
SENATE BILL NO. 82—SENATORS TITUS, WIENER, CARE, CARLTON,
COFFIN, HORSFORD, LEE, MATHEWS, SCHNEIDER AND
WOODHOUSE

FEBRUARY 12, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Provides that price gouging during an emergency
constitutes a deceptive trade practice. (BDR 52-31)

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; providing that charging an
unconscionable price for certain goods and services
immediately before or during an emergency constitutes a
deceptive trade practice; providing penalties; 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 renting, leasing or selling or offering to rent, lease or sell consumer
5 goods and services for an unconscionable price immediately before or during a
6 declared state of emergency constitutes a deceptive trade practice. The remaining
7 sections of this bill amend various sections of NRS to include necessary references
8 to the new deceptive trade practice established in **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 he rents, leases or sells or offers to rent, lease or sell a consumer good or service for an unconscionable price immediately before or during a state of emergency.

2. A person does not engage in a “deceptive trade practice” pursuant to subsection 1 if he rents, leases or sells or offers to rent, lease or sell a consumer good or service for a price that is approved by an appropriate government or governmental entity.

3. For the purposes of this section and except as otherwise provided in subsection 4, it is prima facie evidence that a price for a consumer good or service is an unconscionable price if the price exceeds, by an amount equal to or greater than 25 percent:

(a) The average price at which the consumer good or service was rented, leased or sold or offered for rent, lease or sale in the usual course of business during the 30 days immediately preceding the state of emergency; or

(b) The average price at which the same or similar consumer good or service is readily obtainable by consumers in the trade area for the consumer good or service.

4. For the purposes of this section, a price is not an unconscionable price if the increase in the price is attributable to an increase in the costs incurred in connection with the rental, lease or sale of the consumer good or service or national or international market trends.

5. The provisions of this section do not preempt the authority of a local government to adopt an ordinance relating to the price of a consumer good or service during a state of emergency.

6. As used in this section:

(a) “Consumer good or service” means a good or service used, purchased or rendered primarily for personal, family or household purposes that is vital to the health, safety or welfare of the people of this State. The term includes, without limitation, food for human consumption, food for domestic animals, clothing, shoes, ice, water, gas, electricity, heat, fuel of all kinds and building materials.

(b) “State of emergency” means the period of time:

(1) Beginning when the Governor or the Legislature proclaims a state of emergency or declaration of disaster pursuant



1 *to NRS 414.070 or the President of the United States declares a*
2 *state of emergency in this State or any other state; and*

3 (2) *Ending when the Governor or the Legislature*
4 *terminates the proclamation of a state of emergency or declaration*
5 *of disaster or the President of the United States terminates the*
6 *declaration of a state of emergency.*

7 **Sec. 2.** NRS 598.0903 is hereby amended to read as follows:

8 598.0903 As used in NRS 598.0903 to 598.0999, inclusive,
9 *and section 1 of this act*, unless the context otherwise requires, the
10 words and terms defined in NRS 598.0905 to 598.0947, inclusive,
11 *and section 1 of this act* have the meanings ascribed to them in
12 those sections.

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

14 598.0953 1. Evidence that a person has engaged in a
15 deceptive trade practice is prima facie evidence of intent to injure
16 competitors and to destroy or substantially lessen competition.

17 2. The deceptive trade practices listed in NRS 598.0915 to
18 598.0925, inclusive, *and section 1 of this act* are in addition to and
19 do not limit the types of unfair trade practices actionable at common
20 law or defined as such in other statutes of this State.

21 **Sec. 4.** NRS 598.0955 is hereby amended to read as follows:

22 598.0955 1. The provisions of NRS 598.0903 to 598.0999,
23 inclusive, *and section 1 of this act* do not apply to:

24 (a) Conduct in compliance with the orders or rules of, or a
25 statute administered by, a federal, state or local governmental
26 agency.

27 (b) Publishers, including outdoor advertising media, advertising
28 agencies, broadcasters or printers engaged in the dissemination of
29 information or reproduction of printed or pictorial matter who
30 publish, broadcast or reproduce material without knowledge of its
31 deceptive character.

32 (c) Actions or appeals pending on July 1, 1973.

33 2. The provisions of NRS 598.0903 to 598.0999, inclusive, *and*
34 *section 1 of this act* do not apply to the use by a person of any
35 service mark, trademark, certification mark, collective mark, trade
36 name or other trade identification which was used and not
37 abandoned prior to July 1, 1973, if the use was in good faith and is
38 otherwise lawful except for the provisions of NRS 598.0903 to
39 598.0999, inclusive ~~H~~, *and section 1 of this act*.

40 **Sec. 5.** NRS 598.0963 is hereby amended to read as follows:

41 598.0963 1. Whenever the Attorney General is requested in
42 writing by the Commissioner or the Director to represent him in
43 instituting a legal proceeding against a person who has engaged or is
44 engaging in a deceptive trade practice, the Attorney General may



1 bring an action in the name of the State of Nevada against that
2 person on behalf of the Commissioner or Director.

3 2. The Attorney General may institute criminal proceedings to
4 enforce the provisions of NRS 598.0903 to 598.0999, inclusive **[H]**,
5 **and section 1 of this act**. The Attorney General is not required to
6 obtain leave of the court before instituting criminal proceedings
7 pursuant to this subsection.

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

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

22 **Sec. 6.** NRS 598.0967 is hereby amended to read as follows:

23 598.0967 1. The Commissioner and the Director, in addition
24 to other powers conferred upon them by NRS 598.0903 to
25 598.0999, inclusive, **and section 1 of this act**, may issue subpoenas
26 to require the attendance of witnesses or the production of
27 documents, conduct hearings in aid of any investigation or inquiry
28 and prescribe such forms and adopt such regulations as may be
29 necessary to administer the provisions of NRS 598.0903 to
30 598.0999, inclusive **[H]**, **and section 1 of this act**. Such regulations
31 may include, without limitation, provisions concerning the
32 applicability of the provisions of NRS 598.0903 to 598.0999,
33 inclusive, **and section 1 of this act** to particular persons or
34 circumstances.

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

37 **Sec. 7.** NRS 598.0971 is hereby amended to read as follows:

38 598.0971 1. If, after an investigation, the Commissioner has
39 reasonable cause to believe that any person has been engaged or is
40 engaging in any deceptive trade practice in violation of NRS
41 598.0903 to 598.0999, inclusive, **and section 1 of this act**, the
42 Commissioner may issue an order directed to the person to show
43 cause why the Commissioner should not order the person to cease
44 and desist from engaging in the practice. The order must contain a
45 statement of the charges and a notice of a hearing to be held thereon.



1 The order must be served upon the person directly or by certified or
2 registered mail, return receipt requested.

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

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

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

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

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

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

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

42 5. If the court finds that:

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



(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. 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



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

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

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

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

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

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

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

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

39 5. If a person violates any provision of NRS 598.0903
40 to 598.0999, inclusive, *and section 1 of this act*, 598.100 to
41 598.2801, inclusive, 598.305 to 598.395, inclusive, 598.405
42 to 598.525, inclusive, 598.741 to 598.787, inclusive, or 598.840 to
43 598.966, inclusive, fails to comply with a judgment or order of any
44 court in this State concerning a violation of such a provision, or fails
45 to comply with an assurance of discontinuance or other agreement



1 concerning an alleged violation of such a provision, the
2 Commissioner or the district attorney of any county may bring an
3 action in the name of the State of Nevada seeking:

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

6 (b) If the defendant is a corporation, dissolution of the
7 corporation.

8 ➔ The court may grant or deny the relief sought or may order other
9 appropriate relief.

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

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

19 (b) If the defendant is a corporation, dissolution of the
20 corporation.

21 ➔ The court may grant or deny the relief sought or may order other
22 appropriate relief.

23 **Sec. 11.** NRS 11.190 is hereby amended to read as follows:

24 11.190 Except as otherwise provided in NRS 125B.050 and
25 217.007, actions other than those for the recovery of real property,
26 unless further limited by specific statute, may only be commenced
27 as follows:

28 1. Within 6 years:

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

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

35 2. Within 4 years:

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

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

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

41 (d) An action against a person alleged to have committed a
42 deceptive trade practice in violation of NRS 598.0903 to 598.0999,
43 inclusive, *and section 1 of this act*, but the cause of action shall be
44 deemed to accrue when the aggrieved party discovers, or by the



1 exercise of due diligence should have discovered, the facts
2 constituting the deceptive trade practice.

3 3. Within 3 years:

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

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

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

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

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

30 4. Within 2 years:

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

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

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

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

42 (e) Except as otherwise provided in NRS 11.215, an action to
43 recover damages for injuries to a person or for the death of a person
44 caused by the wrongful act or neglect of another. The provisions of
45 this paragraph relating to an action to recover damages for injuries



1 to a person apply only to causes of action which accrue after
2 March 20, 1951.

3 5. Within 1 year:

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

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

15 **Sec. 12.** NRS 41.600 is hereby amended to read as follows:

16 41.600 1. An action may be brought by any person who is a
17 victim of consumer fraud.

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

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

20 (b) An unlawful act as defined in NRS 205.2747;

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

23 (d) An act prohibited by NRS 482.351; or

24 (e) A deceptive trade practice as defined in NRS 598.0915 to
25 598.0925, inclusive **[H]**, *and section 1 of this act.*

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

28 (a) Any damages that he has sustained; and

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

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

