

ASSEMBLY BILL NO. 627—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF DEPARTMENT OF BUSINESS AND
INDUSTRY—CONSUMER AFFAIRS)

MARCH 26, 2001

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to trade practices. (BDR 52-554)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: No.

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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 trade practices; 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 of the department of business and industry; 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:

- 1 **Section 1.** (Deleted by amendment.)
- 2 **Sec. 2.** Chapter 598 of NRS is hereby amended by adding thereto the
- 3 provisions set forth as sections 3 to 12, inclusive, of this act.
- 4 **Sec. 3.** *As used in sections 3 to 12, inclusive, of this act, unless the*
- 5 *context otherwise requires, the words and terms defined in sections 4 to*
- 6 *8, inclusive, of this act have the meanings ascribed to them in those*
- 7 *sections.*
- 8 **Sec. 4.** *“Commissioner” means the commissioner of the consumer*
- 9 *affairs division of the department of business and industry.*
- 10 **Sec. 5.** *“Division” means the consumer affairs division of the*
- 11 *department of business and industry.*
- 12 **Sec. 6.** *“Seller of travel” means a person who offers for sale, directly*
- 13 *or indirectly, transportation by air, land, rail or water, travel services,*



- 1 vacation certificates or any combination thereof, to a person or group of
2 persons for a fee, commission or other valuable consideration. The term:
3 1. Includes any person who offers membership in a travel club or
4 any services related to travel for an advance fee or payment.
5 2. Does not include:
6 (a) A hotel that provides or arranges travel services for its patrons or
7 guests; or
8 (b) A person who, for compensation, transports persons or property by
9 air, land, rail or water.
- 10 Sec. 7. "Travel services" include, without limitation, short-term
11 leases of passenger cars, lodging, transfers, sight-seeing tours and any
12 other services that are related to travel by air, land, rail or water or any
13 other method of transportation.
- 14 Sec. 8. "Vacation certificate" means any document received by a
15 person for consideration paid in advance which evidences that the holder
16 of the document is entitled to:
17 1. Transportation by air, land, rail or water; or
18 2. The use of lodging or other facilities for a specified
19 period,
20 during the period for which the certificate is valid.
- 21 Sec. 9. 1. Before advertising its services or conducting business in
22 this state, a seller of travel must register with the division by:
23 (a) Submitting to the division an application for registration on a form
24 prescribed by the division;
25 (b) Paying to the division a fee of \$25; and
26 (c) Depositing the security required pursuant to section 10 of this act,
27 if any, with the division.
28 2. The division shall issue a certificate of registration to the seller of
29 travel upon receipt of:
30 (a) The security in the proper form if the seller of travel is required to
31 deposit security pursuant to section 10 of this act; and
32 (b) The payment of the fee required by this section.
- 33 3. A certificate of registration:
34 (a) Is not transferable or assignable; and
35 (b) Expires 1 year after it is issued.
- 36 4. A seller of travel must renew a certificate of registration issued
37 pursuant to this section before the certificate expires by:
38 (a) Submitting to the division an application for the renewal of the
39 certificate on a form prescribed by the division; and
40 (b) Paying to the division a fee of \$25.
- 41 Sec. 10. 1. Except as otherwise provided in subsection 8, each
42 seller of travel shall deposit with the division:
43 (a) A bond executed by a corporate surety approved by the
44 commissioner and licensed to do business in this state;
45 (b) An irrevocable letter of credit for which the seller of travel is the
46 obligor, issued by a bank whose deposits are federally insured; or
47 (c) A certificate of deposit in a financial institution which is doing
48 business in this state and which is federally insured or insured by a
49 private insurer approved pursuant to NRS 678.755. The certificate of



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- 1 *deposit may be withdrawn only on the order of the commissioner, except*
2 *that the interest may accrue to the seller of travel.*
- 3 2. *The term of the bond, letter of credit or certificate of deposit, or*
4 *any renewal thereof, must be not less than 1 year.*
- 5 3. *The amount of the bond, letter of credit or certificate of deposit, or*
6 *any renewal thereof, must be \$50,000.*
- 7 4. *If the seller of travel deposits a bond, the seller of travel shall keep*
8 *accurate records of the bond and the payments made on the premium.*
9 *The records must be open to inspection by the division during business*
10 *hours. The seller of travel shall notify the division not later than 30 days*
11 *before the date of expiration of the bond and provide written proof of the*
12 *renewal of the bond to the division.*
- 13 5. *The commissioner may reject any bond, letter of credit or*
14 *certificate of deposit that fails to comply with the requirements of this*
15 *chapter.*
- 16 6. *A seller of travel may change the form of security that he has*
17 *deposited with the division. If the seller of travel changes the form of the*
18 *security, the commissioner may retain for not more than 1 year any*
19 *portion of the security previously deposited by the seller of travel as*
20 *security for claims arising during the time the previous security was in*
21 *effect.*
- 22 7. *If the amount of the deposited security falls below the amount*
23 *required by this chapter for that security, the seller of travel shall be*
24 *deemed not to be registered as required by section 9 of this act for the*
25 *purposes of this chapter.*
- 26 8. *The provisions of this section do not apply to a seller of travel who*
27 *is accredited by and appointed as an agent of the Airlines Reporting*
28 *Corporation.*
- 29 **Sec. 11.** 1. *The security required to be deposited by a seller of*
30 *travel pursuant to section 10 of this act must be held in trust for*
31 *consumers injured as a result of:*
- 32 (a) *Any act of fraud or misrepresentation by the seller of travel acting*
33 *in his capacity as a seller of travel;*
- 34 (b) *The bankruptcy of the seller of travel; or*
- 35 (c) *The breach of any contract entered into by the seller of travel in*
36 *his capacity as a seller of travel.*
- 37 2. *A consumer so injured may bring and maintain an action in any*
38 *court of competent jurisdiction to recover against the security.*
- 39 3. *The division may bring an action for interpleader against all*
40 *claimants upon the security. If the division brings such an action, the*
41 *division shall publish notice of the action at least once each week for 2*
42 *weeks in a newspaper of general circulation in the county in which the*
43 *seller of travel has its principal place of business. The division may*
44 *deduct its costs of the action, including the costs of the publication of the*
45 *notice, from the amount of the security. All claims against the security*
46 *have equal priority. If the security is insufficient to pay all the claims in*
47 *full, the claims must be paid pro rata. If the seller of travel has posted a*
48 *bond with the division, the surety is then relieved of all liability under the*
49 *bond.*



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

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

11 **Sec. 12.** 1. If no claims have been filed against the security
12 deposited with the division pursuant to section 10 of this act within 6
13 months after the seller of travel ceases to operate or his registration
14 expires, whichever occurs later, the commissioner shall release the
15 security to the seller of travel and shall not audit any claims filed against
16 the security thereafter by consumers.

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

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

25 **Sec. 13.** NRS 598.0915 is hereby amended to read as follows:
26 598.0915 A person engages in a “deceptive trade practice” if, in the
27 course of his business or occupation, he:

28 1. Knowingly passes off goods or services for sale or lease as those of
29 another ~~+~~ **person.**

30 2. Knowingly makes a false representation as to the source,
31 sponsorship, approval or certification of goods or services for sale or lease.

32 3. Knowingly makes a false representation as to affiliation, connection,
33 association with or certification by another ~~+~~ **person.**

34 4. Uses deceptive representations or designations of geographic origin
35 in connection with goods or services for sale or lease.

36 5. Knowingly makes a false representation as to the characteristics,
37 ingredients, uses, benefits, alterations or quantities of goods or services for
38 sale or lease or a false representation as to the sponsorship, approval,
39 status, affiliation or connection of a person therewith.

40 6. Represents that goods for sale or lease are original or new if he
41 knows or should know that they are deteriorated, altered, reconditioned,
42 reclaimed, used or secondhand.

43 7. Represents that goods or services for sale or lease are of a particular
44 standard, quality or grade, or that such goods are of a particular style or
45 model, if he knows or should know that they are of another ~~+~~ **standard,**
46 **quality, grade, style or model.**

47 8. Disparages the goods, services or business of another **person** by
48 false or misleading representation of fact.



1 9. Advertises goods or services with intent not to sell or lease them as
2 advertised.

3 10. Advertises goods or services for sale or lease with intent not to
4 supply reasonably expectable public demand, unless the advertisement
5 discloses a limitation of quantity.

6 11. *Advertises goods or services as being available free of charge*
7 *with intent to require payment of undisclosed costs as a condition of*
8 *receiving the goods or services.*

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

12 ~~12-~~ 13. Makes false or misleading statements of fact concerning the
13 price of goods or services for sale or lease, or the reasons for, existence of
14 or amounts of price reductions.

15 ~~13-~~ 14. Fraudulently alters any contract, written estimate of repair,
16 written statement of charges or other document in connection with the sale
17 or lease of goods or services.

18 ~~14-~~ 15. Knowingly makes any other false representation in a
19 transaction.

20 ~~15-~~ 16. Knowingly falsifies an application for credit relating to a
21 retail installment transaction, as defined in NRS 97.115.

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

23 598.0999 1. A person who violates a court order or injunction
24 issued pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive,
25 and section 1 of ~~this act~~ *Assembly Bill No. 337 of this session* upon a
26 complaint brought by the commissioner, the director, the district attorney
27 of any county of this state or the attorney general shall forfeit and pay to
28 the state general fund a civil penalty of not more than \$10,000 for each
29 violation. For the purpose of this section, the court issuing the order or
30 injunction retains jurisdiction over the action or proceeding. Such civil
31 penalties are in addition to any other penalty or remedy available for the
32 enforcement of the provisions of NRS 598.0903 to 598.0999, inclusive,
33 and section 1 of ~~this act~~ *Assembly Bill No. 337 of this session.*

34 2. In any action brought pursuant to the provisions of NRS 598.0903 to
35 598.0999, inclusive, and section 1 of ~~this act~~ *Assembly Bill No. 337 of*
36 *this session*, if the court finds that a person has willfully engaged in a
37 deceptive trade practice, the commissioner, the director, the district
38 attorney of any county in this state or the attorney general bringing the
39 action may recover a civil penalty not to exceed \$2,500 for each violation.
40 The court in any such action may, in addition to any other relief or
41 reimbursement, award reasonable attorney's fees and costs.

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

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

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



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

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

7 5. If a person violates any provision of NRS 598.0903 to 598.0999,
8 inclusive, and section 1 of ~~{this act,}~~ *Assembly Bill No. 337 of this session,*
9 598.100 to 598.2801, inclusive, 598.281 to 598.289, inclusive, 598.840 to
10 598.966, inclusive, or ~~{598.992,}~~ *sections 3 to 12, inclusive, of this act,*
11 fails to comply with a judgment or order of any court in this state
12 concerning a violation of such a provision, or fails to comply with an
13 assurance of discontinuance or other agreement concerning an alleged
14 violation of such a provision, the commissioner or the district attorney of
15 any county may bring an action in the name of the State of Nevada
16 seeking:

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

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

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

23 **Sec. 15.** NRS 598.2806 is hereby amended to read as follows:

24 598.2806 1. Each credit service organization, organization for
25 buying goods or services at a discount, dance studio and health club
26 regulated by the provisions of this chapter shall apply for registration on
27 the form prescribed by the division.

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

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

34 (a) *Is not transferable or assignable* ~~{}~~ *; and*

35 (b) *Expires 1 year after it is issued.*

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

40 **Sec. 16.** NRS 598.2808 is hereby amended to read as follows:

41 598.2808 1. The security required to be deposited by a registrant
42 pursuant to NRS 598.2807 must be held in trust for consumers injured by
43 the bankruptcy of the registrant or the registrant's breach of any agreement
44 entered into in his capacity as a registrant.

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

47 3. The division may bring an action for interpleader against all
48 claimants upon the security. If the division brings such an action, the
49 division shall publish notice of the action at least once each week for 2



1 weeks in a newspaper of general circulation in the county in which the
2 organization has its principal place of business. The division may deduct its
3 costs of the action, including the costs of the publication of the notice, from
4 the amount of the security. All claims against the security have equal
5 priority. If the security is insufficient to pay all the claims in full, the
6 claims must be paid pro rata. If the registrant has posted a bond with the
7 division, the surety is then relieved of all liability under the bond.

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

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

18 **Sec. 17.** NRS 598.946 is hereby amended to read as follows:

19 598.946 1. Except as otherwise provided in subsection 5, before
20 advertising its services or conducting business in this state, the owner of a
21 dance studio or a health club must register pursuant to NRS 598.2806 and
22 598.944 and deposit security with the division pursuant to NRS 598.2807.
23 The security must ~~be~~ :

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

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

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

33 (a) Ten thousand dollars, if the dance studio or health club has less than
34 400 members;

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

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

39 (d) Twenty-five thousand dollars, if the dance studio or health club has
40 1,200 members or more but less than 1,500 members;

41 (e) Thirty-five thousand dollars, if the dance studio or health club has
42 1,500 members or more but less than 4,000 members; ~~and~~

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

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

47 3. If a dance studio or health club conducts any pre-sale of dance
48 lessons, the use of facilities or other services, the amount of the security



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1 required by this section is \$100,000 ~~It~~ *unless a greater amount is*
2 *required pursuant to paragraph (g) of subsection 2.*

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

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

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

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

21 **Sec. 18.** NRS 598.992 is hereby repealed.

22 **Sec. 19.** 1. Notwithstanding the provisions of section 15 of this act,
23 a registrant that:

24 (a) Is doing business in this state; and

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

30 2. A registrant that:

31 (a) Is doing business in this state; and

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

37 3. As used in this section, "registrant" has the meaning ascribed to it in
38 NRS 598.2805.

39 **Sec. 20.** 1. This section, sections 1 to 12, inclusive, and 14 to 19,
40 inclusive, of this act become effective on October 1, 2001.

41 2. Section 13 of this act becomes effective at 12:01 a.m. on
42 October 1, 2001.



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TEXT OF REPEALED SECTION

598.992 Adult cabarets, erotic dance establishments and adult night clubs in certain counties: Attempting to divert specified passengers to unrequested destination constitutes deceptive trade practice; penalties; suspension of license.

1. In a county whose population is 400,000 or more, a person who:
 - (a) Is a licensee, owner or employee of a business entity that is licensed to operate an adult cabaret, erotic dance establishment or adult night club; and
 - (b) While performing duties associated with the business entity, pays or offers to pay remuneration of any kind, including, without limitation, cash or services, to the owner or driver of a taxicab, limousine or bus containing 21 or fewer passengers, or to an agent of the owner or driver, for taking or attempting to take a passenger to a location other than the destination requested by the passenger,commits a deceptive trade practice for purposes of NRS 598.0903 to 598.0999, inclusive.
2. In any action brought pursuant to NRS 598.0903 to 598.0999, inclusive, if the court finds the licensee or owner of a business entity engaged in a deceptive trade practice described in subsection 1, or his employee engaged in a deceptive trade practice described in subsection 1, the licensee or owner is subject only to a civil penalty of:
 - (a) For the first violation, not less than \$500 and not more than \$1,000;
 - (b) For the second violation, not less than \$1,000 and not more than \$5,000; and
 - (c) For the third and subsequent violations, not less than \$5,000 and not more than \$10,000.
3. If the violation of subsection 1 is the third or greater violation and if:
 - (a) The violation was committed by the licensee or owner of the business entity; or
 - (b) The violation was committed by an employee of the licensee or owner, and the director determines that the licensee or owner knew or should have known that the employee engaged in the act constituting the violation,the director shall order, in writing, all applicable licensing authorities to suspend the license of the business entity for a period of not more than 6 months.
4. Upon receiving an order from the director pursuant to subsection 3, a licensing authority shall suspend the license of the licensee for the period specified in the order.
5. As used in this section:
 - (a) “License” means a business license to operate an adult cabaret, erotic dance establishment or adult night club.



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- (b) “Licensee” means the person to whom a license is issued.
- (c) “Licensing authority” means a local government that licenses adult cabarets, erotic dance establishments or adult night clubs.

