

Assembly Bill No. 44–Committee
on Commerce and Labor

CHAPTER.....

AN ACT relating to unfair trade practices; revising the list of activities that constitute an unlawful contract, combination or conspiracy in restraint of trade to include manipulating the price of an essential good or service in this State; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

The Nevada Unfair Trade Practice Act sets forth various activities that constitute an unlawful contract, combination or conspiracy in restraint of trade and authorizes the Attorney General to investigate and take certain actions against persons who engage in such activities, which may include, without limitation, criminal prosecution and the imposition of civil penalties. (Chapter 598A of NRS) Existing law makes it a category D felony to engage in such activities. (NRS 598A.280) This bill includes among the activities that constitute an unlawful contract, combination or conspiracy in restraint of trade manipulating the price of an essential good or service in this State. This bill defines “essential good or service” to mean any good or service which is needed on a daily or recurring basis for the livelihood of a person and which falls within certain specified categories of goods and services. **Section 1** of this bill provides that a person manipulates the price of an essential good or service when the person, alone or in concert with others, knowingly engages in any deceptive trade practice which: (1) involves conduct engaged in by the person either with the intent to mislead consumers or for the purpose of manipulating the market for an essential good or service; and (2) is intended to and does cause the price of an essential good or service in this State to increase in a manner that does not reflect the basic forces of supply and demand and results in a person paying, over a 1-year period, an amount for the good or service which represents a percentage increase over the amount paid by the person over the immediately preceding year that is equal to or greater than the average percentage increase for the most recent 5-year average annual percentage change for the category of good or service, as set forth in the Personal Consumption Expenditures by State (SAPCE3) for the State of Nevada as published by the Bureau of Economic Analysis of the United States Department of Commerce. **Section 1** sets forth certain exceptions from the prohibition against manipulating the price of an essential good or service.

Existing law, with certain exceptions, authorizes a person who is injured or damaged, or threatened with injury or damage, by a violation of the Nevada Unfair Trade Practice Act to bring an action to obtain certain relief. (NRS 598A.210) **Sections 1 and 2** of this bill provide that the provisions relating to the manipulation of an essential good or service do not establish a private right of action against any person.



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

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

Section 1. NRS 598A.060 is hereby amended to read as follows:

598A.060 1. Every activity enumerated in this subsection constitutes a contract, combination or conspiracy in restraint of trade, and it is unlawful to conduct any part of any such activity in this State:

(a) Price fixing, which consists of raising, depressing, fixing, pegging or stabilizing the price of any commodity or service, and which includes, but is not limited to:

(1) Agreements among competitors to depress prices at which they will buy essential raw material for the end product.

(2) Agreements to establish prices for commodities or services.

(3) Agreements to establish uniform discounts, or to eliminate discounts.

(4) Agreements between manufacturers to price a premium commodity a specified amount above inferior commodities.

(5) Agreements not to sell below cost.

(6) Agreements to establish uniform trade-in allowances.

(7) Establishment of uniform cost surveys.

(8) Establishment of minimum markup percentages.

(9) Establishment of single or multiple basing point systems for determining the delivered price of commodities.

(10) Agreements not to advertise prices.

(11) Agreements among competitors to fix uniform list prices as a place to start bargaining.

(12) Bid rigging, including the misuse of bid depositories, foreclosures of competitive activity for a period of time, rotation of jobs among competitors, submission of identical bids, and submission of complementary bids not intended to secure acceptance by the customer.

(13) Agreements to discontinue a product, or agreements with anyone engaged in the manufacture of competitive lines to limit size, styles or quantities of items comprising the lines.

(14) Agreements to restrict volume of production.

(b) Division of markets, consisting of agreements between competitors to divide territories and to refrain from soliciting or selling in certain areas.



(c) Allocation of customers, consisting of agreements not to sell to specified customers of a competitor.

(d) Tying arrangements, consisting of contracts in which the seller or lessor conditions the sale or lease of commodities or services on the purchase or leasing of another commodity or service.

(e) Monopolization of trade or commerce in this State, including, without limitation, attempting to monopolize or otherwise combining or conspiring to monopolize trade or commerce in this State.

(f) *Except as otherwise provided in subsection 2, manipulating the price of an essential good or service in this State. For the purposes of this paragraph, a person manipulates the price of an essential good or service in this State when the person, alone or in concert with others, knowingly engages in any deceptive trade practice in violation of NRS 598.0903 to 598.0999, inclusive, which:*

(1) Involves conduct engaged in by the person either with the intent to mislead consumers or for the purpose of manipulating the market for an essential good or service in this State to the detriment of the public; and

(2) Is intended to and does cause the price of an essential good or service in this State to increase in a manner that:

(I) Does not reflect basic forces of supply and demand; and

(II) Results in a person paying, over a 1-year period, an amount for the good or service which represents a percentage increase over the amount paid by the person over the immediately preceding year that is equal to or greater than the average percentage increase for the most recent 5-year average annual percentage change for the category of good or service, as set forth in the Personal Consumption Expenditures by State (SAPCE3) for the State of Nevada, as published by the Bureau of Economic Analysis of the United States Department of Commerce.

(g) Except as otherwise provided in subsection ~~2.~~ 5, consolidation, conversion, merger, acquisition of shares of stock or other equity interest, directly or indirectly, of another person engaged in commerce in this State or the acquisition of any assets of another person engaged in commerce in this State that may:

(1) Result in the monopolization of trade or commerce in this State or would further any attempt to monopolize trade or commerce in this State; or

(2) Substantially lessen competition or be in restraint of trade.



2. *The provisions of paragraph (f) of subsection 1 do not apply to:*

(a) *Conduct which is expressly authorized, regulated or approved by an administrative agency of:*

(1) *This State;*

(2) *The United States; or*

(3) *A city or county of this State,*

↪ *having jurisdiction over the prices of goods or services;*

(b) *Conduct relating to rates, fares, allowances or charges of a transportation network company pursuant to chapter 706A of NRS; or*

(c) *Conduct relating to prices charged by a resort hotel.*

3. *The provisions of paragraph (f) of subsection 1 do not establish a private right of action against any person.*

4. *Nothing in the provisions of paragraph (f) of subsection 1 shall be construed to prohibit a person from reducing the price charged by the person for an essential good or service in this State for a limited period as part of a time-limited sale or promotion that has been advertised as such or from engaging in any other conduct that does not constitute a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.*

5. The provisions of paragraph ~~[(f)]~~ (g) of subsection 1 do not:

(a) Apply to a person who, solely for an investment purpose, purchases stock or other equity interest or assets of another person if the purchaser does not use his or her acquisition to bring about or attempt to bring about the substantial lessening of competition in this State.

(b) Prevent a person who is engaged in commerce in this State from forming a subsidiary corporation or other business organization and owning and holding all or part of the stock or equity interest of that corporation or organization.

6. *As used in this section:*

(a) *“Essential good or service” means any good or service which is needed on a daily or recurring basis for the livelihood of a person and which falls within one of the following categories:*

(1) *Food and beverages purchased for off-premises consumption;*

(2) *Clothing and footwear;*

(3) *Gasoline and other energy goods;*

(4) *Pharmaceutical and other medical products;*

(5) *Housing;*

(6) *Household utilities;*

(7) *Ground transportation;*




(8) *Telecommunication services; or*

(9) *Internet access.*

(b) *“Resort hotel” has the meaning ascribed to it in NRS 463.01865.*

(c) *“Transportation network company” has the meaning ascribed to it in NRS 706A.050.*

Sec. 2. NRS 598A.210 is hereby amended to read as follows:

598A.210 Except as otherwise provided in NRS 598A.430  ***and subsection 3 of NRS 598A.060:***

1. Any person threatened with injury or damage to his or her business or property by reason of a violation of any provision of this chapter may institute a civil action or proceeding for injunctive or other equitable relief, including, without limitation, a temporary restraining order, a preliminary or permanent injunction, restitution or disgorgement. If the court issues a permanent injunction, the plaintiff shall recover reasonable attorney fees, together with costs, as determined by the court.

2. Any person injured or damaged directly or indirectly in his or her business or property by reason of a violation of the provisions of this chapter may institute a civil action and shall recover treble damages, together with reasonable attorney fees and costs.

3. Any person commencing an action for any violation of the provisions of this chapter shall, simultaneously with the filing of the complaint with the court, mail a copy of the complaint to the Attorney General.



