

SENATE BILL NO. 53—SENATORS HECK AND
HORSFORD (BY REQUEST)

PREFILED FEBRUARY 1, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Provides that advertising or conducting a live musical performance or production through the use of a false, deceptive or misleading affiliation, connection or association between a performing group and a recording group constitutes a deceptive trade practice. (BDR 52-220)

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; providing that advertising or conducting a live musical performance or production through the use of a false, deceptive or misleading affiliation, connection or association between a performing group and a recording group constitutes a deceptive trade practice; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law defines activities that constitute deceptive trade practices and
2 provides for the imposition of civil and criminal penalties against persons who
3 engage in deceptive trade practices. (Chapter 598 of NRS) **Section 1** of this bill
4 provides that advertising or conducting a live musical performance or production
5 through the use of a false, deceptive or misleading affiliation, connection or
6 association between a performing group and a recording group constitutes a
7 deceptive trade practice. **Sections 2-12** of this bill amend various sections of NRS
8 to include necessary references to the new deceptive trade practice established in
9 **section 1**.



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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. Except as otherwise provided in subsection 2, a person engages in a “deceptive trade practice” if the person advertises or conducts a live musical performance or production in this State through the use of a false, deceptive or misleading affiliation, connection or association between a performing group and a recording group.

2. A person does not engage in a “deceptive trade practice” pursuant to subsection 1 if:

(a) The performing group is the authorized registrant and owner of a federal service mark comprising in whole or dominant part the mark or name of that group registered in the United States Patent and Trademark Office;

(b) At least one member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group;

(c) The live musical performance or production is identified in all advertising and promotion as a salute or tribute and the name of the performing group is not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public;

(d) The advertising does not relate to a live musical performance or production taking place in this State; or

(e) The performance or production is expressly authorized in writing by the recording group.

3. As used in this section:

(a) “Performing group” means a vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

(b) “Person” means the performing group or its promoter, manager or agent. The term does not include the performance venue or its owners, managers or operators unless the performance venue has a controlling or majority ownership interest in and produces the performing group.

(c) “Recording group” means a vocal or instrumental group at least one of whose members has previously released a commercial sound recording under that group’s name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.



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(d) *“Sound recording” means a work that results from the fixation on a material object of a series of musical, spoken or other sounds regardless of the nature of the material object, such as a cassette tape, compact disc or phonograph album, in which the sounds are embodied.*

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, *and section 1 of this act* have the meanings ascribed to them in those sections.

Sec. 3. NRS 598.0953 is hereby amended to read as follows:

598.0953 1. Evidence that a person has engaged in a deceptive trade practice is prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

2. The deceptive trade practices listed in NRS 598.0915 to 598.0925, inclusive, *and section 1 of this act* are in addition to and do not limit the types of unfair trade practices actionable at common law or defined as such in other statutes of this State.

Sec. 4. 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 ~~H~~, *and section 1 of this act*.

Sec. 5. 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 criminal proceedings to enforce the provisions of NRS 598.0903 to 598.0999, inclusive ~~H~~, *and section 1 of this act*. The Attorney General is not required to obtain leave of the court before instituting 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. 6. 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 ~~H~~, *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. 7. 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.



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

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

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

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

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

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

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

40 5. If the court finds that:

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

42 (b) The proceedings by the Commissioner concerning the
43 written report and any order issued pursuant to subsection 2 are in
44 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. 8. NRS 598.0985 is hereby amended to read as follows:

598.0985 Notwithstanding the requirement of knowledge as an element of a deceptive trade practice, and notwithstanding the enforcement powers granted to the Commissioner or Director pursuant to NRS 598.0903 to 598.0999, inclusive, *and section 1 of this act*, whenever the district attorney of any county has reason to believe that any person is using, has used or is about to use any deceptive trade practice, knowingly or otherwise, he may bring an action in the name of the State of Nevada against that person to obtain a temporary or permanent injunction against the deceptive trade practice.

Sec. 9. NRS 598.0993 is hereby amended to read as follows:

598.0993 The court in which an action is brought pursuant to NRS 598.0979 and 598.0985 to 598.099, inclusive, may make such additional orders or judgments as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any deceptive trade practice which violates any of the provisions of NRS 598.0903 to 598.0999, inclusive, *and section 1 of this act*, but such additional orders or judgments may be entered only after a final determination has been made that a deceptive trade practice has occurred.

Sec. 10. 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 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



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1 Attorney General shall forfeit and pay to the State General Fund a
2 civil penalty of not more than \$10,000 for each violation. For the
3 purpose of this section, the court issuing the order or injunction
4 retains jurisdiction over the action or proceeding. Such civil
5 penalties are in addition to any other penalty or remedy available for
6 the enforcement of the provisions of NRS 598.0903 to 598.0999,
7 inclusive ~~H~~, and section 1 of this act.

8 2. Except as otherwise provided in NRS 598.0974, in any
9 action brought pursuant to the provisions of NRS 598.0903 to
10 598.0999, inclusive, and section 1 of this act, if the court finds that
11 a person has willfully engaged in a deceptive trade practice, the
12 Commissioner, the Director, the district attorney of any county in
13 this State or the Attorney General bringing the action may recover a
14 civil penalty not to exceed \$5,000 for each violation. The court in
15 any such action may, in addition to any other relief or
16 reimbursement, award reasonable attorney's fees and costs.

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

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

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

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

25 ➤ The court may require the natural person, firm, or officer or
26 managing agent of the corporation or association to pay to the
27 aggrieved party damages on all profits derived from the knowing
28 and willful engagement in a deceptive trade practice and treble
29 damages on all damages suffered by reason of the deceptive trade
30 practice.

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

36 5. If a person violates any provision of NRS 598.0903 to
37 598.0999, inclusive, and section 1 of this act, 598.100 to
38 598.2801, inclusive, 598.305 to 598.395, inclusive, 598.405
39 to 598.525, inclusive, 598.741 to 598.787, inclusive, or 598.840 to
40 598.966, inclusive, fails to comply with a judgment or order of any
41 court in this State concerning a violation of such a provision, or fails
42 to comply with an assurance of discontinuance or other agreement
43 concerning an alleged violation of such a provision, the
44 Commissioner or the district attorney of any county may bring an
45 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. 11. 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, *and section 1 of this act*, but the cause of 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.



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3. Within 3 years:

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

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

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

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

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

4. Within 2 years:

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

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

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

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

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



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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. 12. 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 NRS 205.2747;

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

(d) An act prohibited by NRS 482.351; or

(e) A deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive ~~§~~, *and section 1 of this act.*

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. 13. This act becomes effective upon passage and approval.

