

SENATE BILL NO. 99—SENATOR HARDY

PREFILED JANUARY 25, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Makes various changes concerning consumer protection. (BDR 52-127)

FISCAL NOTE: Effect on Local Government: No.
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 consumer protection; requiring the Consumer Affairs Division of the Department of Business and Industry to regulate the activities of grant writing services that do business in this State; requiring a grant writing service to register and deposit security with the Division before doing business in this State; requiring a grant writing service to provide certain statements to a buyer before the execution of a contract for grant writing services; prescribing certain mandatory terms of a contract for grant writing services; revising the definition of “goods and services” as that term relates to solicitations by telephone; revising criminal penalties for violations of provisions relating to solicitations by telephone; providing penalties; providing a fee; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Assembly Bill No. 561 of the 2009 Legislative Session temporarily eliminated the Commissioner of Consumer Affairs and the Consumer Affairs Division of the Department of Business and Industry for the 2009-2011 biennium. (Sections 3 and 4 of chapter 475, Statutes of Nevada 2009, pp. 2696-97) As a result, the Attorney General assumed sole responsibility for the enforcement of the provisions of chapter 598 of NRS governing deceptive trade practices and the provisions of chapter 599B of NRS governing solicitations by telephone. Effective July 1, 2011, the Commissioner of Consumer Affairs and the Consumer Affairs Division will be restored and will again share responsibility for the enforcement of these provisions with the Attorney General.

Section 24 of this bill revises the definition of “goods or services” for the purpose of the provisions governing solicitations by telephone to clarify that the



term includes, without limitation, any service, loan or any other extension of credit, insurance or any investment or opportunity for investment.

Existing law provides for graduated penalties for willful violations of the provisions governing solicitations by telephone. A person who willfully violates such provisions is guilty of a misdemeanor for the first offense within 10 years. For the second offense within 10 years, the person is guilty of a gross misdemeanor. For the third and all subsequent offenses within 10 years, such a person is guilty of a category D felony and is subject to imprisonment, a fine of not more than \$50,000, or both imprisonment and a fine. (NRS 599B.255) **Section 25** of this bill makes any willful violation of the provisions governing solicitations by telephone a category B felony, punishable by imprisonment, a fine of not less than the amount lost by all buyers who are injured by the violation plus an additional amount of not less than \$10,000 and not more than \$50,000, or by both imprisonment and a fine.

Sections 2-23 of this bill create provisions governing grant writing services in this State and vest the Commissioner and the Division with authority to enforce these provisions. **Section 7** defines "grant writing service." **Sections 9-12 and 14** establish registration requirements for grant writing services, including the payment of a registration fee, and requirements concerning the deposit of security with the Division. **Section 13** prohibits a grant writing service from engaging in certain activities. **Section 15** requires a grant writing service to provide certain written statements to a buyer before the execution of a contract or before the receipt of any payment by the grant writing service. **Section 16** establishes certain requirements for a contract for grant writing services. **Section 17** sets forth the circumstances which create an irrefutable presumption that a person intends to do business and is regularly conducting business in Nevada. **Section 20** provides a remedy for any buyer injured by a grant writing service, and **section 21** provides that a person who violates **sections 2-23** is guilty of a category B felony. **Section 23** requires the Division to adopt regulations to carry out the provisions of **sections 2-23**.

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 the provisions set forth as sections 2 to 23, inclusive, of this act.

Sec. 2. *As used in sections 2 to 23, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Buyer" means a natural person who is solicited to purchase or who purchases the services of a grant writing service.*

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

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

Sec. 6. *"Grant" means any money given by a governmental entity or any other person or organization to finance a specific or general purpose.*



1 **Sec. 7.** *“Grant writing service” means a person who, with*
2 *respect to obtaining any grant or other payment, loan or money,*
3 *advertises, sells, provides or performs, or represents that he or she*
4 *can or will sell, provide or perform, any of the following services*
5 *in return for the payment of money or other valuable*
6 *consideration:*

- 7 1. *Writing an application for a grant for a buyer.*
- 8 2. *Obtaining a grant for a buyer.*
- 9 3. *Providing advice or assistance to a buyer in obtaining a*
10 *grant.*

11 **Sec. 8.** *“Registrant” means a grant writing service which is*
12 *registered with the Division pursuant to section 9 of this act.*

13 **Sec. 9.** 1. *Each grant writing service regulated by the*
14 *provisions of sections 2 to 23, inclusive, of this act shall apply for*
15 *registration on the form prescribed by the Division.*

16 2. *At the time of application for registration, an applicant*
17 *shall pay to the Division an administrative fee of \$25 and deposit*
18 *the security required pursuant to section 10 of this act with the*
19 *Division.*

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

- 24 (a) *Is not transferable or assignable; and*
- 25 (b) *Expires 1 year after it is issued.*

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

30 **Sec. 10.** 1. *Each registrant shall deposit with the Division:*

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

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

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

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

44 3. *If the registrant deposits a bond, the registrant shall keep*
45 *accurate records of the bond and the payments made on the*



1 *premium. The records must be open to inspection by the Division*
2 *during business hours. The registrant shall notify the Division not*
3 *later than 30 days before the date of expiration of the bond and*
4 *provide written proof of the renewal of the bond to the Division.*

5 *4. The Commissioner may reject any bond, letter of credit or*
6 *certificate of deposit which fails to conform to the requirements of*
7 *sections 2 to 23, inclusive, of this act.*

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

14 *6. If the amount of the deposited security falls below the*
15 *amount required by sections 2 to 23, inclusive, of this act for that*
16 *security, the registrant shall be deemed not to be registered as*
17 *required by section 9 of this act for the purposes of sections 2 to*
18 *23, inclusive, of this act.*

19 **Sec. 11.** *1. The security required to be deposited by a*
20 *registrant pursuant to section 10 of this act must be held in trust*
21 *for buyers injured by the bankruptcy or acts or violations of the*
22 *registrant or the registrant's breach of any agreement entered into*
23 *in his or her capacity as a registrant.*

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

26 *3. The Division may bring an action for interpleader against*
27 *all claimants upon the security. If the Division brings such an*
28 *action, the Division shall publish notice of the action at least once*
29 *each week for 2 weeks in a newspaper of general circulation in the*
30 *county in which the organization has its principal place of*
31 *business. The Division may deduct its costs of the action,*
32 *including the costs of the publication of the notice, from the*
33 *amount of the security. All claims against the security have equal*
34 *priority. If the security is insufficient to pay all the claims in full,*
35 *the claims must be paid pro rata. If the registrant has posted a*
36 *bond with the Division, the surety is then relieved of all liability*
37 *under the bond.*

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



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

5 **Sec. 12.** 1. If no claims have been filed against the security
6 deposited with the Division pursuant to section 10 of this act
7 within 6 months after the registrant ceases to operate or his or her
8 registration expires, whichever occurs later, the Commissioner
9 shall release the security to the registrant and shall not audit any
10 claims filed against the security thereafter by buyers.

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

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

19 **Sec. 13.** A grant writing service shall not:

20 1. Charge or receive any money or other valuable
21 consideration before full and complete performance of the services
22 that the grant writing service has agreed to perform for or on
23 behalf of the buyer.

24 2. If the grant writing service makes a promise express or
25 implied that the grant writing service can or will obtain a grant for
26 a buyer, charge or receive any money or other valuable
27 consideration before the buyer has received the grant.

28 3. Charge or receive any money or other valuable
29 consideration solely for referral of a buyer to a governmental
30 entity or other person or organization which provides grants.

31 4. Make a false or misleading representation in the offer or
32 sale of the services of the grant writing service.

33 5. Hire or obtain the services of a seller, as that term is
34 defined in NRS 599B.010, who does not comply with the
35 provisions of chapter 599B of NRS.

36 **Sec. 14.** Before advertising his or her services or conducting
37 business in this State, a grant writing service shall register with
38 the Division pursuant to section 9 of this act and deposit security
39 in the amount of \$100,000 with the Division pursuant to section 10
40 of this act. The security must be conditioned on compliance by the
41 grant writing service with the provisions of sections 2 to 23,
42 inclusive, of this act and the terms of each contract entered into by
43 the grant writing service and a buyer.

44 **Sec. 15.** 1. Before the execution of a contract between a
45 buyer and a grant writing service or before the receipt by the grant



1 *writing service of any money or other valuable consideration,*
2 *whichever occurs first, the grant writing service shall provide to*
3 *the buyer a written statement which must be printed in at least*
4 *10-point bold type and must include, without limitation:*

5 *(a) A statement that the buyer is not required to pay any money*
6 *or other valuable consideration to the grant writing service before*
7 *the completion of all services promised by the grant writing*
8 *service.*

9 *(b) A detailed description of the services to be performed by the*
10 *grant writing service for the buyer and the total amount the buyer*
11 *is obligated to pay for the services.*

12 *(c) The physical address of the grant writing service and the*
13 *non-toll free telephone number of the grant writing service.*

14 *(d) Notification that the grant writing service has obtained a*
15 *certificate of registration from the Division and bond pursuant to*
16 *sections 9 and 10 of this act. The grant writing service shall*
17 *provide a copy of the certificate and the bond to the buyer.*

18 *2. The grant writing service shall retain a copy of the written*
19 *information provided to buyers pursuant to this section for not less*
20 *than 2 years.*

21 **Sec. 16. 1. A contract between a buyer and a grant writing**
22 **service for the purchase of the services of the grant writing**
23 **service:**

24 *(a) Must be in writing.*

25 *(b) Must be signed by the buyer.*

26 *(c) Must be dated.*

27 *(d) Must clearly indicate above the signature line that the*
28 *buyer may cancel the contract within 5 days after execution of the*
29 *contract by giving written notice to the grant writing service of his*
30 *or her intent to cancel the contract. If the notice is mailed, the*
31 *notice must be postmarked not later than 5 days after the*
32 *execution of the contract.*

33 *2. A grant writing service shall retain a copy of each contract*
34 *executed by a buyer and the grant writing service for not less than*
35 *2 years.*

36 **Sec. 17. 1. The making of any telephone communication or**
37 **any advertisement sent by any electronic means or by mail to make**
38 **any solicitation specifically directed to any buyer located in this**
39 **State creates an irrefutable presumption that the caller or solicitor**
40 **intends to take advantage of the State of Nevada as a place to do**
41 **business and is regularly conducting business in Nevada.**

42 *2. An advertisement is specifically directed to a buyer located*
43 *in this State if:*

44 *(a) The communication is made to any 702 or 775 area code;*



1 **(b)** *The communication is directed to any physical address*
2 *located in this State; or*

3 **(c)** *The person making the communication knows or*
4 *reasonably should know that the buyer is located in this State.*

5 **Sec. 18.** *A grant writing service shall file with the Division*
6 *the information required by sections 2 to 23, inclusive, of this act*
7 *and continuously maintain a commercial registered agent for*
8 *service of legal process.*

9 **Sec. 19.** *1. Any waiver by a buyer of the provisions of*
10 *sections 2 to 23, inclusive, of this act is contrary to public policy*
11 *and is void and unenforceable. Any attempt by a grant writing*
12 *service to have a buyer waive any right provided by sections 2 to*
13 *23, inclusive, of this act is unlawful.*

14 **2.** *In any proceeding arising from the provisions of sections 2*
15 *to 23, inclusive, of this act, the burden of proving an exemption or*
16 *an exception from any provision of sections 2 to 23, inclusive, of*
17 *this act is upon the person or grant writing service claiming the*
18 *exemption or exception.*

19 **Sec. 20.** *A buyer injured by a violation of sections 2 to 23,*
20 *inclusive, of this act or by a breach by a grant writing service of a*
21 *contract subject to the provisions of sections 2 to 23, inclusive, of*
22 *this act, may bring an action for recovery of damages, for*
23 *injunctive relief or for both recovery of damages and injunctive*
24 *relief. Judgment for damages must be entered for actual damages,*
25 *but in no case for less than the amount paid by the buyer to the*
26 *grant writing service, plus reasonable attorney's fees and costs. If*
27 *the court deems it proper, the court may award punitive damages.*

28 **Sec. 21.** *1. Except as otherwise provided in subsection 2, a*
29 *person who violates any provision of sections 2 to 23, inclusive, of*
30 *this act is guilty of a category B felony and shall be punished as*
31 *provided in NRS 193.130.*

32 **2.** *A person who breaches a contract subject to the provisions*
33 *of sections 2 to 23, inclusive, of this act is not guilty of a category*
34 *B felony solely because of the breach.*

35 **Sec. 22.** *1. The provisions of sections 2 to 23, inclusive, of*
36 *this act are not exclusive and do not relieve the parties or contracts*
37 *subject thereto from compliance with any other applicable*
38 *provision of law.*

39 **2.** *The remedies provided in sections 20 and 21 of this act for*
40 *a violation of any provision of sections 2 to 23, inclusive, of this*
41 *act are in addition to any other procedures or remedies for any*
42 *violation or conduct provided for in any other law.*

43 **3.** *Any violation of sections 2 to 23, inclusive, of this act*
44 *constitutes a deceptive trade practice for the purposes of NRS*
45 *598.0903 to 598.0999, inclusive.*



1 **Sec. 23.** *The Division shall adopt such regulations as are*
2 *necessary to carry out the provisions of sections 2 to 23, inclusive,*
3 *of this act.*

4 **Sec. 24.** NRS 599B.010 is hereby amended to read as follows:

5 599B.010 As used in this chapter, unless the context otherwise
6 requires:

7 1. "Chance promotion" means any plan in which premiums are
8 distributed by random or chance selection.

9 2. "Commissioner" means the Commissioner of Consumer
10 Affairs.

11 3. "Consumer" means a person who is solicited by a seller or
12 salesperson.

13 4. "Division" means the Consumer Affairs Division of the
14 Department of Business and Industry.

15 5. "Donation" means a promise, grant or pledge of money,
16 credit, property, financial assistance or other thing of value given in
17 response to a solicitation by telephone, including, but not limited to,
18 a payment or promise to pay in consideration for a performance,
19 event or sale of goods or services. The term does not include
20 volunteer services, government grants or contracts or a payment by
21 members of any organization of membership fees, dues, fines or
22 assessments or for services rendered by the organization to those
23 persons, if:

24 (a) The fees, dues, fines, assessments or services confer a bona
25 fide right, privilege, professional standing, honor or other direct
26 benefit upon the member; and

27 (b) Membership in the organization is not conferred solely in
28 consideration for making a donation in response to a solicitation.

29 6. "Goods or services" means ~~[any property.]~~ :

30 (a) *Any property or product, whether* tangible or intangible ~~[-~~
31 ~~real, personal or mixed, and any other article, commodity or thing]~~ ;

32 (b) *Any service, including, without limitation, financial*
33 *service;*

34 (c) *A loan or any other extension of credit;*

35 (d) *Insurance;*

36 (e) *Any investment or opportunity for investment;*

37 (f) *A prize, bonus, award, gift or any other inducement to act;*
38 *or*

39 (g) *Anything* of value.

40 7. "Premium" includes any prize, bonus, award, gift or any
41 other similar inducement or incentive to purchase.

42 8. "Recovery service" means a business or other practice
43 whereby a person represents or implies that he or she will, for a fee,
44 recover any amount of money that a consumer has provided to a



1 seller or salesperson pursuant to a solicitation governed by the
2 provisions of this chapter.

3 9. "Salesperson" means any person:

4 (a) Employed or authorized by a seller to sell, or to attempt to
5 sell, goods or services by telephone;

6 (b) Retained by a seller to provide consulting services relating to
7 the management or operation of the seller's business; or

8 (c) Who communicates on behalf of a seller with a consumer:

9 (1) In the course of a solicitation by telephone; or

10 (2) For the purpose of verifying, changing or confirming an
11 order,

12 ➤ except that a person is not a salesperson if his or her only
13 function is to identify a consumer by name only and he or she
14 immediately refers the consumer to a salesperson.

15 10. Except as otherwise provided in subsection 11, "seller"
16 means any person who, on his or her own behalf, causes or attempts
17 to cause a solicitation by telephone to be made through the use of
18 one or more salespersons or any automated dialing announcing
19 device under any of the following circumstances:

20 (a) The person initiates contact by telephone with a consumer
21 and represents or implies:

22 (1) That a consumer who buys one or more goods or services
23 will receive additional goods or services, whether or not of the same
24 type as purchased, without further cost, except for actual postage or
25 common carrier charges;

26 (2) That a consumer will or has a chance or opportunity to
27 receive a premium;

28 (3) That the items for sale are gold, silver or other precious
29 metals, diamonds, rubies, sapphires or other precious stones, or any
30 interest in oil, gas or mineral fields, wells or exploration sites or any
31 other investment opportunity;

32 (4) That the product offered for sale is information or
33 opinions relating to sporting events;

34 (5) *That the product offered for sale is the services of a*
35 *grant writing service, as that term is defined in section 7 of this*
36 *act;*

37 (6) That the product offered for sale is the services of a
38 recovery service; or

39 ~~(6)~~ (7) That the consumer will receive a premium or goods
40 or services if he or she makes a donation;

41 (b) The solicitation by telephone is made by the person in
42 response to inquiries from a consumer generated by a notification or
43 communication sent or delivered to the consumer that represents or
44 implies:



(1) That the consumer has been in any manner specially selected to receive the notification or communication or the offer contained in the notification or communication;

(2) That the consumer will receive a premium if the recipient calls the person;

(3) That if the consumer buys one or more goods or services from the person, the consumer will also receive additional or other goods or services, whether or not the same type as purchased, without further cost or at a cost that the person represents or implies is less than the regular price of the goods or services;

(4) That the product offered for sale is the services of a recovery service; or

(5) That the consumer will receive a premium or goods or services if he or she makes a donation; or

(c) The solicitation by telephone is made by the person in response to inquiries generated by advertisements that represent or imply that the person is offering to sell any:

(1) Gold, silver or other metals, including coins, diamonds, rubies, sapphires or other stones, coal or other minerals or any interest in oil, gas or other mineral fields, wells or exploration sites, or any other investment opportunity;

(2) Information or opinions relating to sporting events; or

(3) Services of a recovery service.

11. "Seller" does not include:

(a) A person licensed pursuant to chapter 90 of NRS when soliciting offers, sales or purchases within the scope of his or her license.

(b) A person licensed pursuant to chapter 119A, 119B, 624, 645 or 696A of NRS when soliciting sales within the scope of his or her license.

(c) A person licensed as an insurance broker, agent or solicitor when soliciting sales within the scope of his or her license.

(d) Any solicitation of sales made by the publisher of a newspaper or magazine or by an agent of the publisher pursuant to a written agreement between the agent and publisher.

(e) A broadcaster soliciting sales who is licensed by any state or federal authority, if the solicitation is within the scope of the broadcaster's license.

(f) A person who solicits a donation from a consumer when:

(1) The person represents or implies that the consumer will receive a premium or goods or services with an aggregated fair market value of 2 percent of the donation or \$50, whichever is less; or

(2) The consumer provides a donation of \$50 or less in response to the solicitation.



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(g) A charitable organization which is registered or approved to conduct a lottery pursuant to chapter 462 of NRS.

(h) A public utility or motor carrier which is regulated pursuant to chapter 704 or 706 of NRS, or by an affiliate of such a utility or motor carrier, if the solicitation is within the scope of its certificate or license.

(i) A utility which is regulated pursuant to chapter 710 of NRS, or by an affiliate of such a utility.

(j) A person soliciting the sale of books, recordings, videocassettes, software for computer systems or similar items through:

(1) An organization whose method of sales is governed by the provisions of Part 425 of Title 16 of the Code of Federal Regulations relating to the use of negative option plans by sellers in commerce;

(2) The use of continuity plans, subscription arrangements, arrangements for standing orders, supplements, and series arrangements pursuant to which the person periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis and has the opportunity to review the merchandise for at least 10 days and return it for a full refund within 30 days after it is received; or

(3) An arrangement pursuant to which the person ships merchandise to a consumer who has consented in advance to receive the merchandise and has the opportunity to review the merchandise for at least 10 days and return it for a full refund within 30 days after it is received.

(k) A person who solicits sales by periodically publishing and delivering a catalog to consumers if the catalog:

(1) Contains a written description or illustration of each item offered for sale and the price of each item;

(2) Includes the business address of the person;

(3) Includes at least 24 pages of written material and illustrations;

(4) Is distributed in more than one state; and

(5) Has an annual circulation by mailing of not less than 250,000.

(l) A person soliciting without the intent to complete and who does not complete, the sales transaction by telephone but completes the sales transaction at a later face-to-face meeting between the solicitor and the consumer, if the person, after soliciting a sale by telephone, does not cause another person to collect the payment from or deliver any goods or services purchased to the consumer.

(m) Any commercial bank, bank holding company, subsidiary or affiliate of a bank holding company, trust company, savings and



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1 loan association, credit union, industrial loan company, personal
2 property broker, consumer finance lender, commercial finance
3 lender, or insurer subject to regulation by an official or agency of
4 this State or of the United States, if the solicitation is within the
5 scope of the certificate or license held by the entity.

6 (n) A person holding a certificate of authority issued pursuant to
7 chapter 452 of NRS when soliciting sales within the scope of the
8 certificate.

9 (o) A person licensed pursuant to chapter 689 of NRS when
10 soliciting sales within the scope of his or her license.

11 (p) A person soliciting the sale of services provided by a video
12 service provider subject to regulation pursuant to chapter 711 of
13 NRS.

14 (q) A person soliciting the sale of agricultural products, if the
15 solicitation is not intended to and does not result in a sale of more
16 than \$100 that is to be delivered to one address. As used in this
17 paragraph, "agricultural products" has the meaning ascribed to it in
18 NRS 587.290.

19 (r) A person who has been operating, for at least 2 years, a retail
20 business establishment under the same name as that used in
21 connection with the solicitation of sales by telephone if, on a
22 continuing basis:

23 (1) Goods are displayed and offered for sale or services are
24 offered for sale and provided at the person's business establishment;
25 and

26 (2) At least 50 percent of the person's business involves the
27 buyer obtaining such goods or services at the person's business
28 establishment.

29 (s) A person soliciting only the sale of telephone answering
30 services to be provided by the person or his or her employer.

31 (t) A person soliciting a transaction regulated by the Commodity
32 Futures Trading Commission, if:

33 (1) The person is registered with or temporarily licensed by
34 the Commission to conduct that activity pursuant to the Commodity
35 Exchange Act, 7 U.S.C. §§ 1 et seq.; and

36 (2) The registration or license has not expired or been
37 suspended or revoked.

38 (u) A person who contracts for the maintenance or repair of
39 goods previously purchased from the person:

40 (1) Making the solicitation; or

41 (2) On whose behalf the solicitation is made.

42 (v) A person to whom a license to operate an information
43 service or a nonrestricted gaming license, which is current and valid,
44 has been issued pursuant to chapter 463 of NRS when soliciting
45 sales within the scope of his or her license.



(w) A person who solicits a previous customer of the business on whose behalf the call is made if the person making the call:

(1) Does not offer the customer any premium in connection with the sale;

(2) Is not selling an investment or an opportunity for an investment that is not registered with any state or federal authority; and

(3) Is not regularly engaged in telephone sales.

(x) A person who solicits the sale of livestock.

(y) An issuer which has a class of securities that is listed on the New York Stock Exchange, the American Stock Exchange or the National Market System of the National Association of Securities Dealers Automated Quotation System.

(z) A subsidiary of an issuer that qualifies for exemption pursuant to paragraph (y) if at least 60 percent of the voting power of the shares of the subsidiary is owned by the issuer.

Sec. 25. NRS 599B.255 is hereby amended to read as follows:

599B.255 1. Except as otherwise provided in NRS 599B.213, the Attorney General or the district attorney of any county in this state may prosecute a person who willfully violates, either directly or indirectly, the provisions of this chapter. ~~Except as otherwise provided in subsection 3, such a person:~~

~~—(a) For the first offense within 10 years, is guilty of a misdemeanor;~~

~~—(b) For the second offense within 10 years, is guilty of a gross misdemeanor;~~

~~—(c) For the third and all subsequent offenses within 10 years, is guilty of a category D felony and shall be punished as provided in NRS 193.130, or by a fine of not more than \$50,000, or by both fine and the punishment provided in NRS 193.130.~~

~~—2. Any offense which occurs 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 1 when evidenced by a conviction, without regard to the sequence of the offenses and convictions.~~

~~—3.]~~ A person who violates any provision of ~~[NRS 599B.080]~~ *this chapter* is guilty of a category ~~[D]~~ *B* felony and shall be punished as provided in NRS 193.130, or by a fine of *not less than the amount lost by all buyers who are injured by the violation plus an additional amount of not less than \$10,000 and* not more than \$50,000, or by both fine and the punishment provided in NRS 193.130.

~~[4.]~~ 2. Property or proceeds attributable to any violation pursuant to the provisions of this section are subject to forfeiture in the manner provided by NRS 179.1156 to 179.121, inclusive.



1 **Sec. 26.** This act becomes effective on July 1, 2011.

③

