

**MINUTES OF THE  
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Eighty-first Session  
May 20, 2021**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 9:06 a.m. on Thursday, May 20, 2021, Online and in Room 2134 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Pat Spearman, Chair  
Senator Dina Neal, Vice Chair  
Senator Melanie Scheible  
Senator Roberta Lange  
Senator Joseph P. Hardy  
Senator James A. Settelmeyer  
Senator Keith F. Pickard

**STAFF MEMBERS PRESENT:**

Cesar Melgarejo, Policy Analyst  
Wil Keane, Counsel  
Kim Cadra-Nixon, Committee Secretary

**OTHERS PRESENT:**

Mark Krueger, Chief Deputy Attorney General, Office of the Attorney General  
Edith Duarte, eBay Inc.  
Bryan Wachter, Retail Association of Nevada

CHAIR SPEARMAN:

We open the hearing with Assembly Bill (A.B.) 61.

**ASSEMBLY BILL 61 (2nd Reprint)**: Revises provisions relating to trade practices.  
(BDR 52-424)

MARK KRUEGER (Chief Deputy Attorney General, Office of the Attorney General):  
The intent of A.B. 61 is to amend consumer protection statutes, primarily *Nevada Revised Statutes* (NRS) 598, the Nevada Deceptive Trade Practice Act. These consumer protections are for the benefit of individuals and businesses in this State.

This bill seeks to accomplish several things. It will establish a price gouging prohibition during times of an emergency. We worked with interested stakeholders and made concessions to ensure this provision is limited in scope and duration. This statute only applies when the Governor declares a state of emergency and is only applicable in the geographic area of the emergency. The statute has a fixed end date of 75 days after the declaration of a state of emergency.

Assembly Bill 61 also seeks to harmonize certain criminal penalties of general fraud or theft. We remained mindful of criminal justice reform and worked with stakeholders to align the penalties for theft under the Nevada Deceptive Trade Practice Act.

There should be no statistical increase in the number of cases brought by the Office of the Attorney General. This bill simply allows the Attorney General to bring cases concerning fraud or theft under the Nevada Deceptive Trade Practice Act.

The bill also revises provisions related to administrative hearings and general administrative matters. These sections had no opposition, but it does increase penalties for offenses against minors to mirror those penalties against the elderly. It also ensures violations of the Data Privacy Act are also violations of the Deceptive Trade Practice Act.

Assembly Bill 61 seeks to modify the statute of limitations violations under the Nevada Deceptive Trade Practice Act. It is important to note we did not modify the statute concerning private right of action. Finally, this bill seeks to adjust penalties for deceptive trade practices by telephone. We worked with stakeholders and created a tiered structure for these penalties.

SENATOR HARDY:

There is a preclusion in the bill for charging more than the usual price. Are there any provisions that preclude anyone from limiting the number of items that can be sold to a person?

MR. KRUEGER:

There are no provisions in the bill to limit the number of items sold to a person.

SENATOR HARDY:

People could buyout an entire stock of items and sell these items on the black market without penalties?

MR. KRUEGER:

You are correct, Senator Hardy. There are no provisions in this bill to prohibit this action, but a store could limit the number of items a person may purchase. The person selling these items at above market price would be subject to the provisions in this bill.

SENATOR PICKARD:

Could you provide an example of a similar type of conduct to a Category E felony as described in section 1, subsection 1, paragraph (c)? I am trying to understand if making automatic dialing or robocalls a felony is an anomaly in the law.

MR. KRUEGER:

It is not an anomaly. Robocalls were a misdemeanor in prior legislation, and we are now adding a tiered structure of penalties for this action.

SENATOR PICKARD:

In the Seventy-ninth Legislative Session, Justice James Hardesty lectured us on how the Legislature tends to over punish. At that time, if we could not decide what category a felony should be, we defaulted to a Category B felony. While we have not fallen into that trap, a four-year prison sentence for a business offense causing mental or emotional anguish seems excessive.

A 75-day state of emergency is listed in section 3. What happens if the state of emergency lasts for more than 75 days?

MR. KRUEGER:

Some businesses that use robocalling attempt to defraud individuals. We worked with interested stakeholders and determined it usually takes 75 days for the market to correct. People who take advantage of price gouging tend to stop activity at this timeframe. Emergencies such as fires or earthquakes are more limited in duration and are concentrated in a certain geographic area.

SENATOR PICKARD:

We had two runs on paper goods during the pandemic. How would this bill apply to this past real-world situation?

MR. KRUEGER:

We provided a concession of 75 days based upon a peek back at history and the number of complaints we received. During the second run on paper goods, the supply was starting to catch up and we did not see as many complaints. The shortage was not as severe as it was at the beginning of the pandemic.

SENATOR PICKARD:

It is too bad this bill was not in place at the beginning of the pandemic. If there is no ability to extend the statute beyond 75 days during a state of emergency, we will be left without a remedy. Is there an amendment to this bill? If so, can we consider adding an extension of a state of emergency beyond 75 days?

My last question concerns section 17, subsection 3. What is the reason for the tiered structure for felonies?

MR. KRUEGER:

In the past, the provision only applied misdemeanor penalties for deceptive trade practices. We mirrored the penalty provision of general theft or fraud to the Deceptive Trade Practice Act. Depending on the facts and circumstances of the offense, we can now bring cases under the Deceptive Trade Practice Act or general theft or fraud statutes. We did not have this option prior to this legislation.

SENATOR PICKARD:

This has created an option for the Office of the Attorney General to pursue whichever offense is appropriate for the circumstance.

MR. KRUEGER:

Section 1 amends NRS 597.814, the robocalling offense. This section provides tiered penalties for offenses. Section 17 amends NRS 598, the Deceptive Trade Practice Act and aligns the theft with the general theft provisions and penalties.

SENATOR PICKARD:

Thank you for helping me better understand the bill. I am still uncomfortable with a Category E felony for robocalling. However, I do not think that will prevent me from supporting A.B. 61.

SENATOR SETTELMAYER:

How are the definitions of offense determined?

MR. KRUEGER:

The offenses in section 1, subsection 1, paragraphs (a), (b) and (c) are pertaining to robocalls. Price gouging is measured by dollar amount.

SENATOR SETTELMAYER:

Last year how many telemarketers who made robocalls were prosecuted by the Attorney General?

MR. KRUEGER:

It is difficult to find the people who conduct robocalls. We have participated with multi-state and federal agencies in bringing these telemarketers to justice. We had a recent case that was successful in preventing a large number of robocalls. Technology will soon allow us to trace these callers and this legislation will prepare us to prosecute offenders.

SENATOR SETTELMAYER:

Over the last four years, how many telemarketers who made robocalls were prosecuted by the Attorney General?

MR. KRUEGER:

The prosecution individually within the State has not had a lot of success. I do not have the exact number of cases over the past four years. I assure you, the technology is coming that will enable us to identify telemarketers who make robocalls.

SENATOR SETTELMAYER:

Does the "usual price for that good or service" in section 3, subsection 1, refer to the price prior to the declaration of the emergency?

MR. KRUEGER:

Yes, that is correct. This section also defines what types of goods are included in the provision. We were careful not to affect the cost of goods required to get to the consumer.

SENATOR SETTELMAYER:

Where is this captured in the bill? Can I address Home Depot, Lowes and others who have increased the price of plywood by 235 percent? Tractor parts that cost \$1,200 three months ago are now \$2,400. Where is supply chain increases addressed in A.B. 61?

MR. KRUEGER:

I understand your concern. This was also a concern of the business industry. The bill does not specifically refer to supply chain but the bill does define "usual price" in section 3, subsection 1. If a business can demonstrate the supply chain increase, they are exempt from the provision.

SENATOR SETTELMAYER:

Exemptions from the provision due to supply chain increases are not clear in this bill. I would like to see an amendment to clarify this language.

MR. KRUEGER:

Section 3, subsection 3, paragraphs (c), (d) and (e) ensure the supply chain is not affected by this provision. Only items with amounts known to be considered price gouging will be affected by this provision.

SENATOR SETTELMAYER:

I do not see how these paragraphs support that lumber has increased by 235 percent in the last four months.

SENATOR NEAL:

Will the Office of the Attorney General conduct reporting of unwanted autodialing calls?

MR. KRUEGER:

Some states we work with have reporting capabilities for autodialing calls. We will consider reporting these type of calls.

SENATOR NEAL:

How are the thresholds in section 3 established?

MR. KRUEGER:

Initially we looked at the activities and complaints we received. A percentage increase on a smaller amount is not as significant as a larger percentage increase on a larger amount. We worked with stakeholders to establish a fair standard.

SENATOR NEAL:

How does the "offer to sell" provision in section 3, subsection 4 trigger an action?

MR. KRUEGER:

We are attempting to deter the seller from making the offer because consumers are desperate during an emergency. Our job is to protect consumers from harm.

SENATOR NEAL:

Can we take a more calculated approach based on the behaviors we have seen during the pandemic? How do you determine control and location? Why are internet sales excluded? Were internet sales excluded because the Office of the Attorney General did not know how to deal with them?

MR. KRUEGER:

No, internet sales were not excluded for the reasons you stated. We excluded these provisions because of the interpretation of price gouging statutes in other states. There was a great deal of litigation in other states and this litigation gave us guidance as to what we should include and exclude in statute.

SENATOR NEAL:

It appears you are trying to capture business entities. Internet sellers seem to be excluded where brick-and-mortar businesses are captured by the bill. Internet sellers are taxpayers in our State. Am I correct in my analysis?

MR. KRUEGER:

The language in the bill is intended to capture internet sales; the exclusions are for those types of transactions that occur outside the State. We saw some of those in the complaints and they were addressed by these federal decisions.

SENATOR NEAL:

The definition "which occurs wholly outside the State" in section 3, subsection 5, paragraph (a), is very broad. Section 3, subsection 6, paragraph (b), subparagraph (3) provides for comparisons. Who is conducting the comparison of the usual price versus the excessive price?

MR. KRUEGER:

This provision looks at where there was not a sale of a particular item or service in a 30-day lookback period. If there was no sale, you must figure out a way to determine the price. During the pandemic, the Office of the Attorney General investigated complaints by working with companies to determine if prices reflected a supply chain increase or price gouging.

SENATOR NEAL:

Typically a business can increase prices on an item because it is popular. Are you saying that if you have a price increase on a popular item during a state of emergency, the business falls under scrutiny depending on the range of that cost? During the pandemic, how did you judge if the price increase was considered price gouging?

MR. KRUEGER:

We first looked at spreadsheets of businesses to understand what caused the price increase. Price gouging is tied to the pandemic and the impact on a geographic area. This bill includes only those consumer goods or services that are bought or rendered for personal, family or household purposes, medical supplies and services used for treatment of an illness or services related to the repair of a property. These provisions are defined in section 3, subsection 1, paragraphs (a), (b), (c) and are limiting in nature.

This bill would not apply to a toy that goes up in price during the holidays. The toy is not related to an emergency. Those types of sales will continue. We were cognizant of these concerns when drafting the bill.



SENATOR NEAL:

Who are the provisions in section 5 directed to?

MR. KRUEGER:

This section captures unfair trade practices that victimize minors, just as existing statute applies to crimes against the elderly. We have alleged that certain pharmaceutical companies have targeted the elderly. Section 5 would allow us to capture those same offenses against minors.

SENATOR NEAL:

Section 5, subsection 2, paragraph (e), subparagraph (1) discusses mental anguish of minors. Do the courts determine mental anguish? Section 5, subsection 2, paragraph (e), subparagraph (3) concerns loss of property designated for a minor for specific reasons. How do you make the determination of this section?

MR. KRUEGER:

The courts would make this determination.

SENATOR NEAL:

How do you prove economic well-being as stated in section 5, subsection 2, paragraph (e), subparagraph (5)?

MR. KRUEGER:

Any factual situation can be applied to this provision.

SENATOR NEAL:

It is difficult to prove mental distress in court. Where is mental distress defined in statute? What are the circumstantial factors you expect to see in court? Section 25 states there is no time limit to action brought by the Attorney General against a person alleged of committing a deceptive trade practice in violation of NRS 598. How will this work? Is this action retroactive?

MR. KRUEGER:

This action is not retroactive. We do not affect the statute of limitations for a private right of action for criminal acts. Section 25 is important for our multistate work. Several states have adopted this language. This type of investigation can take many years to conclude.

SENATOR NEAL:

Section 31 assigns broad power to the Consumer's Advocate. Should there be limitations on the Consumer's Advocate? Who oversees this action?

MR. KRUEGER:

This provision is included because we, as the Consumer's Advocate and the Attorney General, have the authority to bring cause of action in support of protecting the public. When we do so, we are able to assert claims on behalf of any other agency, board or commission.

Through the discovery process, we must collect data from the boards or commissions. This statute ensures the boards and commissions are cooperative in providing this information. This information belongs to the State. Since we are asserting the claims on behalf of the State, we provide information in the discovery process. Any information we receive remains statutorily confidential. This is a necessary component to ensure smooth litigation of claims on behalf of the State.

SENATOR HARDY:

There are undefined words in A.B. 61 such as grossly, generally available, unconscionable, unfairly and arbitrarily. The arbitrary nature of the words used in this bill are concerning to me. Politicians often promise more than they can deliver. If I buy something at Walmart and I go to Neiman Marcus, I may think the price is unfair.

MR. KRUEGER:

This is the Nevada Unfair and Deceptive Practice Act we are talking about. While the point is well taken, the inclusion of the term unfair and other words in statute help us capture the types of transactions that are particularly offensive. These actions would categorically fall within that language. This language helps to capture things like notarial fraud.

Politicians do not sell goods or services, they have their own protections and it does not apply to this statute.

SENATOR HARDY:

I am still trying to convey to my children what fair and unfair means.

SENATOR PICKARD:

Can we strengthen the language in section 3, subsection 2 in an amendment?

MR. KRUEGER:

We have completed several amendments to this bill. You are correct, this section was drafted to limit the amount of time to look back and apply usual pricing. This section does not apply to supply chain increases.

SENATOR PICKARD:

We have seen 100 percent increases within a 30-day time period. I suggest the language is strengthened to ensure supply chain impacts are not intended to be included in the definition of price gouging.

CHAIR SPEARMAN:

In 2005, before Hurricane Katrina actually hit, gasoline prices increased from \$2.00 to \$5.00 in a matter of minutes. This is one of the things I think of when considering the definition of price gouging. As Senator Neal stated, it is difficult to prove mental anguish in law.

I would like Mr. Keane to work with those of you with questions and see if they can be resolved today. Will you clarify some of the points raised in the hearing?

WIL KEANE (Counsel):

The language in section 3, subsection 3 is written in the negative and this makes it difficult to read. This subsection tells you when a price for a good or service is not grossly in excess of the usual price.

If you are a person selling a good and you can prove the price qualifies for one of the options in section 3, then your price is not grossly in excess and you are not in violation of this section.

Many questions were asked about the supply chain issue. Regarding these questions, if a piece of plywood is being sold by a retailer for an extra-high cost because that is what it costs the retailer to buy it, I would defend the retailer by looking at section 3, subsection 3, paragraph (c), where it states if the retailer is selling the item for ten percent or less above the sum of the cost and the normal markup for the item.

There are a number of other provisions, all of which address issues that may arise for a seller. The seller only needs to ensure they fall into one of the categories to show they are not participating in price gouging. I will work with those concerned with the language in A.B. 61.

Many questions were asked about the supply chain issue. Regarding these questions, if a piece of plywood is being sold by the retailer for an extra-high cost because that is what it costs the retailer to buy it, I would defend the retailer by looking at section 3, subsection 3, paragraph (c), where it states if the retailer is selling the item for ten percent or less above the sum of the cost and the normal markup for the item.

The language in section 5, subsection 2, paragraph (e) does appear to be subjective, but many of the terms, such as emotional anguish, do exist in other circumstances in the law.

The Director of Business and Industry and the Commissioner of Consumer Affairs have ample regulatory authority to carry out the provisions added in A.B. 61 and NRS 598. If any of the items need to be defined further, we can add language through regulation or amend this bill.

SENATOR HARDY:

When retailers have an inventory of plywood, for example, they must replace their inventory. The replacement price of the inventory will be at an elevated price. A business must charge more for its initial inventory to purchase plywood back to par levels. Replacement costs should be considered in this bill.

EDITH DUARTE (eBay Inc.):

We are in support of A.B. 61. During the early days of the pandemic, eBay Inc. worked with the Office of the Attorney General to ensure listings containing price gouging were prohibited from the eBay site. eBay has a zero tolerance for price gouging in its market place.

Since February 2020, eBay has prohibited products marketed with the term coronavirus because it violated the policy of making unsubstantiated health claims. We will work with the Office of the Attorney General and the Commissioner of Consumer Affairs to prohibit price gouging.

BRYAN WACHTER (Retail Association of Nevada):

The Retail Association of Nevada is in opposition to A.B. 61. Most emergencies do not last 75 days, therefore, the provision would only apply to extreme situations. We do agree there is ambiguity as to what products this bill applies to. It is our belief that section 3, subsection 1, paragraph (a) encompasses all products, a half billion stock-keeping units.

While retailers have the opportunity to prove items are not part of price gouging, this measure will increase the cost of compliance. The cost to prove compliance is not in proportion to the testimony we heard in the hearing of A.B. 61 in the Assembly. The Office of the Attorney General testified they experienced dozens of complaints since the beginning of the pandemic. These provisions are an overreaction without a sufficient sample to provide adequate direction. Retailers saw great changes to the supply chain in the beginning of the pandemic and continue to see challenges.

MR. KEANE:

Senator Hardy raised an excellent point concerning inventory replacement. This is not addressed in section 3, subsection 3, paragraph (c). One can make an argument it is addressed in in section 3, subsection 3, paragraph (a) or (e), but it is not clearly defined. Replacement cost of inventory can be added to section 3, subsection 3, paragraph (c).

MR. KRUEGER:

We are disappointed with the opposition today because we worked with the stakeholders in good faith. We made significant concessions to address their concerns. The idea of tying the price gouging effect to a declaration of a state of emergency provides a trigger point. While this may not be a perfect solution, it is a good and reasonable solution.

The bill intends to last only as long as the emergency. It addresses sellers of goods and services who take advantage of people's desperate need to get critical, necessary items to address the emergency. As Mr. Keane pointed out, A.B. 61 does provide exceptions for supply chain issues.

Senate Committee on Commerce and Labor  
May 20, 2021  
Page 14

CHAIR SPEARMAN:

Mr. Keane, please work with Mr. Krueger and those who had questions on this bill. Please try to get language that works. We only have one day to move this bill forward.

I will close the hearing on A.B. 61. We are adjourned at 11:17 a.m.

RESPECTFULLY SUBMITTED:

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Kim Cadra-Nixon,  
Committee Secretary

APPROVED BY:

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Senator Pat Spearman, Chair

DATE: \_\_\_\_\_

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda