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OFFICE OF THE ATTORNEY GENERAL
BUREAU OF CONSUMER PROTECTION

RECOMMENDED AMENDMENTS TO SB 399 FROM CONCENSUS GROUP

Add section to NRS Chapter 598:

1. "Goods" are defined as all things existing and identifiable which are movable at the time of sale or lease.

2. "Services" are defined as all non- tangible things that have no physical characteristics at the time of sale or lease.

Add section to NRS Chapter 598: (compare to NRS 598.0971)

1. If, after an investigation, the Consumer's Advocate has reasonable cause to believe that any person has been engaged or is engaging in any act in violation of NRS 598.0903 to 598.992, inclusive, the Consumer's Advocate, or a hearing officer appointed by the Consumer's Advocate, may issue an order directed to the person to show cause why the Consumer's Advocate should not order the person to cease and desist from engaging in the practice. The order must contain a statement of the charges and a notice of a hearing to be held thereon. The order must be served upon the person directly or by certified or registered mail, return receipt requested.

2. If, after conducting a hearing pursuant to the provisions of subsection 1, the Consumer's Advocate, or a hearing officer appointed by the Consumer's Advocate, determines that the person has violated any of the provisions of NRS 598.0903 to 598.992, inclusive, or if the person fails to appear for the hearing after being properly served with the statement of charges and notice of hearing, the Consumer's Advocate may make a written report of his findings of fact concerning the violation and cause to be served a copy thereof upon the person and any intervener at the hearing. If the Consumer's Advocate or a hearing officer appointed by the Consumer's Advocate, determines in the report that such a violation has occurred, he may order the violator to:

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

(b) Pay the costs of reporting services, costs of the hearing officer if so appointed, fees for experts and other witnesses, charges for the rental of a hearing room if such a room is not available to the Consumer's Advocate free of charge, charges for providing an independent hearing officer, if any, and charges incurred for any service of process, if the violator is adjudicated to have committed a violation of NRS 598.0903 to 598.992, inclusive; and

(c) Provide restitution for any money or property improperly received or obtained as a result of the violation. The order must be served upon the person directly or by certified or registered mail, return receipt requested. The order becomes effective upon service in the manner provided in this subsection.

3. Any person whose pecuniary interests are directly and immediately affected by an order issued pursuant to subsection 2 or who is aggrieved by the order may petition for judicial review in the manner provided in chapter 233B of NRS. Such a petition must be filed within 30 days after the service of the order. The order becomes final upon the filing of the petition.

4. If a person fails to comply with any provision of an order issued pursuant to subsection 2, the Consumer's Advocate may, at any time 30 days after the service of the order, cause an action to be instituted in the district court of the county wherein the person resides or has his principal place of business requesting the court to enforce the provisions of the order or to provide any other appropriate injunctive relief.

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5. If the court finds that:

(1) The proceedings by the Consumer's Advocate concern any order issued pursuant to subsection 2

(2) Are in the interest of the public; and

(3) The findings of the Consumer's Advocate are supported by the weight of the evidence,
the court shall issue an order enforcing the provisions of the order of the Consumer's Advocate.

6. An order issued pursuant to subsection 5 may include:

(a) A provision requiring the payment to the Consumer's Advocate of a penalty of not more than \$5,000 for each act amounting to a failure to comply with the order of the Consumer's Advocate; or

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

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

8. Upon the violation of any judgment, order or decree issued pursuant to subsection 5 or 6, the Consumer's Advocate, after a hearing thereon, may proceed in accordance with the provisions of NRS 598.0999.

Sec. 2. 1. A person engages in a "deceptive trade practice" if, in the course of his business or occupation, he, directly or through another person, employee, agent or representative acting on his behalf during any non-face to face transaction:

(a) Fails to disclose in a truthful, clear and conspicuous manner, before a customer pays for any goods or services offered, or misrepresents, directly or by implication at the time of the sale or lease of the goods or services, any of the following information:

(1) The total cost to purchase, receive or use, and the quantity of, any goods or services that are the subject of the offer;

(2) Any material restriction, limitation or condition to purchase, receive or use any goods or services that are the subject of the offer;

(3) Any material and significant aspect of the performance~~[- efficacy,~~
~~nature]~~ or central characteristics of any goods or services that are the subject of the offer;

(4) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange or repurchase policies;

~~[(5) Any affiliation of the seller with, or endorsement or sponsorship by, any person or governmental entity;]~~

~~[(6)](5) That any offered goods or services [are required by a person to]~~
provide protections that the person already has pursuant to any federal or state law or regulation; or

~~[(7)](6) Any material aspect of a negative option including, but not limited to, the fact that the customer's account will be charged unless the customer acts to avoid the charge, or the date the charge will be submitted for payment and the specific actions the customer must take to avoid the charge.~~

(b) Makes a false statement concerning or fails to disclose the date the charge for the goods or services will be submitted for payment or the date the customer's account will be charged.

(c) Causes billing information to be submitted for payment, or collects or attempts to collect payment for ~~[goods or]~~ services or a charitable contribution without obtaining express authorization from the customer or donor, as verified in accordance with subsection 2.

(d) Presents for payment or deposits into a financial institution's credit card

system or electronic banking system a credit card sales draft or an electronic debit drawn on a customer's bank account that is generated by a sales transaction for the purchase of ~~[or lease of goods or]~~ services, if the credit card sales draft or electronic debit is not the result of a sale or lease transaction directly between the cardholder and the seller, as verified in accordance with subsection 2, unless the financial institution expressly authorizes the payment or deposit.

(e) Uses a business relationship or an affiliation with a seller or lessor of goods or services to obtain access to the credit card system of a financial institution or a person's bank account information, if the access is not authorized by an agreement between the seller or lessor and the financial institution or bank.

(f) Sells, loans, gives, transmits, trades or distributes in any manner, to another person, a customer's credit card or banking account information or any other information relating to the customer that allows the recipient to access the customer's credit card or banking account, without express authorization of the customer, for the purpose of enabling the recipient to use the information to engage in advertising, telemarketing, direct mailing, facsimile advertising, submitting mail electronically or any indirect sales activity relating to the sale of goods or services.

2. For the purposes of this section, any authorization specified in paragraph (c) or (d) of subsection 1 is verifiable upon:

(a) Presenting the express written authorization of the customer or donor for the payment or charitable contribution, which must include the signature of the customer or donor;

(b) Presenting the express oral authorization of the customer or donor, if the authorization:

(1) Is recorded in audible form;

(2) Is made available to the customer or donor and to the bank or other billing entity of the customer or donor upon request;

(3) Clearly indicates that the customer has authorized payment for the ~~[goods or]~~ services or the donor has authorized the charitable contribution; and

(4) Clearly indicates that the customer or donor has received the following information:

(I) The number of debits, charges or payments required to purchase the ~~[goods or]~~ services or to make the charitable contribution;

(II) The date each debit, charge or payment will be submitted for payment;

(III) The amount of each debit, charge or payment for the ~~[goods or]~~ services or charitable contribution;

(IV) The name of the customer or donor;

(V) The billing information of the customer or donor, stated with sufficient specificity to ensure that the customer or donor understands the account that will be used to collect payment for the ~~[goods or]~~ services or the charitable contribution;

(VI) A telephone number that is available for use by the customer or donor to submit inquiries and that is answered by a natural person during normal business hours; and

(VII) The date the authorization of the customer or donor was obtained; or

(c) Presenting written confirmation of the transaction, set forth in a clear and conspicuous manner and sent to the customer or donor by first class mail at least 30 days before the submission for payment of the customer's or donor's billing information, which includes:

(1) The information set forth in subparagraph (4) of paragraph (b); and

(2) A clear and concise statement indicating the manner in which the customer or donor may, if the written confirmation is inaccurate, cancel the sale or charitable contribution and obtain a refund of any money paid for the sale or donated for

the charitable contribution.

3. As used in this section:

(a) "Credit" means the right granted by a creditor to a debtor to defer payment of a debt or to incur a debt and defer its payment.

(b) "Credit card" means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor or services on credit, or any debit card issued by a financial institution.

(c) "Credit card sales draft" means any record or evidence of a credit card or debit transaction.

(d) "Credit card system" means any method or procedure used to process a credit card or debit card transaction involving a card or other device issued or licensed by any financial institution or any operator employed or licensed by a financial institution.

(e) "Customer" means any person who pays or may be required to pay for goods or services.

(f) "Electronic banking system" means any method or procedure used by a financial institution or an operator employed by a financial institution to carry out an electronic banking transaction.

(g) "Non-face to face transaction" means any communication regarding the sale or lease of services between the buyer and the seller or his agent, employee, contractor or representative where the communication is conducted by use of a mechanical, digital, electronic or other device used to communicate over distances, including, but not limited to use of a telephone, internet web site, electronic mail, or facsimile.

Sec. 3. A person engages in a "deceptive trade practice" if, in the course of his business or occupation, he, directly or through another person, employee, agent or representative acting on his behalf:-

~~1. Makes]makes a false, misleading or threatening statement to induce a person to pay for goods or services that are not ordered, delivered or authorized, or to induce the person to make a charitable contribution.~~

~~[2. Provides substantial assistance or support to any other person, if he knows or consciously avoids knowing that the other person is engaged in a deceptive trade practice.]~~

Sec. 5. NRS 598.0915 is hereby amended to read as follows: 598.0915 A person engages in a "deceptive trade practice" if, in the course of his business or occupation, he [:], directly or through another person, employee, agent or representative acting on his behalf:

1. Knowingly passes off goods or services for sale or lease as those of another person.

2. Knowingly makes a false representation as to the source, sponsorship, approval or certification of goods or services for sale or lease.

3. Knowingly makes a false representation as to affiliation, connection, association with or certification by another person.

4. Refuses to disclose or [:] makes a false or misleading representation ~~[or uses a mail drop, registered agent, post office box, electronic mail address or unlisted telephone number as the sole point of contact for the business]~~ for the purpose of concealing the physical address or geographic location of:

(a) Each address where the operation of the business is located;

(b) The location of any person who, by telephone, mail, facsimile or electronic mail, or in any indirect manner, sells or leases or solicits the sale or lease of any goods or services for or on behalf of the business; or

(c) ~~[The address of each owner, director or officer of the business; or~~

(d) The geographic location from which any goods or services are provided by the business.

5. Uses deceptive representations or designations of geographic origin in connection with goods or services for sale or lease.

[5.] 6. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith.

[6.] 7. Represents that goods for sale or lease are original or new if he knows or should know that they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.

[7.] 8. Represents that goods or services for sale or lease are of a particular standard, quality or grade, or that such goods are of a particular style or model, if he knows or should know that they are of another standard, quality, grade, style or model.

[8.] 9. Disparages the goods, services or business of another person by false or misleading representation of fact.

[9.] 10. Advertises goods or services with intent not to sell or lease them as advertised.

[10.] 11. Advertises goods or services for sale or lease with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.

[11.] 12. Advertises goods or services as being available free of charge with intent to require payment of undisclosed costs as a condition of receiving the goods or services.

[12.] 13. Advertises under the guise of obtaining sales personnel when the purpose is to first sell or lease goods or services to the sales personnel applicant.

[13.] 14. Makes false or misleading statements of fact concerning the price of goods or services for sale or lease, or the reasons for, existence of or amounts of price reductions.

[14.] 15. Fraudulently alters any contract, written estimate of repair, written statement of charges or other document in connection with the sale or lease of goods or services.

[15.] 16. Knowingly makes any other false representation in a transaction.

[16.] 17. Knowingly falsifies an application for credit relating to a retail installment transaction, as defined in NRS 97.115.

Sec. 12. NRS 598.969 is hereby amended to read as follows:

598.969 A provider shall not:

1. Make a statement or representation regarding the provision of a telecommunications service, including, without limitation, a statement regarding the rates, terms or conditions of a telecommunications service, that:

(a) Is false, misleading or deceptive; or

(b) Fails to include material information which makes the statement or representation false, misleading or deceptive.

2. Misrepresent his identity.

3. Falsely state to a person that the person has subscribed or authorized a subscription to or has received a telecommunications service.

4. Omit, when explaining the terms and conditions of a subscription to a telecommunications service, a material fact concerning the subscription.

5. Fail to provide a customer with timely written notice containing:

(a) A clear and detailed description relating directly to the services for which the customer is being billed and the amount the customer is being charged for each service;

(b) All terms and conditions relating directly to the services provided; [and

(c) The] (c) *For each charge for any telecommunications service, the name, address and telephone number of [the provider].*

- (1) *The provider who originates the charge; and*
- (2) *The billing agent for the provider who originates the charge, if the name, address and telephone number of the billing agent differ from the name, address and telephone number of the provider who originates the charge; and*
- (d) *Except for local measured telecommunication services regulated by the Nevada Public Utilities Commission, the [The] duration of each call that is billed to the customer reported in minutes, seconds or any fraction thereof, if the charges for the telecommunications service are calculated, in whole or in part, based upon the duration of the call.*

6. Fail to honor, within a reasonable period, a request of a customer to cancel a telecommunications service pursuant to the terms and conditions for the service.

7. Bill a customer for a telecommunications service after the customer has cancelled the telecommunications service pursuant to the terms and conditions of the service.

8. Bill a customer for [services that] *a service if the provider is notified or knows or upon reasonable inquiry should know that the customer has not authorized [,] the service*, unless the service is required to be provided by law. The failure of a customer to refuse a proposal from a provider does not constitute specific authorization.

9. Change a customer's subscription to a local exchange carrier or an interexchange carrier unless:

(a) The customer has authorized the change within the 30 days immediately preceding the date of the change; and

(b) The provider complies with the provisions of 47 U.S.C. § 258, as amended, and the verification procedures set forth in 47 C.F.R. Part 64, Subpart K, as amended.

10. Fail to provide to a customer who has authorized the provider to change his subscription to a local exchange carrier or an interexchange carrier a written confirmation of the change within 30 days after the date of the change.

11. Propose or enter into a contract with a person that purports to:

(a) Waive the protection afforded to the person by any provision of this section; or

(b) Authorize the provider or an agent, employee, independent contractor or representative of the provider to violate any provision of this section.

Remove Sections 17 through and including Section 23 of SB 399