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— . MCG Lam Eng

OFFICE OF THE ATTORNEY GENERAL
BUREAU OF CONSUMER PROTECTION

RECOMMENDED AMENDMENTS TO SB 399

Add sections to NRS Chapter 598:

"Goods" are defined as all things existing and identifiable which are movable at the time of sale or lease.

"Services" are defined as all non- tangible things that have no physical characteristics as the time of sale or lease.

Sec. 2. 1. A person engages in a "deceptive trade practice" if, in the course of his business or occupation, he, directly or through another person, employee, agent or representative acting on his behalf:

(a) Fails to disclose in a truthful, clear and conspicuous manner, before a customer pays for any goods or services offered, or misrepresents, directly or by implication at the time of the sale or lease of the goods or services, any of the following information:

(1) The total cost to purchase, receive or use, and the quantity of, any goods or services that are the subject of the offer;

(2) Any material restriction, limitation or condition to purchase, receive or use any goods or services that are the subject of the offer;

(3) Any material and significant aspect of the performance[, efficacy, nature] or central characteristics of any goods or services that are the subject of the offer;

(4) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange or repurchase policies;

(5) Any affiliation of the seller with, or endorsement or sponsorship by, any person or governmental entity;

(6) That any offered goods or services are required by a person to provide protections that the person already has pursuant to any federal or state law or regulation; or

(7) Any material aspect of a negative option including, but not limited to, the fact that the customer's account will be charged unless the customer acts to avoid the charge, or the date the charge will be submitted for payment and the specific actions the customer must take to avoid the charge.

(b) Makes a false statement concerning or fails to disclose the date the charge for the goods or services will be submitted for payment or the date the customer's account will be charged.

(c) Causes billing information to be submitted for payment, or collects or attempts to collect payment for [goods or] services or a charitable contribution without obtaining express authorization from the customer or donor, as verified in accordance with subsection 2.

(d) Presents for payment or deposits into a financial institution's credit card system or electronic banking system a credit card sales draft or an electronic debit drawn on a customer's bank account that is generated by a sales transaction for the purchase of [or lease of goods or] services, if the credit card sales draft or electronic debit is not the result of a sale or lease transaction directly between the cardholder and the seller, as verified in accordance with subsection 2, unless the financial institution expressly authorizes the payment or deposit.

(e) Uses a business relationship or an affiliation with a seller or lessor of goods or services to obtain access to the credit card system of a financial institution or a

person's bank account information, if the access is not authorized by an agreement between the seller or lessor and the financial institution or bank.

(f) Sells, loans, gives, transmits, trades or distributes in any manner, to another person, a customer's credit card or banking account information or any other information relating to the customer that allows the recipient to access the customer's credit card or banking account, without express authorization of the customer, for the purpose of enabling the recipient to use the information to engage in advertising, telemarketing, direct mailing, facsimile advertising, submitting mail electronically or any indirect sales activity relating to the sale of goods or services.

2. For the purposes of this section, any authorization specified in paragraph (c) or (d) of subsection 1 is verifiable upon:

(a) Presenting the express written authorization of the customer or donor for the payment or charitable contribution, which must include the signature of the customer or donor;

(b) Presenting the express oral authorization of the customer or donor, if the authorization:

(1) Is recorded in audible form;

(2) Is made available to the customer or donor and to the bank or other billing entity of the customer or donor upon request;

(3) Clearly indicates that the customer has authorized payment for the goods or services or the donor has authorized the charitable contribution; and

(4) Clearly indicates that the customer or donor has received the following information:

(I) The number of debits, charges or payments required to purchase the goods or services or to make the charitable contribution;

(II) The date each debit, charge or payment will be submitted for payment;

(III) The amount of each debit, charge or payment for the goods or services or charitable contribution;

(IV) The name of the customer or donor;

(V) The billing information of the customer or donor, stated with sufficient specificity to ensure that the customer or donor understands the account that will be used to collect payment for the goods or services or the charitable contribution;

(VI) A telephone number that is available for use by the customer or donor to submit inquiries and that is answered by a natural person during normal business hours; and

(VII) The date the authorization of the customer or donor was obtained; or

(c) Presenting written confirmation of the transaction, set forth in a clear and conspicuous manner and sent to the customer or donor by first class mail at least 30 days before the submission for payment of the customer's or donor's billing information, which includes:

(1) The information set forth in subparagraph (4) of paragraph (b); and

(2) A clear and concise statement indicating the manner in which the customer or donor may, if the written confirmation is inaccurate, cancel the sale or charitable contribution and obtain a refund of any money paid for the sale or donated for the charitable contribution.

3. As used in this section:

(a) "Credit" means the right granted by a creditor to a debtor to defer payment of a debt or to incur a debt and defer its payment.

(b) "Credit card" means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor or services on credit, or any debit card issued by a financial institution.

(c) "Credit card sales draft" means any record or evidence of a credit card or

debit transaction.

(d) "Credit card system" means any method or procedure used to process a credit card or debit card transaction involving a card or other device issued or licensed by any financial institution or any operator employed or licensed by a financial institution.

(e) "Customer" means any person who pays or is or may be required to pay for goods or services.

(f) "Electronic banking system" means any method or procedure used by a financial institution or an operator employed by a financial institution to carry out an electronic banking transaction.