

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.

~

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:**

1 Existing law defines various activities involving businesses and occupations  
2 that constitute deceptive trade practices. (NRS 598.0915-598.0925) If a person  
3 engages in a deceptive trade practice, the person may be subject to restraint by  
4 injunction and the imposition of civil and criminal penalties. (NRS 598.0979,  
5 598.0985, 598.0999)

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

12 Existing law makes it a deceptive trade practice for a person, in the course of  
13 his or her business or occupation, to issue a gift certificate that expires on a certain  
14 date unless the expiration date of the gift certificate or a telephone number for  
15 obtaining balance or expiration information is printed on the front or back of the  
16 gift certificate in at least 10-point font. (NRS 598.0921) **Section 1** of this bill makes  
17 it a deceptive trade practice to offer a free gift certificate or gift card as part of a  
18 promotion or incentive to potential customers if the promotion is redeemable only  
19 by mail, unless the expiration date of the offer is printed plainly and conspicuously  
20 on any written materials concerning the offer provided to the recipient of the offer.



\* A B 3 6 1 R 2 \*

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 a gift certificate or gift card, free of*  
5 *charge, as part of a promotion or incentive to potential customers*  
6 *if the promotion or incentive is redeemable only by mail, unless*  
7 *the expiration date of the offer is printed plainly and*  
8 *conspicuously in 12-point bold font on any brochure, leaflet,*  
9 *pamphlet, packaging, advertisement or other written material*  
10 *provided to the recipient of the offer which contains information*  
11 *concerning the offer. This subsection does not apply to an offer*  
12 *upon which the gift certificate or gift card will be provided directly*  
13 *to a potential customer.*

14       2. *A person engages in a "deceptive trade practice" if the*  
15 *person violates subsection 1.*

16       **Sec. 1.3.** NRS 598.0903 is hereby amended to read as follows:  
17       598.0903 As used in NRS 598.0903 to 598.0999, inclusive,  
18 *and section 1 of this act*, unless the context otherwise requires, the  
19 words and terms defined in NRS 598.0905 to 598.0947, inclusive,  
20 *and section 1 of this act* have the meanings ascribed to them in  
21 those sections.

22       **Sec. 1.7.** NRS 598.092 is hereby amended to read as follows:  
23       598.092 A person engages in a "deceptive trade practice" when  
24 in the course of his or her business or occupation he or she:

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

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

31       3. Knowingly states that services, replacement parts or repairs  
32 are needed when no such services, replacement parts or repairs are  
33 actually needed.

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

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

38       (a) Represents that the investment is guaranteed, secured or  
39 protected in a manner which he or she knows or has reason to know  
40 is false or misleading;

41       (b) Represents that the investment will earn a rate of return  
42 which he or she knows or has reason to know is false or misleading;



1 (c) Makes any untrue statement of a material fact or omits to  
2 state a material fact which is necessary to make another statement,  
3 considering the circumstances under which it is made, not  
4 misleading;

5 (d) Fails to maintain adequate records so that an investor may  
6 determine how his or her money is invested;

7 (e) Fails to provide information to an investor after a reasonable  
8 request for information concerning his or her investment;

9 (f) Fails to comply with any law or regulation for the marketing  
10 of securities or other investments; or

11 (g) Represents that he or she is licensed by an agency of the  
12 State to sell or offer for sale investments or services for investments  
13 if he or she is not so licensed.

14 6. Charges a fee for advice with respect to investment of  
15 money and fails to disclose:

16 (a) That he or she is selling or offering to lease goods or services  
17 and, if he or she is, their identity; or

18 (b) That he or she is licensed by an agency of any state or of the  
19 United States to sell or to offer for sale investments or services for  
20 investments or holds any other license related to the service he or  
21 she is providing.

22 7. Notifies any person, by any means, as a part of an  
23 advertising plan or scheme, that he or she has won a prize and that  
24 as a condition of receiving the prize he or she must purchase or lease  
25 goods or services.

26 8. Knowingly misrepresents the legal rights, obligations or  
27 remedies of a party to a transaction.

28 9. Fails, in a consumer transaction that is rescinded, cancelled  
29 or otherwise terminated in accordance with the terms of an  
30 agreement, advertisement, representation or provision of law, to  
31 promptly restore to a person entitled to it a deposit, down payment  
32 or other payment or, in the case of property traded in but not  
33 available, the agreed value of the property or fails to cancel within a  
34 specified time or an otherwise reasonable time an acquired security  
35 interest. This subsection does not apply to a person who is holding a  
36 deposit, down payment or other payment on behalf of another if all  
37 parties to the transaction have not agreed to the release of the  
38 deposit, down payment or other payment.

39 10. Fails to inform customers, if he or she does not allow  
40 refunds or exchanges, that he or she does not allow refunds or  
41 exchanges by:

42 (a) Printing a statement on the face of the lease or sales receipt;

43 (b) Printing a statement on the face of the price tag; or

44 (c) Posting in an open and conspicuous place a sign at least 8 by  
45 10 inches in size with boldface letters,



1 ↪ specifying that no refunds or exchanges are allowed.

2 11. Knowingly and willfully violates NRS 597.7118 or  
3 597.7125.

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

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

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

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

19 598.0953 1. Evidence that a person has engaged in a  
20 deceptive trade practice is prima facie evidence of intent to injure  
21 competitors and to destroy or substantially lessen competition.

22 2. The deceptive trade practices listed in NRS 598.0915 to  
23 598.0925, inclusive, *and section 1 of this act* are in addition to and  
24 do not limit the types of unfair trade practices actionable at common  
25 law or defined as such in other statutes of this State.

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

27 598.0955 1. The provisions of NRS 598.0903 to 598.0999,  
28 inclusive, *and section 1 of this act* do not apply to:

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

32 (b) Publishers, including outdoor advertising media, advertising  
33 agencies, broadcasters or printers engaged in the dissemination of  
34 information or reproduction of printed or pictorial matter who  
35 publish, broadcast or reproduce material without knowledge of its  
36 deceptive character.

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

38 2. The provisions of NRS 598.0903 to 598.0999, inclusive, *and*  
39 *section 1 of this act* do not apply to the use by a person of any  
40 service mark, trademark, certification mark, collective mark, trade  
41 name or other trade identification which was used and not  
42 abandoned prior to July 1, 1973, if the use was in good faith and is  
43 otherwise lawful except for the provisions of NRS 598.0903 to  
44 598.0999, inclusive **H**, *and section 1 of this act.*



\* A B 3 6 1 R 2 \*

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

2       598.0963 1. Whenever the Attorney General is requested in  
3 writing by the Commissioner or the Director to represent him or her  
4 in instituting a legal proceeding against a person who has engaged  
5 or is engaging in a deceptive trade practice, the Attorney General  
6 may bring an action in the name of the State of Nevada against that  
7 person on behalf of the Commissioner or Director.

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

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

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

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

28       598.0967 1. The Commissioner and the Director, in addition  
29 to other powers conferred upon them by NRS 598.0903 to  
30 598.0999, inclusive, **and section 1 of this act**, may issue subpoenas  
31 to require the attendance of witnesses or the production of  
32 documents, conduct hearings in aid of any investigation or inquiry  
33 and prescribe such forms and adopt such regulations as may be  
34 necessary to administer the provisions of NRS 598.0903 to  
35 598.0999, inclusive **H**, **and section 1 of this act**. Such regulations  
36 may include, without limitation, provisions concerning the  
37 applicability of the provisions of NRS 598.0903 to 598.0999,  
38 inclusive, **and section 1 of this act** to particular persons or  
39 circumstances.

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



1       **Sec. 2.5.** NRS 598.0971 is hereby amended to read as follows:  
2       598.0971 1. If, after an investigation, the Commissioner has  
3 reasonable cause to believe that any person has been engaged or is  
4 engaging in any deceptive trade practice in violation of NRS  
5 598.0903 to 598.0999, inclusive, *and section 1 of this act*, the  
6 Commissioner may issue an order directed to the person to show  
7 cause why the Director should not order the person to cease and  
8 desist from engaging in the practice and to pay an administrative  
9 fine. The order must contain a statement of the charges and a notice  
10 of a hearing to be held thereon. The order must be served upon the  
11 person directly or by certified or registered mail, return receipt  
12 requested.

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

16       3. If, after conducting a hearing pursuant to the provisions of  
17 subsection 2, the Director or his or her designee determines that the  
18 person has violated any of the provisions of NRS 598.0903 to  
19 598.0999, inclusive, *and section 1 of this act*, or if the person fails  
20 to appear for the hearing after being properly served with the  
21 statement of charges and notice of hearing, the Director or his or her  
22 designee shall issue an order setting forth his or her findings of fact  
23 concerning the violation and cause to be served a copy thereof upon  
24 the person and any intervener at the hearing. If the Director or his or  
25 her designee determines in the report that such a violation has  
26 occurred, he or she may order the violator to:

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

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

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

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

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

44       4. Any person whose pecuniary interests are directly and  
45 immediately affected by an order issued pursuant to subsection 3 or



1 who is aggrieved by the order may petition for judicial review in the  
2 manner provided in chapter 233B of NRS. Such a petition must be  
3 filed within 30 days after the service of the order. The order  
4 becomes final upon the filing of the petition.

5 5. If a person fails to comply with any provision of an order  
6 issued pursuant to subsection 3, the Commissioner or the Director  
7 may, through the Attorney General, at any time after 30 days after  
8 the service of the order, cause an action to be instituted in the  
9 district court of the county wherein the person resides or has his or  
10 her principal place of business requesting the court to enforce the  
11 provisions of the order or to provide any other appropriate  
12 injunctive relief.

13 6. If the court finds that:

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

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

18 (c) The findings of the Director or his or her designee are  
19 supported by the weight of the evidence,  
20 the court shall issue an order enforcing the provisions of the order  
21 of the Director or his or her designee.

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

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

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

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

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

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

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

39 598.0985 Notwithstanding the requirement of knowledge as an  
40 element of a deceptive trade practice, and notwithstanding the  
41 enforcement powers granted to the Commissioner or Director  
42 pursuant to NRS 598.0903 to 598.0999, inclusive, *and section 1 of*  
43 *this act*, whenever the district attorney of any county has reason to  
44 believe that any person is using, has used or is about to use any  
45 deceptive trade practice, knowingly or otherwise, he or she may



1 bring an action in the name of the State of Nevada against that  
2 person to obtain a temporary or permanent injunction against the  
3 deceptive trade practice.

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

5 598.0993 The court in which an action is brought pursuant to  
6 NRS 598.0979 and 598.0985 to 598.099, inclusive, may make such  
7 additional orders or judgments as may be necessary to restore to any  
8 person in interest any money or property, real or personal, which  
9 may have been acquired by means of any deceptive trade practice  
10 which violates any of the provisions of NRS 598.0903 to 598.0999,  
11 inclusive, *and section 1 of this act*, but such additional orders or  
12 judgments may be entered only after a final determination has been  
13 made that a deceptive trade practice has occurred.

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

15 598.0999 1. Except as otherwise provided in NRS 598.0974,  
16 a person who violates a court order or injunction issued pursuant to  
17 the provisions of NRS 598.0903 to 598.0999, inclusive, *and section*  
18 *1 of this act*, upon a complaint brought by the Commissioner, the  
19 Director, the district attorney of any county of this State or the  
20 Attorney General shall forfeit and pay to the State General Fund a  
21 civil penalty of not more than \$10,000 for each violation. For the  
22 purpose of this section, the court issuing the order or injunction  
23 retains jurisdiction over the action or proceeding. Such civil  
24 penalties are in addition to any other penalty or remedy available for  
25 the enforcement of the provisions of NRS 598.0903 to 598.0999,  
26 inclusive *H*, *and section 1 of this act*.

27 2. Except as otherwise provided in NRS 598.0974, in any  
28 action brought pursuant to the provisions of NRS 598.0903 to  
29 598.0999, inclusive, *and section 1 of this act*, if the court finds that  
30 a person has willfully engaged in a deceptive trade practice, the  
31 Commissioner, the Director, the district attorney of any county in  
32 this State or the Attorney General bringing the action may recover a  
33 civil penalty not to exceed \$5,000 for each violation. The court in  
34 any such action may, in addition to any other relief or  
35 reimbursement, award reasonable attorney's fees and costs.

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

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

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

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

44 ➤ The court may require the natural person, firm, or officer or  
45 managing agent of the corporation or association to pay to the





1 aggrieved party damages on all profits derived from the knowing  
2 and willful engagement in a deceptive trade practice and treble  
3 damages on all damages suffered by reason of the deceptive trade  
4 practice.

5 4. Any offense which occurred within 10 years immediately  
6 preceding the date of the principal offense or after the principal  
7 offense constitutes a prior offense for the purposes of subsection 3  
8 when evidenced by a conviction, without regard to the sequence of  
9 the offenses and convictions.

10 5. If a person violates any provision of NRS 598.0903 to  
11 598.0999, inclusive, *and section 1 of this act*, 598.100 to 598.2801,  
12 inclusive, 598.305 to 598.395, inclusive, 598.405 to 598.525,  
13 inclusive, 598.741 to 598.787, inclusive, or 598.840 to 598.966,  
14 inclusive, fails to comply with a judgment or order of any court in  
15 this State concerning a violation of such a provision, or fails to  
16 comply with an assurance of discontinuance or other agreement  
17 concerning an alleged violation of such a provision, the  
18 Commissioner or the district attorney of any county may bring an  
19 action in the name of the State of Nevada seeking:

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

22 (b) If the defendant is a corporation, dissolution of the  
23 corporation.

24 ➤ The court may grant or deny the relief sought or may order other  
25 appropriate relief.

26 6. If a person violates any provision of NRS 228.500 to  
27 228.640, inclusive, fails to comply with a judgment or order of any  
28 court in this State concerning a violation of such a provision, or fails  
29 to comply with an assurance of discontinuance or other agreement  
30 concerning an alleged violation of such a provision, the Attorney  
31 General may bring an action in the name of the State of Nevada  
32 seeking:

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

35 (b) If the defendant is a corporation, dissolution of the  
36 corporation.

37 ➤ The court may grant or deny the relief sought or may order other  
38 appropriate relief.

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

40 41.600 1. An action may be brought by any person who is a  
41 victim of consumer fraud.

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

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

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



- 1 (c) An act prohibited by NRS 482.36655 to 482.36667,  
2 inclusive;
- 3 (d) An act prohibited by NRS 482.351; or
- 4 (e) A deceptive trade practice as defined in NRS 598.0915 to  
5 598.0925, inclusive ~~†~~, *and section 1 of this act.*
- 6 3. If the claimant is the prevailing party, the court shall award  
7 the claimant:
- 8 (a) Any damages that the claimant has sustained;
- 9 (b) Any equitable relief that the court deems appropriate; and
- 10 (c) The claimant's costs in the action and reasonable attorney's  
11 fees.
- 12 4. Any action brought pursuant to this section is not an action  
13 upon any contract underlying the original transaction.
- 14 **Sec. 3.** The provisions of section 1 of this act apply only to gift  
15 certificate and gift card offers made on or after July 1, 2017.
- 16 **Sec. 4.** This act becomes effective on July 1, 2017.

