

SENATE BILL NO. 489—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

MARCH 29, 2005

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions concerning protection of consumers. (BDR 15-108)

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 the protection of consumers; prohibiting a person from subleasing a motor vehicle under certain circumstances; expanding the private right of action for victims of consumer fraud to include victims of unlawful subleasing of a motor vehicle; establishing the civil and criminal statutes of limitations for certain deceptive trade practices; increasing the amount of the civil and criminal penalties that a court may impose for engaging in certain deceptive trade practices; 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 205 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 ***1. A person, for compensation or some other consideration,***
4 ***shall not transfer or assign, or purport to transfer or assign, any***
5 ***right or interest in a motor vehicle that is subject to a lease***
6 ***contract, retail installment contract or security agreement the***
7 ***terms of which prohibit the transfer or assignment of any right or***



1 *interest in the motor vehicle to any person who is not a party to the*
2 *contract or agreement unless:*

3 *(a) The person is a party to the lease contract, retail*
4 *installment contract or security agreement; and*

5 *(b) The person obtains, before the transfer or assignment,*
6 *written consent to the transfer or assignment from the motor*
7 *vehicle's lessor, seller or secured party.*

8 *2. A person shall not assist, cause or arrange for a person to*
9 *violate the provisions of subsection 1.*

10 *3. This section does not affect the enforceability of any*
11 *provision of any lease contract, retail installment contract, security*
12 *agreement or direct loan agreement by any party to the contract or*
13 *agreement.*

14 *4. In addition to any other penalty, a person who violates the*
15 *provisions of this section is guilty of a gross misdemeanor and*
16 *shall be punished as provided in NRS 193.140.*

17 *5. As used in this section:*

18 *(a) "Buyer" means a person who buys or hires a motor vehicle*
19 *pursuant to a retail installment contract.*

20 *(b) "Direct loan agreement" means an agreement between a*
21 *lender and a purchaser by which the lender has advanced money*
22 *pursuant to a loan secured by a motor vehicle which the purchaser*
23 *has purchased.*

24 *(c) "Lease contract" means a contract for or in contemplation*
25 *of a lease or bailment for the use of a motor vehicle, and the*
26 *purchase of services incidental to the lease or bailment, by a*
27 *natural person for a term exceeding 4 months, primarily for*
28 *personal, family, household, business or commercial purposes.*

29 *(d) "Lessor" means a person who is engaged in the business of*
30 *leasing, offering to lease or arranging the lease of a motor vehicle*
31 *under a lease contract. The term includes a bailor.*

32 *(e) "Motor vehicle" means a motor vehicle which is required*
33 *to be registered pursuant to chapter 482 of NRS.*

34 *(f) "Purchaser" has the meaning ascribed to it in*
35 *NRS 104.1201.*

36 *(g) "Retail installment contract" means a retail installment*
37 *contract as defined in NRS 97.105 pursuant to which the title to or*
38 *lien upon a motor vehicle, which is the subject matter of the retail*
39 *installment transaction, is retained or taken by a seller from a*
40 *buyer as security for the buyer's obligation.*

41 *(h) "Retail installment transaction" means a transaction in*
42 *which a buyer purchases a motor vehicle from a seller pursuant to*
43 *a retail installment contract which provides for a finance charge*
44 *and under which the buyer agrees to pay the total of payments in*
45 *one or more installments. As used in this paragraph:*



(1) *“Amount financed” means the cash sale price of the motor vehicle which is the subject matter of a retail installment contract less the amount of the buyer’s down payment in money or goods or both, plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance and official fees.*

(2) *“Finance charge” means the cost of credit indicated in a dollar amount. The term includes any charge payable directly or indirectly by the buyer and imposed directly or indirectly by the seller as an incident to or a condition of the extension of credit. The term does not include any charge of a type payable in a comparable cash transaction.*

(3) *“Total of payments” means the amount financed plus the finance charge.*

(i) *“Secured party” has the meaning ascribed to it in NRS 104.9102.*

(j) *“Security agreement” has the meaning ascribed to it in NRS 104.9102.*

(k) *“Seller” means a person engaged in the business of selling or leasing motor vehicles pursuant to retail installment contracts.*

Sec. 2. NRS 11.190 is hereby amended to read as follows:

11.190 Except as otherwise provided in NRS 125B.050 and 217.007, actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows:

1. Within 6 years:

(a) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

(b) An action for any article charged on an account in a store.

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

(d) An action against a person alleged to have committed a deceptive trade practice in violation of NRS 598.0903 to 598.0999, inclusive, but the action shall be deemed to accrue when the aggrieved party discovers, or by the exercise of due diligence should have discovered, the facts constituting the deceptive trade practice.

3. Within 3 years:



1 (a) An action upon a liability created by statute, other than a
2 penalty or forfeiture.

3 (b) An action for waste or trespass of real property, but when the
4 waste or trespass is committed by means of underground works
5 upon any mining claim, the cause of action shall be deemed to
6 accrue upon the discovery by the aggrieved party of the facts
7 constituting the waste or trespass.

8 (c) An action for taking, detaining or injuring personal property,
9 including actions for specific recovery thereof, but in all cases
10 where the subject of the action is a domestic animal usually included
11 in the term "livestock," which has a recorded mark or brand upon it
12 at the time of its loss, and which strays or is stolen from the true
13 owner without his fault, the statute does not begin to run against an
14 action for the recovery of the animal until the owner has actual
15 knowledge of such facts as would put a reasonable person upon
16 inquiry as to the possession thereof by the defendant.

17 (d) Except as otherwise provided in NRS 112.230 and 166.170,
18 an action for relief on the ground of fraud or mistake, but the cause
19 of action in such a case shall be deemed to accrue upon the
20 discovery by the aggrieved party of the facts constituting the fraud
21 or mistake.

22 (e) An action pursuant to NRS 40.750 for damages sustained by
23 a financial institution because of its reliance on certain fraudulent
24 conduct of a borrower, but the cause of action in such a case shall be
25 deemed to accrue upon the discovery by the financial institution of
26 the facts constituting the concealment or false statement.

27 4. Within 2 years:

28 (a) An action against a sheriff, coroner or constable upon
29 liability incurred by acting in his official capacity and in virtue of
30 his office, or by the omission of an official duty, including the
31 nonpayment of money collected upon an execution.

32 (b) An action upon a statute for a penalty or forfeiture, where the
33 action is given to a person or the State, or both, except when the
34 statute imposing it prescribes a different limitation.

35 (c) An action for libel, slander, assault, battery, false
36 imprisonment or seduction.

37 (d) An action against a sheriff or other officer for the escape of a
38 prisoner arrested or imprisoned on civil process.

39 (e) Except as otherwise provided in NRS 11.215, an action to
40 recover damages for injuries to a person or for the death of a person
41 caused by the wrongful act or neglect of another. The provisions of
42 this paragraph relating to an action to recover damages for injuries
43 to a person apply only to causes of action which accrue after
44 March 20, 1951.

45 5. Within 1 year:



(a) An action against an officer, or officer de facto to recover goods, wares, merchandise or other property seized by the officer in his official capacity, as tax collector, or to recover the price or value of goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention or sale of, or injury to, goods, wares, merchandise or other personal property seized, or for damages done to any person or property in making the seizure.

(b) An action against an officer, or officer de facto for money paid to the officer under protest, or seized by the officer in his official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

Sec. 3. NRS 41.600 is hereby amended to read as follows:

41.600 1. An action may be brought by any person who is a victim of consumer fraud.

2. As used in this section, "consumer fraud" means:

(a) An unlawful act as defined in NRS 119.330;

(b) *An unlawful act as defined in section 1 of this act;*

(c) An act prohibited by NRS 482.36655 to 482.36667, inclusive;

~~(e)~~ (d) An act prohibited by NRS 482.351; or

~~(d)~~ (e) A deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive.

3. If the claimant is the prevailing party, the court shall award him:

(a) Any damages that he has sustained; and

(b) His costs in the action and reasonable attorney's fees.

4. Any action brought pursuant to this section is not an action upon any contract underlying the original transaction.

Sec. 4. NRS 171.085 is hereby amended to read as follows:

171.085 Except as otherwise provided in NRS 171.083, 171.084 and 171.095, an indictment for:

1. Theft, robbery, burglary, forgery, arson, sexual assault, ~~(e)~~ a violation of NRS 90.570 *or a violation punishable pursuant to paragraph (c) of subsection 3 of NRS 598.0999* must be found, or an information or complaint filed, within 4 years after the commission of the offense.

2. Any felony other than murder, theft, robbery, burglary, forgery, arson, sexual assault, ~~(e)~~ a violation of NRS 90.570 *or a violation punishable pursuant to paragraph (c) of subsection 3 of NRS 598.0999* must be found, or an information or complaint filed, within 3 years after the commission of the offense.

Sec. 5. NRS 598.092 is hereby amended to read as follows:

598.092 A person engages in a "deceptive trade practice" when in the course of his business or occupation he:



1 1. Knowingly fails to identify goods for sale or lease as being
2 damaged by water.

3 2. Solicits by telephone or door to door as a lessor or seller,
4 unless the lessor or seller identifies himself, whom he represents and
5 the purpose of his call within 30 seconds after beginning the
6 conversation.

7 3. Knowingly states that services, replacement parts or repairs
8 are needed when no such services, replacement parts or repairs are
9 actually needed.

10 4. Fails to make delivery of goods or services for sale or lease
11 within a reasonable time or to make a refund for the goods or
12 services, if he allows refunds.

13 5. Advertises or offers an opportunity for investment and:

14 (a) Represents that the investment is guaranteed, secured or
15 protected in a manner which he knows or has reason to know, is
16 false or misleading;

17 (b) Represents that the investment will earn a rate of return
18 which he knows or has reasons to know is false or misleading;

19 (c) Makes any untrue statement of a material fact or omits to
20 state a material fact which is necessary to make another statement,
21 considering the circumstances under which it is made, not
22 misleading;

23 (d) Fails to maintain adequate records so that an investor may
24 determine how his money is invested;

25 (e) Fails to provide information to an investor after a reasonable
26 request for information concerning his investment;

27 (f) Fails to comply with any law or regulation for the marketing
28 of securities or other investments; or

29 (g) Represents that he is licensed by an agency of the State to
30 sell or offer for sale investments or services for investments if he is
31 not so licensed.

32 6. Charges a fee for advice with respect to investment of
33 money and fails to disclose:

34 (a) That he is selling or offering to lease goods or services and,
35 if he is, their identity; or

36 (b) That he is licensed by an agency of any state or of the United
37 States to sell or to offer for sale investments or services for
38 investments, or holds any other license related to the service he is
39 providing.

40 7. Notifies any person, by any means, as a part of an
41 advertising plan or scheme, that he has won a prize and that as a
42 condition of receiving the prize he must purchase or lease goods or
43 services.

44 8. *Knowingly misrepresents the legal rights, obligations or*
45 *remedies of a party to a transaction.*



1 ***9. Fails, in a consumer transaction that is rescinded,***
2 ***cancelled or otherwise terminated in accordance with the terms of***
3 ***an agreement, advertisement, representation or provision of law,***
4 ***to promptly restore to a person entitled to it a deposit, down***
5 ***payment or other payment or, in the case of property traded in but***
6 ***not available, the agreed value of the property, or fails to cancel***
7 ***within a specified time or an otherwise reasonable time an***
8 ***acquired security interest. This subsection does not apply to a***
9 ***person who is holding a deposit, down payment or other payment***
10 ***on behalf of another if all parties to the transaction have not***
11 ***agreed to the release of the deposit, down payment or other***
12 ***payment.***

13 ***10.*** Fails to inform customers, if he does not allow refunds or
14 exchanges, that he does not allow refunds or exchanges by:

- 15 (a) Printing a statement on the face of the lease or sales receipt;
16 (b) Printing a statement on the face of the price tag; or
17 (c) Posting in an open and conspicuous place a sign at least 8 by
18 10 inches in size with boldface letters,
19 ↳ specifying that no refunds or exchanges are allowed.

20 **Sec. 6.** NRS 598.0971 is hereby amended to read as follows:

21 598.0971 1. If, after an investigation, the Commissioner has
22 reasonable cause to believe that any person has been engaged or is
23 engaging in any deceptive trade practice in violation of NRS
24 598.0903 to 598.0999, inclusive, the Commissioner may issue an
25 order directed to the person to show cause why the Commissioner
26 should not order the person to cease and desist from engaging in the
27 practice. The order must contain a statement of the charges and a
28 notice of a hearing to be held thereon. The order must be served
29 upon the person directly or by certified or registered mail, return
30 receipt requested.

31 2. If, after conducting a hearing pursuant to the provisions of
32 subsection 1, the Commissioner determines that the person has
33 violated any of the provisions of NRS 598.0903 to 598.0999,
34 inclusive, or if the person fails to appear for the hearing after being
35 properly served with the statement of charges and notice of hearing,
36 the Commissioner may make a written report of his findings of fact
37 concerning the violation and cause to be served a copy thereof upon
38 the person and any intervener at the hearing. If the Commissioner
39 determines in the report that such a violation has occurred, he may
40 order the violator to:

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

43 (b) Pay the costs of ***conducting the investigation, costs of***
44 ***conducting the hearing, costs of*** reporting services, fees for experts
45 and other witnesses, charges for the rental of a hearing room if such



1 a room is not available to the Commissioner free of charge, charges
2 for providing an independent hearing officer, if any, and charges
3 incurred for any service of process, if the violator is adjudicated to
4 have committed a violation of NRS 598.0903 to 598.0999,
5 inclusive; and

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

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

11 3. Any person whose pecuniary interests are directly
12 and immediately affected by an order issued pursuant to subsection
13 2 or who is aggrieved by the order may petition for judicial review
14 in the manner provided in chapter 233B of NRS. Such a petition
15 must be filed within 30 days after the service of the order. The order
16 becomes final upon the filing of the petition.

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

24 5. If the court finds that:

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

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

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

31 ➡ the court shall issue an order enforcing the provisions of the order
32 of the Commissioner.

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

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

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

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

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



Sec. 7. NRS 598.0973 is hereby amended to read as follows:

598.0973 1. In any action brought pursuant to NRS 598.0979 to 598.099, inclusive, if the court finds that a person has engaged in a deceptive trade practice directed toward an elderly or disabled person, the court may, in addition to any other civil or criminal penalty, impose a civil penalty of not more than ~~[\$10,000]~~ **\$12,500** for each violation.

2. In determining whether to impose a civil penalty pursuant to subsection 1, the court shall consider whether:

(a) The conduct of the person was in disregard of the rights of the elderly or disabled person;

(b) The person knew or should have known that his conduct was directed toward an elderly or disabled person;

(c) The elderly or disabled person was more vulnerable to the conduct of the person because of the age, health, infirmity, impaired understanding, restricted mobility or disability of the elderly or disabled person;

(d) The conduct of the person caused the elderly or disabled person to suffer actual and substantial physical, emotional or economic damage;

(e) The conduct of the person caused the elderly or disabled person to suffer:

(1) Mental or emotional anguish;

(2) The loss of the primary residence of the elderly or disabled person;

(3) The loss of the principal employment or source of income of the elderly or disabled person;

(4) The loss of money received from a pension, retirement plan or governmental program;

(5) The loss of property that had been set aside for retirement or for personal or family care and maintenance;

(6) The loss of assets which are essential to the health and welfare of the elderly or disabled person; or

(7) Any other interference with the economic well-being of the elderly or disabled person, including the encumbrance of his primary residence or principal source of income; or

(f) Any other factors that the court deems to be appropriate.

Sec. 8. NRS 598.098 is hereby amended to read as follows:

598.098 1. NRS 598.0903 to 598.0999, inclusive, do not prohibit the Commissioner or Director from disclosing to the Attorney General, any district attorney or any law enforcement officer the fact that a crime has been committed by any person, if this fact has become known as a result of any investigation conducted pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive.



2. Subject to the provisions of subsection 2 of NRS 598.0979 and except as otherwise provided in this section, the Commissioner or Director may not make public the name of any person alleged to have committed a deceptive trade practice. This subsection does not:

(a) Prevent the Commissioner or Director from issuing public statements describing or warning of any course of conduct which constitutes a deceptive trade practice.

(b) Apply to a person who is subject to an order issued pursuant to subsection 5 of NRS 598.0971.

3. Upon request, the Commissioner may:

(a) Disclose the number of written complaints received by the Commissioner during the current ~~for~~ and immediately preceding 3 fiscal ~~year-~~ years. A disclosure made pursuant to this paragraph must include the disposition of the complaint disclosed.

(b) Make public any order to cease and desist issued pursuant to subsection 5 of NRS 598.0971.

➤ This subsection does not authorize the Commissioner to disclose or make public the contents of any complaint described in paragraph (a) or the record of or any other information concerning a hearing conducted in relation to the issuance of an order to cease and desist described in paragraph (b).

4. The Commissioner may adopt regulations authorizing the disclosure of information concerning any complaint or number of complaints received by the Commissioner or Director relating to a person who has been convicted of violating a provision of NRS 598.0903 to 598.0999, inclusive.

Sec. 9. 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~~ \$5,000 for each violation. The court in any such



1 action may, in addition to any other relief or reimbursement, award
2 reasonable attorney's fees and costs.

3 3. A natural person, firm, or any officer or managing agent of
4 any corporation or association who knowingly and willfully engages
5 in a deceptive trade practice:

6 (a) For the first offense, is guilty of a misdemeanor.

7 (b) For the second offense, is guilty of a gross misdemeanor.

8 (c) For the third and all subsequent offenses, is guilty of a
9 category D felony and shall be punished as provided in
10 NRS 193.130.

11 ➤ *The court may require the natural person, firm, or officer or*
12 *managing agent of the corporation or association to pay to the*
13 *aggrieved party damages on all profits derived from the knowing*
14 *and willful engagement in a deceptive trade practice and treble*
15 *damages on all damages suffered by reason of the deceptive trade*
16 *practice.*

17 4. Any offense which occurred within 10 years immediately
18 preceding the date of the principal offense or after the principal
19 offense constitutes a prior offense for the purposes of subsection 3
20 when evidenced by a conviction, without regard to the sequence of
21 the offenses and convictions.

22 5. If a person violates any provision of NRS 598.0903 to
23 598.0999, inclusive, 598.100 to 598.2801, inclusive, 598.305
24 to 598.395, inclusive, 598.405 to 598.525, inclusive, 598.741 to
25 598.787, inclusive, or 598.840 to 598.966, inclusive, fails to comply
26 with a judgment or order of any court in this State concerning a
27 violation of such a provision, or fails to comply with an assurance of
28 discontinuance or other agreement concerning an alleged violation
29 of such a provision, the Commissioner or the district attorney of any
30 county may bring an action in the name of the State of Nevada
31 seeking:

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

34 (b) If the defendant is a corporation, dissolution of the
35 corporation.

36 ➤ The court may grant or deny the relief sought or may order other
37 appropriate relief.

38 6. If a person violates any provision of NRS 228.500 to
39 228.640, inclusive, fails to comply with a judgment or order of any
40 court in this State concerning a violation of such a provision, or fails
41 to comply with an assurance of discontinuance or other agreement
42 concerning an alleged violation of such a provision, the Attorney
43 General may bring an action in the name of the State of Nevada
44 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 **Sec. 10.** The amendatory provisions of section 2 of this act
8 apply to a firm that or a natural person, or any officer or managing
9 agent of any corporation or association who engaged in a deceptive
10 trade practice before October 1, 2005, if the applicable statute of
11 limitations has commenced but has not yet expired on October 1,
12 2005.

13 **Sec. 11.** The amendatory provisions of section 4 of this act
14 apply to a cause of action:

15 1. That has accrued before October 1, 2005, if the applicable
16 statute of limitations has commenced but not yet expired as of
17 October 1, 2005; or

18 2. That accrues on or after October 1, 2005.

