

SENATE BILL NO. 7—SENATOR WIENER

PREFILED JANUARY 31, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Makes certain opt-out provisions in contracts with consumers unenforceable under certain circumstances. (BDR 52-11)

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.

Legislative Counsel's Digest:

Existing law establishes certain activities as deceptive trade practices. (NRS 598.100-598.990) Activities that are established as deceptive trade practices are prohibited and civil and criminal penalties are imposed upon a person who engages in any such activity. (NRS 598.0999)

This bill establishes a new deceptive trade practice that applies to contracts that authorize a person who sells certain goods or services to make periodic charges on the credit card of a consumer unless the consumer takes affirmative action to opt out of the purchase or contract or returns the goods. This bill prohibits the seller under such a contract from making a charge on the credit card of a consumer unless certain requirements are met.

Existing law regulates certain service contracts under which the provider of services agrees to repair, replace or perform maintenance on goods. (Chapter 690C of NRS)

This bill specifically excludes those service contracts from the new deceptive trade practice.



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 the provisions set forth as sections 2 to 8, inclusive, of this act.

Sec. 2. *As used in sections 2 to 8, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Consumer” means a natural person who purchases, other than for resale, goods or services that are used primarily for personal, family or household purposes and not for business or research purposes.*

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

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

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

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

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

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

(c) The opt-out provision is initialed by the consumer.

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

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

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

(c) Reasonable attorney’s fees and costs.



1 3. A seller and a consumer may not agree to alter or waive
2 the provisions of this section. Any contract that violates the
3 provisions of this section is void and must not be given effect to the
4 extent that it violates the provisions of this section.

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

9 2. Any violation of sections 2 to 8, inclusive, of this act
10 constitutes a deceptive trade practice for the purposes of the civil
11 and administrative remedies and penalties set forth in NRS
12 598.0903 to 598.0999, inclusive.

13 Sec. 9. The provisions of this act do not apply to any contract
14 that is executed before October 1, 2005.



