

SENATE BILL NO. 45—COMMITTEE ON JUDICIARY

PREFILED JANUARY 24, 2001

(ON BEHALF OF ENCOURAGING BUSINESSES TO ORGANIZE AND
CONDUCT BUSINESS IN NEVADA (SCR 19))

Referred to Committee on Commerce and Labor

SUMMARY—Provides remedy for dilution of marks. (BDR 52-256)

FISCAL NOTE: Effect on Local Government: No.
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 marks; providing remedies to the owner of a mark for the dilution of the mark; 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. Chapter 600 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 4, the owner of a mark that is famous in this state may bring an action to enjoin commercial use of the mark by a person if such use:

(a) Begins after the mark has become famous; and

(b) Causes dilution of the mark.

2. In determining whether a mark is famous in this state, the court shall consider, without limitation, the following factors:

(a) The degree of inherent or acquired distinctiveness of the mark in this state.

(b) The duration and extent of use of the mark in connection with the goods and services with which the mark is used.

(c) The duration and extent of advertisement and promotion of the mark in this state.

(d) The geographical extent of the trading area in which the mark is used.

(e) The channels of trade for the goods or services with which the mark is used.

1 (f) *The degree of recognition of the mark in the trading areas and*
2 *channels of trade in this state used by the owner of the mark and the*
3 *person against whom the injunction is sought.*

4 (g) *The nature and extent of use of the same or similar mark by other*
5 *persons.*

6 (h) *Whether the mark is registered in this state or registered in the*
7 *United States Patent and Trademark Office pursuant to federal law.*

8 3. *Except as otherwise provided in this subsection, the owner of a*
9 *mark that is famous may obtain only injunctive relief in an action*
10 *brought pursuant to this section. The owner of a mark that is famous is*
11 *entitled to the remedies provided in NRS 600.430 if the person using the*
12 *mark willfully intended to cause dilution of the mark or willfully*
13 *intended to trade on the reputation of the owner of the mark.*

14 4. *The owner of a mark that is famous may not bring an action*
15 *pursuant to this section for the fair use of the mark by another person in*
16 *comparative commercial advertising or promotion to identify the*
17 *competing goods or services of the owner of the mark.*

18 5. *As used in this section:*

19 (a) *“Commercial use” means use of a mark primarily for profit. The*
20 *term does not include use of a mark for research, criticism, news*
21 *commentary, news reporting, teaching or any similar use that is not*
22 *primarily for profit.*

23 (b) *“Dilution” means a lessening in the capacity of a mark that is*
24 *famous to identify and distinguish goods or services, regardless of the*
25 *presence or absence of:*

26 (1) *Competition between the owner of the mark and other persons;*
27 *or*

28 (2) *Likelihood of confusion, mistake or deception as to the source*
29 *of origin of goods or services.*

30 **Sec. 2.** NRS 600.240 is hereby amended to read as follows:

31 600.240 As used in NRS 600.240 to 600.450, inclusive, *and section 1*
32 *of this act*, unless the context otherwise requires, the words and terms
33 defined in NRS 600.250 to 600.320, inclusive, have the meanings ascribed
34 to them in those sections.

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