

SENATE BILL NO. 332—SENATOR NEAL

MARCH 11, 2025

Referred to Committee on Commerce and Labor

SUMMARY—Prohibits the making of a bad-faith claim or assertion of copyright infringement. (BDR 52-699)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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

AN ACT relating to deceptive trade practices; making it a deceptive trade practice for a person to make a bad-faith claim or assertion of copyright infringement; creating a civil cause of action for a person aggrieved by a bad-faith claim or assertion of copyright infringement; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law defines activities that constitute deceptive trade practices and provides for the imposition of civil and criminal penalties against persons who engage in deceptive trade practices. (Chapter 598 of NRS) **Section 1** of this bill makes it a deceptive trade practice for a person to make a bad-faith claim or assertion of copyright infringement and sets forth various factors that a trier of fact may consider as evidence that a person has or has not made such a bad faith claim or assertion.

Section 1 authorizes a person who is aggrieved by a violation of **section 1** to bring an action against the person who committed the violation seeking: (1) equitable relief; (2) actual damages; (3) reasonable attorney’s fees and costs; and (4) exemplary damages in an amount equal to \$30,000 or three times the sum of the actual damages and reasonable attorney’s fees and costs, whichever is greater.

Section 1 also authorizes a court to award to a prevailing defendant in such an action reasonable attorney’s fees and costs, if the court finds that the action was not well-grounded in fact and warranted by existing law or was interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

Section 2 of this bill sets forth certain legislative declarations and findings.



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 a new section to read as follows:

3 1. *A person shall not make a bad-faith claim or assertion of*
4 *copyright infringement.*

5 2. *The trier of fact may consider the following factors as*
6 *evidence that a person has made a bad-faith claim or assertion of*
7 *copyright infringement:*

8 (a) *The demand sent by the person does not contain all of the*
9 *following information:*

10 (1) *The copyright registration number assigned by the*
11 *United States Copyright Office, if any, or the number*
12 *accompanying an application made to the United States Copyright*
13 *Office, if any;*

14 (2) *The name and address of the copyright owner or owners*
15 *and assignee or assignees, if any;*

16 (3) *Factual allegations concerning the specific areas in*
17 *which the work of the person against whom the claim or assertion*
18 *is made infringes the copyright-protected work; and*

19 (4) *An explanation of why the person making the claim or*
20 *assertion has standing, if the United States Copyright Office does*
21 *not identify the person asserting the copyright as the owner.*

22 (b) *Before sending the demand, the person failed to conduct*
23 *an analysis comparing the copyright protected work to the asserted*
24 *infringing work, or the analysis was done but does not identify*
25 *specific areas in which the asserted infringing work infringes the*
26 *person's copyright.*

27 (c) *The demand lacks the information described in this*
28 *subsection, the person against whom the claim or assertion is*
29 *made requests the information and the person fails to provide the*
30 *information within a reasonable period.*

31 (d) *The person demands payment of a license fee or a response*
32 *within an unreasonably short time.*

33 (e) *The person offers to settle the claim or assertion of*
34 *copyright infringement for an amount that is not based on a*
35 *reasonable estimate of the value of the copyright-protected work,*
36 *or the person offers to settle the claim or assertion for an amount*
37 *that is based on the cost of defending a potential or actual lawsuit.*

38 (f) *The claim or assertion of copyright is meritless and the*
39 *person knew or should have known that the claim or assertion is*
40 *meritless.*

41 (g) *The claim or assertion of copyright infringement is*
42 *deceptive.*



1 (h) *The person or the subsidiaries or affiliates of the person*
2 *have previously or concurrently filed or threatened to file one or*
3 *more lawsuits based on the same or similar claim of copyright*
4 *infringement, and:*

5 (1) *Those threats or lawsuits lacked the information*
6 *described in this subsection; or*

7 (2) *The person attempted to enforce the claim of copyright*
8 *infringement in litigation and a court found the claim to be*
9 *meritless.*

10 (i) *The person sent the same demand or substantially the same*
11 *demand to multiple recipients and made assertions against a wide*
12 *variety of works without reflecting those differences in a*
13 *reasonable manner in the demands.*

14 (j) *The person is aware of, but does not disclose, any final,*
15 *nonfinal or preliminary finding of invalidity involving the*
16 *copyright.*

17 (k) *The person seeks an injunction that is objectively*
18 *unreasonable under the law.*

19 (l) *Any other relevant factor.*

20 3. *The trier of fact may consider the following factors as*
21 *evidence that a person has not made a bad-faith assertion of*
22 *copyright infringement:*

23 (a) *The demand sent by the person contains the information*
24 *described in subsection 1.*

25 (b) *If the demand lacks the information described in*
26 *subsection 1 and the person against whom the claim or assertion*
27 *is made requests the information, the person provides the*
28 *information within a reasonable period.*

29 (c) *The person engages in a good-faith effort to establish that*
30 *the person against whom the claim or assertion is made has*
31 *infringed the copyright and to negotiate an appropriate and*
32 *reasonable remedy.*

33 (d) *The person makes a substantial investment in the use or*
34 *exploitation of the copyright.*

35 (e) *The person is:*

36 (1) *The author or joint author of the copyright-protected*
37 *work;*

38 (2) *The original assignee, in the case of a copyright-*
39 *protected work filed by and awarded to an assignee or claimant of*
40 *the original author or joint author; or*

41 (3) *An institution of higher education or a fine arts*
42 *organization owned or affiliated with an institution of higher*
43 *education.*



1 (f) *The person has demonstrated good-faith business practices*
2 *in previous efforts to enforce the copyright-protected work, or a*
3 *substantially similar copyright-protected work, through litigation.*

4 (g) *Any other factor the court finds relevant.*

5 4. *A person aggrieved by a violation of subsection 1 may*
6 *bring an action against the person who committed the violation to*
7 *seek any or all of the following relief:*

8 (a) *Equitable relief.*

9 (b) *Actual damages.*

10 (c) *Reasonable attorney's fees and costs.*

11 (d) *Exemplary damages in an amount that is equal to the*
12 *greater of:*

13 (1) *Thirty thousand dollars; or*

14 (2) *Three times the sum of:*

15 (I) *Actual damages; and*

16 (II) *Reasonable attorney's fees and costs.*

17 5. *A court may award to a defendant who prevails in an*
18 *action brought pursuant to subsection 4 reasonable attorney's fees*
19 *and costs if the court finds that the action was not well-grounded*
20 *in fact and warranted by existing law or was interposed for any*
21 *improper purpose, such as to harass or to cause an unnecessary*
22 *delay or a needless increase in the cost of litigation.*

23 6. *A violation of subsection 1 constitutes a deceptive trade*
24 *practice for the purposes of NRS 598.0903 to 598.0999, inclusive.*

25 7. *The provisions of this section:*

26 (a) *Apply to a claim or assertion of copyright infringement*
27 *arising under 17 U.S.C. § 106 or 17 U.S.C. § 512.*

28 (b) *Do not apply to a claim or assertion of copyright*
29 *infringement:*

30 (1) *Arising under 17 U.S.C. § 106A; or*

31 (2) *By or on behalf of a person that is recognized as exempt*
32 *pursuant to section 501(c)(3) of the Internal Revenue Code, 26*
33 *U.S.C. § 501(c)(3).*

34 (c) *Do not apply to a claim or assertion of a violation of NRS*
35 *597.720 to 597.760, inclusive.*

36 8. *Subject to the provisions of subsections 1, 2 and 3, and so*
37 *long as the activities are not carried out in bad faith, nothing in*
38 *this section shall be construed to prohibit any person who owns or*
39 *has the right to license or enforce a copyright or copyright-*
40 *protected work to do any of the following:*

41 (a) *Advise others of that ownership or right of license or*
42 *enforcement;*

43 (b) *Communicate to others that the copyright is available for*
44 *license or sale;*



1 (c) *Notify another person of the infringement of the copyright;*
2 *or*

3 (d) *Seek compensation for a past or present infringement or*
4 *for a license to the copyright.*

5 9. *As used in this section:*

6 (a) *“Affiliate” means a business establishment, business or*
7 *other legal entity that wholly or substantially owns, is wholly or*
8 *substantially owned by or is under common ownership with*
9 *another entity.*

10 (b) *“Demand” means a letter, electronic mail message or other*
11 *communication asserting or claiming that a person has engaged*
12 *in copyright infringement.*

13 (c) *“Institution of higher education” has the meaning ascribed*
14 *to it in 20 U.S.C. § 1001(a).*

15 (d) *“Person” includes a governmental entity.*

16 **Sec. 2.** The Legislature hereby finds and declares that:

17 1. Copyright encourages creativity and innovation by
18 protecting original works. Copyright holders have legitimate rights
19 to enforce their copyrights.

20 2. The Legislature does not wish to interfere with good-faith
21 copyright litigation or the good-faith enforcement of copyrights. The
22 Legislature recognizes that Nevada is preempted from passing any
23 law that conflicts with federal copyright law.

24 3. Copyright litigation can be complex and expensive. The
25 expense of copyright litigation can be a significant burden on
26 Nevadans, Nevada businesses and the State of Nevada. The
27 Legislature wishes to help avoid these costs by encouraging the
28 most efficient resolution of copyright infringement claims without
29 conflicting with federal law.

30 4. The Legislature seeks, by this narrowly tailored act, to strike
31 a balance between the interests of efficient and prompt resolution of
32 copyright infringement claims, protection of Nevadans, Nevada
33 businesses and the State of Nevada from bad-faith assertions of
34 copyright infringement and the intentions to respect federal law and
35 be careful not to interfere with legitimate copyright enforcement
36 actions.



