

SENATE BILL NO. 400—COMMITTEE ON FINANCE

(ON BEHALF OF THE OFFICE OF FINANCE
IN THE OFFICE OF THE GOVERNOR)

MARCH 26, 2021

Referred to Committee on Natural Resources

SUMMARY—Makes various changes to certain unlawful acts relating to consumer protection. (BDR 51-1101)

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; revising the penalties for certain unlawful acts relating to weights and measures, public weighing, petroleum products and advertisements of motor vehicle fuel and petroleum products; requiring the State Sealer of Consumer Equitability to adopt certain regulations; establishing procedures for an administrative hearing in certain circumstances; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law: (1) makes it unlawful to commit certain acts relating to weights and measures, public weighing, petroleum products and advertisements of motor vehicle fuel and petroleum products; and (2) prescribes certain criminal penalties for the commission of such unlawful acts. (NRS 581.415, 581.445, 582.300, 582.320, 590.150, 590.330) Existing law also: (1) authorizes the State Sealer of Consumer Equitability to establish a schedule of and impose civil penalties on certain persons who commit such unlawful acts relating to weights and measures, public weighing and advertisements of motor vehicle fuel and petroleum products; and (2) affords any person subject to such a civil penalty the right to notice, an administrative hearing and judicial review of the administrative decision. (NRS 581.415, 581.417, 582.300, 582.310, 590.322, 590.324)

Sections 1, 2, 7 and 8 of this bill make various changes to the penalties for the commission of unlawful acts relating to weights and measures, public weighing, petroleum products and advertisements of motor vehicle fuel and petroleum products by: (1) expanding the application to certain persons who may commit such unlawful acts; (2) adding certain elements of intent; (3) revising the amounts of certain fines; and (4) decreasing certain criminal penalties. **Sections 1, 2, 7 and 8**



also provide that a person, or any officer, agent or employee thereof, who willfully commits such unlawful acts may be punished by: (1) for the first offense, a warning; (2) for the second offense, a misdemeanor with a fine of not less than \$1,000 or not more than \$5,000; and (3) for the third or any subsequent offense, a gross misdemeanor. However, if a person, or an officer, agent or employee thereof, has been convicted three or more times in a 2-year period of any such unlawful act, **sections 1, 2, 7 and 8** provide that the person, officer, agent or employee is guilty of a category E felony.

Existing law establishes that a person who uses or possesses any device which has been altered to facilitate fraud is guilty of a category E felony. (NRS 581.445) **Section 1** of this bill revises the elements of the crime to specify that a person, or an officer, agent or employee thereof, who knowingly uses or possesses a weighing or measuring device which has been altered to facilitate fraud is guilty of a category E felony.

Section 4 of this bill requires State Sealer of Consumer Equitability to adopt regulations establishing a schedule of civil penalties for the commission of certain unlawful acts relating to petroleum products. **Section 5** of this bill establishes procedures for an administrative hearing if requested by a person who is subject to such a civil penalty. **Section 6** of this bill makes a conforming change to indicate the proper placement of **sections 4 and 5** in the Nevada Revised Statutes.

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

Section 1. NRS 581.445 is hereby amended to read as follows:

581.445 1. Except as otherwise provided in subsection 2, a person, *or any officer, agent or employee thereof*, who *willfully* violates any provision of NRS 581.415 : ~~is guilty of a gross misdemeanor and shall be punished;~~

(a) For the first offense, ~~[by imprisonment in the county jail for not more than 6 months, or by a fine of not less than \$500 or more than \$2,000, or by both fine and imprisonment.]~~ *shall be given a warning.*

(b) For ~~[a]~~ *the* second ~~[or subsequent]~~ offense, ~~[by imprisonment in the county jail for not more than 364 days, or] is guilty of a misdemeanor and shall be punished~~ by a fine of not less than ~~[\$2,000]~~ *\$1,000* or more than \$5,000 . ~~[, or by both fine and imprisonment.]~~

(c) For the third or subsequent offense, is guilty of a gross misdemeanor.

2. A person, *or any officer, agent or employee thereof*, who:

(a) ~~Intentionally violates any provision of this chapter or any regulation adopted pursuant thereto;~~

~~—(b)—~~ Is convicted pursuant to subsection 1 more than three times in a 2-year period; or

~~[(e) Uses]~~

(b) Knowingly uses or has in his or her possession any *weighing or measuring* device which has been altered to facilitate fraud,



1 ➡ is guilty of a category E felony and shall be punished as provided
2 in NRS 193.130.

3 **Sec. 2.** NRS 582.320 is hereby amended to read as follows:

4 582.320 1. Except as otherwise provided in subsection 2, a
5 person ~~[who by himself or herself, by a servant or]~~, *or any officer,*
6 ~~agent [; or as the servant] or [agent of another person,]~~ *employee*
7 *thereof, who willfully* violates any provision of this chapter *or any*
8 *regulation adopted pursuant thereto:*

9 (a) *For the first offense, shall be given a warning.*

10 (b) *For the second offense,* is guilty of a ~~[gross]~~ misdemeanor
11 and shall be punished by ~~[imprisonment in the county jail for not~~
12 ~~less than 6 months or more than 364 days, or by]~~ a fine of not less
13 than \$1,000 or more than \$5,000 . ~~[; or by both fine and~~
14 ~~imprisonment.]~~

15 (c) *For the third or subsequent offense, is guilty of a gross*
16 *misdemeanor.*

17 2. A person , ~~[who by himself or herself, by a servant]~~ or *any*
18 *officer,* agent ~~[; or as the servant or agent of another person:~~

19 ~~—(a) Intentionally violates any provision of this chapter or any~~
20 ~~regulation adopted pursuant thereto; or~~

21 ~~—(b) Is]~~ *or employee thereof, who is* convicted pursuant to
22 subsection 1 more than three times in a 2-year period ~~[;~~

23 ➡] is guilty of a category E felony and shall be punished as
24 provided in NRS 193.130.

25 **Sec. 3.** Chapter 590 of NRS is hereby amended by adding
26 thereto the provisions set forth as sections 4 and 5 of this act.

27 **Sec. 4. 1.** *The State Sealer of Consumer Equitability shall*
28 *adopt regulations establishing a schedule of civil penalties for any*
29 *violation of this section, NRS 590.010 to 590.150, inclusive, and*
30 *section 5 of this act.*

31 2. *In addition to any criminal penalty that may be imposed, a*
32 *person who violates any provision of this section, NRS 590.010 to*
33 *590.150, inclusive, or section 5 of this act is subject to a civil*
34 *penalty in accordance with the schedule of civil penalties*
35 *established by the State Sealer of Consumer Equitability pursuant*
36 *to subsection 1.*

37 **Sec. 5. 1.** *A person subject to a civil penalty may request an*
38 *administrative hearing within 10 days after receipt of the notice of*
39 *the civil penalty. The State Sealer of Consumer Equitability or his*
40 *designee shall conduct the hearing after giving appropriate notice*
41 *to the respondent. The decision of the State Sealer of Consumer*
42 *Equitability or his designee is subject to appropriate judicial*
43 *review.*



2. *If the respondent has exhausted his administrative appeals and the civil penalty has been upheld, he shall pay the civil penalty:*

(a) *If no petition for judicial review is filed pursuant to NRS 233B.130, within 40 days after the final decision of the State Sealer of Consumer Equitability; or*

(b) *If a petition for judicial review is filed pursuant to NRS 233B.130 and the civil penalty is upheld, within 10 days after the effective date of the final decision of the court.*

3. *If the respondent fails to pay the civil penalty, a civil action may be brought by the State Sealer of Consumer Equitability in any court of competent jurisdiction to recover the civil penalty. All civil penalties collected pursuant to this chapter must be deposited with the State Treasurer for credit to the State General Fund.*

Sec. 6. NRS 590.020 is hereby amended to read as follows:

590.020 As used in NRS 590.010 to 590.330, inclusive, *and sections 4 and 5 of this act*, unless the context otherwise requires:

1. "Additives" means a substance to be added to a motor oil or lubricating oil to impart or improve desirable properties or to suppress undesirable properties.

2. "Advertising medium" means any sign, printed or written matter, or device for oral or visual communication.

3. "Alternative fuel" includes, without limitation, premium diesel fuel, B-5 diesel fuel, B-10 diesel fuel, B-20 diesel fuel, B-100 diesel fuel, M-85, M-100, E-85, E-100, liquefied petroleum gas, natural gas, reformulated gasoline, gasohol and oxygenated fuel.

4. "Brand name" means a name or logo that is used to identify a business or company.

5. "Grade" means:

(a) "Regular," "midgrade," "plus," "super," "premium" or words of similar meaning when describing a grade designation for gasoline.

(b) "Diesel" or words of similar meaning, including, without limitation, any specific type of diesel, when describing a grade designation for diesel motor fuel.

(c) "M-85," "M-100," "E-85," "E-100" or words of similar meaning when describing a grade designation for alternative fuel.

(d) "Propane," "liquefied petroleum gas," "compressed natural gas," "liquefied natural gas" or words of similar meaning when describing pressurized gases.

6. "Motor vehicle fuel" means a petroleum product or alternative fuel used for internal combustion engines in motor vehicles.



1 7. “Performance rating” means the system adopted by the
2 American Petroleum Institute for the classification of uses for which
3 an oil is designed.

4 8. “Petroleum products” means gasoline, diesel fuel, burner
5 fuel kerosene, lubricating oil, motor oil or any product represented
6 as motor oil or lubricating oil. The term does not include liquefied
7 petroleum gas, natural gas or motor oil additives.

8 9. “Recycled oil” means a petroleum product which is prepared
9 from used motor oil or used lubricating oil. The term includes
10 rerefined oil.

11 10. “Rerefined oil” means used oil which is refined after its
12 previous use to remove from the oil any contaminants acquired
13 during the previous use.

14 11. “Used oil” means any oil which has been refined from
15 crude or synthetic oil and, as a result of use, has become unsuitable
16 for its original purpose because of a loss of its original properties or
17 the presence of impurities, but which may be suitable for another
18 use or economically recycled.

19 12. “Viscosity grade classification” means the measure of an
20 oil’s resistance to flow at a given temperature according to the grade
21 classification system of the Society of Automotive Engineers or
22 other grade classification.

23 **Sec. 7.** NRS 590.150 is hereby amended to read as follows:

24 590.150 1. ~~[Any]~~ *Except as otherwise provided in*
25 *subsection 2, a* person, or any officer, agent or employee thereof,
26 who *willfully* violates any of the provisions of NRS 590.010 to
27 590.140, inclusive, ~~[is guilty of a misdemeanor.]~~ *or any regulation*
28 *adopted pursuant thereto:*

29 *(a) For the first offense, shall be given a warning.*

30 *(b) For the second offense, is guilty of a misdemeanor and*
31 *shall be punished by a fine of not less than \$1,000 or more than*
32 *\$5,000.*

33 *(c) For the third or subsequent offense, is guilty of a gross*
34 *misdemeanor.*

35 2. *A person, or any officer, agent or employee thereof, who is*
36 *convicted pursuant to subsection 1 more than three times in a 2-*
37 *year period is guilty of a category E felony and shall be punished*
38 *as provided in NRS 193.130.*

39 3. Each such person, or any officer, agent or employee thereof,
40 is guilty of a separate offense for each day during any portion of
41 which any violation of any provision of NRS 590.010 to 590.140,
42 inclusive, is committed, continued or permitted by such person, or
43 any officer, agent or employee thereof, and shall be punished as
44 provided in this section.



~~[3.]~~ 4. The selling and delivery of any petroleum product or motor vehicle fuel mentioned in NRS 590.010 to 590.140, inclusive, is prima facie evidence of the representation on the part of the vendor that the quality sold and delivered was the quality bought by the vendee.

Sec. 8. NRS 590.330 is hereby amended to read as follows:

590.330 ~~[Any violation of]~~

1. *Except as otherwise provided in subsection 2, a person, or any officer, agent or employee thereof, who willfully violates the provisions of NRS 590.160 to 590.330, inclusive, ~~[shall be punished:~~*

—1.] or any regulation adopted pursuant thereto:

(a) For the first ~~[conviction, by a fine of not more than \$500.] offense, shall be given a warning.~~

~~[2.]~~ (b) For the second ~~[conviction, for]~~ offense, is guilty of a misdemeanor ~~[.] and shall be punished by a fine of not less than \$1,000 or more than \$5,000.~~

~~[3.]~~ (c) For the third ~~[and]~~ or subsequent ~~[convictions, for]~~ offense, is guilty of a gross misdemeanor.

2. *A person, or any officer, agent or employee thereof, who is convicted pursuant to subsection 1 more than three times in a 2-year period is guilty of a category E felony and shall be punished as provided in NRS 193.130.*

Sec. 9. Notwithstanding the provisions of NRS 218D.430 and 218D.435, a committee, other than the Assembly Standing Committee on Ways and Means and the Senate Standing Committee of Finance, may vote on this act before the expiration of the period prescribed for the return of a fiscal note in NRS 218D.475. This section applies retroactively from and after March 22, 2021.

Sec. 10. This act becomes effective upon passage and approval.

