

SENATE BILL NO. 473—COMMITTEE ON FINANCE

(ON BEHALF OF THE DIVISION OF BUDGET AND PLANNING)

MARCH 28, 2011

Referred to Committee on Finance

SUMMARY—Revises provisions governing consumer affairs.
(BDR 18-1190)

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

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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 the reorganization of State Government; eliminating the Office of Ombudsman of Consumer Affairs for Minorities; making permanent the transfer of the powers and duties of the Consumer Affairs Division of the Department of Business and Industry and the Commissioner of Consumer Affairs to the Office of the Attorney General; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 The Office of Ombudsman of Consumer Affairs for Minorities in the Office of
- 2 the Director of the Department of Business and Industry was made a permanent
- 3 position by the 75th Session of the Nevada Legislature. (Chapter 335 of Statutes of
- 4 Nevada 2009, p. 1502) This bill eliminates the Office of Ombudsman of Consumer
- 5 Affairs for Minorities.
- 6 The 75th Session of the Nevada Legislature temporarily eliminated the
- 7 Consumer Affairs Division of the Department and the Commissioner of Consumer
- 8 Affairs for the 2009-2011 biennium and transferred the powers and duties of the
- 9 Division and the Commissioner to the Office of the Attorney General. (Chapter
- 10 475, Statutes of Nevada 2009, pp. 2695-2733) This bill makes permanent the
- 11 transfer of the powers and duties of the Division and the Commissioner to the
- 12 Office of the Attorney General.



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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 232.505 is hereby amended to read as follows:
232.505 As used in NRS 232.505 to ~~[232.845,]~~ **232.840,**
inclusive, unless the context requires otherwise:

1. "Department" means the Department of Business and
Industry.

2. "Director" means the Director of the Department.

Sec. 2. Section 80 of chapter 475, Statutes of Nevada 2009, at
page 2733, is hereby amended to read as follows:

Sec. 80. ~~[1.]~~ This section and sections 1 to 35,
inclusive, 36 to 57, inclusive, and 58 to 79, inclusive, of this
act become effective on July 1, 2009.

~~[2.—The amendatory provisions of sections 3, 4, 36 to 51,
inclusive, 57, 58 to 75, inclusive, and subsection 2 of section
77 of this act expire by limitation on June 30, 2011.~~

~~—3.—Sections 35.1 to 35.95, inclusive, and 57.5 of this act
become effective on July 1, 2011.]~~

Sec. 3. 1. NRS 232.845 is hereby repealed.

2. Sections 35.1, 35.2, 35.3, 35.4, 35.5, 35.6, 35.7, 35.8, 35.9,
35.95 and 57.5 of chapter 475, Statutes of Nevada 2009, at pages
2709-12 and 2721, are hereby repealed.

Sec. 4. 1. This section and sections 2 and 3 of this act
become effective upon passage and approval.

2. Section 1 of this act becomes effective on July 1, 2011.

TEXT OF REPEALED SECTION OF NRS AND

REPEALED SECTIONS OF STATUTES OF NEVADA

**232.845 Creation; duties of Ombudsman; appointment and
classification of Ombudsman.**

1. The Office of Ombudsman of Consumer Affairs for
Minorities is hereby created within the Office of the Director. The
Ombudsman shall:

(a) Provide for continued educational, outreach and service
programs for minority groups pertaining to consumer fraud; and

(b) Assist the Nevada Commission on Minority Affairs created
by NRS 232.852.

2. The Director shall appoint the Ombudsman of Consumer
Affairs for Minorities.



3. The Ombudsman of Consumer Affairs for Minorities is:
 - (a) In the unclassified service of the State.
 - (b) Directly responsible to the Director.

Section 35.1 of chapter 475, Statutes of Nevada 2009, at page 2709:

Sec. 35.1. Chapter 598 of NRS is hereby amended by adding thereto the provisions set forth as sections 35.2 to 35.95, inclusive, of this act.

Section 35.2 of chapter 475, Statutes of Nevada 2009, at page 2709:

Sec. 35.2. *1. Each organization for buying goods or services at a discount regulated by the provisions of this section, NRS 598.840 to 598.930, inclusive, and sections 35.3, 35.4 and 35.5 of this act shall apply for registration on the form prescribed by the Division.*

2. At the time of application for registration, the applicant must pay to the Division an administrative fee of \$25 and deposit the required security with the Division.

3. Upon receipt of the security in the proper form and the payment of the administrative fee required by this section, the Division shall issue a certificate of registration to the applicant. A certificate of registration:

(a) Is not transferable or assignable; and

(b) Expires 1 year after it is issued.

4. A registrant must renew a certificate of registration issued pursuant to this section before the certificate expires by submitting to the Division an application for the renewal of the certificate on a form prescribed by the Division.

Section 35.3 of chapter 475, Statutes of Nevada 2009, at page 2709:

Sec. 35.3. *1. Each registrant shall deposit with the Division:*

(a) A bond executed by a corporate surety approved by the Commissioner and licensed to do business in this State;

(b) An irrevocable letter of credit for which the registrant is the obligor, issued by a bank whose deposits are federally insured; or

(c) A certificate of deposit in a financial institution which is doing business in this State and which is federally insured or insured by a private insurer approved pursuant to NRS 678.755. The certificate of deposit may be



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withdrawn only on the order of the Commissioner, except that the interest may accrue to the registrant.

2. The term of the bond, letter of credit or certificate of deposit, or any renewal thereof, must be not less than 1 year.

3. If the registrant deposits a bond, the registrant shall keep accurate records of the bond and the payments made on the premium. The records must be open to inspection by the Division during business hours. The registrant shall notify the Division not later than 30 days before the date of expiration of the bond and provide written proof of the renewal of the bond to the Division.

4. The Commissioner may reject any bond, letter of credit or certificate of deposit which fails to conform to the requirements of this section, NRS 598.840 to 598.930, inclusive, and sections 35.2, 35.4 and 35.5 of this act.

5. A registrant may change the form of security which he has deposited with the Division. If the registrant changes the form of the security, the Commissioner may retain for not more than 1 year any portion of the security previously deposited by the registrant as security for claims arising during the time the previous security was in effect.

6. If the amount of the deposited security falls below the amount required by this section, NRS 598.840 to 598.930, inclusive, and sections 35.2, 35.4 and 35.5 of this act for that security, the registrant shall be deemed not to be registered as required by section 35.2 of this act for the purposes of this section, NRS 598.840 to 598.930, inclusive, and sections 35.2, 35.4 and 35.5 of this act.

Section 35.4 of chapter 475, Statutes of Nevada 2009, at page 2710:

Sec. 35.4. 1. The security required to be deposited by a registrant pursuant to section 35.3 of this act must be held in trust for consumers injured by the bankruptcy of the registrant or the registrant's breach of any agreement entered into in his capacity as a registrant.

2. A consumer so injured may bring and maintain an action in any court of competent jurisdiction to recover against the security.

3. The Division may bring an action for interpleader against all claimants upon the security. If the Division brings such an action, the Division shall publish notice of the action at least once each week for 2 weeks in a newspaper of general circulation in the county in which the



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organization has its principal place of business. The Division may deduct its costs of the action, including the costs of the publication of the notice, from the amount of the security. All claims against the security have equal priority. If the security is insufficient to pay all the claims in full, the claims must be paid pro rata. If the registrant has posted a bond with the Division, the surety is then relieved of all liability under the bond.

4. The Division may, in lieu of bringing an action for interpleader pursuant to subsection 3, conduct a hearing to determine the distribution of the security to claimants. The Division shall adopt regulations to provide for adequate notice and the conduct of the hearing. If the registrant has posted a bond with the Division, distribution pursuant to this subsection relieves the surety of all liability under the bond.

5. If the security is sufficient to pay all claims against the security in full, the Division may deduct from the amount of the security, the cost of any investigation or hearing it conducted to determine the distribution of the security.

Section 35.5 of chapter 475, Statutes of Nevada 2009, at page 2710:

Sec. 35.5. 1. If no claims have been filed against the security deposited with the Division pursuant to section 35.3 of this act within 6 months after the registrant ceases to operate or his registration expires, whichever occurs later, the Commissioner shall release the security to the registrant and shall not audit any claims filed against the security thereafter by consumers.

2. If one or more claims have been filed against the security within 6 months after the registrant ceases to operate or his registration expires, whichever occurs later, the proceeds must not be released to the registrant or distributed to any consumer earlier than 1 year after the registrant ceases to operate or his registration expires, whichever occurs later.

3. For the purposes of this section, the Commissioner shall determine the date on which a registrant ceases to operate.



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Section 35.6 of chapter 475, Statutes of Nevada 2009, at page 2711:

Sec. 35.6. “Registrant” means a dance studio or a health club which is required to register and post security with the Division pursuant to the provisions of this section, NRS 598.940 to 598.966, inclusive, and sections 35.7 to 35.95, inclusive, of this act.

Section 35.7 of chapter 475, Statutes of Nevada 2009, at page 2711:

Sec. 35.7. 1. Each dance studio and health club regulated by the provisions of this section, NRS 598.940 to 598.966, inclusive, and sections 35.6, 35.8, 35.9 and 35.95 of this act shall apply for registration on the form prescribed by the Division.

2. At the time of application for registration, the applicant must pay to the Division an administrative fee of \$25 and deposit the required security with the Division.

3. Upon receipt of the security in the proper form and the payment of the administrative fee required by this section, the Division shall issue a certificate of registration to the applicant. A certificate of registration:

(a) Is not transferable or assignable; and

(b) Expires 1 year after it is issued.

4. A registrant must renew a certificate of registration issued pursuant to this section before the certificate expires by submitting to the Division an application for the renewal of the certificate on a form prescribed by the Division.

Section 35.8 of chapter 475, Statutes of Nevada 2009, at page 2711:

Sec. 35.8. 1. Each registrant shall deposit with the Division:

(a) A bond executed by a corporate surety approved by the Commissioner and licensed to do business in this State;

(b) An irrevocable letter of credit for which the registrant is the obligor, issued by a bank whose deposits are federally insured; or

(c) A certificate of deposit in a financial institution which is doing business in this State and which is federally insured or insured by a private insurer approved pursuant to NRS 678.755. The certificate of deposit may be withdrawn only on the order of the Commissioner, except that the interest may accrue to the registrant.



2. *The term of the bond, letter of credit or certificate of deposit, or any renewal thereof, must be not less than 1 year.*

3. *If the registrant deposits a bond, the registrant shall keep accurate records of the bond and the payments made on the premium. The records must be open to inspection by the Division during business hours. The registrant shall notify the Division not later than 30 days before the date of expiration of the bond and provide written proof of the renewal of the bond to the Division.*

4. *The Commissioner may reject any bond, letter of credit or certificate of deposit which fails to conform to the requirements of this section, NRS 598.940 to 598.966, inclusive, and sections 35.6, 35.7, 35.9 and 35.95 of this act.*

5. *A registrant may change the form of security which he has deposited with the Division. If the registrant changes the form of the security, the Commissioner may retain for not more than 1 year any portion of the security previously deposited by the registrant as security for claims arising during the time the previous security was in effect.*

6. *If the amount of the deposited security falls below the amount required by this chapter for that security, the registrant shall be deemed not to be registered as required by section 35.7 of this act for the purposes of this section, NRS 598.940 to 598.966, inclusive, and sections 35.6, 35.7, 35.9 and 35.95 of this act.*

Section 35.9 of chapter 475, Statutes of Nevada 2009, at page 2712:

Sec. 35.9. 1. *The security required to be deposited by a registrant pursuant to section 35.8 of this act must be held in trust for consumers injured by the bankruptcy of the registrant or the registrant's breach of any agreement entered into in his capacity as a registrant.*

2. *A consumer so injured may bring and maintain an action in any court of competent jurisdiction to recover against the security.*

3. *The Division may bring an action for interpleader against all claimants upon the security. If the Division brings such an action, the Division shall publish notice of the action at least once each week for 2 weeks in a newspaper of general circulation in the county in which the organization has its principal place of business. The Division may deduct its costs of the action, including the costs of the publication of the notice, from the amount of*



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the security. All claims against the security have equal priority. If the security is insufficient to pay all the claims in full, the claims must be paid pro rata. If the registrant has posted a bond with the Division, the surety is then relieved of all liability under the bond.

4. The Division may, in lieu of bringing an action for interpleader pursuant to subsection 3, conduct a hearing to determine the distribution of the security to claimants. The Division shall adopt regulations to provide for adequate notice and the conduct of the hearing. If the registrant has posted a bond with the Division, distribution pursuant to this subsection relieves the surety of all liability under the bond.

5. If the security is sufficient to pay all claims against the security in full, the Division may deduct from the amount of the security, the cost of any investigation or hearing it conducted to determine the distribution of the security.

Section 35.95 of chapter 475, Statutes of Nevada 2009, at page 2712:

Sec. 35.95. 1. If no claims have been filed against the security deposited with the Division pursuant to section 35.8 of this act within 6 months after the registrant ceases to operate or his registration expires, whichever occurs later, the Commissioner shall release the security to the registrant and shall not audit any claims filed against the security thereafter by consumers.

2. If one or more claims have been filed against the security within 6 months after the registrant ceases to operate or his registration expires, whichever occurs later, the proceeds must not be released to the registrant or distributed to any consumer earlier than 1 year after the registrant ceases to operate or his registration expires, whichever occurs later.

3. For the purposes of this section, the Commissioner shall determine the date on which a registrant ceases to operate.



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Section 57.5 of chapter 475, Statutes of Nevada 2009, at pages 2721-22:

Sec. 57.5. NRS 598.840 is hereby amended to read as follows:

598.840 As used in NRS 598.840 to 598.930, inclusive, *and sections 35.2 to 35.5, inclusive, of this act*, unless the context otherwise requires:

1. "Affiliate organization" means an organization for buying goods or services at a discount that:

(a) Is a subsidiary of a parent business entity; or

(b) Operates under a franchise granted by a parent business entity.

2. "Business day" means any calendar day except Sunday, or the following business holidays: New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Nevada Day, Veterans' Day, Thanksgiving Day and Christmas Day.

3. "Buyer" means a person who purchases by contract a membership in an organization for buying goods or services at a discount.

4. *"Commissioner" means the Commissioner of the Consumer Affairs Division.*

5. *"Division" means the Consumer Affairs Division of the Department of Business and Industry.*

6. "Franchise" has the meaning ascribed to it in 16 C.F.R. § 436.2, as amended or substituted in revision by the Federal Trade Commission.

~~{5-}~~ 7. "Organization for buying goods or services at a discount" or "organization" means a person who, for a consideration, provides or claims to provide a buyer with the ability to purchase goods or services at a price which is represented to be lower than the price generally charged in the area. The term includes, without limitation, an affiliate organization.

~~{6-}~~ 8. "Parent business entity" or "parent" means any business entity that, directly or indirectly, has owned, operated, controlled or granted franchises to, in any combination thereof, at least 15 organizations or affiliate organizations for a consecutive period of 5 years or more.

~~{7-}~~ 9. *"Registrant" means an organization for buying goods or services at a discount which is required to register and post security with the Division pursuant to the provisions of NRS 598.840 to 598.930, inclusive, and sections 35.2 to 35.5, inclusive, of this act.*



10. “Subsidiary” means an organization for buying goods or services at a discount that is owned, operated or controlled, either directly or indirectly or in whole or in part, by a parent business entity.

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