

Senate Bill No. 447–Committee on Finance

CHAPTER.....

AN ACT relating to deceptive trade practices; eliminating the Consumer Affairs Division of the Department of Business and Industry and making the temporary Consumer Affairs Unit created in the Department permanent; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

During the 2009 Legislative Session, the Consumer Affairs Division of the Department of Business and Industry and the position of the Commissioner of Consumer Affairs were temporarily eliminated and their powers and duties were permanently transferred to other agencies or temporarily eliminated or transferred to other agencies. The powers and duties of the Consumer Affairs Division and the Commissioner of Consumer Affairs were permanently transferred to: (1) the Department of Motor Vehicles relating to the regulation of garages, garagemen and body shops; and (2) the Division of Mortgage Lending of the Department of Business and Industry relating to credit service organizations. The powers and duties of the Consumer Affairs Division and the Commissioner of Consumer Affairs relating to the administration of provisions relating to certain deceptive trade practices, sightseeing tours, organizations for buying goods or services at a discount, dance studios, health clubs, consumer reporting and solicitation by telephone were temporarily transferred to the Attorney General until June 30, 2011. Finally, the requirement that certain sellers of travel register and deposit security with the Consumer Affairs Division and the Commissioner of Consumer Affairs was temporarily eliminated until June 30, 2011. (Chapter 475, Statutes of Nevada 2009, at page 2733)

During the 2011 and 2013 Legislative Sessions, the temporary transfer or elimination of the powers and duties of the Consumer Affairs Division and the Commissioner of Consumer Affairs was continued until 2013 and 2015, respectively. (Chapter 440, Statutes of Nevada 2011, at page 2652; chapter 250, Statutes of Nevada 2013, at page 1054) During the 2015 Legislative Session, the Consumer Affairs Unit was temporarily created in the Department of Business and Industry to perform the duties of the Consumer Affairs Division relating to certain deceptive trade practices until June 30, 2017. The Director of the Department of Business and Industry was required to designate a Deputy Director of the Department of Business and Industry to serve as the Commissioner of Consumer Affairs and Chief of the Consumer Affairs Unit. (Section 14 of chapter 528, Statutes of Nevada 2015, at page 3652) During the 2017 Legislative Session: (1) the Consumer Affairs Unit was extended for an additional period ending on June 30, 2019; and (2) the provisions governing the registration of sellers of travel were permanently eliminated. (Section 3 of chapter 365, Statutes of Nevada 2017, at page 2255; section 2 of chapter 249, Statutes of Nevada 2017, at page 1313) During the 2019 Legislative Session, the Consumer Affairs Unit was again extended for an additional period ending on June 30, 2021. (Section 3 of chapter 399, Statutes of Nevada 2019, at page 2501)

Sections 1 and 13 of this bill eliminate the Consumer Affairs Division and make the Consumer Affairs Unit permanent in the Department of Business and Industry, effective July 1, 2021. The Consumer Affairs Unit and the Commissioner of Consumer Affairs will continue to carry out the powers and duties relating to deceptive trade practices that they have carried out since the temporary creation of the Unit on July 1, 2015, as well as the powers and duties relating to sightseeing tours, organizations for buying goods or services at a discount, dance studios, health clubs, consumer reporting and solicitation by telephone that had been temporarily



transferred from the Consumer Affairs Division to the Attorney General until June 30, 2021. (NRS 598.0903-598.0999, 598.405-598.525, 598.840-598.966; chapters 598C and 599B of NRS) **Sections 2-12** of this bill make conforming changes as a result of the elimination of the Consumer Affairs Division and permanent creation of the Consumer Affairs Unit.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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

Section 1. NRS 232.510 is hereby amended to read as follows:

232.510 1. The Department of Business and Industry is hereby created.

2. The Department consists of a Director and the following:

(a) Consumer Affairs ~~{Division.}~~ *Unit within the Office of the Director.*

(b) Division of Financial Institutions.

(c) Housing Division.

(d) Real Estate Division.

(e) Division of Insurance.

(f) Division of Industrial Relations.

(g) Office of Labor Commissioner.

(h) Taxicab Authority.

(i) Office of the Nevada Attorney for Injured Workers.

(j) Nevada Transportation Authority.

(k) Division of Mortgage Lending.

(l) Any other office, commission, board, agency or entity created or placed within the Department pursuant to a specific statute, the budget approved by the Legislature or an executive order, or an entity whose budget or activities have been placed within the control of the Department by a specific statute.

Sec. 2. NRS 232.520 is hereby amended to read as follows:

232.520 The Director:

1. Shall appoint a chief or executive director, or both of them, of each of the divisions, offices, commissions, boards, agencies or other entities of the Department, unless the authority to appoint such a chief or executive director, or both of them, is expressly vested in another person, board or commission by a specific statute. In making the appointments, the Director may obtain lists of qualified persons from professional organizations, associations or other groups recognized by the Department, if any. The chief of the Consumer Affairs ~~{Division}~~ *Unit* is the Commissioner of Consumer Affairs, the chief of the Division of Financial Institutions



is the Commissioner of Financial Institutions, the chief of the Housing Division is the Administrator of the Housing Division, the chief of the Real Estate Division is the Real Estate Administrator, the chief of the Division of Insurance is the Commissioner of Insurance, the chief of the Division of Industrial Relations is the Administrator of the Division of Industrial Relations, the chief of the Office of Labor Commissioner is the Labor Commissioner, the chief of the Taxicab Authority is the Taxicab Administrator, the chief of the Nevada Transportation Authority is the Chair of the Authority, the chief of the Division of Mortgage Lending is the Commissioner of Mortgage Lending and the chief of any other entity of the Department has the title specified by the Director, unless a different title is specified by a specific statute.

2. Is responsible for the administration of all provisions of law relating to the jurisdiction, duties and functions of all divisions and other entities within the Department. The Director may, if he or she deems it necessary to carry out his or her administrative responsibilities, be considered as a member of the staff of any division or other entity of the Department for the purpose of budget administration or for carrying out any duty or exercising any power necessary to fulfill the responsibilities of the Director pursuant to this subsection. This subsection does not allow the Director to preempt any authority or jurisdiction granted by statute to any division or other entity within the Department or to act or take on a function that would contravene a rule of court or a statute.

3. May:

(a) Establish uniform policies for the Department, consistent with the policies and statutory responsibilities and duties of the divisions and other entities within the Department, relating to matters concerning budgeting, accounting, planning, program development, personnel, information services, dispute resolution, travel, workplace safety, the acceptance of gifts or donations, the management of records and any other subject for which a uniform departmental policy is necessary to ensure the efficient operation of the Department.

(b) Provide coordination among the divisions and other entities within the Department, in a manner which does not encroach upon their statutory powers and duties, as they adopt and enforce regulations, execute agreements, purchase goods, services or equipment, prepare legislative requests and lease or use office space.

(c) Define the responsibilities of any person designated to carry out the duties of the Director relating to financing, industrial development or business support services.



4. May, within the limits of the financial resources made available to the Director, promote, participate in the operation of, and create or cause to be created, any nonprofit corporation, pursuant to chapter 82 of NRS, which he or she determines is necessary or convenient for the exercise of the powers and duties of the Department. The purposes, powers and operation of the corporation must be consistent with the purposes, powers and duties of the Department.

5. For any bonds which the Director is otherwise authorized to issue, may issue bonds the interest on which is not exempt from federal income tax or excluded from gross revenue for the purposes of federal income tax.

6. May, except as otherwise provided by specific statute, adopt by regulation a schedule of fees and deposits to be charged in connection with the programs administered by the Director pursuant to chapters 348A and 349 of NRS. Except as otherwise provided by specific statute, the amount of any such fee or deposit must not exceed 2 percent of the principal amount of the financing.

7. May designate any person within the Department to perform any of the duties or responsibilities, or exercise any of the authority, of the Director on his or her behalf.

8. May negotiate and execute agreements with public or private entities which are necessary to the exercise of the powers and duties of the Director or the Department.

9. May establish a trust account in the State Treasury for depositing and accounting for money that is held in escrow or is on deposit with the Department for the payment of any direct expenses incurred by the Director in connection with any bond programs administered by the Director. The interest and income earned on money in the trust account, less any amount deducted to pay for applicable charges, must be credited to the trust account. Any balance remaining in the account at the end of a fiscal year may be:

(a) Carried forward to the next fiscal year for use in covering the expense for which it was originally received; or

(b) Returned to any person entitled thereto in accordance with agreements or regulations of the Director relating to those bond programs.

Sec. 3. Chapter 598 of NRS is hereby amended by adding thereto a new section to read as follows:

As used in this chapter, unless the context otherwise requires, "Consumer Affairs Unit" or "Unit" means the Consumer Affairs Unit of the Department of Business and Industry.



Sec. 4. NRS 598.0966 is hereby amended to read as follows:

598.0966 1. There is hereby created a revolving account for the Consumer Affairs ~~[Division]~~ *Unit* of the Department of Business and Industry. The account must be administered by the Director or his or her designee.

2. The Director or his or her designee shall deposit any grant of money received by the ~~[Division]~~ *Unit* into the account, and any money in the account must be used solely to defray the costs and expenses of the ~~[Division.]~~ *Unit*.

3. The Director or his or her designee shall deposit any administrative fines received by the ~~[Division]~~ *Unit* into the State General Fund.

Sec. 5. NRS 598.425 is hereby amended to read as follows:

598.425 “Commissioner” means the Commissioner of ~~[the Division.]~~ *Consumer Affairs*.

Sec. 6. NRS 598.840 is hereby amended to read as follows:

598.840 As used in NRS 598.840 to 598.930, inclusive, unless the context otherwise requires:

1. “Affiliate organization” means an organization for buying goods or services at a discount that:

(a) Is a subsidiary of a parent business entity; or

(b) Operates under a franchise granted by a parent business entity.

2. “Business day” means any calendar day except Sunday, or the following business holidays: New Year’s Day, Martin Luther King, Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Nevada Day, Veterans Day, Thanksgiving Day and Christmas Day.

3. “Buyer” means a person who purchases by contract a membership in an organization for buying goods or services at a discount.

4. “Commissioner” means the Commissioner of ~~[the] Consumer Affairs.~~ ~~[Division.]~~

5. ~~[“Division” means the Consumer Affairs Division of the Department of Business and Industry.]~~

~~—6.]~~ “Franchise” has the meaning ascribed to it in 16 C.F.R. § 436.2, as amended or substituted in revision by the Federal Trade Commission.

~~[7.]~~ 6. “Organization for buying goods or services at a discount” or “organization” means a person who, for a consideration, provides or claims to provide a buyer with the ability to purchase goods or services at a price which is represented to be



lower than the price generally charged in the area. The term includes, without limitation, an affiliate organization.

~~[8.]~~ 7. “Parent business entity” or “parent” means any business entity that, directly or indirectly, has owned, operated, controlled or granted franchises to, in any combination thereof, at least 15 organizations or affiliate organizations for a consecutive period of 5 years or more.

~~[9.]~~ 8. “Registrant” means an organization for buying goods or services at a discount which is required to register and post security with the ~~[Division]~~ *Consumer Affairs Unit* pursuant to the provisions of NRS 598.840 to 598.930, inclusive.

~~[10.]~~ 9. “Subsidiary” means an organization for buying goods or services at a discount that is owned, operated or controlled, either directly or indirectly or in whole or in part, by a parent business entity.

Sec. 7. NRS 598.9407 is hereby amended to read as follows:

598.9407 “Commissioner” means the Commissioner of ~~[the Division.]~~ *Consumer Affairs.*

Sec. 8. NRS 598C.180 is hereby amended to read as follows:

598C.180 1. The provisions of this chapter must be administered by the Commissioner of Consumer Affairs.

2. The Attorney General shall provide opinions for the Commissioner on all questions of law relating to the construction, interpretation or administration of this chapter.

3. The Attorney General shall represent the ~~[Division]~~ *Consumer Affairs Unit of the Department of Business and Industry* in any action or proceeding brought by or against the Commissioner pursuant to any of the provisions of this chapter.

Sec. 9. NRS 599B.010 is hereby amended to read as follows:

599B.010 As used in this chapter, unless the context otherwise requires:

1. “Chance promotion” means any plan in which premiums are distributed by random or chance selection.

2. “Commissioner” means the Commissioner of Consumer Affairs.

3. “Consumer” means a person who is solicited by a seller or salesperson.

4. ~~“Division” means the Consumer Affairs Division of the Department of Business and Industry.~~

~~—5.]~~ “Donation” means a promise, grant or pledge of money, credit, property, financial assistance or other thing of value given in response to a solicitation by telephone, including, but not limited to, a payment or promise to pay in consideration for a performance,



event or sale of goods or services. The term does not include volunteer services, government grants or contracts or a payment by members of any organization of membership fees, dues, fines or assessments or for services rendered by the organization to those persons, if:

(a) The fees, dues, fines, assessments or services confer a bona fide right, privilege, professional standing, honor or other direct benefit upon the member; and

(b) Membership in the organization is not conferred solely in consideration for making a donation in response to a solicitation.

~~[6.]~~ **5.** “Goods or services” means any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value.

~~[7.]~~ **6.** “Premium” includes any prize, bonus, award, gift or any other similar inducement or incentive to purchase.

~~[8.]~~ **7.** “Recovery service” means a business or other practice whereby a person represents or implies that he or she will, for a fee, recover any amount of money that a consumer has provided to a seller or salesperson pursuant to a solicitation governed by the provisions of this chapter.

~~[9.]~~ **8.** “Salesperson” means any person:

(a) Employed or authorized by a seller to sell, or to attempt to sell, goods or services by telephone;

(b) Retained by a seller to provide consulting services relating to the management or operation of the seller’s business; or

(c) Who communicates on behalf of a seller with a consumer:

(1) In the course of a solicitation by telephone; or

(2) For the purpose of verifying, changing or confirming an order,

↳ except that a person is not a salesperson if his or her only function is to identify a consumer by name only and he or she immediately refers the consumer to a salesperson.

~~[10.]~~ **9.** Except as otherwise provided in subsection ~~[11.]~~ **10**, “seller” means any person who, on his or her own behalf, causes or attempts to cause a solicitation by telephone to be made through the use of one or more salespersons or any automated dialing announcing device under any of the following circumstances:

(a) The person initiates contact by telephone with a consumer and represents or implies:

(1) That a consumer who buys one or more goods or services will receive additional goods or services, whether or not of the same type as purchased, without further cost, except for actual postage or common carrier charges;



(2) That a consumer will or has a chance or opportunity to receive a premium;

(3) That the items for sale are gold, silver or other precious metals, diamonds, rubies, sapphires or other precious stones, or any interest in oil, gas or mineral fields, wells or exploration sites or any other investment opportunity;

(4) That the product offered for sale is information or opinions relating to sporting events;

(5) That the product offered for sale is the services of a recovery service; or

(6) That the consumer will receive a premium or goods or services if he or she makes a donation;

(b) The solicitation by telephone is made by the person in response to inquiries from a consumer generated by a notification or communication sent or delivered to the consumer that represents or implies:

(1) That the consumer has been in any manner specially selected to receive the notification or communication or the offer contained in the notification or communication;

(2) That the consumer will receive a premium if the recipient calls the person;

(3) That if the consumer buys one or more goods or services from the person, the consumer will also receive additional or other goods or services, whether or not the same type as purchased, without further cost or at a cost that the person represents or implies is less than the regular price of the goods or services;

(4) That the product offered for sale is the services of a recovery service; or

(5) That the consumer will receive a premium or goods or services if he or she makes a donation; or

(c) The solicitation by telephone is made by the person in response to inquiries generated by advertisements that represent or imply that the person is offering to sell any:

(1) Gold, silver or other metals, including coins, diamonds, rubies, sapphires or other stones, coal or other minerals or any interest in oil, gas or other mineral fields, wells or exploration sites, or any other investment opportunity;

(2) Information or opinions relating to sporting events; or

(3) Services of a recovery service.

~~11~~ 10. "Seller" does not include:

(a) A person licensed pursuant to chapter 90 of NRS when soliciting offers, sales or purchases within the scope of his or her license.



(b) A person licensed pursuant to chapter 119A, 119B, 624, 645 or 696A of NRS when soliciting sales within the scope of his or her license.

(c) A person licensed as an insurance broker, agent or solicitor when soliciting sales within the scope of his or her license.

(d) Any solicitation of sales made by the publisher of a newspaper or magazine or by an agent of the publisher pursuant to a written agreement between the agent and publisher.

(e) A broadcaster soliciting sales who is licensed by any state or federal authority, if the solicitation is within the scope of the broadcaster's license.

(f) A person who solicits a donation from a consumer when:

(1) The person represents or implies that the consumer will receive a premium or goods or services with an aggregated fair market value of 2 percent of the donation or \$50, whichever is less; or

(2) The consumer provides a donation of \$50 or less in response to the solicitation.

(g) A charitable organization which is registered or approved to conduct a lottery pursuant to chapter 462 of NRS.

(h) A public utility or motor carrier which is regulated pursuant to chapter 704 or 706 of NRS, or by an affiliate of such a utility or motor carrier, if the solicitation is within the scope of its certificate or license.

(i) A utility which is regulated pursuant to chapter 710 of NRS, or by an affiliate of such a utility.

(j) A person soliciting the sale of books, recordings, videocassettes, software for computer systems or similar items through:

(1) An organization whose method of sales is governed by the provisions of Part 425 of Title 16 of the Code of Federal Regulations relating to the use of negative option plans by sellers in commerce;

(2) The use of continuity plans, subscription arrangements, arrangements for standing orders, supplements, and series arrangements pursuant to which the person periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis and has the opportunity to review the merchandise for at least 10 days and return it for a full refund within 30 days after it is received; or

(3) An arrangement pursuant to which the person ships merchandise to a consumer who has consented in advance to receive the merchandise and has the opportunity to review the merchandise



for at least 10 days and return it for a full refund within 30 days after it is received.

(k) A person who solicits sales by periodically publishing and delivering a catalog to consumers if the catalog:

(1) Contains a written description or illustration of each item offered for sale and the price of each item;

(2) Includes the business address of the person;

(3) Includes at least 24 pages of written material and illustrations;

(4) Is distributed in more than one state; and

(5) Has an annual circulation by mailing of not less than 250,000.

(l) A person soliciting without the intent to complete and who does not complete, the sales transaction by telephone but completes the sales transaction at a later face-to-face meeting between the solicitor and the consumer, if the person, after soliciting a sale by telephone, does not cause another person to collect the payment from or deliver any goods or services purchased to the consumer.

(m) Any commercial bank, bank holding company, subsidiary or affiliate of a bank holding company, trust company, savings and loan association, savings bank, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurer subject to regulation by an official or agency of this State or of the United States, if the solicitation is within the scope of the certificate or license held by the entity.

(n) A person holding a certificate of authority issued pursuant to chapter 452 of NRS when soliciting sales within the scope of the certificate.

(o) A person licensed pursuant to chapter 689 of NRS when soliciting sales within the scope of his or her license.

(p) A person soliciting the sale of services provided by a video service provider subject to regulation pursuant to chapter 711 of NRS.

(q) A person soliciting the sale of agricultural products, if the solicitation is not intended to and does not result in a sale of more than \$100 that is to be delivered to one address. As used in this paragraph, "agricultural products" has the meaning ascribed to it in NRS 587.290.

(r) A person who has been operating, for at least 2 years, a retail business establishment under the same name as that used in connection with the solicitation of sales by telephone if, on a continuing basis:



(1) Goods are displayed and offered for sale or services are offered for sale and provided at the person's business establishment; and

(2) At least 50 percent of the person's business involves the buyer obtaining such goods or services at the person's business establishment.

(s) A person soliciting only the sale of telephone answering services to be provided by the person or his or her employer.

(t) A person soliciting a transaction regulated by the Commodity Futures Trading Commission, if:

(1) The person is registered with or temporarily licensed by the Commission to conduct that activity pursuant to the Commodity Exchange Act, 7 U.S.C. §§ 1 et seq.; and

(2) The registration or license has not expired or been suspended or revoked.

(u) A person who contracts for the maintenance or repair of goods previously purchased from the person:

(1) Making the solicitation; or

(2) On whose behalf the solicitation is made.

(v) A person to whom a license to operate an information service or a nonrestricted gaming license, which is current and valid, has been issued pursuant to chapter 463 of NRS when soliciting sales within the scope of his or her license.

(w) A person who solicits a previous customer of the business on whose behalf the call is made if the person making the call:

(1) Does not offer the customer any premium in connection with the sale;

(2) Is not selling an investment or an opportunity for an investment that is not registered with any state or federal authority; and

(3) Is not regularly engaged in telephone sales.

(x) A person who solicits the sale of livestock.

(y) An issuer which has a class of securities that is listed on the New York Stock Exchange, the American Stock Exchange or the National Market System of the National Association of Securities Dealers Automated Quotation System.

(z) A subsidiary of an issuer that qualifies for exemption pursuant to paragraph (y) if at least 60 percent of the voting power of the shares of the subsidiary is owned by the issuer.

11. "Unit" means the Consumer Affairs Unit of the Department of Business and Industry.

Sec. 10. 1. Any administrative regulations adopted by an officer or an agency whose name has been changed or whose



responsibilities have been transferred pursuant to the provisions of this act to another officer or agency remain in force until amended by the officer or agency to which the responsibility for the adoption of the regulations has been transferred.

2. Any contracts or other agreements entered into by an officer or agency whose name has been changed or whose responsibilities have been transferred pursuant to the provisions of this act to another officer or agency are binding upon the officer or agency to which the responsibility for the administration of the provisions of the contract or other agreement has been transferred. Such contracts and other agreements may be enforced by the officer or agency to which the responsibility for the enforcement of the provisions of the contract or other agreement has been transferred.

3. Any action taken by an officer or agency whose name has been changed or whose responsibilities have been transferred pursuant to the provisions of this act to another officer or agency remains in effect as if taken by the officer or agency to which the responsibility for the enforcement of such actions has been transferred.

Sec. 11. The Legislative Counsel shall:

1. In preparing the reprint and supplements to the Nevada Revised Statutes, appropriately change any references to an officer, agency or other entity whose name is changed or whose responsibilities are transferred pursuant to the provisions of this act to refer to the appropriate officer, agency or other entity.

2. In preparing supplements to the Nevada Administrative Code, appropriately change any references to an officer, agency or other entity whose name is changed or whose responsibilities are transferred pursuant to the provisions of this act to refer to the appropriate officer, agency or other entity.

Sec. 12. NRS 598.435 and 598.9413 are hereby repealed.

Sec. 13. This act becomes effective on July 1, 2021.

