

ASSEMBLY BILL NO. 343—ASSEMBLYMAN CARPENTER
(BY REQUEST)

MARCH 17, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes related to sellers of travel.
(BDR 52-881)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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 sellers of travel; requiring a seller of travel to include his registration number in his advertising; requiring a seller of travel to maintain a trust account for money received for the purchase of travel services; revising the definition of “seller of travel”; requiring the Division to mail to a seller of travel an application for the renewal of his certificate before the expiration of his current certificate; establishing an account for a consumer to recover damages for certain actions of a seller of travel; repealing the provisions that require a seller of travel to comply with certain financial security requirements; repealing the provisions allowing a consumer to recover damages from security deposited by a seller of travel with the Consumer Affairs Division of the Department of Business and Industry; and providing other matters properly relating thereto.

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 the provisions set forth as sections 2 to 10, inclusive, of this
3 act.

4 **Sec. 2.** *“Account” means the account established pursuant to*
5 *section 6 of this act.*



* A B 3 4 3 R 1 *

1 **Sec. 3.** *“Injured person” means a person who:*
2 1. *Paid money to a seller of travel for the purchase of travel*
3 *services; and*
4 2. *Is damaged by the failure of the seller of travel to provide*
5 *those services adequately.*

6 **Sec. 4.** *A seller of travel shall include the registration*
7 *number from his certificate of registration in any advertising*
8 *conducted by, or on the behalf of, the seller of travel. The*
9 *statement must be prominently displayed in the advertisement and*
10 *be in substantially the following form in at least 14-point bold type*
11 *in a font that is easy to read:*

12
13 *Nevada Seller of Travel*
14 *Registration No. _____.*
15

16 **Sec. 5.** 1. *A seller of travel shall maintain a trust account*
17 *in a bank, credit union or savings and loan association in this*
18 *state for the purpose of depositing money paid to the seller of*
19 *travel by a person for the purchase of travel services.*

20 2. *A seller of travel shall deposit all money received by the*
21 *seller of travel from a person for the purchase of travel services*
22 *into the trust account within 1 business day after receiving the*
23 *money.*

24 3. *The seller of travel shall pay out of the trust account the*
25 *money paid by a person for the purchase of travel services as*
26 *needed to complete the purchase of travel services purchased by*
27 *the person.*

28 **Sec. 6.** *The Division shall administer and account separately*
29 *for the money received from each seller of travel pursuant to the*
30 *provisions of paragraph (c) of subsection 1 and paragraph (c) of*
31 *subsection 4 of NRS 598.365. The Division may refer to the money*
32 *in the account as the “Recovery Fund.”*

33 **Sec. 7.** 1. *Except as otherwise provided in section 10 of this*
34 *act, the money in the account must be used to pay claims made by*
35 *persons who paid money to a seller of travel for the purchase of*
36 *travel services who are damaged by:*

37 (a) *The failure of a seller of travel to provide the travel services*
38 *satisfactorily; or*

39 (b) *The violation of a seller of travel of any provision of NRS*
40 *598.305 to 598.365, inclusive, and sections 2 to 10, inclusive, of*
41 *this act.*

42 2. *Except as otherwise provided in subsection 3, an injured*
43 *person who wishes to recover from the account must file a*
44 *complaint with the Division or its designee, within 4 years after the*



1 *initial purchase of the travel services and on a form established*
2 *for this purpose by the Division.*
3 *3. An injured person who has obtained a judgment in any*
4 *court of competent jurisdiction for recovery of damages against a*
5 *seller of travel for the failure of the seller of travel to provide the*
6 *travel services satisfactorily or the violation by the seller of travel*
7 *of any provision of NRS 598.305 to 598.365, inclusive, and*
8 *sections 2 to 10, inclusive, of this act, may file a complaint with the*
9 *Division, within 2 years of the entry of the judgment, with the*
10 *Division for satisfaction of the judgment from the account if:*
11 *(a) The proceedings in connection with the judgment,*
12 *including all appeals, have terminated;*
13 *(b) He submits an application on a form established for this*
14 *purpose by the Division;*
15 *(c) He submits proof satisfactory to the Division of the*
16 *judgment; and*
17 *(d) Upon obtaining payment from the account, he assigns his*
18 *rights to enforce the judgment to the Division.*
19 *4. If the Division receives a complaint pursuant to subsection*
20 *2, the Division or its designee shall hold a hearing on the*
21 *complaint. This Division shall:*
22 *(a) Affix the time and place for the hearing; and*
23 *(b) Notify the injured person, in writing at least 30 days before*
24 *the date affixed for the hearing, of the time and place of the*
25 *hearing.*
26 *5. Any testimony taken at the hearing must be considered a*
27 *part of the record of the hearing before the Division or its*
28 *designee.*
29 *6. The hearing must be public if a request is made for a*
30 *public hearing.*
31 *7. The Division or its designee shall act upon the complaint*
32 *within 6 months after the complaint is filed with the Division.*
33 **Sec. 8. 1. Except as otherwise provided in subsection 2, an**
34 **injured person is eligible for recovery from the account:**
35 *(a) If the Division or its designee, after conducting a hearing*
36 *on a complaint pursuant to the provisions of subsection 4 of*
37 *section 7 of this act, finds that the injured person suffered actual*
38 *damages as a result of:*
39 *(1) The failure of a seller of travel to provide the travel*
40 *services satisfactorily; or*
41 *(2) The violation of a seller of travel of any provision of*
42 *NRS 598.305 to 598.365, inclusive, and sections 2 to 10, inclusive,*
43 *of this act.*



- 1 ***(b) If the injured person files a complaint pursuant to the***
2 ***provisions of subsection 3 of section 7 of this act with the Division***
3 ***for the satisfaction of a judgment from the account.***
- 4 ***2. An injured person is not eligible for recovery from the***
5 ***account if:***
- 6 ***(a) The injured person is the spouse of the seller of travel, or a***
7 ***personal representative of the spouse of the seller of travel;***
8 ***(b) The injured person was associated in a business***
9 ***relationship with the seller of travel other than the travel services***
10 ***at issue; or***
- 11 ***(c) At the time the person paid the money for the purchase of***
12 ***travel services, the seller of travel was not registered with the***
13 ***Division as required by NRS 598.365.***
- 14 ***3. If the Division or its designee determines that an injured***
15 ***person is eligible for recovery from the account pursuant to this***
16 ***section, the Division or its designee may pay out of the account:***
- 17 ***(a) If the complaint was filed pursuant to subsection 2 of***
18 ***section 7 of this act, the amount of actual damages suffered, but***
19 ***not to exceed \$10,000; or***
- 20 ***(b) If the complaint was filed pursuant to subsection 3 of***
21 ***section 7 of this act, the amount of actual damages included in the***
22 ***judgment and remaining unpaid, but not to exceed \$10,000.***
- 23 ***4. The decision of the Division or its designee regarding***
24 ***eligibility for recovery and all related issues is final and not***
25 ***subject to judicial review.***
- 26 ***5. If the injured person has recovered a portion of his loss***
27 ***from sources other than the account, the Division shall deduct the***
28 ***amount recovered from the other sources from the amount***
29 ***payable upon the claim and direct the difference to be paid from***
30 ***the account.***
- 31 ***6. To the extent of payments made from the account, the***
32 ***Division is subrogated to the rights of the injured person,***
33 ***including, without limitation, the right to collect from a surety***
34 ***bond or a cash bond. The Division and the Attorney General shall***
35 ***promptly enforce all subrogation claims.***
- 36 ***7. The amount of recovery from the account based upon***
37 ***claims made against any single seller of travel:***
- 38 ***(a) Must not exceed \$200,000; and***
39 ***(b) For any single action of the seller of travel, must not***
40 ***exceed 20 percent of the balance of the account.***
- 41 ***8. As used in this section, "actual damages" includes***
42 ***attorney's fees or costs in contested cases appealed to the Supreme***
43 ***Court of this state. The term does not include any other attorney's***
44 ***fees or costs.***



1 **Sec. 9. 1.** *A seller of travel shall notify each purchaser of*
2 *travel services from whom he accepts money of the rights of the*
3 *purchaser pursuant to NRS 598.305 to 598.365, inclusive, and*
4 *sections 2 to 10, inclusive, of this act, including, without*
5 *limitation, providing a written statement explaining those rights in*
6 *any agreement or contract for travel services. The written*
7 *statement must be in substantially the following form:*

8
9 **RECOVERY FUND FOR CUSTOMERS**
10 **OF SELLERS OF TRAVEL**

11
12 *Payment may be available from the Recovery Fund if*
13 *you are damaged financially by the failure of a seller of*
14 *travel to provide satisfactorily the travel services for which*
15 *you paid and the damage resulted from certain specified*
16 *violations of Nevada law by a seller of travel registered in*
17 *this state. To obtain information relating to the Recovery*
18 *Fund and filing a claim for recovery from the Recovery*
19 *Fund, you may contact the Consumer Affairs Division of*
20 *the Department of Business and Industry at the following*
21 *locations:*

22
23 **SOUTHERN NEVADA: 1850 East Sahara Avenue**
24 **Suite 101**
25 **Las Vegas, Nevada 89104**
26 **Phone: 702.486.7355**
27 **Fax: 702.486.7371**
28 **ncad@fyiconsumer.org**

29
30 **NORTHERN NEVADA: 4600 Kietzke Lane**
31 **Building B, Suite 113**
32 **Reno, Nevada 89502**
33 **Phone: 775.688.1800**
34 **Fax: 775.688.1803**

- 35
36 2. *The Division may impose upon a seller of travel an*
37 *administrative fine of not more than:*
38 (a) *For the first violation of subsection 1, \$100; and*
39 (b) *For a second or subsequent violation of subsection 1, \$250.*
40 3. *The Division shall deposit any money received pursuant to*
41 *this section in the account established pursuant to section 6 of this*
42 *act.*
43 4. *The provisions of NRS 598.305 to 598.365, inclusive, and*
44 *sections 2 to 10, inclusive, of this act do not limit the authority of*
45 *the Division to take disciplinary action against a seller of travel.*



1 **Sec. 10. 1. The Division shall:**
2 (a) *On or before February 1 of each year, prepare and submit*
3 *to the Director of the Legislative Counsel Bureau for transmittal*
4 *to the appropriate legislative committee if the Legislature is in*
5 *session, or to the Interim Finance Committee if the Legislature is*
6 *not in session, a statement of the condition of the account that is*
7 *prepared in accordance with generally accepted accounting*
8 *principles.*
9 (b) *Employ accountants as necessary for the performance of*
10 *the duties set forth in this section and pay any related expenses*
11 *from the money in the account. Except as otherwise provided in*
12 *subsection 3, the expenditures made by the Division pursuant to*
13 *this paragraph must not exceed \$10,000 in any fiscal year.*
14 (c) *Employ or contract with persons and procure necessary*
15 *equipment, supplies and services to be paid from or purchased*
16 *with the money in the account as may be necessary to monitor or*
17 *process claims filed by injured persons that may result in a*
18 *recovery from the account.*
19 2. *Any interest earned on the money in the account must be*
20 *credited to the account. The Division may expend the interest*
21 *earned on the money in the account to increase public awareness*
22 *of the account. Except as otherwise provided in subsection 3, the*
23 *expenditures made by the Division for this purpose must not*
24 *exceed \$50,000 in any fiscal year.*
25 3. *The total expenditures made by the Division pursuant to*
26 *this section must not exceed 10 percent of the account in any fiscal*
27 *year.*
28 4. *Once an initial balance of \$200,000 exists in the account,*
29 *the Division shall maintain a minimum balance of \$200,000 in the*
30 *account.*
31 5. *The Division shall adopt such regulations as are necessary*
32 *to carry out the provisions of NRS 598.305 to 598.365, inclusive,*
33 *and sections 2 to 10, inclusive, of this act, including, without*
34 *limitation, regulations governing:*
35 (a) *The disbursement of money from the account; and*
36 (b) *The manner in which a complaint is filed with the Division*
37 *or its designee pursuant to the provisions of section 7 of this act.*
38 **Sec. 11.** NRS 598.0999 is hereby amended to read as follows:
39 598.0999 1. A person who violates a court order or
40 injunction issued pursuant to the provisions of NRS 598.0903 to
41 598.0999, inclusive, upon a complaint brought by the
42 Commissioner, the Director, the district attorney of any county of
43 this state or the Attorney General shall forfeit and pay to the State
44 General Fund a civil penalty of not more than \$10,000 for each
45 violation. For the purpose of this section, the court issuing the order



1 or injunction retains jurisdiction over the action or proceeding. Such
2 civil penalties are in addition to any other penalty or remedy
3 available for the enforcement of the provisions of NRS 598.0903 to
4 598.0999, inclusive.

5 2. In any action brought pursuant to the provisions of NRS
6 598.0903 to 598.0999, inclusive, if the court finds that a person has
7 willfully engaged in a deceptive trade practice, the Commissioner,
8 the Director, the district attorney of any county in this state or the
9 Attorney General bringing the action may recover a civil penalty not
10 to exceed \$2,500 for each violation. The court in any such action
11 may, in addition to any other relief or reimbursement, award
12 reasonable attorney's fees and costs.

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

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

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

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

21 4. Any offense which occurred within 10 years immediately
22 preceding the date of the principal offense or after the principal
23 offense constitutes a prior offense for the purposes of subsection 3
24 when evidenced by a conviction, without regard to the sequence of
25 the offenses and convictions.

26 5. If a person violates any provision of NRS 598.0903 to
27 598.0999, inclusive, 598.100 to 598.2801, inclusive, 598.305
28 to ~~598.395,~~ **598.365**, inclusive, **and sections 2 to 10, inclusive, of**
29 **this act**, 598.405 to 598.525, inclusive, 598.741 to 598.787,
30 inclusive, or 598.840 to 598.966, inclusive, fails to comply with a
31 judgment or order of any court in this state concerning a violation of
32 such a provision, or fails to comply with an assurance of
33 discontinuance or other agreement concerning an alleged violation
34 of such a provision, the Commissioner or the district attorney of any
35 county may bring an action in the name of the State of Nevada
36 seeking:

37 (a) The suspension of the person's privilege to conduct business
38 within this state; or

39 (b) If the defendant is a corporation, dissolution of the
40 corporation.

41 The court may grant or deny the relief sought or may order other
42 appropriate relief.

43 **Sec. 12.** NRS 598.305 is hereby amended to read as follows:

44 598.305 As used in NRS 598.305 to ~~598.395,~~ **598.365**,
45 inclusive, **and sections 2 to 10, inclusive, of this act**, unless the



1 context otherwise requires, the words and terms defined in NRS
2 ~~598.315~~ 598.325 to 598.356, inclusive, *and sections 2 and 3 of*
3 *this act* have the meanings ascribed to them in those sections.

4 **Sec. 13.** NRS 598.335 is hereby amended to read as follows:
5 598.335 "Seller of travel" means a person, *including, without*
6 *limitation, a business entity*, who offers for sale, directly or
7 indirectly, transportation by air, land, rail or water, travel services,
8 vacation certificates or any combination thereof, to a person or
9 group of persons for a fee, commission or other valuable
10 consideration. The term:

11 1. Includes any person who offers membership in a travel club
12 or any services related to travel for an advance fee ~~for payment~~,
13 *payment or deposit.*

14 2. Does not include:

15 (a) *A person who:*

16 (1) *Contracts with a seller of travel to sell travel services on*
17 *behalf of the seller of travel;*

18 (2) *Receives compensation for selling the travel services*
19 *only from the seller of travel; and*

20 (3) *Requires a purchaser of travel services to pay for the*
21 *travel services by transmitting payment directly to the provider of*
22 *the travel services or the seller of travel;*

23 (b) A hotel that provides or arranges travel services for its
24 patrons or guests;

25 ~~(b)~~ (c) A person who, for compensation, transports persons or
26 property by air, land, rail or water; ~~for~~

27 ~~(e)~~ (d) A tour broker or tour operator who is subject to the
28 provisions of NRS 598.405 to 598.525, inclusive ~~;~~ *or*

29 (e) *A motor club as defined in NRS 696A.050.*

30 **Sec. 14.** NRS 598.365 is hereby amended to read as follows:

31 598.365 1. Before advertising its services or conducting
32 business in this state, a seller of travel must register with the
33 Division by:

34 (a) Submitting to the Division an application for registration on
35 a form prescribed by the Division;

36 (b) Paying to the Division a fee of \$25; and

37 (c) ~~Depositing the security required pursuant to NRS 598.375,~~
38 ~~if any, with the Division.~~ *Paying to the Division a fee of \$100 for*
39 *deposit to the account established pursuant to section 6 of this act.*

40 2. The Division shall issue a certificate of registration to the
41 seller of travel upon receipt of ~~;~~

42 ~~(a) The security in the proper form if the seller of travel is~~
43 ~~required to deposit security pursuant to NRS 598.375; and~~

44 ~~(b) The~~ *the* payment of ~~the fee~~ *any fees* required by this
45 section.



- 1 3. A certificate of registration:
- 2 (a) Is not transferable or assignable; and
- 3 (b) Expires 1 year after it is issued.
- 4 4. A seller of travel must renew a certificate of registration
- 5 issued pursuant to this section before the certificate expires by:
- 6 (a) Submitting to the Division an application for the renewal of
- 7 the certificate on a form prescribed by the Division; ~~and~~
- 8 (b) Paying to the Division a fee of \$25 ~~+~~; and
- 9 (c) *Paying to the Division a fee of \$100 for deposit to the*
- 10 *account established pursuant to section 6 of this act.*

11 *5. The Division shall mail an application for the renewal of a*
 12 *certificate to the last known address of a seller of travel at least 30*
 13 *days before the expiration of the certificate.*

14 *6. The provisions of this section do not require a person*
 15 *described in paragraph (a) of subsection 2 of NRS 598.335 to*
 16 *register with the Division.*

17 **Sec. 15.** NRS 598.315, 598.375, 598.385 and 598.395 are
 18 hereby repealed.

19 **Sec. 16.** 1. Except as otherwise provided in subsections 2
 20 and 3, the Consumer Affairs Division of the Department of Business
 21 and Industry shall return any security deposited with the Division by
 22 a seller of travel pursuant to NRS 598.365, as the provisions of that
 23 section existed before July 1, 2003.

24 2. The Consumer Affairs Division of the Department of
 25 Business and Industry shall not return any security deposited with
 26 the Division by a seller of travel pursuant to NRS 598.365, as the
 27 provisions of that section existed before July 1, 2003, if:

28 (a) Before July 1, 2003, a consumer has brought an action to
 29 recover from the security pursuant to the provisions of NRS
 30 598.385, as the provisions of that section existed before July 1,
 31 2003; and

32 (b) The proceedings in connection with the action, including all
 33 appeals, have not terminated.

34 3. If, pursuant to the provisions of subsection 2, the Consumer
 35 Affairs Division of the Department of Business and Industry does
 36 not return the security deposited with the Division by a seller of
 37 travel pursuant to NRS 598.365, as the provisions of that section
 38 existed before July 1, 2003, the Division shall return the security to
 39 the seller of travel when all proceedings in connection with all
 40 actions, including all appeals, brought pursuant to the provisions of
 41 NRS 598.385 against the seller of travel have terminated.

42 4. If, before July 1, 2003, a consumer files an action to recover
 43 from the security of a seller of travel pursuant to the provisions of
 44 NRS 598.385, as the provisions of that section existed before



1 July 1, 2003, the provisions of that section shall apply, for all
2 purposes, to that action.
3 **Sec. 17.** This act becomes effective on July 1, 2003.

LEADLINES OF REPEALED SECTIONS

598.315 “Commissioner” defined.

598.375 Security required for registration: Form; term; amount; records; rejection for nonconformance; change in form; inadequate amount; exception.

598.385 Rights and remedies of injured consumers; resolution by Division of claims against security; regulations.

598.395 Release of security if seller ceases to operate or registration expires.

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