

**Amendment No. 782**

Senate Amendment to Assembly Bill No. 361 First Reprint (BDR 52-320)

**Proposed by:** Senate Committee on Commerce, Labor and Energy

**Amends:** Summary: No Title: No 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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

JFD/EGO



Date: 5/19/2017

A.B. No. 361—Revises provisions governing business practices. (BDR 52-320)





## ASSEMBLY BILL NO. 361—ASSEMBLYMAN CARRILLO

MARCH 20, 2017

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing business practices. (BDR 52-320)

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 business practices; making the charging of certain fees a deceptive trade practice; revising provisions governing deceptive trade practices relating to gift certificates or gift cards; providing a penalty; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law defines various activities involving businesses and occupations that constitute deceptive trade practices. (NRS 598.0915-598.0925) If a person engages in a deceptive trade practice, the person may be subject to restraint by injunction and the imposition of civil and criminal penalties. (NRS 598.0979, 598.0985, 598.0999)

**Section 1.7** of this bill makes it a deceptive trade practice for a person, in the course of his or her business or occupation, to charge a fee to update or change records relating to a person, including billing or credit information, including, in circumstances in which the person requesting the update or change chooses to communicate about the update or change by speaking with a natural person by telephone in lieu of using an automated or computerized telephone system.

Existing law makes it a deceptive trade practice for a person, in the course of his or her business or occupation, to issue a gift certificate that expires on a certain date unless the expiration date of the gift certificate or a telephone number for obtaining balance or expiration information is printed on the front or back of the gift certificate in at least 10-point font. (NRS 598.0921) **Section 1** of this bill makes it a deceptive trade practice to offer a free gift certificate or gift card as part of a promotion or incentive to potential customers if ~~if (1) the offer expires less than 90 days after the date on which the offer is made; or (2) the person does not print~~ **the promotion is redeemable only by mail, unless** the expiration date of the offer **is printed** plainly and conspicuously on ~~the front of~~ any written materials concerning the offer provided to the recipient of the offer.

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 shall not, in the course of the person's business or occupation, offer to provide, free of charge, a gift certificate or gift card as part of a promotion or incentive to potential customers if the offer expires less than 90 days after the date on which the offer is made.~~

~~2. If a person, in the course of the person's business or occupation, offers to provide, free of charge, a gift certificate or gift card as part of a promotion or incentive to potential customers, the person shall ensure that the expiration date of the offer is printed:~~

~~(a) Plainly and conspicuously in at least 12 point bold font on the front of any brochure, leaflet, pamphlet, packaging, advertisement or other written material provided to the recipient of the offer which contains information concerning the offer; and~~

~~(b) In such a manner that the print is readily visible to the recipient of the offer before the recipient becomes a customer.~~

~~3. 1. A person shall not, in the course of the person's business or occupation, offer to provide a gift certificate or gift card, free of charge, as part of a promotion or incentive to potential customers if the promotion or incentive is redeemable only by mail, unless the expiration date of the offer is printed plainly and conspicuously in 12-point bold font on any brochure, leaflet, pamphlet, packaging, advertisement or other written material provided to the recipient of the offer which contains information concerning the offer. This subsection does not apply to an offer upon which the gift certificate or gift card will be provided directly to a potential customer.~~

~~2. A person engages in a "deceptive trade practice" if the person violates subsection 1. for 2.~~

**Sec. 1.3.** 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, *and section 1 of this act* have the meanings ascribed to them in those sections.

**Sec. 1.7.** 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.

*13. Charges a fee to a person to change or update any record, including, without limitation, billing or credit information, which relates to the person requesting the change or update, including, without limitation, in circumstances in which that person chooses to communicate regarding the change or update by speaking to a natural person by telephone in lieu of using an automated or computerized telephone system.*

1       **Sec. 2.** (Deleted by amendment.)

2       **Sec. 2.1.** NRS 598.0953 is hereby amended to read as follows:

3       598.0953 1. Evidence that a person has engaged in a deceptive trade  
4 practice is prima facie evidence of intent to injure competitors and to destroy or  
5 substantially lessen competition.

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

10       **Sec. 2.2.** NRS 598.0955 is hereby amended to read as follows:

11       598.0955 1. The provisions of NRS 598.0903 to 598.0999, inclusive, **and**  
12 **section 1 of this act** do not apply to:

13       (a) Conduct in compliance with the orders or rules of, or a statute administered  
14 by, a federal, state or local governmental agency.

15       (b) Publishers, including outdoor advertising media, advertising agencies,  
16 broadcasters or printers engaged in the dissemination of information or  
17 reproduction of printed or pictorial matter who publish, broadcast or reproduce  
18 material without knowledge of its deceptive character.

19       (c) Actions or appeals pending on July 1, 1973.

20       2. The provisions of NRS 598.0903 to 598.0999, inclusive, **and section 1 of**  
21 **this act** do not apply to the use by a person of any service mark, trademark,  
22 certification mark, collective mark, trade name or other trade identification which  
23 was used and not abandoned prior to July 1, 1973, if the use was in good faith and  
24 is otherwise lawful except for the provisions of NRS 598.0903 to 598.0999,  
25 inclusive **H**, **and section 1 of this act**.

26       **Sec. 2.3.** NRS 598.0963 is hereby amended to read as follows:

27       598.0963 1. Whenever the Attorney General is requested in writing by the  
28 Commissioner or the Director to represent him or her in instituting a legal  
29 proceeding against a person who has engaged or is engaging in a deceptive trade  
30 practice, the Attorney General may bring an action in the name of the State of  
31 Nevada against that person on behalf of the Commissioner or Director.

32       2. The Attorney General may institute criminal proceedings to enforce the  
33 provisions of NRS 598.0903 to 598.0999, inclusive **H**, **and section 1 of this act**.  
34 The Attorney General is not required to obtain leave of the court before instituting  
35 criminal proceedings pursuant to this subsection.

36       3. If the Attorney General has reason to believe that a person has engaged or  
37 is engaging in a deceptive trade practice, the Attorney General may bring an action  
38 in the name of the State of Nevada against that person to obtain a temporary  
39 restraining order, a preliminary or permanent injunction, or other appropriate relief.

40       4. If the Attorney General has cause to believe that a person has engaged or is  
41 engaging in a deceptive trade practice, the Attorney General may issue a subpoena  
42 to require the testimony of any person or the production of any documents, and may  
43 administer an oath or affirmation to any person providing such testimony. The  
44 subpoena must be served upon the person in the manner required for service of  
45 process in this State or by certified mail with return receipt requested. An employee  
46 of the Attorney General may personally serve the subpoena.

47       **Sec. 2.4.** NRS 598.0967 is hereby amended to read as follows:

48       598.0967 1. The Commissioner and the Director, in addition to other  
49 powers conferred upon them by NRS 598.0903 to 598.0999, inclusive, **and section**  
50 **1 of this act**, may issue subpoenas to require the attendance of witnesses or the  
51 production of documents, conduct hearings in aid of any investigation or inquiry  
52 and prescribe such forms and adopt such regulations as may be necessary to  
53 administer the provisions of NRS 598.0903 to 598.0999, inclusive **H**, **and section**

1 *1 of this act.* Such regulations may include, without limitation, provisions  
2 concerning the applicability of the provisions of NRS 598.0903 to 598.0999,  
3 inclusive, *and section 1 of this act* to particular persons or circumstances.

4 2. Except as otherwise provided in this subsection, service of any notice or  
5 subpoena must be made by certified mail with return receipt or as otherwise  
6 allowed by law. An employee of the Consumer Affairs Division of the Department  
7 of Business and Industry may personally serve a subpoena issued pursuant to this  
8 section.

9 **Sec. 2.5.** NRS 598.0971 is hereby amended to read as follows:

10 598.0971 1. If, after an investigation, the Commissioner has reasonable  
11 cause to believe that any person has been engaged or is engaging in any deceptive  
12 trade practice in violation of NRS 598.0903 to 598.0999, inclusive, *and section 1*  
13 *of this act*, the Commissioner may issue an order directed to the person to show  
14 cause why the Director should not order the person to cease and desist from  
15 engaging in the practice and to pay an administrative fine. The order must contain a  
16 statement of the charges and a notice of a hearing to be held thereon. The order  
17 must be served upon the person directly or by certified or registered mail, return  
18 receipt requested.

19 2. An administrative hearing on any action brought by the Commissioner  
20 must be conducted before the Director or his or her designee.

21 3. If, after conducting a hearing pursuant to the provisions of subsection 2, the  
22 Director or his or her designee determines that the person has violated any of the  
23 provisions of NRS 598.0903 to 598.0999, inclusive, *and section 1 of this act*, or if  
24 the person fails to appear for the hearing after being properly served with the  
25 statement of charges and notice of hearing, the Director or his or her designee shall  
26 issue an order setting forth his or her findings of fact concerning the violation and  
27 cause to be served a copy thereof upon the person and any intervener at the hearing.  
28 If the Director or his or her designee determines in the report that such a violation  
29 has occurred, he or she may order the violator to:

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

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

39 (c) Provide restitution for any money or property improperly received or  
40 obtained as a result of the violation; and

41 (d) Impose an administrative fine of \$1,000 or treble the amount of restitution  
42 ordered, whichever is greater.

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

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

51 5. If a person fails to comply with any provision of an order issued pursuant  
52 to subsection 3, the Commissioner or the Director may, through the Attorney  
53 General, at any time after 30 days after the service of the order, cause an action to

be instituted in the district court of the county wherein the person resides or has his or her principal place of business requesting the court to enforce the provisions of the order or to provide any other appropriate injunctive relief.

6. If the court finds that:

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

(b) The proceedings by the Director or his or her designee concerning the written report and any order issued pursuant to subsection 3 are in the interest of the public; and

(c) The findings of the Director or his or her designee are supported by the weight of the evidence,

the court shall issue an order enforcing the provisions of the order of the Director or his or her designee.

7. An order issued pursuant to subsection 6 may include:

(a) A provision requiring the payment to the Consumer Affairs Division of the Department of Business and Industry of a penalty of not more than \$5,000 for each act amounting to a failure to comply with the Director's or designee's order;

(b) An order that the person cease doing business within this State; and

(c) Such injunctive or other equitable or extraordinary relief as is determined appropriate by the court.

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

9. Upon the violation of any judgment, order or decree issued pursuant to subsection 6 or 7, the Commissioner, after a hearing thereon, may proceed in accordance with the provisions of NRS 598.0999.

**Sec. 2.6.** NRS 598.0985 is hereby amended to read as follows:

598.0985 Notwithstanding the requirement of knowledge as an element of a deceptive trade practice, and notwithstanding the enforcement powers granted to the Commissioner or Director pursuant to NRS 598.0903 to 598.0999, inclusive, **and section 1 of this act**, whenever the district attorney of any county has reason to believe that any person is using, has used or is about to use any deceptive trade practice, knowingly or otherwise, he or she may bring an action in the name of the State of Nevada against that person to obtain a temporary or permanent injunction against the deceptive trade practice.

**Sec. 2.7.** NRS 598.0993 is hereby amended to read as follows:

598.0993 The court in which an action is brought pursuant to NRS 598.0979 and 598.0985 to 598.099, inclusive, may make such additional orders or judgments as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any deceptive trade practice which violates any of the provisions of NRS 598.0903 to 598.0999, inclusive, **and section 1 of this act**, but such additional orders or judgments may be entered only after a final determination has been made that a deceptive trade practice has occurred.

**Sec. 2.8.** NRS 598.0999 is hereby amended to read as follows:

598.0999 1. Except as otherwise provided in NRS 598.0974, a person who violates a court order or injunction issued pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, **and section 1 of this act**, upon a complaint brought by the Commissioner, the Director, the district attorney of any county of this State or the Attorney General shall forfeit and pay to the State General Fund a civil penalty of not more than \$10,000 for each violation. For the purpose of this section, the court issuing the order or injunction retains jurisdiction over the action or proceeding. Such civil penalties are in addition to any other penalty or remedy available for the enforcement of the provisions of NRS 598.0903 to 598.0999, inclusive **H**, **and section 1 of this act**.



2. Except as otherwise provided in NRS 598.0974, in any action brought pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, *and section 1 of this act*, if the court finds that a person has willfully engaged in a deceptive trade practice, the Commissioner, the Director, the district attorney of any county in this State or the Attorney General bringing the action may recover a civil penalty not to exceed \$5,000 for each violation. The court in any such action may, in addition to any other relief or reimbursement, award reasonable attorney's fees and costs.

3. A natural person, firm, or any officer or managing agent of any corporation or association who knowingly and willfully engages in a deceptive trade practice:

(a) For the first offense, is guilty of a misdemeanor.

(b) For the second offense, is guilty of a gross misdemeanor.

(c) For the third and all subsequent offenses, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

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

**Sec. 2.9.** 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

1 (e) A deceptive trade practice as defined in NRS 598.0915 to 598.0925,  
2 inclusive **H**, *and section 1 of this act.*

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

4 (a) Any damages that the claimant has sustained;

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

6 (c) The claimant's costs in the action and reasonable attorney's fees.

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

9 **Sec. 3.** The provisions of section 1 of this act apply only to gift certificate  
10 and gift card offers made on or after July 1, 2017.

11 **Sec. 4.** This act becomes effective on July 1, 2017.