

MINUTES

COMMERCE COMMITTEE - NEVADA STATE LEGISLATURE - 58TH SESSION

1349

MAY 15, 1975

The meeting was called to order by Chairman Robinson at 2:10 P.M.

MEMBERS PRESENT: Mr. Benkovich
Mr. Demers
Mr. Getto
Mr. Harmon
Mr. Hickey
Mr. Schofield
Mr. Wittenberg
Mr. Chairman

MEMBERS ABSENT: None

SPEAKING GUESTS: None

The purpose of this meeting was to take action on the following bills:

AB 319
AB 783
SB 504
SB 533
SB 510
SB 543
SB 542
SB 544

The committee had a brief discussion on SB 372 in anticipation of the continuation of this hearing at the next scheduled meeting on Friday.

Action was then taken on the following:

AB 319 - An amendment to Subsection 3 on Line 9 was discussed to include in the bill "the court shall award the prevailing party". Mr. Demers moved that this suggested amendment be adopted. This was seconded by Mr. Schofield and carried the committee unanimously. Mr. Wittenberg moved that AB 319 be "do passed as amended". This was seconded by Mr. Schofield and carried the committee unanimously. Mr. Schofield will get this amendment from the bill drafter.

AB 783 - The amendment previously suggested by Assemblyman Heaney was discussed. That amendment would be on Page 3, Line 14, Subsection 5 changing "principal" to "surety". Mr. Getto moved that this proposed amendment be adopted. This was seconded by Mr. Schofield and carried the committee. Mr. Schofield moved that AB 783 be "do passed as amended". This was seconded by Mr. Harmon and carried the committee unanimously. Mr. Getto will get this amendment from the bill drafter.

58TH NEVADA LEGISLATURE

COMMERCE COMMITTEE
LEGISLATION ACTION

1351

DATE May 15, 1975

SUBJECT AB 319 - Provides cause of action for victim of consumer fraud.

MOTION:

1. Adopt amendments X 2. Do pass as amended X

Do Pass _____ Amend _____ Indefinitely Postpone _____ Reconsider _____

Moved By 1. Demers 2. Wittenberg Seconded By 1. Schofield 2. Schofield

AMENDMENT: _____

Moved By _____ Seconded By _____

AMENDMENT: _____

Moved By _____ Seconded By _____

VOTE:	<u>MOTION</u>		<u>AMEND</u>		<u>AMEND</u>	
	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>
Robinson	<u>X</u>	_____	_____	_____	_____	_____
Harmon	<u>X</u>	_____	_____	_____	_____	_____
Demers	<u>X</u>	_____	_____	_____	_____	_____
Hickey	<u>X</u>	_____	_____	_____	_____	_____
Moody	<u>X</u>	_____	_____	_____	_____	_____
Schofield	<u>X</u>	_____	_____	_____	_____	_____
Wittenberg	<u>X</u>	_____	_____	_____	_____	_____
Benkovich	<u>X</u>	_____	_____	_____	_____	_____
Getto	<u>X</u>	_____	_____	_____	_____	_____

ORIGINAL MOTION: Passed X Defeated _____ Withdrawn _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

Attached to Minutes May 15, 1975

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in subsection 1 of section 2 of this act and in any other county choosing to come under the provisions of sections 2 to 28, inclusive, of this act shall submit a report to the 59th session of the legislature regarding the status of the unincorporated towns within its jurisdiction."

Assemblyman Ford moved the adoption of the amendment.

Remarks by Assemblyman Ford.

Amendment adopted.

Bill ordered reprinted, re-engrossed, and to third reading.

GENERAL FILE AND THIRD READING

Assembly Bill No. 319.

Bill read third time.

The following amendment was proposed by Assemblyman Schofield:

Amendment No. 9017.

Amend section 1, page 1, by inserting between lines 11 and 12, the following:

"4. If the defendant is the prevailing party the court shall award him attorney fees and costs."

Amend section 1, page 1, line 12, by deleting "4." and inserting: "5."

Assemblyman Schofield moved the adoption of the amendment.

Remarks by Assemblymen Schofield and Benkovich.

Amendment adopted.

Bill ordered reprinted, re-engrossed, and to third reading.

MOTIONS, RESOLUTIONS, AND NOTICES

Assemblyman Demers moved that Senate Bill No. 335 be taken from the Chief Clerk's desk and placed on the General File.

Remarks by Assemblyman Demers.

Motion carried.

Assemblyman Barengo moved that the vote whereby Amendment No. 9017 to Assembly Bill No. 319 was adopted be rescinded.

Remarks by Assemblymen Barengo, Robinson, Schofield, and Ford.

Motion carried on a division of the house.

Assemblyman Wittenberg moved that Assembly Bill No. 319 be taken from the General File and placed on the Chief Clerk's desk.

Remarks by Assemblyman Wittenberg.

Motion carried.

UNFINISHED BUSINESS

CONSIDERATION OF SENATE AMENDMENTS

Assembly Bill No. 462.

The following Senate amendment was read:

Amendment No. 7899A.

Amend section 1, page 1, line 2, by deleting "6," and inserting: "7,".

Amend section 1.5, page 1, by deleting lines 3 through 14 and inserting:

"Sec. 1.5. As used in sections 1.5 to 7, inclusive, of this act, unless the context otherwise requires:

1. "Alcoholic" means any person who habitually uses alcoholic

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be taken from their positions on the General File and placed at the top of the General File.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 783.

Bill read third time.

Remarks by Assemblyman Heaney.

Roll call on Assembly Bill No. 783:

YEAS—40.

NAYS—None.

Assembly Bill No. 783 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Assembly Bill No. 796.

Bill read third time.

Remarks by Assemblyman Dini.

Roll call on Assembly Bill No. 796:

YEAS—40.

NAYS—None.

Assembly Bill No. 796 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS, AND NOTICES

Assemblyman Dini moved that the rules be suspended and that Assembly Bills Nos. 166, 447, 525, 592, 782, 783, and 796 be immediately transmitted to the Senate.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 319.

Bill read third time.

The following amendment was proposed by Assemblyman Schofield:
Amendment No. 9019.

Amend section 1, page 1, by deleting lines 10 and 11 and inserting:
“*damages that he has sustained.*”

Assemblyman Schofield moved the adoption of the amendment.

Remarks by Assemblyman Schofield.

Amendment adopted.

Bill ordered reprinted, re-engrossed, and to third reading.

SECOND READING AND AMENDMENT

Senate Bill No. 374.

Bill read second time.

The following amendment was proposed by the Committee on Health and Welfare:

ASSEMBLY BILL NO. 319—ASSEMBLYMEN HAYES, MANN,
COULTER, CHRISTENSEN, BANNER, BENKOVICH, PRICE,
VERGIELS, MURPHY, CRADDOCK, DEMERS, SENA,
POLISH AND BARENGO

FEBRUARY 25, 1975

Referred to Concurrent Committees on Judiciary and Commerce

SUMMARY—Provides cause of action for victim of consumer fraud.

Fiscal Note: No. (BDR 3-461)



EXPLANATION—Matter in *italics* is new; matter in brackets [] is
material to be omitted.

AN ACT relating to civil actions; providing for a separate cause of action for a
victim of consumer fraud; 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 41 of NRS is hereby amended by adding thereto
2 a new section which shall read as follows:
3 1. *An action may be brought by any person who is a victim of con-*
4 *sumer fraud.*
5 2. *As used in this section, "consumer fraud" means:*
6 *(a) An unlawful act as defined in NRS 119.330;*
7 *(b) An act prohibited by NRS 482.351; or*
8 *(c) A deceptive trade practice as defined in NRS 598.410.*
9 3. *If the claimant is the prevailing party, the court shall award any*
10 *damages that he has sustained.*
11 4. *Any action brought pursuant to this section is not an action upon*
12 *any contract underlying the original transaction.*

Amend sec. 12, page 5, by deleting lines 9 through 15 and inserting: "estate division that he has successfully completed a college level course of three semester units or an equivalent number of quarter units in real estate law and another course of equal length in the principles of real estate [.] , and satisfied the experiential requirements of subsection 3 of NRS 645.-330."

Amend sec. 12, page 5, lines 17 and 18, by deleting "including 2 years experience as a salesman,".

Amend sec. 12, page 6, by inserting between lines 2 and 3 the following:

"10. An applicant for a broker's examination pursuant to section 1 of [this act] *Assembly Bill 9 of the 58th session of the Nevada legislature* shall meet the educational prerequisites applicable on the date his application is received by the real estate division."

Amend sec. 12, page 6, line 3, by deleting "10." and inserting: "11."

Amend the bill as a whole by adding a new section designated section 37, following section 36, to read as follows:

"Sec. 37. Sections 3 and 12 of this act shall become effective at 12:01 a.m. on July 1, 1975."

Assemblyman Robinson moved that Senate Bill No. 514 be taken from the Second Reading File and placed on the Chief Clerk's desk.

Remarks by Assemblyman Robinson.

Motion carried.

Assembly Bill No. 588.

Bill read second time.

The following amendment was proposed by the Committee on Health and Welfare:

Amendment No. 9089.

Amend section 1, page 1, line 13, after "dependent children" and before "or any" by inserting: ", from the time of birth as provided in section 2 of [this act,] *Assembly Bill 112 of the 58th session of the Nevada legislature*,".

Amend sec. 10, page 6, line 24, by deleting "Sections 1 and" and inserting: "Section".

Amend sec. 10, page 6, line 25, by deleting period after "1975" and inserting: ", and section 1 of this act shall become effective at 12:02 a.m. on July 1, 1975."

Assemblyman Bennett moved the adoption of the amendment.

Remarks by Assemblyman Bennett.

Amendment adopted.

Bill ordered reprinted, re-engrossed, and to third reading.

GENERAL FILE AND THIRD READING

Assembly Bill No. 319.

Bill read third time.

Remarks by Assemblyman Schofield.

Roll call on Assembly Bill No. 319:

YEAS—38.

NAYS—None.

Absent—Bremner, Murphy—2.

Assembly Bill No. 319 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 374.

Bill read third time.

Remarks by Assemblymen Weise and Bennett.

Assemblyman Mello moved that Senate Bill No. 374 be taken from the General File and placed on the Chief Clerk's desk.

Remarks by Assemblymen Mello, Barengo, and Mann.

Motion carried.

Senate Bill No. 542.

Bill read third time.

Remarks by Assemblyman Benkovich.

Roll call on Senate Bill No. 542:

YEAS—36.

NAYS—Dini, May, Weise—3.

Absent—Christensen.

Senate Bill No. 542 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 558.

Bill read third time.

Roll call on Senate Bill No. 558:

YEAS—40.

NAYS—None.

Senate Bill No. 558 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 571.

Bill read third time.

Remarks by Assemblymen Robinson, Mann, and Bennett.

Roll call on Senate Bill No. 571:

YEAS—40.

NAYS—None.

Senate Bill No. 571 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 593.

Bill read third time.

Roll call on Senate Bill No. 593:

YEAS—40.

NAYS—None.

Senate Bill No. 593 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 594.

Bill read third time.

Also, I have the honor to inform your honorable body that the Assembly on this day passed Assembly Bill No. 801.

Also, I have the honor to inform your honorable body that the Assembly on this day concurred in the Senate amendments to Assembly Bills Nos. 700, 454.

Also, I have the honor to inform your honorable body that the Assembly amended, and on this day passed, as amended, Senate Bill No. 335, and respectfully requests your honorable body to concur in said amendments.

Also, I have the honor to inform your honorable body that the Assembly on this day respectfully refused to recede from its action on Senate Bill No. 391 and requests a conference, and appointed Assemblymen Hayes, Sena and Lowman as a first Committee on Conference to meet with a like committee of the Senate.

Also, I have the honor to inform your honorable body that the Assembly on this day respectfully refused to recede from its action on Senate Bill No. 440 and requests a conference, and appointed Assemblymen Hickey, Polish and Wagner as a first Committee on Conference to meet with a like committee of the Senate.

Also, I have the honor to inform your honorable body that the Assembly on this day respectfully refused to recede from its action on Senate Bill No. 253 and requests a conference, and appointed Assemblymen Sena, Hickey and Wagner as a first Committee on Conference to meet with a like committee of the Senate.

MOURYNE B. LANDING
Chief Clerk of the Assembly

ASSEMBLY CHAMBER, Carson City, May 19, 1975

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day adopted Assembly Concurrent Resolution No. 86.

CAROL L. MOORE
Assistant Chief Clerk of the Assembly

INTRODUCTION, FIRST READING, AND REFERENCE

Assembly Bill No. 801.

Senator Brown moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

MOTIONS, RESOLUTIONS, AND NOTICES

Senator Brown moved that Senate Bill No. 224 be taken from the Secretary's desk and be placed on the General File.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 319.

Bill read third time.

Roll call on Assembly Bill No. 319:

YEAS—16.

NAYS—Monroe.

Absent—Herr, Walker, Wilson—3.

Assembly Bill No. 319 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 557.

Bill read third time.

Roll call on Assembly Bill No. 557:

YEAS—17.

NAYS—None.

Absent—Herr, Walker, Wilson—3.

incurred a service-connected disability of the kind described in 38 U.S.C. § 801 as effective on the date when the exemption is claimed, and has received upon severance from service an honorable discharge or certificate of satisfactory service from the Armed Forces of the United States.

Assembly Bill No. 319—Assemblymen Hayes, Mann, Coulter, Christensen, Banner, Benkovich, Price, Vergiels, Murphy, Craddock, Demers, Sena, Polish and Barengo.

A-G

CHAPTER 629

AN ACT relating to civil actions; providing for a separate cause of action for a victim of consumer fraud; and providing other matters properly relating thereto.

[Approved May 20, 1975]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

41.60⁰ SECTION 1. Chapter 41 of NRS is hereby amended by adding thereto a new section which shall read as follows:

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

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

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

(b) An act prohibited by NRS 482.351; or

(c) A deceptive trade practice as defined in NRS 598.410.

3. If the claimant is the prevailing party, the court shall award any damages that he has sustained.

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

A-G

Assembly Bill No. 797—Committee on Government Affairs

CHAPTER 630

AN ACT relating to the division of state lands of the state department of conservation and natural resources; requiring the division to maintain a list of federal lands in this state which are available for exchange and of Nevada residents who desire to exchange their lands for federal lands; requiring the division to assist in the effectuation of such exchanges; and providing other matters properly relating thereto.

[Approved May 20, 1975]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

328.40⁰ SECTION 1. Chapter 321 of NRS is hereby amended by adding thereto a new section which shall read as follows:

EXHIBIT 3

1985

A.B. 379

NELIS

DETAIL LISTING
FROM FIRST TO LAST STEP

TODAY'S DATE: June 16, 1992
TIME : 9:01 am
LEG. DAY: 85 Regular
PAGE : 1 OF 1

1985

AB

379

By Commerce

TRADE REGS/PRACTICES

Increases penalties for deceptive trade practices and
prohibits certain practices. (BDR 52-344)

Fiscal Note: Effect on Local Government: Yes. Effect on the
State or on Industrial Insurance: Yes.

03/19 40 Read first time.
03/20 41 Referred to Committee on Commerce. To printer.
03/21 42 From printer. To committee.
03/21 42 Dates discussed in committee: 4/10, 5/13 (A&DP)
05/16 80 From committee: Amend, and do pass as amended.
05/16 80 (Amendment number 841.)
05/17 81 Read second time. Amended. To printer.
05/20 82 From printer. To engrossment.
05/20 82 Engrossed. First reprint.
05/21 82 Taken from General File. Placed on Chief Clerk's desk.
05/24 86 Taken from Chief Clerk's desk. Placed on General File.
05/24 86 (Amendment number 1168.)
05/24 86 Read third time. Amended. To printer.
05/25 87 From printer. To re-engrossment.
05/25 87 Re-engrossed. Second reprint.
05/25 87 Placed on General File.
05/25 87 Read third time. Passed, as amended. Title approved.
(40 Yeas, 0 Nays, 2 Absent, 0 Excused, 0 Not Voting.) To
Senate.
05/27 91 In Senate.
05/27 91 Read first time. Referred to Committee on
Commerce and Labor. To committee.
05/27 91 Dates discussed in Committee: 5/29, 5/30, 5/31, 6/1
(DPAM)
06/01 96 From committee: Amend, and do pass as amended.
06/01 96 (Amendment number 1447.)
06/01 96 Declared an emergency measure under the Constitution.
06/01 96 Read third time. Amended. To printer.
06/02 97 From printer. To re-engrossment.
06/02 97 Re-engrossed. Third reprint.
06/02 97 Placed on General File.
06/02 97 Read third time. Passed, as amended. Title approved.
(21 Yeas, 0 Nays.) To Assembly.
06/02 94 In Assembly.
06/02 94 Senate amendment concurred in. To enrollment.
06/05 0 Enrolled and delivered to Governor.
06/13 0 Approved by the Governor. Chapter 670.
Sections 8, 11 and 14 of this act effective at 12:01 a.m.
July 1, 1985. Remainder of this act effective July 1, 1985.
(* = instrument from prior session)

NEVADA LEGISLATURE

SIXTY-THIRD SESSION

1985

SUMMARY OF LEGISLATION



PREPARED BY

RESEARCH DIVISION

LEGISLATIVE COUNSEL BUREAU

fees contingent on the outcomes of polygraphic examinations. Educational requirements for polygraphic examiners and interns are revised and clarified.

A.B. 370 (chapter 297)

Assembly Bill 370 amends existing law to exempt the premises of certain wholesale dealers of alcoholic beverages from regulation as a food establishment. The exempted dealers are those who handle beverages in sealed containers only.

A.B. 379 (chapter 670)

Assembly Bill 379 deals with deceptive trade practices. The bill provides that deposits for the purchase of an item must be held no longer than the contract between the buyer and seller specifies. Sellers who violate this provision are subject to a fine equal to the amount of the deposit multiplied by the number of working days that the deposit was unlawfully withheld. The definition of a deceptive trade practice is expanded to include conducting business without a business license and failure to disclose a material fact in connection with a sale. The penalty for repeatedly engaging in a deceptive trade practice is increased. The second offense is a gross misdemeanor. A subsequent offense is a felony, punishable by 1 to 6 years in prison and a fine of up to \$5,000. A person who does not comply with a court order or an assurance of discontinuance ordering him to stop engaging in a deceptive trade practice may have his business license revoked.

The fine imposed for violating the statutes on automobile repairs is increased from \$250 to \$500.

A.B. 401 (chapter 329)

Assembly Bill 401 establishes trade practices for memberships in athletic clubs and discount buying clubs. Athletic clubs, which require members to purchase memberships for 3 months or more, are required to register with the consumer affairs division, department of commerce, and to post a \$25,000 bond. Contracts for membership in clubs may not contain automatic renewal clauses. Members who become disabled are allowed to cancel, extend or suspend their memberships. Purchasers of memberships are allowed 3 days in which to change their minds and cancel the contract. If a club is closed for a month or more, owners must extend memberships or refund a portion of the members' dues.

Discount buying clubs must register with the consumer affairs division and post a \$50,000 bond. Membership dues (except for \$50 of the first payment) and money paid for goods and

ASSEMBLY BILL NO. 379—COMMITTEE ON COMMERCE

MARCH 19, 1985

Referred to Committee on Commerce

SUMMARY—Increases penalties for deceptive trade practices and prohibits certain practices. (BDR 52-344)

LOCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

EXPLANATION—Matter in *italics* is new, matter in brackets [] is material to be omitted.

AN ACT relating to deceptive trade practices; specifying additional deceptive trade practices; increasing penalties for deceptive trade practices; providing penalties; and providing other matters properly relating thereto.

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

Section 1. Chapter 598 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. 1. A person shall not hold a deposit for the purchase of an item longer than the time specified in a contract between the purchaser and the seller if the purchaser is entitled to the return of the deposit.

2. A person who violates the provisions of subsection 1 shall be punished by a fine of not more than the amount of the deposit multiplied by the number of working days the deposit was retained after return was due.

Sec. 3. A business engaged in the sale of goods or services which does not allow refunds or exchanges shall display at least two signs in open and conspicuous places which describe the policy of the business regarding the return or exchange of merchandise and refunds. The signs must be at least 24 by 18 inches in size with boldface letters which must be at least 3 inches high.

Sec. 4. If a person violates any provision of this chapter, fails to comply with a judgment or order of any court in this state concerning a violation of such a provision, or fails to comply with an assurance of discontinuance or other agreement concerning an alleged violation

1 of such a provision, the commissioner of consumer affairs or the district
2 attorney of any county may bring an action in the name of the State
3 of Nevada seeking:

4 1. The suspension of the person's privilege to conduct business
5 within this state; or

6 2. If the defendant is a corporation, dissolution of the corporation.
7 The court may grant or deny the relief sought or may order other
8 appropriate relief.

9 Sec. 5. A person engages in a "deceptive trade practice" when
10 in the course of his business or occupation he employs "bait and
11 switch" advertising, which consists of an offer to sell a product or
12 service which the seller in truth may not intend or desire to sell, accom-
13 panied by one or more of the following practices:

14 1. Refusal to show the product advertised.

15 2. Disparagement in any material respect of the advertised product
16 or the terms of sale.

17 3. Requiring other sales or other undisclosed conditions to be met
18 before selling the advertised product or service.

19 4. Refusal to take orders for the product advertised for delivery
20 within a reasonable time.

21 5. Showing or demonstrating a defective product which is unusable
22 or impractical for the purposes set forth in the advertisement.

23 6. Accepting a deposit for the product and subsequently switching
24 the purchase order to a higher priced item.

25 Sec. 6. A person engages in a "deceptive trade practice" when
26 in the course of his business or occupation he:

27 1. Knowingly fails to identify goods damaged by water.

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

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

34 4. Fails to make delivery of a product within a reasonable time or
35 to make a refund for the product.

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

37 (a) Represents that the investment is guaranteed, secured or protected
38 in a manner which he knows or has reason to know, is false or mislead-
39 ing;

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

42 (c) Makes any untrue statement of a material fact or omits to state
43 a material fact which is necessary to make another statement, consider-
44 ing the circumstances under which it is made, not misleading;

45 (d) Fails to maintain adequate records so that an investor may deter-
46 mine how his money is invested;

1 (e) Fails to provide information to an investor after a reasonable
2 request for information concerning his investment;

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

5 (g) Represents that he is licensed by an agency of the state to sell
6 or offer for sale investments or services for investments if he is not so
7 licensed.

8 Sec. 7. A person engages in a "deceptive trade practice" when
9 in the course of his business or occupation he:

10 1. Conducts the business or occupation without all required state,
11 county or city licenses.

12 2. Fails to disclose a material fact in connection with the sale of
13 goods or services.

14 Sec. 8. NRS 598.360 is hereby amended to read as follows:

15 598.360 As used in NRS 598.360 to 598.640, inclusive, and sec-
16 tions 5, 6 and 7 of this act, unless the context otherwise requires, the
17 words and terms defined in NRS 598.370 to 598.480, inclusive, and
18 sections 5, 6 and 7 of this act have the meanings ascribed to them in
19 those sections.

20 Sec. 9. NRS 598.410 is hereby amended to read as follows:

21 598.410 A person engages in a "deceptive trade practice" when
22 in the course of his business or occupation he:

23 1. Knowingly passes off goods or services as those of another.

24 2. Knowingly makes a false representation as to the source, spon-
25 sorship, approval or certification of goods or services.

26 3. Knowingly makes a false representation as to affiliation, connec-
27 tion, association with or certification by another.

28 4. Uses deceptive representations or designations of geographic ori-
29 gin in connection with goods or services.

30 5. Knowingly makes a false representation as to the characteristics,
31 ingredients, uses, benefits, alterations or quantities of goods or services
32 or a false representation as to the sponsorship, approval, status, affilia-
33 tion or connection of a person therewith.

34 6. Represents that goods are original or new if he knows or should
35 know that they are deteriorated, altered, reconditioned, reclaimed, used
36 or secondhand.

37 7. Represents that goods or services are of a particular standard,
38 quality or grade, or that goods are of a particular style or model, if
39 he knows or should know that they are of another.

40 8. Disparages the goods, services or business of another by false
41 or misleading representation of fact.

42 9. Advertises goods or services with intent not to sell them as adver-
43 tised.

- 1 10. Advertises goods or services with intent not to supply reason-
2 ably expectable public demand, unless the advertisement discloses a
3 limitation of quantity.
- 4 11. Advertises under the guise of obtaining sales personnel when in
5 fact the purpose is to first sell a product or service to the sales person-
6 nel applicant.
- 7 12. Makes false or misleading statements of fact concerning the
8 price of goods or services, or the reasons for, existence of or amounts
9 of price reductions.
- 10 13. Employs "bait and switch" advertising, which consists of an
11 attractive but insincere offer to sell a product or service which the
12 seller in truth does not intend or desire to sell, accompanied by one
13 or more of the following practices:
14 (a) Refusal to show the product advertised.
15 (b) Disparagement in any material respect of the advertised product
16 or the terms of sale.
17 (c) Requiring tie-in sales or other undisclosed conditions to be met
18 prior to selling the advertised product or service.
19 (d) Refusal to take orders for the product advertised for delivery
20 within a reasonable time.
21 (e) Showing or demonstrating a defective product which is unusable
22 or impractical for the purposes set forth in the advertisement.
23 (f) Accepting a deposit for the product and subsequently switching the
24 purchase order to a higher priced item.
25 (g) Failure to make deliveries of the product within a reasonable time
26 or to make a refund therefor.
- 27 14. Knowingly fails to identify flood-damaged or water-damaged
28 goods as to such damages.
- 29 15. Solicits by telephone or door to door as a seller, unless the
30 seller identifies himself, whom he represents and the purpose of his call
31 within 30 seconds after beginning the conversation.
- 32 16. Knowingly states that services, replacement parts or repairs are
33 needed when no such services, replacement parts or repairs are actu-
34 ally needed.
- 35 17. Advertises or offers an opportunity for investment and:
36 (a) Represents that the investment is guaranteed, secured or protected
37 in a manner which he knows or has reason to know, is false or mislead-
38 ing;
39 (b) Represents that the investment will earn a rate of return which he
40 knows or has reasons to know is false or misleading;
41 (c) Makes any untrue statement of a material fact or omits to state
42 a material fact which is necessary to make another statement, consider-
43 ing the circumstances under which it is made, not misleading;
44 (d) Fails to maintain adequate records so that an investor may deter-
45 mine how his money is invested;

- 1 (e) Fails to provide information to an investor after a reasonable
2 request for information concerning his investment;
- 3 (f) Fails to comply with any law or regulation for the marketing of
4 securities or other investments; or
- 5 (g) Represents that he is licensed by an agency of the state to sell
6 or offer for sale investments or services for investments if he is not so
7 licensed.]
- 8 Sec. 10. NRS 598.490 is hereby amended to read as follows:
9 598.490 1. Evidence that a person has engaged in a deceptive
10 trade practice is prima facie evidence of intent to injure competitors
11 and to destroy or substantially lessen competition.
- 12 2. The deceptive trade practices listed in NRS 598.410 and sections
13 5, 6 and 7 of this act are in addition to and do not limit the types
14 of unfair trade practices actionable at common law or defined as such
15 in other statutes of this state.
- 16 Sec. 11. NRS 598.540 is hereby amended to read as follows:
17 598.540 1. Notwithstanding the requirement of knowledge as an
18 element of [any practice enumerated in NRS 598.410 as] a deceptive
19 trade practice, when the commissioner or director has cause to believe
20 that a person has engaged or is engaging in any [of the practices enu-
21 merated in NRS 598.410,] *deceptive trade practice*, knowingly or oth-
22 erwise, he may apply for an injunction or temporary restraining order
23 [as provided in N.R.C.P. 65,] prohibiting the person from continuing
24 [such] the practices. The court may make orders or judgments neces-
25 sary to prevent the use by the person of any such deceptive trade prac-
26 tice or to restore to any other person any money or property which may
27 have been acquired by the deceptive trade practices.
- 28 2. Where the commissioner or director has the authority to institute
29 a civil action or other proceeding, in lieu thereof or as a part thereof,
30 he may accept an assurance of discontinuance of any deceptive trade
31 practice. This assurance may include a stipulation for the [voluntary]
32 payment by the alleged violator of the costs of investigation and the
33 costs of instituting the action or proceeding and for the [voluntary] res-
34 titution of any money or property acquired by deceptive trade practices.
35 Except as provided in this subsection, any assurance of discontinuance
36 accepted by the commissioner or director and any stipulation filed with
37 the court is confidential to the parties to the action or proceeding and
38 to the court and its employees. Upon final judgment by the court that
39 an injunction or a temporary restraining order, issued as provided in
40 subsection 1 of this section, has been violated, an assurance of discon-
41 tinuance has been violated or a person has engaged in the same decep-
42 tive trade practice as had previously been enjoined, the assurance of
43 discontinuance or stipulation becomes a public record. Proof by a pre-
44 ponderance of evidence of a violation of an assurance constitutes prima
45 facie evidence of a deceptive trade practice for the purpose of any civil

1 action or proceeding brought thereafter by the commissioner or direc-
2 tor, whether a new action or a subsequent motion or petition in any
3 pending action or proceeding.

4 Sec. 12. NRS 598.570 is hereby amended to read as follows:

5 598.570 Notwithstanding the requirement of knowledge as an ele-
6 ment of [any practice enumerated in NRS 598.410 as] a deceptive
7 trade practice, and notwithstanding the enforcement powers granted to
8 the commissioner or director pursuant to NRS 598.360 to 598.640,
9 inclusive, whenever the district attorney of any county has reason to
10 believe that any person is using, has used or is about to use any [of
11 the practices enumerated in NRS 598.410,] *deceptive trade practice*,
12 knowingly or otherwise, he may bring an action in the name of the
13 State of Nevada against that person to obtain a temporary or permanent
14 injunction against the deceptive trade practice.

15 Sec. 13. NRS 598.620 is hereby amended to read as follows:

16 598.620 1. In proceeding pursuant to NRS 598.580 to 598.620,
17 inclusive, the district attorney may accept an assurance of discontinu-
18 ance with respect to any method, act or practice deemed to be a decep-
19 tive trade practice [enumerated in NRS 598.410] from any person who
20 is engaged or is about to engage in [such] *the* method, act or practice
21 by following the procedures set forth in subsection 2 of NRS 598.540.

22 2. Any assurance made pursuant to subsection 1 [shall] *must be in*
23 writing and [shall] *must* be filed with and subject to the approval of
24 the district court in the county in which the alleged violator resides or
25 has his principal place of business, or the district court in any county
26 where any deceptive trade practice has occurred or is about to occur
27 or the district court agreed to by the parties.

28 3. An assurance of discontinuance made pursuant to subsections 1
29 and 2 [shall not be considered] *is not* an admission of violation for
30 any purpose, but is subject to the terms, limitations [,] and conditions
31 of NRS 598.540.

32 Sec. 14. NRS 598.640 is hereby amended to read as follows:

33 598.640 1. Any person who violates any court order or injunction
34 issued pursuant to NRS 598.360 to 598.630, inclusive, upon a con-
35 plaint brought by the commissioner, director or the district attorney of
36 any county of this state shall forfeit and pay to the state general fund
37 a civil penalty of not more than \$10,000 for each violation. For the
38 purpose of this section, the court issuing any such order or injunction
39 shall retain jurisdiction over the action or proceeding. Such civil pen-
40 ties are in addition to any other penalty or remedy available for the
41 enforcement of the provisions of NRS 598.360 to 598.630, inclusive.

42 2. In any action brought pursuant to NRS 598.540 and [NRS
43 598.570 to 598.600, inclusive, if the court finds that any person has
44 willfully engaged in a deceptive trade practice, [enumerated in NRS
45 598.410,] the commissioner, director or the district attorney of any

1 county in this state bringing such *an* action may recover a civil penalty
2 not to exceed \$2,500 for each violation.

3 3. Any person, firm, or any officer or managing agent of any corpo-
4 ration or association who knowingly and willfully engages in a decep-
5 tive trade practice [enumerated in NRS 598.410] shall be punished:

6 (a) For the first [or second] offense, for a misdemeanor.

7 (b) For the [third offense and all subsequent offenses,] *second*
8 *offense*, for a gross misdemeanor.

9 [4. As used in this section the term "violation" includes a repeti-
10 tive or continuous violation arising out of the same act.]

11 (c) *For the third and all subsequent offenses, by imprisonment in the*
12 *state prison for not less than 1 year nor more than 6 years, or by a*
13 *fine of not more than \$5,000, or by both fine and imprisonment.*

14 Sec. 15. NRS 598.695 is hereby amended to read as follows:

15 598.695 1. Every garageman shall display conspicuously in those
16 areas of his place of business frequented by persons seeking repairs on
17 motor vehicles a sign, not less than 22 [inches] by 28 inches in size,
18 setting forth in boldface letters the following:

19 STATE LAW REQUIRES THAT [UPON REQUEST BY] ANY
20 PERSON AUTHORIZING REPAIRS [TO A MOTOR VEHICLE,
21 SUCH PERSON SHALL] *MUST* BE GIVEN A WRITTEN ESTI-
22 MATE OF TOTAL CHARGES FOR LABOR AND PARTS AND
23 ACCESSORIES [, AND THAT] *BEFORE REPAIRS ARE*
24 *MADE. NO CHARGE MAY BE MADE EXCEEDING THE ESTI-*
25 *MATED AMOUNT BY 20 PERCENT OR [\$40,] \$80, WHICH-*
26 *EVER IS LESS, WITHOUT THE CONSENT OF THE PERSON*
27 *AUTHORIZING THE REPAIRS.*

28 2. Any person who violates the provisions of this section is guilty
29 of a misdemeanor.

30 Sec. 16. NRS 598.705 is hereby amended to read as follows:

31 598.705 1. A person requesting or authorizing the repair of a
32 motor vehicle is entitled [, at his specific request, to be furnished] *to*
33 *receive* an estimate or statement signed by the person making [such]
34 *the* estimate or statement on behalf of the garageman, indicating the
35 total charge for the performance of the work necessary to accomplish
36 the repair, including the charge for labor and all parts and accessories
37 necessary to the performance of [such work.] *the work and any charge*
38 *for work which is sublet.*

39 2. When the estimate is for the purpose of diagnosing a malfunc-
40 tion, the estimate [shall] *must* include the cost of diagnosis and disas-
41 sembly and the cost of reassembly if the person does not authorize the
42 repair.

43 Sec. 17. NRS 598.710 is hereby amended to read as follows:

44 598.710 1. When an estimate has been furnished pursuant to NRS
45 598.705, and it is determined that additional charges exceeding 20 per-
46 cent of the estimate, or [\$40,] \$80, whichever is less, are required to

1 perform the repair authorized, the garageman shall notify the person
2 authorizing the repairs of the amount of [such additional charges.] the
3 additional charges and shall not proceed further with any work until
4 the additional charges are authorized or rejected.

5 2. The garageman shall not make any repairs authorized pursuant
6 to subsection 1 unless he includes on the estimate or statement of
7 charges:

8 (a) The number of the driver's license or the signature of the person
9 who authorized the additional repairs; and

10 (b) The date and time of the authorization to make the additional
11 repairs.

12 Sec. 18. NRS 598.715 is hereby amended to read as follows:

13 598.715 1. The person authorizing the repairs may waive the
14 notification required by NRS 598.710 by executing the waiver described
15 in subsections 2 [to 4, inclusive.], 3 and 4.

16 2. The waiver [shall] must be executed by the person authorizing
17 the repairs at the time of authorization of [such] the repairs. It [shall]
18 must include the following statement set forth in boldface letters not less
19 than 1/4 inch high:

20 STATE LAW REQUIRES THAT WHEN A GARAGEMAN HAS
21 GIVEN A PERSON AUTHORIZING REPAIRS A WRITTEN
22 ESTIMATE SETTING FORTH THE TOTAL COST FOR LABOR
23 AND PARTS AND ACCESSORIES TO ACCOMPLISH REPAIRS
24 ON A MOTOR VEHICLE, NO CHARGE CAN BE MADE
25 EXCEEDING THE ESTIMATED AMOUNT BY 20 PERCENT OR
26 [\$40.] \$80, WHICHEVER IS LESS, WITHOUT THE
27 CONSENT OF SUCH PERSON. THE PERSON AUTHORIZING
28 THE REPAIRS MAY, HOWEVER, WAIVE HIS RIGHT TO
29 SUBSEQUENT APPROVAL OF INCREASED CHARGES.
30 SHOULD THEY BE FOUND TO BE NECESSARY, BY
31 EXECUTING THIS WAIVER.

32 3. [This shall] The statement must be followed by the [certification
33 set forth below.] following certification and the signature of the person
34 authorizing the repairs:

35 The undersigned hereby certifies that he has read the preceding
36 statement and knowingly and intentionally waives the right
37 approve any increased charges, should they be found necessary
38 complete the required repairs on this motor vehicle.

39 4. The form containing the waiver [shall] must contain:

40 (a) The date.

41 (b) The [vehicle] vehicle's make, body type and mileage and
42 number of its registration plate. [number.]

43 (c) The number of the work order [number assigned by the garage
44 man to] for the work to be performed on the vehicle.

45 (d) The name, address and telephone number, [if any, of]
46 the person authorizing the repairs.

1 Sec. 19. NRS 598.745 is hereby amended to read as follows:

2 598.745 Any person who knowingly violates any provision of NRS
3 598.700 to 598.735, inclusive, is liable, in addition to any other pen-
4 alty or remedy which may be provided by law, to a civil penalty of
5 [\$250] not more than \$500 for each offense, which may be recovered
6 by civil action on complaint of the commissioner of consumer affairs
7 , the director of the department of commerce or the district attorney.

8 Sec. 20. NRS 41.600 is hereby amended to read as follows:

9 41.600 1. An action may be brought by any person who is a vic-
10 tim of consumer fraud.

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

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

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

14 (c) A deceptive trade practice as defined in NRS 598.410 [.] and sec-
15 tions 5, 6 and 7 of this act.

16 3. If the claimant is the prevailing party, the court shall award any
17 damages that he has sustained.

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

20 Sec. 21. NRS 489.401 is hereby amended to read as follows:

21 489.401 The following grounds, among others, constitute grounds
22 for disciplinary action under NRS 489.381:

23 1. The intentional publication, circulation or display of any adver-
24 tising which constitutes a [violation of NRS 598.410 by being a] decep-
25 tive trade practice [within the meaning of the term as set forth in that
26 section.] as that term is defined in NRS 598.410 and sections 5, 6
27 and 7 of this act.

28 2. Failure to include in any advertising the name of the licensed
29 dealer, rebuilder, serviceman or installer, or the name under which he
30 is doing business.

31 3. Making any substantial misrepresentation or false promise which
32 is likely to influence, persuade or induce, or continually failing to fulfill
33 promises to sell, breaching agreements or contracts or making false
34 promises by any means.

35 4. Failure to disclose all terms and conditions of a sale, purchase
36 or lease or offer to sell, purchase or lease a manufactured home,
37 mobile home or commercial coach.

38 5. Representing to any lender, guaranteeing agency or other inter-
39 ested party, either orally or through the preparation of false documents:

40 (a) An amount in excess of the actual sales price;

41 (b) A false amount as the down payment, earnest money deposit or
42 other valuable consideration;

43 (c) Terms differing from those actually agreed upon; or

44 (d) False information on a credit application.

45 6. Inducing an applicant to falsify his credit application.

Mrs. Compton stated that while the businesses are required to obtain a business license, it has been found that if the business leaves town there is not money to repay the consumers. Therefore, a bonding procedure is being requested. Mrs. Compton explained that often times there are owners of these businesses from out of state who do not keep a bank account in Nevada, thus making it impossible to collect any money to repay the consumer.

Mrs. Compton explained Section 10 of AB 401. It was stated that this legislation is a result of what has happened with Dorelco. Approximately 1200 people in southern Nevada were taken in by Dorelco at a cost from \$800 to \$1000 for joining. In addition, furniture that was ordered was never received by the customers. Customers who paid up front are going to have a difficult time retrieving their money. Others who were making payments got some reprieve when there was a court order allowing for the payments to be stopped. Dorelco had no monies in Nevada. All the money collected went out of state, thus the bonding requirement. Mrs. Compton estimated the losses to be more than \$1 million for the thirteen months Dorelco was in operation. These were to be lifetime memberships. Dorelco was scheduled to open in Reno but were stopped from doing so.

Mr. Jeffrey inquired if the stringent requirements being proposed in AB 401 would keep legitimate people from going into business. Mrs. Compton responded that the proposals would not put legitimate people out of business.

Ms. Perry stated that an amendment needs to be added to AB 401 that failure to abide by the provisions as set forth in AB 401 would result in action by Consumer Affairs. Violations should be termed a deceptive trade practice or the Consumer Affairs should be given the ability to act. Chairman DuBois requested that Mrs. Williams have the amendment prepared.

There being no further testimony on AB 401 the hearing was closed.

AB 379: Summary - Increases penalties for deceptive trade practices and prohibits certain practices. (BDR 52-344)

Mrs. Compton and Ms. Perry remained to testify in favor of AB 379. Mrs. Compton stated AB 379 is a result of problems in the area of consumer affairs. Mrs. Compton gave an example of a person who put up \$20,000 deposit on a boat over one year ago and still has not had the deposit returned. Problems with Dorelco were outlined. There are problems with deposits in the furniture industry and with door to door sales for orders that are taken and never come.

Section 3: Mrs. Compton stated that for businesses that do not provide refunds or exchanges it is their privilege. For communications purposes it is being requested that whatever the policy of the store is be posted on a sign in a conspicuous place. The sign must be at least 18x24 inches in size with three-inch bold face lettering. Mrs. Compton stated there are a great number of mediated cases in this area. There is no problem as long as there is communication between

the business and the consumer.

Ms. Perry noted that for Section 3 there is no allowance as to what penalty might be affixed for failure to post a sign. Ms. Perry requested that the penalty be a misdemeanor which is parallel with the automotive repair sign.

Chairman DuBois requested that Mrs. Perry have the amendment prepared.

Section 7: Legislation that creates deceptive trade practice for conducting business or occupation without all required city and state licenses. Doing business without a license would be a deceptive trade practice which is a misdemeanor. Mrs. Compton stated there is a great deal of money lost due to businesses not having a business license.

Mr. Fairchild inquired what this requirement would do to the child who mows lawns. Mrs. Compton stated that legally the child is not of age to have a business license. It is not the intent of this bill. It might hurt the child. But on the other hand there is a man who has a family who has a business to do lawns.

Chairman DuBois inquired if in Section 4 this would allow court action. Mrs. Compton stated that this would be the case because there would be a deceptive trade practice. The Consumer Affairs Division could have an assurance or an administrative hearing in lieu of court action. The findings of an administrative hearing are not binding, however.

Ms. Perry addressed Section 7, subsection 2. Ms. Perry explained that a transaction between two private individuals where there is not full disclosure can be dealt with in court. Yet if you are a consumer and there is not full disclosure in the purchase of goods or services this is not consumer fraud in the State of Nevada. This is fraud but not consumer fraud. This proposal promotes full disclosure to the consumer and has ramifications on all levels of consumer protection.

Chairman DuBois stated that if a businessman forgot one piece of material fact, and it was an honest mistake, how would this affect him? Ms. Perry responded that legitimate businesses in Nevada may make a mistake and the Consumer Affairs Division will believe this. When there are glaring things such as the case in Las Vegas where an individual was selling spas. Before the spas were sold the control panels were removed and replaced with his own. This took the spa out of warranty. The spas failed to function and the people who purchased them were without any recourse. It was not illegal to change the control panel but it should have been his responsibility to let the purchaser know so that they would be aware of what recourse they had. Ms. Perry stated that this type of law is used across the country in other states. Chairman DuBois asked that the Committee be presented with these statistics.

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Page: Four

Section 11: Mrs. Compton requested that an amendment that would take out the word 'voluntary' to make payment of violations mandatory on the administrative level.

Section 14: Addresses penalties. Ms. Perry stated that presently there are not many, if any, criminal prosecutions for consumer fraud. The reason for this is that prosecuting major violators of consumer fraud for a misdemeanor is ludicrous. Civil litigation is lengthier and more costly, but is the best way to deal with consumer fraud at the present time. Ms. Perry outlined what is being proposed.

Mrs. Compton stated in the area of automobile repairs, verbal agreements are what is being dealt with. It is difficult to tell who is telling the truth, the consumer or the business. A written estimate is a communication tool and would cut down on the consumer problem that exists. Presently, the law makes estimates a burden of the consumer to request. The proposed changes would make it mandatory that a written estimate be given.

Section 18: Allows for a waiver to be signed by the consumer to allow for repairs beyond the estimate that cost no more than 20% of the estimate of \$80, whichever is less. This is a change from \$40 in the present law which was created around 1979.

In addition, a waiver may be signed that would allow repairs beyond the \$80 or 20%. This is outlined in Section 18, Subsections 3 and 4.

Mr. Bogaert inquired how this would protect the consumer. Mrs. Compton responded that there will be times when there will be abuse or no disclosure of why the driver license is being requested. Mrs. Compton stated that she views this as part of the Commissioner's duty in Consumer Affairs to educate the public as to what is required.

Section 19: Refers to civil penalties and increases the amounts of fines.

Ms. Carol Vilardo, representing Citizens for Private Enterprise, came forward to testify in favor of AB 379 with reservations. Ms. Vilardo proposed amending the size of the sign requirement. Ms. Vilardo stated that businesses must post a stop payment check sign, a check insufficient fund sign, and a shoplifting sign. To place a sign the size being proposed in AB 379 would create problems for the shop owner in availability of space. Ms. Vilardo requested the requirements for the sizing of the sign be reduced.

Section 7: Ms. Vilardo stated that this proposal would create a problem in the area where a business must contract out part of its services. Technically the business would have to have a special business license to have the contract work done. In order to correct this, Ms. Vilardo suggested putting the word 'knowingly' into subsections 1 and 2. Subsection 1 would then read, "a person who knowingly engages..." Subsection 2 would read, "Knowingly fails to disclose a material fact..."

In addition, Ms. Vilardo suggested that subsection 2 be further amended to read "Knowingly fails to disclose a material fact that adversely affects the product or service in connection ..." This would stop superficial actions.

Mr. Daryl Capurro, representing Nevada Auto Dealers Association, came forward to testify on AB 379. Mr. Capurro stated there is no problem with the intent of AB 379. Mr. Capurro expressed similar comments as Ms. Vilardo. In addition, Section 7, subsection 2, the requirement to disclose a material fact is unclear. A material fact is a legal term. What is material to one person is not material to another. The language should be tied down to intent to defraud and to such things as to not adversely affect the consumer.

Section 15: Mr. Capurro expressed that presently it is required to post a sign conspicuously regarding customer's responsibility to request a written estimate. Mr. Capurro explained circumstances where the customer did not want a written estimate. The current law works fine.

Mr. Capurro stated that the felony offense category is stiff. The current language is sufficient.

There being no further testimony on AB 379, the hearing was closed.

SB 28: Summary - Allows physical therapist to treat patient without referral from certain practitioners of healing arts. (BDR 54-580)

Mr. Joe Midmore, representing the Nevada Chapter of the American Physical Therapy Association, came forward to testify in favor of SB 28. Mr. Midmore explained that the physical therapy profession has been in existence since the years following World War I. It was started by the government to train people to rehabilitate the many thousands of men with injuries from the war. The profession has grown tremendously and is taught in many accredited colleges and universities. At present seven other states allow physical therapy without referral. This is what SB 28 does. Mr. Midmore stated that most referrals that physical therapists get from physicians say simply words to this affect, "Mr. So-and-so referred to 'therapists name'- sore shoulder, sore knee, please treat." For this referral the patient is paying the doctors fee. This is proof of the cost containment efforts that are being reviewed this session. The educational qualifications are high. The demands of the board of physical therapy examiners are high. There is a separate board to examine, license and regulate this profession.

Mr. Midmore made statements regarding the opposition of SB 28. It was stated that the physical therapy law, Chapter 640, specifically says that physical therapists, in their treatment of patients do not use chiropractic adjustment. This is not used and the physical therapists do not wish to use chiropractic adjustment.

be limited to 1.5% per month on accounts past due after 30 days. There is a cap put on the amount that can be charged under subsection 3 of Section 4.

Mr. Francis proposed deleting several sections of SB 254 due to them not being necessary or somewhat unfair. Mr. Francis stated that incidental charges should be limited to interest and returned check. The Committee decided to allow the employment agencies to charge 75%.

Mr. Bogaert moved to amend and do pass as proposed by Mr. Francis. Mr. Sedway seconded the motion. The motion carried unanimously with Mr. Thompson and Mr. Jeffrey not present at the time of the vote and Mr. Schofield absent.

AB 379 - Summary - Increases penalties for deceptive trade practices and prohibits certain practices. (BDR 52-344)

Mrs. Williams, a member of the subcommittee for AB 379, presented amendment #841 to the Committee. The amendments were what the Committee previously discussed and agreed upon at a previous meeting. Amendment #841 is attached to these minutes as EXHIBIT D.

Mr. Sedway moved to amend and do pass AB 379 with amendment #841. Mr. Kerns seconded the motion. The motion carried with Mr. Thompson, Mr. Francis and Mr. Jeffrey not present at the time of the vote and with Mr. Schofield absent.

AB 302 - Summary - Makes various changes concerning private investigator's licensing board. (BDR 54-512)

Mr. Kerns presented written amendments for AB 302 which is what the opposing parties compromised and agreed upon. This is attached to these minutes as EXHIBIT E. The Committee went over the proposed amendments.

Mr. Sedway moved to amend and do pass AB 302 with Mr. Kerns proposed amendments. Mr. Kerns seconded the motion. The motion carried with Mrs. Williams, Mr. Jeffrey and Mr. Thompson not present at the time of the vote and Mr. Schofield was absent.

AB 335 - Prohibits sale of beverage in can with certain removable tab. (BDR 51-792)

Mr. Tebbs moved to indefinitely postpone AB 335. The motion was seconded by Mr. Sedway. The motion carried with Mrs. Williams, Mr. Collins, Mr. Jeffrey and Mr. Thompson not present at the time of the vote and Mr. Schofield absent.

There being no further business before the Committee, the meeting was adjourned at 7:15 p.m.

Respectfully submitted,

Deborah Redican
Deborah Redican, Secretary

LEGISLATIVE ACTION63rd SESSION NEVADA LEGISLATUREDATE OF ACTION: May 13, 1985 6 p.m. BILL NO: AB 379

SUMMARY: Increases penalties for deceptive trade practices and prohibits certain practices. (BDR 52-344)

MOTION: AMEND AND DO PASS

VOTE	
YES	NO

MADE BY: Mr. SedwaySECONDED BY: Mr. Kerns

Mr. Bogaert	XX	___
Mr. Collins	XX	___
Mr. Fairchild	XX	___
Mr. Francis	NOT	PRESENT
Mr. Jeffrey	NOT	PRESENT
Mr. Kerns	XX	___
Mr. Schofield	ABSENT	___
Mr. Sedway	XX	___
Mr. Tabbs	XX	___
Mr. Thomas	XX	___
Mr. Thompson	NOT	PRESENT
Mrs. Williams	XX	___
Mr. DuBois	XX	___

TALLY: 9 0

MOTION:

VOTE	
YES	NO

MADE BY: _____

SECONDED BY: _____

Mr. Bogaert	___	___
Mr. Collins	___	___
Mr. Fairchild	___	___
Mr. Francis	___	___
Mr. Jeffrey	___	___
Mr. Kerns	___	___
Mr. Schofield	___	___
Mr. Sedway	___	___
Mr. Tabbs	___	___
Mr. Thomas	___	___
Mr. Thompson	___	___
Mrs. Williams	___	___
Mr. DuBois	___	___

TALLY: ___ ___

ASSEMBLY ACTION	SENATE ACTION	
Adopted <input type="checkbox"/>	Adopted <input type="checkbox"/>	Assembly Amendment to Assembly Bill No. 379. BDR 52-344 Proposed by Committee on Commerce
Lost <input type="checkbox"/>	Lost <input type="checkbox"/>	
Date:	Date:	
Initial:	Initial:	
Concurred in <input type="checkbox"/>	Concurred in <input type="checkbox"/>	
Not concurred in <input type="checkbox"/>	Not concurred in <input type="checkbox"/>	
Date:	Date:	
Initial:	Initial:	
Amendment		
No. 841		

Amend sec. 3, page 1, line 14, by deleting "The" and inserting:

"One of the".

Amend sec. 3, page 1, line 16, by deleting the period and inserting:

"and the other must be at least 8 by 10 inches in size.".

Amend sec. 7, page 3, line 9, by deleting the colon and inserting "knowingly".

Amend sec. 15, page 7, line 19, by deleting the brackets.

Amend sec. 15, page 7, line 21 after closed bracket by inserting "HE".

Amend sec. 16, page 7, by deleting lines 30 through 42 and inserting:

"Sec. 16. (Deleted by amendment.)".

To: E A E
LCB File
Journal
Engrossment
Bill

Drafted by: K.M.H.

Date: 5/9/85

JOURNAL OF THE ASSEMBLY

5-17-85

SIXTY-THIRD SESSION

1007

By the Committee on Commerce:

Assembly Bill No. 697—An Act relating to dentures; licensing and regulating the manufacture, fitting, installation and repair of dentures; setting fees; providing a penalty; and providing other matters properly relating thereto.

By the Committee on Commerce:

Assembly Bill No. 698—An Act relating to insurance; authorizing the formation of captive insurance companies to provide certain types of casualty insurance to certain persons and entities; regulating these insurance companies; and providing other matters properly relating thereto.

By Assemblymen Nicholas and Thompson:

Assembly Bill No. 699—An Act relating to dogs trained to aid persons in wheelchairs; making it unlawful to refuse service to a person so aided; and providing other matters properly relating thereto.

Assemblyman Francis moved that the Assembly recess until 3 p.m.
Motion carried.

Assembly in recess at 12:48 p.m.

ASSEMBLY IN SESSION

At 3:06 p.m.

Mr. Speaker pro Tempore presiding.

Quorum present.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Francis moved that Assembly Bills Nos. 183, 348, 471, 557, 558, 595, 600, 636, 675; Assembly Joint Resolution No. 25; Senate Bills Nos. 18, 197, 236, 324, 441; Senate Joint Resolutions Nos. 16 and 36 be placed on the Second Reading File.

Assemblyman Francis moved that Assembly Bill No. 302 be placed on the General File.

Remarks by Assemblyman Francis.

Motion carried.

SECOND READING AND AMENDMENT

Assembly Bill No. 379.

Bill read second time.

The following amendment was proposed by the Committee on Commerce:
Amendment No. 841.

Amend sec. 3, page 1, line 14, by deleting "The" and inserting: "One of the".

Amend sec. 3, page 1, line 16, by deleting the period and inserting: "and the other must be at least 8 by 10 inches in size."

Amend sec. 7, page 3, line 9, by deleting the colon and inserting "knowingly:".

Amend sec. 15, page 7, line 19, by deleting the brackets.

Amend sec. 15, page 7, line 21 after the closed bracket by inserting "HE".

Amend sec. 16, page 7, by deleting lines 30 through 42 and inserting:

"Sec. 16. (Deleted by amendment.)".

Assemblyman Stone moved the adoption of the amendment.

Remarks by Assemblyman Stone.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 426.

Bill read second time, ordered engrossed and to third reading.

Assembly Bill No. 440.

Bill read second time, ordered engrossed and to third reading.

Assembly Bill No. 504.

Bill read second time.

The following amendment was proposed by the Committee on Commerce:
Amendment No. 842.

Amend sec. 2, page 2, by deleting lines 2 through 7 and inserting:
"amended (J 42 U.S.C. §§ 1401 et seq. [J]) , as amended;

(c) A person who owns [less than seven] and personally manages four or fewer dwelling units, except with respect to the provisions of NRS 118A.200, 118A.300, 118A.340, 118A.450 and 118A.460 ; [.]

(d) Residence in an institution, public or private, incident to deten-".

Amend sec. 2, page 2, by deleting lines 9 through 30 and inserting:
"counseling, religious or similar service ; [.]

(e) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or [a person who succeeds to the purchaser's interest.] his successor in interest;

(f) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization ; [.]

(g) Occupancy in a hotel or motel for less than 30 consecutive days unless the occupant clearly manifests an intent to remain for a longer continuous period ; [.]

(h) Occupancy by an employee of a landlord whose right to occupancy is solely conditional upon employment in or about the premises ; [.]

(i) Occupancy by an owner of a condominium unit or by a holder of a proprietary lease in a cooperative apartment [.] ; or

(j) Occupancy under a rental agreement covering premises used by".

Amend sec. 6, page 5, by deleting lines 34 through 38 and inserting: "in addition to any other remedy, recover his actual damages [.] , receive an amount not greater than \$1,000 to be fixed by the court, or both.

2. In determining the amount, if any, to be awarded under subsection 1, the court shall consider:".

ng the colon and inserting
the brackets.
closed bracket by inserting
through 42 and inserting:
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1 reading.
to third reading.
to third reading.
e Committee on Commerce:
2 through 7 and inserting:
amended;
personally manages four or
o the provisions of NRS
118A.460 ; [.]
ate, incident to deten-"
through 30 and inserting:
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urchaser or [a person who
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r social organization in the
f the organization ; [.]
30 consecutive days unless
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the premises ; [.]
n unit or by a holder of a
; or
ing premises used by".
ough 38 and inserting: "in
l damages [.] , receive an
e court, or both.
warded under subsection 1,

Amend sec. 9, page 7, line 13, by deleting "served either:" and inserting:
"served : {either:}".
Amend the bill as a whole by adding a new section designated section 10,
following section 9, to read as follows:
"Sec. 10. NRS 118A.490 is hereby amended to read as follows:
118A.490 1. In an action for possession based upon nonpayment of
rent or in an action for rent where the tenant is in possession, the tenant may
defend and counterclaim for any amount which he may recover under the
rental agreement , [or] this chapter [. In that event the court from time to
time may order the tenant to pay into court all or part of the rent accrued and
thereafter accruing which is in dispute and] , or other applicable law. If it
appears that there is money which may be due to the landlord by the tenant
after the day of the hearing or if a judgment is delayed for any reason, the
court shall require a tenant who remains in possession of the premises to
deposit with the court a just and reasonable amount to satisfy the obligation,
but not more than 1 day's rent for each day until the new hearing date. The
court shall order the tenant to pay the landlord any [such] rent which is not
in dispute and shall determine the amount due to each party. Upon the
application of either party, the court, after notice and opportunity for a
hearing, may for good cause release to either party all or any portion of the
rent paid into court by the tenant. The court shall award the prevailing party
the amount owed and shall give judgment for any other amount which is
due.
2. In any action for rent where the tenant is not in possession, the tenant
may counterclaim as provided in subsection 1 but is not required to pay any
rent into court.
3. When the court renders a decision on the landlord's claim for posses-
sion, it shall distribute any rent paid into court under subsection 1 upon a
determination of the amount due to each party.
4. If a tenant fails to deposit with the court within 24 hours after the
original hearing the entire amount required pursuant to subsection 1, the
tenant relinquishes his right to a hearing and the court shall at that time
grant a judgment for eviction without further hearing."
Amend the title of the bill by deleting the first and second lines and
inserting:
"An Act relating to residential tenancy; changing the exemption for small
landlords; making various changes concerning security and eviction;".
Assemblyman Stone moved the adoption of the amendment.
Remarks by Assemblyman Stone.
Amendment adopted.
Bill ordered reprinted, engrossed and to third reading.
Assembly Bill No. 562.
Bill read second time.
The following amendment was proposed by the Committee on Labor and
Management:

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

A. B. 379

ASSEMBLY BILL No. 379—COMMITTEE ON COMMERCE

MARCH 19, 1985

Referred to Committee on Commerce

SUMMARY—Increases penalties for deceptive trade practices and prohibits certain practices. (BDR 52-344)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance. Yes.

EXPLANATION—Matter in *italics* is new, matter in brackets [] is material to be omitted

AN ACT relating to deceptive trade practices; specifying additional deceptive trade practices; increasing penalties for deceptive trade practices; providing penalties; and providing other matters properly relating thereto.

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

Section 1. Chapter 598 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. 1. A person shall not hold a deposit for the purchase of an item longer than the time specified in a contract between the purchaser and the seller if the purchaser is entitled to the return of the deposit.

2. A person who violates the provisions of subsection 1 shall be punished by a fine of not more than the amount of the deposit multiplied by the number of working days the deposit was retained after return was due.

Sec. 3. A business engaged in the sale of goods or services which does not allow refunds or exchanges shall display at least two signs in open and conspicuous places which describe the policy of the business regarding the return or exchange of merchandise and refunds. One of the signs must be at least 24 by 18 inches in size with boldface letters which must be at least 3 inches high and the other must be at least 8 by 10 inches in size.

Sec. 4. *If a person violates any provision of this chapter, fails to comply with a judgment or order of any court in this state concerning a violation of such a provision, or fails to comply with an assurance of*

APPELLANT'S MOTION FOR JUDICIAL NOTICE 130

[illegible]

1 discontinuance or other agreement concerning an alleged violation of
2 such a provision, the commissioner of consumer affairs or the district
3 attorney of any county may bring an action in the name of the State of
4 Nevada seeking:

5 1. The suspension of the person's privilege to conduct business
6 within this state; or

7 2. If the defendant is a corporation, dissolution of the corporation.
8 The court may grant or deny the relief sought or may order other
9 appropriate relief.

10 Sec. 5. A person engages in a "deceptive trade practice" when
11 in the course of his business or occupation he employs "bait and
12 switch" advertising, which consists of an offer to sell a product or
13 service which the seller in truth may not intend or desire to sell, accom-
14 panied by one or more of the following practices:

15 1. Refusal to show the product advertised.

16 2. Disparagement in any material respect of the advertised product
17 or the terms of sale.

18 3. Requiring other sales or other undisclosed conditions to be met
19 before selling the advertised product or service.

20 4. Refusal to take orders for the product advertised for delivery
21 within a reasonable time.

22 5. Showing or demonstrating a defective product which is unusable
23 or impractical for the purposes set forth in the advertisement.

24 6. Accepting a deposit for the product and subsequently switching
25 the purchase order to a higher priced item.

26 Sec. 6. A person engages in a "deceptive trade practice" when
27 in the course of his business or occupation he:

28 1. Knowingly fails to identify goods damaged by water.

29 2. Solicits by telephone or door to door as a seller, unless the seller
30 identifies himself, whom he represents and the purpose of his call within
31 30 seconds after beginning the conversation.

32 3. Knowingly states that services, replacement parts or repairs are
33 needed when no such services, replacement parts or repairs are actu-
34 ally needed.

35 4. Fails to make delivery of a product within a reasonable time
36 to make a refund for the product.

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

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

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

43 (c) Makes any untrue statement of a material fact or omits to state
44 material fact which is necessary to make another statement, considered
45 the circumstances under which it is made, not misleading;

1 (d) Fails to maintain adequate records so that an investor may deter-
2 mine how his money is invested;

3 (e) Fails to provide information to an investor after a reasonable
4 request for information concerning his investment;

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

7 (g) Represents that he is licensed by an agency of the state to sell or
8 offer for sale investments or services for investments if he is not so
9 licensed.

10 Sec. 7. A person engages in a "deceptive trade practice" when
11 in the course of his business or occupation he knowingly:

12 1. Conducts the business or occupation without all required state,
13 county or city licenses.

14 2. Fails to disclose a material fact in connection with the sale of
15 goods or services.

16 Sec. 8. NRS 598.360 is hereby amended to read as follows:
17 598.360 As used in NRS 598.360 to 598.640, inclusive, and sec-
18 tions 5, 6 and 7 of this act, unless the context otherwise requires, the
19 words and terms defined in NRS 598.370 to 598.480, inclusive, and
20 sections 5, 6 and 7 of this act have the meanings ascribed to them in
21 those sections.

22 Sec. 9. NRS 598.410 is hereby amended to read as follows:
23 598.410 A person engages in a "deceptive trade practice" when
24 in the course of his business or occupation he:

25 1. Knowingly passes off goods or services as those of another.
26 2. Knowingly makes a false representation as to the source, spon-
27 sorship, approval or certification of goods or services.

28 3. Knowingly makes a false representation as to affiliation, connec-
29 tion, association with or certification by another.

30 4. Uses deceptive representations or designations of geographic ori-
31 gin in connection with goods or services.

32 5. Knowingly makes a false representation as to the characteristics,
33 ingredients, uses, benefits, alterations or quantities of goods or services
34 or a false representation as to the sponsorship, approval, status, affilia-
35 tion or connection of a person therewith.

36 6. Represents that goods are original or new if he knows or should
37 know that they are deteriorated, altered, reconditioned, reclaimed, used
38 or secondhand.

39 7. Represents that goods or services are of a particular standard,
40 quality or grade, or that goods are of a particular style or model, if he
41 knows or should know that they are of another.

42 8. Disparages the goods, services or business of another by false or
43 misleading representation of fact.

44 9. Advertises goods or services with intent not to sell them as adver-
45 tised.

1 10. Advertises goods or services with intent not to supply reason-
2 ably expectable public demand, unless the advertisement discloses a
3 limitation of quantity.
4 11. Advertises under the guise of obtaining sales personnel when in
5 fact the purpose is to first sell a product or service to the sales person-
6 nel applicant.
7 12. Makes false or misleading statements of fact concerning the
8 price of goods or services, or the reasons for, existence of or amounts
9 of price reductions.
10 13. Employs "bait and switch" advertising, which consists of an
11 attractive but insincere offer to sell a product or service which the
12 seller in truth does not intend or desire to sell, accompanied by one or
13 more of the following practices:
14 (a) Refusal to show the product advertised.
15 (b) Disparagement in any material respect of the advertised product
16 or the terms of sale.
17 (c) Requiring tie-in sales or other undisclosed conditions to be met
18 prior to selling the advertised product or service.
19 (d) Refusal to take orders for the product advertised for delivery
20 within a reasonable time.
21 (e) Showing or demonstrating a defective product which is unusable
22 or impractical for the purposes set forth in the advertisement.
23 (f) Accepting a deposit for the product and subsequently switching the
24 purchase order to a higher priced item.
25 (g) Failure to make deliveries of the product within a reasonable time
26 or to make a refund therefor.
27 14. Knowingly fails to identify flood-damaged or water-damaged
28 goods as to such damages.
29 15. Solicits by telephone or door to door as a seller, unless the
30 seller identifies himself, whom he represents and the purpose of his call
31 within 30 seconds after beginning the conversation.
32 16. Knowingly states that services, replacement parts or repairs are
33 needed when no such services, replacement parts or repairs are actu-
34 ally needed.
35 17. Advertises or offers an opportunity for investment and:
36 (a) Represents that the investment is guaranteed, secured or protected
37 in a manner which he knows or has reason to know, is false or mislead-
38 ing;
39 (b) Represents that the investment will earn a rate of return which he
40 knows or has reasons to know is false or misleading;
41 (c) Makes any untrue statement of a material fact or omits to state a
42 material fact which is necessary to make another statement, considering
43 the circumstances under which it is made, not misleading;
44 (d) Fails to maintain adequate records so that an investor may deter-
45 mine how his money is invested;

1 (e) Fails to provide information to an investor after a reasonable
2 request for information concerning his investment;
3 (f) Fails to comply with any law or regulation for the marketing of
4 securities or other investments; or
5 (g) Represents that he is licensed by an agency of the state to sell or
6 offer for sale investments or services for investments if he is not so
7 licensed.]
8 Sec. 10. NRS 598.490 is hereby amended to read as follows:
9 598.490 1. Evidence that a person has engaged in a deceptive
10 trade practice is prima facie evidence of intent to injure competitors
11 and to destroy or substantially lessen competition.
12 2. The deceptive trade practices listed in NRS 598.410 and sections
13 5, 6 and 7 of this act are in addition to and do not limit the types of
14 unfair trade practices actionable at common law or defined as such in
15 other statutes of this state.
16 Sec. 11. NRS 598.540 is hereby amended to read as follows:
17 598.540 1. Notwithstanding the requirement of knowledge as an
18 element of [any practice enumerated in NRS 598.410 as] a deceptive
19 trade practice, when the commissioner or director has cause to believe
20 that a person has engaged or is engaging in any [of the practices enu-
21 merated in NRS 598.410.] *deceptive trade practice*, knowingly or oth-
22 erwise, he may apply for an injunction or temporary restraining order
23 [as provided in N.R.C.P. 65,] prohibiting the person from continuing
24 [such] the practices. The court may make orders or judgments neces-
25 sary to prevent the use by the person of any such deceptive trade prac-
26 tice or to restore to any other person any money or property which may
27 have been acquired by the deceptive trade practices.
28 2. Where the commissioner or director has the authority to institute
29 a civil action or other proceeding, in lieu thereof or as a part thereof,
30 he may accept an assurance of discontinuance of any deceptive trade
31 practice. This assurance may include a stipulation for the [voluntary]
32 payment by the alleged violator of the costs of investigation and the
33 costs of instituting the action or proceeding and for the [voluntary] res-
34 titution of any money or property acquired by deceptive trade practices.
35 Except as provided in this subsection, any assurance of discontinuance
36 accepted by the commissioner or director and any stipulation filed with
37 the court is confidential to the parties to the action or proceeding and
38 to the court and its employees. Upon final judgment by the court that
39 an injunction or a temporary restraining order, issued as provided in
40 subsection 1 of this section, has been violated, an assurance of discon-
41 tinuance has been violated or a person has engaged in the same decep-
42 tive trade practice as had previously been enjoined, the assurance of
43 discontinuance or stipulation becomes a public record. Proof by a pre-
44 ponderance of evidence of a violation of an assurance constitutes prima
45 facie evidence of a deceptive trade practice for the purpose of any civil

1 action or proceeding brought thereafter by the commissioner or director, whether a new action or a subsequent motion or petition in any pending action or proceeding.

2 Sec. 12. NRS 598.570 is hereby amended to read as follows:

3 598.570 Notwithstanding the requirement of knowledge as an element of [any practice enumerated in NRS 598.410 as] a deceptive trade practice, and notwithstanding the enforcement powers granted to the commissioner or director pursuant to NRS 598.360 to 598.640, inclusive, whenever the district attorney of any county has reason to believe that any person is using, has used or is about to use any [of the practices enumerated in NRS 598.410.] *deceptive trade practice*, knowingly or otherwise, he may bring an action in the name of the State of Nevada against that person to obtain a temporary or permanent injunction against the deceptive trade practice.

4 Sec. 13. NRS 598.620 is hereby amended to read as follows:

5 598.620 1. In proceeding pursuant to NRS 598.580 to 598.620, inclusive, the district attorney may accept an assurance of discontinuance with respect to any method, act or practice deemed to be a deceptive trade practice [enumerated in NRS 598.410] from any person who is engaged or is about to engage in [such] the method, act or practice by following the procedures set forth in subsection 2 of NRS 598.540.

6 2. Any assurance made pursuant to subsection 1 [shall] *must* be in writing and [shall] *must* be filed with and subject to the approval of the district court in the county in which the alleged violator resides or has his principal place of business, or the district court in any county where any deceptive trade practice has occurred or is about to occur or the district court agreed to by the parties.

7 3. An assurance of discontinuance made pursuant to subsections 1 and 2 [shall not be considered] *is not* an admission of violation for any purpose, but is subject to the terms, limitations [.] and conditions of NRS 598.540.

8 Sec. 14. NRS 598.640 is hereby amended to read as follows:

9 598.640 1. Any person who violates any court order or injunction issued pursuant to NRS 598.360 to 598.630, inclusive, upon a complaint brought by the commissioner, director or the district attorney of any county of this state shall forfeit and pay to the state general fund a civil penalty of not more than \$10,000 for each violation. For the purpose of this section, the court issuing any such order or injunction shall retain jurisdiction over the action or proceeding. Such civil penalties are in addition to any other penalty or remedy available for the enforcement of the provisions of NRS 598.360 to 598.630, inclusive.

10 2. In any action brought pursuant to NRS 598.540 and [NRS] 598.570 to 598.600, inclusive, if the court finds that any person has willfully engaged in a deceptive trade practice, [enumerated in NRS 598.410.] the commissioner, director or the district attorney of any

1 county in this state bringing such *an* action may recover a civil penalty not to exceed \$2,500 for each violation.

2 3. Any person, firm, or any officer or managing agent of any corporation or association who knowingly and willfully engages in a deceptive trade practice [enumerated in NRS 598.410] shall be punished:

3 (a) For the first [or second] offense, for a misdemeanor.
4 (b) For the [third offense and all subsequent offenses.] *second* offense, for a gross misdemeanor.

5 [4. As used in this section the term "violation" includes a repetitive or continuous violation arising out of the same act.]

6 (c) *For the third and all subsequent offenses, by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not more than \$5,000, or by both fine and imprisonment.*

7 Sec. 15. NRS 598.695 is hereby amended to read as follows:

8 598.695 1. Every garageman shall display conspicuously in those areas of his place of business frequented by persons seeking repairs on motor vehicles a sign, not less than 22 [inches] by 28 inches in size, setting forth in boldface letters the following:

9 STATE LAW REQUIRES THAT UPON REQUEST BY ANY
10 PERSON AUTHORIZING REPAIRS [TO A MOTOR VEHICLE,
11 SUCH PERSON SHALL] *HE MUST BE GIVEN A WRITTEN*
12 *ESTIMATE OF TOTAL CHARGES FOR LABOR AND PARTS*
13 *AND ACCESSORIES [.] AND THAT] BEFORE REPAIRS ARE*
14 *MADE. NO CHARGE MAY BE MADE EXCEEDING THE ESTI-*
15 *MATED AMOUNT BY 20 PERCENT OR [\$40.] \$80, WHICH-*
16 *EVER IS LESS, WITHOUT THE CONSENT OF THE PERSON*
17 *AUTHORIZING THE REPAIRS.*

18 2. Any person who violates the provisions of this section is guilty of a misdemeanor.

19 Sec. 16. (Deleted by amendment.)

20 Sec. 17. NRS 598.710 is hereby amended to read as follows:

21 598.710 1. When an estimate has been furnished pursuant to NRS 598.705, and it is determined that additional charges exceeding 20 percent of the estimate, or [\$40.] \$80, whichever is less, are required to perform the repair authorized, the garageman shall notify the person authorizing the repairs of the amount of [such additional charges.] *the additional charges and shall not proceed further with any work until the additional charges are authorized or rejected.*

22 2. *The garageman shall not make any repairs authorized pursuant to subsection 1 unless he includes on the estimate or statement of*

23 (a) *The number of the driver's license or the signature of the person who authorized the additional repairs; and*

24 (b) *The date and time of the authorization to make the additional repairs.*

1 **Sec. 18.** NRS 598.715 is hereby amended to read as follows:
2 598.715 1. The person authorizing the repairs may waive the
3 notification required by NRS 598.710 by executing the waiver described
4 in subsections 2 [to 4, inclusive.], 3 and 4.
5 2. The waiver [shall] *must* be executed by the person authorizing
6 the repairs at the time of authorization of [such] the repairs. It [shall]
7 *must* include the following statement set forth in boldface letters not less
8 than ¼ inch high:

9 STATE LAW REQUIRES THAT WHEN A GARAGEMAN HAS
10 GIVEN A PERSON AUTHORIZING REPAIRS A WRITTEN
11 ESTIMATE SETTING FORTH THE TOTAL COST FOR LABOR
12 AND PARTS AND ACCESSORIES TO ACCOMPLISH REPAIRS
13 ON A MOTOR VEHICLE, NO CHARGE CAN BE MADE
14 EXCEEDING THE ESTIMATED AMOUNT BY 20 PERCENT OR
15 [\$40,] \$80, WHICHEVER IS LESS, WITHOUT THE
16 CONSENT OF SUCH PERSON. THE PERSON AUTHORIZING
17 THE REPAIRS MAY, HOWEVER, WAIVE HIS RIGHT TO
18 SUBSEQUENT APPROVAL OF INCREASED CHARGES.
19 SHOULD THEY BE FOUND TO BE NECESSARY, BY EXE-
20 CUTING THIS WAIVER.

21 3. [This shall] *The statement must* be followed by the [certification
22 set forth below.] *following certification* and the signature of the person
23 authorizing the repairs:

24 The undersigned hereby certifies that he has read the preceding
25 statement and knowingly and intentionally waives the right to
26 approve any increased charges, should they be found necessary to
27 complete the required repairs on this motor vehicle.

28 4. The form containing the waiver [shall] *must* contain:

- 29 (a) The date.
- 30 (b) The [vehicle] *vehicle's* make, body type and mileage and the
- 31 *number of its* registration plate . [number.]
- 32 (c) The *number of the* work order [number assigned by the garage-
- 33 *man to] for the work to be performed on the vehicle.*
- 34 (d) The name, address and telephone number . [(if any , () of the
- 35 person authorizing the repairs.

36 **Sec. 19.** NRS 598.745 is hereby amended to read as follows:

37 598.745 Any person who knowingly violates any provision of NRS
38 598.700 to 598.735, inclusive, is liable, in addition to any other pen-
39 alty or remedy which may be provided by law, to a civil penalty of
40 [\$250] *not more than \$500* for each offense, which may be recovered
41 by civil action on complaint of the commissioner of consumer affairs,
42 *the director of the department of commerce* or the district attorney.

1 **Sec. 20.** NRS 41.600 is hereby amended to read as follows:

2 41.600 1. An action may be brought by any person who is a vic-
3 tim of consumer fraud.

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

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

6 (b) An act prohibited by NRS 482.351; or

7 (c) A deceptive trade practice as defined in NRS 598.410 [.] *and sec-*
8 *tions 5, 6 and 7 of this act.*

9 3. If the claimant is the prevailing party, the court shall award any
10 damages that he has sustained.

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

13 **Sec. 21.** NRS 489.401 is hereby amended to read as follows:

14 489.401 The following grounds, among others, constitute grounds
15 for disciplinary action under NRS 489.381:

16 1. The intentional publication, circulation or display of any adver-
17 tising which constitutes a [violation of NRS 598.410 by being a] decep-
18 tive trade practice [within the meaning of the term as set forth in that
19 section.] *as that term is defined in NRS 598.410 and sections 5, 6 and*
20 *7 of this act.*

21 2. Failure to include in any advertising the name of the licensed
22 dealer, rebuilder, serviceman or installer, or the name under which he
23 is doing business.

24 3. Making any substantial misrepresentation or false promise which
25 is likely to influence, persuade or induce, or continually failing to fulfill
26 promises to sell, breaching agreements or contracts or making false
27 promises by any means.

28 4. Failure to disclose all terms and conditions of a sale, purchase
29 or lease or offer to sell, purchase or lease a manufactured home,
30 mobile home or commercial coach.

31 5. Representing to any lender, guaranteeing agency or other inter-
32 ested party, either orally or through the preparation of false documents:

33 (a) An amount in excess of the actual sales price;

34 (b) A false amount as the down payment, earnest money deposit or
35 other valuable consideration;

36 (c) Terms differing from those actually agreed upon; or

37 (d) False information on a credit application.

38 6. Inducing an applicant to falsify his credit application.

5-24-85

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JOURNAL OF THE ASSEMBLY

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Francis moved that Assembly Bills Nos. 599, 604, 606, 635, 643, 651, 684, 694; Senate Bills Nos. 256 and 460 be placed on the Second Reading File.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 379.

Bill read third time.

The following amendment was proposed by the Committee on Commerce: Amendment No. 1168.

Amend sec. 3, page 1, by deleting lines 10 through 16 and inserting:

"Sec. 3. (Deleted by amendment.)".

Assemblyman DuBois moved the adoption of the amendment.

Remarks by Assemblyman DuBois.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 400.

Bill read third time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 1185.

Amend sec. 44, page 9, line 26, by deleting "Proceedings" and inserting "A proceeding".

Amend sec. 44, page 9, line 28, by deleting "any" and inserting "the".

Amend sec. 44, page 9, lines 31 and 32, by deleting "public health" and inserting "registered".

Amend sec. 44, page 9, lines 33 and 34, by deleting: "[Such petition shall] *This petition must*" and inserting: "The petition must".

Amend sec. 44, page 9, line 41, by deleting "[such] *the*" and inserting "the".

Amend sec. 44, page 9, line 45, by deleting "[such] *the*" and inserting "the".

Amend sec. 97, page 16, line 10, by deleting "\$90" and inserting "\$60".

Amend the bill as a whole by renumbering section 107 as section 109 and adding new sections designated sections 107 and 108, following section 106, to read as follows:

"Sec. 107. 1. There is hereby appropriated from the state general fund to the commission on mental health and retardation for salary and travel expenses:

For the fiscal year 1985-86..... \$13,500

For the fiscal year 1986-87..... 13,500

2. Any remaining balance of the sums appropriated by subsection 1 remaining at the end of the respective fiscal years must not be committed for

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(REPRINTED WITH ADOPTED AMENDMENTS)

SECOND REPRINT

A. B. 379

ASSEMBLY BILL NO. 379—COMMITTEE ON COMMERCE

MARCH 19, 1985

Referred to Committee on Commerce

SUMMARY—Increases penalties for deceptive trade practices and prohibits certain practices. (BDR 52-344)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

EXPLANATION—Matter in *italics* is new, matter in brackets [] is material to be omitted.

AN ACT relating to deceptive trade practices; specifying additional deceptive trade practices; increasing penalties for deceptive trade practices; providing penalties; 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 7, inclusive, of this act.

3 Sec. 2. 1. *A person shall not hold a deposit for the purchase of an*
4 *item longer than the time specified in a contract between the purchaser*
5 *and the seller if the purchaser is entitled to the return of the deposit.*

6 2. *A person who violates the provisions of subsection 1 shall be*
7 *punished by a fine of not more than the amount of the deposit multiplied*
8 *by the number of working days the deposit was retained after return*
9 *was due.*

10 Sec. 3. (Deleted by amendment.)

11 Sec. 4. *If a person violates any provision of this chapter, fails to*
12 *comply with a judgment or order of any court in this state concerning a*
13 *violation of such a provision, or fails to comply with an assurance of*
14 *discontinuance or other agreement concerning an alleged violation of*
15 *such a provision, the commissioner of consumer affairs or the district*
16 *attorney of any county may bring an action in the name of the State of*
17 *Nevada seeking:*

18 1. *The suspension of the person's privilege to conduct business*
19 *within this state; or*

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1 2. If the defendant is a corporation, dissolution of the corporation.
2 The court may grant or deny the relief sought or may order other
3 appropriate relief.

4 Sec. 5. A person engages in a "deceptive trade practice" when
5 in the course of his business or occupation he employs "bait and
6 switch" advertising, which consists of an offer to sell a product or
7 service which the seller in truth may not intend or desire to sell, accom-
8 panied by one or more of the following practices:

9 1. Refusal to show the product advertised.
10 2. Disparagement in any material respect of the advertised product
11 or the terms of sale.

12 3. Requiring other sales or other undisclosed conditions to be met
13 before selling the advertised product or service.

14 4. Refusal to take orders for the product advertised for delivery
15 within a reasonable time.

16 5. Showing or demonstrating a defective product which is unusable
17 or impractical for the purposes set forth in the advertisement.

18 6. Accepting a deposit for the product and subsequently switching
19 the purchase order to a higher priced item.

20 Sec. 6. A person engages in a "deceptive trade practice" when
21 in the course of his business or occupation he:

22 1. Knowingly fails to identify goods damaged by water.

23 2. Solicits by telephone or door to door as a seller, unless the seller
24 identifies himself, whom he represents and the purpose of his call within
25 30 seconds after beginning the conversation.

26 3. Knowingly states that services, replacement parts or repairs are
27 needed when no such services, replacement parts or repairs are actu-
28 ally needed.

29 4. Fails to make delivery of a product within a reasonable time or
30 to make a refund for the product.

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

32 (a) Represents that the investment is guaranteed, secured or protected
33 in a manner which he knows or has reason to know, is false or mislead-
34 ing;

35 (b) Represents that the investment will earn a rate of return which he
36 knows or has reasons to know is false or misleading;

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

40 (d) Fails to maintain adequate records so that an investor may deter-
41 mine how his money is invested;

42 (e) Fails to provide information to an investor after a reasonable
43 request for information concerning his investment;

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

1 (g) Represents that he is licensed by an agency of the state to sell or
2 offer for sale investments or services for investments if he is not so
3 licensed.

4 Sec. 7. A person engages in a "deceptive trade practice" when
5 in the course of his business or occupation he knowingly:

6 1. Conducts the business or occupation without all required state,
7 county or city licenses.

8 2. Fails to disclose a material fact in connection with the sale of
9 goods or services.

10 Sec. 8. NRS 598.360 is hereby amended to read as follows:

11 598.360 As used in NRS 598.360 to 598.640, inclusive, and sec-
12 tions 5, 6 and 7 of this act, unless the context otherwise requires, the
13 words and terms defined in NRS 598.370 to 598.480, inclusive, and
14 sections 5, 6 and 7 of this act have the meanings ascribed to them in
15 those sections.

16 Sec. 9. NRS 598.410 is hereby amended to read as follows:

17 598.410 A person engages in a "deceptive trade practice" when
18 in the course of his business or occupation he:

19 1. Knowingly passes off goods or services as those of another.

20 2. Knowingly makes a false representation as to the source, spon-
21 sorship, approval or certification of goods or services.

22 3. Knowingly makes a false representation as to affiliation, connec-
23 tion, association with or certification by another.

24 4. Uses deceptive representations or designations of geographic ori-
25 gin in connection with goods or services.

26 5. Knowingly makes a false representation as to the characteristics,
27 ingredients, uses, benefits, alterations or quantities of goods or services
28 or a false representation as to the sponsorship, approval, status, affilia-
29 tion or connection of a person therewith.

30 6. Represents that goods are original or new if he knows or should
31 know that they are deteriorated, altered, reconditioned, reclaimed, used
32 or secondhand.

33 7. Represents that goods or services are of a particular standard,
34 quality or grade, or that goods are of a particular style or model, if he
35 knows or should know that they are of another.

36 8. Disparages the goods, services or business of another by false or
37 misleading representation of fact.

38 9. Advertises goods or services with intent not to sell them as adver-
39 tised.

40 10. Advertises goods or services with intent not to supply reason-
41 ably expectable public demand, unless the advertisement discloses a
42 limitation of quantity.

43 11. Advertises under the guise of obtaining sales personnel when in
44 fact the purpose is to first sell a product or service to the sales person-
45 nel applicant.

12. Makes false or misleading statements of fact concerning the price of goods or services, or the reasons for, existence of or amounts of price reductions.

13. Employs "bait and switch" advertising, which consists of an attractive but insincere offer to sell a product or service which the seller in truth does not intend or desire to sell, accompanied by one or more of the following practices:

(a) Refusal to show the product advertised.

(b) Disparagement in any material respect of the advertised product or the terms of sale.

(c) Requiring tie-in sales or other undisclosed conditions to be met prior to selling the advertised product or service.

(d) Refusal to take orders for the product advertised for delivery within a reasonable time.

(e) Showing or demonstrating a defective product which is unusable or impractical for the purposes set forth in the advertisement.

(f) Accepting a deposit for the product and subsequently switching the purchase order to a higher priced item.

(g) Failure to make deliveries of the product within a reasonable time or to make a refund therefor.

14. Knowingly fails to identify flood-damaged or water-damaged goods as to such damages.

15. Solicits by telephone or door to door as a seller, unless the seller identifies himself, whom he represents and the purpose of his call within 30 seconds after beginning the conversation.

16. Knowingly states that services, replacement parts or repairs are needed when no such services, replacement parts or repairs are actually needed.

17. Advertises or offers an opportunity for investment and:

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

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

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

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

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

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

(g) Represents that he is licensed by an agency of the state to sell or offer for sale investments or services for investments if he is not so licensed.]

Sec. 10. NRS 598.490 is hereby amended to read as follows:

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

2. The deceptive trade practices listed in NRS 598.410 and sections 5, 6 and 7 of this act are in addition to and do not limit the types of unfair trade practices actionable at common law or defined as such in other statutes of this state.

Sec. 11. NRS 598.540 is hereby amended to read as follows:

598.540 1. Notwithstanding the requirement of knowledge as an element of [any practice enumerated in NRS 598.410 as] a deceptive trade practice, when the commissioner or director has cause to believe that a person has engaged or is engaging in any [of the practices enumerated in NRS 598.410,] *deceptive trade practice*, knowingly or otherwise, he may apply for an injunction or temporary restraining order [as provided in N.R.C.P. 65,] prohibiting the person from continuing [such] the practices. The court may make orders or judgments necessary to prevent the use by the person of any such deceptive trade practice or to restore to any other person any money or property which may have been acquired by the deceptive trade practices.

2. Where the commissioner or director has the authority to institute a civil action or other proceeding, in lieu thereof or as a part thereof, he may accept an assurance of discontinuance of any deceptive trade practice. This assurance may include a stipulation for the [voluntary] payment by the alleged violator of the costs of investigation and the costs of instituting the action or proceeding and for the [voluntary] restitution of any money or property acquired by deceptive trade practices. Except as provided in this subsection, any assurance of discontinuance accepted by the commissioner or director and any stipulation filed with the court is confidential to the parties to the action or proceeding and to the court and its employees. Upon final judgment by the court that an injunction or a temporary restraining order, issued as provided in subsection 1 of this section, has been violated, an assurance of discontinuance has been violated or a person has engaged in the same deceptive trade practice as had previously been enjoined, the assurance of discontinuance or stipulation becomes a public record. Proof by a preponderance of evidence of a violation of an assurance constitutes prima facie evidence of a deceptive trade practice for the purpose of any civil action or proceeding brought thereafter by the commissioner or director, whether a new action or a subsequent motion or petition in any pending action or proceeding.

Sec. 12. NRS 598.570 is hereby amended to read as follows:

598.570 Notwithstanding the requirement of knowledge as an element of [any practice enumerated in NRS 598.410 as] a deceptive trade practice, and notwithstanding the enforcement powers granted to

the commissioner or director pursuant to NRS 598.360 to 598.640, inclusive, whenever the district attorney of any county has reason to believe that any person is using, has used or is about to use any [of the practices enumerated in NRS 598.410,] *deceptive trade practice*, knowingly or otherwise, he may bring an action in the name of the State of Nevada against that person to obtain a temporary or permanent injunction against the deceptive trade practice.

Sec. 13. NRS 598.620 is hereby amended to read as follows:

598.620 1. In proceeding pursuant to NRS 598.580 to 598.620, inclusive, the district attorney may accept an assurance of discontinuance with respect to any method, act or practice deemed to be a deceptive trade practice [enumerated in NRS 598.410] from any person who is engaged or is about to engage in [such] *the* method, act or practice by following the procedures set forth in subsection 2 of NRS 598.540.

2. Any assurance made pursuant to subsection 1 [shall] *must* be in writing and [shall] *must* be filed with and subject to the approval of the district court in the county in which the alleged violator resides or has his principal place of business, or the district court in any county where any deceptive trade practice has occurred or is about to occur or the district court agreed to by the parties.

3. An assurance of discontinuance made pursuant to subsections 1 and 2 [shall not be considered] *is not* an admission of violation for any purpose, but is subject to the terms, limitations [,] and conditions of NRS 598.540.

Sec. 14. NRS 598.640 is hereby amended to read as follows:

598.640 1. Any person who violates any court order or injunction issued pursuant to NRS 598.360 to 598.630, inclusive, upon a complaint brought by the commissioner, director or the district attorney of any county of this state shall forfeit and pay to the state general fund a civil penalty of not more than \$10,000 for each violation. For the purpose of this section, the court issuing any such order or injunction shall retain jurisdiction over the action or proceeding. Such civil penalties are in addition to any other penalty or remedy available for the enforcement of the provisions of NRS 598.360 to 598.630, inclusive.

2. In any action brought pursuant to NRS 598.540 and [NRS] 598.570 to 598.600, inclusive, if the court finds that any person has willfully engaged in a deceptive trade practice [,] [enumerated in NRS 598.410,] the commissioner, director or the district attorney of any county in this state bringing such *an* action may recover a civil penalty not to exceed \$2,500 for each violation.

3. Any person, firm, or any officer or managing agent of any corporation or association who knowingly and willfully engages in a deceptive trade practice [enumerated in NRS 598.410] shall be punished:

(a) For the first [or second] offense, for a misdemeanor.

(b) For the [third offense and all subsequent offenses.] *second offense*, for a gross misdemeanor.

[4. As used in this section the term "violation" includes a repetitive or continuous violation arising out of the same act.]

(c) *For the third and all subsequent offenses, by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not more than \$5,000, or by both fine and imprisonment.*

Sec. 15. NRS 598.695 is hereby amended to read as follows:

598.695 1. Every garageman shall display conspicuously in those areas of his place of business frequented by persons seeking repairs on motor vehicles a sign, not less than 22 [inches] by 28 inches in size, setting forth in boldface letters the following:

STATE LAW REQUIRES THAT UPON REQUEST BY ANY PERSON AUTHORIZING REPAIRS [TO A MOTOR VEHICLE, SUCH PERSON SHALL] *HE MUST* BE GIVEN A WRITTEN ESTIMATE OF TOTAL CHARGES FOR LABOR AND PARTS AND ACCESSORIES [, AND THAT] *BEFORE REPAIRS ARE MADE*. NO CHARGE MAY BE MADE EXCEEDING THE ESTIMATED AMOUNT BY 20 PERCENT OR [\$40.] \$80, WHICHEVER IS LESS, WITHOUT THE CONSENT OF THE PERSON AUTHORIZING THE REPAIRS.

2. Any person who violates the provisions of this section is guilty of a misdemeanor.

Sec. 16. (Deleted by amendment.)

Sec. 17. NRS 598.710 is hereby amended to read as follows:

598.710 1. When an estimate has been furnished pursuant to NRS 598.705, and it is determined that additional charges exceeding 20 percent of the estimate, or [\$40.] \$80, whichever is less, are required to perform the repair authorized, the garageman shall notify the person authorizing the repairs of the amount of [such additional charges.] *the additional charges and shall not proceed further with any work until the additional charges are authorized or rejected.*

2. *The garageman shall not make any repairs authorized pursuant to subsection 1 unless he includes on the estimate or statement of charges:*

(a) *The number of the driver's license or the signature of the person who authorized the additional repairs; and*

(b) *The date and time of the authorization to make the additional repairs.*

Sec. 18. NRS 598.715 is hereby amended to read as follows:

598.715 1. The person authorizing the repairs may waive the notification required by NRS 598.710 by executing the waiver described in subsections 2 [to 4, inclusive.] , 3 and 4.

2. The waiver [shall] *must* be executed by the person authorizing the repairs at the time of authorization of [such] *the* repairs. It [shall] *must* include the following statement set forth in boldface letters not less than ¼ inch high:

STATE LAW REQUIRES THAT WHEN A GARAGEMAN HAS GIVEN A PERSON AUTHORIZING REPAIRS A WRITTEN ESTIMATE SETTING FORTH THE TOTAL COST FOR LABOR AND PARTS AND ACCESSORIES TO ACCOMPLISH REPAIRS ON A MOTOR VEHICLE, NO CHARGE CAN BE MADE EXCEEDING THE ESTIMATED AMOUNT BY 20 PERCENT OR \$40. \$80, WHICHEVER IS LESS, WITHOUT THE CONSENT OF SUCH PERSON. THE PERSON AUTHORIZING THE REPAIRS MAY, HOWEVER, WAIVE HIS RIGHT TO SUBSEQUENT APPROVAL OF INCREASED CHARGES, SHOULD THEY BE FOUND TO BE NECESSARY, BY EXECUTING THIS WAIVER.

3. [This shall] *The statement must* be followed by the [certification set forth below,] *following certification* and the signature of the person authorizing the repairs:

The undersigned hereby certifies that he has read the preceding statement and knowingly and intentionally waives the right to approve any increased charges, should they be found necessary to complete the required repairs on this motor vehicle.

4. The form containing the waiver [shall] *must* contain:

- (a) The date.
- (b) The [vehicle] *vehicle's* make, body type *and mileage and the number of its* registration plate . [number.]
- (c) The *number of the* work order [number assigned by the garage-man to] *for* the work to be performed on the vehicle.
- (d) The name, address and telephone number , [(if any , D)] of the person authorizing the repairs.

Sec. 19. NRS 598.745 is hereby amended to read as follows:
598.745 Any person who knowingly violates any provision of NRS 598.700 to 598.735, inclusive, is liable, in addition to any other penalty or remedy which may be provided by law, to a civil penalty of \$250 not more than \$500 for each offense, which may be recovered by civil action on complaint of the commissioner of consumer affairs , the director of the department of commerce or the district attorney.

Sec. 20. NRS 41.600 is hereby amended to read as follows:
41.600 1. An action may be brought by any person who is a victim of consumer fraud.

- 2. As used in this section, "consumer fraud" means:
 - (a) An unlawful act as defined in NRS 119.330;
 - (b) An act prohibited by NRS 482.351; or
 - (c) A deceptive trade practice as defined in NRS 598.410 [.] *and sections 5, 6 and 7 of this act.*

3. If the claimant is the prevailing party, the court shall award any damages that he has sustained.

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

Sec. 21. NRS 489.401 is hereby amended to read as follows:

489.401 The following grounds, among others, constitute grounds for disciplinary action under NRS 489.381:

- 1. The intentional publication, circulation or display of any advertising which constitutes a [violation of NRS 598.410 by being a] deceptive trade practice [within the meaning of the term as set forth in that section.] *as that term is defined in NRS 598.410 and sections 5, 6 and 7 of this act.*
- 2. Failure to include in any advertising the name of the licensed dealer, rebuilder, serviceman or installer, or the name under which he is doing business.
- 3. Making any substantial misrepresentation or false promise which is likely to influence, persuade or induce, or continually failing to fulfill promises to sell, breaching agreements or contracts or making false promises by any means.
- 4. Failure to disclose all terms and conditions of a sale, purchase or lease or offer to sell, purchase or lease a manufactured home, mobile home or commercial coach.
- 5. Representing to any lender, guaranteeing agency or other interested party, either orally or through the preparation of false documents:
 - (a) An amount in excess of the actual sales price;
 - (b) A false amount as the down payment, earnest money deposit or other valuable consideration;
 - (c) Terms differing from those actually agreed upon; or
 - (d) False information on a credit application.
- 6. Inducing an applicant to falsify his credit application.

(30)

JOURNAL OF THE ASSEMBLY

5-25-85

SIXTY-THIRD SESSION

1185

GENERAL FILE AND THIRD READING

Assembly Bill No. 400.

Bill read third time.

Remarks by Assemblymen Francis, Jeffrey, Humke, Horne, McGaughey, Sader, Craddock and Price.

Roll call on Assembly Bill No. 400:

YEAS—39.

NAYS—Jeffrey.

Absent—Schofield, Sedway—2.

Assembly Bill No. 400 having received a constitutional majority, Mr. Speaker pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Senate.

Mr. Speaker pro Tempore announced that if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 12 noon.

ASSEMBLY IN SESSION

At 12:01 p.m.

Mr. Speaker presiding.

Quorum present.

GENERAL FILE AND THIRD READING

Assembly Bill No. 379.

Bill read third time.

Remarks by Assemblyman Williams.

Roll call on Assembly Bill No. 379:

YEAS—40.

NAYS—None.

Absent—Schofield, Sedway—2.

Assembly Bill No. 379 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 363.

Bill read third time.

The following amendment was proposed by the Committee on Commerce: Amendment No. 1127.

Amend the bill as a whole by deleting section 3 and renumbering section 4 as section 3.

Amend sec. 4, page 4, line 26, by deleting "1."

Amend sec. 4, page 4, line 30, by deleting "[1] (a)" and inserting "1."

Amend sec. 4, page 4, line 31, by deleting "[2.] (b)" and inserting "2."

Amend sec. 4, page 4, line 32, by deleting "[3.] (c)" and inserting "3."

Amend sec. 4, page 4, line 33, by deleting "[4.] (d)" and inserting "4."

Amend sec. 4, page 4, by deleting lines 35 through 38.

MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Sixty-Third Session
May 29, 1985

The Senate Committee on Commerce and Labor was called to order by Chairman Robert E. Robinson, at 8:10 a.m., on Wednesday, May 29, 1985, in Room 323 of the Legislative Building, Carson City, Nevada. EXHIBIT A is the Meeting Agenda. EXHIBIT B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Robert E. Robinson, Chairman
Senator Alan H. Glover, Vice Chairman
Senator Randolph J. Townsend
Senator Ann O'Connell
Senator Kenneth K. Redelsperger
Senator Raymond C. Shaffer
Senator Dean A. Rhoads

OTHER LEGISLATORS PRESENT:

Assemblywoman Myrna Williams

STAFF MEMBERS PRESENT:

Pam Robinson, Committee Secretary

The Chairman acknowledged the minutes of May 20, 1985, and May 21, 1985, to be approved.

SENATOR GLOVER MOVED TO APPROVE THE MINUTES OF
MAY 20, 1985, AND MAY 21, 1985.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

ASSEMBLY BILL 379

Summary: Increases penalties for deceptive trade
practices and prohibits certain practices.
(BDR 52-344)

Assemblywoman Myrna Williams, Assembly District 10, was here on behalf of Assembly Bill 379 which is the deceptive trade practices bill supported by the Department of Commerce, the attorney general, and the commissioner of consumer affairs. She was here to ask that section 3 be reinstated in this bill. She felt that section was very important.

Shari Compton, Commissioner of Consumer Affairs for the Department of Commerce of the State of Nevada, introduced Bill Isaeff, Chief Deputy for the Attorney General's Office. Ms. Compton would like to address section 3 which they wanted added to the bill. The intent of this bill was pertaining to sales of goods and the allowance of exchanges or refunds. When there has been a sign displayed for refunds or exchanges, the communication between the consumer and the business has been better. This bill should be a communication between the consumer and protection for both the consumer and the businessman.

Mr. Isaeff stated the language of section 3 had been deleted by an Assembly amendment. He felt this section should be amended back into the bill. The problem that arose on this section was the concern of requiring service type sellers in the professional field from having to comply with this section. This section should be limited to those people who engage in the sale of goods. That would be more compatible with the idea of a refund or exchange of goods. Mr. Isaeff wanted the language being reinserted into the bill to read, "section 3 from the first reprint, minus, on page 10, the words 'or services.' There has been a suggestion that perhaps the size of the lettering could be reduced on line 15 of the first reprint from 3 inches to 1 inch. That is quite acceptable to our office because there has been some misunderstanding here that the 3 inch letters would have to appear on an 8 by 10 inch sign. I do not read the statute that way. I read it as requiring 3 inch letters only on a 24 by 18 inch sign. The 8 by 10 inch sign would have to be whatever size letters would be compatible. If the committee is desirous of dropping that down to 3 inches as far as the larger sign is concerned, I would have no objection to that. We would recommend that you consider putting this back in because there is a lot of consumer confusion over the right to a refund or exchange, and if you do not have that right, you should know that going into the transaction by a prominently displayed sign in the business establishment."

Ms. Compton referred to section 1 and would be where a person should hold a deposit for the purchase of an item longer than the time specified in the contract between the purchaser and the seller. This has been a problem area.

Senator Townsend wanted to know if the consumer affairs division had any complaints regarding car advertisements. Ms. Compton replied her division had some complaints.

Chairman Robinson asked if any further changes were made in section 15 other than the charge of "\$40" being changed to "\$80." Ms. Compton stated there were no other real changes. The \$40 charge, as far as Ms. Compton was concerned, could remain \$40 and not be changed to \$80.

It was the general consensus of the committee to leave the charge at \$40.

Senator Rhoads asked what the effect would be on the government or the state? Mr. Isaeff thought that since the penalties in the bill have been increased, a fiscal note would be with this bill.

Chairman Robinson asked if the media cooperated with Ms. Compton. Ms. Compton stated the media has been very good to her.

The Chairman called for a recess at 9:30 a.m. The meeting reconvened at 9:50 a.m.

Carole Vilardo, representing the state Car Dealer's Association, stated her association would like the sign section of this bill deleted.

Chairman Robinson asked if Ms. Vilardo wanted section 15 deleted entirely? Ms. Vilardo replied that was correct.

Ms. Vilardo questioned the language of section 14, subsection 3C. She felt this language should have a time frame added to the section. Ms. Vilardo felt the existing language was too stringent.

Senator Shaffer wanted to know if this offense would be basically for knowingly and willfully committing the offense. He felt what Ms. Vilardo was discussing would not fall under the category of knowingly and willingly committing the offense.

Senator Glover asked if the statutes would take care of the time frame Ms. Vilardo wanted. Mr. Isaeff replied the statutes stated if a person were convicted of a third offense, anytime, that person would be subject to a felony prosecution.

Senator O'Connell thought the language of section 14, subsection 4, which was deleted, should be amended into the section again. Mr. Isaeff though that language was vague

and ambiguous. He was not certain how that language could be applied to any particular case.

Mr. Isaefff would like to have language added to section 6, page 2, line 30 to read after the word product, "if he allows refunds." This would make punishable, under the deceptive trade practice, those persons who do not refund when refunds are allowable under their policies.

SENATE BILL NO. 295

Summary: Revises various provisions regulating practice of homeopathic medicine. (BDR 54-418)

Chairman Robinson stated there were some Assembly amendments to this bill the committee needed to concur or not concur in. Those amendments were numbers 948 and 837. The Chairman briefly discussed those amendments.

SENATOR REDELSPERGER MOVED TO CONCUR WITH ASSEMBLY AMENDMENTS NUMBERED 948 and 837 TO SENATE BILL 295.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

ASSEMBLY BILL NO. 329

Summary: Permits industrial insurer to recover over-payments and makes various other changes. (BDR 53-474)

Chairman Robinson introduced amendment number 1280 to the committee and gave a brief explanation as to why this bill needed this amendment.

SENATOR GLOVER MOVED TO ADOPT AMENDMENT NUMBER 1280 TO ASSEMBLY BILL NO. 329.

SENATOR REDELSPERGER SECONDED THE MOTION.

THE MOTION CARRIED WITH A 6 TO 1 VOTE. (Senator Shaffer voted against this motion.)

* * * * *

Senate Committee on COMMERCE AND LABOR

Date: May 30, 1985

Page: three

SENATE BILL NO. 253

Summary -- Specifies treatment under industrial insurance for which chiropractor must be reimbursed. (BDR 53-1686)

Assemblyman John Jeffrey explained Assembly Amendment No. 1040 and Assembly Amendment No. 1164 to this bill. Assembly Amendment No. 1040 resolved a conflict with Assembly Bill No. 57 and Assembly Bill No. 111. Assembly Amendment No. 1164 resolved a conflict with Assembly Bill No. 110.

Mr. Renny Ashleman said these amendments would make the bill appear to remove chiropractors from State Industrial Insurance System (SIIS), when, in fact, this was not correct.

In light of this new information, it was agreed by the members of the committee to concur in the assembly amendments to this bill.

ASSEMBLY BILL NO. 680

Summary -- Authorizes examination of professional engineer in area of specialty. (BDR 54-1628)

Senator Shaffer gave a brief explanation as to what this bill would do. He noted, electrical, structural, and civil engineers would each go through additional testing to determine their knowledge in the field he professed knowledge.

SENATOR GLOVER MOVED THIS BILL RECEIVE A
DO PASS RECOMMENDATION.

SENATOR SHAFFER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY. (Senators Rhoads, Townsend, and Redelsperger were absent for the vote.)

* * * * *

ASSEMBLY BILL NO. 379

Summary -- Increases penalties for deceptive trade practices and prohibits certain practices. (BDR 52-344)

Chairman Robinson advised that he had received a floor explanation on this bill and asked the committee if it wished to take action on this bill.

2261

APPELLANT'S MOTION FOR JUDICIAL NOTICE 146

Senator O'Connell recalled that Senators Townsend and Rhoads had strong convictions regarding Assembly Bill No. 379. She asked the committee to defer any action on this bill until both Senators Townsend and Rhoads were present.

ASSEMBLY BILL NO. 599

Summary -- Provides for full reimbursement by manufacturer for repairs on motor vehicle under express warranty. (BDR 52-1743)

Mr. Capurro stated he had met with Mr. Daykin regarding the question of motorhomes being exempt from warranty repair work. It was decided by Mr. Daykin to incorporate motorhomes into this bill and would prepare an amendment to be adopted into Assembly Bill No. 599.

Senator Townsend was now present for the meeting.

ASSEMBLY BILL NO. 379

Summary -- Increases penalties for deceptive trade practices and prohibits certain practices. (BDR 52-344)

Chairman Robinson noted a proposed amendment to remove section 15 of this bill in its entirety. A change would be made in sections 17 and 18 to return the amounts to \$40 from the \$80 figure shown in the bill.

The meeting recessed at 9:13 a.m. and reconvened at 9:17 a.m.

SENATE BILL NO. 490

Summary -- Removes certain restrictions on construction of utility facilities and export of electricity. (BDR 58-1793)

Mr. Tom Young, representing Sierra Pacific Power, noted there could be a situation where a utility company would want to merely buy power, while another utility company may wish to have ownership in the plant with the flexibility to buy the energy generated. This amendment would cover a "broader base," but be more restrictive. The intent would be to allow a company to buy the energy without requiring that company to buy a portion of ownership in the plant.

MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Sixty-Third Session
May 31, 1985

The Senate Committee on Commerce and Labor was called to order by Chairman Robert E. Robinson, at 8:15 a.m., on Friday, May 31, 1985, in Room 323 of the Legislative Building, Carson City, Nevada. EXHIBIT A is the Meeting Agenda. EXHIBIT B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Robert E. Robinson, Chairman
Senator Alan H. Glover, Vice Chairman
Senator Randolph J. Townsend
Senator Ann O'Connell
Senator Kenneth K. Redelsperger
Senator Raymond C. Shaffer
Senator Dean A. Rhoads

OTHER LEGISLATORS PRESENT:

Assemblywoman Barbara Zimmer
Assemblyman Leonard Nevin

STAFF MEMBERS PRESENT:

Pam Robinson, Committee Secretary

ASSEMBLY BILL NO. 379

Summary: Increases penalties for deceptive trade practices and prohibits certain practices.
(BDR 52-344)

Chairman Robinson discussed the proposed amendments to this bill with the committee. One amendment was to delete section 15 and section 17 return the amount to \$40. That \$40 change would also be made in section 18. Page 2, line 30 add to the end of the sentence, "if he allows refunds."

There was a brief discussion on these amendments.

SENATOR TOWNSEND MOVED TO DELETE SECTION 17 FROM
ASSEMBLY BILL NO. 379.

SENATOR RHOADS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY. (Senator Redelsperger was absent for the vote.)

* * * * *

Date: May 31, 1985

Page: two

Chairman Robinson advised that he had received Assembly Amendment No. 1234 to Senate Bill No. 147. (See EXHIBIT B.)

Mr. Scott Walshaw, of financial institutions division, said Assembly Amendment No. 1234 was drafted to clarify the problems in section 7.7 of this bill. The fourth reprint of this bill already had the assembly's amendment printed into the bill. Mr. Walshaw gave a brief explanation of this amendment for the committee's information.

Mr. Walshaw believed this amendment made Senate Bill No. 147 accomplish what the committee intended.

ASSEMBLY BILL NO. 379

Summary -- Increases penalties for deceptive trade practices and prohibits certain practices. (BDR 52-344)

Mr. Bill Isaeff, attorney general's office, testified in support of this bill.

Senators Rhoads and Townsend are now present for the meeting.

A discussion was held regarding penalties which could be assessed against a person who had been involved in deceptive trade practices with second, third, or fourth convictions. The idea of placing a 10 year "cap" regarding convictions was addressed. In this instance, every 10 years, the bottom conviction would be removed from the list of convictions against an individual.

Chairman Robinson requested that Mr. Isaeff submit some proposed language to be inserted under subsection c, on line 7, regarding the 10 year "cap."

There being no further business the meeting adjourned at 5:15 p.m.

RESPECTFULLY SUBMITTED,



Toni Bryant, Committee Secretary

APPROVED BY:



Senator Robert E. Robinson

DATE: 6/5/85

MINUTES OF THE SENATE
COMMITTEE ON COMMERCE AND LABOR

Sixty-Third Session
June 1, 1985

The Senate Committee on Commerce and Labor was called to order by Chairman Robert E. Robinson, at 2:25 p.m., on Saturday, June 1, 1985, on the Senate Floor, of the Legislative Building, Carson City, Nevada.

COMMITTEE MEMBERS PRESENT:

Senator Robert E. Robinson, Chairman
Senator Alan H. Glover, Vice Chairman
Senator Randolph J. Townsend
Senator Ann O'Connell
Senator Raymond C. Shaffer

COMMITTEE MEMBERS ABSENT:

Senator Dean A. Rhoads
Senator Kenneth K. Redelsperger

ASSEMBLY BILL NO. 379

Summary -- Increases penalties for deceptive trade practices
and prohibits certain practices. (BDR 52-344)

Chairman Robinson advised that he had received Senate Amendment No. 1447 to this bill.

SENATOR TOWNSEND MOVED TO ADOPT AMENDMENT
NO. 1447 TO THIS BILL.

SENATOR GLOVER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY. (Senators Rhoads
and Redelsperger were absent for the vote.)

* * * * *

SENATOR TOWNSEND MOVED THIS BILL RECEIVE
A DO PASS AS AMENDMENT RECOMMENDATION.

SENATOR GLOVER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY. (Senators Rhoads
and Redelsperger were absent for the vote.)

* * * * *

JOURNAL OF THE SENATE

6-1-85

SIXTY-THIRD SESSION

1345

Senator Horn moved the adoption of the amendment.

Remarks by Senator Horn.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 379.

Bill read third time.

The following amendment was proposed by the Committee on Commerce and Labor:

Amendment No. 1447.

Amend sec. 6, page 2, line 30, by deleting the period and inserting: " , if he allows refunds."

Amend sec. 8, page 3, line 11, after "inclusive," by inserting: "[and] sections 2 and 3 of [this act] *Assembly Bill No. 98 of the 63rd session of the Nevada legislature*".

Amend sec. 11, page 5, line 15, by deleting "apply", and inserting: "request in writing that the attorney general represent him in instituting an appropriate legal proceeding, including, without limitation, an application".

Amend sec. 11, page 5, line 20, by deleting "practices.", and inserting "practice."

Amend sec. 11, page 5, line 27, by deleting: "deceptive trade practices." and inserting: "any deceptive trade practice."

Amend sec. 14, page 6, by deleting line 28 and inserting: "plaint brought by the commissioner, the director, the district attorney of".

Amend sec. 14, page 6, line 29, after "this state" by inserting: "or the attorney general".

Amend sec. 14, page 6, lines 31 and 32 by deleting "shall retain" and inserting "retains".

Amend sec. 14, page 6, lines 35 and 36 by deleting: "and [NRS] 598.570 to 598.600, inclusive," and inserting: "to 598.600 inclusive, and section 2 of [this act,] *Assembly Bill No. 98 of the 63rd session of the Nevada legislature*".

Amend sec. 14, page 6, by deleting lines 37 through 39 and inserting: "willfully engaged in a deceptive trade practice, the commissioner, the director, the district attorney of any county in this state or the attorney general bringing the action may recover a civil penalty".

Amend sec. 14, page 6, line 41, after "3. Any" by inserting "natural".

Amend sec. 14, page 6, by deleting lines 43 through 46 and inserting: "tive trade practice:

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

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

(c) For the third and all subsequent offenses, shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not more than \$5,000, or by both fine and imprisonment."

Amend sec. 14, page 7, line 1, by deleting "[4. As" and inserting "4. [As".

Amend sec. 14, page 7, by deleting lines 3 through 5 and inserting: "*Any offense which occurred within 10 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of subsection 3 when evidenced by a conviction, without regard to the sequence of the offenses and convictions.*".

Amend the bill as a whole by deleting sections 15 through 18, and renumbering sections 19 through 21 as sections 15 through 17.

Amend the bill as a whole by adding a new section designated Sec. 18, following Sec. 21, to read as follows:

"Sec. 18. Sections 8, 11 and 14 of this act become effective at 12:01 a.m. on July 1, 1985."

Senator Robinson moved the adoption of the amendment.

Remarks by Senator Robinson.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 524.

Bill read third time.

Remarks by Senators Glover and Neal.

Roll call on Assembly Bill No. 524:

YEAS—20.

NAYS—None.

Absent—Hickey.

Assembly Bill No. 524 having received a constitutional majority, Mr. President pro Tempore declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 567.

Bill read third time.

The following amendment was proposed by the Committee on Human Resources and Facilities:

Amendment No. 1435.

Amend section 1, page 1, lines 2 and 3, by deleting: "*and section 2 of this act,*".

Amend section 1, page 1, by deleting line 10 and inserting: "*tem . [and the Nevada state park system.]*".

Amend the bill as a whole by deleting section 2 and renumbering section 3 as section 2.

Amend the title of the bill to read as follows:

"An Act relating to blind persons; extending their priority to operate vending stands in public buildings and on public property to the state parks; and providing other matters properly relating thereto."

Amend the summary of the bill to read: "*Extends priority of blind persons to operate vending stands to state parks. (BDR 38-1736)*".

Senator Neal moved the adoption of the amendment.

Remarks by Senator Neal.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

(REPRINTED WITH ADOPTED AMENDMENTS)

THIRD REPRINT

A. B. 379

ASSEMBLY BILL No. 379—COMMITTEE ON COMMERCE

MARCH 19, 1985

Referred to Committee on Commerce

SUMMARY—Increases penalties for deceptive trade practices and prohibits certain practices. (BDR 52-344)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

EXPLANATION—Matter in *italics* is new, matter in brackets [] is material to be omitted.

AN ACT relating to deceptive trade practices; specifying additional deceptive trade practices; increasing penalties for deceptive trade practices; providing penalties; 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 7, inclusive, of this act.

3 Sec. 2. 1. *A person shall not hold a deposit for the purchase of an*
4 *item longer than the time specified in a contract between the purchaser*
5 *and the seller if the purchaser is entitled to the return of the deposit.*

6 2. *A person who violates the provisions of subsection 1 shall be*
7 *punished by a fine of not more than the amount of the deposit multiplied*
8 *by the number of working days the deposit was retained after return*
9 *was due.*

10 Sec. 3. (Deleted by amendment.)

11 Sec. 4. *If a person violates any provision of this chapter, fails to*
12 *comply with a judgment or order of any court in this state concerning a*
13 *violation of such a provision, or fails to comply with an assurance of*
14 *discontinuance or other agreement concerning an alleged violation of*
15 *such a provision, the commissioner of consumer affairs or the district*
16 *attorney of any county may bring an action in the name of the State of*
17 *Nevada seeking:*

18 1. *The suspension of the person's privilege to conduct business*
19 *within this state; or*

1 2. If the defendant is a corporation, dissolution of the corporation.
2 The court may grant or deny the relief sought or may order other
3 appropriate relief.

4 **Sec. 5.** A person engages in a "deceptive trade practice" when
5 in the course of his business or occupation he employs "bait and
6 switch" advertising, which consists of an offer to sell a product or
7 service which the seller in truth may not intend or desire to sell, accom-
8 panied by one or more of the following practices:

9 1. Refusal to show the product advertised.
10 2. Disparagement in any material respect of the advertised product
11 or the terms of sale.

12 3. Requiring other sales or other undisclosed conditions to be met
13 before selling the advertised product or service.

14 4. Refusal to take orders for the product advertised for delivery
15 within a reasonable time.

16 5. Showing or demonstrating a defective product which is unusable
17 or impractical for the purposes set forth in the advertisement.

18 6. Accepting a deposit for the product and subsequently switching
19 the purchase order to a higher priced item.

20 **Sec. 6.** A person engages in a "deceptive trade practice" when
21 in the course of his business or occupation he:

22 1. Knowingly fails to identify goods damaged by water.

23 2. Solicits by telephone or door to door as a seller, unless the seller
24 identifies himself, whom he represents and the purpose of his call within
25 30 seconds after beginning the conversation.

26 3. Knowingly states that services, replacement parts or repairs are
27 needed when no such services, replacement parts or repairs are actu-
28 ally needed.

29 4. Fails to make delivery of a product within a reasonable time or
30 to make a refund for the product, if he allows refunds.

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

32 (a) Represents that the investment is guaranteed, secured or protected
33 in a manner which he knows or has reason to know, is false or mislead-
34 ing;

35 (b) Represents that the investment will earn a rate of return which he
36 knows or has reasons to know is false or misleading;

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

40 (d) Fails to maintain adequate records so that an investor may deter-
41 mine how his money is invested;

42 (e) Fails to provide information to an investor after a reasonable
43 request for information concerning his investment;

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

1 (g) Represents that he is licensed by an agency of the state to sell or
2 offer for sale investments or services for investments if he is not so
3 licensed.

4 **Sec. 7.** A person engages in a "deceptive trade practice" when
5 in the course of his business or occupation he knowingly:

6 1. Conducts the business or occupation without all required state,
7 county or city licenses.

8 2. Fails to disclose a material fact in connection with the sale of
9 goods or services.

10 **Sec. 8.** NRS 598.360 is hereby amended to read as follows:

11 598.360 As used in NRS 598.360 to 598.640, inclusive, [and] sec-
12 tions 2 and 3 of [this act] Assembly Bill No. 98 of the 63rd session of
13 the Nevada legislature and sections 5, 6 and 7 of this act, unless the
14 context otherwise requires, the words and terms defined in NRS
15 598.370 to 598.480, inclusive, and sections 5, 6 and 7 of this act have
16 the meanings ascribed to them in those sections.

17 **Sec. 9.** NRS 598.410 is hereby amended to read as follows:

18 598.410 A person engages in a "deceptive trade practice" when
19 in the course of his business or occupation he:

20 1. Knowingly passes off goods or services as those of another.

21 2. Knowingly makes a false representation as to the source, spon-
22 sorship, approval or certification of goods or services.

23 3. Knowingly makes a false representation as to affiliation, connec-
24 tion, association with or certification by another.

25 4. Uses deceptive representations or designations of geographic ori-
26 gin in connection with goods or services.

27 5. Knowingly makes a false representation as to the characteristics,
28 ingredients, uses, benefits, alterations or quantities of goods or services
29 or a false representation as to the sponsorship, approval, status, affilia-
30 tion or connection of a person therewith.

31 6. Represents that goods are original or new if he knows or should
32 know that they are deteriorated, altered, reconditioned, reclaimed, used
33 or secondhand.

34 7. Represents that goods or services are of a particular standard,
35 quality or grade, or that goods are of a particular style or model, if he
36 knows or should know that they are of another.

37 8. Disparages the goods, services or business of another by false or
38 misleading representation of fact.

39 9. Advertises goods or services with intent not to sell them as adver-
40 tised.

41 10. Advertises goods or services with intent not to supply reason-
42 ably expectable public demand, unless the advertisement discloses a
43 limitation of quantity.

44 11. Advertises under the guise of obtaining sales personnel when in

- 1 fact the purpose is to first sell a product or service to the sales person-
2 nel applicant.
- 3 12. Makes false or misleading statements of fact concerning the
4 price of goods or services, or the reasons for, existence of or amounts
5 of price reductions.
- 6 [13. Employs "bait and switch" advertising, which consists of an
7 attractive but insincere offer to sell a product or service which the
8 seller in truth does not intend or desire to sell, accompanied by one or
9 more of the following practices:
- 10 (a) Refusal to show the product advertised.
11 (b) Disparagement in any material respect of the advertised product
12 or the terms of sale.
13 (c) Requiring tie-in sales or other undisclosed conditions to be met
14 prior to selling the advertised product or service.
15 (d) Refusal to take orders for the product advertised for delivery
16 within a reasonable time.
17 (e) Showing or demonstrating a defective product which is unusable
18 or impractical for the purposes set forth in the advertisement.
19 (f) Accepting a deposit for the product and subsequently switching the
20 purchase order to a higher priced item.
21 (g) Failure to make deliveries of the product within a reasonable time
22 or to make a refund therefor.
- 23 14. Knowingly fails to identify flood-damaged or water-damaged
24 goods as to such damages.
- 25 15. Solicits by telephone or door to door as a seller, unless the
26 seller identifies himself, whom he represents and the purpose of his call
27 within 30 seconds after beginning the conversation.
- 28 16. Knowingly states that services, replacement parts or repairs are
29 needed when no such services, replacement parts or repairs are actu-
30 ally needed.
- 31 17. Advertises or offers an opportunity for investment and:
32 (a) Represents that the investment is guaranteed, secured or protected
33 in a manner which he knows or has reason to know, is false or mislead-
34 ing;
35 (b) Represents that the investment will earn a rate of return which he
36 knows or has reasons to know is false or misleading;
37 (c) Makes any untrue statement of a material fact or omits to state a
38 material fact which is necessary to make another statement, considering
39 the circumstances under which it is made, not misleading;
40 (d) Fails to maintain adequate records so that an investor may deter-
41 mine how his money is invested;
42 (e) Fails to provide information to an investor after a reasonable
43 request for information concerning his investment;
44 (f) Fails to comply with any law or regulation for the marketing of
45 securities or other investments; or
46 (g) Represents that he is licensed by an agency of the state to sell or

1 offer for sale investments or services for investments if he is not so
2 licensed.]

3 Sec. 10. NRS 598.490 is hereby amended to read as follows:

4 598.490 1. Evidence that a person has engaged in a deceptive
5 trade practice is prima facie evidence of intent to injure competitors
6 and to destroy or substantially lessen competition.

7 2. The deceptive trade practices listed in NRS 598.410 and sections
8 5, 6 and 7 of this act are in addition to and do not limit the types of
9 unfair trade practices actionable at common law or defined as such in
10 other statutes of this state.

11 Sec. 11. NRS 598.540 is hereby amended to read as follows:

12 598.540 1. Notwithstanding the requirement of knowledge as an
13 element of [any practice enumerated in NRS 598.410 as] a deceptive
14 trade practice, when the commissioner or director has cause to believe
15 that a person has engaged or is engaging in any [of the practices enu-
16 merated in NRS 598.410,] *deceptive trade practice*, knowingly or oth-
17 erwise, he may request in writing that the attorney general represent
18 him in instituting an appropriate legal proceeding, including, without
19 limitation, an application for an injunction or temporary restraining
20 order [, as provided in N.R.C.P. 65,] prohibiting the person from con-
21 tinuing [such] *the* practices. The court may make orders or judgments
22 necessary to prevent the use by the person of any such deceptive trade
23 practice or to restore to any other person any money or property which
24 may have been acquired by the deceptive trade practice.

25 2. Where the commissioner or director has the authority to institute
26 a civil action or other proceeding, in lieu thereof or as a part thereof,
27 he may accept an assurance of discontinuance of any deceptive trade
28 practice. This assurance may include a stipulation for the [voluntary]
29 payment by the alleged violator of the costs of investigation and the
30 costs of instituting the action or proceeding and for the [voluntary] res-
31 titution of any money or property acquired by any deceptive trade prac-
32 tice. Except as provided in this subsection, any assurance of discontinu-
33 ance accepted by the commissioner or director and any stipulation filed
34 with the court is confidential to the parties to the action or proceeding
35 and to the court and its employees. Upon final judgment by the court
36 that an injunction or a temporary restraining order, issued as provided
37 in subsection 1 of this section, has been violated, an assurance of dis-
38 continuance has been violated or a person has engaged in the same
39 deceptive trade practice as had previously been enjoined, the assurance
40 of discontinuance or stipulation becomes a public record. Proof by a
41 preponderance of evidence of a violation of an assurance constitutes
42 prima facie evidence of a deceptive trade practice for the purpose of
43 any civil action or proceeding brought thereafter by the commissioner
44 or director, whether a new action or a subsequent motion or petition in
45 any pending action or proceeding.

1 **Sec. 12.** NRS 598.570 is hereby amended to read as follows:
 2 598.570 Notwithstanding the requirement of knowledge as an ele-
 3 ment of [any practice enumerated in NRS 598.410 as] a deceptive
 4 trade practice, and notwithstanding the enforcement powers granted to
 5 the commissioner or director pursuant to NRS 598.360 to 598.640,
 6 inclusive, whenever the district attorney of any county has reason to
 7 believe that any person is using, has used or is about to use any [of the
 8 practices enumerated in NRS 598.410,] *deceptive trade practice*, know-
 9 ingly or otherwise, he may bring an action in the name of the State of
 10 Nevada against that person to obtain a temporary or permanent injunc-
 11 tion against the deceptive trade practice.

12 **Sec. 13.** NRS 598.620 is hereby amended to read as follows:
 13 598.620 1. In proceeding pursuant to NRS 598.580 to 598.620,
 14 inclusive, the district attorney may accept an assurance of discontinu-
 15 ance with respect to any method, act or practice deemed to be a decep-
 16 tive trade practice [enumerated in NRS 598.410] from any person who
 17 is engaged or is about to engage in [such] the method, act or practice
 18 by following the procedures set forth in subsection 2 of NRS 598.540.

19 2. Any assurance made pursuant to subsection 1 [shall] *must* be in
 20 writing and [shall] *must* be filed with and subject to the approval of the
 21 district court in the county in which the alleged violator resides or has
 22 his principal place of business, or the district court in any county where
 23 any deceptive trade practice has occurred or is about to occur or the
 24 district court agreed to by the parties.

25 3. An assurance of discontinuance made pursuant to subsections 1
 26 and 2 [shall not be considered] *is not* an admission of violation for any
 27 purpose, but is subject to the terms, limitations [.] and conditions of
 28 NRS 598.540.

29 **Sec. 14.** NRS 598.640 is hereby amended to read as follows:
 30 598.640 1. Any person who violates any court order or injunction
 31 issued pursuant to NRS 598.360 to 598.630, inclusive, upon a com-
 32 plaint brought by the commissioner, the director, the district attorney of
 33 any county of this state or the attorney general shall forfeit and pay to
 34 the state general fund a civil penalty of not more than \$10,000 for each
 35 violation. For the purpose of this section, the court issuing any such
 36 order or injunction retains jurisdiction over the action or proceeding.
 37 Such civil penalties are in addition to any other penalty or remedy
 38 available for the enforcement of the provisions of NRS 598.360 to
 39 598.630, inclusive.

40 2. In any action brought pursuant to NRS 598.540 to 598.600 inclu-
 41 sive, and section 2 of [this act,] *Assembly Bill No. 98 of the 63rd ses-*
 42 *sion of the Nevada legislature*, if the court finds that any person has
 43 willfully engaged in a deceptive trade practice, the commissioner, the
 44 director, the district attorney of any county in this state or the attorney

1 general bringing the action may recover a civil penalty not to exceed
 2 \$2,500 for each violation.

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

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

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

8 (c) For the third and all subsequent offenses, shall be punished by
 9 imprisonment in the state prison for not less than 1 year nor more than
 10 6 years, or by a fine of not more than \$5,000, or by both fine and
 11 imprisonment.

12 4. [As used in this section the term "violation" includes a repeti-
 13 tive or continuous violation arising out of the same act.]

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

19 **Sec. 15.** NRS 598.745 is hereby amended to read as follows:

20 598.745 Any person who knowingly violates any provision of NRS
 21 598.700 to 598.735, inclusive, is liable, in addition to any other pen-
 22 alty or remedy which may be provided by law, to a civil penalty of
 23 [\$250] *not more than \$500* for each offense, which may be recovered
 24 by civil action on complaint of the commissioner of consumer affairs,
 25 *the director of the department of commerce or the district attorney.*

26 **Sec. 16.** NRS 41.600 is hereby amended to read as follows:

27 41.600 1. An action may be brought by any person who is a vic-
 28 tim of consumer fraud.

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

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

31 (b) An act prohibited by NRS 482.351; or

32 (c) A deceptive trade practice as defined in NRS 598.410 [.] *and sec-*
 33 *tions 5, 6 and 7 of this act.*

34 3. If the claimant is the prevailing party, the court shall award any
 35 damages that he has sustained.

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

38 **Sec. 17.** NRS 489.401 is hereby amended to read as follows:

39 489.401 The following grounds, among others, constitute grounds
 40 for disciplinary action under NRS 489.381:

41 1. The intentional publication, circulation or display of any adver-
 42 tising which constitutes a [violation of NRS 598.410 by being a] decep-
 43 tive trade practice [within the meaning of the term as set forth in that
 44 section.] *as that term is defined in NRS 598.410 and sections 5, 6 and*
 45 *7 of this act.*

46 2. Failure to include in any advertising the name of the licensed

- 1 dealer, rebuilder, serviceman or installer, or the name under which he
2 is doing business.
- 3 3. Making any substantial misrepresentation or false promise which
4 is likely to influence, persuade or induce, or continually failing to fulfill
5 promises to sell, breaching agreements or contracts or making false
6 promises by any means.
- 7 4. Failure to disclose all terms and conditions of a sale, purchase
8 or lease or offer to sell, purchase or lease a manufactured home,
9 mobile home or commercial coach.
- 10 5. Representing to any lender, guaranteeing agency or other inter-
11 ested party, either orally or through the preparation of false documents:
- 12 (a) An amount in excess of the actual sales price;
13 (b) A false amount as the down payment, earnest money deposit or
14 other valuable consideration;
15 (c) Terms differing from those actually agreed upon; or
16 (d) False information on a credit application.
- 17 6. Inducing an applicant to falsify his credit application.
- 18 Sec. 18. Sections 8, 11 and 14 of this act become effective at 12:01
19 a.m. on July 1, 1985.

JOURNAL OF THE SENATE

62-85

SIXTY-THIRD SESSION

1371

SENATE

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Bills Nos. 374, 400, 533, 599, 605,

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CAROL L. MOORE
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ND NOTICES

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D READING

be entered in the Journal.

this day in terms of the explanation

of this bill. First of all the bill is necessary because there was a mistake made in Senate Bill No. 196 and it was too late to recall that bill from the Governor's office.

This bill allows funding the Washoe County Regional Water Planning and Advisory Board for fiscal year 1985 and 1986. In Senate Bill No. 196 the budget dates that were proposed are already passed for this fiscal year. So if this legislation is not processed, there will be no budget for that advisory board for their first year of operation. It is not the intention of this bill or of any of the Washoe legislators to impose any new tax and this is not what this bill does. We all thought when voting on Senate Bill No. 196 that we were indeed including a budget for fiscal year 1985 and 1986. Unfortunately, we were not because the budget dates have already been passed. This is not a new levy, this is what we intended to do when we voted on Senate Bill No. 196 and is necessary in order to accomplish the objectives of that previous legislation.

Roll call on Senate Bill No. 519:

YEAS—21.

NAYS—None.

Senate Bill No. 519 having received a constitutional majority, Mr. President pro Tempore declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 83.

Bill read third time.

Remarks by Senators Neal, Wagner and Hickey.

Roll call on Assembly Bill No. 83:

YEAS—21.

NAYS—None.

Assembly Bill No. 83 having received a constitutional majority, Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 379.

Bill read third time.

Remarks by Senators Neal and Robinson.

Roll call on Assembly Bill No. 379:

YEAS—21.

NAYS—None.

Assembly Bill No. 379 having received a constitutional majority, Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 567.

Bill read third time.

Roll call on Assembly Bill No. 567:

YEAS—21.

NAYS—None

Assembly Bill No. 567 having received a constitutional majority, Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 608.

Bill read third time.

Assembly Bill No. 379—Committee on Commerce

CHAPTER 670

AN ACT relating to deceptive trade practices; specifying additional deceptive trade practices; increasing penalties for deceptive trade practices; providing penalties; and providing other matters properly relating thereto.

[Approved June 13, 1985]

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

Section 1. Chapter 598 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. 1. *A person shall not hold a deposit for the purchase of an item longer than the time specified in a contract between the purchaser and the seller if the purchaser is entitled to the return of the deposit.*

2. A person who violates the provisions of subsection 1 shall be punished by a fine of not more than the amount of the deposit multiplied by the number of working days the deposit was retained after return was due.

Sec. 3. (Deleted by amendment.)

Sec. 4. *If a person violates any provision of this chapter, fails to comply with a judgment or order of any court in this state concerning a violation of such a provision, or fails to comply with an assurance of discontinuance or other agreement concerning an alleged violation of such a provision, the commissioner of consumer affairs or the district attorney of any county may bring an action in the name of the State of Nevada seeking:*

1. The suspension of the person's privilege to conduct business within this state; or

2. If the defendant is a corporation, dissolution of the corporation. The court may grant or deny the relief sought or may order other appropriate relief.

Sec. 5. *A person engages in a "deceptive trade practice" when in the course of his business or occupation he employs "bait and switch" advertising, which consists of an offer to sell a product or service which the seller in truth may not intend or desire to sell, accompanied by one or more of the following practices:*

1. Refusal to show the product advertised.

2. Disparagement in any material respect of the advertised product or the terms of sale.

3. Requiring other sales or other undisclosed conditions to be met before selling the advertised product or service.

4. Refusal to take orders for the product advertised for delivery within a reasonable time.

5. Showing or demonstrating a defective product which is unusable or impractical for the purposes set forth in the advertisement.

6. Accepting a deposit for the product and subsequently switching the purchase order to a higher priced item.

Sec. 6. *A person engages in a "deceptive trade practice" when in the course of his business or occupation he:*

1. *Knowingly fails to identify goods damaged by water.*
2. *Solicits by telephone or door to door as a seller, unless the seller identifies himself, whom he represents and the purpose of his call within 30 seconds after beginning the conversation.*
3. *Knowingly states that services, replacement parts or repairs are needed when no such services, replacement parts or repairs are actually needed.*
4. *Fails to make delivery of a product within a reasonable time or to make a refund for the product, if he allows refunds.*
5. *Advertises or offers an opportunity for investment and:*
 - (a) *Represents that the investment is guaranteed, secured or protected in a manner which he knows or has reason to know, is false or misleading;*
 - (b) *Represents that the investment will earn a rate of return which he knows or has reasons to know is false or misleading;*
 - (c) *Makes any untrue statement of a material fact or omits to state a material fact which is necessary to make another statement, considering the circumstances under which it is made, not misleading;*
 - (d) *Fails to maintain adequate records so that an investor may determine how his money is invested;*
 - (e) *Fails to provide information to an investor after a reasonable request for information concerning his investment;*
 - (f) *Fails to comply with any law or regulation for the marketing of securities or other investments; or*
 - (g) *Represents that he is licensed by an agency of the state to sell or offer for sale investments or services for investments if he is not so licensed.*

Sec. 7. *A person engages in a "deceptive trade practice" when in the course of his business or occupation he knowingly:*

1. *Conducts the business or occupation without all required state, county or city licenses.*
2. *Fails to disclose a material fact in connection with the sale of goods or services.*

Sec. 8. NRS 598.360 is hereby amended to read as follows:

598.360 As used in NRS 598.360 to 598.640, inclusive, [and] sections 2 and 3 of [this act] Assembly Bill No. 98 of the 63rd session of the Nevada legislature and sections 5, 6 and 7 of this act, unless the context otherwise requires, the words and terms defined in NRS 598.370 to 598.480, inclusive, and sections 5, 6 and 7 of this act have the meanings ascribed to them in those sections.

Sec. 9. NRS 598.410 is hereby amended to read as follows:

598.410 A person engages in a "deceptive trade practice" when in the course of his business or occupation he:

1. *Knowingly passes off goods or services as those of another.*

2. Knowingly makes a false representation as to the source, sponsorship, approval or certification of goods or services.
3. Knowingly makes a false representation as to affiliation, connection, association with or certification by another.
4. Uses deceptive representations or designations of geographic origin in connection with goods or services.
5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith.
6. Represents that goods are original or new if he knows or should know that they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.
7. Represents that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if he knows or should know that they are of another.
8. Disparages the goods, services or business of another by false or misleading representation of fact.
9. Advertises goods or services with intent not to sell them as advertised.
10. Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.
11. Advertises under the guise of obtaining sales personnel when in fact the purpose is to first sell a product or service to the sales personnel applicant.
12. Makes false or misleading statements of fact concerning the price of goods or services, or the reasons for, existence of or amounts of price reductions.
13. Employs "bait and switch" advertising, which consists of an attractive but insincere offer to sell a product or service which the seller in truth does not intend or desire to sell, accompanied by one or more of the following practices:
 - (a) Refusal to show the product advertised.
 - (b) Disparagement in any material respect of the advertised product or the terms of sale.
 - (c) Requiring tie-in sales or other undisclosed conditions to be met prior to selling the advertised product or service.
 - (d) Refusal to take orders for the product advertised for delivery within a reasonable time.
 - (e) Showing or demonstrating a defective product which is unusable or impractical for the purposes set forth in the advertisement.
 - (f) Accepting a deposit for the product and subsequently switching the purchase order to a higher priced item.
 - (g) Failure to make deliveries of the product within a reasonable time or to make a refund therefor.

14. Knowingly fails to identify flood-damaged or water-damaged goods as to such damages.

15. Solicits by telephone or door to door as a seller, unless the seller identifies himself, whom he represents and the purpose of his call within 30 seconds after beginning the conversation.

16. Knowingly states that services, replacement parts or repairs are needed when no such services, replacement parts or repairs are actually needed.

17. Advertises or offers an opportunity for investment and:

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

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

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

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

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

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

(g) Represents that he is licensed by an agency of the state to sell or offer for sale investments or services for investments if he is not so licensed.】

Sec. 10. NRS 598.490 is hereby amended to read as follows:

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

2. The deceptive trade practices listed in NRS 598.410 and sections 5, 6 and 7 of this act are in addition to and do not limit the types of unfair trade practices actionable at common law or defined as such in other statutes of this state.

Sec. 11. NRS 598.540 is hereby amended to read as follows:

598.540 1. Notwithstanding the requirement of knowledge as an element of 【any practice enumerated in NRS 598.410 as】 a deceptive trade practice, when the commissioner or director has cause to believe that a person has engaged or is engaging in any 【of the practices enumerated in NRS 598.410,】 *deceptive trade practice*, knowingly or otherwise, he may request in writing that the attorney general represent him in instituting an appropriate legal proceeding, including, without limitation, an application for an injunction or temporary restraining order 【, as provided in N.R.C.P. 65,】 prohibiting the person from continuing

[such] the practices. The court may make orders or judgments necessary to prevent the use by the person of any such deceptive trade practice or to restore to any other person any money or property which may have been acquired by the deceptive trade practice.

2. Where the commissioner or director has the authority to institute a civil action or other proceeding, in lieu thereof or as a part thereof, he may accept an assurance of discontinuance of any deceptive trade practice. This assurance may include a stipulation for the [voluntary] payment by the alleged violator of the costs of investigation and the costs of instituting the action or proceeding and for the [voluntary] restitution of any money or property acquired by any deceptive trade practice. Except as provided in this subsection, any assurance of discontinuance accepted by the commissioner or director and any stipulation filed with the court is confidential to the parties to the action or proceeding and to the court and its employees. Upon final judgment by the court that an injunction or a temporary restraining order, issued as provided in subsection 1 of this section, has been violated, an assurance of discontinuance has been violated or a person has engaged in the same deceptive trade practice as had previously been enjoined, the assurance of discontinuance or stipulation becomes a public record. Proof by a preponderance of evidence of a violation of an assurance constitutes prima facie evidence of a deceptive trade practice for the purpose of any civil action or proceeding brought thereafter by the commissioner or director, whether a new action or a subsequent motion or petition in any pending action or proceeding.

Sec. 12. NRS 598.570 is hereby amended to read as follows:

598.570 Notwithstanding the requirement of knowledge as an element of [any practice enumerated in NRS 598.410 as] a deceptive trade practice, and notwithstanding the enforcement powers granted to the commissioner or director pursuant to NRS 598.360 to 598.640, inclusive, whenever the district attorney of any county has reason to believe that any person is using, has used or is about to use any [of the practices enumerated in NRS 598.410,] *deceptive trade practice*, knowingly or otherwise, he may bring an action in the name of the State of Nevada against that person to obtain a temporary or permanent injunction against the deceptive trade practice.

Sec. 13. NRS 598.620 is hereby amended to read as follows:

598.620 1. In proceeding pursuant to NRS 598.580 to 598.620, inclusive, the district attorney may accept an assurance of discontinuance with respect to any method, act or practice deemed to be a deceptive trade practice [enumerated in NRS 598.410] from any person who is engaged or is about to engage in [such] the method, act or practice by following the procedures set forth in subsection 2 of NRS 598.540.

2. Any assurance made pursuant to subsection 1 [shall] *must* be in writing and [shall] *must* be filed with and subject to the approval of the district court in the county in which the alleged violator resides or has his principal place of business, or the district court in any county where

any deceptive trade practice has occurred or is about to occur or the district court agreed to by the parties.

3. An assurance of discontinuance made pursuant to subsections 1 and 2 ~~shall not be considered~~ *is not* an admission of violation for any purpose, but is subject to the terms, limitations ~~[,]~~ and conditions of NRS 598.540.

Sec. 14. NRS 598.640 is hereby amended to read as follows:

598.640 1. Any person who violates any court order or injunction issued pursuant to NRS 598.360 to 598.630, inclusive, upon a complaint brought by the commissioner, the director, the district attorney of any county of this state or the attorney general shall forfeit and pay to the state general fund a civil penalty of not more than \$10,000 for each violation. For the purpose of this section, the court issuing any such order or injunction retains jurisdiction over the action or proceeding. Such civil penalties are in addition to any other penalty or remedy available for the enforcement of the provisions of NRS 598.360 to 598.630, inclusive.

2. In any action brought pursuant to NRS 598.540 to 598.600 inclusive, and section 2 of ~~[this act.]~~ *Assembly Bill No. 98 of the 63rd session of the Nevada legislature*, if the court finds that any person has willfully engaged in a deceptive trade practice, the commissioner, the director, the district attorney of any county in this state or the attorney general bringing the action may recover a civil penalty not to exceed \$2,500 for each violation.

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

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

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

(c) For the third and all subsequent offenses, shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not more than \$5,000, or by both fine and imprisonment.

4. ~~[As used in this section the term "violation" includes a repetitive or continuous violation arising out of the same act.]~~

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

Sec. 15. NRS 598.745 is hereby amended to read as follows:

598.745 Any person who knowingly violates any provision of NRS 598.700 to 598.735, inclusive, is liable, in addition to any other penalty or remedy which may be provided by law, to a civil penalty of ~~[\$250]~~ *not more than \$500* for each offense, which may be recovered by civil action on complaint of the commissioner of consumer affairs, *the director of the department of commerce* or the district attorney.

Sec. 16. NRS 41.600 is hereby amended to read as follows:

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

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

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

(b) An act prohibited by NRS 482.351; or

(c) A deceptive trade practice as defined in NRS 598.410 **[.]** and sections 5, 6 and 7 of this act.

3. If the claimant is the prevailing party, the court shall award any damages that he has sustained.

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

Sec. 17. NRS 489.401 is hereby amended to read as follows:

489.401 The following grounds, among others, constitute grounds for disciplinary action under NRS 489.381:

1. The intentional publication, circulation or display of any advertising which constitutes a **[violation of NRS 598.410 by being a]** deceptive trade practice **[within the meaning of the term as set forth in that section.]** as that term is defined in NRS 598.410 and sections 5, 6 and 7 of this act.

2. Failure to include in any advertising the name of the licensed dealer, rebuilder, serviceman or installer, or the name under which he is doing business.

3. Making any substantial misrepresentation or false promise which is likely to influence, persuade or induce, or continually failing to fulfill promises to sell, breaching agreements or contracts or making false promises by any means.

4. Failure to disclose all terms and conditions of a sale, purchase or lease or offer to sell, purchase or lease a manufactured home, mobile home or commercial coach.

5. Representing to any lender, guaranteeing agency or other interested party, either orally or through the preparation of false documents:

(a) An amount in excess of the actual sales price;

(b) A false amount as the down payment, earnest money deposit or other valuable consideration;

(c) Terms differing from those actually agreed upon; or

(d) False information on a credit application.

6. Inducing an applicant to falsify his credit application.

Sec. 18. Sections 8, 11 and 14 of this act become effective at 12:01 a.m. on July 1, 1985.

EXHIBIT 4

AB 431 - 1999

Introduced on Mar 10, 1999

By Commerce and Labor,

Fiscal Note

Effect On Local Government: *Yes*

Effect on the State or on Industrial Insurance: *Yes*

Revises protections provided to individual buyers, lessees, borrowers, guests of public accommodations and recipients of workers' compensation benefits. (BDR 52-182)

Current Status: In Assembly at Governor
Chapter 604 Sections 9, 10, and 11 effective June 9, 1999. Sections 1 to 7, inclusive effective October 1, 1999. Section 8 effective 12:01 a.m. October 1, 1999.

Hearings

Assembly Commerce and Labor	<u>Mar-24-1999</u>	No Action
Assembly Commerce and Labor	<u>Apr-07-1999</u>	Amend, and do pass as amended
Senate Commerce and Labor	<u>May-05-1999</u>	To Subcommittee
Senate Commerce and Labor	<u>May-05-1999</u>	Subcommittee
Senate Commerce and Labor	<u>May-11-1999</u>	Subcommittee
Senate Commerce and Labor	<u>May-12-1999</u>	Subcommittee
Senate Commerce and Labor	<u>May-14-1999</u>	Amend, and do pass as amended
Senate Commerce and Labor	<u>May-26-1999</u>	Do not recede

Votes

<u>Assembly Final Passage</u>	<u>Apr-19</u>	29 Yea	13 Nay	0 Excused	0 Not Voting	0 Absent
<u>Senate Final Passage</u>	<u>May-21</u>	21 Yea	0 Nay	0 Excused	0 Not Voting	0 Absent

10-Mar-99 Read first time. Referred to Committee on Commerce and Labor. To printer.

11-Mar-99 From printer. To committee.

✓ 17-Apr-99 From committee: Amend, and do pass as amended. Placed on Second Reading File. Read second time. Amended. (Amend. No. 679). To printer.

✓ 19-Apr-99 From printer. To engrossment. Engrossed. First reprint. ✓ Read third time. Passed, as amended. Title approved, as amended. (Yeas: 29, Nays: 13). To Senate.

20-Apr-99 In Senate. Read first time. Referred to Committee on Commerce and Labor. To committee.

✓✓ 21-May-99 From committee: Amend, and do pass as amended. Placed on Second Reading File. Read second time. Amended. (Amend. No. 1119). To printer. From printer. To re-engrossment. Re-engrossed. Second reprint. ✓ Declared an emergency measure under the Constitution. Read third time. Passed, as amended. Title approved, as amended. (Yeas: 21, Nays: None). To Assembly.

22-May-99 In Assembly.

24-May-99 Senate Amendment No. 1119 not concurred in. To Senate.

25-May-99 In Senate.

26-May-99 Senate Amend. No. 1119 not receded from. Conference requested. First Conference Committee appointed by Senate. To Assembly.

27-May-99 In Assembly. First Conference Committee appointed by Assembly. To committee.

✓ 30-May-99 From committee: Concur in Senate Amendment No. 1119 and further amend. First Conference report adopted by Assembly.

✓ 31-May-99 First Conference report adopted by Senate. To printer. From printer. To re-engrossment. Re-engrossed. Third reprint. ✓ To enrollment.

02-Jun-99 Enrolled and delivered to Governor.

09-Jun-99 Approved by the Governor. Chapter 604.



BILL SUMMARY
70th REGULAR SESSION
OF THE NEVADA STATE LEGISLATURE

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

ASSEMBLY BILL 431
(Enrolled)

Assembly Bill 431 revises provisions governing deceptive trade practices to include transactions involving leases as well as sales. Among the prohibited acts are:

- **Knowingly making any false representation in a transaction;**
- Tendering a lease or terms of sale or lease that are less favorable than the terms advertised;
- **Violating a state or federal statute or regulation relating to the sale or lease of goods or services; and**
- Using coercion, duress, or intimidation in a transaction.

The bill also requires a person who has been issued a certificate of registration to operate a check-cashing or deferred deposit service, to adhere to certain practices, including delivering a written agreement, approved by the Commissioner of Financial Institutions to a borrower with specified information. The agreement must contain the identity of the registrant as well as the name and title of the employee who signs the agreement, an itemization of the fees and interest to be paid, disclosures required for a similar transaction by the federal truth in lending act, any applicable disclosures required under state law and a clear description of the borrower's obligations. A registrant must post certain information at each location in which the registrant conducts business.

In addition, A.B. 431 establishes a process to address loan defaults involving deferred deposit transactions. If a check is not paid when presented because of insufficient funds, the registrant may collect a fee of not more than \$25. Only two such fees may be charged regardless of the number of times the check is presented for payment. If a borrower defaults on a loan made in the form of a deferred deposit, the registrant may immediately pursue any available collection proceedings. The interest rate that can be charged in such cases is limited to the prime rate plus 10 percent.

Further, A.B. 431 prohibits a registrant from engaging in certain activities concerning the conduct of the business. These unlawful activities include the use of the criminal process, or of any civil process not available to creditors generally, to collect on a deferred deposit.

In addition, a registrant may not make a loan that exceeds one third of the borrower's expected monthly net income during the term of the transaction unless justified by particular circumstances. Further, a registrant may not charge to cash a check representing the proceeds of a deferred deposit nor make more than one loan to the same borrower at one time unless the borrower is seeking multiple loans in the form of deferred deposits that do not exceed one third of the borrower's expected monthly net income.

The bill also prohibits a registrant from making a loan in the form of a deferred deposit to repay, renew, refinance, or consolidate an outstanding deferred deposit loan to the same borrower beyond ten weeks after the expiration of the initial loan period or to accept any collateral for a deferred deposit loan. Moreover, the measure prohibits a registrant from including certain waivers, assignments, and confessions of judgment, or similar provisions in a written agreement.

The bill also revises provisions concerning vehicle dealers or rebuilders. The bill prohibits "bait and switch" advertising.

Further, the measure revises provisions governing hotels, inns, motels, and motor courts. The bill requires an owner, as well as a keeper, of such an establishment to maintain a printed statement of the charge or rate of charges by the day and make the statement available for viewing, upon request, at the registration desk or an equivalent location.

Portions of the measure are effective on June 9, 1999.

LEGISLATIVE HEARINGS

MINUTES AND EXHIBITS

**MINUTES OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventieth Session
March 24, 1999**

The Committee on Commerce and Labor was called to order at 3:45 p.m., on Wednesday, March 24, 1999. Chairman Barbara Buckley presided in Room 3142 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All Exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Ms. Barbara Buckley, Chairman
Mr. Richard Perkins, Vice Chairman
Mr. Bob Beers
Ms. Merle Berman
Mr. Joe Dini, Jr.
Mrs. Jan Evans
Ms. Chris Giunchigliani
Mr. David Goldwater
Mr. Lynn Hettrick
Mr. David Humke
Mr. Dennis Nolan
Mr. David Parks
Mrs. Gene Segerblom

COMMITTEE MEMBERS ABSENT:

Mr. Morse Arberry, Jr.

GUEST LEGISLATORS PRESENT:

Assemblyman John Carpenter, Assembly District 33
Senator Mark Amodei, Capital Senatorial District

STAFF MEMBERS PRESENT:

Vance Hughey, Committee Policy Analyst
Crystal M. Lesbo, Committee Counsel

Kelly Gregory, Committee Secretary
Meagan Colard, Committee Secretary

OTHERS PRESENT:

Daphne Hunkin, private citizen
Gail Burks, Executive Director, Nevada Fair Housing Center
Michele Johnson, President, Consumer Credit Counseling Service
Robert Frimet, President, Casa de Cambia Check Cashing, and President,
Nevada Independent Check Cashing Association
Neil Ordiers, President, Cash Plus, and member, Nevada Independent
Check Cashing Association
John Odin, member, Nevada Independent Check Cashing Association
Carl Hull, member, Nevada Independent Check Cashing Association
Ken Kruger, President, All American Driving School and President, Nevada
Professional Driving School Association
Robert D. Sullivan, President, Bishop Manogue High School
Dana Mathiesen, Management Analyst, Department of Motor Vehicles
and Public Safety
Joann Keller, Highway Safety Coordinator, Office of Traffic Safety
Shirley Petro, Auditor, Department of Business and Industry Real Estate
Division
James Gregory, Broker, Westgate Property Management Company
Joseph Johnson, member, Nevada Housing Coalition
Sean Smith, lobbyist, National Association of Independent Insurers
Jim Wadhams, lobbyist, National Association of Independent Insurers
Nancy Wong, Counsel, Division of Industrial Relations

Chairman Buckley opened the meeting and advised the committee the order in which the bills would be heard. She also said a work session would follow the hearing. Chairman Buckley advised those persons testifying before the committee on proper procedures for testimony.

Assembly Bill 431: Provides additional protections to individual buyers, lessees, borrowers and recipients of workers' compensation benefits. (BDR 52-182)

Chairman Buckley handed the gavel over to Vice Chairman Perkins so she could introduce the bill. Vice Chairman Perkins said it was his intention to move the bills along quickly.

Assemblywoman Barbara Buckley, representing district 8, said that was an

"omnibus consumer protection" bill. She expressed her frustration with Nevada's current consumer protection laws and said they were some of the worst in the country. Ms. Buckley reviewed section 2 of the bill, which expanded the definition of deceptive trade practices. Current statute, outlined in NRS chapter 598, had not been updated in some time. Ms. Buckley pointed out fraudulent persons changed their ways often to avoid capture and prosecution. An update of consumer protection statutes would ensure fraudulent persons would not take advantage of consumers. Ms. Buckley again referred to section 2, which specified down payments must be returned to individuals who unsuccessfully applied for loans or other forms of credit, even if the down payment was a condition of financing. She explained sections 1, 2, and 3 were attempts by the bill drafter to clarify the language to prohibit fraudulent lenders from keeping those down payments.

Section 3 stipulated persons involved in contract negotiations, undertaken in a language other than English, must be provided an unexecuted copy of the contract in that language. Ms. Buckley said in southern Nevada, businesses were marketing to Hispanic customers in the Spanish language and conducting transactions in Spanish. Then, when the contract was drawn up, the business refused to provide that contract in Spanish.

Sections 4, 5, and 6, described the unfair and deceptive practice law, which currently did not make anything illegal unless a sale of goods took place. A major loophole was left open because leasing was not included. Section 6, page 3, paragraph 14, added another deceptive trade practice: "knowingly making a false representation." Section 7 added lease language for previously stated reasons. That section also updated the "bait and switch law" in regard to leases. Section 9 expanded the deceptive trade practice law by providing a person who engaged in a deceptive trade practice, or used coercion, duress, or intimidation, would be punished accordingly.

Ms. Buckley wanted to discuss her intent in drafting section 12, which referred to "payday lending." She presented a handout entitled "Financing the Unbanked" (Exhibit C) and a document by the Consumer Federation of America, which discussed the growth of payday loan lending (Exhibit D). Additionally, Ms. Buckley handed out a statement from the attorney general's Bureau of Consumer Protection in support of certain portions of the bill (Exhibit E). She said banks no longer issued small loans to consumers due to mergers, deregulation, and other trends in the industry. As a result, businesses that loaned money to people wanting to borrow small amounts over a short period of time were cropping up everywhere. Ms. Buckley said those new payday lenders could be seen on any corner throughout Nevada. Last session, Assemblyman Wendell Williams had introduced a bill on check cashing, to limit the amount a

check casher could charge customers. Ms. Buckley said testimony was presented during a hearing on that bill from businesses in the deferred deposit industry. Prior to that hearing, many legislators had not known such an industry existed. Ms. Buckley explained the process in which lenders gave money to customers. In the deferred deposit industry, a customer wrote a check to the check casher, which then held the check until the customer's next payday, hence the name payday lending. The check casher provided the funds to the customer, knowing funds were not presently available, but on the promise that the funds would be available on the customer's next payday.

Ms. Buckley was concerned because those payday lenders charged exorbitantly high interest rates. Some were loaning at as much as 1000 percent interest. The rollover aspect of the lending process also concerned her. She said in many cases, the customers could not raise enough money to pay for the loan they took out in the first place. More money was borrowed, and the person was eventually indebted far beyond their ability to pay. Ms. Buckley was concerned because the finance charges paid by deferred deposit customers were extremely high. She said most users of payday lending did not have much money in the first place, and the payday lending process never let them out of debt.

The other sections of the bill were derived from language included in the Consumer Federation of America's Model National Legislation. She said approximately 20 states prohibited payday lending. Ms. Buckley explained she had not chosen to eliminate the industry all together with the bill. She felt a regulatory approach was more appropriate.

Daphne Hunkin, a private citizen, was a 6 year resident of Nevada. She wanted to share her costly experiences with the deferred deposit industry. The short-term and high-rate loans came with different names: some were called payday loans, also cash advance loans, check advance loans, post-dated check loans, and deferred deposit check loans. Ms. Hunkin reviewed the lending process with the committee. She emphasized there was no restriction on the amount she was allowed to borrow, and the amount was not based on her income. For the \$200 to \$500 loans Ms. Hunkin had taken, fees ranged from \$5 per \$100 loaned per week to \$15 per \$100 loaned per week, depending on the lender. Ms. Hunkin reiterated she had been easily given the loan by signing a post-dated check to the lender. Loans could be renewed at the end of the term with a rollover fee. Those types of loans were very high priced credit. The annual percentage rates she had been charged varied from 240 percent to 720 percent annually.

Ms. Hunkin had read the report authored by the Consumer Federation of America and easily related to the situations in the report. The use of a personal

check made collection easier for lenders, because the deferred deposit lenders could sue delinquent customers under the state's bad check law. She had been threatened into paying additional fees by some lenders to avoid being sued under that law. Under current state law, deferred deposit lenders had both civil and criminal resources available to collect debts. Ms. Hunkin pointed out no other lending industry enjoyed that privilege. Additionally, contracts had never been utilized during her dealings with deferred deposit lenders. She said the nature of those loans put borrowers on a "debt treadmill." Ms. Hunkin was outraged when she learned minorities and lower income families were targeted by the deferred deposit industry.

Ms. Buckley continued by turning to section 12, page 5, of the bill. She said the protections guaranteed by other states could be broken into categories. The first were disclosures requiring an explanation of the services to be provided. Conspicuous statements were required, advising customers they would not be prosecuted under criminal law for a deferred deposit collection. She reiterated the deferred deposit industry had an advantage over other lending mechanisms because bad checks carried criminal implications. Section 13 also dealt with the same disclosure. Section 14 addressed interest rates, capping the interest at 36 percent per year, plus an administration fee. Section 15 made public policy statements by providing it was unlawful to threaten criminal prosecution to deferred deposit debtors. Additionally, the section provided protection to consumers against confessions of judgement or waivers of the right to a jury trial. She said some members of the deferred deposit industry had expressed an interest in helping her with the language of the bill, while others had threatened her for bringing the issue forward.

Ms. Segerblom thought a limit on deferred deposit finance charges had been put in statute during the previous legislative session. Ms. Buckley said that language had been deleted when the bill reached the Senate. Passage of that statute had required deferred deposit lenders to register with the state. She continued by expressing her concern about the increase in debt incurred by consumers using payday lending. She observed the banking industry did not have those problems, because they did not lend to those persons they thought to be risky. At the same time, the deferred deposit industry was targeting those consumers who were unable to pay.

Mr. Nolan said the bill included a requirement forcing a lender to provide a contract in both English and Spanish when the customer was Hispanic. He stated there were other provisions in the bill requiring contracts to be drafted in the primary language of the person who was entering into the contract. He wondered if it would be difficult to find people to draft the intricate language of a contract in those other languages. Ms. Buckley said her intent was to target

transactions conducted by a business in another language. She stated everyone was legally bound to read a contract before signing, and persons who were unable to read the language of a contract were bound to find someone who could. She felt businesses who deliberately marketed to non-English speaking people and had salespeople who conducted transactions in that language were not allowing the customer to see a copy of the contract in that language. Ms. Buckley stated the bill could be shaped to clarify that desire. She felt the bill did not apply to other groups unless the business was specifically owned, staffed by, and marketed to a specific ethnic group.

Ms. Guinchigliani asked who was the commissioner in the bill. Ms. Buckley answered that was the Commissioner of Financial Institutions.

Ms. Guinchigliani asked if there would be a toll free number where complaints could be voiced. Ms. Buckley answered a number would be available.

Mr. Goldwater asked about the amount a lender could charge if the deferred check was returned for insufficient funds. That question was in reference to section 14, number 2. The language in the bill stated a lender could not charge the customer more than a \$15 service fee for a returned check. Ms. Buckley agreed the language was somewhat restrictive and said she would look into making changes to enable the lender to charge more, if he was charged a higher fee by his banking institution.

Gail Burks, Executive Director of the Nevada Fair Housing Center, said her corporation dealt with housing and banking issues in Nevada and across the nation. She supported the bill, and felt it closed a loophole regulation of the deferred deposit industry. Credit was defined by the Federal Truth in Lending law as "a right granted by a creditor to defer payment of a debt... A loan, in Black's Law Dictionary, was the delivery of one party of one thing for another in exchange for a later payment." According to those definitions, a deferred deposit did not constitute a loan. The loopholes in current state law allowed deferred deposit companies to be set up as international or national corporations to avoid being subject to state law. The economic effect was demonstrated by the amortization schedule provided by Ms. Burks (Exhibit F).

Ms. Burks gave an example using a 2-week loan of \$200. If the customer paid back the loan within the 2-week period, the cost of the loan would be approximately \$40. However, if she carried the loan out over 1-year, it would cost \$1,042. Ms. Burks also discussed the practice of rolling over loans. If a customer rolled over a loan of \$200, over 1-year's time, the cost of the loan would be over \$35,000. She called the deferred deposit industry "fringe banking" which was trying to service a market left open by the traditional

banking industry.

Ms. Burks stated several other states had aggressive laws aimed against the deferred deposit industry. She referred to Virginia's law, which capped the loan amount that could be borrowed from a deferred deposit lender. She said that law was similar to the bill being discussed by the committee. Georgia and Kentucky were also dealing with the legality of deferred deposit businesses.

Michele Johnson, President of Consumer Credit Counseling Service, said her organization provided several services, most of which were focused on education. According to Ms. Johnson, deferred deposit businesses did not perform the credit checks made by traditional lending venues. Many low to moderate income consumers were targeted by deferred deposit lenders because they did not have the credit choices offered to more credit-worthy consumers. Ms. Johnson also pointed out the debt incurred by customers of deferred deposit did not stop at the interest. Fees were also charged for sending letters, completing collections calls, and many other services. She said Nevada had the second highest bankruptcy growth in the nation for 1998. Ms. Johnson also submitted a written copy of her testimony (Exhibit G). It included several examples of the forms and disclosure statements utilized by various check cashers.

Several persons who came to her organization for help owed more to deferred deposit lenders than their monthly income. Another factor in the problem was a customer could go to many different lenders and take out several loans easily. Ms. Johnson stated regulation would offer protection to those indebted consumers.

Mr. Nolan asked if the deferred deposit lenders were so deceptive that they did not disclose the interest rate and long-term obligations. He wondered if the customers were so desperate they were willing to accept the terms, no matter how bad. Ms. Johnson replied annual percentage rates were disclosed, but were minimized to the customer as inapplicable. Most customers lived paycheck to paycheck and took out the loans to pay their living expenses. They did not have the money to pay back the lender. Annual percentage rates often became a reality for those customers. Ms. Johnson felt desperation was not a factor. Ms. Burks also responded by stating no disclosures were made on the compound interest of the loan. Unlike a mortgage or other traditional loan, the ending balance and payment information on a deferred deposit loan was never made available.

Mr. Goldwater stated the bill could be reworked to eliminate the deceptive practices of the deferred deposit industry, but the bill as written did not

accomplish that goal. He said there was a difference between annual percentage rate and the stated percentage rate. In the example presented by Ms. Burks, he thought the daily compounding rate was the real problem.

Michael Pawlak, a member of the Clark County Community Resources organization, submitted written testimony in favor of the bill (Exhibit H). He felt the legislation was important to Nevada consumers. According to his statement, many new families in southern Nevada relied on nontraditional lending sources. He pointed out many of those problems were exacerbated by language differences. The work he had done in Clark County allowed him to become familiar with the ways check cashing affected consumers and the community. It was Mr. Pawlak's opinion the bill would help protect honest businesses in the deferred deposit industry.

Chairman Perkins asked for further testimony in favor of the legislation. Seeing no one, he called up the first witness in opposition to the bill. Ms. Buckley interjected the bill as drafted applied only to check cashers under the referenced chapter. She was considering amending the bill so it applied to all small loans issued by cash lenders. Chairman Perkins urged the people testifying in opposition to the bill to keep their testimony brief.

Robert Frimet, President of the Nevada Independent Check Cashing Association and President of Casa de Cambia Check Cashing, was concerned about sections 11 through 17 of the bill. He submitted a written copy of his testimony (Exhibit I). The members of the association were regulated by legislation passed in the 1997 legislative session. Mr. Frimet outlined his employment history in Nevada, including his involvement at various levels of the check cashing industry. He owned a check cashing business with three locations in Las Vegas. Mr. Frimet said the bill would take away everything he had worked so hard to build.

He said the members of the association had complied with chapter 604 of NRS to the letter. According to Mr. Frimet, the businesses in the deferred deposit industry had participated in workshops and public hearings with regulators. The interaction allowed formulation of regulations benefiting consumers, while maintaining the integrity of the deferred deposit industry. Mr. Frimet said NRS 604 required check cashers to post a \$50,000 bond to show viability and fiscal responsibility, and required the owners of businesses to pass a financial and criminal background check. The law also required the businesses to post the fees in the building, showing the customer what they were being charged. Consumers were protected by a disclosure of fees, which they were required to sign under the law. However, current statute did not limit the profitability of lenders. Additionally, current law could not regulate businesses without a

license under NRS 604, who were most likely misleading consumers.

Mr. Frimet said he had several conversations with the financial commissioner concerning those "renegade" lenders. The commissioner assured Mr. Frimet cease and desist orders were sent to such lenders as soon as the agency learned of their existence. Mr. Frimet argued businesses not operating under NRS 604 and not members of the Nevada Independent Check Cashing Association should not be allowed to do business. Deferred deposit lenders who were complying with the law should be allowed to operate with no further restriction. Mr. Frimet read into the record a letter from one of his customers (Exhibit I). The letter expressed satisfaction with the check cashing process and stated the customer had been aware of the fees paid to the lender. The author urged the lawmakers to allow those lenders to operate without restriction. Mr. Frimet asserted the letter exemplified the necessity for check cashers in the community and the positive experience customers had with businesses in the industry. He stated there were over 33,000 active customers and 175 employees in the deferred deposit industry in Nevada. Approximately \$660 million was outstanding to deferred deposit customers. A 1997 study by the Department of Treasury revealed there were over 5,000 check cashing businesses in the United States, who cashed over 180 million checks amounting \$55 billion. Mr. Frimet stated consumers dictated the market for deferred deposits and check cashing. He felt that government should support "fringe banking".

Mr. Frimet continued by arguing the business of check cashing was high risk, and felt he should be able to use whatever legal means necessary to recoup losses. He stated insufficient funds checks did not have to be prosecuted criminally; however, customers who closed accounts or stopped payment of checks should be held liable under criminal law. He acknowledged those risks were the price of doing business. He concluded by stating he should be allowed to make profit at will and usury was eliminated in Nevada to foster new enterprise. He said the bill was too limited because it told him how to run his business, from the amount he could loan, to the amount collected in interest. The bill would force him "out of business and into bankruptcy" and eliminate a service needed by many consumers. He also stated employees in the industry would be forced to collect unemployment. Mr. Frimet urged the committee to allow NRS 604 to regulate the industry. He stated only four complaints had been made to the commissioner's office since July of 1998 against the deferred deposit industry.

Mr. Frimet also wanted to address the issue of annual percentage rates. He said those rates had been created by the Federal Reserve Bank to allow customers to compare prices. He stated annual percentage rates were not

applicable to loans given by check cashers, which only lasted 2 to 4 weeks. Mr. Frimet stated none of his customers were interested in annual percentage rates, although as of May 1, 1999, lenders were required to disclose those rates.

Mr. Nolan asked what percentage of loans defaulted at Mr. Frimet's business. Mr. Frimet answered approximately 25 percent. He had been in business for just over 1 year and was holding \$35,000 in returned checks. He stated collection was very difficult. He estimated 3 out of 10 borrowers defaulted on their loans.

Mr. Nolan asked what the highest annual percentage rate was for lending. Mr. Frimet said he was not familiar with those rates. He reviewed the amounts he charged to customers, which ranged from \$15 to \$25 per week, depending on the amount loaned. Mr. Frimet asserted those charges were much less than what a customer could incur at a traditional bank. He reiterated he did not have any information on the annual percentage rates of the loans.

Ms. Buckley asked if Mr. Frimet's business granted rollovers for those loans. He answered affirmatively. She wondered what percentage of his customers utilized rollovers. Mr. Frimet estimated 30 percent rolled over once or twice, while 10 percent rolled over beyond 6 weeks.

Ms. Buckley asked how much a customer would pay if they borrowed \$300, as a general rule. Mr. Frimet said customers could come in and make payments on the loan to reduce the principle or extend the loan by requesting a rollover. He stated only a few customers utilized rollovers.

Ms. Buckley did not feel he had answered the question, so she put the question to him again. Mr. Frimet replied \$100 per month was the charge if the customer borrowed \$300. The average term of advance was 2 weeks. He said the fees were so high because the loan was unsecured and the business was very risky.

Ms. Buckley asked how long the term was for borrowing. She wanted to know the cost of credit over several months. Mr. Frimet answered out of the 10 percent who rolled over loans, half went 2 months and the other half went 3 months. He said it may cost the customer \$300 over a 90 day period to borrow \$300.

Neil Ordiers owned two Cash Plus lending stores in Carson City, and was a member of the Nevada Independent Check Cashing Association. He presented a written copy of his testimony to the committee (Exhibit J). Mr. Ordiers' intent

was to inform the committee about his customers and give more information on the benefits of the deferred deposit industry.

Chairman Perkins advised Mr. Ordiers several other people wished to testify on the bill, and time was limited.

Mr. Ordiers replied he intended to be as brief as possible, and cover points no one else would be able to review. He proceeded by recapping the written testimony. He asked why so many customers frequented businesses in the deferred deposit industry, if they were so fraudulent. He stated the businesses were so successful because they took a chance on the customer when no one else was willing, and provided short-term assistance. He stated customers of the deferred deposit industry came from all walks of life. They used deferred deposit as a method of lending because it provided a short-term solution to a short-term problem. Mr. Ordiers argued traditional lending channels were too restrictive and did not allow customers to borrow when they needed extra cash.

Mr. Ordiers proceeded to review the qualifications required for a customer to receive a loan from his company. He required two bank statements, a continuous work history of 3 months or more, and a telephone and other utilities under their name. He said many check cashing businesses, including his own, used an outside source to perform credit checks. Mr. Ordiers said the average customer would take 2 weeks to pay back the loan, with 25 percent paying within 1 week, and 15 percent within 4 to 6 weeks. The average income of his customer was \$900 per paycheck. In addition, the average amount loaned to each customer was \$200. According to his testimony, the "average customer received between 15 percent to 25 percent of their net income as an industry standard." He said the bill would detrimentally affect customers. It could cause customers to lose wages, have their power turned off, and hurt their credit rating. The financial chain of events that occurred as a result of bad checks would affect many types of businesses. Mr. Ordiers asserted collection agencies would be the prime beneficiaries of the bill. He suggested customers would be punished if the bill was passed, because they would not have funding alternatives. He argued the bill would put an industry out of business and create financial disaster for consumers. In addition to his written testimony, Mr. Ordiers submitted several letters of reference for the committee's review (Exhibit J) and copies of the contracts given to customers of deferred deposit businesses.

Sandy Perry, President of Cash Express and member of the Nevada Independent Check Cashing Association, said she understood why Ms. Buckley introduced the bill and sympathized with Ms. Hunkin. Ms. Perry said her business had \$24,000 outstanding when she purchased it in 1997. She had lowered her fees

since 1997, and was currently charging \$12.00 per hundred per week. Ms. Perry stated she gave bonus incentives to customers who paid back their loans early or on time. Her business did not encourage people to roll over their loans. She stated all business came via telephone calls, in which customers were asked a series of questions. Ms. Perry offered to furnish a form outlining those questions. She said callers were asked if they had outstanding advances with other companies. If customers did have other outstanding cash advances, they were usually not extended credit by Cash Express. Income ranges for Cash Express customers were \$1200 to \$7000 net per month. Ms. Perry stated extensions were common, and they cost \$500. Her customers viewed the service as a convenience. Ms. Perry distributed several letters for the committee's review (Exhibit K).

Ms. Perry prepared a financial statement of her expenses if the bill passed. As of March 20, 1999, Cash Express had \$52,000 outstanding, at an average of \$24 per hundred. The annual percentage rate calculated was 625 percent. She estimated her net monthly profit would be \$13,000. Ms. Perry said she did not take a salary in the last year. Her company would have a net monthly loss of \$6,000 if the bill was passed. It would effectively put her out of business. She reiterated her customers were pleased with the service provided, and her company was extremely careful in lending. She said the policy of her company was to stop finance charges if and when a customer came into serious financial hardship. Ms. Perry invited members of the committee to visit her store to observe those practices.

Steven Gresh, owner of Cash Central, submitted a written document for the record in opposition to the bill (Exhibit L). He stated the bill would be detrimental to the citizens of Nevada. Mr. Gresh was especially concerned about section 11. He pointed out chapter 604 had just taken effect, and urged the committee members to let the law do its job before restricting the deferred deposit industry any further. He also included several letters from his customers on his behalf.

Chairman Perkins acknowledged John Odin and Carl Hull of the Nevada Independent Check Cashing Association and noted their objection to the bill for the record. Chairman Perkins closed the hearing on A.B. 431, and returned the gavel to Ms. Buckley.

Assembly Bill 492: Revises provisions regulating schools that train drivers of motor vehicles. (BDR 54-1332)

Chairman Buckley opened the hearing on A.B. 492.

PROOF OF SERVICE

STATE OF NEVADA)
)
COUNTY OF CLARK)

On June 11, 2018 I served the forgoing document(s) described as 1) APPELLANT'S MOTION TO TAKE JUDICIAL NOTICE interested party(ies) in this action by either fax and/or email, or by placing a true and correct copy and/or original thereof addressed as follows:

JEFF BENDAVID, ESQ
Moran, Brandon, Bendavid, Moran
630 South Fourth Street
Las Vegas, NV 89101
j.bendavid@moranlawfirm.com

☐ **(BY FIRST CLASS MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal service on that same day with first class postage thereon fully prepaid at Las Vegas, NV in the ordinary course of business.

☐ **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the office, and/or to the attorney listed as the addressee below.

☐ **(BY FAX SERVICE)** Pursuant to consent under NRCP, Rule 5(b), I hereby certify that service of the aforementioned document(s) via facsimile, pursuant to EDCR Rule 7.26(a), as set forth herein.

☒ **(BY EMAIL SERVICE) (Wiznet/email)** Pursuant NRCP, Rule 5(b)(2)(D), and the EDCR on electronic service, I hereby certify that service of the aforementioned document(s) via email to pursuant to the relevant and pertinent provisions of EDCR and NRCP, as set forth herein.

Executed on this 11th day of June, 2018

/s/ George O. West III
GEORGE O. WEST III

Senator Pozzi objected to the penalty.

Senator Blakemore asked if there was anything in the bill to give the merchant recourse for a false complaint. The answer was no.

Senator Drakulich spoke in favor of the bill.

Motion by Senator Blakemore, Do Pass, seconded by Senator Herr. Senator Swobe moved to amend the motion to reduce the civil penalty to \$1,000.

Discussion: Senator Swobe stated that the penalty was not in the Governor's original bill.

Mr. Melner stated that they did not have certain information from the office of the District Attorney at the time the Governor presented his budget message.

Ayes, Senators Pozzi, Swobe and Hecht, Naves, Senators Herr, Lamb, Blakemore and Drakulich.

Original Motion was renewed, Senators Lamb, Herr, Blakemore, and Drakulich voting Aye, Senators Swobe, Pozzi and Hecht voting nay.

Motion by Senator Lamb, the bill be referred to Finance Committee, seconded by Senator Swobe, carried.

S. B. 500 - Creates consumer protection board to administer provisions of unfair trade practices and consumer protection law and door-to-door sales.

Motion, Senator Lamb, Do Kill, seconded Senator Pozzi, carried.

A. B. 245 - Clarifies procedure in making deductions from employees wages.

Stanley Jones, Labor Commissioners, appeared before the committee and spoke in favor of the legislation.

Motion, Senator Swobe, seconded Senator Pozzi, Do Kill, carried unanimously.

S. B. 629 - Enacts the Nevada Occupational Safety and Health Act.

John Reiser appeared before the committee and spoke in support of the measure.

Ralph Langley, NIC, spoke in support of the bill.

Rowland Oakes, Associated General Contractors, spoke in support of the bill.

Motion, Senator Lamb, Do Pass, seconded Senator Blakemore, carried unanimously.

SENATE FINANCE COMMITTEE
MINUTES OF MEETINGS
APRIL 16, 1973

The meeting was called to order at 8:30 a.m. Senator Lamb was in the chair.

PRESENT: Floyd R. Lamb, Chairman
Warren L. Monroe
B. Mahlon Brown
James I. Gibson
Archie Pozzi

(Senators Young and Raggio were in another committee meeting)

Earl Oliver, LCB Fiscal Analyst
Bob Tripp, LCB Deputy Legislative Auditor
Howard Barrett, Budget Director
Mike Melner, Director Department of Commerce
Sophie Taylor, Consumers Affairs Division
Joe Lawler, "
Bill Hancock, Planning Board
Assemblyman Vergil Ghetto

A.B. 301:

SUMMARY: Creates consumer affairs division of department of commerce and regulates deceptive trade practices.

This bill also relates to page 399 of the executive budget. Mr. Barrett said, "This is in the budget and is part of our program."

Mr. Melner said that this bill is patterned after the Colorado version of the uniform unfair trade practices act. He said that between 35-40 states now have such an act and that it has been introduced in several states and could be enacted this year in 49 states.

A.B. 636:

SUMMARY: Requires refund of contributions to public employees retirement system if employee fails to become eligible.

Assemblyman Ghetto said, "This bill is the result of a problem we've had in small counties. There are a group of public employees that haven't been considered as that because to be termed that they must earn over \$3,600 a year."

SENATE FINANCE COMMITTEE
MINUTES OF MEETING
APRIL 17, 1973

The meeting was called to order at 8:00 a.m. Senator Lamb was in the chair.

PRESENT: Floyd R. Lamb, Chairman
Warren L. Monroe
B. Mahlon Brown
James I. Gibson
William J. Raggio
Clifton Young
Archie Pozzi

Earl Oliver, LCB Fiscal Analyst
Bob Tripp, LCB Deputy Legislative Auditor
John Dolan, Chief Deputy Fiscal Analyst, LCB
Howard Barrett, Budget Director
Cy Ryan, UPI
Assemblyman Zel Lowman
Assemblyman Rawson Prince

A.B. 816:

SUMMARY: Creates child care services division in department of health, welfare and rehabilitation.

The committee felt that there should be an expression of interest in day care and Senator Raggio drew up an amendment which will express this. This bill will be held until the bill comes back with that amendment.

A.C.R. 60:

SUMMARY: Memorializes board of regents of University of Nevada System to offer baccalaureate degree program in criminal justice.

Senator Lamb said they had already put it in the budgets. Senator Raggio said the other reason for the bill was because the baccalaureate degree program in criminal justice hadn't been established. Senator Young asked, "Why do we need it?" Senator Monroe said, "You don't need that."

Senator Raggio moved they recommend do pass. Senator Monroe seconded the motion, and only Senator Raggio voted in favor of it so it failed. Senators Gibson and Pozzi were absent. Senator Brown said, "You have already got it in the budget."

Senate Finance Committee
April 17, 1973
Page Four

is my understanding that this is a special fund which has no accountability on it." Mr. Barrett said he knew nothing about it. They decided to call Assemblyman Prince in to testify on this.

A.B. 580:

SUMMARY: Increases number of district judges in Washoe County.

Senator Gibson said, "I wasn't clear on that one judges bill which would eliminate one judge. If we pass this we will still have the same number of district judges?" Senator Raggio said, "You won't have the same number unless you say the same date." I think you should give the county time to prepare for this. The county just isn't equipped at this point and would just as soon have the same number of judges." Senator Young said, "I agree."

Senator Raggio said he moved to amend the bill to make it effective 1975. They decided to take this bill back to the printer as it has a mistake on it. They took no action on the amendment.

S.B. 639:

SUMMARY: Requires commissioner of consumer affairs to adopt regulations providing for uniform retail designations of ground beef and cuts of beef.

Senator Pozzi said, "I think it would be a mistake to put this into the consumer affairs division." Senator Lamb said, "It is a consumer problem, and we thought they could handle it." Senator Raggio said, "Doesn't it make more sense to have it done by the health department?" Senator Monroe said, "You better decide what you are going to do to have consumer affairs division before you pass this." Senator Lamb said, "Otherwise the health department will be doing it and so will consumer affairs."

A.B. 301:

SUMMARY: Creates consumer affairs division of department of commerce and regulates deceptive trade practices.

Senator Lamb said, "Off the record I got a story that they don't need the secretary or chief assistant in this bill. The story told me is she didn't need these two people."

Senator Lamb moved this amendment to the

Senate Finance Committee
April 17, 1973
Page Five

Senator Brown said, "But you have already agreed on personnel with assembly ways and means." Senator Brown moved that they recommend do pass. Senator Gibson seconded the motion, and it passed unanimously.

Senator Pozzi said, "That budget will be \$300,000 when you come back here next year."

S.B. 639:

SUMMARY: Requires commissioner of consumer affairs to adopt regulations providing for uniform retail designations of ground beef and cuts of beef.

Senator Monroe moved they recommend do pass. Senator Gibson seconded the motion, and it passed unanimously.

ATTORNEY GENERAL'S OFFICE:

Senator Raggio said, "I keep getting asked every day what we have done regarding the attorney general's office and the truckee river litigation (involving the DiGeorgio lumber company)." Senator Lamb said, "We put \$75,000 in the conservation budget for that, plus it seems we did give him some money." Mr. Barrett said they had put \$75,000 in the water resources budget for legal matters. Senator Raggio mentioned that he (the attorney general) had already spent \$50,000 for this and if he wasn't reimbursed it would have to come out of his general budget.

S.B. 632:

SUMMARY: Provides longevity pay for certain judicial officers.

Senator Gibson said, "I got asked to hold this one one more day. The problem is some people feel 1-1/2% per year is a little extravagant. They would like to resolve that. They feel a 30% increase is too much." Senator Raggio said that the 30% increase would be over 20 years though. Senator Gibson said he got the 1-1/2% figure from the service (military). Senator Raggio said that whatever we do we ought to be consistent. Senator Gibson said that if they approved this the judges would be able to go back over their years of service and get credit for all past years. Senator Young said, "I agree that it would be a little excessive."

Roll call on Assembly Bill No. 242:

YEAS—19.

NAYS—None.

Absent—Pozzi.

Assembly Bill No. 242 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

✓ Assembly Bill No. 301.

Bill read third time.

Roll call on Assembly Bill No. 301:

YEAS—19.

NAYS—None.

Absent—Pozzi.

Assembly Bill No. 301 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 454.

Bill read third time.

Remarks by Senators Close, Gibson, and Dodge.

Roll call on Assembly Bill No. 454:

YEAS—19.

NAYS—None.

Absent—Pozzi.

Assembly Bill No. 454 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

MOTIONS, RESOLUTIONS, AND NOTICES

Senator Walker gave notice that, pursuant to Senate Standing Rule No. 50, he would move to re-refer Assembly Bill No. 865 from the Committee on Commerce and Labor to the Committee on Federal, State, and Local Governments on the next legislative day.

Remarks by Senators Walker, Lamb, Bryan, Drakulich, Brown, Wilson, Gibson, Dodge, Neal, Monroe, Raggio, and Close.

Senator Brown moved that the Senate recess until 2 p.m.

Motion carried.

Senate in recess at 12:02 p.m.

SENATE IN SESSION

At 2:33 p.m.

President Reid presiding.

Quorum present.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Ecology and Public Resources, to which was referred Assembly Bill No. 477, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and re-refer to the Committee on Finance.

THOMAS R. C. WILSON, *Chairman*

Remarks by Mr. Capurro.

Motion carried.

Bill ordered enrolled.

Assembly Bill No. 776.

The following Senate amendment was read:

Amendment No. 5537.

Amend section 1, page 1, by deleting line 14 and inserting:

"5. Subject to the prior review and approval of the county commission, to adopt a schedule of reasonable fees to be collected for issuing".

Amend sec. 2, page 2, by deleting line 9 and inserting:

"5. Subject to the prior review and approval of the governing body of the city, to adopt a schedule of reasonable fees to be collected for issuing".

Amend the title of the bill by deleting line 1 and inserting: "An Act relating to public health; permitting local boards of health under certain conditions to adopt fee".

Mr. Bennett moved that the Assembly concur in the Senate amendment to Assembly Bill No. 776.

Remarks by Mr. Bennett.

Motion carried.

Bill ordered enrolled.

MOTIONS, RESOLUTIONS, AND NOTICES

✓ Mr. Dreyer moved that Assembly Bill No. 301 be returned from enrollment. ✓

Motion carried.

Mr. Dreyer moved that the vote whereby Assembly Bill No. 301 was passed be rescinded.

Motion carried.

Mr. Barengo moved that Assembly Bill No. 780 be taken from the Chief Clerk's desk and re-referred to the Committee on Judiciary.

Remarks by Mr. Barengo.

Motion carried.

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee on Ways and Means, to which was referred Senate Bill No. 640, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

DONALD R. MELLO, Chairman

GENERAL FILE AND THIRD READING

Senate Bill No. 442.

Bill read third time.

Roll call on Senate Bill No. 442:

YEAS—36.

NAYS—None.

Absent—Broadbent, Capurro, Dini, Hayes—4.

Senate Bill No. 442 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

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parcel to be divided into four parcels before being defined as a subdivider. The proposed amendment had nothing to do with land sales companies.

S.B. 124 contains other needed provisions, but the amendment that would be proposed has no effect on S.B. 259, the Land Sales Act, passed yesterday. The measure was not allowed to be reconsidered, and I want everyone to know that it was the administration and some individual assemblymen, which you have heard today, that made subdividers out of everyone wanting to sell off one part of a piece of land that they might own.

I firmly believe this is contrary to the American way of life and the right to hold land and dispose of it, a small piece at a time, over a period of years, as the owner may desire.

We do need S.B. 124, but we did need to alter it by amendment to four lots.

GENERAL FILE AND THIRD READING

Assembly Bill No. 301.

Bill read third time.

The following amendment was proposed by Mr. Dreyer:

Amendment No. 5698.

Amend the bill as a whole by inserting a new section designated as sec. 1.5, following section 1, to read:

"Section 1.5. NRS 232.230 is hereby amended to read as follows:

232.230 1. The department of commerce is hereby created.

2. The department shall consist of a director and the following divisions:

(a) Banking division.

(b) *Consumer affairs division.*

(c) Insurance division.

[(c)] (d) Real estate division.

[(d)] (e) Savings and loan division.

[(e)] (f) State fire marshal division."

Amend the bill as a whole by inserting a new section designated as sec. 2.5, following sec. 2 to read:

"Sec. 2.5. NRS 232.250 is hereby amended to read as follows:

232.250 The director shall:

1. Appoint, with the consent of the governor, a chief of each of the divisions of the department. In making such appointments, the director shall obtain lists of nominees from recognized professional organizations, if any, in the appropriate professions and shall make such appointments after consultation with and concurrence of such organizations. The chief of the banking division shall be known as the superintendent of banks, *the chief of the consumer affairs division shall be known as the commissioner of consumer affairs*, the chief of the insurance division shall be known as the commissioner of insurance, the chief of the real estate division shall be known as the real estate administrator, the chief of the savings and loan division shall be known as the commissioner of savings associations and the chief of the state fire marshal division shall be known as the state fire marshal.

2. Be responsible for the administration, through the divisions of the department, of the provisions of Titles 55 to 57, inclusive, of NRS, chapters 645 of NRS, *sections 4 to 32, inclusive, of this act*, and all other provisions of law relating to the functions of the divisions of the department."

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40

Amend the bill as a whole by inserting new sections designated as sections 33 and 34, following sec. 32 to read:

"Sec. 33. 1. Sections 1 and 2 of this act shall not become effective if sections 41 and 42 of Assembly Bill 944 of the 57th session of the Nevada legislature becomes law.

2. Sections 1.5 and 2.5 of this act shall not become effective if sections 41 and 42 of Assembly Bill 944 of the 57th session of the Nevada legislature does not become law.

Sec. 34. This act shall become effective at 12:02 a.m. on July 1, 1973."

Mr. Dreyer moved the adoption of the amendment.

Remarks by Mr. Dreyer.

Amendment adopted.

Bill ordered reprinted, re-engrossed, and to third reading.

Senate Bill No. 62.

Bill read third time.

Roll call on Senate Bill No. 62:

YEAS—34.

NAYS—Jacobsen, Lowman, Smith, Young—4.

Absent—Broadbent, Torvinen—2.

Senate Bill No. 62 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 340.

Bill read third time.

Remarks by Messrs. Smith, Ullom, Schofield, and Dini.

Roll call on Senate Bill No. 340:

YEAS—37.

NAYS—Foote.

Absent—Broadbent, Torvinen—2.

Senate Bill No. 340 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS, AND NOTICES

Mr. Jacobsen moved that Senate Bill No. 490 be taken from the General File and placed on the General File for the next legislative day.

Remarks by Messrs. Jacobsen and Dini.

Motion lost.

GENERAL FILE AND THIRD READING

Senate Bill No. 490.

Bill read third time.

Remarks by Mr. Jacobsen.

Roll call on Senate Bill No. 490:

YEAS—24.

NAYS—Bickerstaff, Capurro, Fry, Getto, Hafen, Howard, Huff, McNeel, Prince, Schofield, Torvinen, Young—12.

Absent—Broadbent, Mello—2.

Not voting—Dini, Mr. Speaker—2.

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(REPRINTED WITH ADOPTED AMENDMENTS)

THIRD REPRINT

A. B. 301

ASSEMBLY BILL NO. 301—COMMITTEE ON COMMERCE

FEBRUARY 15, 1973

Referred to Committee on Commerce

SUMMARY—Creates consumer affairs division of department of commerce and regulates deceptive trade practices. Fiscal Note: Yes. (BDR 52-233)

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to consumer protection; creating the consumer affairs division of the department of commerce; regulating deceptive trade practices; providing injunctive relief; providing a method of voluntary compliance; providing for notice; providing penalties; 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. NRS 232.230 is hereby amended to read as follows:
2 232.230 1. The department of commerce is hereby created.
3 2. The department shall consist of a director and the following divi-
4 sions:
5 (a) Banking division.
6 (b) *Consumer affairs division.*
7 (c) Insurance division.
8 [(c)] (d) Real estate division.
9 [(d)] (e) Savings and loan division.
10 SECTION 1.5. NRS 232.230 is hereby amended to read as follows:
11 232.230 1. The department of commerce is hereby created.
12 2. The department shall consist of a director and the following
13 divisions:
14 (a) Banking division.
15 (b) *Consumer affairs division.*
16 (c) Insurance division.
17 [(c)] (d) Real estate division.
18 [(d)] (e) Savings and loan division.
19 [(e)] (f) State fire marshal division.
20 SEC. 2. NRS 232.250 is hereby amended to read as follows:
21 232.250 The director shall:
22 1. Appoint, with the consent of the governor, a chief of each of the
23 divisions of the department. In making such appointments, the director

1 shall obtain lists of nominees from recognized professional organizations,
2 if any, in the appropriate professions and shall make such appointments
3 after consultation with and concurrence of such organizations. The chief
4 of the banking division shall be known as the superintendent of banks,
5 the chief of the consumer affairs division shall be known as the commis-
6 sioner of consumer affairs, the chief of the insurance division shall be
7 known as the commissioner of insurance, the chief of the real estate
8 division shall be known as the real estate administrator, and the chief
9 of the savings and loan division shall be known as the commissioner of
10 savings associations.

11 2. Be responsible for the administration, through the divisions of the
12 department, of the provisions of Titles 55 to 57, inclusive, of NRS, chap-
13 ter 645 of NRS, sections 4 to 32, inclusive, of this act, and all other pro-
14 visions of law relating to the functions of the divisions of the department.

15 SEC. 2.5. NRS 232.250 is hereby amended to read as follows:

16 232.250 The director shall:

17 1. Appoint, with the consent of the governor, a chief of each of the
18 divisions of the department. In making such appointments, the director
19 shall obtain lists of nominees from recognized professional organiza-
20 tions, if any, in the appropriate professions and shall make such appoint-
21 ments after consultation with and concurrence of such organizations. The chief of the banking division shall be known as the superintendent
22 of banks, the chief of the consumer affairs division shall be known as
23 the commissioner of consumer affairs, the chief of the insurance division
24 shall be known as the commissioner of insurance, the chief of the real
25 estate division shall be known as the real estate administrator, the chief
26 of the savings and loan division shall be known as the commissioner of
27 savings associations and the chief of the state fire marshal division shall
28 be known as the state fire marshal.

29 2. Be responsible for the administration, through the divisions of the
30 department, of the provisions of Title 55 to 57, inclusive, of NRS,
31 chapter 645 of NRS, sections 4 to 32, inclusive, of this act, and all
32 other provisions of law relating to the functions of the divisions of the
33 department.

34 SEC. 3. Chapter 598 of NRS is hereby amended by adding thereto the
35 provisions set forth as sections 4 to 32, inclusive, of this act.

36 SEC. 4. As used in sections 4 to 32, inclusive, of this act, unless the
37 context otherwise requires, the words and terms defined in sections 5 to
38 16, inclusive, of this act have the meanings ascribed to them in such sec-
39 tions.

40 SEC. 5. "Advertisement" means the attempt by publication, dissem-
41 ination, solicitation or circulation to induce, directly or indirectly, any
42 person to enter into any obligation or to acquire any title or interest in
43 any property.

44 SEC. 6. "Certification mark" means a mark used in connection with
45 the goods or services of a person other than the certifier to indicate geo-
46 graphic origin, material, mode of manufacture, quality, accuracy or other
47 characteristics of the goods or services or to indicate that the work or
48 labor on the goods or services was performed by members of a union or
49 other organization.

1 SEC. 7. "Collective mark" means a mark used by members of a coop-
2 erative, association or other collective group or organization to identify
3 goods or services and distinguish them from those of others, or to indicate
4 membership in the collective group or organization.

5 SEC. 8. "Commissioner" means the commissioner of consumer affairs.

6 SEC. 9. A person engages in a "deceptive trade practice" when in the
7 course of his business or occupation he:

8 1. Knowingly passes off goods or services as those of another.
9 2. Knowingly makes a false representation as to the source, sponsor-
10 ship, approval or certification of goods or services.

11 3. Knowingly makes a false representation as to affiliation, connec-
12 tion, association with or certification by another.

13 4. Uses deceptive representations or designations of geographic origin
14 in connection with goods or services.

15 5. Knowingly makes a false representation as to the characteristics,
16 ingredients, uses, benefits, alterations or quantities of goods or services
17 or a false representation as to the sponsorship, approval, status, affiliation
18 or connection of a person therewith.

19 6. Represents that goods are original or new if he knows or should
20 know that they are deteriorated, altered, reconditioned, reclaimed, used or
21 secondhand.

22 7. Represents that goods or services are of a particular standard,
23 quality or grade, or that goods are of a particular style or model, if he
24 knows or should know that they are of another.

25 8. Disparages the goods, services or business of another by false or
26 misleading representation of fact.

27 9. Advertises goods or services with intent not to sell them as adver-
28 tised.

29 10. Advertises goods or services with intent not to supply reasonably
30 expectable public demand, unless the advertisement discloses a limitation
31 of quantity.

32 11. Advertises under the guise of obtaining sales personnel when
33 in fact the purpose is to first sell a product or service to the sales per-
34 sonnel applicant.

35 12. Makes false or misleading statements of fact concerning the
36 price of goods or services, or the reasons for, existence of or amounts
37 of price reductions.

38 13. Employs "bait and switch" advertising, which consists of an
39 attractive but insincere offer to sell a product or service which the seller
40 in truth does not intend or desire to sell, accompanied by one or more
41 of the following practices:

42 (a) Refusal to show the product advertised.

43 (b) Disparagement in any material respect of the advertised product or
44 the terms of sale.

45 (c) Requiring tie-in sales or other undisclosed conditions to be met
46 prior to selling the advertised product or service.

47 (d) Refusal to take orders for the product advertised for delivery within
48 a reasonable time.

49 (e) Showing or demonstrating a defective product which is unusable or
50 impractical for the purposes set forth in the advertisement.

1 (f) Accepting a deposit for the product and subsequently switching
2 the purchase order to a higher priced item.

3 (g) Failure to make deliveries of the product within a reasonable time
4 or to make a refund therefor.

5 14. Knowingly fails to identify flood-damaged or water-damaged
6 goods as to such damages.

7 15. Solicits by telephone or door to door as a seller, unless the seller
8 identifies himself, whom he represents and the purpose of his call within
9 30 seconds after beginning the conversation.

10 16. Knowingly states that services, replacement parts or repairs are
11 needed when no such services, replacement parts or repairs are actually
12 needed.

13 SEC. 10. "Mark" means a word, name, symbol, device or any com-
14 bination of the foregoing in any form or arrangement.

15 SEC. 11. "Person" means an individual, corporation, business trust,
16 estate, trust, partnership, unincorporated association, two or more of any
17 of the foregoing having a joint or common interest, or any other legal
18 or commercial entity.

19 SEC. 12. "Property" means any real or personal property, or both
20 real and personal property, intangible property or services.

21 SEC. 13. "Service mark" means a mark used by a person to identify
22 services and to distinguish them from the services of others.

23 SEC. 14. "Sale" includes any sale, offer for sale or attempt to sell any
24 property for any consideration.

25 SEC. 15. "Trademark" means a mark used by a person to identify
26 goods and to distinguish them from the goods of others.

27 SEC. 16. "Trade name" means a word, name, symbol, device or any
28 combination of the foregoing in any form or arrangement used by a
29 person to identify his business or occupation, and to distinguish it from
30 the business or occupation of others.

31 SEC. 17. 1. Evidence that a person has engaged in a deceptive trade
32 practice is prima facie evidence of intent to injure competitors and to
33 destroy or substantially lessen competition.

34 2. The deceptive trade practices listed in section 9 of this act are
35 in addition to and do not limit the types of unfair trade practices action-
36 able at common law or defined as such in other statutes of this state.

37 SEC. 18. 1. Sections 4 to 32, inclusive, of this act do not apply to:

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

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

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

45 2. Sections 4 to 32, inclusive, of this act do not apply to the use by
46 a person of any service mark, trademark, certification mark, collective
47 mark, trade name or other trade identification which was used and not
48 abandoned prior to July 1, 1973, if the use was in good faith and is other-
49 wise lawful except for the provisions of sections 4 to 32, inclusive, of
50 this act.

1 SEC. 19. When the commissioner has cause to believe that any person
2 has engaged or is engaging in any deceptive trade practice, he may:

3 1. Request such person to file a statement or report in writing under
4 oath or otherwise, on such forms as shall be prescribed by the commis-
5 sioner, as to all facts and circumstances concerning the sale or advertise-
6 ment of property by such person, and such other data and information
7 as he may deem necessary.

8 2. Examine under oath any person in connection with the sale or
9 advertisement of any property.

10 3. Examine any property or sample thereof, record, book, docu-
11 ment, account or paper as he may deem necessary.

12 4. Make true copies, at the expense of the consumer affairs division
13 of the department of commerce, of any record, book, document, account
14 or paper examined, as provided in subsection 3 of this section, which
15 copies may be offered into evidence in lieu of the originals thereof in
16 actions brought pursuant to sections 21 and 22 of this act.

17 5. Pursuant to an order of any district court, impound any sample
18 of property which is material to such deceptive trade practice and retain
19 the property in his possession until completion of all proceedings as pro-
20 vided in sections 4 to 32, inclusive, of this act. An order shall not be
21 issued pursuant to this subsection unless the commissioner and the court
22 give the accused full opportunity to be heard and unless the commissioner
23 proves by clear and convincing evidence that the business activities of
24 the accused will not be impaired thereby.

25 SEC. 20. 1. The commissioner, in addition to other powers conferred
26 upon him by this act, may issue subpoenas to require the attendance of
27 witnesses or the production of documents, administer oaths, conduct
28 hearings in aid of any investigation or inquiry and prescribe such forms
29 and promulgate such rules as may be necessary to administer the provi-
30 sions of this act.

31 2. Service of any notice or subpoena shall be made as provided in
32 N.R.C.P. 45(c).

33 SEC. 21. If any person fails to cooperate with any investigation, as
34 provided in section 19 of this act, or if any person fails to obey a sub-
35 pena issued by the commissioner, the commissioner may apply to any
36 district court for equitable relief. Such application shall state reasonable
37 grounds showing that such relief is necessary to terminate or prevent a
38 deceptive trade practice. If the court is satisfied of such reasonable
39 grounds, the court may:

40 1. Grant injunctive relief restraining the sale or advertisement of any
41 property by such person.

42 2. Require the attendance of or the production of documents by such
43 person, or both.

44 3. Grant other relief necessary to compel compliance by such person.

45 SEC. 22. 1. Notwithstanding the requirement of knowledge as an ele-
46 ment of any practice enumerated in section 9 of this act as a deceptive
47 trade practice, when the commissioner has cause to believe that a person
48 has engaged or is engaging in any of the practices enumerated in section
49 9 of this act, knowingly or otherwise, he may apply for an injunction or
50 temporary restraining order, as provided in N.R.C.P. 65, prohibiting such

1 person from continuing such practices. The court may make orders or
2 judgments necessary to prevent the use by such person of any such decep-
3 tive trade practice or to restore to any other person any money or prop-
4 erty which may have been acquired by such deceptive trade practices.

5 2. Where the commissioner has the authority to institute a civil
6 action or other proceeding, in lieu thereof or as a part thereof, he may
7 accept an assurance of discontinuance of any deceptive trade practice.
8 Such assurance may include a stipulation for the voluntary payment by
9 the alleged violator of the costs of investigation and the costs of institut-
10 ing the action or proceeding and for the voluntary restitution of any
11 money or property acquired by deceptive trade practices. Except as pro-
12 vided in the next sentence, any such assurance of discontinuance accepted
13 by the commissioner and any such stipulation filed with the court shall
14 be confidential to the parties to such action or proceeding and to the
15 court and its employees. Upon final judgment by the court that an injunc-
16 tion or a temporary restraining order, issued as provided in subsection 1
17 of this section, has been violated, an assurance of discontinuance has
18 been violated or a person has engaged in the same deceptive trade prac-
19 tice as had previously been enjoined, the assurance of discontinuance or
20 stipulation shall become a public record. Proof by a preponderance of
21 evidence of a violation of such an assurance constitutes prima facie evi-
22 dence of a deceptive trade practice for the purpose of any civil action or
23 proceeding brought thereafter by the commissioner, whether a new action
24 or a subsequent motion or petition in any pending action or proceeding.

25 SEC. 23. 1. Sections 4 to 32, inclusive, of this act do not prohibit the
26 commissioner from disclosing to any district attorney or law enforcement
27 officer the fact that a crime has been committed by any person, if this fact
28 has become known as a result of any investigation conducted pursuant to
29 the provisions of sections 4 to 32, inclusive, of this act.

30 2. Subject to the provisions of subsection 2 of section 22 of this act,
31 the commissioner shall not make public the name of any person alleged to
32 have committed a deceptive trade practice. This subsection does not pre-
33 vent the commissioner from issuing public statements describing or warn-
34 ing of any course of conduct which constitutes a deceptive trade practice.

35 SEC. 24. 1. Prior to instituting any action pursuant to sections 25 to
36 31, inclusive, of this act, the district attorney shall ascertain whether or
37 not the action in question is subject to the regulatory authority of any
38 state agency, board, official or other authority established by virtue of the
39 Nevada Revised Statutes except the regulatory or administrative authority
40 provided to the commissioner of consumer affairs by sections 4 to 32,
41 inclusive, of this act.

42 2. If such action is subject to such regulatory authority or any regu-
43 lation duly adopted and promulgated or any statutes administered by any
44 state regulatory agency, board, official or other authority as provided in
45 subsection 1, the district attorney shall not institute any proceeding under
46 sections 25 to 31, inclusive, of this act until such state agency, board,
47 official or other state regulatory authority has had reasonable time to
48 investigate or take any appropriate action with respect to the alleged
49 facts.

50 3. For the purposes of this section, a reasonable time has elapsed if

1 no final action or other disposition is made of any matter otherwise fall-
2 ing within the provisions of sections 4 to 32, inclusive, of this act within
3 30 days after such matter is referred to or brought to the attention of any
4 state agency, board, official or other regulatory authority except the com-
5 missioner of consumer affairs.

6 4. This section does not prohibit the district attorney of any county
7 from filing an action pursuant to the provisions of sections 25 to 28, inclu-
8 sive, of this act, if the referral of any matters subject to the provisions of
9 this act to any state agency, board, official or other regulatory authority
10 would cause immediate harm to the public of this state or endanger the
11 public health, safety or welfare, and such facts are shown by affidavit
12 or by verified complaint.

13 SEC. 25. Notwithstanding the requirement of knowledge as an element
14 of any practice enumerated in section 9 of this act as a deceptive trade
15 practice, and notwithstanding the enforcement powers granted to the
16 commissioner pursuant to sections 4 to 32, inclusive, of this act, whenever
17 the district attorney of any county has reason to believe that any person
18 is using, has used or is about to use any of the practices enumerated in
19 section 9 of this act, knowingly or otherwise, he may bring an action in
20 the name of the State of Nevada against such person to obtain a tempo-
21 rary or permanent injunction against such deceptive trade practice.

22 SEC. 26. Except as otherwise provided in section 28 of this act,
23 appropriate notice must be given by the district attorney to any person
24 against whom an action is brought pursuant to section 25 of this act.
25 Such notice must state generally the relief sought and be served in accord-
26 ance with section 31 of this act at least 10 days prior to the filing of the
27 action.

28 SEC. 27. Any action brought pursuant to section 22 or 25 of this act
29 may be brought:

30 1. In a district court in the county in which the defendant resides or
31 has his principal place of business;

32 2. In the district court in Carson City if the parties consent thereto; or

33 3. In the district court in any county where a deceptive trade practice
34 has occurred. Any court in which an action is brought pursuant to section
35 22 or 25 of this act may issue any temporary or permanent injunction in
36 accordance with the Nevada Rules of Civil Procedure to restrain and pre-
37 vent any violation of any provisions of sections 4 to 32, inclusive, of this
38 act, and such injunctions shall be issued without bond.

39 SEC. 28. Whenever the district attorney has reason to believe that the
40 delay caused by complying with the notice requirement of section 26 of
41 this act would cause immediate harm to the public of this state or endan-
42 ger the public welfare, he may immediately institute a suit for injunctive
43 relief, including a request for a temporary restraining order, upon proof of
44 specific facts shown by affidavit or by verified complaint or otherwise that
45 such immediate harm will be or is likely to be caused by such delay. The
46 Nevada Rules of Civil Procedure pertaining to the issuance of temporary
47 restraining orders govern all actions instituted pursuant to this section.

48 SEC. 29. The court in which an action is brought pursuant to section
49 22 and sections 25 to 28, inclusive, of this act may make such additional

orders or judgments as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any deceptive trade practice which violates any of the provisions of sections 4 to 32, inclusive, of this act, but such additional orders or judgments may be entered only after a final determination has been made that a deceptive trade practice has occurred.

SEC. 30. 1. In proceeding pursuant to sections 26 to 30, inclusive, of this act, the district attorney may accept an assurance of discontinuance with respect to any method, act or practice deemed to be a deceptive trade practice enumerated in section 9 of this act from any person who is engaged or is about to engage in such method, act or practice by following the procedures set forth in subsection 2 of section 22 of this act.

2. Any assurance made pursuant to subsection 1 shall be in writing and shall be filed with and subject to the approval of the district court in the county in which the alleged violator resides or has his principal place of business, or the district court in any county where any deceptive trade practice has occurred or is about to occur or the district court agreed to by the parties.

3. An assurance of discontinuance made pursuant to subsections 1 and 2 shall not be considered an admission of violation for any purpose, but is subject to the terms, limitations, and conditions of section 22 of this act.

SEC. 31. Service of any notice under sections 25 to 30, inclusive, of this act shall be made by personal service within the State of Nevada, but if such service cannot be obtained, substituted service therefor may be made in any of the following ways:

1. Personal service thereof outside the State of Nevada;

2. The mailing thereof by registered or certified mail to the last-known place of business, residence or both whether inside or outside the State of Nevada of such person for whom the notice is intended, in which event such service shall be deemed complete upon the third day following the mailing of any notice required under this section;

3. As to any person other than a natural person, service shall be in the manner provided in the Nevada Rules of Civil Procedure for completing service of process on such a person, corporation, association or organization; or

4. Such service as any district court may direct in lieu of personal service within the State of Nevada.

SEC. 32. 1. Any person who violates any court order or injunction issued pursuant to sections 4 to 31, inclusive, of this act, upon a complaint brought by the commissioner, the district attorney of any county of this state shall forfeit and pay to the general fund in the state treasury a civil penalty of not more than \$10,000 for each violation. For the purpose of this section, the court issuing any such order or injunction shall retain jurisdiction over any such action or proceeding. Such civil penalties shall be in addition to any other penalty or remedy available for the enforcement of the provisions of sections 4 to 31, inclusive, of this act.

2. In any action brought pursuant to sections 22 and 25 to 28, inclusive, of this act, if the court finds that any person has willfully engaged in

a deceptive trade practice enumerated in section 9 of this act, the commissioner or the district attorney of any county in this state bringing such action may recover a civil penalty not to exceed \$2,500 for each violation.

3. Any person, firm, or any officer or managing agent of any corporation or association who knowingly and willfully engages in a deceptive trade practice enumerated in section 9 of this act shall be punished:

(a) For the first or second offense, for a misdemeanor.

(b) For the third offense and all subsequent offenses, for a gross misdemeanor.

4. As used in this section, the term "violation" includes a repetitive or continuous violation arising out of the same act.

SEC. 33. 1. Sections 1 and 2 of this act shall not become effective if sections 41 and 42 of Assembly Bill 944 of the 57th session of the Nevada legislature becomes law.

2. Sections 1.5 and 2.5 of this act shall not become effective if sections 41 and 42 of Assembly Bill 944 of the 57th session of the Nevada legislature does not become law.

SEC. 34. This act shall become effective at 12:02 a.m. on July 1, 1973.

April 23, 1972

Senate Bill No. 571 having received a constitutional majority, Mr. Speaker pro Tempore declared it passed.
Bill ordered transmitted to the Senate.

Senate Bill No. 603.

Bill read third time.

Remarks by Messrs. Barengo, Demers, May, and Hayes.

Roll call on Senate Bill No. 603:

YEAS—38.

NAYS—Torvinen.

Absent—Bickerstaff.

Senate Bill No. 603 having received a constitutional majority, Mr. Speaker pro Tempore declared it passed.
Bill ordered transmitted to the Senate.

✓ Assembly Bill No. 301.

Bill read third time.

Roll call on Assembly Bill No. 301:

YEAS—38.

NAYS—Hafen.

Absent—Bickerstaff.

Assembly Bill No. 301 having received a constitutional majority, Mr. Speaker pro Tempore declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 835.

Bill read third time.

Roll call on Assembly Bill No. 835:

YEAS—39.

NAYS—None.

Absent—Bickerstaff.

Assembly Bill No. 835 having received a constitutional majority, Mr. Speaker pro Tempore declared it passed, as amended.
Bill ordered transmitted to the Senate.

Senate Bill No. 268.

Bill read third time.

Remarks by Messrs. Torvinen and Craddock.

Roll call on Senate Bill No. 268:

YEAS—24.

NAYS—Banner, Barengo, Bremner, Brookman, Craddock, Crawford, Dini, Dreyer, Hickey, May, McNeel, Mello, Smalley, Ullom, Vergiels—15.

Absent—Bickerstaff.

Senate Bill No. 268 having received a constitutional majority, Mr. Speaker pro Tempore declared it passed, as amended.
Bill ordered transmitted to the Senate.

Senate Bill No. 612.

Bill read third time.

Remarks by Mr. Demers.

Roll call on Senate Bill No. 612:

YEAS—30.

NAYS—Barengo, Bennett, Brookman, Capurro, Crawford, McNeel, Smalley, Ullom, Vergiels—9.

Absent—Bickerstaff.

Roll call on Assembly Bill No. 62:

YEAS—17.

NAYS—None.

Absent—Close, Foley, Lamb—3.

Assembly Bill No. 62 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 298.

Bill read third time.

Roll call on Assembly Bill No. 298:

YEAS—18.

NAYS—None.

Absent—Close, Foley—2.

Assembly Bill No. 298 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

✓ Assembly Bill No. 301.

Bill read third time.

Roll call on Assembly Bill No. 301:

YEAS—18.

NAYS—None.

Absent—Close, Foley—2.

Assembly Bill No. 301 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 511.

Bill read third time.

Roll call on Assembly Bill No. 511:

YEAS—19.

NAYS—None.

Absent—Foley.

Assembly Bill No. 511 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 835.

Bill read third time.

Roll call on Assembly Bill No. 835:

YEAS—19.

NAYS—None.

Absent—Foley.

Assembly Bill No. 835 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 806.

Bill read third time.

Roll call on Assembly Bill No. 806:

YEAS—19.

NAYS—None.

Absent—Foley.

counties having a population of less than 100,000 as determined by the last preceding national census of the Bureau of the Census of the United States Department of Commerce.

(9) Justices of the peace.

(10) Constables, except where otherwise provided by law.

2. The following officers shall be appointed:

(a) Notaries public.

(b) Commissioners of deeds for the respective states and territories of the United States and foreign countries.

(c) All officers who are not elected.

SEC. 2. NRS 512.020 is hereby amended to read as follows:

512.020 1. The inspector of mines shall not at the time of his [election,] *appointment*, or at any time during the term of his office, be an officer, director or employee in or of any mining corporation in this state, or in or of any milling corporation in the state engaged in the business of smelting or reducing ores.

2. The inspector of mines shall have had at least 7 years' experience in mines, mills, beneficiation plants or smelters, at least 3 years of which shall be in underground mining.

SEC. 3. NRS 512.030 is hereby amended to read as follows:

512.030 1. The inspector of mines shall be [elected every 4 years at the same time and in the same manner as other officers of the executive department of the State of Nevada are elected.] *appointed by the Nevada industrial commission.*

2. He shall: [hold his office for the term of 4 years, or until his successor is elected and qualified.]

(a) *Serve at the pleasure of such commission; and*

(b) *Be in the unclassified service of the state.*

SEC. 4. NRS 618.180 is hereby amended to read as follows:

618.180 1. The department of industrial safety shall have full power, jurisdiction and authority over all employments: [not within the jurisdiction of the inspector of mines or the public service commission of Nevada:]

(a) To declare and prescribe what safety devices, safeguards or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law or lawful order.

(b) To fix such reasonable standards and to prescribe, modify and enforce such reasonable orders for the adoption, installation, use, maintenance and operation of safety devices, safeguards and other means or methods of protection, to be as nearly uniform as practical, as may be necessary to carry out all laws and lawful orders relative to the protection of the lives and safety of employees in employments and places of employment.

(c) To fix and order such reasonable standards for the construction, repair and maintenance of places of employment as shall render them safe.

(d) To require the performance of any other act which the protection of the lives and safety of employees in employments and places of employment may reasonably demand.

(e) To appoint advisers, and fix their compensation, who shall assist

the department in establishing standards of safety, and the department may adopt and incorporate in its general orders such safety recommendations as it may receive from such advisers.

2. Nothing in this section shall be construed to invest the department of industrial safety with any power, jurisdiction and authority over motor vehicles operating on the public highways.

SEC. 5. Section 4 of this act shall not become effective if section 78 of Senate Bill 629 of the 57th session of the Nevada legislature becomes law.

SEC. 6. This act shall become effective at 12:01 a.m. on July 1, 1973, for the purpose of precluding the nomination or election of an inspector of mines at the general election in 1974, and shall become effective for all other purposes on the 1st Monday of January 1975.

Assembly Bill No. 301—Committee on Commerce

CHAPTER 729

AN ACT relating to consumer protection; creating the consumer affairs division of the department of commerce; regulating deceptive trade practices; providing injunctive relief; providing a method of voluntary compliance; providing for notice; providing penalties; and providing other matters properly relating thereto.

[Approved April 30, 1973]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 232.230 is hereby amended to read as follows:

232.230 1. The department of commerce is hereby created.

2. The department shall consist of a director and the following divisions:

(a) Banking division.

(b) *Consumer affairs division.*

(c) Insurance division.

[(c)] (d) Real estate division.

[(d)] (e) Savings and loan division.

SEC. 1.5. NRS 232.230 is hereby amended to read as follows:

232.230 1. The department of commerce is hereby created.

2. The department shall consist of a director and the following divisions:

(a) Banking division.

(b) *Consumer affairs division.*

(c) Insurance division.

[(c)] (d) Real estate division.

[(d)] (e) Savings and loan division.

[(e)] (f) State fire marshal division.

SEC. 2. NRS 232.250 is hereby amended to read as follows:

232.250 The director shall:

1. Appoint, with the consent of the governor, a chief of each of the

divisions of the department. In making such appointments, the director shall obtain lists of nominees from recognized professional organizations, if any, in the appropriate professions and shall make such appointments after consultation with and concurrence of such organizations. The chief of the banking division shall be known as the superintendent of banks, the chief of the consumer affairs division shall be known as the commissioner of consumer affairs, the chief of the insurance division shall be known as the commissioner of insurance, the chief of the real estate division shall be known as the real estate administrator, and the chief of the savings and loan division shall be known as the commissioner of savings associations.

2. Be responsible for the administration, through the divisions of the department, of the provisions of Titles 55 to 57, inclusive, of NRS, chapter 645 of NRS, sections 4 to 32, inclusive, of this act, and all other provisions of law relating to the functions of the divisions of the department.

SEC. 2.5. NRS 232.250 is hereby amended to read as follows:

232.250 The director shall:

1. Appoint, with the consent of the governor, a chief of each of the divisions of the department. In making such appointments, the director shall obtain lists of nominees from recognized professional organizations, if any, in the appropriate professions and shall make such appointments after consultation with and concurrence of such organizations. The chief of the banking division shall be known as the superintendent of banks, the chief of the consumer affairs division shall be known as the commissioner of consumer affairs, the chief of the insurance division shall be known as the commissioner of insurance, the chief of the real estate division shall be known as the real estate administrator, the chief of the savings and loan division shall be known as the commissioner of savings associations and the chief of the state fire marshal division shall be known as the state fire marshal.

2. Be responsible for the administration, through the divisions of the department, of the provisions of Title 55 to 57, inclusive, of NRS, chapter 645 of NRS, sections 4 to 32, inclusive, of this act, and all other provisions of law relating to the functions of the divisions of the department.

SEC. 3. Chapter 598 of NRS is hereby amended by adding thereto the provisions set forth as sections 4 to 32, inclusive, of this act.

360 SEC. 4. As used in sections 4 to 32, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 5 to 16, inclusive, of this act have the meanings ascribed to them in such sections.

370 SEC. 5. "Advertisement" means the attempt by publication, dissemination, solicitation or circulation to induce, directly or indirectly, any person to enter into any obligation or to acquire any title or interest in any property.

380 SEC. 6. "Certification mark" means a mark used in connection with the goods or services of a person other than the certifier to indicate geographic origin, material, mode of manufacture, quality, accuracy or other characteristics of the goods or services or to indicate that the work or labor on the goods or services was performed by members of a union or other organization.

SEC. 7. "Collective mark" means a mark used by members of a cooperative, association or other collective group or organization to identify goods or services and distinguish them from those of others, or to indicate membership in the collective group or organization.

SEC. 8. "Commissioner" means the commissioner of consumer affairs.

SEC. 9. A person engages in a "deceptive trade practice" when in the course of his business or occupation he:

1. Knowingly passes off goods or services as those of another.
2. Knowingly makes a false representation as to the source, sponsorship, approval or certification of goods or services.
3. Knowingly makes a false representation as to affiliation, connection, association with or certification by another.
4. Uses deceptive representations or designations of geographic origin in connection with goods or services.
5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith.
6. Represents that goods are original or new if he knows or should know that they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.
7. Represents that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if he knows or should know that they are of another.
8. Disparages the goods, services or business of another by false or misleading representation of fact.
9. Advertises goods or services with intent not to sell them as advertised.
10. Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.
11. Advertises under the guise of obtaining sales personnel when in fact the purpose is to first sell a product or service to the sales personnel applicant.
12. Makes false or misleading statements of fact concerning the price of goods or services, or the reasons for, existence of or amounts of price reductions.
13. Employs "bait and switch" advertising, which consists of an attractive but insincere offer to sell a product or service which the seller in truth does not intend or desire to sell, accompanied by one or more of the following practices:
 - (a) Refusal to show the product advertised.
 - (b) Disparagement in any material respect of the advertised product or the terms of sale.
 - (c) Requiring tie-in sales or other undisclosed conditions to be met prior to selling the advertised product or service.
 - (d) Refusal to take orders for the product advertised for delivery within a reasonable time.
 - (e) Showing or demonstrating a defective product which is unusable or impractical for the purposes set forth in the advertisement.

(f) Accepting a deposit for the product and subsequently switching the purchase order to a higher priced item.

(g) Failure to make deliveries of the product within a reasonable time or to make a refund therefor.

14. Knowingly fails to identify flood-damaged or water-damaged goods as to such damages.

15. Solicits by telephone or door to door as a seller, unless the seller identifies himself, whom he represents and the purpose of his call within 30 seconds after beginning the conversation.

16. Knowingly states that services, replacement parts or repairs are needed when no such services, replacement parts or repairs are actually needed.

-20 SEC. 10. "Mark" means a word, name, symbol, device or any combination of the foregoing in any form or arrangement.

-30 SEC. 11. "Person" means an individual, corporation, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

40 SEC. 12. "Property" means any real or personal property, or both real and personal property, intangible property or services.

-60 SEC. 13. "Service mark" means a mark used by a person to identify services and to distinguish them from the services of others.

50 SEC. 14. "Sale" includes any sale, offer for sale or attempt to sell any property for any consideration.

70 SEC. 15. "Trademark" means a mark used by a person to identify goods and to distinguish them from the goods of others.

80 SEC. 16. "Trade name" means a word, name, symbol, device or any combination of the foregoing in any form or arrangement used by a person to identify his business or occupation, and to distinguish it from the business or occupation of others.

90 SEC. 17. 1. Evidence that a person has engaged in a deceptive trade practice is prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

2. The deceptive trade practices listed in section 9 of this act are in addition to and do not limit the types of unfair trade practices actionable at common law or defined as such in other statutes of this state.

SEC. 18. 1. Sections 4 to 32, inclusive, of this act do not apply to:

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

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

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

2. Sections 4 to 32, inclusive, of this act do not apply to the use by a person of any service mark, trademark, certification mark, collective mark, trade name or other trade identification which was used and not abandoned prior to July 1, 1973, if the use was in good faith and is otherwise lawful except for the provisions of sections 4 to 32, inclusive, of this act.

SEC. 19. When the commissioner has cause to believe that any person has engaged or is engaging in any deceptive trade practice, he may:

1. Request such person to file a statement or report in writing under oath or otherwise, on such forms as shall be prescribed by the commissioner, as to all facts and circumstances concerning the sale or advertisement of property by such person, and such other data and information as he may deem necessary.

2. Examine under oath any person in connection with the sale or advertisement of any property.

3. Examine any property or sample thereof, record, book, document, account or paper as he may deem necessary.

4. Make true copies, at the expense of the consumer affairs division of the department of commerce, of any record, book, document, account or paper examined, as provided in subsection 3 of this section, which copies may be offered into evidence in lieu of the originals thereof in actions brought pursuant to sections 21 and 22 of this act.

5. Pursuant to an order of any district court, impound any sample of property which is material to such deceptive trade practice and retain the property in his possession until completion of all proceedings as provided in sections 4 to 32, inclusive, of this act. An order shall not be issued pursuant to this subsection unless the commissioner and the court give the accused full opportunity to be heard and unless the commissioner proves by clear and convincing evidence that the business activities of the accused will not be impaired thereby.

SEC. 20. 1. The commissioner, in addition to other powers conferred upon him by this act, may issue subpoenas to require the attendance of witnesses or the production of documents, administer oaths, conduct hearings in aid of any investigation or inquiry and prescribe such forms and promulgate such rules as may be necessary to administer the provisions of this act.

2. Service of any notice or subpoena shall be made as provided in N.R.C.P. 45(c).

SEC. 21. If any person fails to cooperate with any investigation, as provided in section 19 of this act, or if any person fails to obey a subpoena issued by the commissioner, the commissioner may apply to any district court for equitable relief. Such application shall state reasonable grounds showing that such relief is necessary to terminate or prevent a deceptive trade practice. If the court is satisfied of such reasonable grounds, the court may:

1. Grant injunctive relief restraining the sale or advertisement of any property by such person.

2. Require the attendance of or the production of documents by such person, or both.

3. Grant other relief necessary to compel compliance by such person.

SEC. 22. 1. Notwithstanding the requirement of knowledge as an element of any practice enumerated in section 9 of this act as a deceptive trade practice, when the commissioner has cause to believe that a person has engaged or is engaging in any of the practices enumerated in section 9 of this act, knowingly or otherwise, he may apply for an injunction or temporary restraining order, as provided in N.R.C.P. 65, prohibiting such

person from continuing such practices. The court may make orders or judgments necessary to prevent the use by such person of any such deceptive trade practice or to restore to any other person any money or property which may have been acquired by such deceptive trade practices.

2. Where the commissioner has the authority to institute a civil action or other proceeding, in lieu thereof or as a part thereof, he may accept an assurance of discontinuance of any deceptive trade practice. Such assurance may include a stipulation for the voluntary payment by the alleged violator of the costs of investigation and the costs of instituting the action or proceeding and for the voluntary restitution of any money or property acquired by deceptive trade practices. Except as provided in the next sentence, any such assurance of discontinuance accepted by the commissioner and any such stipulation filed with the court shall be confidential to the parties to such action or proceeding and to the court and its employees. Upon final judgment by the court that an injunction or a temporary restraining order, issued as provided in subsection 1 of this section, has been violated, an assurance of discontinuance has been violated or a person has engaged in the same deceptive trade practice as had previously been enjoined, the assurance of discontinuance or stipulation shall become a public record. Proof by a preponderance of evidence of a violation of such an assurance constitutes prima facie evidence of a deceptive trade practice for the purpose of any civil action or proceeding brought thereafter by the commissioner, whether a new action or a subsequent motion or petition in any pending action or proceeding.

SEC. 23. 1. Sections 4 to 32, inclusive, of this act do not prohibit the commissioner from disclosing to any district attorney or law enforcement officer the fact that a crime has been committed by any person, if this fact has become known as a result of any investigation conducted pursuant to the provisions of sections 4 to 32, inclusive, of this act.

2. Subject to the provisions of subsection 2 of section 22 of this act, the commissioner shall not make public the name of any person alleged to have committed a deceptive trade practice. This subsection does not prevent the commissioner from issuing public statements describing or warning of any course of conduct which constitutes a deceptive trade practice.

SEC. 24. 1. Prior to instituting any action pursuant to sections 25 to 31, inclusive, of this act, the district attorney shall ascertain whether or not the action in question is subject to the regulatory authority of any state agency, board, official or other authority established by virtue of the Nevada Revised Statutes except the regulatory or administrative authority provided to the commissioner of consumer affairs by sections 4 to 32, inclusive, of this act.

2. If such action is subject to such regulatory authority or any regulation duly adopted and promulgated or any statutes administered by any state regulatory agency, board, official or other authority as provided in subsection 1, the district attorney shall not institute any proceeding under sections 25 to 31, inclusive, of this act until such state agency, board, official or other state regulatory authority has had reasonable time to investigate or take any appropriate action with respect to the alleged facts.

3. For the purposes of this section, a reasonable time has elapsed if no final action or other disposition is made of any matter otherwise falling within the provisions of sections 4 to 32, inclusive, of this act within 30 days after such matter is referred to or brought to the attention of any state agency, board, official or other regulatory authority except the commissioner of consumer affairs.

4. This section does not prohibit the district attorney of any county from filing an action pursuant to the provisions of sections 25 to 28, inclusive, of this act, if the referral of any matters subject to the provisions of this act to any state agency, board, official or other regulatory authority would cause immediate harm to the public of this state or endanger the public health, safety or welfare, and such facts are shown by affidavit or by verified complaint.

SEC. 25. Notwithstanding the requirement of knowledge as an element of any practice enumerated in section 9 of this act as a deceptive trade practice, and notwithstanding the enforcement powers granted to the commissioner pursuant to sections 4 to 32, inclusive, of this act, whenever the district attorney of any county has reason to believe that any person is using, has used or is about to use any of the practices enumerated in section 9 of this act, knowingly or otherwise, he may bring an action in the name of the State of Nevada against such person to obtain a temporary or permanent injunction against such deceptive trade practice.

SEC. 26. Except as otherwise provided in section 28 of this act, appropriate notice must be given by the district attorney to any person against whom an action is brought pursuant to section 25 of this act. Such notice must state generally the relief sought and be served in accordance with section 31 of this act at least 10 days prior to the filing of the action.

SEC. 27. Any action brought pursuant to section 22 or 25 of this act may be brought:

1. In a district court in the county in which the defendant resides or has his principal place of business;
2. In the district court in Carson City if the parties consent thereto; or
3. In the district court in any county where a deceptive trade practice has occurred. Any court in which an action is brought pursuant to section 22 or 25 of this act may issue any temporary or permanent injunction in accordance with the Nevada Rules of Civil Procedure to restrain and prevent any violation of any provisions of sections 4 to 32, inclusive, of this act, and such injunctions shall be issued without bond.

SEC. 28. Whenever the district attorney has reason to believe that the delay caused by complying with the notice requirement of section 26 of this act would cause immediate harm to the public of this state or endanger the public welfare, he may immediately institute a suit for injunctive relief, including a request for a temporary restraining order, upon proof of specific facts shown by affidavit or by verified complaint or otherwise that such immediate harm will be or is likely to be caused by such delay. The Nevada Rules of Civil Procedure pertaining to the issuance of temporary restraining orders govern all actions instituted pursuant to this section.

SEC. 29. The court in which an action is brought pursuant to section

22 and sections 25 to 28, inclusive, of this act may make such additional orders or judgments as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any deceptive trade practice which violates any of the provisions of sections 4 to 32, inclusive, of this act, but such additional orders or judgments may be entered only after a final determination has been made that a deceptive trade practice has occurred.

SEC. 30. 1. In proceeding pursuant to sections 26 to 30, inclusive, of this act, the district attorney may accept an assurance of discontinuance with respect to any method, act or practice deemed to be a deceptive trade practice enumerated in section 9 of this act from any person who is engaged or is about to engage in such method, act or practice by following the procedures set forth in subsection 2 of section 22 of this act.

2. Any assurance made pursuant to subsection 1 shall be in writing and shall be filed with and subject to the approval of the district court in the county in which the alleged violator resides or has his principal place of business, or the district court in any county where any deceptive trade practice has occurred or is about to occur or the district court agreed to by the parties.

3. An assurance of discontinuance made pursuant to subsections 1 and 2 shall not be considered an admission of violation for any purpose, but is subject to the terms, limitations, and conditions of section 22 of this act.

SEC. 31. Service of any notice under sections 25 to 30, inclusive, of this act shall be made by personal service within the State of Nevada, but if such service cannot be obtained, substituted service therefor may be made in any of the following ways:

1. Personal service thereof outside the State of Nevada;

2. The mailing thereof by registered or certified mail to the last-known place of business, residence or both whether inside or outside the State of Nevada of such person for whom the notice is intended, in which event such service shall be deemed complete upon the third day following the mailing of any notice required under this section;

3. As to any person other than a natural person, service shall be in the manner provided in the Nevada Rules of Civil Procedure for completing service of process on such a person, corporation, association or organization; or

4. Such service as any district court may direct in lieu of personal service within the State of Nevada.

SEC. 32. 1. Any person who violates any court order or injunction issued pursuant to sections 4 to 31, inclusive, of this act, upon a complaint brought by the commissioner, the district attorney of any county of this state shall forfeit and pay to the general fund in the state treasury a civil penalty of not more than \$10,000 for each violation. For the purpose of this section, the court issuing any such order or injunction shall retain jurisdiction over any such action or proceeding. Such civil penalties shall be in addition to any other penalty or remedy available for the enforcement of the provisions of sections 4 to 31, inclusive, of this act.

2. In any action brought pursuant to sections 22 and 25 to 28, inclusive, of this act, if the court finds that any person has willfully engaged in

a deceptive trade practice enumerated in section 9 of this act, the commissioner or the district attorney of any county in this state bringing such action may recover a civil penalty not to exceed \$2,500 for each violation.

3. Any person, firm, or any officer or managing agent of any corporation or association who knowingly and willfully engages in a deceptive trade practice enumerated in section 9 of this act shall be punished:

(a) For the first or second offense, for a misdemeanor.

(b) For the third offense and all subsequent offenses, for a gross misdemeanor.

4. As used in this section, the term "violation" includes a repetitive or continuous violation arising out of the same act.

SEC. 33. 1. Sections 1 and 2 of this act shall not become effective if sections 41 and 42 of Assembly Bill 944 of the 57th session of the Nevada legislature becomes law.

2. Sections 1.5 and 2.5 of this act shall not become effective if sections 41 and 42 of Assembly Bill 944 of the 57th session of the Nevada legislature does not become law.

SEC. 34. This act shall become effective at 12:02 a.m. on July 1, 1973.

Assembly Bill No. 416—Messrs. Barengo, Hayes, Ullom, Wittenberg and Huff

CHAPTER 730

AN ACT relating to criminal appeals; eliminating interlocutory appeals from certain orders of the district court; and providing other matters properly relating thereto.

[Approved May 1, 1973]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 177.015 is hereby amended to read as follows:

177.015 1. The party aggrieved in a criminal action, whether that party be the state or the defendant, may appeal *only* as follows:

(a) To the district court of the county from a final judgment of the justice's court.

(b) To the supreme court from []:

(1) An [] an order of the district court granting a motion to dismiss, a motion for acquittal or a motion in arrest of judgment, or granting or refusing a new trial.

[(2) Upon good cause shown, any pretrial order of the district court granting or denying a motion to suppress evidence made pursuant to NRS 174.125. Notice of such appeal shall be filed with the clerk of the district court within 2 judicial days and with the clerk of the supreme court within 5 judicial days after the ruling by the district court. The clerk of the district court shall notify counsel for the other party, or in the case of a defendant without counsel, the defendant, within 2 judicial days of the filing of the notice of appeal. The supreme court may establish such

A. B. 318—Committee on Legislative Functions, Feb. 25.

Summary—Extends certain legislative travel allowances to include travel expenses to and from committee and subcommittee hearings. Fiscal Note: No. (BDR 17-1065)

Feb. 25—Read first time. Declared an emergency measure under the Constitution. Read third time. Passed. Title approved. To Senate. In Senate. Read first time. Referred to Committee on Legislative Functions. To committee. From committee: Do pass. Declared an emergency measure under the Constitution. Read third time. Passed. Title approved. To Assembly.

Feb. 26—In Assembly. To printer. From printer. To enrollment.

Feb. 27—Enrolled and delivered to Governor.

Feb. 28—Approved by the Governor. Chapter 32.

Effective February 28, 1975.

A. B. 319—Hayes, Mann, Coulter, Christensen, Banner, Benkovich, Price, Vergiels, Murphy, Craddock, Demers, Sena, Polish, and Barengo, Feb. 25.

Summary—Provides cause of action for victim of consumer fraud. Fiscal Note: No. (BDR 3-461)

Feb. 25—Read first time. Referred to Concurrent Committees on Judiciary and Commerce. To printer.

Feb. 26—From printer. To committees. 3/6; 3/14

✓ May 6—From Concurrent Committee on Judiciary: Amend, and do pass as amended. Placed on Second Reading File. Read second time. Amended. To printer.

May 7—From printer. ✓ To engrossment. Engrossed. To Concurrent Committee on Commerce. 5/12; 5/15

✓ May 15—From Concurrent Committee on Commerce: Amend, and do pass as amended. Placed on General File. Read third time. Amended. Action of adoption of amendment rescinded. Taken from General File. Placed on Chief Clerk's desk.

✓ May 16—Taken from Chief Clerk's desk. Placed on General File. Read third time. Amended. To printer. From printer. ✓ To re-engrossment. Re-engrossed.

✓ May 17—Read third time. Passed, as amended. Title approved, as amended. To Senate. In Senate. Read first time. Referred to Committee on Judiciary. To committee. *No committee discussion in minutes*

✓ May 19—From committee: Do pass. Declared an emergency measure under the Constitution. Read third time. Passed. Title approved. To Assembly. In Assembly. To enrollment.

May 20—Enrolled and delivered to Governor. Approved by the Governor. Chapter 629.

Effective July 1, 1975.

A. B. 320—Brookman, Murphy, Bremner, Barengo, Mann, Price, Bennett, Craddock, Dreyer, Sena, Jeffrey, Coulter, Schofield, Harmon, Heaney, Hayes, Vergiels, Wagner, Robinson, Weise, Polish, Chaney, Getto, Wittenberg, Demers, Ford, Benkovich, Dini, May, and Moody, Feb. 25.

Summary—Prohibits charging fee for use of public toilet. Fiscal Note: No. (BDR 40-392)

Feb. 25—Read first time. Referred to Committee on Government Affairs. To printer.

Feb. 26—From printer. To committee.

Mar. 5—From committee: Do pass.

Mar. 6—Read second time. To engrossment. Engrossed.

Mar. 7—Read third time. Passed. Title approved. To Senate.

Mar. 10—In Senate. Read first time. Referred to Committee on Government Affairs. To committee.

EXHIBIT 2

SUMMARY OF LEGISLATION 1975
LEGISLATIVE COUNSEL BUREAU - RESEARCH DIVISION

A.B. 319 (chapter 629) establishes consumer fraud as a separate cause of action apart from breach of contract or other causes of action in commercial dealings.

ASSEMBLY BILL NO. 319—ASSEMBLYMEN HAYES, MANN,
COULTER, CHRISTENSEN, BANNER, BENKOVICH, PRICE,
VERGIELS, MURPHY, CRADDOCK, DEMERS, SENA,
POLISH AND BARENGO

FEBRUARY 25, 1975

Referred to Concurrent Committees on Judiciary and Commerce

SUMMARY—Provides cause of action for victim of consumer fraud.

Fiscal Note: No. (BDR 3-461)



EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to civil actions; providing for a separate cause of action for a victim of consumer fraud; providing that double damages are to be awarded; 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 41 of NRS is hereby amended by adding thereto
2 a new section which shall read as follows:
3 1. *An action may be brought by any person who is a victim of con-*
4 *sumer fraud.*
5 2. *As used in this section, "consumer fraud" means:*
6 *(a) An unlawful act as defined in NRS 119.330;*
7 *(b) An act prohibited by NRS 482.351; or*
8 *(c) A deceptive trade practice as defined in NRS 598.410.*
9 3. *If the claimant is the prevailing party, the court shall award double*
10 *the damages that he has sustained and shall also award attorney fees and*
11 *costs. If the facts warrant, the court may further award punitive damages*
12 *to the successful claimant.*
13 4. *Any action brought pursuant to this section is not an action upon*
14 *any contract underlying the original transaction.*

ASSEMBLY JUDICIARY COMMITTEE
58th NEVADA ASSEMBLY SESSION

MINUTES

March 6, 1975

This meeting of the Assembly Judiciary Committee was called to order by Chairman Barengo on Thursday, March 6, 1975 at the hour of 8:46 a.m.

MEMBERS PRESENT: Messrs. BARENGO, BANNER,
HEANEY, HICKEY, LOWMAN,
POLISH, SENA, Mrs. HAYES
and Mrs. WAGNER.

MEMBERS ABSENT: NONE.

Guests present at this meeting of the Committee were: John R. Kimball, representing the 16 City Advisory Committee for the Aging; Nick Lusich, representing the Reno Chamber of Commerce; Daryl E. Capurro, representing the Nevada Motor Transport Association and Nevada Franchised Auto Dealers Association; Pete Kelle, representing the Nevada Retail Association; Bob O'Connell, representing the Nevada Retail Association; Nat Standing, from the J. C. Penney Co.; Rusty Nash, Esq., Deputy Washoe County District Attorney; Joe Lawler, representing the State of Nevada's Consumer Affairs Division; and Robert L. Weise, State Assemblyman. The Guest Register from this meeting is attached hereto.

Speaking regarding A.B.328 was Assemblyman Weise, the main sponsor of the bill. This bill would terminate alimony payments to an individual who has been cohabiting with a member of the opposite sex, but who doesn't want to engage in marriage for fear of losing the alimony payments. Mr. Weise discussed possible amendments to this bill, and he presented the Chairman with a copy of those said amendments. Mr. Weise said that the bill specifically omits the homosexual relationship because of the difficulty to define the situation in a bill. Mr. Weise stated that California has this type of statute, and because of the divorce situation here in Nevada, we probably need this kind of statute even more.

Next to testify was Joe Lawlor, State of Nevada Consumer Affairs, who spoke in favor of A.B.319. The Consumer Affairs Division is in support of this bill.

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Page Two.

March 6, 1975

In opposition to the bill was Nick Lusich, President of the Reno Chamber of Commerce, who stated in regard to A.B.319 that if there was any consumer fraud, this certainly was no way to stop it. He said that if the Consumer Affairs Division needs more money to enforce and prosecute offenders, he was certainly in favor of this, but he was definitely in opposition to passage of this bill. He advised the Committee to consider what this type of legislation costs and who pays for it. He pointed out how difficult it is for the businessman to obtain insurance coverage after having been taken to court for alleged consumer fraud. He said that the State of Nevada deserves legislation which would penalize only the offender. Mr. Lusich was then questioned by the Committee.

Next to testify was Pete Kelley, Nevada Retail Association, who referred to S.B.79 and pointed out that included in this Senate Bill was good protection against consumer fraud. Mr. Kelley stated that he thinks there is no real reason for A.B.319, as all of the matters referred to in that bill are contained in the Deceptive Trade Practices Act.

Mr. Banner was excused from this meeting to chair a meeting of the Assembly Labor Committee.

Next to testify was Daryl Capurro, representing the Nevada Motor Transport Association, and more particularly with reference to A.B.319 the Nevada Franchised Auto Dealers. He supported Mr. Lusich's testimony, and stated that they wish to get rid of the fellow who is going to intentionally misrepresent his product, services or business. The group which Mr. Capurro represents is in opposition to A.B.319, and stated that there were several areas in which they found objection. He said that auto dealers were finding themselves in court more often than they were running their business. Whether or not consumer fraud is proved by the court, the fact that the man has gone to court to defend himself is a consideration of the insurance companies when he needs insurance for protection. Mr. Capurro also stated that they find it hard to justify the practice of awarding more damages than were actually sustained. Further discussion and questioning by this Committee continued.

Next to testify was Rusty Nash, Esq., Deputy Washoe County District Attorney. He stated that he was an advisor to the Consumer Protection Unit. He said he noticed both in last session and this session of the Legislature that whenever a bill was introduced which was a consumer bill, businessmen seemed to oppose it. He said that A.B.319 gives as much protection to the businessman as it can to the consumer. Current law already provides a cause of action

March 6, 1975

for consumer frauds. Common law fraud is a rather complex action to bring. Mr. Nash said that the type of legislation which this Committee was then considering gives relief directly to the person who deserves relief--the person who has been taken advantage of. He said A.B.319 refers to the person who wilfully and intentionally tries to defraud the public--not the normal businessman. With this legislation anyone can bring this kind of action on his own behalf in Small Claims Court and not have to go through an attorney. He believes that legislation such as this is essential and crucial. The Committee then began its questioning of Mr. Nash.

Mr. Barengo passed out copies of a proposed amendment to A.B.296 submitted by Mr. Heaney, a copy of which is attached.

There was a motion and a second, and Mr. Barengo then adjourned this meeting at 9:52 a.m.

ASSEMBLY JUDICIARY COMMITTEE
58th NEVADA ASSEMBLY SESSION

MINUTES

March 14, 1975

This meeting of the Assembly Judiciary Committee was called to order by Chairman Barengo on Friday, March 14, 1975 at the hour of 8:30 a.m.

MEMBERS PRESENT: Messrs. BARENGO, BANNER, HEANEY, HICKEY, LOWMAN, POLISH, SENA, Mrs. HAYES and Mrs. WAGNER.

MEMBERS ABSENT: NONE.

Guests present at this meeting were Neil D. Humphrey, Chancellor of the University of Nevada System; Howard Barrett, State of Nevada Budget Director; Judge Keith C. Hayes; and Dr. Brock Dixon, representing the University of Nevada, Las Vegas. Guest Register is attached to these Minutes.

In regards to A.B.45, Assemblyman Darrell Dreyer testified. Mr. Dreyer introduced this bill, and he said he requests an amendment on Line 10. In addition to notifying the District Attorney, Mr. Dreyer requests that the Sheriff and Chief of Police be inserted. He said he has word from the Sheriffs' group that they support this bill. He also requests that on Page 2, the FBI and CII be eliminated. Chairman Barengo stated that it was his understanding that a request can be made of these agencies, but they do not have to honor the request for records.

Next to testify in regards to A.B.305 was Neil Humphrey, representing the University of Nevada. This bill was introduced to accomplish a result desired by the administration and the Board of Regents. They have a code of conduct at the University, which is adopted by the Regents. Under that code of conduct, a student or employee may be suspended and ordered off the campus. They have found in this situation, which does not occur with much frequency, they have a legal difficulty. Each time the person in question comes back onto the campus he must be served anew before he can be arrested. This bill, if passed, would allow one service in the beginning, and if he came back onto the campus again, the campus police could arrest him immediately. There

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Page 3.

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compensated under the law, you have to be attempting to prevent the commission of a crime and not defending yourself--or assisting a police officer in the prevention of a crime. The case of Mr. Garske was the first and last case handled by a previous Board of Examiners during the previous administration. The present Board feels this is not a true "victims of crime" bill. They would request that this Legislature "clean up" the law so that it can be interpreted as the Legislature means it. Further detailed questioning of Mr. Barrett continued by this Committee.

Mr. Hickey moved DO PASS as to A.B.284, and Mr. Lowman seconded. Discussion continued, and it was suggested that Section 7 be taken out of the bill and that it include all crimes rather than certain crimes. Mr. Barengo then appointed Mr. Heaney to work out more appropriate language for this bill.

Considering A.B.45, Mrs. Wagner moved indefinite postponement. Mr. Hickey seconded. Legislation Form is attached hereto. A vote was taken and 7 members of this Committee voted in favor of indefinite postponement. Mr. Lowman and Mr. Sena dissented.

MOTION CARRIED INDEFINITELY POSTPONE A.B.45.

Next, A.B.319 was discussed. Chairman Barengo made general comments in regard to this bill. There were some suggested amendments to this bill, and Mr. Banner moved DO PASS AS AMENDED. Mrs. Wagner seconded. A unanimous vote in favor of passage as amended followed. Form attached.

MOTION CARRIED DO PASS A.B.319 AS AMENDED.

Chairman Barengo announced to this Committee that Amendment No. 4557 to A.B.124 was received by this Committee. Mr. Barengo then briefly went over the amendment to this bill for the benefit of the Committee. It was moved and seconded that this Committee concur with Amendment No. 4557 to A.B.124. The Committee then voted unanimously to concur with this amendment.

After a motion and a second, and there being no further business for this Committee to consider at this meeting, Chairman Barengo adjourned the meeting at 10:07 a.m.

97, 489, 537, 625, 667, 679, 700, 704, 716, and 739 be placed on the Second Reading File.

Motion carried.

Assemblyman Dini moved that the Assembly recess until 2 p.m.

Motion carried.

Assembly in recess at 12:19 p.m.

ASSEMBLY IN SESSION

At 2:10 p.m.

Mr. Speaker presiding.

Quorum present.

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee on Commerce, to which was referred Assembly Bill No. 594, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

ROBERT E. ROBINSON, *Chairman*

INTRODUCTION, FIRST READING, AND REFERENCE

By Assemblymen Jeffrey, Vergiels, Benkovich, Craddock, Polish, Banner, and Price:

Assembly Bill No. 780—An Act relating to unemployment compensation; increasing maximum weekly benefit amount.

Assemblyman Jeffrey moved that the bill be referred to the Committee on Commerce.

Motion carried.

SECOND READING AND AMENDMENT

Assembly Bill No. 319.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 8666.

Amend section 1, page 1, lines 9 and 10, by deleting "*double the*" and inserting: "*any*".

Amend section 1, page 1, by deleting lines 11 and 12 and inserting: "*costs*."

Amend the title by deleting lines 2 and 3 and inserting: "victim of consumer fraud; and providing other matters properly relating thereto."

Assemblyman Barengo moved the adoption of the amendment.

Remarks by Assemblyman Barengo.

Amendment adopted.

Bill ordered reprinted, engrossed, and to the Concurrent Committee on Commerce.

Assembly Bill No. 539.

Bill read second time.

The following amendment was proposed by the Committee on Commerce:

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

A. B. 319

ASSEMBLY BILL NO. 319—ASSEMBLYMEN HAYES, MANN,
COULTER, CHRISTENSEN, BANNER, BENKOVICH, PRICE,
VERGIELS, MURPHY, CRADDOCK, DEMERS, SENA,
POLISH AND BARENGO

FEBRUARY 25, 1975

Referred to Concurrent Committees on Judiciary and Commerce

SUMMARY—Provides cause of action for victim of consumer fraud.
Fiscal Note: No. (BDR 3-461)



EXPLANATION—Matter in *italics* is new; matter in brackets [] is
material to be omitted.

AN ACT relating to civil actions; providing for a separate cause of action for a
victim of consumer fraud; 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 41 of NRS is hereby amended by adding thereto
2 a new section which shall read as follows:
3 1. *An action may be brought by any person who is a victim of con-*
4 *sumer fraud.*
5 2. *As used in this section, "consumer fraud" means:*
6 *(a) An unlawful act as defined in NRS 119.330;*
7 *(b) An act prohibited by NRS 482.351; or*
8 *(c) A deceptive trade practice as defined in NRS 598.410.*
9 3. *If the claimant is the prevailing party, the court shall award any*
10 *damages that he has sustained and shall also award attorney fees and*
11 *costs.*
12 4. *Any action brought pursuant to this section is not an action upon*
13 *any contract underlying the original transaction.*

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MINUTES

1327

COMMERCE COMMITTEE - NEVADA STATE LEGISLATURE - 58TH SESSION

MAY 12, 1975

The meeting was called to order by Vice Chairman Harmon at 4:50 P.M.

MEMBERS PRESENT: Mr. Benkovich
Mr. Demers
Mr. Getto
Mr. Harmon
Mr. Hickey
Mr. Moody
Mr. Schofield
Mr. Wittenberg

MEMBERS ABSENT: Mr. Robinson - excused

SPEAKING GUESTS: Rowland Oakes, Associated General Contractors
Darryl Capurro, Nevada Franchised Auto Dealers
Milos Terzich, ALIA, HIAA
Assemblyman May
Corky Lingenfelter, Nevada Land Title Association
Robert Long, Employment Security Department
Jim Hanna, Employment Security Department
Bill Gibbons, The Gibbons Company
Bob Alkire, Kennecott Copper Company
Robert Groves, Nevada Board of Pharmacy
George Bennett, Nevada Board of Pharmacy
Marjory K. Tsuda, Nevada Nurses' Association
Keith McDonald, Nevada State Pharmacy Association
Bob Tucker, State Board of Pharmacy
Assemblyman Heaney
Chuck Saladino, landscape architect

The purpose of this meeting was to hear testimony on the following bills:

AB 627	AB 783
AB 319	SB 460
SB 510	SB 202
AB 780	SB 542

The first bill to be discussed was AB 627 which:

Prohibits an employer from requiring his employee to submit any document pertaining to group health insurance which contains information relative to any injury or illness for which such employee received medical treatment.

Assemblyman Benkovich spoke in favor of this measure saying in would solve a problem in Northern Nevada in that insurance forms would be handled by the insured and the insurance company only rather than being turned in to the company of employment to handle it. This would make your insurance forms as confidential as possible.

APPELLANT'S MOTION FOR JUDICIAL NOTICE 099

Mr. Oakes commented that his association like many other group policies are administered out of their office by instruction from the insurance company who says they must be handled in this manner. If the employees of his association wished their insurance to be handled in such a way as provided for in AB 627, they would have to get insurance independently rather than through the group policy.

Mr. Capurro commented that his association has the same problem. All forms must be verified by their office before being sent on to the insurance company. The purpose of this is to make sure the individual indicated on the claim is actually covered. It is a double check system. If they send in a form without the verification stamp on it, it will be sent back which delays the processing of a claim. Also, if a form is sent in either incomplete or improper filled out, it will be returned. He added that strict confidence is a matter of policy in their organization and only the claims person has access to these files. He added that insurance companies do not like bills to stagger in. They prefer them to be sent in as a group. Also, there is a portion of the claim that must be filled out by the employer. Mr. Benkovich commented that at the Nevada Club the portion of the forms that must be filled out by the employer is filled out first and then the form is given to the individual to complete and send to the insurance company.

Milos Terzich spoke saying he has no official position on this bill but commented that there are several bills dealing with uniform claims forms and he felt this should be considered when considering this bill.

This concluded testimony on AB 627 and discussion turned to SB 202 which:

Requires title insurance companies transacting escrow services to be licensed as escrow agents and places restrictions on escrow accounts.

Assemblyman May spoke on this bill on behalf of Senator Herr. He said, in general, the reason this bill had been introduced because of an incident which occurred to Mrs. Herr in which she entered into an agreement with a group of people involving a large amount of money and she was told a great amount of money was put into escrow. After considerable time, the deal fell through and the property owner tried to collect money for having his property tied up for so long and it was discovered that there was no cash deposited into escrow after all. This bill would tighten up on cases like this one.

Corky Lingenfelter spoke in favor of this bill. He said it is a fairly good bill and that these businesses feel they should be licensed and they feel this bill should be passed this Session to give some protection to the consumer and then perhaps at the next Session a more comprehensive measure could be passed.

This concluded testimony on this bill and discussion turned to AB 319 which:

Provides cause of action for victim of consumer fraud.

Mr. Capurro spoke on this bill saying he had no real opposition to it but asked that consideration be given to amending Subsection 3 on Line 9 to more or less coincide with other legislation that has been proposed--"court shall award the prevailing party". This would allow for the right to any damages sustained and court costs and attorney's fees incurred.

There were no others present to testify on this bill. Discussion then turned to SB 510 which:

Requires health maintenance organizations to provide for coordination of certain coverages.

There was no one present to testify for or against this measure. Discussion turned to AB 780 which:

Increases minimum weekly benefit amount under unemployment compensation law.

Robert Long spoke on this bill stating that the Department does not take a stand on this bill but as a matter of record, while they do not have the increased money to comply with this, it would not pose any problems administratively.

Mr. Hanna commented that the maximum weekly benefit would be raised from \$85 to \$101 and this would affect about 45% of those people receiving benefits. It would create a 10% increase in the total payout which at the current rate of payout would amount to about a \$5,500,000 increase.

Mr. Oakes spoke in opposition to the bill. He said if the Fund is in trouble, we can't afford to increase the benefits.

Mr. Long added that if this bill was passed, it would wipe out about 2/3 of the savings which should be generated by the package presented at earlier meetings by the Employment Security Department.

Darryl Capurro said the people he represents are in total opposition to this bill. To impose this on top of the increase caused by the package would not be feasible in today's economics.

Bill Gibbons commented that out of the 52 taxing jurisdictions in the U.S., a weekly benefit of \$101 would be exceeded by only 10 states and these are all back East and also the State of Alaska. He said Nevada is presently not out of line as compared to other states especially our neighboring states. He felt with the Fund in the condition it is, passing this legislation would be irresponsible.

Bob Alkire also opposed this bill. He said the Fund is already in deep trouble and it would not be wise to put it in deeper trouble. He commented that \$89 would not appear to be much money but it must be kept in mind that it actually represents more money than that because there are no deductions from it. He also said that the closer you get to real

APPELLANTS MOTION FOR JUDICIAL NOTICE

Amendment No. 4771 to Assembly Bill No. 301 (BDR 52-211) Page 7

2. Any assurance made pursuant to subsection 1 shall be in writing and shall be filed with and subject to the approval of the district court in the county in which the alleged violator resides or has his principal place of business, or the district court in any county where any deceptive trade practice has occurred or is about to occur or the district court agreed to by the parties.

3. An assurance of discontinuance made pursuant to subsections 1 and 2 shall not be considered an admission of violation for any purpose, but is subject to the terms, limitations, and conditions of section 22 of this act.

4. If any assurance of discontinuance is filed and approved by a district court in accordance with the provisions of subsection 3, no other district attorney in any county in this state, the attorney general or the commissioner or his attorney may file any action under the provisions of sections 4 to 32, inclusive, of this act as to any matters covered in such assurance of discontinuance.

Sec. 31. Service of any notice under sections 25 to 30, inclusive, of this act shall be made by personal service within the State of Nevada, but if such service cannot be obtained, substituted service therefor may be made in any of the following ways:

1. Personal service thereof outside the State of Nevada;
2. The mailing thereof by registered or certified mail to the last-known place of business, residence or both whether inside or outside the

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(more)

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Amendment No. 771 to Assembly Bill No. 201 (BDR 11-213) Page 8

State of Nevada of such person for whom the notice is intended, in which
event such service shall be deemed complete upon the third day following
the mailing of any notice required under this section;

3. As to any person other than a natural person, service shall be in the
manner provided in the Nevada Rules of Civil Procedure for completing
service of process on such a person, corporation, association or
organization; or

4. Such service is as any district court may direct in lieu of personal
service within the State of Nevada."

Amend sec. 24, page 6, by deleting lines 17 through 21 and inserting:

"Sec. 21. 1. Any person who violates any court order or injunction
issued pursuant to sections 4 to 31, inclusive, of this act, or upon a
complaint brought by the commissioner, the attorney general or the dis-
trict attorney of any county of this state shall forfeit and pay to
the general fund in the state treasury a civil penalty of not more than
\$5,000 for each violation. For the purpose of this section, the court
issuing any such order or injunction shall retain jurisdiction over any
such action as proceedings. Such civil penalties shall be in addition
to any other penalty or remedy available for the enforcement of the
provisions of sections 4 to 31, inclusive, of this act.

2. As used in this section, the term "violation" includes a per-
sonal, civil or continuous violation arising out of the same act."

Amendment No. 1771 to Assembly Bill No. 221 (BDR 32-323) Page 9

Amend the bill as a whole by deleting sec. 25.

Amend the title of the bill by deleting "and providing other matters properly relating thereto." and inserting:

"providing injunctive relief; providing a method of voluntary compliance; providing for notice; providing penalties; and providing other matters properly relating thereto."

Sec. 2. 1. Each candidate for a state, county, city, town, township or district office shall, within 10 days after the election at which he was a candidate, file a sworn statement listing all of his campaign contributors and the sum contributed by each individual contributor or group of contributors. Such statements shall be filed as follows:

(a) By a candidate for a state office or a candidate for a district office in a district having territory in more than one county, with the secretary of state.

(b) By a candidate for a county, town, township or other district office, with the county clerk.

(c) By a candidate for a city office, with the city clerk.

2. The secretary of state shall prescribe the form to be used by all candidates in disclosing the information required under subsection 1.

Sec. 3. Any candidate who willfully fails to file the statement required under section 2 of this act, or who willfully falsifies such statement, is guilty of a misdemeanor."

Amend the title of the bill to read: "An Act relating to elections; requiring candidates for state, county, city, town, township and district offices to disclose campaign contributions; providing a penalty; and providing other matters properly relating thereto."

Miss Foote moved the adoption of the amendment.

Remarks by Miss Foote.

Amendment adopted.

Bill ordered reprinted, engrossed, and to third reading.

Assembly Bill No. 277.

Bill read second time, ordered engrossed, and to third reading.

Assembly Bill No. 285.

Bill read second time.

The following amendment was proposed by the Committee on Elections:

Amendment No. 4840.

Amend section 1, page 1, by deleting lines 14 through 16 and inserting: "whom he intends to vote.] *Actively solicit on election day a person to vote for or against any candidate or question on the ballot within 1,000 feet of any entrance to any building in which a polling place is located.*"

Miss Foote moved the adoption of the amendment.

Remarks by Miss Foote.

Amendment adopted.

Bill ordered reprinted, engrossed, and to third reading.

✓ Assembly Bill No. 301.

Bill read second time.

The following amendment was proposed by the Committee on Commerce:

Amendment No. 4823.

Amend sec. 2, page 2, line 2, by deleting "25," and inserting: "32,".

Amend sec. 3, page 2, line 5, by deleting "25," and inserting: "32,".

Amend sec. 4, page 2, line 6, by deleting "25," and inserting: "32,".

Amend sec. 9, page 3, by deleting lines 7 through 12.

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Amend sec. 9, page 3, line 13, by deleting "14." and inserting: "13."

Amend sec. 9, page 3, by deleting lines 18 and 19, and inserting:

"(b) Disparagement in any material respect of the advertised product or the terms of sale."

Amend sec. 9, page 3, line 30, by deleting "15." and inserting "14."

Amend sec. 9, page 3, line 32, by deleting "16." and inserting: "15."

Amend sec. 9, page 3, line 35, by deleting "17." and inserting: "16."

Amend sec. 18, page 4, line 13, by deleting "25," and inserting: "32,".

Amend sec. 18, page 4, line 21, by deleting "25," and inserting: "32,".

Amend sec. 18, page 4, line 25, by deleting "25," and inserting: "32,".

Amend sec. 19, page 4, line 46, by deleting "25," and inserting: "32,".

Amend sec. 22, page 5, by deleting line 21 and inserting:

"Sec. 22. 1. Notwithstanding the requirement of knowledge as an element of any practice enumerated in section 9 of this act as a deceptive trade practice, when the commissioner has cause to believe that a per-

Amend sec. 22, page 5, line 22, by deleting "deceptive trade practice," and inserting "of the practices enumerated in section 9 of this act, knowingly or otherwise,".

Amend sec. 22, page 5, line 26, by inserting "such" before "deceptive".

Amend sec. 22, page 5, line 27, by inserting "such" before "decep-".

Amend sec. 23, by deleting line 49 on page 5 and lines 1 through 16 on page 6 and inserting:

"Sec. 23. 1. Sections 4 to 32, inclusive, of this act do not prohibit the commissioner from disclosing to any district attorney or law enforcement officer the fact that a crime has been committed by any person, if this fact has become known as a result of any investigation conducted pursuant to the provisions of sections 4 to 32, inclusive, of this act.

2. Subject to the provisions of subsection 2 of section 22 of this act, the commissioner shall not make public the name of any person alleged to have committed a deceptive trade practice. This subsection does not prevent the commissioner from issuing public statements describing or warning of any course of conduct which constitutes a deceptive trade practice."

Amend the bill as a whole, by adding new sections designated secs. 24 through 31, following sec. 23, to read as follows:

"Sec. 24. 1. Prior to instituting any action pursuant to sections 25 to 31, inclusive, of this act, the district attorney shall ascertain whether or not the action in question is subject to the regulatory authority of any state agency, board, official or other authority established by virtue of the Nevada Revised Statutes except the regulatory or administrative authority provided to the commissioner of consumer affairs by sections 4 to 32, inclusive, of this act.

2. If such action is subject to such regulatory authority or any regulation duly adopted and promulgated or any statutes administered by any state regulatory agency, board, official or other authority as provided in subsection 1, the district attorney shall not institute any proceeding under sections 25 to 31, inclusive, of this act until such state agency, board, official or other state regulatory authority has had reasonable time to

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investigate or take any appropriate action with respect to the alleged facts.

3. For the purposes of this section, a reasonable time has elapsed if no final action or other disposition is made of any matter otherwise falling within the provisions of sections 4 to 32, inclusive, of this act within 30 days after such matter is referred to or brought to the attention of any state agency, board, official or other regulatory authority except the commissioner of consumer affairs.

4. This section does not prohibit the district attorney of any county from filing an action pursuant to the provisions of sections 25 to 28, inclusive, of this act, if the referral of any matters subject to the provisions of this act to any state agency, board, official or other regulatory authority would cause immediate harm to the public of this state or endanger the public health, safety or welfare, and such facts are shown by affidavit or by verified complaint.

Sec. 25. Notwithstanding the requirement of knowledge as an element of any practice enumerated in section 9 of this act as a deceptive trade practice, and notwithstanding the enforcement powers granted to the commissioner pursuant to sections 4 to 32, inclusive, of this act, whenever the district attorney of any county has reason to believe that any person is using, has used or is about to use any of the practices enumerated in section 9 of this act, knowingly or otherwise, he may bring an action in the name of the State of Nevada against such person to obtain a temporary or permanent injunction against such deceptive trade practice.

Sec. 26. Except as otherwise provided in section 28 of this act, appropriate notice must be given by the district attorney to any person against whom an action is brought pursuant to section 25 of this act. Such notice must state generally the relief sought and be served in accordance with section 31 of this act at least 10 days prior to the filing of the action.

Sec. 27. Any action brought pursuant to section 22 or 25 of this act may be brought:

1. In a district court in the county in which the defendant resides or has his principal place of business;
2. In the district court in Carson City if the parties consent thereto; or
3. In the district court in any county where a deceptive trade practice has occurred. Any court in which an action is brought pursuant to section 22 or 25 of this act may issue any temporary or permanent injunction in accordance with the Nevada Rules of Civil Procedure to restrain and prevent any violation of any provisions of sections 4 to 32, inclusive, of this act, and such injunctions shall be issued without bond.

Sec. 28. Whenever the district attorney has reason to believe that the delay caused by complying with the notice requirement of section 26 of this act would cause immediate harm to the public of this state or endanger the public welfare, he may immediately institute a suit for injunctive relief, including a request for a temporary restraining order, upon proof of specific facts shown by affidavit or by verified complaint or otherwise that such immediate harm will be or is likely to be caused by such delay. The Nevada Rules of Civil Procedure pertaining to the issuance of temporary restraining orders govern all actions instituted pursuant to this section.

X 17

Sec. 29. The court in which an action is brought pursuant to section 22 and sections 25 to 28, inclusive, of this act may make such additional orders or judgments as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any deceptive trade practice which violates any of the provisions of sections 4 to 32, inclusive, of this act, but such additional orders or judgments may be entered only after a final determination has been made that a deceptive trade practice has occurred.

Sec. 30. 1. In proceeding pursuant to sections 26 to 30, inclusive, of this act, the district attorney may accept an assurance of discontinuance with respect to any method, act or practice deemed to be a deceptive trade practice enumerated in section 9 of this act from any person who is engaged or is about to engage in such method, act or practice by following the procedures set forth in subsection 2 of section 22 of this act.

2. Any assurance made pursuant to subsection 1 shall be in writing and shall be filed with and subject to the approval of the district court in the county in which the alleged violator resides or has his principal place of business, or the district court in any county where any deceptive trade practice has occurred or is about to occur or the district court agreed to by the parties.

3. An assurance of discontinuance made pursuant to subsections 1 and 2 shall not be considered an admission of violation for any purpose, but is subject to the terms, limitations, and conditions of section 22 of this act.

Sec. 31. Service of any notice under sections 25 to 30, inclusive, of this act shall be made by personal service within the State of Nevada, but if such service cannot be obtained, substituted service therefor may be made in any of the following ways:

1. Personal service thereof outside the State of Nevada;

2. The mailing thereof by registered or certified mail to the last-known place of business, residence or both whether inside or outside the State of Nevada of such person for whom the notice is intended, in which event such service shall be deemed complete upon the third day following the mailing of any notice required under this section;

3. As to any person other than a natural person, service shall be in the manner provided in the Nevada Rules of Civil Procedure for completing service of process on such a person, corporation, association or organization; or

4. Such service as any district court may direct in lieu of personal service within the State of Nevada."

Amend sec. 24, page 6, by deleting lines 17 through 24 and inserting:

"Sec. 32. 1. Any person who violates any court order or injunction issued pursuant to sections 4 to 31, inclusive, of this act, upon a complaint brought by the commissioner, the district attorney of any county of this state shall forfeit and pay to the general fund in the state treasury a civil penalty of not more than \$10,000 for each violation. For the purpose of this section, the court issuing any such order or injunction shall retain jurisdiction over any such action or proceeding. Such civil penalties shall be in addition to any other penalty or remedy available

for the enforcement of the provisions of sections 4 to 31, inclusive, of this act.

2. *As used in this section, the term "violation" includes a repetitive or continuous violation arising out of the same act."*

Amend the bill as a whole by deleting sec. 25.

Amend the title of the bill by deleting "and providing other matters properly relating thereto." and inserting: "providing injunctive relief; providing a method of voluntary compliance; providing for notice; providing penalties; and providing other matters properly relating thereto."

Mr. Wittenberg moved the adoption of the amendment.

Remarks by Mr. Wittenberg.

Amendment adopted.

Bill ordered reprinted, engrossed, and to third reading.

Assembly Bill No. 339.

Bill read second time.

The following amendment was proposed by Mr. Banner:

Amendment No. 361.

Amend section 1, page 1, by deleting lines 3 and 4 and inserting:

"1. No employee is required to accept the services of a physician provided by the employer pursuant to NRS 616.340 or 616.415. Each employee may seek".

Amend section 1, page 1, by inserting after line 7:

"2. No provision of this chapter shall prevent an employee from providing for treatment for his injuries or disease through prayer or other spiritual means in accordance with the tenets and practices of a recognized church, which treatment is recognized in this state in lieu of medical treatment."

Amend the title of the bill by deleting line 3 and inserting: "choice at the expense of the accident benefit fund; providing that chapter 616 of NRS shall not bar treatment by spiritual means; and providing other matters".

Mr. Banner moved the adoption of the amendment.

Remarks by Mr. Banner.

Amendment adopted.

Bill ordered reprinted, engrossed, and to third reading.

Assembly Bill No. 396.

Bill read second time, ordered engrossed, and to third reading.

Assembly Bill No. 459.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 4708.

Amend section 1, page 1, by deleting line 2 and inserting:

"4.020 1. Until the 1st Monday in January 1967, there shall".

Amend section 1, page 1, line 3, by deleting the bracket.

Amend section 1, page 1, by deleting line 4 and inserting: "justice of the peace shall be elected by the qualified electors of the".

Amend section 1, page 1, line 5 by deleting the bracket.

Amend section 1, page 1, line 9, by deleting "100,000," and inserting "[100,000,] 90,000,".

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(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

A. B. 301

ASSEMBLY BILL NO. 301—COMMITTEE ON COMMERCE

FEBRUARY 15, 1973

Referred to Committee on Commerce

SUMMARY—Creates consumer affairs division of department of commerce and regulates deceptive trade practices. Fiscal Note: Yes. (BDR 52-233)

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to consumer protection; creating the consumer affairs division of the department of commerce; regulating deceptive trade practices; providing injunctive relief; providing a method of voluntary compliance; providing for notice; providing penalties; 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. NRS 232.230 is hereby amended to read as follows:
2 232.230 1. The department of commerce is hereby created.
3 2. The department shall consist of a director and the following divi-
4 sions:
5 (a) Banking division.
6 (b) *Consumer affairs division.*
7 (c) Insurance division.
8 [(c)] (d) Real estate division.
9 [(d)] (e) Savings and loan division.
10 SEC. 2. NRS 232.250 is hereby amended to read as follows:
11 232.250 The director shall:
12 1. Appoint, with the consent of the governor, a chief of each of the
13 divisions of the department. In making such appointments, the director
14 shall obtain lists of nominees from recognized professional organizations,
15 if any, in the appropriate professions and shall make such appointments
16 after consultation with and concurrence of such organizations. The chief
17 of the banking division shall be known as the superintendent of banks,
18 *the chief of the consumer affairs division shall be known as the commis-*
19 *sioner of consumer affairs,* the chief of the insurance division shall be
20 known as the commissioner of insurance, the chief of the real estate
21 division shall be known as the real estate administrator, and the chief
22 of the savings and loan division shall be known as the commissioner of
23 savings associations.

2. Be responsible for the administration, through the divisions of the department, of the provisions of Titles 55 to 57, inclusive, of NRS, chapter 645 of NRS, sections 4 to 32, inclusive, of this act, and all other provisions of law relating to the functions of the divisions of the department.

SEC. 3. Chapter 598 of NRS is hereby amended by adding thereto the provisions set forth as sections 4 to 32, inclusive, of this act.

SEC. 4. As used in sections 4 to 32, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 5 to 16, inclusive, of this act have the meanings ascribed to them in such sections.

SEC. 5. "Advertisement" means the attempt by publication, dissemination, solicitation or circulation to induce, directly or indirectly, any person to enter into any obligation or to acquire any title or interest in any property.

SEC. 6. "Certification mark" means a mark used in connection with the goods or services of a person other than the certifier to indicate geographic origin, material, mode of manufacture, quality, accuracy or other characteristics of the goods or services or to indicate that the work or labor on the goods or services was performed by members of a union or other organization.

SEC. 7. "Collective mark" means a mark used by members of a cooperative, association or other collective group or organization to identify goods or services and distinguish them from those of others, or to indicate membership in the collective group or organization.

SEC. 8. "Commissioner" means the commissioner of consumer affairs.

SEC. 9. A person engages in a "deceptive trade practice" when in the course of his business or occupation he:

1. Knowingly passes off goods or services as those of another.

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

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

4. Uses deceptive representations or designations of geographic origin in connection with goods or services.

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

6. Represents that goods are original or new if he knows or should know that they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.

7. Represents that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if he knows or should know that they are of another.

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

9. Advertises goods or services with intent not to sell them as advertised.

10. Advertises goods or services with intent not to supply reasonably

expectable public demand, unless the advertisement discloses a limitation of quantity.

11. Advertises under the guise of obtaining sales personnel when in fact the purpose is to first sell a product or service to the sales personnel applicant.

12. Makes false or misleading statements of fact concerning the price of goods or services, or the reasons for, existence of or amounts of price reductions.

13. Employs "bait and switch" advertising, which consists of an attractive but insincere offer to sell a product or service which the seller in truth does not intend or desire to sell, accompanied by one or more of the following practices:

(a) Refusal to show the product advertised.

(b) Disparagement in any material respect of the advertised product or the terms of sale.

(c) Requiring tie-in sales or other undisclosed conditions to be met prior to selling the advertised product or service.

(d) Refusal to take orders for the product advertised for delivery within a reasonable time.

(e) Showing or demonstrating a defective product which is unusable or impractical for the purposes set forth in the advertisement.

(f) Accepting a deposit for the product and subsequently switching the purchase order to a higher priced item.

(g) Failure to make deliveries of the product within a reasonable time or to make a refund therefor.

14. Knowingly fails to identify flood-damaged or water-damaged goods as to such damages.

15. Solicits by telephone or door to door as a seller, unless the seller identifies himself, whom he represents and the purpose of his call within 30 seconds after beginning the conversation.

16. Knowingly states that services, replacement parts or repairs are needed when no such services, replacement parts or repairs are actually needed.

SEC. 10. "Mark" means a word, name, symbol, device or any combination of the foregoing in any form or arrangement.

SEC. 11. "Person" means an individual, corporation, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

SEC. 12. "Property" means any real or personal property, or both real and personal property, intangible property or services.

SEC. 13. "Service mark" means a mark used by a person to identify services and to distinguish them from the services of others.

SEC. 14. "Sale" includes any sale, offer for sale or attempt to sell any property for any consideration.

SEC. 15. "Trademark" means a mark used by a person to identify goods and to distinguish them from the goods of others.

SEC. 16. "Trade name" means a word, name, symbol, device or any combination of the foregoing in any form or arrangement used by a

1 person to identify his business or occupation, and to distinguish it from
2 the business or occupation of others.

3 SEC. 17. 1. Evidence that a person has engaged in a deceptive trade
4 practice is prima facie evidence of intent to injure competitors and to
5 destroy or substantially lessen competition.

6 2. The deceptive trade practices listed in section 9 of this act are
7 in addition to and do not limit the types of unfair trade practices action-
8 able at common law or defined as such in other statutes of this state.

9 SEC. 18. 1. Sections 4 to 32, inclusive, of this act do not apply to:

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

12 (b) Publishers, including outdoor advertising media, advertising agen-
13 cies, broadcasters or printers engaged in the dissemination of information
14 or reproduction of printed or pictorial matter who publish, broadcast or
15 reproduce material without knowledge of its deceptive character.

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

17 2. Sections 4 to 32, inclusive, of this act do not apply to the use by
18 a person of any service mark, trademark, certification mark, collective
19 mark, trade name or other trade identification which was used and not
20 abandoned prior to July 1, 1973, if the use was in good faith and is other-
21 wise lawful except for the provisions of sections 4 to 32, inclusive, of
22 this act.

23 SEC. 19. When the commissioner has cause to believe that any person
24 has engaged or is engaging in any deceptive trade practice, he may:

25 1. Request such person to file a statement or report in writing under
26 oath or otherwise, on such forms as shall be prescribed by the commis-
27 sioner, as to all facts and circumstances concerning the sale or advertise-
28 ment of property by such person, and such other data and information
29 as he may deem necessary.

30 2. Examine under oath any person in connection with the sale or
31 advertisement of any property.

32 3. Examine any property or sample thereof, record, book, docu-
33 ment, account or paper as he may deem necessary.

34 4. Make true copies, at the expense of the consumer affairs division
35 of the department of commerce, of any record, book, document, account
36 or paper examined, as provided in subsection 3 of this section, which
37 copies may be offered into evidence in lieu of the originals thereof in
38 actions brought pursuant to sections 21 and 22 of this act.

39 5. Pursuant to an order of any district court, impound any sample
40 of property which is material to such deceptive trade practice and retain
41 the property in his possession until completion of all proceedings as pro-
42 vided in sections 4 to 32, inclusive, of this act. An order shall not be
43 issued pursuant to this subsection unless the commissioner and the court
44 give the accused full opportunity to be heard and unless the commissioner
45 proves by clear and convincing evidence that the business activities of
46 the accused will not be impaired thereby.

47 SEC. 20. 1. The commissioner, in addition to other powers conferred
48 upon him by this act, may issue subpoenas to require the attendance of
49 witnesses or the production of documents, administer oaths, conduct
50 hearings in aid of any investigation or inquiry and prescribe such forms

1 and promulgate such rules as may be necessary to administer the provi-
2 sions of this act.

3 2. Service of any notice or subpoena shall be made as provided in
4 N.R.C.P. 45(c).

5 SEC. 21. If any person fails to cooperate with any investigation, as
6 provided in section 19 of this act, or if any person fails to obey a sub-
7 pena issued by the commissioner, the commissioner may apply to any
8 district court for equitable relief. Such application shall state reasonable
9 grounds showing that such relief is necessary to terminate or prevent a
10 deceptive trade practice. If the court is satisfied of such reasonable
11 grounds, the court may:

12 1. Grant injunctive relief restraining the sale or advertisement of any
13 property by such person.

14 2. Require the attendance of or the production of documents by such
15 person, or both.

16 3. Grant other relief necessary to compel compliance by such person.

17 SEC. 22. 1. Notwithstanding the requirement of knowledge as an ele-
18 ment of any practice enumerated in section 9 of this act as a deceptive
19 trade practice, when the commissioner has cause to believe that a person
20 has engaged or is engaging in any of the practices enumerated in section
21 9 of this act, knowingly or otherwise, he may apply for an injunction or
22 temporary restraining order, as provided in N.R.C.P. 65, prohibiting such
23 person from continuing such practices. The court may make orders or
24 judgments necessary to prevent the use by such person of any such decep-
25 tive trade practice or to restore to any other person any money or prop-
26 erty which may have been acquired by such deceptive trade practices.

27 2. Where the commissioner has the authority to institute a civil
28 action or other proceeding, in lieu thereof or as a part thereof, he may
29 accept an assurance of discontinuance of any deceptive trade practice.
30 Such assurance may include a stipulation for the voluntary payment by
31 the alleged violator of the costs of investigation and the costs of institut-
32 ing the action or proceeding and for the voluntary restitution of any
33 money or property acquired by deceptive trade practices. Except as pro-
34 vided in the next sentence, any such assurance of discontinuance accepted
35 by the commissioner and any such stipulation filed with the court shall
36 be confidential to the parties to such action or proceeding and to the
37 court and its employees. Upon final judgment by the court that an injunc-
38 tion or a temporary restraining order, issued as provided in subsection 1
39 of this section, has been violated, an assurance of discontinuance has
40 been violated or a person has engaged in the same deceptive trade prac-
41 tice as had previously been enjoined, the assurance of discontinuance or
42 stipulation shall become a public record. Proof by a preponderance of
43 evidence of a violation of such an assurance constitutes prima facie evi-
44 dence of a deceptive trade practice for the purpose of any civil action or
45 proceeding brought thereafter by the commissioner, whether a new action
46 or a subsequent motion or petition in any pending action or proceeding.

47 SEC. 23. 1. Sections 4 to 32, inclusive, of this act do not prohibit the
48 commissioner from disclosing to any district attorney or law enforcement
49 officer the fact that a crime has been committed by any person, if this fact

1 as become known as a result of any investigation conducted pursuant to
2 the provisions of sections 4 to 32, inclusive, of this act.

3 2. Subject to the provisions of subsection 2 of section 22 of this act,
4 the commissioner shall not make public the name of any person alleged to
5 have committed a deceptive trade practice. This subsection does not pre-
6 vent the commissioner from issuing public statements describing or warn-
7 ing of any course of conduct which constitutes a deceptive trade practice.

8 SEC. 24. 1. Prior to instituting any action pursuant to sections 25 to
9 31, inclusive, of this act, the district attorney shall ascertain whether or
10 not the action in question is subject to the regulatory authority of any
11 state agency, board, official or other authority established by virtue of the
12 Nevada Revised Statutes except the regulatory or administrative authority
13 provided to the commissioner of consumer affairs by sections 4 to 32,
14 inclusive, of this act.

15 2. If such action is subject to such regulatory authority or any regu-
16 lation duly adopted and promulgated or any statutes administered by any
17 state regulatory agency, board, official or other authority as provided in
18 subsection 1, the district attorney shall not institute any proceeding under
19 sections 25 to 31, inclusive, of this act until such state agency, board,
20 official or other state regulatory authority has had reasonable time to
21 investigate or take any appropriate action with respect to the alleged
22 facts.

23 3. For the purposes of this section, a reasonable time has elapsed if
24 no final action or other disposition is made of any matter otherwise fall-
25 ing within the provisions of sections 4 to 32, inclusive, of this act within
26 30 days after such matter is referred to or brought to the attention of any
27 state agency, board, official or other regulatory authority except the com-
28 missioner of consumer affairs.

29 4. This section does not prohibit the district attorney of any county
30 from filing an action pursuant to the provisions of sections 25 to 28, inclu-
31 sive, of this act, if the referral of any matters subject to the provisions of
32 this act to any state agency, board, official or other regulatory authority
33 would cause immediate harm to the public of this state or endanger the
34 public health, safety or welfare, and such facts are shown by affidavit
35 or by verified complaint.

36 SEC. 25. Notwithstanding the requirement of knowledge as an element
37 of any practice enumerated in section 9 of this act as a deceptive trade
38 practice, and notwithstanding the enforcement powers granted to the
39 commissioner pursuant to sections 4 to 32, inclusive, of this act, whenever
40 the district attorney of any county has reason to believe that any person
41 is using, has used or is about to use any of the practices enumerated in
42 section 9 of this act, knowingly or otherwise, he may bring an action in
43 the name of the State of Nevada against such person to obtain a tempo-
44 rary or permanent injunction against such deceptive trade practice.

45 SEC. 26. Except as otherwise provided in section 28 of this act,
46 appropriate notice must be given by the district attorney to any person
47 against whom an action is brought pursuant to section 25 of this act.
48 Such notice must state generally the relief sought and be served in accord-
49 ance with section 31 of this act at least 10 days prior to the filing of the
50 action.

1 SEC. 27. Any action brought pursuant to section 22 or 25 of this act
2 may be brought:

3 1. In a district court in the county in which the defendant resides or
4 has his principal place of business;

5 2. In the district court in Carson City if the parties consent thereto; or

6 3. In the district court in any county where a deceptive trade practice
7 has occurred. Any court in which an action is brought pursuant to section
8 22 or 25 of this act may issue any temporary or permanent injunction in
9 accordance with the Nevada Rules of Civil Procedure to restrain and pre-
10 vent any violation of any provisions of sections 4 to 32, inclusive, of this
11 act, and such injunctions shall be issued without bond.

12 SEC. 28. Whenever the district attorney has reason to believe that the
13 delay caused by complying with the notice requirement of section 26 of
14 this act would cause immediate harm to the public of this state or endan-
15 ger the public welfare, he may immediately institute a suit for injunctive
16 relief, including a request for a temporary restraining order, upon proof of
17 specific facts shown by affidavit or by verified complaint or otherwise that
18 such immediate harm will be or is likely to be caused by such delay. The
19 Nevada Rules of Civil Procedure pertaining to the issuance of temporary
20 restraining orders govern all actions instituted pursuant to this section.

21 SEC. 29. The court in which an action is brought pursuant to section
22 22 and sections 25 to 28, inclusive, of this act may make such additional
23 orders or judgments as may be necessary to restore to any person in inter-
24 est any money or property, real or personal, which may have been
25 acquired by means of any deceptive trade practice which violates any of
26 the provisions of sections 4 to 32, inclusive, of this act, but such addi-
27 tional orders or judgments may be entered only after a final determin-
28 ation has been made that a deceptive trade practice has occurred.

29 SEC. 30. 1. In proceeding pursuant to sections 26 to 30, inclusive,
30 of this act, the district attorney may accept an assurance of discontinu-
31 ance with respect to any method, act or practice deemed to be a decep-
32 tive trade practice enumerated in section 9 of this act from any person
33 who is engaged or is about to engage in such method, act or practice by
34 following the procedures set forth in subsection 2 of section 22 of this act.

35 2. Any assurance made pursuant to subsection 1 shall be in writing
36 and shall be filed with and subject to the approval of the district court in
37 the county in which the alleged violator resides or has his principal place
38 of business, or the district court in any county where any deceptive trade
39 practice has occurred or is about to occur or the district court agreed to
40 by the parties.

41 3. An assurance of discontinuance made pursuant to subsections 1
42 and 2 shall not be considered an admission of violation for any purpose,
43 but is subject to the terms, limitations, and conditions of section 22 of this
44 act.

45 SEC. 31. Service of any notice under sections 25 to 30, inclusive, of
46 this act shall be made by personal service within the State of Nevada, but
47 if such service cannot be obtained, substituted service therefor may be
48 made in any of the following ways:

49 1. Personal service thereof outside the State of Nevada;

1 2. The mailing thereof by registered or certified mail to the last-
2 known place of business, residence or both whether inside or outside the
3 State of Nevada of such person for whom the notice is intended, in which
4 event such service shall be deemed complete upon the third day following
5 the mailing of any notice required under this section;

6 3. As to any person other than a natural person, service shall be in
7 the manner provided in the Nevada Rules of Civil Procedure for complet-
8 ing service of process on such a person, corporation, association or orga-
9 nization; or

10 4. Such service as any district court may direct in lieu of personal
11 service within the State of Nevada.

12 SEC. 32. 1. Any person who violates any court order or injunction
13 issued pursuant to sections 4 to 31, inclusive, of this act, upon a com-
14 plaint brought by the commissioner, the district attorney of any county
15 of this state shall forfeit and pay to the general fund in the state treasury
16 a civil penalty of not more than \$10,000 for each violation. For the pur-
17 pose of this section, the court issuing any such order or injunction shall
18 retain jurisdiction over any such action or proceeding. Such civil penalties
19 shall be in addition to any other penalty or remedy available for the
20 enforcement of the provisions of sections 4 to 31, inclusive, of this act.

21 2. As used in this section, the term "violation" includes a repetitive
22 or continuous violation arising out of the same act.

election day a person to vote for or against any candidate or question on the ballot. This paragraph shall not apply to political signs placed upon private property with the permission of the owner of such property."

Amend sec. 2, page 2, by deleting lines 5 through 7 and inserting: "public thoroughfare to any polling place, marked as such entrance:] while within 300 feet of any entrance to any building in which a polling place is located:".

Amend sec. 2, page 2, by adding after line 11:

"3. Subsection 1 shall not apply to political signs placed upon private property with the permission of the owner of such property."

Mr. Crawford moved the adoption of the amendment.

Remarks by Messrs. Crawford, Dreyer, Bremner, Banner, Dini, Mrs. Ford, Messrs. McNeel, Wittenberg, Torvinen, and Robinson.

Amendment adopted.

Bill ordered reprinted, re-engrossed, and to third reading.

Assembly Bill No. 288.

Bill read third time.

The following amendment was proposed by Mr. Lowman:

Amendment No. 4978.

Amend section 1, page 1, by inserting the following between lines 18 and 19:

"(h) The taxicab field investigators appointed under the provisions of NRS 706.8821."

Mr. Lowman moved the adoption of the amendment.

Remarks by Messrs. Lowman, Ullom, Getto, and Dreyer.

Amendment lost.

Roll call on Assembly Bill No. 288:

YEAS—30.

NAYS—Banner, Brookman, Capurro, Hafen, McNeel, Prince—6.

Absent—Bennett, Dini, Gojack, Vergiels—4.

Assembly Bill No. 288 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

✓ Assembly Bill No. 301.

Bill read third time.

The following amendment was proposed by Mr. Torvinen:

Amendment No. 4916.

Amend sec. 23, page 5, by deleting line 48 and inserting: "commissioner from disclosing to the attorney general or any district attorney or law enforcement".

Amend sec. 24, page 6, by deleting line 9 and inserting: "31, inclusive, of this act, the attorney general or district attorney shall ascertain whether or".

Amend sec. 24, page 6, by deleting line 18 and inserting: "subsection 1, the attorney general or district attorney shall not institute any proceeding under".

Amend sec. 24, page 6, by deleting line 29 and inserting:

"4. This section does not prohibit the attorney general or the district attorney of any county".

Amend sec. 25, page 6, by deleting line 40 and inserting: "*the attorney general or the district attorney of any county has reason to believe that any person*".

Amend sec. 26, page 6, by deleting line 46 and inserting: "*appropriate notice must be given by the attorney general or district attorney to any person*".

Amend sec. 28, page 7, by deleting line 12 and inserting:

"Sec. 28. *Whenever the attorney general or district attorney has reason to believe that the*".

Amend sec. 30, page 7, by deleting line 30 and inserting: "*of this act, the attorney general or district attorney may accept an assurance of discontinu-*".

Amend sec. 32, page 8, by deleting line 14 and inserting: "*plaint brought by the commissioner, the attorney general or the district attorney of any county*".

Mr. Torvinen moved the adoption of the amendment.

Remarks by Messrs. Torvinen and Wittenberg.

Amendment lost on a division of the house.

The following amendment was proposed by Mr. Wittenberg:

Amendment No. 4926.

Amend sec. 32, page 8, by deleting lines 21 and 22 and inserting:

"2. *In any action brought pursuant to sections 22 and 25 to 28, inclusive, of this act, if the court finds that any person has willfully engaged in a deceptive trade practice enumerated in section 9 of this act, the commissioner or the district attorney of any county in this state bringing such action may recover a civil penalty not to exceed \$2,500 for each violation.*

3. *Any person, firm, or any officer or managing agent of any corporation or association who knowingly and willfully engages in a deceptive trade practice enumerated in section 9 of this act shall be punished:*

(a) *For the first or second offense, for a misdemeanor.*

(b) *For the third offense and all subsequent offenses, for a gross misdemeanor.*

4. *As used in this section, the term "violation" includes a repetitive or continuous violation arising out of the same act."*

Mr. Wittenberg moved the adoption of the amendment.

Remarks by Messrs. Wittenberg, Torvinen, Barengo, Jacobsen, Dini, Hayes, and May.

Amendment adopted.

Bill ordered reprinted, re-engrossed, and to third reading.

MOTIONS, RESOLUTIONS, AND NOTICES

Mr. May moved that Assembly Bill No. 801 be re-referred to the Committee on Government Affairs.

Remarks by Mr. May.

Motion carried.

In compliance with a notice given on a previous day, Mr. Dini moved that the vote whereby Senate Bill No. 115 was passed be reconsidered.

Remarks by Messrs. Dini, Ullom, and Glover.

Motion carried.

30 26

(REPRINTED WITH ADOPTED AMENDMENTS)

SECOND REPRINT

A. B. 301

ASSEMBLY BILL NO. 301—COMMITTEE ON COMMERCE

FEBRUARY 15, 1973

Referred to Committee on Commerce

SUMMARY—Creates consumer affairs division of department of commerce and regulates deceptive trade practices. Fiscal Note: Yes. (BDR 52-233)

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted

AN ACT relating to consumer protection; creating the consumer affairs division of the department of commerce; regulating deceptive trade practices; providing injunctive relief; providing a method of voluntary compliance; providing for notice; providing penalties; 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. NRS 232.230 is hereby amended to read as follows:
2 232.230 1. The department of commerce is hereby created.
3 2. The department shall consist of a director and the following divi-
4 sions:
5 (a) Banking division.
6 (b) *Consumer affairs division.*
7 (c) Insurance division.
8 [(c)] (d) Real estate division.
9 [(d)] (e) Savings and loan division.
10 SEC. 2. NRS 232.250 is hereby amended to read as follows:
11 232.250 The director shall:

- 12 1. Appoint, with the consent of the governor, a chief of each of the
13 divisions of the department. In making such appointments, the director
14 shall obtain lists of nominees from recognized professional organizations,
15 if any, in the appropriate professions and shall make such appointments
16 after consultation with and concurrence of such organizations. The chief
17 of the banking division shall be known as the superintendent of banks,
18 *the chief of the consumer affairs division shall be known as the commis-*
19 *sioner of consumer affairs,* the chief of the insurance division shall be
20 known as the commissioner of insurance, the chief of the real estate
21 division shall be known as the real estate administrator, and the chief
22 of the savings and loan division shall be known as the commissioner of
23 savings associations.

2. Be responsible for the administration, through the divisions of the department, of the provisions of Titles 55 to 57, inclusive, of NRS, chapter 645 of NRS, sections 4 to 32, inclusive, of this act, and all other provisions of law relating to the functions of the divisions of the department.

SEC. 3. Chapter 598 of NRS is hereby amended by adding thereto the provisions set forth as sections 4 to 32, inclusive, of this act.

SEC. 4. As used in sections 4 to 32, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 5 to 16, inclusive, of this act have the meanings ascribed to them in such sections.

SEC. 5. "Advertisement" means the attempt by publication, dissemination, solicitation or circulation to induce, directly or indirectly, any person to enter into any obligation or to acquire any title or interest in any property.

SEC. 6. "Certification mark" means a mark used in connection with the goods or services of a person other than the certifier to indicate geographic origin, material, mode of manufacture, quality, accuracy or other characteristics of the goods or services or to indicate that the work or labor on the goods or services was performed by members of a union or other organization.

SEC. 7. "Collective mark" means a mark used by members of a cooperative, association or other collective group or organization to identify goods or services and distinguish them from those of others, or to indicate membership in the collective group or organization.

SEC. 8. "Commissioner" means the commissioner of consumer affairs.

SEC. 9. A person engages in a "deceptive trade practice" when in the course of his business or occupation he:

1. Knowingly passes off goods or services as those of another.

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

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

4. Uses deceptive representations or designations of geographic origin in connection with goods or services.

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

6. Represents that goods are original or new if he knows or should know that they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.

7. Represents that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if he knows or should know that they are of another.

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

9. Advertises goods or services with intent not to sell them as advertised.

10. Advertises goods or services with intent not to supply reasonably

expectable public demand, unless the advertisement discloses a limitation of quantity.

11. Advertises under the guise of obtaining sales personnel when in fact the purpose is to first sell a product or service to the sales personnel applicant.

12. Makes false or misleading statements of fact concerning the price of goods or services, or the reasons for, existence of or amounts of price reductions.

13. Employs "bait and switch" advertising, which consists of an attractive but insincere offer to sell a product or service which the seller in truth does not intend or desire to sell, accompanied by one or more of the following practices:

(a) Refusal to show the product advertised.

(b) Disparagement in any material respect of the advertised product or the terms of sale.

(c) Requiring tie-in sales or other undisclosed conditions to be met prior to selling the advertised product or service.

(d) Refusal to take orders for the product advertised for delivery within a reasonable time.

(e) Showing or demonstrating a defective product which is unusable or impractical for the purposes set forth in the advertisement.

(f) Accepting a deposit for the product and subsequently switching the purchase order to a higher priced item.

(g) Failure to make deliveries of the product within a reasonable time or to make a refund therefor.

14. Knowingly fails to identify flood-damaged or water-damaged goods as to such damages.

15. Solicits by telephone or door to door as a seller, unless the seller identifies himself, whom he represents and the purpose of his call within 30 seconds after beginning the conversation.

16. Knowingly states that services, replacement parts or repairs are needed when no such services, replacement parts or repairs are actually needed.

SEC. 10. "Mark" means a word, name, symbol, device or any combination of the foregoing in any form or arrangement.

SEC. 11. "Person" means an individual, corporation, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

SEC. 12. "Property" means any real or personal property, or both real and personal property, intangible property or services.

SEC. 13. "Service mark" means a mark used by a person to identify services and to distinguish them from the services of others.

SEC. 14. "Sale" includes any sale, offer for sale or attempt to sell any property for any consideration.

SEC. 15. "Trademark" means a mark used by a person to identify goods and to distinguish them from the goods of others.

SEC. 16. "Trade name" means a word, name, symbol, device or any combination of the foregoing in any form or arrangement used by a

1 person to identify his business or occupation, and to distinguish it from
2 the business or occupation of others.

3 SEC. 17. 1. Evidence that a person has engaged in a deceptive trade
4 practice is prima facie evidence of intent to injure competitors and to
5 destroy or substantially lessen competition.

6 2. The deceptive trade practices listed in section 9 of this act are
7 in addition to and do not limit the types of unfair trade practices action-
8 able at common law or defined as such in other statutes of this state.

9 SEC. 18. 1. Sections 4 to 32, inclusive, of this act do not apply to:

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

12 (b) Publishers, including outdoor advertising media, advertising agen-
13 cies, broadcasters or printers engaged in the dissemination of information
14 or reproduction of printed or pictorial matter who publish, broadcast or
15 reproduce material without knowledge of its deceptive character.

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

17 2. Sections 4 to 32, inclusive, of this act do not apply to the use by
18 a person of any service mark, trademark, certification mark, collective
19 mark, trade name or other trade identification which was used and not
20 abandoned prior to July 1, 1973, if the use was in good faith and is other-
21 wise lawful except for the provisions of sections 4 to 32, inclusive, of
22 this act.

23 SEC. 19. When the commissioner has cause to believe that any person
24 has engaged or is engaging in any deceptive trade practice, he may:

25 1. Request such person to file a statement or report in writing under
26 oath or otherwise, on such forms as shall be prescribed by the commis-
27 sioner, as to all facts and circumstances concerning the sale or advertise-
28 ment of property by such person, and such other data and information
29 as he may deem necessary.

30 2. Examine under oath any person in connection with the sale or
31 advertisement of any property.

32 3. Examine any property or sample thereof, record, book, docu-
33 ment, account or paper as he may deem necessary.

34 4. Make true copies, at the expense of the consumer affairs division
35 of the department of commerce, of any record, book, document, account
36 or paper examined, as provided in subsection 3 of this section, which
37 copies may be offered into evidence in lieu of the originals thereof in
38 actions brought pursuant to sections 21 and 22 of this act.

39 5. Pursuant to an order of any district court, impound any sample
40 of property which is material to such deceptive trade practice and retain
41 the property in his possession until completion of all proceedings as pro-
42 vided in sections 4 to 32, inclusive, of this act. An order shall not be
43 issued pursuant to this subsection unless the commissioner and the court
44 give the accused full opportunity to be heard and unless the commissioner
45 proves by clear and convincing evidence that the business activities of
46 the accused will not be impaired thereby.

47 SEC. 20. 1. The commissioner, in addition to other powers conferred
48 upon him by this act, may issue subpoenas to require the attendance of
49 witnesses or the production of documents, administer oaths, conduct
50 hearings in aid of any investigation or inquiry and prescribe such forms

1 and promulgate such rules as may be necessary to administer the provi-
2 sions of this act.

3 2. Service of any notice or subpoena shall be made as provided in
4 N.R.C.P. 45(c).

5 SEC. 21. If any person fails to cooperate with any investigation, as
6 provided in section 19 of this act, or if any person fails to obey a sub-
7 pena issued by the commissioner, the commissioner may apply to any
8 district court for equitable relief. Such application shall state reasonable
9 grounds showing that such relief is necessary to terminate or prevent a
10 deceptive trade practice. If the court is satisfied of such reasonable
11 grounds, the court may:

12 1. Grant injunctive relief restraining the sale or advertisement of any
13 property by such person.

14 2. Require the attendance of or the production of documents by such
15 person, or both.

16 3. Grant other relief necessary to compel compliance by such person.

17 SEC. 22. 1. Notwithstanding the requirement of knowledge as an ele-
18 ment of any practice enumerated in section 9 of this act as a deceptive
19 trade practice, when the commissioner has cause to believe that a person
20 has engaged or is engaging in any of the practices enumerated in section
21 9 of this act, knowingly or otherwise, he may apply for an injunction or
22 temporary restraining order, as provided in N.R.C.P. 65, prohibiting such
23 person from continuing such practices. The court may make orders or
24 judgments necessary to prevent the use by such person of any such decep-
25 tive trade practice or to restore to any other person any money or prop-
26 erty which may have been acquired by such deceptive trade practices.

27 2. Where the commissioner has the authority to institute a civil
28 action or other proceeding, in lieu thereof or as a part thereof, he may
29 accept an assurance of discontinuance of any deceptive trade practice.
30 Such assurance may include a stipulation for the voluntary payment by
31 the alleged violator of the costs of investigation and the costs of institut-
32 ing the action or proceeding and for the voluntary restitution of any
33 money or property acquired by deceptive trade practices. Except as pro-
34 vided in the next sentence, any such assurance of discontinuance accepted
35 by the commissioner and any such stipulation filed with the court shall
36 be confidential to the parties to such action or proceeding and to the
37 court and its employees. Upon final judgment by the court that an injunc-
38 tion or a temporary restraining order, issued as provided in subsection 1
39 of this section, has been violated, an assurance of discontinuance has
40 been violated or a person has engaged in the same deceptive trade prac-
41 tice as had previously been enjoined, the assurance of discontinuance or
42 stipulation shall become a public record. Proof by a preponderance of
43 evidence of a violation of such an assurance constitutes prima facie evi-
44 dence of a deceptive trade practice for the purpose of any civil action or
45 proceeding brought thereafter by the commissioner, whether a new action
46 or a subsequent motion or petition in any pending action or proceeding.

47 SEC. 23. 1. Sections 4 to 32, inclusive, of this act do not prohibit the
48 commissioner from disclosing to any district attorney or law enforcement
49 officer the fact that a crime has been committed by any person, if this fact

1 as become known as a result of any investigation conducted pursuant to
2 the provisions of sections 4 to 32, inclusive, of this act.

3 2. Subject to the provisions of subsection 2 of section 22 of this act,
4 the commissioner shall not make public the name of any person alleged to
5 have committed a deceptive trade practice. This subsection does not pre-
6 vent the commissioner from issuing public statements describing or warn-
7 ing of any course of conduct which constitutes a deceptive trade practice.

8 SEC. 24. 1. Prior to instituting any action pursuant to sections 25 to
9 31, inclusive, of this act, the district attorney shall ascertain whether or
10 not the action in question is subject to the regulatory authority of any
11 state agency, board, official or other authority established by virtue of the
12 Nevada Revised Statutes except the regulatory or administrative authority
13 provided to the commissioner of consumer affairs by sections 4 to 32,
14 inclusive, of this act.

15 2. If such action is subject to such regulatory authority or any regu-
16 lation duly adopted and promulgated or any statutes administered by any
17 state regulatory agency, board, official or other authority as provided in
18 subsection 1, the district attorney shall not institute any proceeding under
19 sections 25 to 31, inclusive, of this act until such state agency, board,
20 official or other state regulatory authority has had reasonable time to
21 investigate or take any appropriate action with respect to the alleged
22 facts.

23 3. For the purposes of this section, a reasonable time has elapsed if
24 no final action or other disposition is made of any matter otherwise fall-
25 ing within the provisions of sections 4 to 32, inclusive, of this act within
26 30 days after such matter is referred to or brought to the attention of any
27 state agency, board, official or other regulatory authority except the com-
28 missioner of consumer affairs.

29 4. This section does not prohibit the district attorney of any county
30 from filing an action pursuant to the provisions of sections 25 to 28, inclu-
31 sive, of this act, if the referral of any matters subject to the provisions of
32 this act to any state agency, board, official or other regulatory authority
33 would cause immediate harm to the public of this state or endanger the
34 public health, safety or welfare, and such facts are shown by affidavit
35 or by verified complaint.

36 SEC. 25. Notwithstanding the requirement of knowledge as an element
37 of any practice enumerated in section 9 of this act as a deceptive trade
38 practice, and notwithstanding the enforcement powers granted to the
39 commissioner pursuant to sections 4 to 32, inclusive, of this act, whenever
40 the district attorney of any county has reason to believe that any person
41 is using, has used or is about to use any of the practices enumerated in
42 section 9 of this act, knowingly or otherwise, he may bring an action in
43 the name of the State of Nevada against such person to obtain a tempo-
44 rary or permanent injunction against such deceptive trade practice.

45 SEC. 26. Except as otherwise provided in section 28 of this act,
46 appropriate notice must be given by the district attorney to any person
47 against whom an action is brought pursuant to section 25 of this act.
48 Such notice must state generally the relief sought and be served in accord-
49 ance with section 31 of this act at least 10 days prior to the filing of the
50 action.

1 SEC. 27. Any action brought pursuant to section 22 or 25 of this act
2 may be brought:

3 1. In a district court in the county in which the defendant resides or
4 has his principal place of business;

5 2. In the district court in Carson City if the parties consent thereto; or

6 3. In the district court in any county where a deceptive trade practice
7 has occurred. Any court in which an action is brought pursuant to section
8 22 or 25 of this act may issue any temporary or permanent injunction in
9 accordance with the Nevada Rules of Civil Procedure to restrain and pre-
10 vent any violation of any provisions of sections 4 to 32, inclusive, of this
11 act, and such injunctions shall be issued without bond.

12 SEC. 28. Whenever the district attorney has reason to believe that the
13 delay caused by complying with the notice requirement of section 26 of
14 this act would cause immediate harm to the public of this state or endan-
15 ger the public welfare, he may immediately institute a suit for injunctive
16 relief, including a request for a temporary restraining order, upon proof of
17 specific facts shown by affidavit or by verified complaint or otherwise that
18 such immediate harm will be or is likely to be caused by such delay. The
19 Nevada Rules of Civil Procedure pertaining to the issuance of temporary
20 restraining orders govern all actions instituted pursuant to this section.

21 SEC. 29. The court in which an action is brought pursuant to section
22 22 and sections 25 to 28, inclusive, of this act may make such additional
23 orders or judgments as may be necessary to restore to any person in inter-
24 est any money or property, real or personal, which may have been
25 acquired by means of any deceptive trade practice which violates any of
26 the provisions of sections 4 to 32, inclusive, of this act, but such addi-
27 tional orders or judgments may be entered only after a final determin-
28 ation has been made that a deceptive trade practice has occurred.

29 SEC. 30. 1. In proceeding pursuant to sections 26 to 30, inclusive,
30 of this act, the district attorney may accept an assurance of discontinu-
31 ance with respect to any method, act or practice deemed to be a decep-
32 tive trade practice enumerated in section 9 of this act from any person
33 who is engaged or is about to engage in such method, act or practice by
34 following the procedures set forth in subsection 2 of section 22 of this act.

35 2. Any assurance made pursuant to subsection 1 shall be in writing
36 and shall be filed with and subject to the approval of the district court in
37 the county in which the alleged violator resides or has his principal place
38 of business, or the district court in any county where any deceptive trade
39 practice has occurred or is about to occur or the district court agreed to
40 by the parties.

41 3. An assurance of discontinuance made pursuant to subsections 1
42 and 2 shall not be considered an admission of violation for any purpose,
43 but is subject to the terms, limitations, and conditions of section 22 of this
44 act.

45 SEC. 31. Service of any notice under sections 25 to 30, inclusive, of
46 this act shall be made by personal service within the State of Nevada, but
47 if such service cannot be obtained, substituted service therefor may be
48 made in any of the following ways:

49 1. Personal service thereof outside the State of Nevada;

1 2. The mailing thereof by registered or certified mail to the last-
2 known place of business, residence or both whether inside or outside the
3 State of Nevada of such person for whom the notice is intended, in which
4 event such service shall be deemed complete upon the third day following
5 the mailing of any notice required under this section;

6 3. As to any person other than a natural person, service shall be in
7 the manner provided in the Nevada Rules of Civil Procedure for complet-
8 ing service of process on such a person, corporation, association or orga-
9 nization; or

10 4. Such service as any district court may direct in lieu of personal
11 service within the State of Nevada.

12 SEC. 32. 1. Any person who violates any court order or injunction
13 issued pursuant to sections 4 to 31, inclusive, of this act, upon a com-
14 plaint brought by the commissioner, the district attorney of any county
15 of this state shall forfeit and pay to the general fund in the state treasury
16 a civil penalty of not more than \$10,000 for each violation. For the pur-
17 pose of this section, the court issuing any such order or injunction shall
18 retain jurisdiction over any such action or proceeding. Such civil penalties
19 shall be in addition to any other penalty or remedy available for the
20 enforcement of the provisions of sections 4 to 31, inclusive, of this act.

21 2. In any action brought pursuant to sections 22 and 25 to 28, inclu-
22 sive, of this act, if the court finds that any person has willfully engaged in
23 a deceptive trade practice enumerated in section 9 of this act, the com-
24 missioner or the district attorney of any county in this state bringing
25 such action may recover a civil penalty not to exceed \$2,500 for each
26 violation.

27 3. Any person, firm, or any officer or managing agent of any corpo-
28 ration or association who knowingly and willfully engages in a deceptive
29 trade practice enumerated in section 9 of this act shall be punished:

30 (a) For the first or second offense, for a misdemeanor.

31 (b) For the third offense and all subsequent offenses, for a gross mis-
32 demeanor.

33 4. As used in this section, the term "violation" includes a repetitive
34 or continuous violation arising out of the same act.

MINUTES

COMMITTEE: COMMERCE

DATE: Wednesday, April 4, 1973

MEMBERS PRESENT: Messrs Prince, Demers, Wittenberg, Bickerstaff, Dini, Hafen, Robinson and Capurro and Torvinen

MEMBERS ABSENT: None

GUESTS: See attached list

Chairman Prince called the meeting to order at 3:15 p.m.
The Committee took the following action:

- 1) AB 684: Mr. Dini moved, Mr. Wittenberg seconded to indefinitely postpone. The motion was unanimously passed;
- 2) AB 826: The Committee agreed to hold this bill until the amendments were printed for their consideration;
- 3) AB 602: Mr. Demers moved, Mr. Bickerstaff seconded to pass this bill as amended. The motion was unanimously passed;
- 4) AB 625: Mr. Dini moved, Mr. Demers seconded to pass this bill. The motion was unanimously approved;
- 5) AB 664: The Committee agreed to hold this bill until the Commission of Insurance had been consulted. Chairman Prince appointed Mr. Bickerstaff and Mr. Demers as a sub-committee;
- 6) AB 670: Mr. Wittenberg moved, Mr. Hafen seconded a motion to indefinitely postpone this bill. The motion was unanimously passed;
- 7) AB 745: Mr. Demers moved, Mr. Capurro seconded to pass this bill as amended, including loans made on real estate by small loan companies being subject to an interest rate of 12% and a maximum of \$10,000 for any loans these companies make. The motion was unanimously passed;
- 8) AB 638: The Committee agreed to hold this bill to a later date;
- 9) AB 202: Chairman Prince appointed a sub-committee of Mr. Hafen to meet with Mr. Getto and combine this bill with AB 634 and AB 908 and report back to the Committee;
- 10) AB 23: Mr. Capurro moved and Mr. Wittenberg seconded to pass this bill. The motion was unanimously approved;

Mr. Charles Fox, intern to Mr. Hayes, stated that this bill is basically the same as that of California and left a copy of the California bill with the Committee. (See Exhibit "A") He also left a copy of a statement of charges from a mortuary in Calexico, California. (See Exhibit "B")

Mr. Wittenberg stated that it would place a large burden on mortuaries if in line 8, page 2 of the proposed bill, it was necessary to determine what credits a deceased would have under veterans and social security benefits. He suggested deleting this portion of the bill. He also left copies of purchase agreements from Walton's Funeral Home in Reno. (See Exhibit "C").

Regarding AB 795, Mrs. Brookman stated that she has received many complaints of dog grooming parlors treating dogs cruelly. She suggests this bill should be regulated by the County Health Departments and that a veterinarian should be placed on the State Board of Veterinary Medicine.

As to AB 917, Mrs. Brookman stated that she only wanted some place where babysitters could complain and suggested that the Labor Commissioner would be the person who should receive complaints in this area. Most of the people affected by this bill are senior citizens and the Committee will receive a letter from Mr. Jones relative to this matter. She suggested deleting everything in the bill but Section 5.

Returning to AB 795, Mr. Demers stated his disapproval of this responsibility being given to the county health departments and stated the Veterinary Board does not have police powers. The Washoe County Board of Health presently has this responsibility.

Mr. John O'Harra, Secretary of the Veterinary Board stated that if passed, this bill would place the Board in a very untenable position; that the Board merely regulates the practice of veterinary medicine and is self-supporting under NRS 638; that they do not have the manpower or funds to police this area; that the bill must be funded if passed; that the Clark County Board of Health has a full-time veterinarian on its staff and Board; that Washoe County has neither.

Mrs. Brookman informed the Committee that they could do "real good work and be compassionate to the people" if they favorably considered AB 917, 722, and 795.

Mr. Hayes discussing AB 774 requested the Committee to delete portions of the bill so that disclosure of customer quantity limitations in advertising would only apply to groceries. Mr.

Torvinen suggested rewording the bill to say: "If the limitation of quantity is not advertised, no limitation can be forced on the buyer".

Mr. Wittenberg felt that AB 301 would cover this situation with the stores giving "rainchecks". AB 230 could also make these practices deceptive advertising.

Mr. Hayes, regarding AB 775, felt that/all kinds of insurance policies should not necessarily be required to be given to insureds prior to signing, such as life and health and accident. copies of

Mr. Milos Turvich, representing American Life Insurance Association, 365 companies writing 95% of all life insurance in the US, stated that group insurance policies could not comply with this regulation as many of these policies are written in other states; that this bill would increase costs to insurance companies and onto consumers. "I just don't see how this could work under life and health and accident insurance," he said.

Chairman Prince asked if there were any provisions whereby an insured could cancel a policy within thirty days and be reimbursed premium costs. Mr. Turvich stated that there is usually a provision for mid-term cancellation and if a company has misrepresented anything to an insured, he can be refunded his premiums. But he knows of no 30 day cancellation provision. Mr. Turvich also stated that insurance companies often do not know the risk they are undertaking in time to comply with this bill; that in NRS 687, no health or life insurance policy can be written until the forms are approved by the Insurance Commissioner.

Mr. Virgil Anderson of the AAA stated that his company was not included in this bill.

Mr. Lingenfelter of Land Title Insurance asked that his company be exempted because they do not know the cost of a title insurance policy until the title is searched.

Mr. Robert Haley of the NIC stated that he felt AB 650 should be killed because it applies to a very small percentage of employers; that 15% of all employers contribute 85% of all premiums to NIC; that this would penalize the small employer much more than it would help him.

Regarding AB 722, Mr. Virgil Anderson of the AAA, stated that he opposes this bill; that it is not in the public interest; that most insurance companies presently only cancel policies in case of non-payment of premiums or revocation of drivers' licenses; that this would not cover the number of out-of-court

Assembly Bill No. 867.

Bill read third time.

Remarks by Messrs. Getto, Lowman, Capurro, and Bremner.

Roll call on Assembly Bill No. 867:

YEAS—31.

NAYS—Bennett, Glover, Hickey, Howard, Jacobsen, Lowman, Schofield,
Young—8.

Absent—Brookman.

Assembly Bill No. 867 having received a constitutional majority, Mr.
Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 191.

Bill read third time.

Remarks by Mr. Bennett.

Roll call on Senate Bill No. 191:

YEAS—40.

NAYS—None.

Senate Bill No. 191 having received a constitutional majority, Mr.
Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 469.

Bill read third time.

Remarks by Mr. Hafen.

Roll call on Senate Bill No. 469:

YEAS—40.

NAYS—None.

Senate Bill No. 469 having received a constitutional majority, Mr.
Speaker declared it passed.

Bill ordered transmitted to the Senate.

✓

Assembly Bill No. 301.

Bill read third time.

Remarks by Messrs. Barengo and Jacobsen.

Roll call on Assembly Bill No. 301:

YEAS—38.

NAYS—Jacobsen, Young—2.

Assembly Bill No. 301 having received a constitutional majority, Mr.
Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 587.

Bill read third time.

Remarks by Messrs. Dini, McNeel, and Bickerstaff.

Roll call on Assembly Bill No. 587:

YEAS—38.

NAYS—Banner, Lowman—2.

Assembly Bill No. 587 having received a constitutional majority, Mr.
Speaker declared it passed.

Bill ordered transmitted to the Senate.

MINUTES

COMMITTEE: COMMERCE

DATE: Friday, April 6, 1973

MEMBERS PRESENT: Messrs Prince, Capurro, Demers, Robinson, Wittenberg, Dini, Torvinen

MEMBERS ABSENT: Messrs Hafen and Bickerstaff

GUESTS: See attached list

Chairman Prince called the meeting to order at 4:15 p.m. Regarding AB 855, Mr. Wittenberg moved to indefinitely postpone the bill; Mr. Capurro seconded the motion. The motion was un-animously passed.

Mr. Demers discussed AB 882, stating that he is preparing amendments to the bill because as it is written, it would require State funding. His amendments would make the establishment of a motel authority by county option.

Mr. Lingenfelter discussed amendments to AB 889 and stated that Mr. Hafen is having the amendments prepared. Mr. also discussed amendments to AB 862, clarifying adequate egress and ingress; that Mack Fry was having these amendments prepared.

Mr. Dave Boyer of United Mortgage Co. discussed AB 906, amending page 1, line 15, Section 3 by adding: "to charge a fee for his services", page 8, line 7, "who does not charge a fee or cause to be paid a fee for any services other than the normal and scheduled rates for escrow, title insurance, and recording fees". He stated that the three companies he represents are agreeable to these amendments, but that 15 companies are effected by the amendment. Discussing this same bill, Mr. Tarkington, Commissioner of Savings and Loan, stated that there is a need for regulating mortgage companies in the State; that he is willing to take on the task but he is concerned with the necessary funding for the job; that he would need a good investigator and a secretary at an expenditure of about \$25,000; he felt that the application of the surety bond in the bill was not clear as it is written; does it cover officers and/or principals of mortgage companies for malpractice or does it protect the customers? He felt that most mortgage companies are in the conventional lending market; that under the provisions of this bill, mortgage companies approved by the FHA are exempt and some of them do no FHA business at all.

Mr. Dreyer discussed AB 785, stating that the regulation of motor vehicle repair shops should be on a national level; that the Department of Commerce of the State would have to do much checking to enforce the bill. Mr. Bob Guinn representing

the Franchised Automobile Dealers stated that the same testimony he gave at the hearing on AB 296 would apply; that if the Committee was to give serious consideration to this bill he would like it amended as AB 296 making it more comprehensive. Mr. E. J. Silva of the Department of Motor Vehicles stated that he and his office is responsible for licensing of all vehicles, 200 licensed dealers and 2,000 salesmen; that "we can't keep up with the problems we have now". He stated that 3,000 firms would have to be licensed under this bill plus from 500 to 1,000 appraisers; that the Department could not handle the job without funding of \$150,000 for the biennium. He presently has only eight men in his office.

Mr. Vergiels discussed the problems he hoped would be alleviated by AB 756 regarding warranties on trailers. He said that California manufacturers say that the dealers in Nevada are responsible for the warranties and the Nevada dealers say that the various California manufacturers are responsible; that many trailer owners do not service their trailers as required by warranties and a new owner must pay the cost of repairs because the warranty is invalidated. He felt that better inspection of new trailers could help this problem. Mr. Dini stated that AB 944 presently in his committee of Government Affairs could correct this problem. Mr. Torvinen suggested a statute that would state that "express warranties benefit any owner for the life of the warranty." Most warranties follow the purchase, not the person; that consumer bills already passed should cover this, particularly AB 301, suggested Dr. Robinson. Mr. Vergiels suggested holding the bill and he would do some work on it.

Mr. Guinn stated that as it is presently drafted, the bill would apply to any new vehicle dealers getting into some very broad subjects, such as all the equipment on campers.

Regarding AB 538, Mr. Guinn stated that licensing auto repair mechanics is a very complicated procedure; that there is presently an aptitude test for mechanics; that the OEO has been instrumental in establishing this test; that he didn't think the cities would be interested in requiring this licensing.

Regarding AB 918 and 895, it was stated that these bills are already covered by the Uniform Building Code. Chairman Prince read a letter from Mr. Hancock, Chairman of the State Planning Board, who suggested that a simpler bill be written requiring conformity with the Uniform Building Code.

Mr. Demers introduced Mr. Myron Leavitt, Clark County County Commissioner.

Regarding SB 250, a bill regulating marriage counselors, Dr. Magruder stated that licensing fees would take care of any costs involved in this regulation and he explained the

MINUTES

COMMITTEE: COMMERCE

DATE: Monday, April 9, 1973

MEMBERS PRESENT: Messrs Prince, Demers, Robinson, Capurro, Wittenberg, Hafen, Torvinen, Bickerstaff, and Dini

MEMBERS ABSENT: None

GUESTS: None

Chairman Prince called the meeting to order at 4:05 p.m. He stated that he had received some criticism on the Committee's action adopting AJR 43, a resolution memorializing the President and CAB to authorize competitive air service between Las Vegas and Reno, signed by 27 Assemblymen. Mr. Robinson stated that he thought the resolution was more serious than the Committee had thought and that the Governor was upset about the Committee's action. Mr. Prince introduced Mr. Noel Clark of the PSC who stated that the PSC hears all applications for any additional service between Las Vegas and Reno; that the President of the United States only has authority to veto funds for international flights and has no authority over this Resolution; that Air West has not had a rate increase in three years; that the fare between Reno and Portland is \$84, whereas the fare between Las Vegas and Reno is \$57 and both flights are the same length of time; that because of this economical fare, Air West is unable to offer its passengers any "frills" on its flights; that if more flights are authorized, fares would increase. Presently Air West has no subsidies, but they would be necessary if competitive flights were authorized. Mr. Clark emphatically stated that it was unlikely that the CAB would authorize more carriers because it would not be economically feasible. Fare increases of 25% would be likely and this would place an additional burden on the State.

Mr. Demers stated that legislators from Southern Nevada were unhappy with delays in flights both from Reno and Las Vegas though he felt this action was "kind of childish". He moved to reconsider the bill and Dr. Robinson seconded the motion. The bill failed for lack of a majority. Dr. Robinson stated that it could still be corrected on the floor of the Assembly.

Mr. Dreyer requested that the Committee introduce a bill repealing NRS 599(a).010 which would apply to both Clark and Washoe Counties enabling the State to police land "up" suppliers. Though the Legislature gave the counties this authority in 1971, they have not stopped these companies though they have been receiving funds from taxes imposed on each person brought into the State for the purpose of buying land. He stated there is presently a bill in the Senate, SB 259, giving Skip Hansen this

COMMERCE MINUTES - Mon., Ap. 9, 1973

authority, but the Senate bill places too much pressure on the legisimate land companies. His bill will give the Real Estate Division the "teeth" necessary to enforce this measure. Revenue received from this tax will defray the costs of enforcement. Clark presently receives \$300,000 a quarter from \$5,000,000 in land sales. Mr. Capurro moved to introduce the bill, Mr. Hafen seconded the motion. The motion failed for lack of a majority.

Regarding SB 410 prohibiting advertising of obscene items and material, Mr. Demers moved that the bill be referred to the Judiciary Committee; Mr. Capurro seconded the motion. The motion was passed with Messrs Demers, Robinson, Bickerstaff, Capurro and Prince voting "aye"; Mr. Hafen voted "no".

Regarding SB 538, Mr. Wittenberg discussed the differences between this bill and AB 768. He stated the Senate bill requires a complete list of all services provided by funeral directors and the prices for all these services which would be very difficult since some mortuaries have over 100 caskets to choose from alone. Mr. Demers moved to indefinitely postpone SB 538 and Mr. Capurro seconded the motion. The motion was passed with Mr. Wittenberg abstaining.

Regarding AB 882 which gives the counties the option of establishing a motel authority to check on price gouging, Mr. Demers presented letters from outraged tourists and motel owners and stated that this would apply to motels with 80 rooms or less and would allow them rate fluctuation of 25% with the seasons and holiday week-ends. Mr. Demers moved to pass the resolution with amendments, Mr. Bickerstaff seconded the motion. The motion was unanimously passed.

Regarding AB 935, Mr. Bickerstaff explained that this bill would prohibit hazardous materials being shipped into the State such as poisonous toys; that it is recommended by the FDA. Mr. Robinson suggested that the Health Department be requested to appear before the Committee on Wednesday to discuss the merits of the bill. Chairman Prince instructed the secretary to call them.

Regarding AB 933, a Uniform Consumer Sales Practices Act, Mr. Hafen felt that since the Committee had not passed AB 301, this bill would not have any chance of passage. Mr. Wittenberg moved, Mr. Bickerstaff seconded an indefinite postponement of the bill. The motion was unanimously passed.

*Mr. Hafen asked the Committee to introduce a joint resolution regarding HR 5683 which sets up a revolving fund for the Rural Electrification Act asking that the bill be passed. He stated that this HR 5683 is likely to be passed by Congress over an earlier bill introduced by the Senate which the Committee resolved to be passed. Mr. Wittenberg moved that the Committee introduce the resolution and introduce it on the

APPELLANT'S MOTION FOR JUDICIAL NOTICE 063

*A.J.R. 45 (BDR 2156)

MINUTES

COMMITTEE: COMMERCE

DATE: Wednesday, April 11, 1973

MEMBERS PRESENT: Messrs Prince, Capurro, Torvinen, Hafen, Bickerstaff, Demers, Robinson, Wittenberg;

MEMBERS ABSENT: Mr. Dini GUESTS: See attached list

Chairman Prince called the meeting to order at 4:00 p.m. He asked for testimony on AB 923, a bill amending the Nevada Plumbing Law. Mr. John Darr, Secretary of the Northern Regional Plumbing Board, stated that when the Uniform Plumbing Code was passed by the 1971 Legislature, it had no teeth in it and no requirement that it be adopted by the counties. Consequently each county made changes in it to suit their own needs which has caused much confusion with the contractors and plumbers. In Northern Nevada, the "public is taking a beating because the code is not being followed". There are no inspections; metal pipe is being replaced by plastic which ruptures and pulls apart; out-of-state plans are not being properly checked to allow for freezing conditions and a state-wide code could correct many of these problems. Most states have a State Plumbing Inspector with no city or county inspectors.

Mr. Demers asked Mr. Darr if he had an estimate of the cost of a State Plumbing Inspector. Mr. Darr stated that this cost would be approximately \$15,000 because it is difficult to get a good man at any less when he can make this much working as a plumber. He also stated that city and county inspectors are not paid enough making them susceptible to "pay offs". Mr. Capurro asked if the educational requirements in the bill would adversely affect would-be plumbers living in outlying areas. Mr. Darr stated that plumbing courses were offered by correspondence and that the present bill doesn't properly train men; that some contractors exploit youngsters in the summer and they cannot get credit for this type of work. This bill will require proper educational requirements for apprentices.

Regarding AB 935, a bill enacting the Nevada Hazardous Substances Act, Mr. Demers stated that he received a call from the Consumers' League of Nevada asking that the Committee take further testimony from an FDA representative on Friday.

Mr. James Edmundson representing the State Health Department, presented suggested amendments to the bill. (See attached Exhibit "A") He stated that the State Health Officer concurred with these suggestions but that there were possible problems with the bill as it is written principally in para-

this bill so that the legitimate businessmen can live with it. It is the land sales company which does not intend to deliver as promised to the customer that this bill is designed to discourage and put out of business. "We haven't been able to enforce the statute". There are only three or four people in the office in Las Vegas, including the secretary. He presented exhibits of articles from newspapers exposing frauds in land sales with many references to those being made in Nevada. He stated that there is no question about the need for tightening up this legislation; that they have tried to take the problem areas to the legitimate land developers out in attempting to get to the marginal operator; that the legitimate operator may have to live with some additional regulations which he doesn't feel are difficult or onerous.

Mr. Demers asked if any of the provisions in AB 301 would cover this situation. Mr. Melner stated that there is no advertising provision for land sales in 301. Mr. Wittenberg asked if AB 230 would cover anything. Mr. Melner stated that it would not; that "we're amending an existing act because of problems we found in other acts which were aimed at the sale of products. Mr. Demers asked the number of marginal operators. Mr. Hansen of the Real Estate Division stated that Lake Havasu Estates was under indictment in Arizona; that no airport or restaurant exist as promised and there are no funds available for refunds to the consumer because the company is bankrupt; that even though the company qualified, HUD had no way of checking the subdivision and HUD does not require proof of financial stability.

Mr. Wittenberg stated that some land companies simply continue to pay for an option on land which they never own but sell in the duration. Mr. Hafen asked if this bill gave the Commerce Department the authority to check on the financial stability of these companies. Mr. Hansen stated that the former bill exempted companies who filed with HUD; this one will not exempt companies filing with HUD; that California has subdivision laws permitting sales from California but not into California. It is very simply for "fly-by-night" companies to file with HUD and come into Nevada to sell land.

Mr. Wittenberg pointed out that on page 7, lines 23 and 24, companies must supply the Division with such "reasonable information the Division may require". Mr. Hansen stated that NRS 119.160 now allows the Division to require bonds; that once the HUD exemption is out, enforcement falls back on the existing act - NRS 119.160. Mr. Melner stated that it is the applicant's burden to comply with the Department's forms which can only be changed by public hearing.

SENATE COMMERCE AND LABOR COMMITTEE

MINUTES OF MEETING

FRIDAY, APRIL 13, 1973

The meeting was called to order at 12:15 p.m.

Senator Drakulich in the chair.

PRESENT: Senator Herr
Senator Blakemore
Senator Lamb
Senator Pozzi
Senator Swobe
Senator Hecht

A. B. 587 - Prohibits use of aluminum wire in electrical systems of factory-built housing, mobile homes and travel trailers.

Motion Senator Blakemore, Do Kill, seconded Senator Herr, at the request of the introducer. Carried unanimously.

S. B. 621 - Provides for employee contribution for unemployment compensation from tips and gratuities.

Motion Senator Herr, Do Kill, seconded by Senator Blakemore, carried. Senator Swobe voting no.

A. B. 161 - Increases amount of insurance coverage required for motor vehicles leased for short term, and requires short-term lessor to carry insurance.

Senator Hecht presented amendments to the bill.

Motion, Senator Hecht, Amend and Do Pass, seconded by Senator Blakemore. Carried unanimously.

A. B. 301 - Creates consumer affairs division of department of commerce and regulates deceptive trade practices.

Mike Melner, Direct of Commerce, appeared before the committee to speak in support of the measure. He explained that this bill would create a consumer affairs division within the department and give it the power enforce violations of unfair trade practices.

Larry Struve, Deputy District Attorney, spoke in favor of the bill.

Senator Swobe objected to the \$2500 penalty for each offense as being excessive.

IN THE SUPREME COURT OF THE STATE OF NEVADA

DERRICK POOLE,

Appellant,

v

NEVADA AUTO DEALERSHIP
INVESTMENTS LLC a Nevada
Limited Liability Company d/b/a
SAHARA CHRYSLER, JEEP,
DODGE, and COREPOINTE
INSURANCE COMPANY,

Respondents,

Appeal from the Eighth Judicial District Court, Clark County.
The Honorable Nancy Alff, District Court Judge

Supreme Court Case No. 74804
District Court Case No. A-16-737120-C
Electronically Filed
Jun 12 2018 02:18 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S MOTION TO TAKE JUDICIAL NOTICE

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Attorneys for Appellant Derrick Poole

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE:

Appellant DERRICK POOLE will move the Court to take judicial notice of the attached Legislative History of NRS 41.600 and the *Nevada Deceptive Trade Practices Act* (“NDTPA”). This motion is made pursuant NRAP 27 and NRS 47.130 on the grounds that the Legislative History is relevant and pertinent to the subject appeal and the attached portions of the Legislative History are capable of accurate and ready determination by resort to sources (the Nevada Legislature) whose accuracy cannot reasonably be questioned so that the fact is not subject to reasonable dispute.

Dated this 10th day of June, 2018

By /s/ George O. West III
George O. West III
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Consumer Attorneys Against Auto Fraud
10161 Park Run Drive, Suite 150
Attorney for Appellant
DERRICK POOLE

A PARTY MAY MOVE TO HAVE THIS COURT TAKE
JUDICIAL NOTICE OF CERTAIN MATTERS

NRS 47.1302(2)(b) states:

1. The facts subject to judicial notice are facts in issue or facts from which they may be inferred.
2. A judicially noticed fact must be:
 - (b) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute.¹

Attached to this Motion as Exhibits 1 through 4 are true and correct copies of the Legislative History when NRS 41.600 and the (“NDTPA”) were first passed into law as well as amendments to the NDTPA which are also at issue in this appeal. They were obtained by Appellant’s counsel from the Nevada Legislature’s Website at the following URL www.leg.state.nv.us/dbtwwpd/SimpleSearch.htm. The attached Legislative History is also referred to throughout Appellant’s brief (“RFJN-LH”) and any particular pages identified in Appellant’s brief are in reference

¹ See *Fierle v. Perez*, 125 Nev. 728, 738, 219 P. 3d 906, 912 (2009), rev’d on other grounds [holding “[this court] may take judicial notice of facts generally known or capable of verification from a reliable source, whether we are requested to or not. NRS 47.150(1). Further, [this court] may take judicial notice of facts that are “[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute.” See NRS 47.130(2)(b). Moreover, courts generally may take judicial notice of legislative histories, which are public records. See *Hayes v. Continental Ins. Co.*, 178 Ariz. 264, 872 P.2d 668, 673 n. 5 (1994); *Nekoosa–Edwards Paper Co. v. Public Service Com’n*, 8 Wis.2d 582, 99 N.W.2d 821, 826 (1959).”

to ***bates numbers*** that were added to the pages by Appellant's counsel for ease of reference.

It is Appellant's position in his Opening brief that the Legislative history is relevant to this Court's analysis to a core issue on appeal, particularly as to the issue of the underlying Legislative public policy objectives behind NRS 41.600 the NDTPA (Chapter 598 of the NRS) and the rule of liberal construction with respect to remedial statutes.

Dated this 10th day of June, 2018.

By /s/ George O. West III
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DERRICK POOLE

EXHIBIT 1

1973

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Assembly History, Fifty-seventh Session

A. B. 301—Committee on Commerce, Feb. 15.

Summary—Creates Consumer Affairs Division of Department of Commerce and regulates deceptive trade practices. Fiscal Note: Yes. (BDR 52-233)

Feb. 15—Read first time. Referred to Committee on Commerce. To printer.

Feb. 19—From printer. To committee. 2/14, BDR; 3/19; 3/22; 3/22, 7; 3/28; 4/4; 4/6; 4/9 & 4/11

Mar. 30—From committee: Amend, and do pass as amended.

✓ Mar. 31—Read second time. Amended. To printer.

Apr. 2—From printer. To engrossment. Engrossed.

✓ Apr. 3—Read third time. Amended. To printer.

✓ Apr. 4—From printer. To re-engrossment. Re-engrossed. Placed on General File. Read third time. Passed, as amended. Title approved, as amended. To Senate.

Apr. 5—In Senate. Read first time. Referred to Committee on Commerce and Labor. To committee. 4/13

Apr. 13—From committee: Re-refer to Committee on Finance. Re-referred to Committee on Finance. To committee. 4/16; 4/17

Apr. 17—From committee: Do pass. Read second time.

✓ Apr. 18—Read third time. Passed. Title approved. To Assembly. In Assembly. To enrollment.

✓ Apr. 20—Returned from enrollment. Action of passage rescinded. Read third time. Amended. To printer.

✓ Apr. 23—From printer. To re-engrossment. Re-engrossed. Placed on General File. Read third time. Passed, as amended. Title approved. To Senate.

✓ Apr. 24—In Senate. Action of passage rescinded. Read third time. Passed. Title approved. To Assembly. In Assembly. To enrollment.

Apr. 27—Enrolled and delivered to Governor.

Apr. 30—Approved by the Governor. Chapter 729.

Sections 1 and 2 of this act are not effective.

The remainder of this act is effective at 12:02 a.m., July 1, 1973.

A. B. 301

ASSEMBLY BILL NO. 301—COMMITTEE ON COMMERCE

FEBRUARY 15, 1973

Referred to Committee on Commerce

SUMMARY—Creates consumer affairs division of department of commerce and regulates deceptive trade practices. Fiscal Note: Yes. (BDR 52-233)

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to consumer protection; creating the consumer affairs division of the department of commerce; regulating deceptive trade practices; 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. NRS 232.230 is hereby amended to read as follows:
2 232.230 1. The department of commerce is hereby created.
3 2. The department shall consist of a director and the following divi-
4 sions:
5 (a) Banking division.
6 (b) *Consumer affairs division.*
7 (c) Insurance division.
8 [(c)] (d) Real estate division.
9 [(d)] (e) Savings and loan division.
10 SEC. 2. NRS 232.250 is hereby amended to read as follows:
11 232.250 The director shall:
12 1. Appoint, with the consent of the governor, a chief of each of the
13 divisions of the department. In making such appointments, the director
14 shall obtain lists of nominees from recognized professional organizations,
15 if any, in the appropriate professions and shall make such appointments
16 after consultation with and concurrence of such organizations. The chief
17 of the banking division shall be known as the superintendent of banks,
18 *the chief of the consumer affairs division shall be known as the commis-*
19 *sioner of consumer affairs,* the chief of the insurance division shall be
20 known as the commissioner of insurance, the chief of the real estate
21 division shall be known as the real estate administrator, and the chief
22 of the savings and loan division shall be known as the commissioner of
23 savings associations.
24 2. Be responsible for the administration, through the divisions of the

1 department, of the provisions of Titles 55 to 57, inclusive, of NRS, chap-
2 ter 645 of NRS, sections 4 to 25, inclusive, of this act, and all other pro-
3 visions of law relating to the functions of the divisions of the department.

4 SEC. 3. Chapter 598 of NRS is hereby amended by adding thereto the
5 provisions set forth as sections 4 to 25, inclusive, of this act.

6 SEC. 4. As used in sections 4 to 25, inclusive, of this act, unless the
7 context otherwise requires, the words and terms defined in sections 5 to
8 16, inclusive, of this act have the meanings ascribed to them in such sec-
9 tions.

10 SEC. 5. "Advertisement" means the attempt by publication, dissem-
11 ination, solicitation or circulation to induce, directly or indirectly, any
12 person to enter into any obligation or to acquire any title or interest in
13 any property.

14 SEC. 6. "Certification mark" means a mark used in connection with
15 the goods or services of a person other than the certifier to indicate geo-
16 graphic origin, material, mode of manufacture, quality, accuracy or other
17 characteristics of the goods or services or to indicate that the work or
18 labor on the goods or services was performed by members of a union or
19 other organization.

20 SEC. 7. "Collective mark" means a mark used by members of a coop-
21 erative, association or other collective group or organization to identify
22 goods or services and distinguish them from those of others, or to indicate
23 membership in the collective group or organization.

24 SEC. 8. "Commissioner" means the commissioner of consumer affairs.

25 SEC. 9. A person engages in a "deceptive trade practice" when in the
26 course of his business or occupation he:

27 1. Knowingly passes off goods or services as those of another.

28 2. Knowingly makes a false representation as to the source, sponsor-
29 ship, approval or certification of goods or services.

30 3. Knowingly makes a false representation as to affiliation, connec-
31 tion, association with or certification by another.

32 4. Uses deceptive representations or designations of geographic origin
33 in connection with goods or services.

34 5. Knowingly makes a false representation as to the characteristics,
35 ingredients, uses, benefits, alterations or quantities of goods or services
36 or a false representation as to the sponsorship, approval, status, affiliation
37 or connection of a person therewith.

38 6. Represents that goods are original or new if he knows or should
39 know that they are deteriorated, altered, reconditioned, reclaimed, used or
40 secondhand.

41 7. Represents that goods or services are of a particular standard,
42 quality or grade, or that goods are of a particular style or model, if he
43 knows or should know that they are of another.

44 8. Disparages the goods, services or business of another by false or
45 misleading representation of fact.

46 9. Advertises goods or services with intent not to sell them as adver-
47 tised.

48 10. Advertises goods or services with intent not to supply reasonably
49 expectable public demand, unless the advertisement discloses a limitation
50 of quantity.

1 11. Advertises under the guise of obtaining sales personnel when
2 in fact the purpose is to first sell a product or service to the sales per-
3 sonnel applicant.

4 12. Makes false or misleading statements of fact concerning the
5 price of goods or services, or the reasons for, existence of or amounts
6 of price reductions.

7 13. Fails to deliver to the customer at the time of an installment sale
8 of goods or services, a written order, contract or receipt setting forth
9 the name and address of the seller and the name and address of the
10 organization which he represents, and all of the terms and conditions of
11 the sale, including a description of the goods or services, which shall be
12 stated in readable, clear and unambiguous language.

13 14. Employs "bait and switch" advertising, which consists of an
14 attractive but insincere offer to sell a product or service which the seller
15 in truth does not intend or desire to sell, accompanied by one or more
16 of the following practices:

17 (a) Refusal to show the product advertised.

18 (b) Disparagement in any respect of the advertised product or the
19 terms of sale.

20 (c) Requiring tie-in sales or other undisclosed conditions to be met
21 prior to selling the advertised product or service.

22 (d) Refusal to take orders for the product advertised for delivery within
23 a reasonable time.

24 (e) Showing or demonstrating a defective product which is unusable or
25 impractical for the purposes set forth in the advertisement.

26 (f) Accepting a deposit for the product and subsequently switching
27 the purchase order to a higher priced item.

28 (g) Failure to make deliveries of the product within a reasonable time
29 or to make a refund therefor.

30 15. Knowingly fails to identify flood-damaged or water-damaged
31 goods as to such damages.

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

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

38 SEC. 10. "Mark" means a word, name, symbol, device or any com-
39 bination of the foregoing in any form or arrangement.

40 SEC. 11. "Person" means an individual, corporation, business trust,
41 estate, trust, partnership, unincorporated association, two or more of any
42 of the foregoing having a joint or common interest, or any other legal
43 or commercial entity.

44 SEC. 12. "Property" means any real or personal property, or both
45 real and personal property, intangible property or services.

46 SEC. 13. "Service mark" means a mark used by a person to identify
47 services and to distinguish them from the services of others.

48 SEC. 14. "Sale" includes any sale, offer for sale or attempt to sell any
49 property for any consideration.

1 SEC. 15. "Trademark" means a mark used by a person to identify
2 goods and to distinguish them from the goods of others.

3 SEC. 16. "Trade name" means a word, name, symbol, device or any
4 combination of the foregoing in any form or arrangement used by a
5 person to identify his business or occupation, and to distinguish it from
6 the business or occupation of others.

7 SEC. 17. 1. Evidence that a person has engaged in a deceptive trade
8 practice is prima facie evidence of intent to injure competitors and to
9 destroy or substantially lessen competition.

10 2. The deceptive trade practices listed in section 9 of this act are
11 in addition to and do not limit the types of unfair trade practices action-
12 able at common law or defined as such in other statutes of this state.

13 SEC. 18. 1. Sections 4 to 25, inclusive, of this act do not apply to:

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

16 (b) Publishers, including outdoor advertising media, advertising agen-
17 cies, broadcasters or printers engaged in the dissemination of information
18 or reproduction of printed or pictorial matter who publish, broadcast or
19 reproduce material without knowledge of its deceptive character.

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

21 2. Sections 4 to 25, inclusive, of this act do not apply to the use by
22 a person of any service mark, trademark, certification mark, collective
23 mark, trade name or other trade identification which was used and not
24 abandoned prior to July 1, 1973, if the use was in good faith and is other-
25 wise lawful except for the provisions of sections 4 to 25, inclusive, of
26 this act.

27 SEC. 19. When the commissioner has cause to believe that any person
28 has engaged or is engaging in any deceptive trade practice, he may:

29 1. Request such person to file a statement or report in writing under
30 oath or otherwise, on such forms as shall be prescribed by the commis-
31 sioner, as to all facts and circumstances concerning the sale or advertise-
32 ment of property by such person, and such other data and information
33 as he may deem necessary.

34 2. Examine under oath any person in connection with the sale or
35 advertisement of any property.

36 3. Examine any property or sample thereof, record, book, docu-
37 ment, account or paper as he may deem necessary.

38 4. Make true copies, at the expense of the consumer affairs division
39 of the department of commerce, of any record, book, document, account
40 or paper examined, as provided in subsection 3 of this section, which
41 copies may be offered into evidence in lieu of the originals thereof in
42 actions brought pursuant to sections 21 and 22 of this act.

43 5. Pursuant to an order of any district court, impound any sample
44 of property which is material to such deceptive trade practice and retain
45 the property in his possession until completion of all proceedings as pro-
46 vided in sections 4 to 25, inclusive, of this act. An order shall not be
47 issued pursuant to this subsection unless the commissioner and the court
48 give the accused full opportunity to be heard and unless the commissioner
49 proves by clear and convincing evidence that the business activities of
50 the accused will not be impaired thereby.

1 SEC. 20. 1. The commissioner, in addition to other powers conferred
2 upon him by this act, may issue subpoenas to require the attendance of
3 witnesses or the production of documents, administer oaths, conduct
4 hearings in aid of any investigation or inquiry and prescribe such forms
5 and promulgate such rules as may be necessary to administer the provi-
6 sions of this act.

7 2. Service of any notice or subpoena shall be made as provided in
8 N.R.C.P. 45(c).

9 SEC. 21. If any person fails to cooperate with any investigation, as
10 provided in section 19 of this act, or if any person fails to obey a sub-
11 pena issued by the commissioner, the commissioner may apply to any
12 district court for equitable relief. Such application shall state reasonable
13 grounds showing that such relief is necessary to terminate or prevent a
14 deceptive trade practice. If the court is satisfied of such reasonable
15 grounds, the court may:

16 1. Grant injunctive relief restraining the sale or advertisement of any
17 property by such person.

18 2. Require the attendance of or the production of documents by such
19 person, or both.

20 3. Grant other relief necessary to compel compliance by such person.

21 SEC. 22. 1. When the commissioner has cause to believe that a per-
22 son has engaged or is engaging in any deceptive trade practice, he may
23 apply for an injunction or temporary restraining order, as provided in
24 N.R.C.P. 65, prohibiting such person from continuing such practices.
25 The court may make orders or judgments necessary to prevent the use by
26 such person of any deceptive trade practice or to restore to any other
27 person any money or property which may have been acquired by decep-
28 tive trade practices.

29 2. Where the commissioner has the authority to institute a civil
30 action or other proceeding, in lieu thereof or as a part thereof, he may
31 accept an assurance of discontinuance of any deceptive trade practice.
32 Such assurance may include a stipulation for the voluntary payment by
33 the alleged violator of the costs of investigation and the costs of institut-
34 ing the action or proceeding and for the voluntary restitution of any
35 money or property acquired by deceptive trade practices. Except as pro-
36 vided in the next sentence, any such assurance of discontinuance accepted
37 by the commissioner and any such stipulation filed with the court shall
38 be confidential to the parties to such action or proceeding and to the
39 court and its employees. Upon final judgment by the court that an injunc-
40 tion or a temporary restraining order, issued as provided in subsection 1
41 of this section, has been violated, an assurance of discontinuance has
42 been violated or a person has engaged in the same deceptive trade prac-
43 tice as had previously been enjoined, the assurance of discontinuance or
44 stipulation shall become a public record. Proof by a preponderance of
45 evidence of a violation of such an assurance constitutes prima facie evi-
46 dence of a deceptive trade practice for the purpose of any civil action or
47 proceeding brought thereafter by the commissioner, whether a new action
48 or a subsequent motion or petition in any pending action or proceeding.

49 SEC. 23. 1. The commissioner shall not release any information or

1 evidence obtained by him to any district attorney or his investigator or
2 to any law enforcement officer for use in any criminal prosecution. Any
3 information or evidence produced by the commissioner is not admissible
4 in evidence in any criminal prosecution. This subsection does not prevent
5 the commissioner from disclosing to any district attorney or law enforce-
6 ment officer the fact of the commission of a crime by any person, or pre-
7 vent any district attorney or law enforcement officer from independently
8 producing or obtaining the same or similar information or evidence for
9 use in any criminal prosecution.

10 2. Subject to the provisions of subsection 2 of section 22 of this act,
11 the commissioner shall not make public the name of any person alleged
12 to have committed a deceptive trade practice, and the records of investi-
13 gation of the commissioner are not public records. This subsection does
14 not prevent the commissioner from issuing public statements describing
15 or warning of any course of conduct which constitutes a deceptive trade
16 practice.

17 SEC. 24. Any person who violates any court order or injunction
18 issued pursuant to sections 4 to 25, inclusive, of this act shall forfeit and
19 pay to the general fund in the state treasury a civil penalty of not more
20 than \$10,000. For the purpose of this section, the court issuing any such
21 order or injunction shall retain jurisdiction over any action or proceeding
22 instituted by the commissioner. Such civil penalties shall be in addition to
23 any other penalty or remedy available for the enforcement of the provi-
24 sions of sections 4 to 25, inclusive, of this act.

25 SEC. 25. The provisions of sections 4 to 25, inclusive, of this act
26 shall be available to any person in a civil action for any claim against
27 any person who has acquired money or property by deceptive trade prac-
28 tices. Costs shall be allowed to the prevailing party unless the court
29 otherwise directs. The court may award attorneys' fees to the prevailing
30 party.

BDR 52-233
A.B. 301
S.B.

FISCAL NOTE

AMENDMENTS:

Assembly: First Reading
Second Reading
Third Reading
Senate: First Reading
Second Reading
Third Reading

Date transmitted January 18, 1973

Agency submitting Department of Commerce Date prepared January 18, 1973

Summary	Fiscal Year 1972-73	Fiscal Year 1973-74	Fiscal Year 1974-75	Continuing
Salary-Payroll	-----	115,332	119,409	
Out-of-State Travel	-----	2,000	2,000	
In-State Travel	-----	3,000	3,000	
Operating	-----	17,930	18,550	
Equipment	-----	8,334		
Training	-----	250	250	
Total.....	-----	146,846	143,209	
These appropriations are/are not included in Executive Budget				
EXPLANATION (use continuation sheets if required):				

The proposed work program requires the services of 11 employees, most of whom would be field representatives. These field representatives would investigate complaints and would be required to travel.

The establishment of a new division requires a capital outlay for equipment.

Signature _____

Title Director

Approved by Department of Administration Yes

Comments by Department of Administration:

Signature _____

Date January 22, 1973

Title Director of Administration

Findings of Fiscal Analyst:

Signature _____

Date Title

APPELLANT'S MOTION FOR JUDICIAL NOTICE 007

MINUTES

53

COMMITTEE: COMMERCE

DATE: Wednesday, February 14, 1973

MEMBERS PRESENT: Vice-Chairman Wittenberg; Dr. Robinson,
Messrs. Hafen, Demers, Bickerstaff,
Capurro, Dini and Torvinen;

MEMBERS ABSENT: Chairman Prince

GUESTS:	<u>Name</u>	<u>Representing</u>
	Joe Johnston	Nevada Southern Title, LV
	Don Winne	Insurance Division
	Mike Mellnor	Dept. of Commerce
	Preston Tidvall	Superintendent of Banks
	R. E. Hansen	Real Estate Division
	Gene Milligan	Nevada Assn. Realtors
	Steve Rucker	Sierra Meat & Provisions
	Brendan Riey	AP
	W. H. Tarkington	Savings & Loan Division

The meeting was called to order at 4:05 p.m. by Vice-Chairman Wittenberg. He stated that he had received the following bills to be introduced by the Committee: 1) a bill* creating a division of consumer affairs; and 2) a bill regarding employment agencies. After discussion, Mr. Dini moved, Mr. Demers seconded a motion to approve introduction of the first bill. It was unanimously carried. After further discussion, Mr. Capurro moved that the second bill be introduced. Lacking a second, the motion died.

Mr. Capurro introduced Mr. Steve Rucker of Sierra Meat & Provisions from Reno to discuss AB 53. Mr. Rucker stated that all beef in Nevada is not federally inspected; that by requiring all slaughterhouses to do so would place a heavy financial burden on them; that two sessions ago, funds were allocated for State inspections, whose standards are the same as those of the USDA. He made suggestions for re-wording the bill to cover advertisements on pre-packaged meat. These suggested amendments were given to Mr. Demers who would present an amendment to the bill. He also discussed the "yield" grade meat which is sold. He suggested that this grade be clearly designated on all meat, both in the stores and through home meat freezing companies.

*A.B. 301 (BPR 52-233)

MINUTES

COMMITTEE: COMMERCE

DATE: Monday, March 19, 1973

MEMBERS PRESENT: Chairman Prince, Dr. Robinson, Messrs Bickerstaff, Capurro, Wittenberg, Demers, Dini, Hafen, and Torvinen;

MEMBERS ABSENT: None

GUESTS:	<u>Name</u>	<u>Representing</u>
	Charles Levinson	Consumers' League
	Tom Leen	" "
	Thomas Lorentzen	---
	Kay Ricks	U of N, School of Home Econ.
	Joyce Jones	" " " "
	Minnie Inzer	" " " "
	George Vargas	American Insurance Assn.
	Eileen Brookman	Assemblyman
	Elliott Sattler	Attorney General's Office
	Mike Melner	Director Commerce Dept.
	Daryl Capurro	Nev. Fran. Auto Dealers
	Pete Holden	Washoe County D.A.'s Office
	George Archer	Amer. Asso Retired People
	Pete Kelly	Retail Merchants Assn.
	John Garvin	Montgomery Ward
	Tom Waterman	Penney's
	Charles McKenney	Sears
	Ken O'Connell	Las Vegas Chamber of Commerce
	Sonner Greenspan	Park Lane Center
	Henry Michel	" " "
	Larry Struve	Washoe County District Atty
	Vickie Kolousek	U of N Home Economics
	Charlotte Lorello	" " " "
	Rebecca Ratliff	" " " "
	Fred Lugar	Penney's
	Rex Lundberg	Commerce Dept., Las Vegas
	Joe Lawler	" " Carson City
	Keith Ashworth	Assembly Speaker
	Suzie Hood	FTC
	Ray Lloyd	"
	Lester H. Berkson	Attorney

Chairman Prince called the meeting to order at 4:00 p.m. Mr. Capurro asked the Committee to allow him to make certain changes in the amendments to AB 227, particularly in the Assigned Claims portion of the bill, to bring them into conformity with Nevada law. Mr. Demers moved, Mr. Wittenberg seconded

the motion. It was unanimously passed.

Due to over-crowded conditions in Room 222, the Committee adjourned to Room 214.

Mr. Wittenberg, as one of the sponsors of AB 300, stated that this bill includes fair trade practices and AB 301 establishes a Consumers' Affairs Division of the Commerce Department; that a majority of the introducers would prefer taking the strong enforcement language out of AB 300 and include it in AB 301 for a better enforcement provision. He asked witnesses to consider this in their testimony.

Dr. Levinson of the Consumer's League stated that he supports AB 300, but feels that there are many things the bill does not cover in respect to food services. He presented two pieces of meat which were the same cut of meat, in his opinion, but indicated a price difference of 14%. This is the type of practice the consumer needs some protection from. The consumer has no recourse and there are presently no laws to cover this type of violation.

Mr. Demers stated that Senator Lamb is presently considering introduction of laws to cover meat labeling similar to those of New York.

Tom Leen, attorney for the Consumers League, stated that there is a great need for consumer laws to cover deceptive practices and he gave historical reasons for this; that consumers today are forced to buy products that they really don't understand; that there is no equality in bargaining between consumers and retailers; that there are many occasions when consumers are defrauded in ways that are not illegal and are very difficult to prove; that Nevada is one of the very few states that have no consumer protection laws.

Chairman Prince stated that it would cost \$146,846.00 to set up the Consumer's Affairs Division.

Mike Melner of the Commerce Department stated that in 1971 the Governor, by Executive Order, established the Consumer's Affairs Division of the Commerce Department, but it was not funded in any way; that they have handled 3,000 complaints but have not been able to prosecute any of them; that they have worked fairly well with limited funds and limited legislation; that honest businessmen can only benefit from this kind of legislation and the dishonest businessmen will be forced out of business; that AB 301 is very broad and comprehensive; that there are only six states which do not have this act. Regarding AB 300, he felt that it would be more

COMMERCE MINUTES - page three - Mon., March 19, 1973

effective if it were amended and included in AB 301; that the Commerce Department would support any amendments which would add definitions of unfair trade practices and give more authority to the District Attorney's Office. He suggested removing Section 25 from AB 301.

Mr. Demers asked Mr. Melner if he felt this bill has the teeth necessary in it to properly enforce the act. Mr. Melner stated that with amendments and the language from AB 300 added to it, it would.

Mr. Larry Struve of the Washoe County District Attorney's Office stated that many states are now simply adopting the FTC Consumers' Protection Act; that Section 5 of AB 300 and Section 9 of AB 301 are from this Act. He feels that concurrent jurisdiction between the State and local District Attorney offices is the best way to enforce the provisions of this act. He stated that AB 301 is very weak; that it only allows for injunctive enforcement which would leave the Commerce Department with very little strength to enforce the bill; that the amendments prepared by the Washoe County District Attorney's Office will provide for civil penalties for any wilful acts. (See Exhibit "A" for amendments.)

Mr. Struve felt that the FTC laws incorporated into the bill gives the bill more flexibility, particularly in view of the fact that the Legislature only meets biannually.

Mr. Wittenberg pointed out that if the FTC amends their law while the Nevada Legislature is not in session, their changes would still apply in Nevada. Mr. Struve felt that without the criminal penalties in the law, they would not be in a good enforcement position and he urged the Committee to consider these provisions.

Mr. Torvinen stated that he felt the discovery provisions in Section 19 were very broad and could be very depressing to business. Mr. Melner stated that many agencies of the Commerce Department have these powers; that the reputable merchant will cooperate with their office and show them their records. Mr. Struve stated that most of their complaints were received from businessmen, not consumers, because of price-cutting practices causing the businessmen to lose customers. Mr. Bickerstaff asked what was meant or intended by a "reasonable time" in which to correct an unfair practice. Mr. Struve stated that it was what the consumer was "given to believe".

Mr. Holden, an investigator for the Washoe County District Attorney's Office, stated that because most of the states surrounding Nevada have strong consumer laws, crooks are driven to Nevada where there aren't any. "We have had problems with each

and every provision of Section 9," he stated, and that "the legitimate businessman has nothing to fear from this". He gave examples of used cars being sold for new and that under the present situation, all he can do is advise the consumer to sue civilly

Mr. Rex Lundberg of the Las Vegas Office of the Consumer's Affairs Division of the Commerce Department, stated and felt that AB 301 would be good for both consumers and businessmen. He stated that of the 3,000 complaints they had received, 753 were against firms and/or individuals; that 78% had been resolved in favor of the consumer; 15% were a "draw", and 7% were in favor of the businessman; that there are more problems in some industries than others; that this bill would cover just about every industry the consumer will come in contact with.

Discussion was held regarding Dr. Robinson's query regarding protection for the businessman who might be found innocent of any unfair practice, yet could be put out of business in the meantime. Mr. Lundberg and Mr. Melner both stated that the Commerce Department would have no powers to create a hardship of any businessman nor impound any property without an order from a District Court.

Mr. Garvin, an attorney representing Montgomery Ward and the Nevada Retailers Association stated that he felt AB 230 took care of many of the problems covered by AB 300; that he was in favor of AB 300 as an adjunct to AB 230. He had several suggested changes to be made in AB 301 and the proposed amendments. Chairman Prince asked Mr. Garvin to meet with Mr. Wittenberg to draft his suggested changes.

Ken O'Connell Dir LV CJC, ends ses AB 301 as amended.

Mr. Wittenberg asked for Committee approval to introduction of five housekeeping bills* related to the Savings and Loan division of the Commerce Department. Mr. Wittenberg moved that they be presented to the Committee; Mr. Capurro seconded the motion. All the Committee members approved the motion with the exception of Mr. Torvinen who voted "nay". Mr. Demers moved, and Mr. Wittenberg seconded a motion to introduce an insurance bill^A. The vote was unanimous.

The meeting was adjourned at 6:00 p.m.

Respectfully submitted,

PHYLLIS BERKSON, Attache

* A.B. 728 (BDR 56-145), A.B. 729 (BDR 56-142), A.B. 730 (BDR 56-139), A.B. 731 (BDR 56-140)
A.B. 732 (BDR 56-144)

Δ A.B. 738 (BDR 57-1320)

ASSEMBLY

18

AGENDA FOR COMMITTEE ON COMMERCE

Date Mon., March 19 Time 4:00 p.m. Room 222

Bills or Resolutions
to be considered

Subject

Counsel
requested*

THIS AGENDA SUPERCEDES AND CANCELS PREVIOUS AGENDA DATED MARCH 2

AB 300

**Prohibits unfair methods of competition
and unfair or deceptive acts or practices
in conduct of any trade or commerce;**

AB 301

Creates consumer affairs division of the
Department of Commerce and regulates de-
ceptive trade practices.

*Please do not ask for counsel unless necessary.

APPELLANT'S MOTION FOR JUDICIAL NOTICE 013

Ex. A
231

Adopted <input type="checkbox"/>	Adopted <input type="checkbox"/>	Amendments to Assembly / Senate
Lost <input type="checkbox"/>	Lost <input type="checkbox"/>	
Date:	Date:	Bill / Joint Resolution No. 30 (BDR 30-222)
Initial:	Initial:	
Concurred in <input type="checkbox"/>	Concurred in <input type="checkbox"/>	Proposed by
Not concurred in <input type="checkbox"/>	Not concurred in <input type="checkbox"/>	
Date:	Date:	
Initial:	Initial:	

Amendment N^o 466



Amend sec. 9, pages 2 and 3, by deleting lines 25 through 50 on page 2, and deleting lines 1 through 37 on page 3 and inserting:

"Sec. 9. "Documentary material" means the original or a copy of any writing, including but not limited to any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording wherever located."

AS Form 1a (AMENDMENT BLANK)

3044



Drafted 3/17/73 By CEM (more)

To Journal
(3) CFB

Amendment No. 100 to Assembly Bill No. 301 (BDR 52-000) Page 2

Amend the bill as a whole by adding a new section designated sec. 9.5 following sec. 9 to read as follows:

"Sec. 9.5. "Examine or examination" of documentary material means the inspection, study or copying of any documentary material, including the taking of testimony under oath or acknowledgment relating to such documentary material."

Amend sec. 14, page 3, by deleting line 49 and inserting:

"property for any consideration in trade or commerce."

Amend the bill as a whole by adding a new section designated sec. 14.5 following sec. 14 to read as follows:

"Sec. 14.5. "Trade" and "commerce" means the advertising, offering for sale, sale or disposition of any services, real or personal property, commodity or article of value wherever situated which directly or indirectly affects the people of this state."

Amend the bill as a whole by adding a new section designated as sec. 16.5 following sec. 16 to read as follows:

"Sec. 16.5. It is unlawful for any person in the course of his business or occupation or in the conduct of any trade or commerce to engage in a "deceptive trade practice," which shall include the following:

1. Passing off goods or services which are known or through the exercise of reasonable care ought to be known as being those of another.
2. Making a false representation or causing confusion or likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services.

APPELLANT'S MOTION FOR JUDICIAL NOTICE 015

Amendment No. 456 to Assembly Bill No. 301 (BDR 52-223) Page 2

3. Making a false representation or causing confusion or likelihood of confusion or misunderstanding as to any affiliation, connection, association with or certification by another in connection with any goods or services.

4. Using deceptive representations or designations of geographic origin in connection with goods or services.

5. Making any false representation that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, alterations or quantities of goods or services which are known or ought to be known they do not have or that a person has a sponsorship, approval, status, affiliation or connection of a person therewith which he does not have.

6. Representing that goods are original or new if he knows or through the exercise of reasonable care ought to have known that they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.

7. Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model when he knows or through the exercise of reasonable care ought to know that they are of another.

8. Disparaging the goods, services or business of another by using false or misleading representations of fact.

9. Advertising goods or services with the intent not to sell them in the manner or condition as advertised.

10. Advertising goods or services with the knowledge that the supply of such goods or services is insufficient to handle a reasonably expectable

Amendment No. _____ to _____ Assembly Bill No. 331 (BDR 53-333) Page 4

publ. demand, unless the advertisement discloses a limitation of quantity.

11. Advertising under the guise of obtaining sales personnel when in fact the primary purpose of such advertising is to sell a product or service to the sales personnel applicant.

12. Making false or misleading statements of fact concerning the price of any goods or services, or the reasons for the existence of or the motivation for or the amounts of price reductions.

13. Failing to deliver to the customer at the time of an installment sale of goods or services, a written order, contract or receipt setting forth the name and address of the seller and the name and address of the organization which he represents, and all of the terms and conditions of the sale, including a description of the goods or services, which shall be stated in readable, clear and unambiguous language.

14. Employing "bait and switch" advertising, which consists of an attractive but insincere offer to sell a product or service which the seller in truth does not intend or desire to sell, accompanied by one or more of the following practices:

- (a) Refusal to show the product advertised.
- (b) Disparagement in any respect of the advertised product or the terms of sale.
- (c) Requiring tie-in sales or other undisclosed conditions to be met prior to selling the advertised product or service.
- (d) Refusal to take orders for the product advertised for delivery within a reasonable time.

Amendment No. 165 to Assembly Bill No. 165 (BDR 5-1-73) Page 2

(e) Showing or demonstrating a defective product which is unusable or impractical for the purposes set forth in the advertisement.

(f) Accepting a deposit for the product and subsequently switching the purchase order to a higher priced item.

(g) Failure to make deliveries of the product within a reasonable time or to make a refund therefor.

15. Failing to identify flood-damaged or water-damaged goods as to such damage.

16. Soliciting by telephone or door to door as a seller, unless the seller identifies himself, whom he represents and the purpose of his call within 30 seconds after beginning the conversation.

17. Stating that services, replacement parts or repairs are needed when no such services, replacement parts or repairs are actually needed.

18. Engaging in any act or practice deemed to be an unfair method of competition or an unfair or deceptive act or practice in the conduct of any trade or commerce within the meaning of Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1), as from time to time amended."

Amend sec. 17, page 4, line 10, by deleting "2" and inserting "10.5".

Amend sec. 18, page 4, by deleting line 13 and inserting:

"reproduce material in good faith and without knowledge of its deceptive character."

Amend the bill as a whole by adding new sections designated as sec.

22.1, sec. 22.2, sec. 22.3, sec. 22.4, sec. 22.5, sec. 22.6 and sec. 22.7 following sec. 22 to read as follows:

Amendment No. 188 to Assembly Bill No. 331 (BDR 52-236) Page 5

Sec. 22.1. Notwithstanding the enforcement powers granted to the commissioner herein, whenever the district attorney of any county has reason to believe that any person is using, has used, or is about to use any deceptive trade practice prohibited herein, he may bring an action in the name of the State of Nevada against such person to obtain a temporary or permanent injunction against the use of such method, act or practice.

Sec. 22.2. Except as otherwise provided in section 22.4 of this act, appropriate notice must be given by any district attorney to any person against whom an action is brought pursuant to section 22.1 of this act. Such notice must state generally the relief sought and be served in accordance with section 22.7 of this act at least 3 days prior to the filing of the action.

Sec. 22.3. Any action brought pursuant to sections 22 and 22.1 of this act may be brought:

1. In a district court in the county in which the defendant resides or has his principal place of business;

2. In the district court in Carson City if the parties consent thereto; or

3. In the district court in any county where a deceptive trade practice has occurred. Any court in which an action is brought pursuant to sections 22 and 22.1 of this act may issue any temporary or permanent injunction in accordance with the Nevada Rules of Civil Procedure to

Amendment No. 418 to Assembly Bill No. 131 (BDR 62-233) Page 7

restrain and prevent any violation of any provisions of this act, and such injunctions shall be issued without bond.

Sec. 22.4. Whenever the district attorney of any county has reason to believe that the delay caused by complying with the notice requirement of section 22.2 of this act would cause immediate harm to the public of this state or endanger the public welfare, the district attorney may immediately institute a suit for injunctive relief, including a request for a temporary restraining order, upon proof of specific facts shown by affidavit or by verified complaint or otherwise that such immediate harm will be or is likely to be caused by such delay. The Nevada Rules of Civil Procedure pertaining to the issuance of temporary restraining orders shall govern all actions instituted pursuant to this section.

Sec. 22.5. The court in which an action is brought pursuant to sections 22 to 22.4, inclusive, of this act may make such additional orders or judgments as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any deceptive trade practice which violates any of the provisions of sections 4 to 25, inclusive, of this act, including the appointment of a receiver or the revocation of a license or certificate which authorizes a person to engage in business in this state, or both, but such additional orders or judgments may be entered only after a formal determination has been made by the court that a deceptive trade practice has occurred.

Sec. 22.6. 1. In proceeding pursuant to sections 22.2 to 24.5, inclusive,

of this act, the district attorney may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be in violation of section 16.5 of this act from any person who is engaged or is about to engage in such method, act or practice.

2. Any assurance made pursuant to subsection 1 shall be in writing and shall be filed with and subject to the approval of the district court in the county in which the alleged violator resides or has his principal place of business, or the district court in any county where any deceptive trade practice has occurred or is about to occur or the district court agreed to by the parties.

3. An assurance of voluntary compliance made pursuant to subsections 1 and 2 above shall not be considered an admission of violation for any purpose but shall be subject to the terms, limitations, and conditions of section 22 of this act.

4. Matters closed by the filing of such an assurance may be reopened at any time by the district attorney who participated in the filing of any assurance of voluntary compliance pursuant to subsections 1 and 2 for further proceedings in the public interest as provided in sections 22.2 to 22.4, inclusive, of this act.

5. If any assurance of voluntary compliance is filed and approved by a district court in accordance with the provisions of subsection 2, no other district attorney in any county in this state or the commissioner or his attorney may file any action under the provisions of sections 4 to 25, inclusive, of this act as to any matters covered in such assurance of

voluntary compliance.

Sec. 22.7. Service of any notice under sections 22.1 to 22.6, inclusive,
of this act shall be made by personal service within the State of Nevada,
but if such service cannot be obtained, substituted service therefor may
may be made in any of the following ways:

1. Personal service thereof outside the State of Nevada;
2. The mailing thereof by registered or certified mail to the last-
known place of business, residence or both whether inside or outside the
State of Nevada of such person for whom the notice is intended, in which
event such service shall be deemed complete upon the third day following
the mailing of any notice required under this section;
3. As to any person other than a natural person, service shall
be in the manner provided in the Nevada Rules of Civil Procedure for com-
pleting service of process on such a person, corporation, association or
organization; or
4. Such service as any district court may direct in lieu of personal
[service within the State of Nevada.]

Amend sec. 23, by deleting line 49 on page 5 and lines 1 through 16 on
page 6 and inserting:

"Sec. 23. 1. Nothing contained herein shall prohibit the commissioner
from disclosing to the attorney general or any district attorney or law
enforcement officer the fact that a crime has been committed by any person,
which fact has become known as a result of any investigation conducted
pursuant to the provisions of sections 4 to 25, inclusive, of this act.

To Journal

Amendment No. 333 to Assembly Bill No. 333 (BDR 72-333) Page 11

2. Subject to the provisions of subsection 2 of section 22 of this act, the commissioner shall not make public the name of any person alleged to have committed a deceptive trade practice. This subsection does not prevent the commissioner from issuing public statements describing or warning of any course of conduct which constitutes a deceptive trade practice."

Amend sec. 24, page 6, by deleting lines 17 through 24 and inserting:
"Sec. 24. Any person who violates any court order or injunction issued pursuant to sections 4 to 25, inclusive, of this act, upon a complaint brought by either the commissioner or the district attorney of any county of this state shall forfeit and pay a civil penalty of not more than \$25,000 for each violation. For the purpose of this section, the court issuing any such order or injunction shall retain jurisdiction over any such action or proceeding. Such civil penalties shall be in addition to any other penalty or remedy available for the enforcement of the provisions of sections 4 to 25, inclusive, of this act."

Amend the bill as a whole by adding new sections designated as sec. 24.1, sec. 24.2 and sec. 24.3 following sec. 24 to read as follows:

"Sec. 24.1. In any action brought pursuant to sections 22 to 23.4, inclusive, of this act, if the district court finds that any person is willfully using or has willfully used a method, act or practice declared unlawful by section 16.5 of this act, the commissioner or the district attorney of any county in this state bringing such action may recover a civil penalty not to exceed \$2,500 for each violation.

Amendment No. 16 to Assembly Bill No. 101 (BDR 82-101) Page 11

Sec. 24.2. Any person who engages in a willful, knowing or fraudulent course of conduct declared unlawful by section 16.5 of this act shall be punished:

1. For the first offense, for a misdemeanor;
2. For the second offense and all subsequent offenses, for a gross misdemeanor.

Sec. 24.3. 1. Prior to instituting any action pursuant to sections 22.1 to 22.7, inclusive, of this act, the district attorney of any county in this state shall ascertain whether or not the action in question is subject to the regulatory authority of any state agency, board, official or other authority established by virtue of the Nevada Revised Statutes, except the regulatory or administrative authority provided to the commissioner of consumer affairs by sections 4 to 25, inclusive, of this act.

2. If such action is subject to such regulatory authority or any regulation duly adopted and promulgated or any statutes administered by any state regulatory agency, board, official or other authority as provided in subsection 1, the district attorney shall not institute any proceeding under sections 22.1 to 22.7, inclusive, of this act until such state agency, board, official or other state regulatory authority has had reasonable time to investigate or take any appropriate action with respect to the alleged facts.

3. For the purposes of this section, a reasonable time has elapsed if no final action or other disposition is made of any matter otherwise falling within the provisions of sections 4 to 25, inclusive, of this

Amendment No. 100 to Bill No. 100 (BDR 100-100) Page 12

act within 30 days after such matter is referred to or brought to the attention of any state agency, board, official or other regulatory authority, except the commissioner of consumer affairs, as provided herein.

4. This section does not prohibit the district attorney of any county from filing an action pursuant to the provisions of sections 22.1 to 22.4, inclusive, of this act, if the referral of any matters subject to the provisions of this act to any state agency, board, official or other regulatory authority would cause immediate harm to the public of this state or endanger the public health, safety or welfare, and such facts are shown by affidavit or by verified complaint.

Amend the title of the bill by deleting lines 2 and 3 and inserting:
"the department of commerce; prohibiting deceptive trade practices; providing injunctive relief; providing a method of voluntary compliance; providing for notice; providing civil and criminal penalties; and providing other matters properly relating thereto."

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MINUTES

COMMITTEE: COMMERCE

MEMBERS PRESENT: Chairman Prince, Dr. Robinson, Messrs Demers, Hafen and Wittenberg;

MEMBERS ABSENT: Messrs Capurro, Bickerstaff, Dini and Torvinen;

DATE: Thursday, March 22, 1973

GUESTS: See attached Exhibit "A"

Chairman Prince called the meeting to order at 4:00 p. m. He asked for Committee introduction of a bill* regulating mortgage companies. Since Mr. Torvinen and Mr. Dini were absent to explain the bill, Chairman Prince suggested that it be held over until the next meeting. This was one of two bills requested by the Committee to replace AB 167.

Regarding AB 343, Mr. Demers moved to indefinitely postpone the bill and Mr. Wittenberg seconded the motion because the bill is identical to SB 156. This bill relates to insurance rates being increased solely because of an insured's age. The vote was unanimous. Regarding AB 669, a bill relating to telephone subscriber's indicating in the telephone book if they are or are not interested in telephone solicitations, the Committee agreed to hold the bill until a later date. Mr. Demers, referring back to SB 156 (AB 343), stated that he felt Paragraph 3 of the bill discriminatory against drivers between the ages of 16 and 25. Mr. Demers moved to pass the bill; Dr. Robinson seconded the motion. It was unanimously carried.

Mr. Wittenberg presented AB 301 as amended which creates a Consumer's Affairs Division of the Department of Commerce. He stated that the "meat" was taken from AB 300 and added to this bill to strengthen it; that he hoped the Committee would pass the bill. Mr. Hafen stated that he opposed the bill principally on a philosophical basis and also for the reason that the bill would allow harassment of legitimate businessmen. Mr. Demers felt that we would be creating a power that is too strong in the State, though subsequent Legislative sessions could amend the act. Dr. Robinson agreed that consumers with the slightest gripe could complain and harass. Mr. Demers wanted it clear that no information obtained by this Division could be used for grand jury investigations. Mr. Wittenberg asked if the Committee was agreeable to passing this bill with no Consumers Affairs Division established.

*A.B. 906 (BVR 54-1988)

Chairman Prince presented a series of bills requested by the Savings and Loan Division of the Commerce Department: AB 728, 729, 730, 731, and 732. Mr. Hafen asked for a letter from Mr. Tarkington of the Savings and Loan Division explaining AB 728. Otherwise it was agreeable with the Committee to pass the

Joint Mtg. with
Senate Transportation

At 4:25 p.m. the Committee adjourned to Room 345 to meet with the Senate Transportation Committee. Present from the Senate were Senators William Raggio, Carl Dodge, Warren Monroe, Richard Blakemore and Archie Pozzi. Absent were Senators Helen Herr and Joe Neal.

Mr. Pete Holden of the Washoe County District Attorneys' Office testified on AB 296 prohibiting unauthorized motor vehicle repair cost estimates and statements of charges. He discussed the provisions of the bill and stated that SB 284, AB 230, AB 300 and 301 all have been heard and include the penalty clause of \$2,500 for each violation. Senator Dodge asked if an estimate must be given before any work is done at all. Mr. Holden stated, "Yes, it must be given at the time the car is brought in." He further stated that the garage would give a "tear-down" estimate; then when it is determined what actual work must be done, another estimate is given.

He further stated that his office has received 700 complaints in six months, 31% of which refer to automobile repairs. Under present law there is nothing that can be done to correct these unfair practices by the District Attorney's Office. Though these practices are performed by perhaps only 3% or 5% of all the Reno automobile repairmen, something must be done to protect the legitimate repairmen who are losing business because the illegitimate repairmen are enticing customers into their shops through unfair means. This bill would place certain burdens on the legitimate repairmen because they must maintain certain forms. "We will do our best to put the illegitimate operators out of business," he said.

Mr. Demers asked if this bill isn't duplicating provisions contained in the proposed Consumers' Affairs Division. Mr. Holden stated that they request specific legislation only when there is a big problem. He further stated that this bill would not create a new bureaucracy, would require no licensing, no appropriation for funds, and that 31 or 32 states have enacted such legislation. The Washoe County DA's office endorses this bill over other proposals and Clark County feels the same.

MINUTES

COMMITTEE: COMMERCE

DATE: Wednesday, March 28, 1973

MEMBERS PRESENT: Chairman Prince, Dr. Robinson, Messrs. Bickerstaff, Wittenberg, Demers, Torvinen, Hafen, Capurro and Dini;

MEMBERS ABSENT: None

GUESTS: See attached sheet

Chairman Prince called the meeting to order at 3:35 p.m. He asked for Committee introduction of a bill regulating escrow companies. This bill is the second bill to come from an earlier bill discussed by the Committee regulating both escrow companies and mortgage companies. Mr. Hafen moved for introduction, Mr. Demers seconded the motion. It was unanimously passed.

Mr. Wittenberg discussed AB 301 stating that the unfair trade practices provision from AB 300 had been made a part of AB 301; that the provision concerning "class action" suits had been removed. Mr. Torvinen discussed amendment no. 4771 which he had prepared covering these two bills which included the Attorney General's services in prosecuting offenders along with District Attorneys and a consent decree to cease and desist. (See Exhibit "A" for the complete amendment.) Mr. Wittenberg stated that he does not like the Attorney General in the bill as he is already included in all State Departments requiring his services. Mr. Torvinen read a letter from the Attorney General which stated that this bill gives authority to the District Attorneys which his office does not have and should have.

Mr. Melner of the Commerce Department stated that his office does not have its own attorneys; that the Attorney General does all their work; that he hopes this bill doesn't set up a new division of attorneys to prosecute consumer affairs in the Commerce Department which would only duplicate those services already performed by the Attorney General.

Dr. Robinson stated his disapproval of the removal of "knowingly" in several sections of AB 301. Mr. Wittenberg stated that the term "reasonable man" had replaced this so that violations of the act could be more easily proven.

* A.B. 889 (BDR 54-1693)

Mr. Wittenberg moved to pass AB 301 with Mr. Torvinen's amendments, deleting the inclusion of the Attorney General and the "cease and desist" provision; Mr. Demers seconded the motion. Voting "aye" were Messrs Prince, Wittenberg, Demers, Dini, Robinson, Bickerstaff and Capurro. Voting "nay" were Messrs Torvinen and Hafen. The motion was passed.

Mr. Wittenberg discussed AB 296 prohibiting unauthorized motor vehicle repair and requiring cost estimates and statements of charges. He stated that his prepared amendments would delete minor repairs from requiring estimates and that estimates would only be provided in writing if the customer requests such written estimate. Mr. Dini suggested exempting farm equipment dealers. Mr. Wittenberg moved a "do pass"; Mr. Dini seconded the motion. Dr. Robinson stated his opposition to the entire concept stating that we will all be paying more for automobile repairs because they will be over-estimated. Mr. Demers asked if we are going to regulate every industry in the State. (See Exhibit "B" for the complete amendments to AB 296.) Mr. Capurro moved to amend Mr. Wittenberg's motion by indefinitely postponing AB 296. Mr. Torvinen seconded the motion. The motion was passed with Messrs Prince, Demers, Robinson, Bickerstaff, Capurro, Hafen and Torvinen voting "aye"; Messrs Dini and Wittenberg voting "nay". The motion passed to indefinitely postpone AB 296.

Regarding AB 740 providing guidelines for retaining certain funds under public works contracts, Mr. Rowland Oakes of the Association of General Contractors stated that this bill will enable contractors to have more use of funds; that it should reduce costs to public bodies; that bonds could be used in place of retention of 10% of the total cost of a building until completion; that the second half of the bill was proposed by the sub-contractors which he opposes because it sets up a relationship between the sub-contractor and owner which establishes a dangerous precedent. This would allow the owner to be subject to claims of the sub-contractors. Mr. Torvinen expressed concern over sub-contractors not being paid by the general contractor, going against the bond and having to wait for an indefinite period of time before being paid. Mr. Oakes states that sub-contractors should be paid from the funds which are retained. Mr. Torvinen questioned that bonding companies would agree to this. Mr. Oakes felt it unfair to penalize all contractors because of a few bad ones.

Mr. Max Christiansen, representing air conditioning and sheet metal contractors, as well as steel, masonry, and plumbing contractors, agreed with Mr. Oakes and stated

<input type="checkbox"/> Adopted <input type="checkbox"/> Lost Date: _____ Initial: _____ <input type="checkbox"/> Concurred in <input type="checkbox"/> Not concurred in Date: _____ Initial: _____	<input type="checkbox"/> Adopted <input type="checkbox"/> Lost Date: _____ Initial: _____ <input type="checkbox"/> Concurred in <input type="checkbox"/> Not concurred in Date: _____ Initial: _____	Amendments to Assembly / Senate Bill/Joint Resolution No. <u>301</u> (BDR <u>12-222</u>) Proposed by <u>Committee on Commerce</u> 272
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Amendment No. 4771

Replaces Amendment No. 466

Amend sec. 2, page 2, line 2, by deleting "25," and inserting: "32."

Amend sec. 3, page 2, line 5, by deleting "25," and inserting: "32."

Amend sec. 4, page 2, line 6, by deleting "25," and inserting: "32."

Amend sec. 9, page 3, by deleting lines 7 through 12.

Amend sec. 9, page 3, line 13, by deleting "14." and inserting: "13."

Amend sec. 9, page 3, by deleting lines 18 and 19, and inserting:

"(b) Disparagement in any material respect of the advertised product or

AS Form 1a (AMENDMENT BLANK)

3044A



Drafted 1-25-1977 By TBI (none)

To Journal
(3) CFB

Amendment No. 1732 to Legislation Bill No. 111 (BDR 51-111) Page 2

the terms of sale."

Amend sec. 9, page 3, line 30, by deleting "15." and inserting: "14."

Amend sec. 9, page 3, line 32, by deleting "16." and inserting: "15."

Amend sec. 9, page 3, line 35, by deleting "17." and inserting: "16."

Amend sec. 18, page 4, line 13, by deleting "25." and inserting: "32."

Amend sec. 18, page 4, line 21, by deleting "25." and inserting: "32."

Amend sec. 18, page 4, line 25, by deleting "25." and inserting: "32."

Amend sec. 19, page 4, line 46, by deleting "25." and inserting: "32."

Amend sec. 22, page 5, by deleting line 21 and inserting:

"Sec. 22. 1. Notwithstanding the requirement of knowledge as

a element of any practice enumerated in section 9 of this act as a deceptive
trade practice, when & the commissioner has cause to believe that a per-".

Amend sec. 22, page 5, line 22, by deleting "deceptive trade practice,"
and inserting "of the practices enumerated in section 9 of this act,
knowingly or otherwise,".

Amend sec. 22, page 5, line 26, by inserting "such" before
"deceptive".

Amend sec. 22, page 5, line 27, by inserting "such" before "decep-".

Amend sec. 23, by deleting line 49 on page 5 and lines 1 through 16 on
page 6 and inserting:

"Sec. 23. 1. Sections 4 to 31, inclusive, of this act do not prohibit
the commissioner from disclosing to the attorney general or any district
attorney or law enforcement officer the fact that a crime has been

(core)

committed by any person, if this fact has become known as a result of any investigation conducted pursuant to the provisions of sections 4 to 32, inclusive, of this act.

2. Subject to the provisions of subsection 2 of section 22 of this act, the commissioner shall not make public the name of any person alleged to have committed a deceptive trade practice. This subsection does not prevent the commissioner from issuing public statements describing or warning of any course of conduct which constitutes a deceptive trade practice."

Amend the bill as a whole, by adding new sections designated secs.

24 through 31, following sec. 23, to read as follows:

"Sec. 24. 1. Prior to instituting any action pursuant to sections 25 to 31, inclusive, of this act, the attorney general or district attorney shall ascertain whether or not the action in question is subject to the regulatory authority of any state agency, board, official or other authority established by virtue of the Nevada Revised Statutes except the regulatory or administrative authority provided to the commissioner of consumer affairs by sections 4 to 32, inclusive, of this act.

2. If such action is subject to such regulatory authority or any regulation duly adopted and promulgated or any statutes administered by any state regulatory agency, board, official or other authority as provided in subsection 1, the attorney general or district attorney shall not institute any proceeding under sections 25 to 31, inclusive, of this act until such state agency, board, official or other state regulatory

Appellant has had reasonable time to investigate or take any appropriate action with respect to the alleged facts.

2. For the purposes of this section, a reasonable time has elapsed if no final action or other disposition is made of any matter otherwise falling within the provisions of ^{sections} 1 to 32, inclusive, of this act within 30 days after such matter is referred to or brought to the attention of any state agency, board, official or other regulatory authority except the commissioner of consumer affairs.

3. This section does not preclude the attorney general or director of any county from filing an action pursuant to the provisions of sections 21 to 26, inclusive, of this act, or the referral of any matter subject to the provisions of this act to any state agency, board, official or other regulatory authority would cause immediate harm to the public or such state or board or such public safety or welfare, or such facts are shown by affidavit or by verified complaint.

Sec. 14. Commencing on the enactment of amendments as an element of the consumer protection act, section 1 of this act as a separate title or chapter, was renumbered and reorganized to be placed in the same position as sections 1 to 32, inclusive, of this act, wherever such sections appear in the existing version of any code or law book. The act shall be cited as such, and it is about to use any of the sections referred to in section 1 of this act, knowingly or otherwise, in any action to the same of the state of Nevada.

Amendment No. 1771 to Assembly Bill No. 331 (BDR 73-221) Page 5

against such person to obtain a temporary or permanent injunction against such deceptive trade practice.

Sec. 26. Except as otherwise provided in section 23 of this act, appropriate notice must be given by the attorney general or district attorney to any person against whom an action is brought pursuant to section 25 of this act. Such notice must state generally the relief sought and be served in accordance with section 31 of this act at least 10 days prior to the filing of the action.

Sec. 27. Any action brought pursuant to section 22 or 25 of this act may be brought:

1. In a district court in the county in which the defendant resides or has his principal place of business;
 2. In the district court in Carson City if the parties consent thereto;
 3. In the district court in any county where a deceptive trade practice was committed. Any court in which an action is brought pursuant to section 22 or 25 of this act may issue any temporary or permanent injunction in accordance with the Nevada Rules of Civil Procedure to restrain and prevent any violation of any provisions of this act.
- Notwithstanding, of this act, and such injunctions shall be enforceable.

Sec. 28. Whenever the attorney general or district attorney has reason to believe that the delay caused by complying with the notice requirement of section 26 of this act would cause immediate harm to the public

of any state or endanger the public welfare, he may immediately institute a suit for injunctive relief, including a request for a temporary restraining order, upon proof of specific facts shown by affidavit or by verified complaint or otherwise that such immediate harm will be or is likely to be caused by such delay. The Nevada Rules of Civil Procedure pertaining to the issuance of temporary restraining orders govern all actions instituted pursuant to this section.

Sec. 20. The court in which an action is brought pursuant to section 19 and sections 25 to 33, inclusive, of this act may make such additional orders or judgments as may be necessary to restore to any person in possession any money or property, real or personal, which may have been acquired by means of the deceptive trade practice which violates any of the provisions of sections 4 to 33, inclusive, of this act, but such orders and judgments may be entered only after a final determination has been made that a deceptive trade practice has occurred.

Sec. 21. 1. In proceeding pursuant to sections 25 to 33, inclusive, of this act, the attorney general or district attorney may accept an assignment of responsibility with respect to any method, act or practice which is a deceptive trade practice enumerated in section 9 of this act if any person is accused or is about to engage in such method, act or practice. The provisions set forth in subsection 2 of section 21 shall apply.

(more)

To Engrossment

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