

Amendment No. 651

Senate Amendment to Assembly Bill No. 90 First Reprint (BDR 52-269)

Proposed by: Senate Committee on Commerce and Labor**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

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 dashed underlining* is newly added transitory language.

DP/WLK



Date: 5/10/2009

A.B. No. 90—Revises certain provisions concerning the investigation and prosecution of deceptive trade practices. (BDR 52-269)



ASSEMBLY BILL NO. 90—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 15, 2008

Referred to Committee on Commerce and Labor

SUMMARY—Revises certain provisions concerning the investigation and prosecution of deceptive trade practices. (BDR 52-269)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to deceptive trade practices; requiring that information obtained in the course of certain investigations and proceedings be kept confidential in certain circumstances; authorizing the Attorney General to share such information, and otherwise cooperate with, officials of the Federal Government and other states; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law allows the Attorney General to investigate suspected deceptive trade practices and to institute proceedings to seek certain remedies for such violations. (Chapter 598 of NRS)

Section 1 of this bill requires that information obtained in the course of certain investigations and proceedings be kept confidential in certain circumstances. **Section 1** also authorizes the Attorney General to share such information, and otherwise cooperate with, officials of the Federal Government and other states.

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. The Attorney General, in the course of the investigation of any alleged violations of this chapter, may obtain and use any intelligence, investigative information or other information obtained ~~as the result of a subpoena or civil investigative demand~~ by or made available to the Attorney General, ~~on a confidential or similarly restricted basis. Any~~ Except as otherwise provided in subsections 2 and 3, any such intelligence or information received must retain its confidential status under the laws of this State until the Attorney General

institutes civil or criminal proceedings and is exempt from the provisions of NRS 239.010.

~~2. [The Attorney General may withhold from public inspection or refuse to disclose to a person, for such time as the Attorney General considers necessary, any intelligence or information obtained pursuant to subsection 1 or NRS 598.0963 that, in the Attorney General's judgment, would impede or otherwise interfere with an investigation that is currently pending.~~

~~3. The] Except as otherwise provided in subsection 4, the Attorney General may cooperate with and coordinate the enforcement of the provisions of this chapter with State and local agencies, officials of the Federal Government and the several states, including, but not limited to, the sharing of information and evidence obtained in accordance with subsection 1 or NRS 598.0963.~~

3. The provisions of subsections 1 and 2 do not prohibit the Attorney General from disclosing any intelligence or information received pursuant to subsection 1, including, without limitation, the address or telephone number of a business or organization, before the Attorney General institutes civil or criminal proceedings if, in the discretion of the Attorney General, that disclosure is necessary to protect consumers and businesses.

4. If any information sought pursuant to an investigation of an alleged violation of this chapter includes a trade secret, the Attorney General shall enter into, and be bound by, an agreement regarding limitations on the disclosure of that information to protect that trade secret. Notwithstanding the provisions of this section, the Attorney General shall not disclose that information in violation of the terms of the agreement. For the purposes of this subsection, "trade secret" has the meaning ascribed to it in NRS 600A.030.

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, have the meanings ascribed to them in those sections.

Sec. 3. 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. 4. 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 ~~§~~, *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. 5. 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 ~~§~~, *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. 6. 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.

Sec. 7. 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 section 1 of this act*, if the court finds that a person has engaged in a deceptive trade practice directed toward an elderly person or a person with a disability, 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 person or person with a disability;

(b) The person knew or should have known that his conduct was directed toward an elderly person or a person with a disability;

(c) The elderly person or person with a disability was more vulnerable to the conduct of the person because of the age, health, infirmity, impaired understanding, restricted mobility or disability of the elderly person or person with a disability;

(d) The conduct of the person caused the elderly person or person with a disability to suffer actual and substantial physical, emotional or economic damage;

(e) The conduct of the person caused the elderly person or person with a disability to suffer:

(1) Mental or emotional anguish;

(2) The loss of the primary residence of the elderly person or person with a disability;

(3) The loss of the principal employment or source of income of the elderly person or person with a disability;

(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 person or person with a disability; or

(7) Any other interference with the economic well-being of the elderly person or person with a disability, 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. 8. NRS 598.0974 is hereby amended to read as follows:

598.0974 A civil penalty must not be imposed against any person who engages in a deceptive trade practice pursuant to NRS 598.0903 to 598.0999, inclusive, *and section 1 of this act* in a civil proceeding brought by the Commissioner, Director or Attorney General if a fine has previously been imposed against that person by the Department of Motor Vehicles pursuant to NRS 482.554, for the same act.

Sec. 9. 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 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~~, *and section 1 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 section 1 of this act*, if the court finds that a person has willfully engaged in a deceptive trade practice, 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:

(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.

➤ The court may require the natural person, firm, or officer or managing agent of the corporation or association to pay to the aggrieved party damages on all profits

1 derived from the knowing and willful engagement in a deceptive trade practice and
2 treble damages on all damages suffered by reason of the deceptive trade practice.

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

7 5. If a person violates any provision of NRS 598.0903 to 598.0999, inclusive,
8 *and section 1 of this act, NRS* 598.100 to 598.2801, inclusive, 598.305 to 598.395,
9 inclusive, 598.405 to 598.525, inclusive, 598.741 to 598.787, inclusive, or 598.840
10 to 598.966, inclusive, fails to comply with a judgment or order of any court in this
11 State concerning a violation of such a provision, or fails to comply with an
12 assurance of discontinuance or other agreement concerning an alleged violation of
13 such a provision, the Commissioner or the district attorney of any county may bring
14 an action in the name of the State of Nevada seeking:

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

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

18 ➤ The court may grant or deny the relief sought or may order other appropriate
19 relief.

20 6. If a person violates any provision of NRS 228.500 to 228.640, inclusive,
21 fails to comply with a judgment or order of any court in this State concerning a
22 violation of such a provision, or fails to comply with an assurance of
23 discontinuance or other agreement concerning an alleged violation of such a
24 provision, the Attorney General may bring an action in the name of the State of
25 Nevada seeking:

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

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

29 ➤ The court may grant or deny the relief sought or may order other appropriate
30 relief.

31 **Sec. 10.** (Deleted by amendment.)

32 **Sec. 11.** (Deleted by amendment.)