

ASSEMBLY BILL NO. 373—ASSEMBLYMEN GORELOW,
NGUYEN; ANDERSON AND TAYLOR

MARCH 22, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to deceptive trade practices. (BDR 52-773)

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 ~~for mitted material~~ is material to be omitted.

AN ACT relating to deceptive trade practices; clarifying the authority of the Attorney General with respect to a deceptive trade practice; increasing certain civil penalties for engaging in a deceptive trade practice under certain circumstances; revising the statute of limitations for engaging in a deceptive trade practice; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law defines activities that constitute deceptive trade practices and provides for the imposition of civil and criminal penalties against persons who engage in deceptive trade practices. (Chapter 598 of NRS) Existing law authorizes the Attorney General to obtain a temporary restraining order, a preliminary or permanent injunction or other appropriate relief by bringing an action in the name of the State against a person the Attorney General has reason to believe has engaged or is engaging in a deceptive trade practice. (NRS 598.0963) **Section 1** of this bill clarifies that such other appropriate relief which the Attorney General may obtain includes, without limitation, the recovery of a civil penalty, disgorgement, restitution or the recovery of damages as parens patriae.

Existing law authorizes a court or the Director of the Department of Business and Industry or his or her designee, in certain actions and proceedings relating to the enforcement of the provisions prohibiting deceptive trade practices, to impose an additional maximum civil penalty of \$12,500 for each violation if the court or the Director or his or her designee finds that a person has engaged in a deceptive trade practice directed toward an elderly person or a person with a disability. (NRS 598.0973) **Section 1.5** of this bill increases the additional maximum civil penalty to \$25,000 if the deceptive trade practice was directed toward an elderly person.



Existing law authorizes the Commissioner of Consumer Affairs, the Director of the Department of Business and Industry, the district attorney of any county in this State or the Attorney General to recover a civil penalty not to exceed \$5,000 if the court finds that a person has willfully engaged in a deceptive trade practice. (NRS 598.0999) **Section 2** of this bill increases the maximum civil penalty for such a willful violation to \$15,000.

Existing law requires an indictment for the offense of engaging in certain trade practices punishable as a felony to be found, or an information or complaint to be filed, within 4 years after the commission of the offense. (NRS 171.085) **Section 3** of this bill imposes that requirement for all offenses involving the commission of any deceptive trade practice that is punishable as a felony. **Section 4** of this bill clarifies that the amendatory provisions of **section 3** apply to an offense committed: (1) before July 1, 2023, if the applicable statute of limitations has commenced but has not yet expired; and (2) on or after July 1, 2023.

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

Section 1. NRS 598.0963 is hereby amended to read as follows:

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

2. The Attorney General may institute criminal proceedings to enforce the provisions of NRS 598.0903 to 598.0999, inclusive. The Attorney General is not required to obtain leave of the court before instituting criminal proceedings pursuant to this subsection.

3. If the Attorney General has reason to believe that a person has engaged or is engaging in a deceptive trade practice, the Attorney General may bring an action in the name of the State of Nevada against that person to obtain a temporary restraining order, a preliminary or permanent injunction, or other appropriate relief **H**, *including, without limitation, the recovery of a civil penalty, disgorgement, restitution or the recovery of damages:*

(a) As parens patriae of the persons residing this State, with respect to damages sustained directly or indirectly by such persons, or, alternatively, if the court finds in its discretion that the interests of justice so require, as a representative of a class or classes consisting of persons residing in this State who have been damaged directly or indirectly; or

(b) As parens patriae, with respect to direct or indirect damages to the general economy of the State of Nevada or any agency or political subdivision thereof.



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

Sec. 1.5. NRS 598.0973 is hereby amended to read as follows:

598.0973 1. Except as otherwise provided in NRS 598.0974, in any action or proceeding brought pursuant to NRS 598.0903 to 598.0999, inclusive, if the court or the Director or his or her designee finds that a person has engaged in a deceptive trade practice directed toward an elderly person or a person with a disability, the court or the Director or his or her designee may, in addition to any other civil or criminal penalty, impose a civil penalty of :

(a) For a deceptive trade practice directed toward a person with a disability, not more than \$12,500 for each violation.

(b) For a deceptive trade practice directed toward an elderly person, not more than \$25,000 for each violation.

2. In determining whether to impose a civil penalty pursuant to subsection 1, the court or the Director or his or her designee shall consider whether:

(a) The conduct of the person was in disregard of the rights of the elderly person or person with a disability;

(b) The person knew or should have known that his or her conduct was directed toward an elderly person or a person with a disability;

(c) The elderly person or person with a disability was more vulnerable to the conduct of the person because of the age, health, infirmity, impaired understanding, restricted mobility or disability of the elderly person or person with a disability;

(d) The conduct of the person caused the elderly person or person with a disability to suffer actual and substantial physical, emotional or economic damage;

(e) The conduct of the person caused the elderly person or person with a disability to suffer:

(1) Mental or emotional anguish;

(2) The loss of the primary residence of the elderly person or person with a disability;

(3) The loss of the principal employment or source of income of the elderly person or person with a disability;



(4) The loss of money received from a pension, retirement plan or governmental program;

(5) The loss of property that had been set aside for retirement or for personal or family care and maintenance;

(6) The loss of assets which are essential to the health and welfare of the elderly person or person with a disability; or

(7) Any other interference with the economic well-being of the elderly person or person with a disability, including the encumbrance of his or her primary residence or principal source of income; or

(f) Any other factors that the court or the Director or his or her designee deems to be appropriate.

Sec. 2. 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, 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.

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, 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~~ \$15,000 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 an offense involving a loss of property or services valued at \$1,200 or more but less than \$5,000, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

(b) For an offense involving a loss of property or services valued at \$5,000 or more but less than \$25,000, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

(c) For an offense involving a loss of property or services valued at \$25,000 or more but less than \$100,000, is guilty of a category B



felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and by a fine of not more than \$10,000.

(d) For an offense involving a loss of property or services valued at \$100,000 or more, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years, and by a fine of not more than \$15,000.

(e) For any offense other than an offense described in paragraphs (a) to (d), inclusive, is guilty of a misdemeanor.

➤ 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. If a person violates any provision of NRS 598.0903 to 598.0999, inclusive, 598.100 to 598.2801, inclusive, 598.405 to 598.525, inclusive, 598.741 to 598.787, inclusive, 598.840 to 598.966, inclusive, or 598.9701 to 598.9718, 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.

5. 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.



6. In an action brought by the Commissioner or the Attorney General pursuant to subsection 4 or 5, process may be served by an employee of the Consumer Affairs Unit of the Department of Business and Industry or an employee of the Attorney General.

7. As used in this section:

(a) “Property” has the meaning ascribed to it in NRS 193.0225.

(b) “Services” has the meaning ascribed to it in NRS 205.0829.

(c) “Value” means the fair market value of the property or services at the time the deceptive trade practice occurred. The value of a written instrument which does not have a readily ascertainable market value is the greater of the face amount of the instrument less the portion satisfied or the amount of economic loss to the owner of the instrument resulting from the deprivation of the instrument. The trier of fact shall determine the value of all other property whose value is not readily ascertainable, and may, in making that determination, consider all relevant evidence, including evidence of the value of the property to its owner.

Sec. 3. NRS 171.085 is hereby amended to read as follows:

171.085 Except as otherwise provided in NRS 171.080 to 171.084, inclusive, and 171.095, an indictment for:

1. Theft, robbery, burglary, forgery, arson, a violation of NRS 90.570, a violation punishable pursuant to ~~paragraph (c)~~ **paragraphs (a) to (d), inclusive**, of subsection 3 of NRS 598.0999 or a violation of NRS 205.377 must be found, or an information or complaint filed, within 4 years after the commission of the offense.

2. Sexual assault must be found, or an information or complaint filed, within 20 years after the commission of the offense.

3. Sex trafficking must be found, or an information or complaint filed, within 6 years after the commission of the offense.

4. Any felony other than the felonies listed in subsections 1, 2 and 3 must be found, or an information or complaint filed, within 3 years after the commission of the offense.

Sec. 4. The amendatory provisions of section 3 of this act apply to an offense committed:

1. Before July 1, 2023, if the applicable statute of limitations has commenced but has not expired on July 1, 2023.

2. On or after July 1, 2023.

Sec. 5. This act becomes effective on July 1, 2023.

