

ASSEMBLY BILL NO. 439—ASSEMBLYMAN BROWER

MARCH 19, 2001

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to deceptive trade practices. (BDR 52-1263)

FISCAL NOTE: Effect on Local Government: No.
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 the establishment of a registry of persons who do not wish to receive unsolicited telephone calls for the sale of goods or services; prohibiting a telephone solicitor from making an unsolicited telephone call to a person whose telephone number is included in the registry under certain circumstances; 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 to 9, inclusive, of this act.
3 **Sec. 2.** *As used in sections 2 to 9, inclusive, of this act, unless the*
4 *context otherwise requires, “commissioner” means the commissioner of*
5 *consumer affairs.*
6 **Sec. 3.** *1. The commissioner shall establish and maintain or cause*
7 *to be established and maintained, a registry that includes the telephone*
8 *numbers of persons in this state who do not wish to receive unsolicited*
9 *telephone calls for the sale of goods or services. The commissioner may*
10 *contract for the establishment and maintenance of the registry. The*
11 *registry must be available to a telephone solicitor for a fee established by*
12 *the commissioner. The fee must not exceed \$500 annually for each*
13 *telephone solicitor.*
14 *2. The commissioner shall provide to persons in this state:*
15 *(a) Information concerning the establishment and maintenance of the*
16 *registry, including:*
17 *(1) The procedure for requesting the inclusion of a telephone*
18 *number in the registry;*
19 *(2) A statement indicating that the registry will be revised and*
20 *published at least once every 6 months pursuant to subsection 4; and*



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1 (3) *A statement indicating that all telephone numbers and any other*
2 *information included in the registry will be deleted on January 1 of each*
3 *year pursuant to subsection 4; and*

4 (b) *The procedure for the inclusion of a telephone number in the*
5 *registry.*

6 3. *A person who wishes to be included in the registry may notify the*
7 *commissioner by a toll-free telephone number provided by the*
8 *commissioner or any other method authorized by the commissioner. A*
9 *person who wishes to have his name removed from the registry must*
10 *submit a written request to the commissioner.*

11 4. *The commissioner shall:*

12 (a) *Revise the telephone numbers and any other information included*
13 *in the registry and publish the revised registry at least once every 6*
14 *months; and*

15 (b) *Delete all telephone numbers and any other information included*
16 *in the registry on January 1 of each year.*

17 Sec. 4. *A person who publishes telephone directories for distribution*
18 *to the general public in this state shall ensure that each telephone*
19 *directory includes a statement of the provisions of sections 2 to 9,*
20 *inclusive, of this act.*

21 Sec. 5. 1. *Except as otherwise provided in subsection 2, a*
22 *telephone solicitor shall not intentionally make an unsolicited telephone*
23 *call for the sale of goods or services to a person whose telephone number*
24 *has been included for at least 30 days in the most recently published*
25 *registry.*

26 2. *The provisions of subsection 1 do not apply to a telephone call*
27 *made:*

28 (a) *By or on behalf of a public utility or community antenna television*
29 *company that is regulated pursuant to chapter 704 or 711 of NRS, or by*
30 *an affiliate of the public utility or community antenna television*
31 *company, if the making of the telephone call is authorized by the terms*
32 *and conditions of the certificate of public convenience and necessity or*
33 *franchise of the public utility or community antenna television company;*

34 (b) *By or on behalf of a company that provides television services by*
35 *satellite; or*

36 (c) *To a person:*

37 (1) *With whom the caller or an entity on whose behalf the call is*
38 *made, or its affiliate, has a business relationship; or*

39 (2) *Who had a business relationship with the caller or entity on*
40 *whose behalf the call is made, or its affiliate, if the telephone call is made*
41 *within 12 months after:*

42 (I) *The business relationship was terminated; or*

43 (II) *The date on which the person last purchased any goods or*
44 *services from the caller or entity.*

45 Sec. 6. 1. *If the commissioner finds that a telephone solicitor has*
46 *violated a provision of section 5 of this act, the commissioner may, in lieu*
47 *of taking any action against the telephone solicitor pursuant to NRS*
48 *598.0903 to 598.0999, inclusive, for the first offense, issue a notice of*



1 violation to the telephone solicitor if the telephone solicitor submits proof
2 to the commissioner that he has:
3 (a) Obtained a copy of the registry and has established written policies
4 and procedures concerning the provisions of sections 2 to 9, inclusive, of
5 this act;
6 (b) Provided training to each person who makes telephone calls for
7 the telephone solicitor concerning the provisions of sections 2 to 9,
8 inclusive, of this act; and
9 (c) Maintained records evidencing compliance with the provisions of
10 paragraphs (a) and (b).
11 2. A notice of violation issued pursuant to subsection 1 must set forth
12 with particularity the violation alleged by the commissioner and specify
13 the corrective action that the telephone solicitor must take and the period
14 within which that corrective action must be taken. If a telephone solicitor
15 to whom a notice of violation is issued fails to take the corrective action
16 specified in the notice of violation, the commissioner may:
17 (a) Extend the period for taking corrective action; or
18 (b) Proceed against the telephone solicitor in accordance with the
19 provisions of NRS 598.0903 to 598.0999, inclusive.
20 Sec. 7. A violation of a provision of section 5 of this act constitutes a
21 deceptive trade practice for the purposes of NRS 598.0903 to 598.0999,
22 inclusive.
23 Sec. 8. 1. The revolving account for the commissioner is hereby
24 created, which must be used only for the payment of expenses to carry
25 out the provisions of sections 2 to 9, inclusive, of this act.
26 2. The commissioner shall deposit the fees collected pursuant to
27 section 3 of this act in the revolving account in a bank or credit union
28 that is qualified to receive deposits of public money as provided by law.
29 The deposit must be secured by a depository bond satisfactory to the state
30 board of examiners.
31 3. The commissioner or his designee may:
32 (a) Sign all checks drawn upon the revolving account; and
33 (b) Make withdrawals of cash from the revolving account.
34 4. Payments made from the revolving account must be promptly
35 reimbursed from the legislative appropriation, if any, made to the
36 commissioner for the expenses to carry out the provisions of sections 2 to
37 9, inclusive, of this act. The claim for reimbursement must be paid as
38 other claims against the state are paid.
39 5. The commissioner shall:
40 (a) Approve any disbursement from the revolving account; and
41 (b) Maintain a record of each disbursement.
42 Sec. 9. The commissioner shall adopt regulations to carry out the
43 provisions of sections 2 to 9, inclusive, of this act.
44 Sec. 10. 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~~ 598.0999, inclusive, upon a
47 complaint brought by the commissioner, the director, the district attorney
48 of any county of this state or the attorney general shall forfeit and pay to
49 the state general fund a civil penalty of not more than \$10,000 for each



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1 violation. For the purpose of this section, the court issuing the order or
2 injunction retains jurisdiction over the action or proceeding. Such civil
3 penalties are in addition to any other penalty or remedy available for the
4 enforcement of the provisions of NRS 598.0903 to ~~598.0997,~~ 598.0999,
5 inclusive.

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

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

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

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

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

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

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

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

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

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

38 **Sec. 11.** The amendatory provisions of this act do not apply to
39 offenses committed before January 1, 2002.

40 **Sec. 12.** This act becomes effective upon passage and approval for the
41 purpose of adopting regulations and on January 1, 2002, for all other
42 purposes.

