
ASSEMBLY BILL NO. 539—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF THE ATTORNEY GENERAL)

MARCH 29, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Prohibits unconscionable pricing of consumer goods and services during abnormal disruption of market. (BDR 52-117)

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 trade practices; prohibiting certain persons from renting, leasing or selling consumer goods or services at unconscionable prices during an abnormal disruption of the market for those consumer goods or services; providing that such a rental, lease or sale constitutes a deceptive trade practice; providing a penalty; 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 a new section to read as follows:

3 1. *Except as otherwise provided in this section, during an*
4 *abnormal disruption of the market for consumer goods or services,*
5 *it is unlawful for a person within the chain of distribution for the*
6 *consumer goods or services to rent, lease or sell, or offer to rent,*
7 *lease or sell, the consumer goods or services at an unconscionable*
8 *price.*



2. It is prima facie evidence that a price for consumer goods or services is unconscionable if the amount of the price exceeds, by an amount equal to or more than 25 percent:

(a) The average price at which the consumer goods or services were rented, leased, sold or offered for rent, lease or sale in the usual course of business during the 30 days immediately preceding the beginning of the abnormal disruption of the market; or

(b) The average price at which the same or similar consumer goods or services are readily obtainable by consumers in the trade area for the consumer goods or services.

3. Except as otherwise provided in this section, a violation of this section constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.

4. A price increase approved by an appropriate government or governmental entity is not a violation of this section.

5. The provisions of this section do not preempt the authority of a local government to adopt an ordinance relating to the restriction of price gouging during an abnormal disruption of the market for consumer goods or services.

6. The provisions of this section only apply to consumer goods that are located within this State at the time that the consumer goods are rented, leased or sold or offered for rent, lease or sale.

7. As used in this section:

(a) "Abnormal disruption of the market" means any change in the market for consumer goods or services, whether actual or imminently threatened, that results from any stress of weather, convulsion of nature, failure or shortage of electric power or other source of energy, strike, civil disorder, war, military action, national or local emergency or any other circumstance that causes a disruption of the market and results in a state of emergency or declaration of disaster by the Governor or the Legislature pursuant to NRS 414.070.

(b) "Consumer goods or services" means goods or services used, purchased or rendered primarily for personal, family or household purposes that are vital for the health, safety and welfare of consumers in this State. The term includes, without limitation, repairs made by a person within the chain of distribution of the consumer goods or services on an emergency basis as a result of an abnormal disruption of the market.

(c) "Person within the chain of distribution" means any manufacturer, supplier, wholesaler, distributor or retail seller of consumer goods or services rented, leased or sold or offered for rent, lease or sale by a person to another person. The term



includes any agent or employee of such a manufacturer, supplier, wholesaler, distributor or retail seller.

Sec. 2. 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, ~~for~~ 598.840 to 598.966, inclusive, *or section 1 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 Commissioner or the district attorney of any county may bring an action in the name of the State of Nevada seeking:



1 (a) The suspension of the person's privilege to conduct business
2 within this State; or

3 (b) If the defendant is a corporation, dissolution of the
4 corporation.

5 ➤ The court may grant or deny the relief sought or may order other
6 appropriate relief.

7 6. If a person violates any provision of NRS 228.500 to
8 228.640, inclusive, fails to comply with a judgment or order of any
9 court in this State concerning a violation of such a provision, or fails
10 to comply with an assurance of discontinuance or other agreement
11 concerning an alleged violation of such a provision, the Attorney
12 General may bring an action in the name of the State of Nevada
13 seeking:

14 (a) The suspension of the person's privilege to conduct business
15 within this State; or

16 (b) If the defendant is a corporation, dissolution of the
17 corporation.

18 ➤ The court may grant or deny the relief sought or may order other
19 appropriate relief.

