

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 sightseeing tour; prohibiting certain tour brokers and tour operators from charging more for a sightseeing 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 sightseeing tour; requiring a tour operator to honor in good faith any nonexpired coupon or other indicia of discount or special promotion that the tour operator has issued or caused to be issued; 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; authorizing the commissioner of the consumer affairs division to adopt certain regulations; 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 14, inclusive, of this act.

3 **Sec. 2.** *As used in sections 2 to 14, inclusive, of this act, unless the*  
4 *context otherwise requires, the words and terms defined in sections 3 to*



\* A B 2 4 5 R 3 \*

1 8, inclusive, of this act have the meanings ascribed to them in those  
2 sections.

3 Sec. 3. "Advertise" and "advertisement" mean the attempt by  
4 publication, dissemination, solicitation or circulation to induce, directly  
5 or indirectly, any person to take a sightseeing tour.

6 Sec. 4. "Commissioner" means the commissioner of the division.

7 Sec. 5. "Division" means the consumer affairs division of the  
8 department of business and industry.

9 Sec. 6. "Sightseeing tour" means an excursion that:

- 10 1. Has a duration of 24 hours or less;  
11 2. Travels to one or more points of interest; and  
12 3. Is conducted using one or more means of motorized conveyance,  
13 including, without limitation, an airplane, bus, helicopter, tour boat or  
14 touring raft.

15 Sec. 7. "Tour broker" means a person who, in this state, advertises a  
16 sightseeing tour for a tour operator and collects money from customers  
17 for a sightseeing tour.

18 Sec. 8. "Tour operator" means a person who, in this state, engages  
19 in the business of providing a sightseeing tour to customers.

20 Sec. 9. 1. In each advertisement for a sightseeing tour, a tour  
21 broker and a tour operator shall disclose in a clear and conspicuous  
22 manner the total price a customer is required to pay to take the  
23 sightseeing tour. Unless the inclusion of a fee or tax in the total price  
24 would violate a specific statute of this state or a federal statute or  
25 regulation, the total price must include, without limitation, all fees, taxes  
26 and other charges that a customer for a sightseeing tour is required to  
27 pay to take the sightseeing tour. If a fee or tax cannot be included in the  
28 total price because its inclusion would violate a specific statute of this  
29 state or a federal statute or regulation, the tour broker or tour operator,  
30 as applicable, shall disclose in a clear and conspicuous manner that the  
31 fee or tax is not included in the total price and must be paid in addition to  
32 the total price.

33 2. A tour broker and a tour operator shall not charge a customer for  
34 a sightseeing tour an amount that exceeds the sum of:

35 (a) The total price for the sightseeing tour which is disclosed in an  
36 advertisement for the sightseeing tour; and

37 (b) Any fee or tax that is not included in the total price for the  
38 sightseeing tour because its inclusion would violate a specific statute of  
39 this state or a federal statute or regulation.

40 3. On a billing invoice or receipt given to a customer for a  
41 sightseeing tour, a tour broker and a tour operator shall provide a clear  
42 and conspicuous notice which:

43 (a) Sets forth the provisions of subsection 2;

44 (b) States that complaints concerning the charges for a sightseeing  
45 tour may be directed to the division; and

46 (c) Provides a telephone number for the division.

47 4. If a tour operator issues or causes to be issued a coupon or other  
48 indicia of discount or special promotion, the tour operator shall honor  
49 the coupon or other indicia in good faith unless:



1     (a) *The coupon or other indicia sets forth a date of expiration that is*  
2     *clearly legible; and*

3     (b) *The date of expiration has passed.*

4     5. *The failure of a tour broker or tour operator to comply with a*  
5     *provision of this section constitutes a deceptive trade practice for the*  
6     *purposes of NRS 598.0903 to 598.0999, inclusive.*

7     **Sec. 10.** *The provisions of sections 11, 12 and 13 of this act do not*  
8     *apply to a tour broker whose business is confined to advertising, or a tour*  
9     *operator whose business is confined to advertising and conducting,*  
10    *sightseeing tours that originate in a county other than a county whose*  
11    *population is 400,000 or more.*

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

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

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

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

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

26    3. *The amount of the bond, letter of credit or certificate of deposit, or*  
27    *any renewal thereof, 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 that 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    *that he has deposited with the division. If the tour broker or tour operator*  
40    *changes the form of the security, the commissioner may retain for not*  
41    *more than 1 year any portion of the security previously deposited by the*  
42    *tour broker or tour operator as security for claims arising during the*  
43    *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 of*  
47    *credit or certificate of deposit to the amount required by this section.*



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

4         (a) *The bankruptcy of the tour broker or tour operator; or*  
5         (b) *The tour broker's or tour operator's breach of any agreement*  
6     *entered into in his capacity as a tour broker or tour operator.*

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

9     3.   *The division may bring an action for interpleader against all*  
10    *claimants upon the security. If the division brings such an action, the*  
11    *division shall publish notice of the action at least once each week for 2*  
12    *weeks in a newspaper of general circulation in the county in which the*  
13    *tour broker or tour operator has its principal place of business. The*  
14    *division may deduct its costs of the action, including, without limitation,*  
15    *the costs of the publication of the notice, from the amount of the security.*  
16    *All claims against the security have equal priority. If the security is*  
17    *insufficient to pay all the claims in full, the claims must be paid pro rata.*  
18    *If the tour broker or tour operator has posted a bond with the division,*  
19    *the surety is then relieved of all liability under the bond.*

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

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

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

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

40    **Sec. 14.**   *The commissioner may adopt such regulations as the*  
41    *commissioner determines are necessary to carry out the intent of sections*  
42    *2 to 14, inclusive, of this act.*

43    **Sec. 15.**   NRS 598.0999 is hereby amended to read as follows:

44    598.0999   1.   A person who violates a court order or injunction issued  
45    pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, and  
46    section 1 of *Assembly Bill No. 337 of this ~~fact~~ session* 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 598.0999, inclusive, and section 1 of  
5 *Assembly Bill No. 337 of this ~~act~~ session.*

6 2. In any action brought pursuant to the provisions of NRS 598.0903 to  
7 598.0999, inclusive, and section 1 of *Assembly Bill No. 337 of this ~~act~~*  
8 *session*, if the court finds that a person has willfully engaged in a deceptive  
9 trade practice, the commissioner, the director, the district attorney of any  
10 county in this state or the attorney general bringing the action may recover  
11 a civil penalty not to exceed \$2,500 for each violation. The court in any  
12 such action may, in addition to any other relief or reimbursement, award  
13 reasonable attorney's fees and costs.

14 3. A natural person, firm, or any officer or managing agent of any  
15 corporation or association who knowingly and willfully engages in a  
16 deceptive trade practice, other than a deceptive trade practice described in  
17 NRS 598.992:

- 18 (a) For the first offense, is guilty of a misdemeanor.  
19 (b) For the second offense, is guilty of a gross misdemeanor.  
20 (c) For the third and all subsequent offenses, is guilty of a category D  
21 felony and shall be punished as provided in NRS 193.130.

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

26 5. If a person violates any provision of NRS 598.0903 to 598.0999,  
27 inclusive, and section 1 of *Assembly Bill No. 337 of this ~~act~~ session*,  
28 598.100 to 598.2801, inclusive, 598.281 to 598.289, inclusive, 598.840 to  
29 598.966, inclusive, *sections 2 to 14, inclusive, of this act* or 598.992, fails  
30 to comply with a judgment or order of any court in this state concerning a  
31 violation of such a provision, or fails to comply with an assurance of  
32 discontinuance or other agreement concerning an alleged violation of such  
33 a provision, the commissioner or the district attorney of any county may  
34 bring an action in the name of the State of Nevada seeking:

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

37 (b) If the defendant is a corporation, dissolution of the  
38 corporation.

39 The court may grant or deny the relief sought or may order other  
40 appropriate relief.

41 **Sec. 16.** The amendatory provisions of this act do not apply to  
42 offenses committed before October 1, 2001.

