

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: (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 expiration date of the offer plainly and conspicuously on the front of any written materials concerning the offer provided to the recipient of the offer.



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

1 **Section 1.** Chapter 598 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

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

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

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

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

19 3. *A person engages in a "deceptive trade practice" if the*
20 *person violates subsection 1 or 2.*

21 **Sec. 1.3.** NRS 598.0903 is hereby amended to read as follows:

22 598.0903 As used in NRS 598.0903 to 598.0999, inclusive,
23 *and section 1 of this act*, unless the context otherwise requires, the
24 words and terms defined in NRS 598.0905 to 598.0947, inclusive,
25 *and section 1 of this act* have the meanings ascribed to them in
26 those sections.

27 **Sec. 1.7.** NRS 598.092 is hereby amended to read as follows:

28 598.092 A person engages in a "deceptive trade practice" when
29 in the course of his or her business or occupation he or she:

30 1. Knowingly fails to identify goods for sale or lease as being
31 damaged by water.

32 2. Solicits by telephone or door to door as a lessor or seller,
33 unless the lessor or seller identifies himself or herself, whom he or
34 she represents and the purpose of his or her call within 30 seconds
35 after beginning the conversation.

36 3. Knowingly states that services, replacement parts or repairs
37 are needed when no such services, replacement parts or repairs are
38 actually needed.

39 4. Fails to make delivery of goods or services for sale or lease
40 within a reasonable time or to make a refund for the goods or
41 services, if he or she allows refunds.

42 5. Advertises or offers an opportunity for investment and:



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- 1 (a) Represents that the investment is guaranteed, secured or
2 protected in a manner which he or she knows or has reason to know
3 is false or misleading;
- 4 (b) Represents that the investment will earn a rate of return
5 which he or she knows or has reason to know is false or misleading;
- 6 (c) Makes any untrue statement of a material fact or omits to
7 state a material fact which is necessary to make another statement,
8 considering the circumstances under which it is made, not
9 misleading;
- 10 (d) Fails to maintain adequate records so that an investor may
11 determine how his or her money is invested;
- 12 (e) Fails to provide information to an investor after a reasonable
13 request for information concerning his or her investment;
- 14 (f) Fails to comply with any law or regulation for the marketing
15 of securities or other investments; or
- 16 (g) Represents that he or she is licensed by an agency of the
17 State to sell or offer for sale investments or services for investments
18 if he or she is not so licensed.
- 19 6. Charges a fee for advice with respect to investment of
20 money and fails to disclose:
- 21 (a) That he or she is selling or offering to lease goods or services
22 and, if he or she is, their identity; or
- 23 (b) That he or she is licensed by an agency of any state or of the
24 United States to sell or to offer for sale investments or services for
25 investments or holds any other license related to the service he or
26 she is providing.
- 27 7. Notifies any person, by any means, as a part of an
28 advertising plan or scheme, that he or she has won a prize and that
29 as a condition of receiving the prize he or she must purchase or lease
30 goods or services.
- 31 8. Knowingly misrepresents the legal rights, obligations or
32 remedies of a party to a transaction.
- 33 9. Fails, in a consumer transaction that is rescinded, cancelled
34 or otherwise terminated in accordance with the terms of an
35 agreement, advertisement, representation or provision of law, to
36 promptly restore to a person entitled to it a deposit, down payment
37 or other payment or, in the case of property traded in but not
38 available, the agreed value of the property or fails to cancel within a
39 specified time or an otherwise reasonable time an acquired security
40 interest. This subsection does not apply to a person who is holding a
41 deposit, down payment or other payment on behalf of another if all
42 parties to the transaction have not agreed to the release of the
43 deposit, down payment or other payment.



1 10. Fails to inform customers, if he or she does not allow
2 refunds or exchanges, that he or she does not allow refunds or
3 exchanges by:

- 4 (a) Printing a statement on the face of the lease or sales receipt;
- 5 (b) Printing a statement on the face of the price tag; or
- 6 (c) Posting in an open and conspicuous place a sign at least 8 by
7 10 inches in size with boldface letters,
8 ➔ specifying that no refunds or exchanges are allowed.

9 11. Knowingly and willfully violates NRS 597.7118 or
10 597.7125.

11 12. Knowingly takes advantage of another person's inability
12 reasonably to protect his or her own rights or interests in a consumer
13 transaction when such an inability is due to illiteracy, or to a mental
14 or physical infirmity or another similar condition which manifests
15 itself as an incapability to understand the language or terms of any
16 agreement.

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

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

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

26 598.0953 1. Evidence that a person has engaged in a
27 deceptive trade practice is prima facie evidence of intent to injure
28 competitors and to destroy or substantially lessen competition.

29 2. The deceptive trade practices listed in NRS 598.0915 to
30 598.0925, inclusive, ***and section 1 of this act*** are in addition to and
31 do not limit the types of unfair trade practices actionable at common
32 law or defined as such in other statutes of this State.

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

34 598.0955 1. The provisions of NRS 598.0903 to 598.0999,
35 inclusive, ***and section 1 of this act*** do not apply to:

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

39 (b) Publishers, including outdoor advertising media, advertising
40 agencies, broadcasters or printers engaged in the dissemination of
41 information or reproduction of printed or pictorial matter who
42 publish, broadcast or reproduce material without knowledge of its
43 deceptive character.

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



1 2. The provisions of NRS 598.0903 to 598.0999, inclusive, *and*
2 *section 1 of this act* do not apply to the use by a person of any
3 service mark, trademark, certification mark, collective mark, trade
4 name or other trade identification which was used and not
5 abandoned prior to July 1, 1973, if the use was in good faith and is
6 otherwise lawful except for the provisions of NRS 598.0903 to
7 598.0999, inclusive **H**, *and section 1 of this act*.

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

9 598.0963 1. Whenever the Attorney General is requested in
10 writing by the Commissioner or the Director to represent him or her
11 in instituting a legal proceeding against a person who has engaged
12 or is engaging in a deceptive trade practice, the Attorney General
13 may bring an action in the name of the State of Nevada against that
14 person on behalf of the Commissioner or Director.

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

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

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

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

35 598.0967 1. The Commissioner and the Director, in addition
36 to other powers conferred upon them by NRS 598.0903 to
37 598.0999, inclusive, *and section 1 of this act*, may issue subpoenas
38 to require the attendance of witnesses or the production of
39 documents, conduct hearings in aid of any investigation or inquiry
40 and prescribe such forms and adopt such regulations as may be
41 necessary to administer the provisions of NRS 598.0903 to
42 598.0999, inclusive **H**, *and section 1 of this act*. Such regulations
43 may include, without limitation, provisions concerning the
44 applicability of the provisions of NRS 598.0903 to 598.0999,



1 inclusive, *and section 1 of this act* to particular persons or
2 circumstances.

3 2. Except as otherwise provided in this subsection, service of
4 any notice or subpoena must be made by certified mail with return
5 receipt or as otherwise allowed by law. An employee of the
6 Consumer Affairs Division of the Department of Business and
7 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
11 reasonable cause to believe that any person has been engaged or is
12 engaging in any deceptive trade practice in violation of NRS
13 598.0903 to 598.0999, inclusive, *and section 1 of this act*, the
14 Commissioner may issue an order directed to the person to show
15 cause why the Director should not order the person to cease and
16 desist from engaging in the practice and to pay an administrative
17 fine. The order must contain a statement of the charges and a notice
18 of a hearing to be held thereon. The order must be served upon the
19 person directly or by certified or registered mail, return receipt
20 requested.

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

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

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

37 (b) Pay the costs of conducting the investigation, costs of
38 conducting the hearing, costs of reporting services, fees for experts
39 and other witnesses, charges for the rental of a hearing room if such
40 a room is not available to the Director or his or her designee free of
41 charge, charges for providing an independent hearing officer, if any,
42 and charges incurred for any service of process, if the violator is
43 adjudicated to have committed a violation of NRS 598.0903 to
44 598.0999, inclusive **†**, *and section 1 of this act*;



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

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

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

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

14 5. If a person fails to comply with any provision of an order
15 issued pursuant to subsection 3, the Commissioner or the Director
16 may, through the Attorney General, at any time after 30 days after
17 the service of the order, cause an action to be instituted in the
18 district court of the county wherein the person resides or has his or
19 her principal place of business requesting the court to enforce the
20 provisions of the order or to provide any other appropriate
21 injunctive relief.

22 6. If the court finds that:

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

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

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

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

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

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

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

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

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

43 9. Upon the violation of any judgment, order or decree issued
44 pursuant to subsection 6 or 7, the Commissioner, after a hearing



1 thereon, may proceed in accordance with the provisions of
2 NRS 598.0999.

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

4 598.0985 Notwithstanding the requirement of knowledge as an
5 element of a deceptive trade practice, and notwithstanding the
6 enforcement powers granted to the Commissioner or Director
7 pursuant to NRS 598.0903 to 598.0999, inclusive, *and section 1 of*
8 *this act*, whenever the district attorney of any county has reason to
9 believe that any person is using, has used or is about to use any
10 deceptive trade practice, knowingly or otherwise, he or she may
11 bring an action in the name of the State of Nevada against that
12 person to obtain a temporary or permanent injunction against the
13 deceptive trade practice.

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

15 598.0993 The court in which an action is brought pursuant to
16 NRS 598.0979 and 598.0985 to 598.099, inclusive, may make such
17 additional orders or judgments as may be necessary to restore to any
18 person in interest any money or property, real or personal, which
19 may have been acquired by means of any deceptive trade practice
20 which violates any of the provisions of NRS 598.0903 to 598.0999,
21 inclusive, *and section 1 of this act*, but such additional orders or
22 judgments may be entered only after a final determination has been
23 made that a deceptive trade practice has occurred.

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

25 598.0999 1. Except as otherwise provided in NRS 598.0974,
26 a person who violates a court order or injunction issued pursuant to
27 the provisions of NRS 598.0903 to 598.0999, inclusive, *and section*
28 *1 of this act*, upon a complaint brought by the Commissioner, the
29 Director, the district attorney of any county of this State or the
30 Attorney General shall forfeit and pay to the State General Fund a
31 civil penalty of not more than \$10,000 for each violation. For the
32 purpose of this section, the court issuing the order or injunction
33 retains jurisdiction over the action or proceeding. Such civil
34 penalties are in addition to any other penalty or remedy available for
35 the enforcement of the provisions of NRS 598.0903 to 598.0999,
36 inclusive ~~H~~, *and section 1 of this act*.

37 2. Except as otherwise provided in NRS 598.0974, in any
38 action brought pursuant to the provisions of NRS 598.0903 to
39 598.0999, inclusive, *and section 1 of this act*, if the court finds that
40 a person has willfully engaged in a deceptive trade practice, the
41 Commissioner, the Director, the district attorney of any county in
42 this State or the Attorney General bringing the action may recover a
43 civil penalty not to exceed \$5,000 for each violation. The court in
44 any such action may, in addition to any other relief or
45 reimbursement, award reasonable attorney's fees and costs.



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

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

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

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

9 ➔ The court may require the natural person, firm, or officer or
10 managing agent of the corporation or association to pay to the
11 aggrieved party damages on all profits derived from the knowing
12 and willful engagement in a deceptive trade practice and treble
13 damages on all damages suffered by reason of the deceptive trade
14 practice.

15 4. Any offense which occurred within 10 years immediately
16 preceding the date of the principal offense or after the principal
17 offense constitutes a prior offense for the purposes of subsection 3
18 when evidenced by a conviction, without regard to the sequence of
19 the offenses and convictions.

20 5. If a person violates any provision of NRS 598.0903 to
21 598.0999, inclusive, *and section 1 of this act*, 598.100 to 598.2801,
22 inclusive, 598.305 to 598.395, inclusive, 598.405 to 598.525,
23 inclusive, 598.741 to 598.787, inclusive, or 598.840 to 598.966,
24 inclusive, fails to comply with a judgment or order of any court in
25 this State concerning a violation of such a provision, or fails to
26 comply with an assurance of discontinuance or other agreement
27 concerning an alleged violation of such a provision, the
28 Commissioner or the district attorney of any county may bring an
29 action in the name of the State of Nevada seeking:

30 (a) The suspension of the person's privilege to conduct business
31 within this State; or

32 (b) If the defendant is a corporation, dissolution of the
33 corporation.

34 ➔ The court may grant or deny the relief sought or may order other
35 appropriate relief.

36 6. If a person violates any provision of NRS 228.500 to
37 228.640, inclusive, fails to comply with a judgment or order of any
38 court in this State concerning a violation of such a provision, or fails
39 to comply with an assurance of discontinuance or other agreement
40 concerning an alleged violation of such a provision, the Attorney
41 General may bring an action in the name of the State of Nevada
42 seeking:

43 (a) The suspension of the person's privilege to conduct business
44 within this State; or



1 (b) If the defendant is a corporation, dissolution of the
2 corporation.

3 ➔ The court may grant or deny the relief sought or may order other
4 appropriate relief.

5 **Sec. 2.9.** NRS 41.600 is hereby amended to read as follows:

6 41.600 1. An action may be brought by any person who is a
7 victim of consumer fraud.

8 2. As used in this section, "consumer fraud" means:

9 (a) An unlawful act as defined in NRS 119.330;

10 (b) An unlawful act as defined in NRS 205.2747;

11 (c) An act prohibited by NRS 482.36655 to 482.36667,
12 inclusive;

13 (d) An act prohibited by NRS 482.351; or

14 (e) A deceptive trade practice as defined in NRS 598.0915 to
15 598.0925, inclusive **H**, *and section 1 of this act.*

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

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

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

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

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

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

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

