

SENATE BILL NO. 290—SENATOR COPENING

MARCH 21, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions governing deceptive trade practices. (BDR 52-993)

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; requiring certain disclosures in an offer for a sale or lease of certain goods or services pursuant to an automatic renewal contract; providing that certain acts relating to an automatic renewal contract constitute deceptive trade practices; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, certain acts regarding various consumer transactions are considered deceptive trade practices. (NRS 598.0915-598.0925) Deceptive trade practices may be investigated by the Commissioner of Consumer Affairs, the Director of the Department of Business and Industry or the Attorney General. (NRS 598.096) A person who commits a deceptive trade practice is subject to certain administrative fines and civil and criminal penalties. (NRS 598.097-598.0999)

This bill provides that it is a deceptive trade practice for a person to fail to perform certain acts regarding an automatic renewal contract, which is a contract that provides for ongoing payment by the customer and the ongoing provision of goods or services by the seller. This bill provides that a person making a sale or lease of goods or services pursuant to an automatic renewal contract must provide certain information to the consumer regarding the terms of the contract before the consumer agrees to the contract, including the method by which the consumer can cancel the contract. This bill also provides that it is a deceptive trade practice to renew an automatic renewal contract on terms other than month to month without the consent of the consumer. This bill also provides that it is an unfair trade practice to renew or change any material term of an automatic renewal contract before providing notice of the renewal or change in material terms of the contract and an explanation of how the consumer may cancel the contract.



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Under existing law, a person who engages in a deceptive trade practice is subject to certain civil and criminal penalties and potentially liable for consumer fraud. (NRS 41.600, 119A.710, 119B.430, 482.554, 487.6889, 489.401) Sections 3-8 of this bill provide that a person who engages in a deceptive trade practice relating to an automatic renewal contract is subject to the penalties and liabilities provided by existing law.

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. A person engages in a "deceptive trade practice" if the person offers a product or service for sale or lease to a consumer pursuant to an automatic renewal contract and:

(a) Fails to provide to the consumer the following disclosures in clear and conspicuous language before the sale or lease of the product or service:

(1) That the product or service will continue to be provided to the consumer for the period provided for in the contract for the term of the contract or, if the contract is continuous, until the contract is cancelled by the consumer;

(2) A description of the cancellation policy which applies to the contract and which, if the offer includes a free trial, describes the process by which the consumer may cancel the contract before the consumer is charged for any product or service;

(3) The amount of the recurring payments that will be charged to the consumer;

(4) The period of the contract or a statement that the contract is continuous, unless the period of the contract is chosen by the consumer; and

(5) The minimum purchase obligation under the contract, if any.

(b) Upon the sale or lease of the product or service pursuant to an automatic renewal contract, fails to provide to the consumer, in a manner that is capable of being retained by the consumer, a written notice that contains the material terms of the contract, including, without limitation:

(1) The amount of the recurring payments required under the contract;

(2) The period of the contract or a statement that the contract is continuous; and

(3) Specific information regarding how to cancel the contract, including, without limitation:



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(I) A mechanism for timely cancellation of the contract by the consumer that may include, without limitation, a toll-free phone number, an electronic mail address or a postal address if the seller directly bills the consumer; and

(II) The amount of the cancellation fee, if any.

(c) Upon the sale or lease of a product or service pursuant to an automatic renewal contract, charges the credit card or debit card or the account of the consumer with a third party for the first recurring payment under the contract before obtaining the consent of the consumer to the terms of the contract and providing the written notice required pursuant to paragraph (b). Any product or service provided to a consumer before such consent is obtained or before the required notice is provided to the consumer is deemed to be an unconditional gift to the consumer, and the consumer may not be charged under the automatic renewal contract for the product or service.

(d) Upon the sale or lease of a product or service pursuant to an automatic renewal contract, changes any material term of the contract before:

(1) Providing to the consumer, at least 30 days before a change in any material term of the contract, in a manner that is capable of being retained by the consumer, a written notice which contains the new material term of the contract and provides information explaining how the consumer may cancel the contract before the new material term becomes effective; and

(2) Obtaining the consent of the consumer to the new material term of the contract.

(e) Upon the expiration of the initial period of an automatic renewal contract for the sale or lease of a product or service:

(1) Fails to provide to the consumer, at least 30 days before the expiration of the initial period of the contract, in a manner that is capable of being retained by the consumer, a written notice that contains the new period of the contract and provides information explaining how the consumer may cancel the contract before the new period becomes effective; and

(2) Renews the contract for any period beyond the initial period of the contract on any terms other than month to month without the consent of the consumer.

(f) For an automatic renewal contract which is renewed as a month-to-month contract, imposes, charges or collects a fee for the cancellation of the contract.

2. As used in this section:

(a) "Automatic renewal contract" means an agreement in which a paid subscription or purchasing agreement is renewed automatically at the end of a definite period for a subsequent



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1 *period. The term includes, without limitation, a continuous service*
2 *plan or agreement in which the plan or agreement continues until*
3 *the consumer cancels the service.*

4 (b) *“Consumer” means any person who seeks or acquires by*
5 *purchase or lease any product or service for personal, family or*
6 *household use.*

7 **Sec. 2.** NRS 598.0953 is hereby amended to read as follows:

8 598.0953 1. Evidence that a person has engaged in a
9 deceptive trade practice is prima facie evidence of intent to injure
10 competitors and to destroy or substantially lessen competition.

11 2. The deceptive trade practices listed in NRS 598.0915 to
12 598.0925, inclusive, *and section 1 of this act* are in addition to and
13 do not limit the types of unfair trade practices actionable at common
14 law or defined as such in other statutes of this State.

15 **Sec. 3.** 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 *§, and section 1 of this act.*

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

28 (a) Any damages that the claimant has sustained; and

29 (b) The claimant’s costs in the action and reasonable attorney’s
30 fees.

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

33 **Sec. 4.** NRS 119A.710 is hereby amended to read as follows:

34 119A.710 It is unlawful to engage in unfair methods of
35 competition or deceptive or unfair acts in the offer to sell or sale of a
36 time share including, without limitation:

37 1. Misrepresenting or failing to disclose any material fact
38 concerning a time share.

39 2. Including in an agreement for the purchase of a time share
40 provisions purporting to waive any right or benefit provided for
41 purchasers under this chapter.

42 3. Receiving from a prospective purchaser any money or other
43 valuable consideration before the purchaser has received a statement
44 of public offering.



4. Misrepresenting the amount of time or period of time the unit will be available to a purchaser.

5. Misrepresenting the location or locations of the unit.

6. Misrepresenting the size, nature, extent, qualities or characteristics of the unit.

7. Misrepresenting the nature or extent of any services incident to the unit.

8. Misrepresenting the conditions under which a purchaser may exchange occupancy rights to a unit in one location for occupancy rights to a unit in another location.

9. Failing to disclose initially that any promised entertainment, food or other inducements are being offered to solicit the sale of a time share.

10. Conducting or participating in, without prior approval by the Division, any type of lottery or contest, or offering prizes or gifts to induce or encourage a person to visit a project, attend a meeting at which a time share will be discussed, attend a presentation or purchase a time share.

11. Failing to disclose initially to a prospective purchaser any agreement between the project broker or sales agent and the developer that results in a sharing of sales proceeds in excess of a minimum sales price for a time share.

12. Any act or practice considered an unfair method of competition or an unfair or deceptive act or practice under NRS 207.170, 207.171 or 598.0915 to 598.0925, inclusive, *and section 1 of this act* or chapter 598A or 599A of NRS.

Sec. 5. NRS 119B.430 is hereby amended to read as follows:

119B.430 It is unlawful to engage in unfair methods of competition or deceptive or unfair practices in the offer to sell or sale of a membership. These practices include, without limitation:

1. Misrepresenting or failing to disclose any material fact concerning a campground or membership.

2. Including in any agreement for purchase of a membership provisions purporting to waive any right or benefit provided for purchasers under this chapter.

3. Receiving from a prospective purchaser any money or other valuable consideration before the purchaser receives the information required by NRS 119B.270.

4. Misrepresenting the amount of time or the date a camping site will be available to a purchaser.

5. Misrepresenting the location of the campground.

6. Misrepresenting the size, nature, extent, qualities or characteristics of the campground.

7. Misrepresenting the nature or extent of any services incident to the membership.



8. Misrepresenting the conditions under which a purchaser may exchange occupancy rights in a campground in one location for occupancy rights in a campground at another location.

9. Failing to disclose initially that any promised entertainment, food or other inducements are being offered to solicit the sale of a membership.

10. Conducting or participating in, without prior approval by the Division, any type of lottery or contest, or offering prizes or gifts to induce or encourage a person to visit a campground, attend a meeting at which a membership will be discussed, attend a presentation, or purchase a membership.

11. Any act or practice considered an unfair method of competition or an unfair or deceptive act or practice under NRS 207.170, 207.171 or 598.0915 to 598.0925, inclusive, *and section 1 of this act* or chapter 598A or 599A of NRS.

12. Making any false promises of a character likely to influence, persuade or induce.

13. Engaging in any fraudulent, misleading or oppressive techniques or tactics of selling.

Sec. 6. NRS 482.554 is hereby amended to read as follows:

482.554 1. The Department may impose an administrative fine of not more than \$10,000 against any person who engages in a deceptive trade practice. The Department shall afford to any person so fined an opportunity for a hearing pursuant to the provisions of NRS 233B.121.

2. For the purposes of this section, a person shall be deemed to be engaged in a "deceptive trade practice" if, in the course of his or her business or occupation, the person:

(a) Enters into a contract for the sale of a vehicle on credit with a customer, exercises a valid option to cancel the vehicle sale and then, after the customer returns the vehicle with no damage other than reasonable wear and tear, the seller:

(1) Fails to return any down payment or other consideration in full, including, returning a vehicle accepted in trade;

(2) Knowingly makes a false representation to the customer that the customer must sign another contract for the sale of the vehicle on less favorable terms; or

(3) Fails to use the disclosure as required in subsection 3.

(b) Uses a contract for the sale of the vehicle or a security agreement that materially differs from the form prescribed by law.

(c) Engages in any deceptive trade practice, as defined in NRS 598.0915 to 598.0925, inclusive, *and section 1 of this act* that involves the purchase and sale or lease of a motor vehicle.

(d) Engages in any other acts prescribed by the Department by regulation as a deceptive trade practice.



3. If a seller of a vehicle exercises a valid option to cancel the sale of a vehicle to a customer, the seller must provide a disclosure, and the customer must sign that disclosure, before the seller and customer may enter into a new agreement for the sale of the same vehicle on different terms, or for the sale of a different vehicle. The Department shall prescribe the form of the disclosure by regulation.

4. All administrative fines collected by the Department pursuant to this section must be deposited with the State Treasurer to the credit of the State Highway Fund.

5. The administrative remedy provided in this section is not exclusive and is in addition to any other remedy provided by law. The provisions of this section do not deprive a person injured by a deceptive trade practice from resorting to any other legal remedy.

Sec. 7. NRS 487.6889 is hereby amended to read as follows:

487.6889 A person shall be deemed to be engaged in a "deceptive trade practice" if, in the course of his or her business or occupation, the person:

1. Engages in any deceptive trade practice, as defined in NRS 598.0915 to 598.0925, inclusive, *and section 1 of this act* that involves the repair of a motor vehicle; or

2. Engages in any other acts prescribed by the Director by regulation as a deceptive trade practice.

Sec. 8. NRS 489.401 is hereby amended to read as follows:

489.401 The following grounds, among others, constitute grounds for disciplinary action pursuant to NRS 489.381:

1. The intentional publication, circulation or display of any advertising which constitutes a deceptive trade practice as that term is defined in NRS 598.0915 to 598.0925, inclusive ~~§~~, *and section 1 of this act.*

2. Failure to include in any advertising the name of the licensed dealer, distributor, general serviceperson or specialty serviceperson, or the name under which the person is doing business.

3. Making any substantial misrepresentation or false promise which is likely to influence, persuade or induce, or continually failing to fulfill promises to sell, breaching agreements or contracts or making false promises by any means.

4. Failure to disclose all terms and conditions of a sale, purchase or lease or offer to sell, purchase or lease a manufactured home, mobile home, manufactured building or commercial coach or factory-built housing.

5. Failure to disclose to a person with whom the licensed dealer or distributor is dealing with regard to the sale, distribution, purchase or lease of a manufactured home any material facts, structural defects or other material information which the licensed dealer or distributor knew, or which by the exercise of reasonable



- 1 care and diligence should have known, concerning the manufactured
2 home or concerning the sale, distribution, purchase or lease of the
3 manufactured home.
- 4 6. Failure to comply with the provisions of NRS 489.595.
- 5 7. Representing to any lender, guaranteeing agency or other
6 interested party, orally or through the preparation of false
7 documents:
- 8 (a) An amount in excess of the actual sales price;
9 (b) A false amount as the down payment, earnest money deposit
10 or other valuable consideration;
11 (c) Terms differing from those actually agreed upon; or
12 (d) False information on a credit application.
- 13 8. Inducing an applicant to falsify a credit application.
- 14 9. Failure to obtain from the holder of any lien or security
15 interest in a manufactured home, mobile home, manufactured
16 building or commercial coach or factory-built housing within 10
17 days before the closure of a sale a written acknowledgment that the
18 holder of the lien or security interest has received written
19 notification of the sale.

