

Amendment No. 18

Senate Amendment to Senate Bill No. 53	(BDR 52-220)
Proposed by: Senate Committee on Commerce and Labor	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted	☐	Lost ☐	Adopted	☐	Lost ☐
Concurred In	☐	Not ☐	Concurred In	☐	Not ☐
Receded	☐	Not ☐	Receded	☐	Not ☐

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

WLK



Date: 4/5/2007

S.B. No. 53—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)



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:

Existing law defines activities that constitute deceptive trade practices and provides for the imposition of civil and criminal penalties against persons who engage in deceptive trade practices. (Chapter 598 of NRS) **Section 1** of this bill 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. ~~The remaining sections~~ **Sections 2-12** of this bill amend various sections of NRS to include necessary references to the new deceptive trade practice established in **section 1**.

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 for 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 ~~for~~ 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 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 owns 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.

~~(c)(d)~~ (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.

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

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

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

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

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

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

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

5. If the court finds that:

(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.

1 **Sec. 8.** NRS 598.0985 is hereby amended to read as follows:

2 598.0985 Notwithstanding the requirement of knowledge as an element of a
3 deceptive trade practice, and notwithstanding the enforcement powers granted to
4 the Commissioner or Director pursuant to NRS 598.0903 to 598.0999, inclusive,
5 **and section 1 of this act**, whenever the district attorney of any county has reason to
6 believe that any person is using, has used or is about to use any deceptive trade
7 practice, knowingly or otherwise, he may bring an action in the name of the State of
8 Nevada against that person to obtain a temporary or permanent injunction against
9 the deceptive trade practice.

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

11 598.0993 The court in which an action is brought pursuant to NRS 598.0979
12 and 598.0985 to 598.099, inclusive, may make such additional orders or judgments
13 as may be necessary to restore to any person in interest any money or property, real
14 or personal, which may have been acquired by means of any deceptive trade
15 practice which violates any of the provisions of NRS 598.0903 to 598.0999,
16 inclusive, **and section 1 of this act**, but such additional orders or judgments may be
17 entered only after a final determination has been made that a deceptive trade
18 practice has occurred.

19 **Sec. 10.** NRS 598.0999 is hereby amended to read as follows:

20 598.0999 1. Except as otherwise provided in NRS 598.0974, a person who
21 violates a court order or injunction issued pursuant to the provisions of NRS
22 598.0903 to 598.0999, inclusive, **and section 1 of this act** upon a complaint
23 brought by the Commissioner, the Director, the district attorney of any county of
24 this State or the Attorney General shall forfeit and pay to the State General Fund a
25 civil penalty of not more than \$10,000 for each violation. For the purpose of this
26 section, the court issuing the order or injunction retains jurisdiction over the action
27 or proceeding. Such civil penalties are in addition to any other penalty or remedy
28 available for the enforcement of the provisions of NRS 598.0903 to 598.0999,
29 inclusive **H**, **and section 1 of this act**.

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

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

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

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

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

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

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

51 5. If a person violates any provision of NRS 598.0903 to 598.0999, inclusive,
52 **and section 1 of this act**, 598.100 to 598.2801, inclusive, 598.305 to 598.395,
53 inclusive, 598.405 to 598.525, inclusive, 598.741 to 598.787, inclusive, or 598.840

1 to 598.966, inclusive, fails to comply with a judgment or order of any court in this
2 State concerning a violation of such a provision, or fails to comply with an
3 assurance of discontinuance or other agreement concerning an alleged violation of
4 such a provision, the Commissioner or the district attorney of any county may bring
5 an action in the name of the State of Nevada seeking:

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

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

9 ➤ The court may grant or deny the relief sought or may order other appropriate
10 relief.

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

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

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

20 ➤ The court may grant or deny the relief sought or may order other appropriate
21 relief.

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

23 11.190 Except as otherwise provided in NRS 125B.050 and 217.007, actions
24 other than those for the recovery of real property, unless further limited by specific
25 statute, may only be commenced as follows:

26 1. Within 6 years:

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

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

32 2. Within 4 years:

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

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

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

38 (d) An action against a person alleged to have committed a deceptive trade
39 practice in violation of NRS 598.0903 to 598.0999, inclusive, **and section 1 of this**
40 **act**, but the cause of action shall be deemed to accrue when the aggrieved party
41 discovers, or by the exercise of due diligence should have discovered, the facts
42 constituting the deceptive trade practice.

43 3. Within 3 years:

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

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

50 (c) An action for taking, detaining or injuring personal property, including
51 actions for specific recovery thereof, but in all cases where the subject of the action
52 is a domestic animal usually included in the term "livestock," which has a recorded
53 mark or brand upon it at the time of its loss, and which strays or is stolen from the

1 true owner without his fault, the statute does not begin to run against an action for
2 the recovery of the animal until the owner has actual knowledge of such facts as
3 would put a reasonable person upon inquiry as to the possession thereof by the
4 defendant.

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

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

13 4. Within 2 years:

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

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

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

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

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

29 5. Within 1 year:

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

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

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

40 41.600 1. An action may be brought by any person who is a victim of
41 consumer fraud.

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

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

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

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

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

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

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

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

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

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

1 **Sec. 13. This act becomes effective upon passage and approval.**

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