

ASSEMBLY BILL NO. 245—ASSEMBLYMEN CHOWNING, ANDERSON, ARBERRY, BROWN, CARPENTER, CLABORN, COLLINS, DE BRAGA, FREEMAN, GIUNCHIGLIANI, GOLDWATER, HETTRICK, KOIVISTO, MANENDO, MARVEL, MCCLAIN, NEIGHBORS, NOLAN, PARKS, PERKINS AND SMITH

FEBRUARY 26, 2001

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes relating to advertising and charges by certain tour brokers and tour operators and requires certain tour brokers and tour operators to deposit security. (BDR 52-1021)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: 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 deceptive trade practices; requiring certain tour brokers and tour operators to make certain disclosures relating to price in an advertisement for a tour; prohibiting certain tour brokers and tour operators from charging more for a tour than the price disclosed in an advertisement for the tour; requiring certain tour brokers and tour operators to include certain information on a billing invoice or receipt given to a customer for a tour; requiring certain tour brokers and tour operators to deposit security with the consumer affairs division of the department of business and industry; authorizing certain consumers to bring and maintain an action to recover against the deposited security; providing for the release of the deposited security within a certain period after the tour broker or tour operator ceases to operate; 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:

1 **Section 1.** Chapter 598 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 13, inclusive, of this act.

3 **Sec. 2.** *As used in sections 2 to 13, inclusive, of this act, unless the*
4 *context otherwise requires, the words and terms defined in sections 3 to*
5 *8, inclusive, of this act have the meanings ascribed to them in those*
6 *sections.*

7 **Sec. 3.** *“Advertise” and “advertisement” mean the attempt by*
8 *publication, dissemination, solicitation or circulation to induce, directly*
9 *or indirectly, any person to take a tour.*



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1 *Sec. 4. "Charter bus" means a motor vehicle for the transport of*
2 *persons, chartered by the hour or for a fixed period, that:*

3 *(a) Has a minimum capacity of 32 persons; and*

4 *(b) Is hired to provide service for a person or group of persons*
5 *traveling from one location to another for a common purpose.*

6 *2. The term does not include a bus transporting persons on the basis*
7 *of a fee or charge that is imposed per person.*

8 *Sec. 5. "Commissioner" means the commissioner of the consumer*
9 *affairs division of the department of business and industry.*

10 *Sec. 6. "Division" means the consumer affairs division of the*
11 *department of business and industry.*

12 *Sec. 7. "Tour broker" means a person who, in this state, advertises a*
13 *tour for a tour operator and collects money from customers for a tour.*

14 *Sec. 8. "Tour operator" means a person who, in this state, engages*
15 *in the business of providing a tour with a duration of 24 hours or less to*
16 *customers.*

17 *Sec. 9. 1. Except as otherwise provided in subsection 2:*

18 *(a) In each advertisement for a tour, a tour broker and a tour operator*
19 *shall disclose in a clear and conspicuous manner the total cash price a*
20 *customer is required to pay to take the tour. Unless the inclusion of a fee*
21 *or tax in the total cash price would violate a specific statute of this state*
22 *or a federal statute or regulation, the total cash price must include,*
23 *without limitation, all fees, taxes and other charges that a customer for a*
24 *tour is required to pay to take the tour. If a fee or tax cannot be included*
25 *in the total cash price because its inclusion would violate a specific*
26 *statute of this state or a federal statute or regulation, the tour broker or*
27 *tour operator, as applicable, shall disclose in a clear and conspicuous*
28 *manner that the fee or tax is not included in the total cash price and must*
29 *be paid in addition to the total cash price.*

30 *(b) A tour broker and a tour operator shall not charge a customer for*
31 *a tour an amount that exceeds the sum of:*

32 *(1) The total cash price for the tour which is disclosed in an*
33 *advertisement for the tour; and*

34 *(2) Any fee or tax that is not included in the total cash price*
35 *because its inclusion would violate a specific statute of this state or a*
36 *federal statute or regulation.*

37 *(c) On a billing invoice or receipt given to a customer for a tour, a*
38 *tour broker and a tour operator shall provide a clear and conspicuous*
39 *notice which:*

40 *(1) Sets forth the provisions of paragraph (b);*

41 *(2) States that complaints concerning the charges for a tour may be*
42 *directed to the division; and*

43 *(3) Provides a telephone number for the division.*

44 *(d) The failure of a tour broker or tour operator to comply with a*
45 *provision of this section constitutes a deceptive trade practice for the*
46 *purposes of NRS 598.0903 to 598.0999, inclusive.*

47 *2. The requirements set forth in subsection 1 do not apply with*
48 *respect to:*

49 *(a) A tour that is conducted in its entirety on a charter bus; or*



1 (b) If a tour is not conducted in its entirety on a charter bus, that part
2 of the tour which is conducted on a charter bus.

3 **Sec. 10.** The provisions of sections 11, 12 and 13 of this act do not
4 apply to a tour broker whose business is confined to advertising, or a tour
5 operator whose business is confined to advertising and conducting, tours
6 that:

7 1. Originate in a county other than a county whose population is
8 400,000 or more;

9 2. Do not include some manner of motorized conveyance; or

10 3. Are conducted in their entirety on charter buses.

11 **Sec. 11.** 1. Each tour broker and tour operator shall deposit with
12 the division:

13 (a) A bond executed by a corporate surety approved by the
14 commissioner and licensed to do business in this state;

15 (b) An irrevocable letter of credit for which the tour broker or tour
16 operator is the obligor, issued by a bank whose deposits are federally
17 insured; or

18 (c) A certificate of deposit in a financial institution which is doing
19 business in this state and which is federally insured or insured by a
20 private insurer approved pursuant to NRS 678.755. The certificate of
21 deposit may be withdrawn only on the order of the commissioner, except
22 that the interest may accrue to the tour broker or tour operator.

23 2. The term of the bond, letter of credit or certificate of deposit, or
24 any renewal thereof, must be not less than 1 year.

25 3. Except as otherwise provided in subsection 8, the amount of the
26 bond, letter of credit or certificate of deposit, or any renewal thereof,
27 must be \$10,000.

28 4. If the tour broker or tour operator deposits a bond, the tour broker
29 or tour operator shall keep accurate records of the bond and the
30 payments made on the premium. The records must be open to inspection
31 by the division during business hours. The tour broker or tour operator
32 shall notify the division not later than 30 days before the date of
33 expiration of the bond and provide written proof of the renewal of the
34 bond to the division.

35 5. The commissioner may reject any bond, letter of credit or
36 certificate of deposit which fails to conform to the requirements of this
37 chapter.

38 6. A tour broker or tour operator may change the form of security
39 which he has deposited with the division. If the tour broker or tour
40 operator changes the form of the security, the commissioner may retain
41 for not more than 1 year any portion of the security previously deposited
42 by the tour broker or tour operator as security for claims arising during
43 the time the previous security was in effect.

44 7. If the amount of the bond, letter of credit or certificate of deposit
45 falls below the amount required by this section, the tour broker or tour
46 operator shall, within 30 days, increase the amount of the bond, letter or
47 credit or certificate of deposit to the amount required by this section.

48 8. If the commissioner determines that the business of a tour broker
49 or tour operator involves tours conducted on charter buses, the



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1 *commissioner shall reduce the amount of security otherwise required*
2 *pursuant to subsection 3 in proportion to the percentage of the business*
3 *of the tour broker or tour operator involving tours conducted on charter*
4 *buses.*

5 **Sec. 12.** 1. *The security required to be deposited by a tour broker*
6 *or tour operator pursuant to section 11 of this act must be held in trust*
7 *for consumers injured by:*

8 (a) *The bankruptcy of the tour broker or tour operator; or*

9 (b) *The tour broker's or tour operator's breach of any agreement*
10 *entered into in his capacity as a tour broker or tour operator.*

11 2. *A consumer so injured may bring and maintain an action in any*
12 *court of competent jurisdiction to recover against the security.*

13 3. *The division may bring an action for interpleader against all*
14 *claimants upon the security. If the division brings such an action, the*
15 *division shall publish notice of the action at least once each week for 2*
16 *weeks in a newspaper of general circulation in the county in which the*
17 *tour broker or tour operator has its principal place of business. The*
18 *division may deduct its costs of the action, including the costs of the*
19 *publication of the notice, from the amount of the security. All claims*
20 *against the security have equal priority. If the security is insufficient to*
21 *pay all the claims in full, the claims must be paid pro rata. If the tour*
22 *broker or tour operator has posted a bond with the division, the surety is*
23 *then relieved of all liability under the bond.*

24 4. *The division may, in lieu of bringing an action for interpleader*
25 *pursuant to subsection 3, conduct a hearing to determine the distribution*
26 *of the security to claimants. The division shall adopt regulations to*
27 *provide for adequate notice and the conduct of the hearing. If the tour*
28 *broker or tour operator has posted a bond with the division, distribution*
29 *pursuant to this subsection relieves the surety of all liability under the*
30 *bond.*

31 **Sec. 13.** 1. *If no claims have been filed against the security*
32 *deposited with the division pursuant to section 11 of this act within 6*
33 *months after the tour broker or tour operator ceases to operate, the*
34 *commissioner shall release the security to the tour broker or tour*
35 *operator and shall not audit any claims filed against the security*
36 *thereafter by consumers.*

37 2. *If one or more claims have been filed against the security within 6*
38 *months after the tour broker or tour operator ceases to operate, the*
39 *proceeds must not be released to the tour broker or tour operator or*
40 *distributed to any consumer earlier than 1 year after the tour broker or*
41 *tour operator ceases to operate.*

42 3. *For the purposes of this section, the commissioner shall determine*
43 *the date on which a tour broker or tour operator ceases to operate.*

44 **Sec. 14.** NRS 598.0999 is hereby amended to read as follows:

45 598.0999 1. A person who violates a court order or injunction issued
46 pursuant to NRS 598.0903 to 598.0997, inclusive, upon a complaint
47 brought by the commissioner, the director, the district attorney of any
48 county of this state or the attorney general shall forfeit and pay to the state
49 general fund a civil penalty of not more than \$10,000 for each violation.



1 For the purpose of this section, the court issuing the order or injunction
2 retains jurisdiction over the action or proceeding. Such civil penalties are in
3 addition to any other penalty or remedy available for the enforcement of
4 the provisions of NRS 598.0903 to 598.0997, inclusive.

5 2. In any action brought pursuant to NRS 598.0903 to 598.0999,
6 inclusive, if the court finds that a person has willfully engaged in a
7 deceptive trade practice, the commissioner, the director, the district
8 attorney of any county in this state or the attorney general bringing the
9 action may recover a civil penalty not to exceed \$2,500 for each violation.

10 3. A natural person, firm, or any officer or managing agent of any
11 corporation or association who knowingly and willfully engages in a
12 deceptive trade practice, other than a deceptive trade practice described in
13 NRS 598.992:

14 (a) For the first offense, is guilty of a misdemeanor.

15 (b) For the second offense, is guilty of a gross misdemeanor.

16 (c) For the third and all subsequent offenses, is guilty of a category D
17 felony and shall be punished as provided in NRS 193.130.

18 4. Any offense which occurred within 10 years immediately preceding
19 the date of the principal offense or after the principal offense constitutes a
20 prior offense for the purposes of subsection 3 when evidenced by a
21 conviction, without regard to the sequence of the offenses and convictions.

22 5. If a person violates any provision of NRS 598.0903 to 598.0999,
23 inclusive, 598.100 to 598.2801, inclusive, 598.281 to 598.289, inclusive,
24 598.840 to 598.966, inclusive, *sections 2 to 13, inclusive, of this act* or
25 598.992, fails to comply with a judgment or order of any court in this state
26 concerning a violation of such a provision, or fails to comply with an
27 assurance of discontinuance or other agreement concerning an alleged
28 violation of such a provision, the commissioner or the district attorney of
29 any county may bring an action in the name of the State of Nevada
30 seeking:

31 (a) The suspension of the person's privilege to conduct business within
32 this state; or

33 (b) If the defendant is a corporation, dissolution of the
34 corporation.

35 The court may grant or deny the relief sought or may order other
36 appropriate relief.

37 **Sec. 15.** The amendatory provisions of this act do not apply to
38 offenses committed before October 1, 2001.

