

**PROPOSED REGULATION OF THE
CONSUMER AFFAIRS DIVISION OF THE DEPARTMENT OF BUSINESS
AND INDUSTRY**

LCB FILE NO. R058-22I

**The following document is the initial draft regulation proposed
by the agency submitted on 04/28/2022**

**PROPOSED NAC 598 REGULATIONS – DECEPTIVE TRADE
PRACTICES**

**THE CONSUMER AFFAIRS UNIT OF THE DEPARTMENT OF
BUSINESS AND INDUSTRY, PROPOSES AS FOLLOWS:**

DIGEST

NRS chapter 598 defines deceptive trade practices and gives the Director of the Department of Business and Industry (“Director”), the Commissioner of the Consumer Affairs Unit and, in certain instances, the Attorney General, authority to investigate any person they have cause to believe has engaged or is engaging in any deceptive trade practice. If an order to show cause hearing is ultimately held by the Director or the Director’s designee, and a determination made that the person has engaged or is engaging in a deceptive trade practice, NRS chapter 598 authorizes the Director or Director’s designee to, among other things, order the person to cease and desist the deceptive trade activity, pay an administrative fine, pay restitution, and pay certain costs associated with the investigation and hearing. The proposed new and amended regulations define certain terms used in NRS 598 and NAC 598; establishes the hourly charge for investigations and audits and establishes how transcript and other hearing related costs will be determined.

NRS chapter 598 also requires sightseeing tours, organizations for buying goods or services at a discount, dance studios and health clubs to register with the Consumer Affairs Unit and post security in the form of a surety bond, letter of credit or certificate of deposit. According to NRS chapter 598, the security posted by the registrant is for the benefit of consumers who are injured or suffer a loss in the event the registrant files bankruptcy or breaches any agreement entered into in its capacity as a registrant. If claims are filed against the security posted by the registrant, NRS chapter 598 authorizes the Consumer Affairs Unit to conduct show cause hearings to determine whether the security should be distributed to the claimants and if so, the order and amount of the distribution. Certain of the proposed new regulations establish the form to be used for the order to show cause issued to a registrant and the manner of serving the order to show cause.

The remaining proposed amended regulations: 1) make changes to existing NAC 598 regulations to conform them to past amendments to various NRS chapter 598 statutes; 2) reflect the Consumer Affairs Unit’s current address; 3) propose the repeal of regulations related to sellers of travel as the 2017 legislative session permanently eliminated the requirement that sellers of travel register with the Consumer Affairs Unit; and 4) propose the repeal of the definition of the “Consumer Affairs Division” as the division was permanently eliminated by SB 447 which passed during the 2021 legislative session and permanently replaced it with the Consumer Affairs Unit.

Section 1. NAC Chapter 598 is hereby amended by adding thereto the following:

NAC 598.____ “Unit” defined. (NRS 598) “Unit means the Consumer Affairs Unit of the Department of Business and Industry.

NAC 598.____ “Violator” defined. (NRS 598.0971) “Violator” means a person or entity who, after a hearing, is deemed to have violated any of the provisions of NRS 598.0903 to 598.09999, inclusive.

NAC 598.____ Fees for investigations and audits: Amount. (NRS_598.0971, 598.506, 598.731(5), 598.854(5), 598.9474(5)). *The cost for investigations and audits conducted pursuant to NRS 598 and NAC 598 shall be billed at a rate of \$28¹ per hour.*

NAC 598.____ Costs of conducting hearings; hearing room rental costs; charges for providing an independent hearing officer. (NRS 598.0971, 598.506, 598.731(5), 598.854(5), 598.9474(5) and NAC 598.139).

1. *The costs of conducting a hearing held pursuant to NRS chapter 598 shall be billed at a rate of \$28² per hour.*
2. *If a hearing room is not available free of charge for a hearing held under NRS chapter 598 and if a Violator is ordered to pay the cost for the room used or reserved for the hearing, the amount charged the Violator shall be an amount equivalent to the costs charged to the Unit for the room.*
3. *If the Unit incurs costs for hiring an independent hearing officer for a hearing conducted under NRS chapter 598, and if a Violator is ordered to pay the charges for providing an independent hearing officer, the amount charged shall be an amount equivalent to the fees and costs charged by the independent hearing officer.*

NAC 598. ____ Costs of reporting services and expert witness fees (NRS 598.0971 NAC 598.146(9)(10)). *A party requesting a court reporting service to record a hearing held under NRS chapter 598 shall pay the fees and costs for the service and any transcript the party may request.*

NAC 598. ____ Notification when Registrant ceases to operate (NRS 598.8541). *A Registrant under NRS chapter 598 shall notify the Unit in writing within 10 days after it ceases to operate.*³

NAC 598.____ Order to show cause – action against Security of Registrant: Service; contents. (NRS 598.506(4), 598.731(4), 598.854(4), 598.9474(4) and NAC 598.136)⁴

1. *An order to show cause must be served, directly or by certified or registered mail, return receipt requested, or by any method authorized by law, upon the respondent at least 10 calendar days before the*

¹ \$28 per hour is based upon the current hourly pay of Consumer Affairs Unit Compliance Investigators.

² For consistency, the \$28 per hour rate for investigations and audits is also proposed for hearings as the Compliance Investigator (whose hourly pay rate was used for investigations and audits) also assists the Attorney General with hearing preparation and attends and in some instances testifies at the hearing.

³ NRS 598.8541(1) requires the Commissioner to release the security posted by the Registrant if no claims have been filed within 6 months after the Registrant ceases to operate or its registration expires. The Unit needs to know when a Registrant ceases operations so that a determination can be made as to when the six-month period expires, and security is to be released.

⁴ NRS 598.506(4), 598.731(4), 598.854(4) and 598.9474(4) permit the Unit to conduct an order to show cause hearing to determine the distribution of security posted by a Registrant when a consumer proves they were injured by the bankruptcy or breach of an agreement by the Registrant. The proposed regulation is needed to detail the contents of the order to show cause and how it must be served. The proposed regulation is modeled after NAC 598.140 which contents and service of orders to show cause in proceedings against a person believed to have committed a deceptive trade practice.

date of the order to show cause hearing, unless the requirement that service be made within that time is waived in writing by the respondent.

2. An order to show cause must bear an identifying number assigned by the Consumer Affairs Unit and must include, but is not limited to:

(a) A brief and concise description of the matters asserted by the consumer who alleges they were injured by the bankruptcy of the Registrant or by the Registrant's breach of any agreement entered into in his or her capacity as a Registrant;

(b) Reference to any specific statutory provisions the respondent is alleged to have violated;

(c) Notice of the hearing to show cause that sets forth the date, time and place of the hearing;

(d) A statement that the hearing is being held pursuant to NRS 598.506, 598.731, 598.854, or 598.9474; and

(e) An affidavit by an investigator or auditor of the Unit or the Attorney General, or both, in support of the order to show cause stating that:

(1) An investigation or audit was conducted; and

(2) There is reasonable cause to believe that the respondent has injured the consumer and the consumer is entitled to be compensated from the Security the Registrant posted with the Unit.

NAC 598.____ Order to show cause - action against security of Registrant: Form. (NRS 598.506, 598.731, 598.854, 598.9474, NAC 598.136)⁵

An order to show cause must be in substantially the following form, but may include other information:

(Legal Caption)

TO: (Name and Address of Respondent)

COMES NOW, The Consumer Affairs Unit (Unit), Department of Business and Industry, State of Nevada, pursuant to Nevada Revised Statutes (hereinafter "NRS") 598.506, 598.731, 598.854 or 598.9474 and NAC 598.136 and hereby ORDERS (name of respondent/Registrant) to show cause, if any, why the Unit should not take action against the Security on deposit with the Unit and held in trust for consumers injured by the respondent's bankruptcy or breach of an agreement entered into in his, her or its capacity as a Registrant pursuant to NRS 598.506, NRS 598.731, NRS 598.854 or NRS 598.9474.

(Describe the circumstances causing injury to the consumer(s) (i.e. bankruptcy of the respondent or respondent's breach of any agreement entered into in his, her or its capacity as a Registrant under NRS 598.506, NRS 598.731, NRS 598.854 or NRS 598.9474). Use one paragraph for each alleged violation.)

⁵ The proposed regulation is modeled after NAC 598.142 which sets forth the form of the order to show cause that is to be used in deceptive trade practices cases.

IT IS FURTHER ORDERED that a copy of this Order and the affidavits in support thereof be served on (name of respondent), directly or by registered, certified mail, return receipt requested, or by any other lawful means no later than (date).

TAKE NOTICE that the Consumer Affairs Unit has completed its audit and has reasonable cause to believe the claimant is entitled to recover against the security of the Registrant and that a HEARING will be held thereon at (place hearing is to be held), at (time of hearing) on (date).

TAKE FURTHER NOTICE that if the Consumer Affairs Unit determines that (name of respondent) has injured consumers in a manner set forth in NRS 598.506, 598.731, 598.854 or 598.9474, as alleged, or if (name of respondent) fails to appear for the hearing after being properly served with this Order, the Commissioner, Director or Director's designee may make a written report of findings of fact and cause to be served a copy thereof upon (name of respondent) and any intervener at the hearing.

TAKE FURTHER NOTICE that if the Consumer Affairs Unit determines in the report that consumers have been injured in the manner set forth in NRS 598.506, NRS 598.731, NRS 598.854 or NRS 598.9474 and determines they are entitled to recover against the Security of the Registrant, the Consumer Affairs Unit may order:

- 1. Distribution of the Security in accordance with the priority of claims set forth in NAC 598.138; and*
- 2. If the Security is sufficient to pay all claims against the Security in full, the deduction from the remaining Security of the cost of any investigation, audit or hearing conducted by the Consumer Affairs Unit to determine the distribution of the Security.*

You may be present at the hearing and may be, but need not be, represented by counsel. Pursuant to chapter 233B of NRS, you may present any relevant evidence and will be given the opportunity to cross-examine all witnesses testifying against you. At the discretion of the Commissioner or Director, or Director's designee, you may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Consumer Affairs Unit.

NAC 598.____ Duty to notify Consumer Affairs Unit of claim. (NRS 598.506, 598.515) Registrants under NRS chapter 598 must notify the Unit in writing of all claims filed against the Security. The required notice must include, but is not limited to: 1) the claimant's name and address; 2) the date the claim was filed; 3) the amount of the claim; and 4) whether the claim has been paid.

Section 2. NAC Chapter 598 is hereby amended to read as follows:

NAC 598.107 "Registrant" defined. (NRS 598.0971, 598.731) "~~Registrant~~" ~~has the meaning ascribed to it in NRS 598.2805~~ is a person or entity who has registered with the Unit under the provisions of NRS 598.405 to NRS 598.966, inclusive⁶.

⁶ The definition has to be revised because the NRS provision it references, NRS 598.2805, no longer exists.

NAC 598.109 “Security” defined. (NRS 598.0967, 598.731) “Security” means a bond, irrevocable letter of credit or certificate of deposit that is deposited with the ~~Division~~Unit pursuant to ~~NRS 598.2807~~⁷ 598.495, ~~598.726, 598.752, 598.851, 598.946.~~

NAC 598.115 Disclosure of information by Commissioner and Director⁸. In addition to the information that may be disclosed pursuant to NRS 598.098, the Commissioner and Director may disclose:

1. The total number of complaints received by the ~~Division~~Unit on a day specified by the person who requested the information; and
2. The number of complaints that are currently under investigation and the number of complaints that have been resolved by the ~~Division~~Unit.

NAC 598.124 Correspondence to Division. (NRS 598.0967, 598.731) All claims, requests for hearing and other correspondence regarding a hearing must be addressed to the Department of Business and Industry, Consumer Affairs ~~Division Unit, 1850 East Sahara Avenue, Suite 101~~ 3300 W. Sahara Avenue, Suite 425, Las Vegas, Nevada ~~89104~~89102.

NAC 598.144 Order to show cause: Answer; objections to form. (NRS 598.0967, 598.731)

1. A party who wishes to contest an order to show cause may file an answer with the Division within ten calendar days after the day the order to show cause is received. –The answer must:
 - (a) Be in writing;
 - (b) Admit or deny each ~~material~~ allegation with specificity; and
 - (c) State with specificity any facts constituting a defense to the allegations, including, but not limited to, all affirmative defenses that are being asserted in response to the allegations.
2. Unless the respondent states an objection to the form of the order to show cause in the answer, the respondent shall be deemed to have waived all objections to the form of the order to show cause.
3. If the respondent objects to the form of the order to show cause, the respondent shall identify with specificity why he or she objects to the form of the order.

NAC 598.146 Subpoenas; fees and expenses of witnesses. (NRS 598.0967, 598.0957, 598.731)

1. Before a hearing, or during a hearing if good cause is shown, the ~~Division~~Commissioner, Director, Director’s designee⁹ or the Attorney General, ~~or both,~~ may issue subpoenas and subpoenas duces tecum.
2. The ~~Division~~Commissioner, Director, Director’s designee may issue subpoenas and subpoenas duces tecum at the written request of a party.

⁷ Deleted because the statutory provision was repealed.

⁸ Added Director because NRS 598.098 permits the Commissioner *or* Director to use and disclose certain information.

⁹ NRS 598.0967 gives the Commissioner and the Director the authority to issue subpoenas; and, per NRS 598.0957, the Director may delegate his powers and duties under NRS 598.0903 to NRS 598.0999, inclusive to any person under his direct supervision and direction. Nowhere in NRS chapter 598 does it give the Division or Unit the power to issue subpoenas and thus Division is deleted.

3. Subpoenas may only be issued to require the attendance of a witness at a place in this state that has been designated as a place to give oral testimony before the hearing officer.
4. Subpoenas must not be issued in blank.
5. A request for the issuance of a subpoena submitted for issuance must contain:
 - (a) The title and identifying number of the case;
 - (b) The name of the person to whom it will be directed;
 - (c) The date, time and place of the hearing; and
 - (d) The name and signature of the requesting party or his or her attorney.
6. In addition to the requirements listed in subsection 5, a subpoena duces tecum must also contain a complete description of specific documents or other tangible things that the witness will be required to produce at the hearing.
7. A subpoena must not be issued if the request is untimely, or the evidence to be offered is not material or relevant to the determination of the issues before the hearing officer.
8. If the request for a subpoena is granted, the subpoena must be issued within 5 business days after the date on which it was requested. If a request for the issuance of a subpoena is denied, the Division will notify the requesting party in writing, as soon as practicable, of the reasons for the denial.
9. A witness appearing or testifying on behalf of the Division, whether or not pursuant to a subpoena, other than a party or an officer or employee of the State of Nevada testifying during his or her regular hours for work, is entitled to receive the same fees and expenses as are provided for witnesses pursuant to NRS 50.225.
10. A party requesting the issuance of a subpoena shall pay for the service of the subpoena and the fees and expenses of the witness.

NAC 598.156 Presiding hearing officer. (NRS 598.0967, 598.731)

1. The Commissioner may designate a person to act as hearing officer.
2. The decision of the hearing officer is subject to review and approval by the Commissioner.
3. If the Commissioner designates a person to act as hearing officer, the Commissioner retains the right, at any time, to assume responsibility for presiding over the hearing, and any authority granted to a hearing officer in NAC 598.120 to 598.174, inclusive, is also granted to the Commissioner.
4. If the Commissioner ~~is unable to preside over the hearing and~~ does not designate a hearing officer, the Director shall appoint a hearing officer to preside over the hearing, whose decision is subject to review and approval by the Director.

NAC 598.160 Method of recording hearing. (NRS 598.0967, 598.731) The hearing must be recorded using equipment for recording sound or, ~~if a party so requests and pays the costs therefore, may~~ ~~must~~ be reported by a court reporter certified pursuant to chapter 656 of NRS.

NAC 598.168 Retention of record of hearing; ~~availability of copy.~~ (NRS 598.0967, 598.731)

~~1.~~ The ~~transcribed stenographic~~ record or sound recording of a hearing will be retained for 90 days after the date of the decision and order, at which time it will be destroyed or reused, unless a petition for judicial review has been filed pursuant to chapter 233B of NRS.¹⁰

~~—2.— A certified copy of the transcription will be made available to a party upon request at the Division. A copy of the sound recording will be made available to a party upon request.~~

NAC 598.170 Copies of transcript. (NRS 598.0967, 598.731)

1. A party may purchase ~~obtain~~ a copy of the transcript of a hearing from the official certified court reporter upon payment of the costs and fees charged by the official court reporter for preparing the transcript. ~~fixed therefor.~~

2. A party who files a petition for judicial review pursuant to chapter 233B of NRS may purchase a copy of the transcript of the hearing at an amount equivalent to the costs or fees charged by the official reporter for preparing the transcript.

NAC 598.560 Disclosure or notice required. (NRS 598.0967, 598.525)

1. A disclosure or notice required of a tour broker or tour operator pursuant to NRS 598.475 must set forth the required information in bold type at least 2 points larger than the type used in the majority of the document in which the information appears.

2. The notice on a billing invoice or receipt given to a customer for a sightseeing tour must set forth the information in substantially the following form:

STATE OF NEVADA

REGISTERED TOUR BROKER OR TOUR OPERATOR

THIS TOUR BROKER OR TOUR OPERATOR IS REGISTERED IN NEVADA WITH THE CONSUMER AFFAIRS ~~DIVISION UNIT~~ OF THE DEPARTMENT OF BUSINESS AND INDUSTRY

THIS TOUR BROKER OR TOUR OPERATOR IS PROHIBITED FROM CHARGING A CUSTOMER IN NEVADA FOR A SIGHTSEEING TOUR AN AMOUNT THAT EXCEEDS THE SUM OF:

- (1) THE TOTAL PRICE ADVERTISED FOR THE TOUR; AND
- (2) ANY FEE OR TAX THAT IS NOT INCLUDED IN THE TOTAL PRICE FOR THE SIGHTSEEING TOUR BECAUSE ITS INCLUSION WOULD VIOLATE A STATE OR FEDERAL STATUTE OR REGULATION.

ANY COMPLAINTS CONCERNING CHARGES FOR THIS SIGHTSEEING TOUR MAY BE DIRECTED TO:

¹⁰ Currently Consumer Affairs only makes a sound recording of hearings. The recording is not transcribed unless and until a person requests a transcription. The changes made reflect the current process. If a party wants a certified court reporter to record the hearing and wants a transcription of the proceedings, the party has to order it directly from the court reporter and pay the court reporter for any transcription.

THE DEPARTMENT OF BUSINESS AND INDUSTRY
CONSUMER AFFAIRS DIVISION
~~1850 EAST 3300 W.~~ SAHARA AVENUE, SUITE ~~101425~~
LAS VEGAS, NEVADA ~~89104~~89102

IN CLARK COUNTY CALL: (702) 486-~~7355~~2750
ALL OTHER AREAS CALL TOLL FREE: 1-~~800-326-5202~~844-594-7275

Section 3. The following NAC Chapter 598 regulations are hereby repealed.

NAC 598.1045 is hereby repealed.¹¹

NAC 598.500 to NAC 598.520, inclusive are hereby repealed.¹²

NAC 598.010 to NAC 598.060, inclusive are hereby moved to ...? ¹³

¹¹ SB 447 which passed during the 2021 legislative session eliminates the Consumer Affairs Division and permanently creates the Consumer Affairs Unit under the Department of Business and Industry. Thus, NAC 598.1045 which defines “Division” as “the Consumer Affairs Division of the Department of Business and Industry” is no longer needed and can be repealed.

¹² SB 311 which passed during the 2017 legislative session permanently eliminated NRS chapter 598 provisions requiring the registration of sellers of travel. Thus, the NAC 598.500 to NAC 598.520, inclusive which relate to sellers of travel are no longer needed and can be repealed.

¹³ These provisions require an escrow account to be established when a mobile home dealer sells a mobile home and detail the terms upon the account must be opened and the conditions upon which it can be closed. Can/should these provisions be moved to NAC chapter 461A which deals with mobile homes and parks or some other chapter administered by the Nevada Housing Division?