

Amendment No. 427

Assembly Amendment to Assembly Bill No. 352

(BDR 52-976)

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

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 underlining* is newly added transitory language.

DLJ/SLP



Date: 4/20/2011

A.B. No. 352—Revises provisions relating to certain trade practices. (BDR 52-976)



ASSEMBLY BILL NO. 352—ASSEMBLYWOMAN CARLTON

MARCH 21, 2011

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to certain trade practices. (BDR 52-976)

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 trade practices; ~~providing that certain persons may bring a civil action for various deceptive trade practices or other violations;~~ providing that various actions related to certain persons with an inability to reasonably protect their rights or interests constitute a deceptive trade practice; allowing equitable relief for certain actions related to consumer fraud; 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 certain persons may bring a civil action for damages for deceptive trade practices and for certain other violations.~~ **Section 3** of this bill provides that it is a deceptive trade practice knowingly to take advantage of certain persons with an inability reasonably to protect their rights or interests. **Section 10** of this bill allows equitable relief for various actions involving consumer fraud.

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, in addition to any other remedy or penalty, if a person suffers damage as a result of a deceptive trade practice or a violation of this chapter or any regulation adopted pursuant thereto, that person may commence a civil action against any other person who engaged in the act or violation to recover statutory damages of up to \$5,000 per act or violation.~~

~~2. A person may not be held liable in any civil action brought pursuant to this section if the person proves, by a preponderance of evidence, that the act or violation:~~

~~(a) Was not intentional; and~~

~~(b) Resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.~~

~~3. For the purposes of this section, a bona fide error includes, without limitation, clerical errors, calculation errors, computer malfunction and programming errors and printing errors, except that an error of legal judgment with respect to a person's obligations under this chapter is not a bona fide error.~~
(Deleted by amendment.)

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.]~~
(Deleted by amendment.)

Sec. 3. NRS 598.092 is hereby amended to read as follows:

598.092 A person engages in a "deceptive trade practice" when in the course of his or her business or occupation he or she:

1. Knowingly fails to identify goods for sale or lease as being damaged by water.

2. Solicits by telephone or door to door as a lessor or seller, unless the lessor or seller identifies himself or herself, whom he or she represents and the purpose of his or her call within 30 seconds after beginning the conversation.

3. Knowingly states that services, replacement parts or repairs are needed when no such services, replacement parts or repairs are actually needed.

4. Fails to make delivery of goods or services for sale or lease within a reasonable time or to make a refund for the goods or services, if he or she allows refunds.

5. Advertises or offers an opportunity for investment and:

(a) Represents that the investment is guaranteed, secured or protected in a manner which he or she knows or has reason to know is false or misleading;

(b) Represents that the investment will earn a rate of return which he or she knows or has reason to know is false or misleading;

(c) Makes any untrue statement of a material fact or omits to state a material fact which is necessary to make another statement, considering the circumstances under which it is made, not misleading;

(d) Fails to maintain adequate records so that an investor may determine how his or her money is invested;

(e) Fails to provide information to an investor after a reasonable request for information concerning his or her investment;

(f) Fails to comply with any law or regulation for the marketing of securities or other investments; or

(g) Represents that he or she is licensed by an agency of the State to sell or offer for sale investments or services for investments if he or she is not so licensed.

6. Charges a fee for advice with respect to investment of money and fails to disclose:

(a) That he or she is selling or offering to lease goods or services and, if he or she is, their identity; or

(b) That he or she is licensed by an agency of any state or of the United States to sell or to offer for sale investments or services for investments or holds any other license related to the service he or she is providing.

7. Notifies any person, by any means, as a part of an advertising plan or scheme, that he or she has won a prize and that as a condition of receiving the prize he or she must purchase or lease goods or services.

8. Knowingly misrepresents the legal rights, obligations or remedies of a party to a transaction.

9. Fails, in a consumer transaction that is rescinded, cancelled or otherwise terminated in accordance with the terms of an agreement, advertisement, representation or provision of law, to promptly restore to a person entitled to it a deposit, down payment or other payment or, in the case of property traded in but not available, the agreed value of the property or fails to cancel within a specified time or an otherwise reasonable time an acquired security interest. This subsection does not apply to a person who is holding a deposit, down payment or other payment on behalf of another if all parties to the transaction have not agreed to the release of the deposit, down payment or other payment.

10. Fails to inform customers, if he or she does not allow refunds or exchanges, that he or she does not allow refunds or exchanges by:

(a) Printing a statement on the face of the lease or sales receipt;

(b) Printing a statement on the face of the price tag; or

(c) Posting in an open and conspicuous place a sign at least 8 by 10 inches in size with boldface letters,

➤ specifying that no refunds or exchanges are allowed.

11. Knowingly and willfully violates NRS 597.7118 or 597.7125.

12. Knowingly takes advantage of another person's inability reasonably to protect his or her own rights or interests in a consumer transaction when such an inability is due to illiteracy, or to a mental or physical infirmity or another similar condition which manifests itself as an incapability to understand the language or terms of any agreement, for as another similar condition.

~~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 [], and section 1 of this act.] (Deleted by amendment.)~~

~~Sec. 5. [NRS 598.096 is hereby amended to read as follows:~~

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

~~1. Request the person to file a statement or report in writing under oath or otherwise, on such forms as may be prescribed by the Commissioner, Director or Attorney General, as to all facts and circumstances concerning the sale or advertisement of property by the person, and such other data and information as the Commissioner, Director or Attorney General may deem necessary;~~

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

~~3. Examine any property or sample thereof, record, book, document, account or paper as he or she may deem necessary;~~

~~4. Make true copies, at the expense of the Consumer Affairs Division of the Department of Business and Industry, of any record, book, document, account or~~

1 ~~paper examined pursuant to subsection 2, which copies may be offered into~~
2 ~~evidence in lieu of the originals thereof in actions brought pursuant to NRS 598.097~~
3 ~~and 598.0979.~~

4 ~~5. Pursuant to an order of any district court, impound any sample of property~~
5 ~~which is material to the deceptive trade practice and retain the property in his or her~~
6 ~~possession until completion of all proceedings as provided in NRS 598.0903 to~~
7 ~~598.0999, inclusive [;], and section 1 of this act. An order may not be issued~~
8 ~~pursuant to this subsection unless:~~

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

11 ~~(b) The Commissioner, Director or Attorney General proves by clear and~~
12 ~~convincing evidence that the business activities of the accused will not be impaired~~
13 ~~thereby.] (Deleted by amendment.)~~

14 **Sec. 6.** ~~[NRS 598.0971 is hereby amended to read as follows:~~

15 ~~598.0971 1. If, after an investigation, the Commissioner has reasonable~~
16 ~~cause to believe that any person has been engaged or is engaging in any deceptive~~
17 ~~trade practice in violation of NRS 598.0903 to 598.0999, inclusive, and section 1~~
18 ~~of this act, the Commissioner may issue an order directed to the person to show~~
19 ~~cause why the Commissioner should not order the person to cease and desist from~~
20 ~~engaging in the practice. The order must contain a statement of the charges and a~~
21 ~~notice of a hearing to be held thereon. The order must be served upon the person~~
22 ~~directly or by certified or registered mail, return receipt requested.~~

23 ~~2. If, after conducting a hearing pursuant to the provisions of subsection 1, the~~
24 ~~Commissioner determines that the person has violated any of the provisions of NRS~~
25 ~~598.0903 to 598.0999, inclusive, and section 1 of this act, or if the person fails to~~
26 ~~appear for the hearing after being properly served with the statement of charges and~~
27 ~~notice of hearing, the Commissioner may make a written report of his or her~~
28 ~~findings of fact concerning the violation and cause to be served a copy thereof upon~~
29 ~~the person and any intervenor at the hearing. If the Commissioner determines in the~~
30 ~~report that such a violation has occurred, he or she may order the violator to:~~

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

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

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

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

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

50 ~~4. If a person fails to comply with any provision of an order issued pursuant~~
51 ~~to subsection 2, the Commissioner may, through the Attorney General, at any time~~
52 ~~after 30 days after the service of the order, cause an action to be instituted in the~~
53 ~~district court of the county wherein the person resides or has his or her principal~~

1 ~~place of business requesting the court to enforce the provisions of the order or to~~
2 ~~provide any other appropriate injunctive relief.~~

3 ~~5. If the court finds that:~~

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

5 ~~(b) The proceedings by the Commissioner concerning the written report and~~
6 ~~any order issued pursuant to subsection 2 are in the interest of the public; and~~

7 ~~(c) The findings of the Commissioner are supported by the weight of the~~
8 ~~evidence;~~

9 ~~the court shall issue an order enforcing the provisions of the order of the~~
10 ~~Commissioner.~~

11 ~~6. Except as otherwise provided in NRS 598.0974, an order issued pursuant to~~
12 ~~subsection 5 may include:~~

13 ~~(a) A provision requiring the payment to the Commissioner of a penalty of not~~
14 ~~more than \$5,000 for each act amounting to a failure to comply with the~~
15 ~~Commissioner's order; or~~

16 ~~(b) Such injunctive or other equitable or extraordinary relief as is determined~~
17 ~~appropriate by the court.~~

18 ~~7. Any aggrieved party may appeal from the final judgment, order or decree~~
19 ~~of the court in a like manner as provided for appeals in civil cases.~~

20 ~~8. Upon the violation of any judgment, order or decree issued pursuant to~~
21 ~~subsection 5 or 6, the Commissioner, after a hearing thereon, may proceed in~~
22 ~~accordance with the provisions of NRS 598.0999. (Deleted by amendment.)~~

23 **Sec. 7. [NRS 598.0975 is hereby amended to read as follows:**

24 ~~598.0975 1. Except as otherwise provided in subsection 3 and in subsection~~
25 ~~4 of NRS 598.0999, all fees, civil penalties and any other money collected pursuant~~
26 ~~to the provisions of NRS 598.0903 to 598.0999, inclusive [], and section 1 of this~~
27 ~~act.~~

28 ~~(a) In an action brought by the Attorney General, Commissioner or Director,~~
29 ~~must be deposited in the State General Fund and may only be used to offset the~~
30 ~~costs of administering and enforcing the provisions of NRS 598.0903 to 598.0999,~~
31 ~~inclusive [], and section 1 of this act.~~

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

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

37 ~~(a) The investigation and prosecution of deceptive trade practices against~~
38 ~~elderly persons or persons with disabilities; and~~

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

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

43 ~~(a) Criminal fines imposed pursuant to NRS 598.0903 to 598.0999, inclusive~~
44 ~~[], and section 1 of this act; or~~

45 ~~(b) Restitution ordered pursuant to NRS 598.0903 to 598.0999, inclusive, and~~
46 ~~section 1 of this act in an action brought by the Attorney General. Money collected~~
47 ~~for restitution ordered in such an action must be deposited by the Attorney General~~
48 ~~and credited to the appropriate account of the Consumer Affairs Division of the~~
49 ~~Department of Business and Industry or the Attorney General for distribution to the~~
50 ~~person for whom the restitution was ordered. (Deleted by amendment.)~~

51 **Sec. 8. [NRS 598.0999 is hereby amended to read as follows:**

52 ~~598.0999 1. Except as otherwise provided in NRS 598.0974, a person who~~
53 ~~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 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 192.130;~~

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

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

~~5. If a person violates any provision of NRS 598.0903 to 598.0999, inclusive, and section 1 of this act, 598.100 to 598.2801, inclusive, 598.305 to 598.395, inclusive, 598.405 to 598.525, inclusive, 598.741 to 598.787, inclusive, or 598.840 to 598.966, 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 Commissioner or the district attorney of any county 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.~~

~~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.~~ 7. (Deleted by amendment.)

1 **Sec. 9.** ~~[NRS 11.190 is hereby amended to read as follows:~~

2 ~~11.190 Except as otherwise provided in NRS 125B.050 and 217.007, actions~~
3 ~~other than those for the recovery of real property, unless further limited by specific~~
4 ~~statute, may only be commenced as follows:~~

5 ~~1. Within 6 years:~~

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

8 ~~(b) An action upon a contract, obligation or liability founded upon an~~
9 ~~instrument in writing, except those mentioned in the preceding sections of this~~
10 ~~chapter.~~

11 ~~2. Within 4 years:~~

12 ~~(a) An action on an open account for goods, wares and merchandise sold and~~
13 ~~delivered.~~

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

15 ~~(c) An action upon a contract, obligation or liability not founded upon an~~
16 ~~instrument in writing.~~

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

22 ~~3. Within 3 years:~~

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

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

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

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

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

46 ~~4. Within 2 years:~~

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

51 ~~(b) An action upon a statute for a penalty or forfeiture, where the action is~~
52 ~~given to a person or the State, or both, except when the statute imposing it~~
53 ~~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.~~

~~(f) An action to recover damages under NRS 41.740.~~

~~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 or her 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 or her official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.] (Deleted by amendment.)~~

Sec. 10. 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.

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

(a) Any damages that the claimant has sustained; ~~[and]~~

(b) *Any equitable relief that the court deems appropriate; and*

(c) The claimant's 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. 11. ~~[NRS 645B.189 is hereby amended to read as follows:~~

~~645B.189 1. If, in carrying on his or her business, a mortgage broker uses an advertisement that is designed, intended or reasonably likely to solicit money from private investors, the mortgage broker shall include in each such advertisement a statement of disclosure in substantially the following form:~~

~~Money invested through a mortgage broker is not guaranteed to earn any interest or return and is not insured.~~

~~2. A mortgage broker shall include in each advertisement that the mortgage broker uses in carrying on his or her business any statements of disclosure required pursuant to the regulations adopted by the Commissioner or required pursuant to an order of the Commissioner entered in accordance with subsections 7 and 8 of NRS 645B.185.~~

~~3. Each mortgage broker who has received an initial license within the past 12 months shall submit any proposed advertisement that the mortgage broker intends to use in carrying on his or her business to the Commissioner for approval.~~

~~4. In addition to the requirements set forth in this chapter, each advertisement that a mortgage broker uses in carrying on his or her business must comply with the requirements of:~~

~~(a) NRS 598.0903 to 598.0999, inclusive, and section 1 of this act concerning deceptive trade practices; and~~

~~(b) Any applicable federal statute or regulation concerning deceptive advertising and the advertising of interest rates.~~

~~5. If a mortgage broker violates any provision of NRS 598.0903 to 598.0999, inclusive, and section 1 of this act concerning deceptive trade practices or any federal statute or regulation concerning deceptive advertising or the advertising of interest rates, in addition to any sanction or penalty imposed by state or federal law upon the mortgage broker for the violation, the Commissioner may take any disciplinary action set forth in subsection 2 of NRS 645B.670 against the mortgage broker.~~

~~6. The Commissioner may adopt any regulations that are necessary to carry out the provisions of this section.] (Deleted by amendment.)~~

Sec. 12. This act becomes effective on July 1, 2011.