

SENATE BILL NO. 47—SENATOR WIENER

PREFILED JANUARY 30, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Makes certain opt-out provisions in contracts with consumers unenforceable under certain circumstances. (BDR 52-24)

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 trade practices; making certain opt-out provisions in contracts with consumers unenforceable under certain circumstances; prohibiting a seller of goods or services from making a charge to a credit card of a consumer under certain circumstances; providing civil remedies; making certain acts deceptive trade practices; providing civil and administrative penalties; 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.** Chapter 598 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 8, inclusive, of this
3 act.
4 **Sec. 2.** *As used in sections 2 to 8, inclusive, of this act, unless*
5 *the context otherwise requires, the words and terms defined in*
6 *sections 3, 4 and 5 of this act have the meanings ascribed to them*
7 *in those sections.*
8 **Sec. 3.** *“Consumer” means a natural person who purchases,*
9 *other than for resale, goods or services that are used primarily for*
10 *personal, family or household purposes and not for business or*
11 *research purposes.*



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1 **Sec. 4.** *“Credit card” means any credit card, charge card,*
2 *debit card, bank card or other similar instrument or device that*
3 *may be used by a consumer to purchase goods or services.*

4 **Sec. 5.** *“Opt-out provision” means any provision in a*
5 *contract by which a consumer agrees to purchase goods or*
6 *services on a periodic or recurrent basis from a seller and the*
7 *seller is entitled to charge the consumer on a periodic or recurrent*
8 *basis for those goods or services unless the consumer takes*
9 *affirmative action to cancel the purchase, cancel the contract or*
10 *return the goods.*

11 **Sec. 6.** *The provisions of sections 2 to 8, inclusive, of this act*
12 *do not apply to a service contract that is subject to the provisions*
13 *of chapter 690C of NRS.*

14 **Sec. 7. 1.** *A seller shall not make a charge to a credit card*
15 *of a consumer under the terms of an opt-out provision unless:*

16 *(a) The opt-out provision is contained in a written contract*
17 *that is signed by the consumer;*

18 *(b) The opt-out provision is written in language that is*
19 *understandable and is printed in a typeface that is easy to read;*

20 *(c) The opt-out provision is initialed by the consumer; and*

21 *(d) Not fewer than 20 days before the date on which the first*
22 *charge will be made to a credit card of the consumer, the seller*
23 *has provided the consumer with written notice which:*

24 *(1) States that a charge will be made to the credit card of*
25 *the consumer for the purchase of goods or services unless the*
26 *consumer takes affirmative action in accordance with the terms of*
27 *the opt-out provision; and*

28 *(2) Contains a verbatim copy of the opt-out provision and*
29 *all contact information that is necessary for the consumer to*
30 *exercise his rights under the opt-out provision, including, without*
31 *limitation, all necessary addresses and telephone numbers.*

32 **2.** *If a seller makes a charge to a credit card of a consumer in*
33 *violation of the provisions of this section, the consumer may bring*
34 *a civil action to rescind the contract and to recover:*

35 *(a) The total amount of money charged to the credit card of*
36 *the consumer under the contract;*

37 *(b) Statutory damages in an amount equal to three times the*
38 *total amount of money charged to the credit card of the consumer*
39 *under the contract or \$10,000, whichever amount is greater; and*

40 *(c) Reasonable attorney’s fees and costs.*

41 **3.** *A seller and a consumer may not agree to alter or waive*
42 *the provisions of this section. Any contract that violates the*
43 *provisions of this section is void and must not be given effect to the*
44 *extent that it violates the provisions of this section.*



1 **Sec. 8. 1.** *The remedies, duties and prohibitions set forth in*
2 *sections 2 to 8, inclusive, of this act are not exclusive and are in*
3 *addition to any other remedies, duties and prohibitions provided by*
4 *law.*

5 **2.** *Any violation of sections 2 to 8, inclusive, of this act*
6 *constitutes a deceptive trade practice for the purposes of the civil*
7 *and administrative remedies and penalties set forth in NRS*
8 *598.0903 to 598.0999, inclusive.*

9 **Sec. 9.** The provisions of this act do not apply to any contract
10 that is executed before October 1, 2003.

