ASSEMBLY BILL NO. 19–ASSEMBLYMAN PARKS

PREFILED FEBRUARY 1, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Prohibits issuance of gift certificate that contains expiration date and prohibits issuer of gift certificate from charging fee for inactivity to buyer or holder of gift certificate. (BDR 52-558)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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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 deceptive trade practices; prohibiting the issuance of a gift certificate that contains an expiration date under certain circumstances; prohibiting the issuer of a gift certificate from charging a fee for inactivity to the buyer or holder of the gift certificate; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes and regulates deceptive trade practices (NRS 598.0903-598.990) and provides civil and criminal penalties for engaging in such practices. (NRS 598.0999)

This bill makes it a deceptive trade practice for a person to issue a gift certificate or card in the course of his business or occupation with a value of $50 or more that contains an expiration date. However, a person may issue a gift certificate or card with a value of less than $50 with an expiration date if the expiration date is printed conspicuously on the face of the card or certificate.

This bill also prohibits a person from imposing any charge or fee for failing to use a gift certificate or card within a certain period. Because these practices are deemed deceptive trade practices, a person who violates these provisions is subject to the civil and criminal penalties for engaging in a deceptive trade practice.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 598 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A person engages in a "deceptive trade practice" when, in the course of his business or occupation:

(a) He issues a gift certificate with a face value of $50 or more that contains an expiration date;

(b) He issues a gift certificate with a face value of less than $50 that contains an expiration date, unless the expiration date is printed plainly and conspicuously on the face of the gift certificate; or

(c) He imposes any charge or fee for inactivity on the buyer or holder of a gift certificate.

2. As used in this section, unless the context otherwise requires:

(a) "Gift card" means a record in the form of a card or other physical medium that contains stored value primarily intended to be exchanged for goods and services. The term includes, without limitation, an electronic card, stored-value card or similar instrument.

(b) "Gift certificate" means an instrument or record evidencing a promise by the seller or issuer of the instrument or record to provide goods or services for the value shown in the instrument or record. The term includes, without limitation, a gift card, certificate or similar instrument.

(c) "Issue" means to sell or otherwise provide a gift certificate to any person, and includes, without limitation, adding value to an existing gift certificate.

(d) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Sec. 2. NRS 598.0903 is hereby amended to read as follows:

598.0903 As used in NRS 598.0903 to 598.0999, inclusive, ***and section 1 of this act,*** unless the context otherwise requires, the words and terms defined in NRS 598.0905 to 598.0947, inclusive, have the meanings ascribed to them in those sections.

Sec. 3. NRS 598.0955 is hereby amended to read as follows:

598.0955 1. ***The provisions of*** NRS 598.0903 to 598.0999, inclusive, ***and section 1 of this act*** do not apply to:

(a) Conduct in compliance with the orders or rules of, or a statute administered by, a federal, state or local governmental agency.

(b) Publishers, including outdoor advertising media, advertising agencies, broadcasters or printers engaged in the dissemination of information or reproduction of printed or pictorial matter who publish, broadcast or reproduce material without knowledge of its deceptive character.

(c) Actions or appeals pending on July 1, 1973.

2. ***The provisions of*** NRS 598.0903 to 598.0999, inclusive, ***and section 1 of this act*** do not apply to the use by a person of any service mark, trademark, certification mark, collective mark, trade name or other trade identification which was used and not abandoned prior to July 1, 1973, if the use was in good faith and is otherwise lawful except for the provisions of NRS 598.0903 to 598.0999, inclusive ~~[.]~~ ***, and section 1 of this act.***

Sec. 4. NRS 598.0967 is hereby amended to read as follows:

598.0967 1. The Commissioner and the Director, in addition to other powers conferred upon them by NRS 598.0903 to 598.0999, inclusive, ***and section 1 of this act*** may issue subpoenas to require the attendance of witnesses or the production of documents, conduct hearings in aid of any investigation or inquiry and prescribe such forms and adopt such regulations as may be necessary to administer the provisions of NRS 598.0903 to 598.0999, inclusive ~~[.]~~ ***, and section 1 of this act.*** Such regulations may include, without limitation, provisions concerning the applicability of the provisions of NRS 598.0903 to 598.0999, inclusive, ***and section 1 of this act*** to particular persons or circumstances.

2. Service of any notice or subpoena must be made as provided in N.R.C.P. 45(c).

Sec. 5. NRS 598.0971 is hereby amended to read as follows:

598.0971 1. If, after an investigation, the Commissioner has reasonable cause to believe that any person has been engaged or is engaging in any deceptive trade practice in violation of NRS 598.0903 to 598.0999, inclusive, ***and section 1 of this act,*** the Commissioner may issue an order directed to the person to show cause why the Commissioner should not order the person to cease and desist from engaging in the practice. The order must contain a statement of the charges and a notice of a hearing to be held thereon. The order must be served upon the person directly or by certified or registered mail, return receipt requested.

2. If, after conducting a hearing pursuant to the provisions of subsection 1, the Commissioner determines that the person has violated any of the provisions of NRS 598.0903 to 598.0999, inclusive, ***and section 1 of this act,*** or if the person fails to appear for the hearing after being properly served with the statement of charges and notice of hearing, the Commissioner may make a

written report of his findings of fact concerning the violation and cause to be served a copy thereof upon the person and any intervener at the hearing. If the Commissioner determines in the report that such a violation has occurred, he may order the violator to:

(a) Cease and desist from engaging in the practice or other activity constituting the violation;

(b) Pay the costs of reporting services, fees for experts and other witnesses, charges for the rental of a hearing room if such a room is not available to the Commissioner free of charge, charges for providing an independent hearing officer, if any, and charges incurred for any service of process, if the violator is adjudicated to have committed a violation of NRS 598.0903 to 598.0999, inclusive ~~[;]~~ ***, and section 1 of this act;*** and

(c) Provide restitution for any money or property improperly received or obtained as a result of the violation.

➥ The order must be served upon the person directly or by certified or registered mail, return receipt requested. The order becomes effective upon service in the manner provided in this subsection.

3. Any person whose pecuniary interests are directly and immediately affected by an order issued pursuant to subsection 2 or who is aggrieved by the order may petition for judicial review in the manner provided in chapter 233B of NRS. Such a petition must be filed within 30 days after the service of the order. The order becomes final upon the filing of the petition.

4. If a person fails to comply with any provision of an order issued pursuant to subsection 2, the Commissioner may, through the Attorney General, at any time after 30 days after the service of the order, cause an action to be instituted in the district court of the county wherein the person resides or has his principal place of business requesting the court to enforce the provisions of the order or to provide any other appropriate injunctive relief.

5. If the court finds that:

(a) The violation complained of is a deceptive trade practice;

(b) The proceedings by the Commissioner concerning the written report and any order issued pursuant to subsection 2 are in the interest of the public; and

(c) The findings of the Commissioner are supported by the weight of the evidence,

➥ the court shall issue an order enforcing the provisions of the order of the Commissioner.

6. An order issued pursuant to subsection 5 may include:

(a) A provision requiring the payment to the Commissioner of a penalty of not more than $5,000 for each act amounting to a failure to comply with the Commissioner's order; or

(b) Such injunctive or other equitable or extraordinary relief as is determined appropriate by the court.

7. Any aggrieved party may appeal from the final judgment, order or decree of the court in a like manner as provided for appeals in civil cases.

8. Upon the violation of any judgment, order or decree issued pursuant to subsection 5 or 6, the Commissioner, after a hearing thereon, may proceed in accordance with the provisions of NRS 598.0999.

Sec. 6. 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, ***and section 1 of this act,*** 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 ~~[.]~~ ***, and section 1 of this act.***

2. In any action brought pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, ***and section 1 of this act,*** 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, ***and section 1 of this act,*** 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 NRS 228.500 to 228.640, 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 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. 7. The provisions of this act apply only to gift certificates issued on or after October 1, 2005.

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