

Assembly Bill No. 232—Assemblymen Conklin, Atkinson, Horne, Perkins, Buckley, Anderson, Andonov, Angle, Arberry, Beers, Brown, Carpenter, Chowning, Christensen, Claborn, Collins, Geddes, Gibbons, Giunchigliani, Goicoechea, Goldwater, Grady, Griffin, Gustavson, Hardy, Hettrick, Knecht, Koivisto, Leslie, Mabey, Manendo, Marvel, McClain, McCleary, Mortenson, Ocegüera, Parks, Pierce, Sherer, Weber and Williams

Joint Sponsors: Senators Townsend, Amodei, Titus, Hardy, Carlton, Care, Cegavske, Mathews, McGinness, Neal, Nolan, O’Connell, Raggio, Rawson, Schneider, Shaffer, Tiffany, Washington and Wiener

CHAPTER.....

AN ACT relating to trade practices; requiring the establishment of a registry of certain telephone numbers or the use of a similar federal list; requiring the publication of a list of certain telephone numbers or the use of a similar federal list; prohibiting a telephone solicitor from making an unsolicited telephone call for the sale of goods or services to a telephone number included in the currently effective version of the list under certain circumstances; providing that the making of an unsolicited telephone call for the sale of goods and services is a deceptive trade practice under certain circumstances; providing that a seller of travel may maintain a trust account or post security; 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. NRS 597.814 is hereby amended to read as follows:

597.814 1. Except as otherwise provided in subsection 3 and NRS 597.816, a person shall not use a device for automatic dialing and announcing to disseminate a prerecorded message in a telephone call unless, before the message is disseminated, a recorded or unrecorded natural voice:

(a) Informs the person who answers the telephone call of the nature of the call, including, without limitation, the fact that a device for automatic dialing and announcing will be used to disseminate the message if the person who answers the call remains on the line; and

(b) Provides to the person who answers the telephone call the name, address and telephone number of the business or organization, if any, being represented by the caller.

2. A person shall not operate a device for automatic dialing and announcing to place:

(a) A call that is received by a telephone located in this state during the period between ~~9~~ 8 p.m. and 9 a.m.; or

(b) A call-back or second call to the same telephone number ~~if~~ if a person at the telephone number terminated the original call.

3. This section does not prohibit the use of a device for automatic dialing and announcing to dial the number of and play a recorded message to a person with whom the person using the device or another person affiliated with the person using the device has a preexisting business relationship.

Sec. 2. NRS 598.0918 is hereby amended to read as follows:

598.0918 A person engages in a “deceptive trade practice” if, during a solicitation by telephone or sales presentation, he:

1. Uses threatening, intimidating, profane or obscene language;

2. Repeatedly or continuously conducts the solicitation or presentation in a manner that is considered by a reasonable person to be annoying, abusive or harassing;

3. Solicits a person by telephone at his residence between ~~9~~ 8 p.m. and ~~8 a.m.; or~~ 9 a.m.;

4. Blocks or otherwise intentionally circumvents any service used to identify the caller when placing an unsolicited telephone call ~~if~~; or

5. Places an unsolicited telephone call that does not allow a service to identify the caller by the telephone number or name of the business, unless such identification is not technically feasible.

Sec. 3. 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, 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.

2. In any action brought pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, 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:

(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, 598.100 to 598.2801, inclusive, 598.305 to 598.395, inclusive, 598.405 to 598.525, inclusive, 598.741 to 598.787, inclusive, or 598.840 to 598.966, inclusive, 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.

6. If a person violates any provision of sections 5 to 19, 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 Attorney General 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. 3.3. NRS 598.375 is hereby amended to read as follows:

598.375 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 NRS 598.365 for the purposes of this chapter.

8. The provisions of this section do not apply to a seller of travel who ~~is~~:

(a) *Is* accredited by and appointed as an agent of the Airlines Reporting Corporation ~~is~~; or

(b) *Maintains a trust account in accordance with the provisions of section 5 of Assembly Bill No. 343 of this session.*

Sec. 3.5. NRS 598A.260 is hereby amended to read as follows:

598A.260 1. All money obtained as awards, damages or civil penalties for the State of Nevada and its agencies by the Attorney General as a result of enforcement of statutes pertaining to unfair

trade practices, whether by final judgment, settlement or otherwise must be deposited in the State Treasury as follows:

(a) All attorney's fees and costs and 50 percent of all recoveries for credit to the Attorney General's Special Fund.

(b) The balance of the recoveries for credit to the State General Fund.

2. Money deposited in the State Treasury for credit to the Attorney General's Special Fund pursuant to subsection 1 must be used for payment of the expenses of enforcing the statutes pertaining to unfair trade practices ~~[]~~ *and sections 5 to 19, inclusive, of this act.* Those expenses which are in excess of the amount available in the fund must be paid out of the legislative appropriation for the support of the Office of Attorney General.

3. On June 30 of each fiscal year, any amount in excess of ~~[\$200,000]~~ *\$450,000* in the Attorney General's Special Fund of the money collected pursuant to subsection 1 reverts to the State General Fund.

4. The balance of the money in the Attorney General's Special Fund that is collected pursuant to subsection 1 must not exceed ~~[\$250,000]~~ *\$500,000*. If money deposited in the State Treasury for credit to the Attorney General's Special Fund pursuant to subsection 1 would cause that balance to exceed ~~[\$250,000]~~ *\$500,000* if credited to the Fund, the amount of the deposit which would cause the balance to exceed ~~[\$250,000]~~ *\$500,000* immediately reverts to the State General Fund.

Sec. 4. Chapter 228 of NRS is hereby amended by adding thereto the provisions set forth as sections 5 to 19, inclusive, of this act.

Sec. 5. *As used in sections 5 to 19, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 6, 7 and 8 of this act have the meanings ascribed to them in those sections.*

Sec. 6. *"Registry" means the registry established pursuant to section 10 of this act unless, pursuant to section 9 of this act, the part of the single national database that relates to this state is deemed to be the registry.*

Sec. 7. 1. *"Telephone solicitor" means a person who makes or causes another person or a machine to make an unsolicited telephone call for the sale of goods or services.*

2. As used in this section:

(a) "Device for automatic dialing and announcing" has the meaning ascribed to it in NRS 597.812.

(b) "Machine" includes, without limitation, a device for automatic dialing and announcing.

Sec. 8. 1. *"Unsolicited telephone call for the sale of goods or services" means an unsolicited telephone call, other than a*

telephone call on behalf of a charitable organization, religious organization or political organization, to:

(a) Rent, lease, sell, exchange, promote or gift any good or service;

(b) Solicit any act described in paragraph (a);

(c) Seek or obtain a donation or contribution of money or anything else of value; or

(d) Seek or obtain information, including, without limitation, any document, intended to be used to facilitate any act described in paragraph (a), (b) or (c).

2. As used in this section:

(a) "Charitable organization" means a person that the Secretary of the Treasury has determined to be tax exempt pursuant to the provisions of section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3).

(b) "Committee for political action" means a committee for political action, as defined in NRS 294A.0055, which has registered pursuant to NRS 294A.230.

(c) "Good or service" means:

(1) Any property or product, whether tangible or intangible;

(2) Any service, including, without limitation, financial service;

(3) A loan or any other extension of credit;

(4) Insurance;

(5) Any investment or opportunity for investment;

(6) A gift, prize, bonus or any other inducement to act; or

(7) Anything of value.

(d) "Political organization" means a committee for political action, political party or candidate for public office.

(e) "Religious organization" means an organization for which the primary purpose is the operation of a church, synagogue or other place of religious worship at which nonprofit religious services and activities are regularly conducted.

(f) "Telephone call on behalf of a charitable organization, religious organization or political organization" means a telephone call on behalf of the organization if the call is made by:

(1) An employee of the organization who is paid directly by the organization; or

(2) A volunteer.

3. For the purposes of this section, a telephone call is deemed to have been solicited if it is made to a person who:

(a) Expressly requested or expressly gave permission for the telephone call to be made;

(b) Had an established business relationship with the caller, if the telephone call is made solely to verify the termination of the business relationship; or

(c) *Has a delinquent obligation for which payment or performance is due but has not been made, if the telephone call is made to:*

- (1) Collect the payment or obtain the performance; or*
- (2) Extend credit to allow the person to make the payment.*

Sec. 9. *1. If a federal agency establishes a single national database of telephone numbers of persons who request not to receive unsolicited telephone calls for the sale of goods or services, the Attorney General shall, to the extent consistent with federal law, examine that database and the federal law relating to that database for the purposes of sections 5 to 19, inclusive, of this act. Based upon this examination and his analysis of the applicable needs of this state, the Attorney General may issue a finding that:*

(a) The part of the single national database that relates to this state is adequate to serve as the registry for the purposes of sections 5 to 19, inclusive, of this act; and

(b) It is in the best interests of this state for the Attorney General to use the part of the single national database that relates to this state as the registry for the purposes of sections 5 to 19, inclusive, of this act.

2. Except as otherwise provided in subsection 3, if the Attorney General issues the finding described in subsection 1:

(a) The part of the single national database that relates to this state shall be deemed to be the registry for the purposes of sections 5 to 19, inclusive, of this act;

(b) The Attorney General shall forward the applicable information in the registry established pursuant to section 10 of this act, if any, to the federal agency or other appropriate person who maintains the single national database;

(c) The provisions of sections 10 and 13 of this act do not apply;

(d) The provisions of paragraphs (b), (c) and (d) of subsection 1 of section 11 of this act do not apply; and

(e) The provisions of subsection 3 of section 14 of this act do not apply.

3. Not less than biennially, the Attorney General shall reexamine the single national database and the federal law relating to that database for the purposes of sections 5 to 19, inclusive, of this act. Based upon this reexamination and his analysis of the applicable needs of this state, the Attorney General may rescind his finding issued pursuant to subsection 1. If the Attorney General rescinds his finding:

(a) Except as otherwise provided in paragraph (d), 1 month after the Attorney General rescinds his finding, the provisions of section 10 of this act apply;

(b) Five months after the Attorney General rescinds his finding, the provisions of section 13 of this act apply;

(c) Six months after the Attorney General rescinds his finding:

(1) The provisions of paragraphs (b), (c) and (d) of subsection 1 of section 11 of this act apply;

(2) The provisions of subsection 3 of section 14 of this act apply; and

(3) The part of the single national database that relates to this state shall cease to be deemed to be the registry for the purposes of sections 5 to 19, inclusive, of this act; and

(d) Three years after the Attorney General rescinds his finding, the provisions of paragraph (d) of subsection 1 of section 10 of this act apply.

4. At any time after rescinding a finding pursuant to subsection 3, the Attorney General may again issue a finding described in subsection 1, and may rescind that finding pursuant to subsection 3.

Sec. 10. 1. The Attorney General shall:

(a) Establish and maintain, or cause to be established and maintained, a registry that includes the name and telephone number of each person in this state who has requested that his telephone number be included in the list published pursuant to this section;

(b) Provide for a toll-free telephone number that may be used to request inclusion or maintenance of a telephone number in the registry;

(c) Publish a list of the telephone numbers in the registry at least once every 6 months and ensure that no other personally identifying information contained in the registry is included in the published lists;

(d) On January 1, 2007, and every 3 years thereafter, delete from the registry every telephone number and related information, except for each telephone number and related information for which the Attorney General has received a request within the preceding 6 months to include or maintain the telephone number in the registry;

(e) During the 6-month period identified in paragraph (d), use reasonable means, including, without limitation, public service announcements, to inform the public that telephone numbers and related information in the registry will be deleted or otherwise purged unless new or renewed requests for inclusion in the registry are received by the Attorney General; and

(f) If a federal agency establishes a single national database of telephone numbers of persons who request not to receive unsolicited telephone calls for the sale of goods or services:

(1) Include the part of the single national database that relates to this state in the registry;

(2) At least once every 6 months, add to the registry any new and applicable information that has been added to the part of the single national database that relates to this state; and

(3) At least once every 6 months, remove from the registry any applicable information that has been removed from the part of the single national database that relates to this state.

2. The Attorney General may:

(a) Contract for the establishment and maintenance of the registry;

(b) Provide for additional procedures for requesting inclusion or maintenance of a telephone number in the registry; and

(c) Require by regulation that information in addition to names and telephone numbers be included in the registry, including, without limitation, the mailing address of each person who has requested inclusion in the registry.

3. A person may request that his telephone number be included or maintained in the registry using:

(a) A toll-free telephone number provided by the Attorney General for that purpose; or

(b) Any other method provided by the Attorney General.

4. A person may request to have his telephone number removed from the registry. Such a request must be submitted to the Attorney General in writing.

Sec. 11. *1. The Attorney General shall make information available to the public concerning the establishment and maintenance of the registry, including, without limitation:*

(a) The procedures for requesting the inclusion or maintenance of a telephone number in the registry;

(b) A statement indicating that a revised version of the list of telephone numbers in the registry will be published at least once every 6 months;

(c) A statement indicating that no information contained in the registry, other than the telephone numbers, will be included on the list published pursuant to this section or otherwise disclosed to the public; and

(d) A statement indicating that all telephone numbers and related information in the registry will be deleted or otherwise purged from the registry every 3 years, except for any telephone number and related information for which the Attorney General has received a new or renewed request for inclusion in the registry within the 6 months before the potential deletion.

2. A person who publishes telephone directories for distribution to the public in this state shall ensure that each such

telephone directory includes the information made available to the public by the Attorney General pursuant to subsection 1.

Sec. 12. *To the extent consistent with federal law:*

1. The registry is not a public record. Any list published of the telephone numbers contained within the registry is not a public record.

2. The telephone numbers in the registry must not be published or released except pursuant to the provisions of sections 5 to 19, inclusive, of this act.

3. The information in the registry other than the telephone numbers:

(a) Must not be published or released; and

(b) May only be used by the Attorney General to administer the provisions of sections 5 to 19, inclusive, of this act.

Sec. 13. *Each list of telephone numbers published pursuant to section 10 of this act must be made available to a telephone solicitor upon the payment of the fee established by regulation for this purpose by the Attorney General. The fee must not exceed \$1,000 annually for each telephone solicitor, regardless of the number of revised editions of the list that are published during the calendar year.*

Sec. 14. *1. Except as otherwise provided in section 15 of this act, a telephone solicitor shall not intentionally make an unsolicited telephone call for the sale of goods or services to a telephone number in the currently effective version of the list of telephone numbers in the registry.*

2. A person who obtains a copy of or access to the registry or to any version of the list of telephone numbers in the registry shall not use that information for any purpose other than determining whether a particular telephone number is available for an unsolicited telephone call for the sale of goods or services.

3. For the purposes of this section, a version of the list of telephone numbers in the registry is deemed to be the currently effective version of the list for the period beginning on the 31st day after it is published and ending on the 30th day after the next version is published.

Sec. 15. *1. The provisions of section 14 of this act do not prohibit a telephone solicitor from making or causing another person to make an unsolicited telephone call for the sale of goods or services to a telephone number in the currently effective version of the list of telephone numbers in the registry if:*

(a) There is a preexisting business relationship between the telephone solicitor and the person who is called; and

(b) The telephone solicitor complies with the provisions of this section.

2. *Before a telephone solicitor may make or cause another person to make an unsolicited telephone call for the sale of goods or services based on a preexisting business relationship, the telephone solicitor must establish and maintain an internal do-not-call registry that complies with federal and state laws and regulations. The internal do-not-call registry must:*

(a) Include, without limitation, a list of the telephone numbers of any person who has requested that the telephone solicitor not make or cause another person to make an unsolicited telephone call for the sale of goods or services to a telephone number of the person making the request; and

(b) Upon request, be provided by the telephone solicitor to the Attorney General.

3. *In addition to the requirements set forth in subsection 2, at least once each year, the telephone solicitor shall provide written notice to each person with whom the telephone solicitor has a preexisting business relationship. The written notice must:*

(a) Inform the person that the telephone solicitor is providing the notice pursuant to state law;

(b) Explain to the person that the telephone solicitor may elect to be placed on the internal do-not-call list of the telephone solicitor and specify the procedures for making such an election; and

(c) Explain to the person that the person may contact the customer service department of the telephone solicitor or the Attorney General to obtain further information concerning the provisions of this section and must provide the current address, telephone number and electronic mail address of the customer service department of the telephone solicitor and the Attorney General.

4. *As used in this section, "preexisting business relationship" means a relationship between a telephone solicitor and a person that is based on:*

(a) The person's purchase, rental or lease of goods or services directly from the telephone solicitor, but not from any affiliate or associate of the telephone solicitor; or

(b) Any other financial transaction directly between the person and the telephone solicitor, but not between the person and any affiliate or associate of the telephone solicitor, that occurs within the 18 months immediately preceding the date of the unsolicited telephone call for the sale of goods or services.

Sec. 16. *If the Attorney General has reason to believe that a person has violated any of the provisions of sections 5 to 19, inclusive, of this act or any regulation adopted pursuant thereto, he may institute an appropriate legal proceeding against the person in a court of competent jurisdiction.*

Sec. 17. *A violation of a provision of sections 5 to 19, inclusive, of this act constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.*

Sec. 18. *1. The Registry Fund is hereby created as a special revenue fund in the State Treasury for the use of the Attorney General.*

2. All money collected by the Attorney General pursuant to section 13 of this act must be deposited in the State Treasury for credit to the Registry Fund. The interest and income earned on the money in the Registry Fund, after deducting any applicable charges, must be credited to the Registry Fund.

3. Expenditures from the Registry Fund must be made only to administer and enforce the provisions of sections 5 to 19, inclusive, of this act.

4. The Attorney General shall administer the Registry Fund. All claims against the Registry Fund must be paid as other claims against the State are paid.

5. Any money remaining in the Registry Fund at the end of a fiscal year does not revert to the State General Fund, and the balance in the Registry Fund must be carried forward to the next fiscal year.

6. Each year, the Attorney General shall submit an itemized statement of the income and expenditures for the Registry Fund:

(a) To the Legislature, if the Legislature is in session; or

(b) To the Interim Finance Committee, if the Legislature is not in session.

Sec. 19. *The Attorney General shall adopt regulations to carry out the provisions of sections 5 to 19, inclusive, of this act.*

Sec. 20. Section 5 of Assembly Bill No. 343 of this session is hereby amended to read as follows:

Sec. 5. 1. Except as otherwise provided in subsection 2:

(a) A seller of travel shall maintain a trust account in a bank, credit union or savings and loan association in this state for the purpose of depositing all money that a consumer pays to the seller of travel for the purchase of travel services or a vacation certificate.

(b) If a consumer pays money to a seller of travel for the purchase of travel services or a vacation certificate, the seller of travel shall deposit all such money in the trust account maintained by the seller of travel not later than 2 business days after the date on which the consumer pays the money to the seller of travel.

(c) The seller of travel shall pay out of the trust account the money paid to the seller of travel by the consumer as

needed to complete the purchase of the travel services or vacation certificate purchased by the consumer.

2. The provisions of this section do not apply to a seller of travel who deposits security with the Division pursuant to NRS 598.375.

Sec. 21. Section 7 of Assembly Bill No. 343 of this session is hereby amended to read as follows:

Sec. 7. *1. Except as otherwise provided in subsection 5, a consumer who is eligible for recovery from the account must file a complaint with the Division or its designee not later than 1 year after the scheduled date of completion of the travel purchased by the consumer. The consumer must file the complaint on a form established for this purpose by the Division.*

2. If the Division receives a complaint pursuant to subsection 1, the Division or its designee shall hold a hearing on the complaint. The Division shall:

(a) Affix the time and place for the hearing; and

(b) Notify the interested parties, in writing, at least 10 days before the date affixed for the hearing, of the time and place of the hearing.

3. Any testimony taken at the hearing must be considered a part of the record of the hearing before the Division or its designee.

4. The hearing must be public if a request is made for a public hearing.

5. If a consumer has obtained a judgment in any court of competent jurisdiction for recovery of damages against a seller of travel, the consumer may file with the Division or its designee a complaint for recovery of the judgment from the account. The consumer must file the complaint not later than 2 years after the entry of the judgment. The consumer is eligible for recovery of the judgment from the account if:

(a) The judgment is for actual damages suffered by the consumer as a result of:

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

(2) The bankruptcy of the seller of travel;

(3) The breach of any contract entered into by the seller of travel in his capacity as a seller of travel; or

(4) The violation by the seller of travel of any provision of NRS 598.305 to 598.395, inclusive, and sections 2 to 10, inclusive, of this act;

(b) The proceedings in connection with the judgment, including all appeals, have terminated;

(c) The consumer files the complaint on a form established for this purpose by the Division;

(d) The consumer submits proof satisfactory to the Division of the judgment; and

(e) Upon obtaining payment from the account, the consumer assigns his rights to enforce the judgment to the Division.

6. If a consumer files a complaint pursuant to this section, the Division or its designee shall act upon the complaint not later than 60 days after the date on which the complaint is filed with the Division, unless the Division:

(a) Determines that the complaint involves complex issues that may not reasonably be resolved within 60 days; and

(b) Notifies the interested parties, in writing, that the time for acting on the complaint will be extended. If the Division provides such notice to the interested parties, the Division shall act upon the complaint not later than 180 days after the date on which the complaint is filed with the Division.

Sec. 22. Section 8 of Assembly Bill No. 343 of this session is hereby amended to read as follows:

Sec. 8. 1. Except as otherwise provided in subsection 2, a consumer is eligible for recovery from the account if:

(a) The Division or its designee, after conducting a hearing on a complaint filed pursuant to the provisions of subsection 1 of section 7 of this act, finds that the consumer suffered actual damages as a result of:

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

(2) The bankruptcy of the seller of travel;

(3) The breach of any contract entered into by the seller of travel in his capacity as a seller of travel; or

(4) The violation by the seller of travel of any provision of NRS 598.305 to 598.395, inclusive, and sections 2 to 10, inclusive, of this act; or

(b) The consumer complies with the provisions of subsection 5 of section 7 of this act for the recovery of a judgment from the account.

2. A consumer is not eligible for recovery from the account if:

(a) The consumer is the spouse of the seller of travel or is a personal representative of the spouse of the seller of travel;

(b) The consumer was associated in a business relationship with the seller of travel other than with regard to the travel services or vacation certificate at issue;

(c) At the time the consumer paid money to the seller of travel for the purchase of the travel services or vacation certificate at issue, the seller of travel was not registered with the Division as required by NRS 598.365; or

(d) The consumer is seeking recovery of losses which were incurred by the consumer as the result of a cancellation penalty that:

(1) Was fully disclosed and agreed to by the consumer at the time the consumer entered into the contract for the purchase of the travel services or vacation certificate at issue; and

(2) Was imposed against the consumer, in accordance with the terms of the contract, after the cancellation of the travel services or vacation certificate at issue.

3. If the Division or its designee finds that a consumer is eligible for recovery from the account pursuant to this section, the Division or its designee may pay out of the account:

(a) If the complaint was filed pursuant to subsection 1 of section 7 of this act, the amount of actual damages suffered, but not to exceed \$10,000; or

(b) If the complaint was filed pursuant to subsection 5 of section 7 of this act, the amount of actual damages included in the judgment and remaining unpaid, but not to exceed \$10,000.

4. If a consumer has recovered a portion of his losses from sources other than the account, the Division shall deduct the amount recovered from the other sources from the amount payable upon the claim and direct the difference to be paid from the account.

5. To the extent that payments are made from the account to a consumer, the Division is subrogated to the rights of the consumer. The Division and the Attorney General shall promptly enforce all subrogation claims.

6. The amount of recovery from the account based upon claims made against any single seller of travel:

(a) Must not exceed \$200,000; and

(b) For any single action of the seller of travel, must not exceed 20 percent of the balance of the account.

Sec. 23. Section 9 of Assembly Bill No. 343 of this session is hereby amended to read as follows:

Sec. 9. 1. A seller of travel shall display conspicuously, at each place of business of the seller of travel and on any website maintained by the seller of travel for business purposes, a legible and typewritten statement that notifies consumers that they may be eligible to recover certain financial damages from the Recovery Fund. The written statement must be in substantially the following form:

***RECOVERY FUND FOR CONSUMERS
DAMAGED BY SELLERS OF TRAVEL***

You may be eligible for payment from the Recovery Fund if you have paid money to a seller of travel registered in this state for the purchase of travel services or a vacation certificate and you have suffered certain financial damages as a result of the transaction. To obtain information relating to your rights under the Recovery Fund and the filing of a claim for recovery from the Recovery Fund, you may contact the Consumer Affairs Division of the Department of Business and Industry at the following locations:

***SOUTHERN NEVADA: 1850 East Sahara Avenue
Suite 101
Las Vegas, Nevada 89104
Phone: 702.486.7355
Fax: 702.486.7371
ncad@fyiconsumer.org***

***NORTHERN NEVADA: 4600 Kietzke Lane
Building B, Suite 113
Reno, Nevada 89502
Phone: 775.688.1800
Fax: 775.688.1803***

2. The Division may impose upon a seller of travel an administrative fine of not more than:

- (a) For the first violation of subsection 1, \$100; and*
- (b) For a second or subsequent violation of subsection 1, \$250.*

3. The Division shall deposit any money received pursuant to this section in the account established pursuant to section 6 of this act.

4. The provisions of NRS 598.305 to 598.395, inclusive, and sections 2 to 10, inclusive, of this act do not limit the authority of the Division to take disciplinary action against a seller of travel.

Sec. 24. Section 10 of Assembly Bill No. 343 of this session is hereby amended to read as follows:

Sec. 10. *1. The Division shall:*

(a) On or before February 1 of each year, prepare and submit to the Director of the Legislative Counsel Bureau for transmittal to the appropriate legislative committee if the Legislature is in session, or to the Interim Finance Committee if the Legislature is not in session, a statement of the condition of the account that is prepared in accordance with generally accepted accounting principles.

(b) Employ accountants as necessary for the performance of the duties set forth in this section and pay any related expenses from the money in the account. Except as otherwise provided in subsection 3, the expenditures made by the Division pursuant to this paragraph must not exceed \$10,000 in any fiscal year.

(c) Employ or contract with persons and procure necessary equipment, supplies and services to be paid from or purchased with the money in the account as may be necessary to monitor or process claims filed by consumers that may result in a recovery from the account.

2. Any interest earned on the money in the account must be credited to the account. The Division may expend the interest earned on the money in the account to increase public awareness of the account. Except as otherwise provided in subsection 3, the expenditures made by the Division for this purpose must not exceed \$50,000 in any fiscal year.

3. The total expenditures made by the Division pursuant to this section must not exceed 10 percent of the account in any fiscal year.

4. Once an initial balance of \$200,000 exists in the account, the Division shall maintain a minimum balance of \$200,000 in the account.

5. The Division shall adopt such regulations as are necessary to carry out the provisions of NRS 598.305 to 598.395, inclusive, and sections 2 to 10, inclusive, of this act, including, without limitation, regulations governing:

(a) The disbursement of money from the account; and

(b) The manner in which a complaint is filed with the Division or its designee pursuant to the provisions of section 7 of this act.

Sec. 25. Section 11 of Assembly Bill No. 343 of this session is hereby amended to read as follows:

Sec. 11. 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, 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.

2. In any action brought pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, 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:

(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, 598.100 to 598.2801, inclusive, 598.305 to 598.395, inclusive, *and sections 2 to 10, inclusive, of this act*, 598.405 to 598.525, inclusive, *and section 10.5 of this act*, 598.741 to 598.787, inclusive, or 598.840 to 598.966, inclusive, 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. 26. Section 12 of Assembly Bill No. 343 of this session is hereby amended to read as follows:

Sec. 12. NRS 598.305 is hereby amended to read as follows:

598.305 As used in NRS 598.305 to 598.395, inclusive, *and sections 2 to 10, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS 598.315 to 598.356, inclusive, *and sections 2 and 3 of this act* have the meanings ascribed to them in those sections.

Sec. 27. Section 14 of Assembly Bill No. 343 of this session is hereby amended to read as follows:

Sec. 14. NRS 598.365 is hereby amended to read as follows:

598.365 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 NRS 598.375, if any, with the Division ~~and~~; *and*

(d) Paying to the Division a fee of \$100 for deposit to the account established pursuant to section 6 of this act.

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 NRS 598.375; and

(b) The payment of ~~the fee~~ *any fees* 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 ~~H~~; and

(c) *Paying to the Division a fee of \$100 for deposit to the account established pursuant to section 6 of this act.*

5. The Division shall mail an application for the renewal of a certificate to the last known address of a seller of travel at least 30 days before the expiration of the certificate.

6. The provisions of this section do not require a person described in paragraph (a) of subsection 2 of NRS 598.335 to register with the Division.

Sec. 28. Section 15 of Assembly Bill No. 343 of this session is hereby amended to read as follows:

Sec. 15. (Deleted by amendment.)

Sec. 29. 1. This section becomes effective upon passage and approval.

2. Sections 1, 2, 3 and 3.5 to 19, inclusive, of this act become effective upon passage and approval for the purposes of adopting regulations and entering into contracts or otherwise preparing to carry out the provisions of this act.

3. Sections 3.3 and 20 to 28, inclusive, of this act become effective on October 1, 2003.

4. Sections 1, 2, 3 and 3.5 to 19, inclusive, of this act become effective on January 1, 2004, for the purpose of the Attorney General making the determination described in subsection 1 of section 9 of this act.

5. If the Attorney General makes the determination described in subsection 1 of section 9 of this act on or before April 1, 2004, sections 1, 2, 3 and 3.5 to 19, inclusive, of this act become effective on May 1, 2004, for all other purposes.

6. If the Attorney General does not make the determination described in subsection 1 of section 9 of this act on or before April 1, 2004, sections 1, 2, 3 and 3.5 to 19, inclusive, of this act become effective:

(a) On May 1, 2004, for the purposes of the Attorney General receiving and accepting requests to include telephone numbers in the registry established pursuant to section 10 of this act.

(b) On June 1, 2004, for the purpose of publishing the first list of telephone numbers in the registry; and

(c) On July 1, 2004, for all other purposes.