

SENATE BILL NO. 538—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF THE ATTORNEY GENERAL)

MARCH 26, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions regarding trade practices.
(BDR 52-501)

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; making it unlawful for suppliers of goods or services and residential mortgages to engage in unconscionable trade practices; authorizing the Attorney General to institute certain civil proceedings to enforce provisions regulating deceptive trade practices and unconscionable trade practices; providing for the sharing of information and intelligence between the Attorney General and a state or federal investigative agency under certain circumstances; authorizing certain equitable relief to be sought by the Attorney General for violations of law relating to unfair trade practices; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits deceptive trade practices. (Chapter 598 of NRS) **Section 2** of this bill prohibits unconscionable trade practices relating to suppliers of goods or services. **Section 3** of this bill prohibits unconscionable trade practices relating to residential mortgages.

Existing law authorizes the Attorney General to begin criminal proceedings to enforce the provisions of law regarding deceptive trade practices. (NRS 598.0963) **Section 6** of this bill specifies that the Attorney General may also begin civil proceedings to enforce those provisions. Existing law authorizes the disclosure to the Attorney General of certain information relating to criminal investigations. (NRS 598.098, 598A.080, 598A.110) **Sections 14, 20 and 22** of this bill authorize



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11 further sharing of information between the Attorney General and state and federal
12 investigative agencies under specified conditions.

13 Existing law prohibits contract, combinations and conspiracies to restrain trade
14 via monopolizing. (NRS 598A.060) **Section 18** of this bill prohibits all
15 monopolizing, regardless of whether it is done in a contract, combination or
16 conspiracy and regardless of whether it is done in restraint of trade.

17 Existing law authorizes the Attorney General to institute proceedings against
18 alleged violators of unfair trade practice laws for civil and criminal penalties. (NRS
19 598A.070, 598A.090) **Sections 19 and 21** of this bill authorize the Attorney
20 General also to seek other relief, including restitution and disgorgement.

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 and 3 of this act.

3 **Sec. 2. 1.** *It is unlawful for a supplier of goods or services*
4 *to engage in an unconscionable trade practice.*

5 **2.** *For the purposes of this section, and except as otherwise*
6 *provided in subsection 4, an unconscionable trade practice occurs*
7 *any time a supplier of goods or services engages in any*
8 *commercial transaction before, during or after which:*

9 (a) *The supplier knowingly takes advantage of the inability of*
10 *the consumer reasonably to protect the interests of the consumer*
11 *because of physical or mental disabilities, ignorance, illiteracy or*
12 *inability to understand the language of an agreement.*

13 (b) *At the time the transaction is entered into, the supplier*
14 *knows that the price is substantially in excess of the price at which*
15 *similar property or services are readily obtainable in similar*
16 *transactions by similar consumers.*

17 (c) *At the time the transaction is entered into, the supplier*
18 *knows of the inability of the consumer to receive a substantial*
19 *benefit from the good or service that is the subject of the*
20 *transaction.*

21 (d) *At the time the transaction is entered into, the supplier*
22 *knows that there is no reasonable probability of payment in full of*
23 *the obligation by the consumer.*

24 (e) *The supplier requires the consumer to enter into a*
25 *transaction on terms the supplier knows are substantially one-*
26 *sided in favor of the supplier.*

27 (f) *The supplier knowingly makes a misleading statement of*
28 *opinion on which the consumer is likely to rely, to the detriment of*
29 *the consumer.*

30 (g) *Except as otherwise provided in subsection 3, the supplier,*
31 *without justification, refuses to make a refund in cash or by check*
32 *for a returned good that was purchased with cash or by check.*



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1 3. A supplier may refuse to refund a good if the refusal
2 conforms to a refund policy posted conspicuously at the site of
3 purchase at the time the good was purchased.

4 4. This section does not apply to a consumer transaction in
5 connection with a residential mortgage.

6 **Sec. 3.** 1. Notwithstanding any provision of the law of this
7 State to the contrary, and to the extent allowed under federal law,
8 it is unlawful for a supplier of residential mortgages to engage in
9 an unconscionable trade practice relating to residential
10 mortgages.

11 2. For the purposes of this section, an unconscionable trade
12 practice relating to residential mortgages occurs any time a
13 supplier of residential mortgages, before, during or after a
14 transaction involving a residential mortgage, does any of the
15 following:

16 (a) Arranges for or makes a mortgage loan that provides for
17 an interest rate applicable after default that is higher than the
18 interest rate applicable before default, except for interest rates in
19 variable rate loan transactions otherwise consistent with the
20 provisions of the loan documents.

21 (b) Subject to the provisions of paragraph (c), engages in a
22 pattern or practice of providing transactions to consumers based
23 predominantly on a realization by the supplier of the foreclosure
24 or liquidation value of the collateral of the consumer, without
25 regard to the ability of the consumer to repay the loan in
26 accordance with its terms.

27 (c) Makes a transaction that permits the creditor to demand
28 repayment of the outstanding balance of a mortgage loan before
29 the original maturity date, unless the creditor does so in good faith
30 and because of the failure of the consumer to abide by the
31 material terms of the loan.

32 (d) Knowingly replaces, refinances or consolidates a low-
33 interest mortgage loan made by a governmental or nonprofit
34 lender with another loan, unless the current holder of the loan
35 consents in writing to the refinancing and the consumer presents
36 written certification from a third-party nonprofit organization
37 counselor approved by the Financial Institutions Division of the
38 Department of Business and Industry or by the United States
39 Department of Housing and Urban Development that the
40 consumer received counseling on the advisability of the loan
41 transaction.

42 (e) Instructs the consumer to ignore the written information
43 provided by the supplier regarding lower interest rates and dollar
44 value of points for the transaction.



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1 (f) *Recommends or encourages a consumer to default on a*
2 *mortgage or any consumer transaction or revolving credit loan*
3 *agreement.*

4 (g) *Charges a late payment fee more than once with respect to*
5 *a single late payment, including, without limitation:*

6 (1) *Deducting a late payment fee from a payment made on*
7 *a loan and charging a late payment fee if the deduction causes a*
8 *subsequent default on a subsequent payment; and*

9 (2) *After a late payment fee has been imposed once with*
10 *respect to a particular late payment, imposing a late payment fee*
11 *on any future payment that would have been timely and sufficient*
12 *if not for the previous default.*

13 (h) *Fails to disclose to the consumer at the closing of the*
14 *transaction that a consumer:*

15 (1) *Is not required to complete a transaction solely because*
16 *the consumer has received prior estimates of closing costs or*
17 *because the consumer has signed an application; and*

18 (2) *Should not close a loan transaction that contains*
19 *different terms and conditions than those the consumer was*
20 *promised.*

21 (i) *Arranges for or makes a consumer transaction that*
22 *includes terms under which more than two periodic payments*
23 *required under the consumer transaction are consolidated and*
24 *paid in advance from the loan proceeds provided to the consumer.*

25 (j) *Knowingly compensates, instructs, induces, coerces or*
26 *intimidates, or attempts to compensate, instruct, induce, coerce or*
27 *intimidate, a person licensed or certified pursuant to chapter 645E*
28 *of NRS for the purpose of corrupting or improperly influencing*
29 *the independent judgment of the person with respect to the value*
30 *of the dwelling offered as security for repayment of a mortgage*
31 *loan.*

32 (k) *Finances, directly or indirectly, any credit, life, disability or*
33 *unemployment insurance premiums, any other life or health*
34 *insurance premiums or any debt collection agreement. Insurance*
35 *premiums calculated and paid on a monthly basis shall not be*
36 *considered financed by the lender.*

37 (l) *Knowingly or intentionally flips a mortgage loan,*
38 *regardless of whether the interest rates, points, fees and charges*
39 *paid or payable by the consumer in connection with the*
40 *refinancing exceeds any thresholds specified in any section of*
41 *NRS.*

42 (m) *Knowingly or intentionally takes advantage of the inability*
43 *of the consumer to reasonably protect the interests of the*
44 *consumer because of a known physical or mental disability or*
45 *illiteracy of the consumer.*



1 (n) Enters into the transaction knowing there exists no
2 reasonable probability of payment of the obligation by the
3 consumer.

4 (o) Engages in an act or practice prohibited pursuant to
5 section 2 of this act.

6 3. A supplier of residential mortgages may use any
7 reasonable method to determine the ability of a borrower to repay
8 a loan.

9 4. Any unconscionable arbitration clause, unconscionable
10 clause requiring the consumer to pay the attorney fees of the
11 supplier or unconscionable liquidated damages clause included in
12 a mortgage loan is unenforceable.

13 5. A supplier of residential mortgages may not:

14 (a) Attempt to enforce by any means, including, but not limited
15 to, a court action, any clause described in subsection 3; or

16 (b) By referring to such a clause, attempt to induce the
17 consumer to take any action desired by the supplier.

18 6. If the current interest rate of a loan is either a discounted
19 introductory rate or a rate that automatically increases over time,
20 the fully indexed rate or fully increased rate, as applicable, must
21 be used in lieu of the current rate to determine whether a loan is a
22 low-rate mortgage loan.

23 7. As used in this section:

24 (a) "Low-rate mortgage loan" means a mortgage loan that
25 carries a current interest rate that is 2 percentage points or more
26 below the current yield on United States treasury securities with a
27 comparable maturity.

28 (b) "To flip a mortgage loan" means to make a mortgage loan
29 that refinances an existing mortgage loan when the new loan does
30 not have reasonable, tangible net benefit to the consumer,
31 considering all the circumstances, including the terms of both the
32 new and refinanced loans, the cost of the new loan and the
33 circumstances of the consumer.

34 **Sec. 4.** NRS 598.0903 is hereby amended to read as follows:

35 598.0903 As used in NRS 598.0903 to 598.0999, inclusive,
36 and sections 2 and 3 of this act, unless the context otherwise
37 requires, the words and terms defined in NRS 598.0905 to
38 598.0947, inclusive, have the meanings ascribed to them in those
39 sections.

40 **Sec. 5.** NRS 598.0955 is hereby amended to read as follows:

41 598.0955 1. The provisions of NRS 598.0903 to 598.0999,
42 inclusive, and sections 2 and 3 of this act do not apply to:

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



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(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 sections 2 and 3 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 sections 2 and 3 of this act*.

Sec. 6. NRS 598.0963 is hereby amended to read as follows:

598.0963 1. Whenever the Attorney General is requested in writing by the Commissioner or the Director to represent him in instituting a legal proceeding against a person who has engaged or is engaging in a deceptive trade practice, the Attorney General may bring an action in the name of the State of Nevada against that person on behalf of the Commissioner or Director.

2. The Attorney General may institute *civil or* criminal proceedings to enforce the provisions of NRS 598.0903 to 598.0999, inclusive ~~§~~, *and sections 2 and 3 of this act*. The Attorney General is not required to obtain leave of the court before instituting *civil or* criminal proceedings pursuant to this subsection.

3. If the Attorney General has reason to believe that a person has engaged or is engaging in a deceptive trade practice, the Attorney General may bring an action in the name of the State of Nevada against that person to obtain a temporary restraining order, a preliminary or permanent injunction, or other appropriate relief.

4. If the Attorney General has cause to believe that a person has engaged or is engaging in a deceptive trade practice, the Attorney General may issue a subpoena to require the testimony of any person or the production of any documents, and may administer an oath or affirmation to any person providing such testimony. The subpoena must be served upon the person in the manner required for service of process in this State or by certified mail with return receipt requested. An employee of the Attorney General may personally serve the subpoena.

Sec. 7. NRS 598.096 is hereby amended to read as follows:

598.096 When the Commissioner, Director or Attorney General has cause to believe that any person has engaged or is engaging in any deceptive trade practice, he may:

1. Request the person to file a statement or report in writing under oath or otherwise, on such forms as may be prescribed by the



1 Commissioner, Director or Attorney General, as to all facts and
2 circumstances concerning the sale or advertisement of property by
3 the person, and such other data and information as the
4 Commissioner, Director or Attorney General may deem necessary.

5 2. Examine under oath any person in connection with the sale
6 or advertisement of any property.

7 3. Examine any property or sample thereof, record, book,
8 document, account or paper as he may deem necessary.

9 4. Make true copies, at the expense of the Consumer Affairs
10 Division of the Department of Business and Industry, of any record,
11 book, document, account or paper examined pursuant to subsection
12 3, which copies may be offered into evidence in lieu of the originals
13 thereof in actions brought pursuant to NRS 598.097 and 598.0979.

14 5. Pursuant to an order of any district court, impound any
15 sample of property which is material to the deceptive trade practice
16 and retain the property in his possession until completion of all
17 proceedings as provided in NRS 598.0903 to 598.0999, inclusive ~~§~~
18 *, and sections 2 and 3 of this act.* An order may not be issued
19 pursuant to this subsection unless:

20 (a) The Commissioner, Director or Attorney General, and the
21 court give the accused full opportunity to be heard; and

22 (b) The Commissioner, Director or Attorney General proves by
23 clear and convincing evidence that the business activities of the
24 accused will not be impaired thereby.

25 **Sec. 8.** NRS 598.0967 is hereby amended to read as follows:

26 598.0967 1. The Commissioner and the Director, in addition
27 to other powers conferred upon them by NRS 598.0903 to
28 598.0999, inclusive, *and sections 2 and 3 of this act*, may issue
29 subpoenas to require the attendance of witnesses or the production
30 of documents, conduct hearings in aid of any investigation or
31 inquiry and prescribe such forms and adopt such regulations as may
32 be necessary to administer the provisions of NRS 598.0903 to
33 598.0999, inclusive ~~§~~ *, and sections 2 and 3 of this act.* Such
34 regulations may include, without limitation, provisions concerning
35 the applicability of the provisions of NRS 598.0903 to 598.0999,
36 inclusive, *and sections 2 and 3 of this act* to particular persons or
37 circumstances.

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

40 **Sec. 9.** NRS 598.0971 is hereby amended to read as follows:

41 598.0971 1. If, after an investigation, the Commissioner has
42 reasonable cause to believe that any person has been engaged or is
43 engaging in any deceptive trade practice in violation of NRS
44 598.0903 to 598.0999, inclusive, *and sections 2 and 3 of this act*,
45 the Commissioner may issue an order directed to the person to show



1 cause why the Commissioner should not order the person to cease
2 and desist from engaging in the practice. The order must contain a
3 statement of the charges and a notice of a hearing to be held thereon.
4 The order must be served upon the person directly or by certified or
5 registered mail, return receipt requested.

6 2. If, after conducting a hearing pursuant to the provisions of
7 subsection 1, the Commissioner determines that the person has
8 violated any of the provisions of NRS 598.0903 to 598.0999,
9 inclusive, *and sections 2 and 3 of this act*, or if the person fails to
10 appear for the hearing after being properly served with the statement
11 of charges and notice of hearing, the Commissioner may make a
12 written report of his findings of fact concerning the violation and
13 cause to be served a copy thereof upon the person and any
14 intervener at the hearing. If the Commissioner determines in the
15 report that such a violation has occurred, he may order the violator
16 to:

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

19 (b) Pay the costs of conducting the investigation, costs of
20 conducting the hearing, costs of reporting services, fees for experts
21 and other witnesses, charges for the rental of a hearing room if such
22 a room is not available to the Commissioner free of charge, charges
23 for providing an independent hearing officer, if any, and charges
24 incurred for any service of process, if the violator is adjudicated to
25 have committed a violation of NRS 598.0903 to 598.0999, inclusive
26 ~~§~~, *and sections 2 and 3 of this act*; and

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

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

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

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

45 5. If the court finds that:



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(a) The violation complained of is a deceptive trade practice ~~or~~
*or an unconscionable trade practice in violation of the provisions
of section 2 or 3 of this act;*

(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. Except as otherwise provided in NRS 598.0974, 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. 10. NRS 598.0973 is hereby amended to read as follows:

598.0973 1. Except as otherwise provided in NRS 598.0974,
in any action brought pursuant to NRS 598.0979 to 598.099,
inclusive, *and sections 2 and 3 of this act*, if the court finds that a
person has engaged in a deceptive trade practice *or an
unconscionable trade practice in violation of the provisions of
section 2 or 3 of this act* 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 \$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. 11. NRS 598.0975 is hereby amended to read as follows:

598.0975 1. Except as otherwise provided in subsection 1 of NRS 598.0999 and subsection 3, all fees, civil penalties and any other money collected pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive ~~§~~, *and sections 2 and 3 of this act:*

(a) In an action brought by the Attorney General, Commissioner or Director, must be deposited in the State General Fund and may only be used to offset the costs of administering and enforcing the provisions of NRS 598.0903 to 598.0999, inclusive ~~§~~, *and sections 2 and 3 of this act.*

(b) In an action brought by the district attorney of a county, must be deposited with the county treasurer of that county and accounted for separately in the county general fund.

2. Money in the account created pursuant to paragraph (b) of subsection 1 must be used by the district attorney of the county for:

(a) The investigation and prosecution of deceptive trade practices *and unconscionable trade practices in violation of the provisions of section 2 or 3 of this act* against elderly or disabled persons; and

(b) Programs for the education of consumers which are directed toward elderly or disabled persons, law enforcement officers, members of the judicial system, persons who provide social services and the general public.

3. The provisions of this section do not apply to:



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(a) Criminal fines imposed pursuant to NRS 598.0903 to 598.0999, inclusive ~~§~~, *and sections 2 and 3 of this act*; or

(b) Restitution ordered pursuant to NRS 598.0903 to 598.0999, inclusive, *and sections 2 and 3 of this act* in an action brought by the Attorney General. Money collected for restitution ordered in such an action must be deposited by the Attorney General and credited to the appropriate account of the Consumer Affairs Division of the Department of Business and Industry or the Attorney General for distribution to the person for whom the restitution was ordered.

Sec. 12. NRS 598.0977 is hereby amended to read as follows:

598.0977 If an elderly or disabled person suffers damage or injury as a result of a deceptive trade practice ~~§~~ *or an unconscionable trade practice in violation of the provisions of section 2 or 3 of this act*, he or his legal representative, if any, may commence a civil action against any person who engaged in the practice to recover the actual damages suffered by the elderly or disabled person, punitive damages, if appropriate, and reasonable attorney's fees. The collection of any restitution awarded pursuant to this section has a priority over the collection of any civil penalty imposed pursuant to NRS 598.0973.

Sec. 13. NRS 598.0979 is hereby amended to read as follows:

598.0979 1. Notwithstanding the requirement of knowledge as an element of a deceptive trade practice ~~§~~ *or an unconscionable trade practice*, when the Commissioner or Director has cause to believe that a person has engaged or is engaging in any deceptive trade practice ~~§~~ *or unconscionable trade practice in violation of the provisions of section 2 or 3 of this act*, knowingly or otherwise, he may request in writing that the Attorney General represent him in instituting an appropriate legal proceeding, including, without limitation, an application for an injunction or temporary restraining order prohibiting the person from continuing the practices. The court may make orders or judgments necessary to prevent the use by the person of any such deceptive trade practice *or unconscionable trade practice* or to restore to any other person any money or property which may have been acquired by the deceptive trade practice ~~§~~ *or unconscionable trade practice*.

2. Where the Commissioner or Director has the authority to institute a civil action or other proceeding, in lieu thereof or as a part thereof, he may accept an assurance of discontinuance of any deceptive trade practice ~~§~~ *or unconscionable trade practice*. This assurance may include a stipulation for the payment by the alleged violator of:

(a) The costs of investigation and the costs of instituting the action or proceeding;



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(b) Any amount of money which he may be required to pay pursuant to the provisions of NRS 598.0971 in lieu of any administrative fine; and

(c) The restitution of any money or property acquired by any deceptive trade practice ~~§~~ *or unconscionable trade practice.*

➤ Except as otherwise provided in this subsection, any assurance of discontinuance accepted by the Commissioner or Director and any stipulation filed with the court is confidential to the parties to the action or proceeding and to the court and its employees. Upon final judgment by the court that an injunction or a temporary restraining order, issued as provided in subsection 1 of this section, has been violated, an assurance of discontinuance has been violated or a person has engaged in the same deceptive trade practice *or unconscionable trade practice* as had previously been enjoined, the assurance of discontinuance or stipulation becomes a public record. Proof by a preponderance of the evidence of a violation of an assurance constitutes prima facie evidence of a deceptive trade practice *or an unconscionable trade practice* for the purpose of any civil action or proceeding brought thereafter by the Commissioner or Director, whether a new action or a subsequent motion or petition in any pending action or proceeding.

Sec. 14. NRS 598.098 is hereby amended to read as follows:

598.098 1. NRS 598.0903 to 598.0999, inclusive, *and sections 2 and 3 of this act* 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 ~~§~~, *and sections 2 and 3 of this act.*

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 ~~§~~ *or an unconscionable trade practice in violation of the provisions of section 2 or 3 of this act.* 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 ~~§~~ *or an unconscionable 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 and immediately preceding 3



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1 fiscal years. A disclosure made pursuant to this paragraph must
2 include the disposition of the complaint disclosed.

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

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

10 4. *Whenever criminal or civil intelligence, investigative*
11 *information or any other information held by any state or federal*
12 *agency is made available to the Attorney General on a confidential*
13 *or similarly restricted basis, the Attorney General, in the course of*
14 *the investigation of any alleged violation of this chapter, may*
15 *obtain and use such intelligence or information. Any such*
16 *intelligence or information received shall retain its confidential*
17 *status under the laws of this State and is exempt from the*
18 *provisions of NRS 239.010.*

19 5. The Commissioner may adopt regulations authorizing the
20 disclosure of information concerning any complaint or number of
21 complaints received by the Commissioner or Director relating to a
22 person who has been convicted of violating a provision of NRS
23 598.0903 to 598.0999, inclusive ~~[]~~, *and sections 2 and 3 of this*
24 *act.*

25 **Sec. 15.** NRS 598.0993 is hereby amended to read as follows:

26 598.0993 The court in which an action is brought pursuant to
27 NRS 598.0979 and 598.0985 to 598.099, inclusive, may make such
28 additional orders or judgments as may be necessary to restore to any
29 person in interest any money or property, real or personal, which
30 may have been acquired by means of any deceptive trade practice *or*
31 *unconscionable trade practice* which violates any of the provisions
32 of NRS 598.0903 to 598.0999, inclusive, *and sections 2 and 3 of*
33 *this act*, but such additional orders or judgments may be entered
34 only after a final determination has been made that a deceptive trade
35 practice *or unconscionable trade practice* has occurred.

36 **Sec. 16.** NRS 598.0995 is hereby amended to read as follows:

37 598.0995 1. In proceeding pursuant to subsection 3 of NRS
38 598.0963 or NRS 598.0987 to 598.0995, inclusive, the district
39 attorney or Attorney General may accept an assurance of
40 discontinuance with respect to any method, act or practice deemed
41 to be a deceptive trade practice *or an unconscionable trade practice*
42 *in violation of the provisions of section 2 or 3 of this act* from any
43 person who is engaged or is about to engage in the method, act or
44 practice by following the procedures set forth in subsection 2 of
45 NRS 598.0979.



2. Any assurance made pursuant to subsection 1 must be in writing and must be filed with and subject to the approval of the district court in the county in which the alleged violator resides or has his principal place of business, or the district court in any county where any deceptive trade practice *or an unconscionable trade practice in violation of the provisions of section 2 or 3 of this act* has occurred or is about to occur or the district court agreed to by the parties.

3. An assurance of discontinuance made pursuant to subsections 1 and 2 is not an admission of violation for any purpose, but is subject to the terms, limitations and conditions of NRS 598.0979.

Sec. 17. NRS 598.0999 is hereby amended to read as follows:

598.0999 1. Except as otherwise provided in NRS 598.0974, a person who violates a court order or injunction issued pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, *and sections 2 and 3 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 sections 2 and 3 of this act*.

2. Except as otherwise provided in NRS 598.0974, in any action brought pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, *and sections 2 and 3 of this act*, if the court finds that a person has willfully engaged in a deceptive trade practice ~~§~~ *or an unconscionable trade practice in violation of the provisions of section 2 or 3 of this act*, 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 \$5,000 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 ~~§~~ *or an unconscionable 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.



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1 ↳ The court may require the natural person, firm, or officer or
2 managing agent of the corporation or association to pay to the
3 aggrieved party damages on all profits derived from the knowing
4 and willful engagement in a deceptive trade practice *or an*
5 *unconscionable trade practice* and treble damages on all damages
6 suffered by reason of the deceptive trade practice.

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

12 5. If a person violates any provision of NRS 598.0903 to
13 598.0999, inclusive, *and sections 2 and 3 of this act*, 598.100
14 to 598.2801, inclusive, 598.305 to 598.395, inclusive, 598.405 to
15 598.525, inclusive, 598.741 to 598.787, inclusive, or 598.840 to
16 598.966, inclusive, fails to comply with a judgment or order of any
17 court in this State concerning a violation of such a provision, or fails
18 to comply with an assurance of discontinuance or other agreement
19 concerning an alleged violation of such a provision, the
20 Commissioner or the district attorney of any county may bring an
21 action in the name of the State of Nevada seeking:

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

24 (b) If the defendant is a corporation, dissolution of the
25 corporation.

26 ↳ The court may grant or deny the relief sought or may order other
27 appropriate relief.

28 6. If a person violates any provision of NRS 228.500 to
29 228.640, inclusive, fails to comply with a judgment or order of any
30 court in this State concerning a violation of such a provision, or fails
31 to comply with an assurance of discontinuance or other agreement
32 concerning an alleged violation of such a provision, the Attorney
33 General may bring an action in the name of the State of Nevada
34 seeking:

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

37 (b) If the defendant is a corporation, dissolution of the
38 corporation.

39 ↳ The court may grant or deny the relief sought or may order other
40 appropriate relief.

41 **Sec. 18.** NRS 598A.060 is hereby amended to read as follows:

42 598A.060 1. Every activity enumerated in this subsection
43 constitutes a contract, combination or conspiracy in restraint of
44 trade, and it is unlawful to conduct any part of any such activity
45 *affecting commerce* in this State:



(a) Price fixing, which consists of raising, depressing, fixing, pegging or stabilizing the price of any commodity or service, and which includes, but is not limited to:

(1) Agreements among competitors to depress prices at which they will buy essential raw material for the end product.

(2) Agreements to establish prices for commodities or services.

(3) Agreements to establish uniform discounts, or to eliminate discounts.

(4) Agreements between manufacturers to price a premium commodity a specified amount above inferior commodities.

(5) Agreements not to sell below cost.

(6) Agreements to establish uniform trade-in allowances.

(7) Establishment of uniform cost surveys.

(8) Establishment of minimum markup percentages.

(9) Establishment of single or multiple basing point systems for determining the delivered price of commodities.

(10) Agreements not to advertise prices.

(11) Agreements among competitors to fix uniform list prices as a place to start bargaining.

(12) Bid rigging, including the misuse of bid depositories, foreclosures of competitive activity for a period of time, rotation of jobs among competitors, submission of identical bids, and submission of complementary bids not intended to secure acceptance by the customer.

(13) Agreements to discontinue a product, or agreements with anyone engaged in the manufacture of competitive lines to limit size, styles or quantities of items comprising the lines.

(14) Agreements to restrict volume of production.

(b) Division of markets, consisting of agreements between competitors to divide territories and to refrain from soliciting or selling in certain areas.

(c) Allocation of customers, consisting of agreements not to sell to specified customers of a competitor.

(d) Tying arrangements, consisting of contracts in which the seller or lessor conditions the sale or lease of commodities or services on the purchase or leasing of another commodity or service.

~~(e) [Monopolization of trade or commerce in this State, including, without limitation, attempting to monopolize or otherwise combining or conspiring to monopolize trade or commerce in this State.~~

~~—(f)]~~ Except as otherwise provided in subsection 2, consolidation, conversion, merger, acquisition of shares of stock or other equity interest, directly or indirectly, of another person engaged in



1 commerce in this State or the acquisition of any assets of another
2 person engaged in commerce in this State that may:

3 (1) Result in the monopolization of trade or commerce in this
4 State or would further any attempt to monopolize trade or commerce
5 in this State; or

6 (2) Substantially lessen competition or be in restraint of
7 trade.

8 2. The provisions of paragraph ~~[(f)]~~ (e) of subsection 1 do not:

9 (a) Apply to a person who, solely for an investment purpose,
10 purchases stock or other equity interest or assets of another person if
11 the purchaser does not use his acquisition to bring about or attempt
12 to bring about the substantial lessening of competition in this State.

13 (b) Prevent a person who is engaged in commerce in this State
14 from forming a subsidiary corporation or other business
15 organization and owning and holding all or part of the stock or
16 equity interest of that corporation or organization.

17 *3. Monopolization of trade or commerce in this State,*
18 *including, without limitation, attempting to monopolize or*
19 *combining or conspiring to monopolize trade or commerce in this*
20 *State is an unlawful act under this chapter.*

21 **Sec. 19.** NRS 598A.070 is hereby amended to read as follows:

22 598A.070 1. The Attorney General shall:

23 (a) Enforce the provisions of this chapter.

24 (b) Investigate suspected violations of the provisions of this
25 chapter.

26 (c) Institute proceedings on behalf of the State, its agencies,
27 political subdivisions, districts or municipal corporations, or as
28 parens patriae of the persons residing in the State for:

29 (1) Injunctive relief to prevent and restrain a violation of any
30 provision of this chapter.

31 (2) Civil penalties for violations of the provisions of this
32 chapter.

33 (3) Criminal penalties for violations of the provisions of this
34 chapter.

35 *(4) Other equitable relief, including, but not limited to,*
36 *restitution and disgorgement, for violations of the provisions of*
37 *this chapter.*

38 2. Any district attorney in this State, with the permission or at
39 the direction of the Attorney General, shall institute proceedings in
40 the name of the State of Nevada for any violation of the provisions
41 of this chapter.

42 **Sec. 20.** NRS 598A.080 is hereby amended to read as follows:

43 598A.080 The Attorney General may cooperate with and
44 coordinate the enforcement of the provisions of this chapter with



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officials of the Federal Government and the several states, including , but not limited to ~~the~~ :

1. *The sharing of information and evidence obtained in accordance with NRS 598A.100 ~~is~~, if the officials agree in writing to comply with the provisions of NRS 598A.110 and if the officials agree to disclose the information and evidence to, or when authorized by, any court; and*

2. *The receipt of information and evidence by the Attorney General from the officials during an investigation of a violation of this chapter. If the information and evidence are provided on a confidential basis, that information and evidence are subject to the provisions of NRS 598A.110.*

Sec. 21. NRS 598A.090 is hereby amended to read as follows:

598A.090 The district courts have jurisdiction over actions and proceedings for violations of the provisions of this chapter and may:

1. Issue temporary restraining orders and injunctions to prevent and restrain violations of the provisions of this chapter.

2. Impose civil and criminal penalties and award damages as provided in this chapter.

3. Grant mandatory injunctions reasonably necessary to eliminate practices which are unlawful under the provisions of this chapter.

4. *Grant other equitable relief, including restitution and disgorgement, for violations of the provisions of this chapter.*

Sec. 22. NRS 598A.110 is hereby amended to read as follows:

598A.110 1. Any procedure, testimony taken, document or other tangible evidence produced, or answer made under NRS 598A.100 ~~shall~~ *is confidential and must* be kept confidential by the Attorney General , ~~[prior to the institution of an action brought under this chapter for the alleged violation of the provisions of this chapter under investigation,]~~ unless:

~~1.]~~ (a) Confidentiality is waived by the person upon whom the written investigative demand is made;

~~2.]~~ (b) Disclosure is authorized by the district court; ~~for~~

~~3. Disclosure]~~

(c) *Subject to the provisions of subsection 2, disclosure* is made pursuant to NRS 598A.080 ~~is~~ ; or

(d) *Disclosure is made pursuant to an action brought under this chapter for the alleged violation of the provisions of this chapter.*

2. *Disclosure made pursuant to NRS 598A.080 does not change the confidentiality of the information and evidence.*

Sec. 23. NRS 598A.160 is hereby amended to read as follows:

598A.160 1. The Attorney General may bring a civil action for any violation of the provisions of this chapter in the name of the



1 State of Nevada and is entitled to recover damages and secure other
2 relief provided by the provisions of this chapter:

3 (a) As parens patriae of the persons residing in this State, with
4 respect to damages sustained directly or indirectly by such persons,
5 or, alternatively, if the court finds in its discretion that the interests
6 of justice so require, as a representative of a class or classes
7 consisting of persons residing in this State who have been damaged
8 directly or indirectly; ~~for~~

9 (b) As parens patriae, with respect to direct or indirect damages
10 to the general economy of the State of Nevada or any political
11 subdivision thereof ~~for~~; or

12 (c) *On behalf of or parens patriae, with respect to direct or*
13 *indirect damages of the State, its agencies, political subdivisions,*
14 *districts or municipal corporations.*

15 2. In any action under this section, this State:

16 (a) May recover *treble* the aggregate damage sustained by the
17 persons on whose behalf this State sues, without separately proving
18 the individual claims of each such person. Proof of such damages
19 must be based on:

20 (1) Statistical or sampling methods;

21 (2) The pro rata allocation of illegal overcharges of sales
22 occurring within the State of Nevada; or

23 (3) Such other reasonable system of estimating aggregate
24 damages as the court may permit.

25 (b) Shall distribute, allocate or otherwise pay the amounts so
26 recovered in accordance with state law, or in the absence of any
27 applicable state law, as the district court may authorize, subject to
28 the requirement that any distribution procedure adopted afford each
29 person on whose behalf this State sues a reasonable opportunity
30 individually to secure the pro rata portion of such recovery
31 attributable to his or its respective claims for damages, less litigation
32 and administrative costs, including attorney fees, before any of the
33 recovery is escheated.

