

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; authorizing the commissioner of the consumer affairs division of the department of business and industry 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:

- 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 13, 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.*



- 1     **Sec. 5.** *"Division" means the consumer affairs division of the*  
2 *department of business and industry.*
- 3     **Sec. 6.** *"Seller of travel" means a person who offers for sale, directly*  
4 *or indirectly, transportation by air, land, rail or water, travel services,*  
5 *vacation certificates or any combination thereof, to a person or group of*  
6 *persons for a fee, commission or other valuable consideration. The term:*  
7     1. *Includes any person who offers membership in a travel club or*  
8 *any services related to travel for an advance fee or payment.*  
9     2. *Does not include:*  
10     (a) *A hotel that provides or arranges travel services for its patrons or*  
11 *guests;*  
12     (b) *A person who, for compensation, transports persons or property by*  
13 *air, land, rail or water; or*  
14     (c) *A tour broker or tour operator who is subject to the provisions of*  
15 *sections 2 to 14, inclusive, of Assembly Bill No. 245 of this session.*
- 16     **Sec. 7.** *"Travel services" includes, without limitation:*  
17     1. *Short-term leases of passenger cars;*  
18     2. *Lodging;*  
19     3. *Transfers;*  
20     4. *Sightseeing tours other than sightseeing tours for which a tour*  
21 *broker or tour operator is regulated pursuant to sections 2 to 14,*  
22 *inclusive, of Assembly Bill No. 245 of this session; and*  
23     5. *Any other services that are related to travel by air, land, rail or*  
24 *water or any other method of transportation.*
- 25     **Sec. 8.** *"Vacation certificate" means any document received by a*  
26 *person for consideration paid in advance which evidences that the holder*  
27 *of the document is entitled to:*  
28     1. *Transportation by air, land, rail or water; or*  
29     2. *The use of lodging or other facilities for a specified*  
30 *period,*  
31 *during the period for which the certificate is valid.*
- 32     **Sec. 9.** 1. *Before advertising its services or conducting business in*  
33 *this state, a seller of travel must register with the division by:*  
34     (a) *Submitting to the division an application for registration on a form*  
35 *prescribed by the division;*  
36     (b) *Paying to the division a fee of \$25; and*  
37     (c) *Depositing the security required pursuant to section 10 of this act,*  
38 *if any, with the division.*  
39     2. *The division shall issue a certificate of registration to the seller of*  
40 *travel upon receipt of:*  
41     (a) *The security in the proper form if the seller of travel is required to*  
42 *deposit security pursuant to section 10 of this act; and*  
43     (b) *The payment of the fee required by this section.*  
44     3. *A certificate of registration:*  
45     (a) *Is not transferable or assignable; and*  
46     (b) *Expires 1 year after it is issued.*  
47     4. *A seller of travel must renew a certificate of registration issued*  
48 *pursuant to this section before the certificate expires by:*



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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- 1     2. A consumer so injured may bring and maintain an action in any  
2 court of competent jurisdiction to recover against the security.
- 3     3. The division may bring an action for interpleader against all  
4 claimants upon the security. If the division brings such an action, the  
5 division shall publish notice of the action at least once each week for 2  
6 weeks in a newspaper of general circulation in the county in which the  
7 seller of travel has its principal place of business. The division may  
8 deduct its costs of the action, including the costs of the publication of the  
9 notice, from the amount of the security. All claims against the security  
10 have equal priority. If the security is insufficient to pay all the claims in  
11 full, the claims must be paid pro rata. If the seller of travel has posted a  
12 bond with the division, the surety is then relieved of all liability under the  
13 bond.
- 14     4. The division may, in lieu of bringing an action for interpleader  
15 pursuant to subsection 3, conduct a hearing to determine the distribution  
16 of the security to claimants. The division shall adopt regulations to  
17 provide for adequate notice and the conduct of the hearing. If the seller  
18 of travel has posted a bond with the division, distribution pursuant to this  
19 subsection relieves the surety of all liability under the bond.
- 20     5. If the security is sufficient to pay all claims against the security in  
21 full, the division may deduct from the amount of the security, the cost of  
22 any investigation or hearing it conducted to determine the distribution of  
23 the security.
- 24     **Sec. 12.** 1. If no claims have been filed against the security  
25 deposited with the division pursuant to section 10 of this act within 6  
26 months after the seller of travel ceases to operate or his registration  
27 expires, whichever occurs later, the commissioner shall release the  
28 security to the seller of travel and shall not audit any claims filed against  
29 the security thereafter by consumers.
- 30     2. If one or more claims have been filed against the security within 6  
31 months after the seller of travel ceases to operate or his registration  
32 expires, whichever occurs later, the proceeds must not be released to the  
33 seller of travel or distributed to any consumer earlier than 1 year after  
34 the seller of travel ceases to operate or his registration expires, whichever  
35 occurs later.
- 36     3. For the purposes of this section, the commissioner shall determine  
37 the date on which a seller of travel ceases to operate.
- 38     **Sec. 13.** The commissioner of the consumer affairs division of the  
39 department of business and industry may adopt regulations governing  
40 the disclosures that must be made by a provider to a customer before the  
41 customer may be charged for a telecommunications service.
- 42     **Sec. 14.** NRS 598.0915 is hereby amended to read as follows:  
43     598.0915 A person engages in a “deceptive trade practice” if, in the  
44 course of his business or occupation, he:  
45     1. Knowingly passes off goods or services for sale or lease as those of  
46 another ~~H~~ person.
- 47     2. Knowingly makes a false representation as to the source,  
48 sponsorship, approval or certification of goods or services for sale or lease.



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- 1 3. Knowingly makes a false representation as to affiliation, connection,  
2 association with or certification by another ~~the~~ *person*.
- 3 4. Uses deceptive representations or designations of geographic origin  
4 in connection with goods or services for sale or lease.
- 5 5. Knowingly makes a false representation as to the characteristics,  
6 ingredients, uses, benefits, alterations or quantities of goods or services for  
7 sale or lease or a false representation as to the sponsorship, approval,  
8 status, affiliation or connection of a person therewith.
- 9 6. Represents that goods for sale or lease are original or new if he  
10 knows or should know that they are deteriorated, altered, reconditioned,  
11 reclaimed, used or secondhand.
- 12 7. Represents that goods or services for sale or lease are of a particular  
13 standard, quality or grade, or that such goods are of a particular style or  
14 model, if he knows or should know that they are of another ~~the~~ *standard,*  
15 *quality, grade, style or model.*
- 16 8. Disparages the goods, services or business of another *person* by  
17 false or misleading representation of fact.
- 18 9. Advertises goods or services with intent not to sell or lease them as  
19 advertised.
- 20 10. Advertises goods or services for sale or lease with intent not to  
21 supply reasonably expectable public demand, unless the advertisement  
22 discloses a limitation of quantity.
- 23 11. *Advertises goods or services as being available free of charge*  
24 *with intent to require payment of undisclosed costs as a condition of*  
25 *receiving the goods or services.*
- 26 12. Advertises under the guise of obtaining sales personnel when ~~the~~  
27 ~~fact~~ the purpose is to first sell or lease goods or services to the sales  
28 personnel applicant.
- 29 ~~the~~ 13. Makes false or misleading statements of fact concerning the  
30 price of goods or services for sale or lease, or the reasons for, existence of  
31 or amounts of price reductions.
- 32 ~~the~~ 14. Fraudulently alters any contract, written estimate of repair,  
33 written statement of charges or other document in connection with the sale  
34 or lease of goods or services.
- 35 ~~the~~ 15. Knowingly makes any other false representation in a  
36 transaction.
- 37 ~~the~~ 16. Knowingly falsifies an application for credit relating to a  
38 retail installment transaction, as defined in NRS 97.115.
- 39 **Sec. 15.** NRS 598.0999 is hereby amended to read as follows:  
40 598.0999 1. A person who violates a court order or injunction issued  
41 pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, and  
42 section 1 of Assembly Bill No. 337 of this session upon a complaint  
43 brought by the commissioner, the director, the district attorney of any  
44 county of this state or the attorney general shall forfeit and pay to the state  
45 general fund a civil penalty of not more than \$10,000 for each violation.  
46 For the purpose of this section, the court issuing the order or injunction  
47 retains jurisdiction over the action or proceeding. Such civil penalties are in  
48 addition to any other penalty or remedy available for the enforcement of



1 the provisions of NRS 598.0903 to 598.0999, inclusive, and section 1 of  
2 Assembly Bill No. 337 of this session.

3 2. In any action brought pursuant to the provisions of NRS 598.0903 to  
4 598.0999, inclusive, and section 1 of Assembly Bill No. 337 of this  
5 session, if the court finds that a person has willfully engaged in a deceptive  
6 trade practice, the commissioner, the director, the district attorney of any  
7 county in this state or the attorney general bringing the action may recover  
8 a civil penalty not to exceed \$2,500 for each violation. The court in any  
9 such action may, in addition to any other relief or reimbursement, award  
10 reasonable attorney's fees and costs.

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~~  
14 ~~in 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, and section 1 of Assembly Bill No. 337 of this session, 598.100  
25 to 598.2801, inclusive, 598.281 to 598.289, inclusive, 598.840 to 598.966,  
26 inclusive, sections 2 to 14, inclusive, of *Assembly Bill No. 245 of this act*  
27 ~~or 598.992;~~ *session or sections 3 to 12, inclusive, of this act,* fails to  
28 comply with a judgment or order of any court in this state concerning a  
29 violation of such a provision, or fails to comply with an assurance of  
30 discontinuance or other agreement concerning an alleged violation of such  
31 a provision, the commissioner or the district attorney of any county may  
32 bring an action in the name of the State of Nevada seeking:

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

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

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

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

40 598.2806 1. Each credit service organization, organization for  
41 buying goods or services at a discount, dance studio and health club  
42 regulated by the provisions of this chapter shall apply for registration on  
43 the form prescribed by the division.

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

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



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1 (a) Is not transferable or assignable ~~to~~; and

2 (b) Expires 1 year after it is issued.

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

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

8 598.2808 1. The security required to be deposited by a registrant  
9 pursuant to NRS 598.2807 must be held in trust for consumers injured by  
10 the bankruptcy of the registrant or the registrant's breach of any agreement  
11 entered into in his capacity as a registrant.

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

14 3. The division may bring an action for interpleader against all  
15 claimants upon the security. If the division brings such an action, the  
16 division shall publish notice of the action at least once each week for 2  
17 weeks in a newspaper of general circulation in the county in which the  
18 organization has its principal place of business. The division may deduct its  
19 costs of the action, including the costs of the publication of the notice, from  
20 the amount of the security. All claims against the security have equal  
21 priority. If the security is insufficient to pay all the claims in full, the  
22 claims must be paid pro rata. If the registrant has posted a bond with the  
23 division, the surety is 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 of  
26 the security to claimants. The division shall adopt regulations to provide  
27 for adequate notice and the conduct of the hearing. If the registrant has  
28 posted a bond with the division, distribution pursuant to this subsection  
29 relieves the surety of all liability under the bond.

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

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

35 598.946 1. Except as otherwise provided in subsection 5, before  
36 advertising its services or conducting business in this state, the owner of a  
37 dance studio or a health club must register pursuant to NRS 598.2806 and  
38 598.944 and deposit security with the division pursuant to NRS 598.2807.  
39 The security must ~~be~~:

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

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

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



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- 1 (a) Ten thousand dollars, if the dance studio or health club has less than  
2 400 members;
- 3 (b) Fifteen thousand dollars, if the dance studio or health club has 400  
4 members or more but less than 800 members;
- 5 (c) Twenty thousand dollars, if the dance studio or health club has 800  
6 members or more but less than 1,200 members;
- 7 (d) Twenty-five thousand dollars, if the dance studio or health club has  
8 1,200 members or more but less than 1,500 members;
- 9 (e) Thirty-five thousand dollars, if the dance studio or health club has  
10 1,500 members or more but less than 4,000 members; ~~and~~
- 11 (f) Fifty thousand dollars, if the dance studio or health club has 4,000  
12 *members or more but less than 25,000 members* ~~+~~; *and*
- 13 *(g) Two hundred and fifty thousand dollars, if the dance studio or*  
14 *health club has 25,000 or more members.*
- 15 3. If a dance studio or health club conducts any pre-sale of dance  
16 lessons, the use of facilities or other services, the amount of the security  
17 required by this section is \$100,000 ~~+~~ *unless a greater amount is*  
18 *required pursuant to paragraph (g) of subsection 2.*
- 19 4. A dance studio or health club shall report to the division on a  
20 quarterly basis the size of its membership and shall, on the basis of any  
21 change in the size of that membership, adjust accordingly the amount of  
22 the security deposited with the division.
- 23 5. ~~If a dance studio or health club has actively conducted business for~~  
24 ~~not less than 4 consecutive years and has not changed ownership or, in the~~  
25 ~~case of a corporation, not more than 25 percent of its authorized shares~~  
26 ~~have been transferred, it is not required to deposit security with the division~~  
27 ~~pursuant to NRS 598.2807.~~ If, *on October 1, 2001*, a dance studio or  
28 health club ~~does not deposit such security, it shall~~ *has not deposited*  
29 *security with the division pursuant to NRS 598.2807 because it was not*  
30 *required to do so pursuant to this section, the dance studio or health*  
31 *club:*
- 32 *(a) Is not required to deposit security with the division pursuant to*  
33 *NRS 598.2807; and*
- 34 *(b) Shall* obtain a written acknowledgment from each member and  
35 prominently post a notice on its premises stating that no security for  
36 refunds or reimbursement has been deposited with the State of Nevada.
- 37 **Sec. 19.** NRS 598.968 is hereby amended to read as follows:  
38 598.968 As used in NRS 598.968 to 598.9694, inclusive, *and section*  
39 *13 of this act*, unless the context otherwise requires, the words and terms  
40 defined in NRS 598.9682 and 598.9684 have the meanings ascribed to  
41 them in those sections.
- 42 **Sec. 20.** NRS 598.992 is hereby repealed.
- 43 **Sec. 21.** 1. Notwithstanding the provisions of section 16 of this act,  
44 a registrant that:
- 45 (a) Is doing business in this state; and
- 46 (b) Has a certificate of registration that was issued by the division  
47 pursuant to NRS 598.2806 before October 1, 2000,



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- 1 must submit to the division an application for the renewal of the certificate  
2 of registration on a form prescribed by the division not later than  
3 October 1, 2001.
- 4 2. A registrant that:
- 5 (a) Is doing business in this state; and
- 6 (b) Has a certificate of registration that was issued by the division  
7 pursuant to NRS 598.2806 on or after October 1, 2000,  
8 must submit to the division an application for the renewal of the certificate  
9 of registration on a form prescribed by the division not later than 1 year  
10 after the certificate of registration was issued by the division.
- 11 3. As used in this section, “registrant” has the meaning ascribed to it in  
12 NRS 598.2805.
- 13 **Sec. 22.** 1. This section, sections 1 to 13, inclusive, and 16 to 21,  
14 inclusive, of this act become effective on October 1, 2001.
- 15 2. Sections 14 and 15 of this act become effective at 12:01 a.m. on  
16 October 1, 2001.

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### TEXT OF REPEALED SECTION

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**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:



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(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.

(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.

