the office and every bedroom of the establishment must display]~~ ***listed on the printed statement required to be maintained by an owner or keeper of an establishment pursuant to NRS 651.030 must include*** the daily rate of the room for occupancy by one person, for occupancy by two persons, the additional charge, if any, for each person over two persons and the additional charge, if any, for each additional bed provided in the room. Every establishment shall maintain a registration card for each room and supply the person or persons registering for accommodations a receipt. Both the registration card and the receipt must reflect the type of

accommodations supplied, the number of persons occupying the accommodation and the rate charged each person therefor. An establishment shall not charge more than the ~~[posted rates, or require as a condition of securing accommodations that any person pay for a greater number of days than actually requested or that the accommodations are actually occupied by the person or persons.]~~ ***rates listed on the printed statement required to be maintained by an owner or keeper of an establishment pursuant to NRS 651.030.***

3. For any violation of this section, or any provision herein contained, the offender shall forfeit to the injured party 3 times the amount of the sum charged in excess of what he is entitled to charge.

4. Any owner or keeper of any establishment who violates any of the provisions of this section is guilty of a misdemeanor.

Sec. 11. The amendatory provisions of sections 9 and 10 of this act do not apply to offenses that were committed before the effective date of those sections.

Sec. 12. 1. This section and sections 9, 10 and 11 of this act become effective upon passage and approval.

2. Sections 1 to 7, inclusive, of this act become effective on October 1, 1999.

3. Section 8 of this act becomes effective at 12:01 a.m. on October 1, 1999.

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