

CHAPTER.....

AN ACT relating to trade practices; authorizing the public utilities commission of Nevada to adopt regulations governing the disclosures that must be made by a provider of a telecommunications service to a customer before the customer is charged for the service; expanding the definition of “deceptive trade practice” to include certain advertising practices relating to goods or services; revising the provisions governing certificates of registration issued to certain registrants by the consumer affairs division; requiring the renewal of those certificates of registration; increasing the amount of the security that certain dance studios and health clubs are required to deposit with the consumer affairs division; requiring certain sellers of travel to register and deposit security with the consumer affairs division; authorizing certain consumers to bring and maintain actions to recover against the security; providing for the release of the security within a certain period after the seller of travel ceases to operate; 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. (Deleted by amendment.)

Sec. 2. Chapter 598 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 13, inclusive, of this act.

Sec. 3. *As used in sections 3 to 12, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 8, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4. *“Commissioner” means the commissioner of the consumer affairs division of the department of business and industry.*

Sec. 5. *“Division” means the consumer affairs division of the department of business and industry.*

Sec. 6. *“Seller of travel” means a person who offers for sale, directly or indirectly, transportation by air, land, rail or water, travel services, vacation certificates or any combination thereof, to a person or group of persons for a fee, commission or other valuable consideration. The term:*

1. Includes any person who offers membership in a travel club or any services related to travel for an advance fee or payment.

2. Does not include:

(a) A hotel that provides or arranges travel services for its patrons or guests;

(b) A person who, for compensation, transports persons or property by air, land, rail or water; or

(c) A tour broker or tour operator who is subject to the provisions of sections 2 to 14, inclusive, of Assembly Bill No. 245 of this session.

Sec. 7. *“Travel services” includes, without limitation:*

1. Short-term leases of passenger cars;

2. Lodging;

3. Transfers;

4. Sightseeing tours other than sightseeing tours for which a tour broker or tour operator is regulated pursuant to sections 2 to 14, inclusive, of Assembly Bill No. 245 of this session; and

5. Any other services that are related to travel by air, land, rail or water or any other method of transportation.

Sec. 8. *"Vacation certificate" means any document received by a person for consideration paid in advance which evidences that the holder of the document is entitled to:*

- 1. Transportation by air, land, rail or water; or*
 - 2. The use of lodging or other facilities for a specified period,*
- during the period for which the certificate is valid.*

Sec. 9. *1. Before advertising its services or conducting business in this state, a seller of travel must register with the division by:*

(a) Submitting to the division an application for registration on a form prescribed by the division;

(b) Paying to the division a fee of \$25; and

(c) Depositing the security required pursuant to section 10 of this act, if any, with the division.

2. The division shall issue a certificate of registration to the seller of travel upon receipt of:

(a) The security in the proper form if the seller of travel is required to deposit security pursuant to section 10 of this act; and

(b) The payment of the fee required by this section.

3. A certificate of registration:

(a) Is not transferable or assignable; and

(b) Expires 1 year after it is issued.

4. A seller of travel must renew a certificate of registration issued pursuant to this section before the certificate expires by:

(a) Submitting to the division an application for the renewal of the certificate on a form prescribed by the division; and

(b) Paying to the division a fee of \$25.

Sec. 10. *1. Except as otherwise provided in subsection 8, each seller of travel shall deposit with the division:*

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

(b) An irrevocable letter of credit for which the seller of travel is the obligor, issued by a bank whose deposits are federally insured; or

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

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

3. The amount of the bond, letter of credit or certificate of deposit, or any renewal thereof, must be \$50,000.

4. If the seller of travel deposits a bond, the seller of travel shall keep accurate records of the bond and the payments made on the premium. The records must be open to inspection by the division during business hours. The seller of travel shall notify the division not later than 30 days before the date of expiration of the bond and provide written proof of the renewal of the bond to the division.

5. *The commissioner may reject any bond, letter of credit or certificate of deposit that fails to comply with the requirements of this chapter.*

6. *A seller of travel may change the form of security that he has deposited with the division. If the seller of travel changes the form of the security, the commissioner may retain for not more than 1 year any portion of the security previously deposited by the seller of travel as security for claims arising during the time the previous security was in effect.*

7. *If the amount of the deposited security falls below the amount required by this chapter for that security, the seller of travel shall be deemed not to be registered as required by section 9 of this act for the purposes of this chapter.*

8. *The provisions of this section do not apply to a seller of travel who is accredited by and appointed as an agent of the Airlines Reporting Corporation.*

Sec. 11. 1. *The security required to be deposited by a seller of travel pursuant to section 10 of this act must be held in trust for consumers injured as a result of:*

(a) Any act of fraud or misrepresentation by the seller of travel acting in his capacity as a seller of travel;

(b) The bankruptcy of the seller of travel; or

(c) The breach of any contract entered into by the seller of travel in his capacity as a seller of travel.

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

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

4. *The division may, in lieu of bringing an action for interpleader pursuant to subsection 3, conduct a hearing to determine the distribution of the security to claimants. The division shall adopt regulations to provide for adequate notice and the conduct of the hearing. If the seller of travel has posted a bond with the division, distribution pursuant to this subsection relieves the surety of all liability under the bond.*

5. *If the security is sufficient to pay all claims against the security in full, the division may deduct from the amount of the security, the cost of any investigation or hearing it conducted to determine the distribution of the security.*

Sec. 12. 1. *If no claims have been filed against the security deposited with the division pursuant to section 10 of this act within 6 months after the seller of travel ceases to operate or his registration*

expires, whichever occurs later, the commissioner shall release the security to the seller of travel and shall not audit any claims filed against the security thereafter by consumers.

2. If one or more claims have been filed against the security within 6 months after the seller of travel ceases to operate or his registration expires, whichever occurs later, the proceeds must not be released to the seller of travel or distributed to any consumer earlier than 1 year after the seller of travel ceases to operate or his registration expires, whichever occurs later.

3. For the purposes of this section, the commissioner shall determine the date on which a seller of travel ceases to operate.

Sec. 13. *The public utilities commission of Nevada may adopt regulations governing the disclosures that must be made by a provider to a customer before the customer may be charged for a telecommunications service.*

Sec. 14. 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 ~~+~~ **person**.

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 ~~+~~ **person**.

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 ~~+~~ **standard, quality, grade, style or model**.

8. Disparages the goods, services or business of another **person** 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 goods or services as being available free of charge with intent to require payment of undisclosed costs as a condition of receiving the goods or services.*

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

~~121~~ **13.** 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.

~~131~~ **14.** Fraudulently alters any contract, written estimate of repair, written statement of charges or other document in connection with the sale or lease of goods or services.

~~141~~ **15.** Knowingly makes any other false representation in a transaction.

~~151~~ **16.** Knowingly falsifies an application for credit relating to a retail installment transaction, as defined in NRS 97.115.

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

598.0999 1. A person who violates a court order or injunction issued pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, and section 1 of Assembly Bill No. 337 of this session upon a complaint brought by the commissioner, the director, the district attorney of any county of this state or the attorney general shall forfeit and pay to the state general fund a civil penalty of not more than \$10,000 for each violation. For the purpose of this section, the court issuing the order or injunction retains jurisdiction over the action or proceeding. Such civil penalties are in addition to any other penalty or remedy available for the enforcement of the provisions of NRS 598.0903 to 598.0999, inclusive, and section 1 of Assembly Bill No. 337 of this session.

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

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

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

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

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

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

5. If a person violates any provision of NRS 598.0903 to 598.0999, inclusive, and section 1 of Assembly Bill No. 337 of this session, 598.100 to 598.2801, inclusive, 598.281 to 598.289, inclusive, 598.840 to 598.966, inclusive, sections 2 to 14, inclusive, of *Assembly Bill No. 245 of this act* ~~or 598.992;~~ *session or sections 3 to 12, inclusive, of this act,* fails to comply with a judgment or order of any court in this state concerning a violation of such a provision, or fails to comply with an assurance of discontinuance or other agreement concerning an alleged violation of such

a provision, the commissioner or the district attorney of any county may bring an action in the name of the State of Nevada seeking:

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

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

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

Sec. 16. NRS 598.2806 is hereby amended to read as follows:

598.2806 1. Each credit service organization, organization for buying goods or services at a discount, dance studio and health club regulated by the provisions of this chapter shall apply for registration on the form prescribed by the division.

2. At the time of application for registration, the applicant ~~shall~~ *must* pay to the division an administrative fee of \$25 and deposit the required security with the division.

3. Upon receipt of the security in the proper form and the payment of the administrative fee required by this section, the division shall issue a certificate of registration to the applicant. A certificate of registration ~~is~~ :

(a) Is not transferable or assignable ~~is~~ ; and

(b) Expires 1 year after it is issued.

4. A registrant must renew a certificate of registration issued pursuant to this section before the certificate expires by submitting to the division an application for the renewal of the certificate on a form prescribed by the division.

Sec. 17. NRS 598.2808 is hereby amended to read as follows:

598.2808 1. The security required to be deposited by a registrant pursuant to NRS 598.2807 must be held in trust for consumers injured by the bankruptcy of the registrant or the registrant's breach of any agreement entered into in his capacity as a registrant.

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

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

4. The division may, in lieu of bringing an action for interpleader pursuant to subsection 3, conduct a hearing to determine the distribution of the security to claimants. The division shall adopt regulations to provide for adequate notice and the conduct of the hearing. If the registrant has posted a bond with the division, distribution pursuant to this subsection relieves the surety of all liability under the bond.

5. If the security is sufficient to pay all claims against the security in full, the division may deduct from the amount of the security, the cost of any investigation or hearing it conducted to determine the distribution of the security.

Sec. 18. NRS 598.946 is hereby amended to read as follows:

598.946 1. Except as otherwise provided in subsection 5, before advertising its services or conducting business in this state, the owner of a dance studio or a health club must register pursuant to NRS 598.2806 and 598.944 and deposit security with the division pursuant to NRS 598.2807. The security must ~~be~~ :

(a) Be conditioned on compliance by the owner with the provisions of NRS 598.940 to 598.966, inclusive, and the terms of the contract with a buyer ~~+~~ ; and

(b) Remain on deposit with the division until the release of the security is authorized or required pursuant to NRS 598.2809, except that the dance studio or health club may change the form of the security as provided in NRS 598.2807.

2. Except as otherwise provided in subsection 3, the amount of the security to be deposited must be:

(a) Ten thousand dollars, if the dance studio or health club has less than 400 members;

(b) Fifteen thousand dollars, if the dance studio or health club has 400 members or more but less than 800 members;

(c) Twenty thousand dollars, if the dance studio or health club has 800 members or more but less than 1,200 members;

(d) Twenty-five thousand dollars, if the dance studio or health club has 1,200 members or more but less than 1,500 members;

(e) Thirty-five thousand dollars, if the dance studio or health club has 1,500 members or more but less than 4,000 members; ~~and~~

(f) Fifty thousand dollars, if the dance studio or health club has 4,000 *members* or more *but less than 25,000* members ~~+~~ ; and

(g) Two hundred and fifty thousand dollars, if the dance studio or health club has 25,000 or more members.

3. If a dance studio or health club conducts any pre-sale of dance lessons, the use of facilities or other services, the amount of the security required by this section is \$100,000 ~~+~~ *unless a greater amount is required pursuant to paragraph (g) of subsection 2.*

4. A dance studio or health club shall report to the division on a quarterly basis the size of its membership and shall, on the basis of any change in the size of that membership, adjust accordingly the amount of the security deposited with the division.

5. ~~If a dance studio or health club has actively conducted business for not less than 4 consecutive years and has not changed ownership or, in the case of a corporation, not more than 25 percent of its authorized shares have been transferred, it is not required to deposit security with the division pursuant to NRS 598.2807.~~ If , on October 1, 2001, a dance studio or health club ~~does not deposit such security, it shall~~ *has not deposited security with the division pursuant to NRS 598.2807 because it was not required to do so pursuant to this section, the dance studio or health club:*

(a) Is not required to deposit security with the division pursuant to NRS 598.2807; and

(b) Shall obtain a written acknowledgment from each member and prominently post a notice on its premises stating that no security for refunds or reimbursement has been deposited with the State of Nevada.

Sec. 19. NRS 598.968 is hereby amended to read as follows:

598.968 As used in NRS 598.968 to 598.9694, inclusive, *and section 13 of this act*, unless the context otherwise requires, the words and terms defined in NRS 598.9682 and 598.9684 have the meanings ascribed to them in those sections.

Sec. 20. NRS 598.992 is hereby repealed.

Sec. 21. 1. Notwithstanding the provisions of section 16 of this act, a registrant that:

(a) Is doing business in this state; and

(b) Has a certificate of registration that was issued by the division pursuant to NRS 598.2806 before October 1, 2000, must submit to the division an application for the renewal of the certificate of registration on a form prescribed by the division not later than October 1, 2001.

2. A registrant that:

(a) Is doing business in this state; and

(b) Has a certificate of registration that was issued by the division pursuant to NRS 598.2806 on or after October 1, 2000, must submit to the division an application for the renewal of the certificate of registration on a form prescribed by the division not later than 1 year after the certificate of registration was issued by the division.

3. As used in this section, “registrant” has the meaning ascribed to it in NRS 598.2805.

Sec. 22. 1. This section, sections 1 to 13, inclusive, and 16 to 21, inclusive, of this act become effective on October 1, 2001.

2. Sections 14 and 15 of this act become effective at 12:01 a.m. on October 1, 2001.