

**APPROVED REGULATION OF THE
COMMISSIONER OF CONSUMER AFFAIRS OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R058-22

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

AUTHORITY: §§ 1, 7, 9, 12, 14, 17-22, 25-35 and 38, NRS 598.0967, 598.506, 598.525, 598.854 and 598.9474; §§ 2, 11 and 16, NRS 598.0967; §§ 3, 6, 8, 10, 15 and 23, NRS 598.506, 598.525, 598.854 and 598.9474; § 4, NRS 598.0967, 598.0971, 598.525, 598.854 and 598.9474; § 5, NRS 598.515, 598.525, 598.8541 and 598.9476; § 13, NRS 598.471, 598.525, 598.852 and 598.944; § 24, NRS 598.0967 and 598.0971; §§ 36 and 37, NRS 598.525.

A REGULATION relating to trade practices; defining certain terms and revising certain definitions relating to deceptive trade practices; establishing the manner in which the costs of certain investigations, audits and hearings of the Consumer Affairs Unit of the Department of Business and Industry are calculated; authorizing the Director of the Department to designate a hearing officer to conduct a prehearing conference; requiring a registrant with the Unit to submit certain notices to the Unit; revising provisions governing orders to show cause issued and hearings held by a hearing officer; repealing certain provisions governing sellers of travel and deceptive trade practices; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

The 2021 Legislature enacted Senate Bill No. 447, which: (1) eliminated the Consumer Affairs Division of the Department of Business and Industry; and (2) created the Consumer Affairs Unit of the Department and permanently transferred to the Unit certain powers and duties previously belonging to the Division. (Chapter 423, Statutes of Nevada 2021, at page 2741) **Sections 10, 11, 15-19, 23, 25, 26, 32 and 35-37** of this regulation make conforming changes as a result of the elimination of the Division and the transfer of such powers and duties to the Unit.

Under existing law, the Unit and the Commissioner of Consumer Affairs are charged with carrying out certain duties relating to the enforcement of laws prohibiting deceptive trade practices and the regulation of certain businesses, including, without limitation, sightseeing tours, organizations for buying goods or services at a discount, dance studios and health clubs. (Chapter 598 of NRS)

If, after investigation, the Commissioner or Attorney General has reasonable cause to believe that any person has been engaged or is engaging in any deceptive trade practice, existing

law authorizes the Commissioner or Attorney General to issue an order to that person to show cause why the Director of the Department should not order the person to cease and desist from engaging in the practice and pay an administrative fine. If the Director or his or her designee determines that the person has been engaged or is engaging in a deceptive trade practice, existing law authorizes the Director or his or her designee to issue an order requiring the violator to pay the costs of conducting the investigation, conducting the hearing, any reporting services, renting a hearing room if one is not available free of charge and certain other costs. (NRS 598.0971) **Section 4** of this regulation establishes the manner in which the costs of conducting an investigation, audit or hearing pursuant to chapter 598 of the Nevada Revised Statutes and chapter 598 of the Nevada Administrative Code must be calculated.

Existing law requires tour brokers and tour operators, organizations for buying goods or services at a discount, dance studios and health clubs to register with the Unit and to deposit a security to be held in trust for consumers injured by the bankruptcy of the registrant or the registrant's breach of any agreement entered into in his or her capacity as a registrant. (NRS 598.471, 598.506, 598.852, 598.854, 598.944, 598.9474) Existing law authorizes the Unit to conduct a hearing to determine the distribution of the security of a registrant to claimants. (NRS 598.506, 598.854, 598.9474) If the Unit decides to take action against the security of a registrant, existing regulations require the Unit to request that the registrant appear and show cause why the Unit should not take the intended action. (NAC 598.136) **Sections 13-15** of this regulation revise definitions related to such registrants. **Section 8** of this regulation requires a registrant to notify the Unit of any claims filed against the security of the registrant. **Section 38** of this regulation repeals the definition of "order to show cause." **Section 2** of this regulation defines the term "complaint and order to show cause" to refer to the order to show cause and statement of charges issued to a person alleged to have been engaged or to be engaging in a deceptive trade practice. **Section 3** of this regulation defines the term "notice of intended action and order to show cause" to mean a notification and order to show cause issued with respect to a proposed action against the security deposit of a registrant. **Section 6** of this regulation prescribes the contents of such a notice of intended action and order to show cause and the manner in which it must be served upon the respondent. **Section 9** of this regulation makes a conforming change to indicate the proper placement of **sections 2-8** in the Nevada Administrative Code. **Sections 24, 25 and 29** of this regulation make conforming changes to account for the repeal of the definition of "order to show cause" and the adoption of the definitions added by **sections 2 and 3**.

Existing law authorizes the Commissioner and Director to conduct hearings in aid of any investigation or inquiry. (NRS 598.0967) Existing regulations authorize the Commissioner to designate a person to act as a hearing officer whose decisions are subject to the Commissioner's review and approval and assume the responsibility of a hearing officer at any time during a hearing. (NAC 598.156) **Section 28** of this regulation provides instead that the Director possesses such authority. **Section 12** of this regulation revises the term "hearing officer" to mean the Director or a person designated by the Director to conduct a hearing. **Sections 14, 17, 20-22, 26, 27, 29, 32 and 35** of this regulation make conforming changes to indicate that a hearing officer will preside over certain proceedings.

Existing regulations provide that certain provisions governing hearings do not preclude the commencement or pursuit of any additional remedies by the Unit. (NAC 598.120) **Section 17** provides that those provisions do not preclude the commencement or pursuit of any additional remedies by the Attorney General.

Existing regulations require that all claims, requests for a hearing and other correspondence regarding a hearing be addressed to the Unit at the physical address of the Unit. (NAC 598.124) **Section 19** of this regulation requires instead that all claims, requests for a hearing and other correspondence regarding a hearing be addressed to the Unit at the physical address provided on the Internet website of the Unit.

Section 7 of this regulation authorizes a hearing officer to order a prehearing conference for certain purposes. **Section 7** also sets forth certain requirements for notice relating to a prehearing conference and the effect of a party failing to attend a prehearing conference.

Existing regulations authorize a party to a hearing, before the hearing, to inspect all documents which may be considered by the hearing officer and have a copy made of any of those documents. (NAC 598.150) **Section 27** removes the authorization for a party to inspect such documents before a hearing and instead authorizes a party to request a copy of those documents, which may be provided electronically.

Existing regulations require that evidence which is introduced at a hearing be introduced and considered in compliance with certain provisions of the Nevada Administrative Procedure Act and authorize certain relevant evidence to be admitted if it is the sort of evidence commonly relied upon by reasonable and prudent persons in the conduct of their affairs. (NAC 598.164) **Section 32** instead requires that evidence introduced at a hearing be introduced and considered in accordance with all provisions of the Act and removes the provision governing the admittance of evidence commonly relied upon by reasonable and prudent persons.

Existing regulations authorize the Unit or the Attorney General, or both, to issue a subpoena or subpoena duces tecum before a hearing or during a hearing if good cause is shown. (NAC 598.146) **Section 26** removes this authority from the Unit and authorizes the Commissioner or hearing officer to issue a subpoena or subpoena duces tecum.

Existing regulations require that a hearing be recorded using equipment for recording sound or reported by a certified court reporter. (NAC 598.160) Existing regulations also require the temporary retention of the transcribed record of a hearing, which must be made available to a party upon request, and authorize a party to obtain a copy of the transcript from the official reporter for a fixed fee. (NAC 598.168, 598.170) **Section 30** of this regulation requires that such a hearing be recorded using equipment for recording sound, unless a party requests and pays for a certified court reporter. **Section 33** of this regulation makes a conforming change by requiring: (1) the temporary retention of the stenographic record or sound recording of a hearing; and (2) that a copy of the sound recording be made available to a party upon request. **Section 34** of this regulation authorizes a party to purchase a copy of the transcript of a hearing from the official certified court reporter.

Existing regulations set forth certain actions which may be taken pursuant to a hearing if a party who has been served with proper notice fails to appear at the hearing. (NAC 598.162) **Section 31** of this regulation instead authorizes such actions to be taken upon the failure of a respondent to appear at the hearing and expands the list of actions which may be taken to include the consideration of evidence and the entry of a default judgment against the respondent.

Existing regulations set forth the manner in which certain costs, fees, fines, penalties, charges or restitution relating to the regulation of deceptive trade practices must be paid. (NAC 598.172) **Section 35** revises the manner in which those costs, fees, fines, penalties, charges or restitution must be paid.

Existing regulations provide that a party who wishes to contest an order to show cause may file an answer with the Unit that must, in relevant part, admit or deny each material

allegation with specificity. Existing regulations also provide that a party who wishes to object to the form of an order to show cause must identify with specificity why he or she objects to the form. (NAC 598.144) **Section 25** requires such a party to file such an answer with the Unit or Attorney General within 10 calendar days after receipt of the notice of intended action and order to show cause or the complaint and order to show cause. **Section 25** also revises the required content of the answer and removes the requirement that a party who objects to the form of an order to show cause identify with specificity why he or she objects.

Existing law requires a tour broker or tour operator to disclose certain information in each advertisement for a sightseeing tour. (NRS 598.475) **Section 37** of this regulation revises the required contents of such a disclosure.

Existing law requires that the Commissioner determine the date on which a registrant has ceased to operate so that the Commissioner may release to the registrant the security deposited with the Unit, if no claims have been filed against that security within 6 months after the registrant has ceased to operate. (NRS 598.515, 598.8541, 598.9476) **Section 5** of this regulation requires such a registrant to notify the Unit in writing within 10 days after the registrant ceases to operate.

Existing regulations authorize the Commissioner to disclose information about the number of complaints that: (1) are currently under investigation by the Unit; (2) have been resolved by the Unit; and (3) were received by the Unit on any specific day. (NAC 598.115) **Section 16** of this regulation additionally authorizes the Director to disclose such information with respect to the Unit.

Section 38 repeals certain provisions relating to deceptive trade practices and sellers of travel. **Sections 9, 15, 17, 18 and 28** of this regulation make conforming changes to remove internal references to those repealed provisions.

Section 1. Chapter 598 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this regulation.

Sec. 2. *“Complaint and order to show cause” means an order to show cause and a statement of the charges issued by the Commissioner or Attorney General pursuant to subsection 1 of NRS 598.0971 directed to a person to show cause why the hearing officer should not order the person to cease and desist from engaging in a deceptive trade practice.*

Sec. 3. *“Notice of intended action and order to show cause” means a notification and order to show cause issued by the Unit pursuant to subsection 3 of NAC 598.136 directed to a person to show cause why the Unit should not take action against the security on deposit with the Unit and held in trust for consumers injured by the bankruptcy of the person or breach of*

an agreement entered into by the person in his or her capacity as a registrant pursuant to NRS 598.506, 598.854 or 598.9474.

Sec. 4. 1. *The cost of conducting an investigation or audit pursuant to this chapter or chapter 598 of NRS is the actual cost of conducting the investigation or audit, as determined by the Director, not to exceed \$50 per hour.*

2. The cost of conducting a hearing pursuant to this chapter or chapter 598 of NRS is the actual cost of conducting the hearing, as determined by the Director, not to exceed \$50 per hour.

3. For the purposes of NRS 598.0971:

(a) The charges for the rental of a hearing room shall be deemed to be the actual charges incurred by the Unit for the rental of the room used or reserved for the hearing.

(b) The charges for providing an independent hearing officer shall be deemed to be the actual fees and costs charged by the independent hearing officer.

Sec. 5. *A registrant shall notify the Unit in writing within 10 days after ceasing to operate.*

Sec. 6. 1. *A notice of intended action and order to show cause issued pursuant to subsection 3 of NAC 598.136 must be served upon the respondent:*

(a) Directly, by certified or registered mail, return receipt requested, or in any other manner permitted by the Nevada Rules of Civil Procedure for the service of process in civil actions.

(b) At least 10 calendar days before the date of the hearing, unless the requirement that service be made within that time is waived by the respondent.

2. A notice of intended action and order to show cause must include, without limitation:

- (a) An identifying number assigned by the Unit;*
- (b) A brief and concise description of the matters asserted by the claimant who alleges he or she was injured by the bankruptcy of the respondent or by the respondent's breach of an agreement entered into in his or her capacity as a registrant;*
- (c) A reference to any specific statutory provisions the respondent is alleged to have violated;*
- (d) A statement that there is reasonable cause to believe the respondent violated the statutory provisions referenced pursuant to paragraph (c);*
- (e) The signature of an employee of the Unit or an employee of the Attorney General;*
- (f) A notice of the hearing to show cause that sets forth the date, time and place of the hearing;*
- (g) A statement that the hearing is being held pursuant to NRS 598.506, 598.854 or 598.9474; and*
- (h) A notice that the respondent's failure to appear at the hearing may result in a default judgment being entered against the respondent without further notice.*

Sec. 7. 1. *The hearing officer may, at his or her discretion, order a prehearing conference to accomplish one or more of the following purposes:*

- (a) Formulate or simplify the issues involved in the hearing.*
- (b) Obtain admissions of fact or documents.*
- (c) Arrange for the exchange of proposed exhibits or prepared expert testimony.*
- (d) Limit the number of witnesses.*
- (e) Establish any other procedure or determine any other matters which may expedite the orderly conduct and disposition of the proceedings or settlements thereof.*

2. If a hearing officer orders a prehearing conference pursuant to subsection 1, the hearing officer shall serve on all parties a notice of the prehearing conference that includes, without limitation, the date, time and place of the prehearing conference.

3. Unless otherwise ordered by the hearing officer for good cause shown, the failure of a party or his or her counsel to attend a prehearing conference constitutes a waiver of any objection to any action taken at the prehearing conference or any agreements, admissions or stipulations made by the parties at the conference.

Sec. 8. *A registrant shall notify the Unit in writing of any claim filed against the security of the registrant. The notice must include, without limitation:*

- 1. The name and address of the person who filed the claim;*
- 2. The date the claim was filed;*
- 3. The amount of the claim; and*
- 4. Whether the claim has been paid.*

Sec. 9. NAC 598.100 is hereby amended to read as follows:

598.100 As used in NAC 598.100 to ~~598.174,~~ **598.172**, inclusive, *and sections 2 to 8, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 598.101 to 598.109, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 10. NAC 598.1015 is hereby amended to read as follows:

598.1015 “Claimant” means a person who has filed a claim with the ~~Division~~ **Unit**.

Sec. 11. NAC 598.102 is hereby amended to read as follows:

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

Sec. 12. NAC 598.105 is hereby amended to read as follows:

598.105 “Hearing officer” means the ~~{Commissioner}~~ *Director* or a person designated by the ~~{Commissioner or the}~~ Director to conduct a hearing.

Sec. 13. NAC 598.107 is hereby amended to read as follows:

598.107 “Registrant” ~~{has the meaning ascribed to it in NRS 598.2805.}~~ *means a person or entity who has registered with the Unit pursuant to NRS 598.471, 598.852 or 598.944.*

Sec. 14. NAC 598.108 is hereby amended to read as follows:

598.108 “Respondent” means any natural person or business entity required to respond to a proceeding before the ~~{Division.}~~ *hearing officer.*

Sec. 15. NAC 598.109 is hereby amended to read as follows:

598.109 “Security” means a bond, irrevocable letter of credit or certificate of deposit that is deposited with the ~~{Division}~~ *Unit* pursuant to NRS ~~{598.2807.}~~ *598.495, 598.853 or 598.9472.*

Sec. 16. NAC 598.115 is hereby amended to read as follows:

598.115 In addition to the information that may be disclosed pursuant to NRS 598.098, the Commissioner *or 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.*

Sec. 17. NAC 598.120 is hereby amended to read as follows:

598.120 The provisions of NAC 598.120 to ~~{598.174.}~~ *598.172*, inclusive:

1. Apply to any hearing authorized to be conducted by the ~~{Division}~~ *hearing officer* pursuant to chapter 598 of NRS, including, but not limited to, a hearing to show cause regarding

an order to cease and desist held pursuant to subsection 1 of NRS 598.0971 and a hearing to determine the distribution of security to claimants held pursuant to ~~subsection 4 of~~ NRS ~~598.731;~~ *598.506, 598.854 or 598.9474*; and

2. Do not preclude the commencement or pursuit of any additional remedies by the ~~Division~~ *Unit or Attorney General*.

Sec. 18. NAC 598.122 is hereby amended to read as follows:

598.122 The provisions of NAC 598.120 to ~~598.174;~~ *598.172*, inclusive, must be liberally construed to secure a just, speedy and economical determination of all issues before the ~~Division~~ *Unit* and to carry out the purposes of chapter 598 of NRS.

Sec. 19. NAC 598.124 is hereby amended to read as follows:

598.124 All claims, requests for a hearing and other correspondence regarding a hearing must be addressed to the Department of Business and Industry, Consumer Affairs ~~Division,~~ *1850 East Sahara Avenue, Suite 101, Las Vegas, Nevada 89104.* *Unit at the Unit's physical address provided on the Internet website of the Unit.*

Sec. 20. NAC 598.130 is hereby amended to read as follows:

598.130 An attorney of record withdrawing from the representation of a party appearing in a proceeding before the ~~Division~~ *hearing officer* shall immediately give written notice of his or her withdrawal to:

1. The hearing officer;
2. The party whom the attorney of record represented; and
3. Any other parties to the proceeding.

Sec. 21. NAC 598.132 is hereby amended to read as follows:

598.132 1. All persons appearing in or attending a proceeding before the ~~{Division}~~ *hearing officer* shall conduct themselves in a respectful manner.

2. If the behavior of a person interferes with the orderly conduct of the hearing, the hearing officer may order the person to cease the improper behavior. Such an order must be made part of the record.

3. If the improper behavior continues or resumes, the hearing officer may exclude the person from the hearing.

Sec. 22. NAC 598.134 is hereby amended to read as follows:

598.134 1. A person other than the original parties to the proceeding, who believes that he or she may be directly and substantially affected by the proceeding, may seek an order for leave to intervene in the proceeding by filing a written motion to intervene with the hearing officer.

2. The granting of leave to intervene or otherwise appear in any matter or proceeding is not construed to be a finding or determination that the person will or may be a party aggrieved by any ruling, order or decision of the ~~{Division}~~ *hearing officer* for the purposes of judicial review.

Sec. 23. NAC 598.136 is hereby amended to read as follows:

598.136 1. Upon receiving a claim, the ~~{Division}~~ *Unit* may conduct an audit to determine whether the claimant is entitled to recover against the security of the registrant.

2. After the ~~{Division}~~ *Unit* has completed its audit, the ~~{Division}~~ *Unit* may schedule a hearing.

3. If the ~~{Division}~~ *Unit* decides that it will take action against the security of the registrant, the ~~{Division}~~ *Unit* will notify the registrant at least 10 days before the date set for the hearing and request the registrant to appear and show cause why the ~~{Division}~~ *Unit* should not take the intended action.

4. If the ~~{Division}~~ *Unit* decides that it will not take action against the security of the registrant on behalf of the claimant, the ~~{Division}~~ *Unit* will notify the claimant at least 10 days before the date set for the hearing and request the claimant to appear and show cause why the ~~{Division}~~ *Unit* should not decline to take action.

Sec. 24. NAC 598.140 is hereby amended to read as follows:

598.140 1. ~~{An}~~ *A complaint and* order to show cause *issued pursuant to NRS 598.0971* must be served ~~{, directly}~~ *upon the respondent:*

(a) *Directly* or by certified or registered mail, return receipt requested, ~~{upon the respondent at}~~ *or in any other manner permitted in the Nevada Rules of Civil Procedure for service of process in civil actions.*

(b) *At* least 10 calendar days before the date of the hearing, unless the requirement that service be made within that time is waived in writing by the respondent.

2. ~~{An}~~ *A complaint and* order to show cause must ~~{bear an identifying number assigned by the Division and must}~~ include ~~{, but is not limited to:}~~ *, without limitation:*

(a) *An identifying number assigned by the Unit or Attorney General;*

(b) A statement of the charges, including, but not limited to, a brief and concise description of the matters asserted;

~~{(b)}~~ (c) A reference to any specific statutory provisions that the respondent is alleged to have violated;

~~{(e)}~~ (d) *A statement that there is reasonable cause to believe the respondent violated the statutory provisions referenced in paragraph (c);*

(e) *The signature of an employee of the Unit or an employee of the Attorney General;*

(f) A notice of the hearing ~~{to show cause}~~ that sets forth the date, time and place of the hearing;

~~{(d)}~~ (g) A statement that the hearing is being held pursuant to NRS 598.0971; and

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

~~—— (1) An investigation was conducted; and~~

~~—— (2) There is reasonable cause to believe that the respondent violated the provisions listed pursuant to paragraph (b).}~~

(h) A notice that the respondent's failure to appear at the hearing may result in a default judgment being entered against the respondent without further notice.

Sec. 25. NAC 598.144 is hereby amended to read as follows:

598.144 1. A party who wishes to contest ~~{an}~~ *a notice of intended action and order to show cause or a complaint and* order to show cause may file an answer with the ~~{Division.}~~ *Unit or Attorney General within 10 calendar days after the day the notice of intended action and order to show cause or the complaint and order to show cause, as applicable, 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 *notice of intended action and order to show cause or the complaint and* order to show cause in the answer, the respondent

shall be deemed to have waived all objections to the form of the *notice of intended action and order to show cause or the complaint and 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.}~~

Sec. 26. NAC 598.146 is hereby amended to read as follows:

598.146 1. Before a hearing, or during a hearing if good cause is shown, the ~~{Division}~~ *Commissioner, hearing officer* or the Attorney General ~~{, or both,}~~ may issue subpoenas and subpoenas duces tecum.

2. The ~~{Division}~~ *Commissioner or hearing officer* may issue subpoenas and subpoenas duces tecum at the written request of a party.

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}~~ *Commissioner or hearing officer* 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,}~~ *Unit or Attorney General*, 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.

Sec. 27. NAC 598.150 is hereby amended to read as follows:

598.150 A party to a hearing may ~~†~~:

- ~~—1. Inspect, before the hearing, all documents which may be considered by the hearing officer as part of the case presented by the Division; and~~
- ~~—2. Have} request~~ a copy ~~{made}~~ of any ~~{such}~~ document ~~{upon payment of}~~ *that may be considered by the hearing officer, which may be provided in an electronic format at the discretion of the hearing officer. If a copy of the document is not provided in an electronic format, the hearing officer may collect a fee for the copy in the amount of 25 cents per page .* ~~{to reimburse the Division for the cost of providing the copy.}~~

Sec. 28. NAC 598.156 is hereby amended to read as follows:

598.156 1. The ~~{Commissioner}~~ *Director* 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.}~~ *Director.*

3. If the ~~{Commissioner}~~ *Director* designates a person to act as hearing officer, the ~~{Commissioner}~~ *Director* 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,}~~ *598.172*, 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.

Sec. 29. NAC 598.158 is hereby amended to read as follows:

598.158 The hearing officer *conducting a hearing* shall:

1. Call the hearing to order and note the appearances of the parties who are present;
2. Ascertain whether the persons commanded to appear under subpoena are present, and whether the documents, books, records and other evidence requested by subpoena are present in the hearing room;
3. Ascertain whether a copy of the notice of intended action *and order to show cause* or *the complaint and* order to show cause, whichever is applicable, has been served on the appropriate parties;
4. Hold appropriate conferences before or during the hearing;
5. Rule on any procedural matter;
6. Rule on the admissibility of evidence and receive evidence;
7. Rule on the admissibility of any amendments to the *notice of intended action and order to show cause or the complaint and* order to show cause ~~{}~~, *as applicable*;
8. Act upon any pending motions, petitions or applications that do not involve a final determination of the proceeding;

9. Issue appropriate interim orders;
10. Recess or continue the hearing as necessary;
11. Set reasonable limitations on the time for presentation of oral testimony;
12. Administer the oath to all persons whose testimony will be taken;
13. Ascertain whether a party desires to have a witness excluded from the hearing room

until the witness is called to testify; and

14. Make proposed findings of fact, opinions and conclusions of law.

Sec. 30. NAC 598.160 is hereby amended to read as follows:

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

Sec. 31. NAC 598.162 is hereby amended to read as follows:

598.162 If a ~~party~~ *respondent* who has been served with a proper notice of a hearing fails to appear at the hearing, and a continuance of the hearing has not been requested and granted:

1. The failure to appear by the ~~party~~ *respondent* may be entered in the record;

2. Evidence may be heard ~~and~~ *and considered*; and

3. The matter may be considered and disposed of on the basis of the evidence before the hearing officer in the manner required by this section ~~and~~ *or a default judgment may be entered against the respondent without further notice.*

Sec. 32. NAC 598.164 is hereby amended to read as follows:

598.164 1. The respondent may cross-examine witnesses in the order in which the ~~Division~~ *Unit* presents them.

2. When the ~~{Division}~~ *Unit* has completed its presentation, the hearing officer shall request the respondent to proceed with the introduction of evidence and the calling of witnesses on his or her behalf. The ~~{Division}~~ *Unit* may cross-examine witnesses in the order in which the respondent presents them.

3. When the respondent has completed his or her presentation, the ~~{Division}~~ *Unit* may call any rebuttal witnesses.

4. The hearing officer may question counsel for the parties or witnesses at any time during the proceeding.

5. If a party does not testify in his or her own behalf, the party may be called and examined as if under cross-examination.

6. The hearing need not be conducted according to the technical rules relating to evidence and witnesses. Evidence must be introduced and considered in accordance with ~~{the provisions}~~ *chapter 233B* of NRS . ~~{233B.123. Any relevant evidence, including, but not limited to, a claim in lieu of or in addition to the testimony, may be admitted and is sufficient in itself to support a finding if it is the sort of evidence commonly relied upon by reasonable and prudent persons in the conduct of their affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action.}~~

7. Depositions of witnesses and parties may not be taken and no formal discovery of evidence will be allowed.

8. Briefs must be filed upon the order of the hearing officer. The time for filing briefs will be set by the hearing officer conducting the hearing.

9. Rules of privilege recognized by law must be given effect.

10. Objections to evidentiary offers may be made and must be noted in the record. If an objection is made to the admission of evidence, such evidence may be received subject to a later ruling by the hearing officer. If an objection to the admission of evidence is sustained, the offering party may make an offer of proof for the record.

11. Oral argument is not allowed unless requested by the hearing officer. The hearing officer may request that the parties summarize their presentations.

12. The hearing officer may adjourn the hearing for the submittal of further evidence or to hear further testimony when justice would not be served otherwise, and may adjourn the hearing at the request of any party for good cause shown, but for not more than 30 days after the date scheduled for the first hearing.

13. Any documentary or real evidence introduced at the hearing must be marked for identification by the court reporter or hearing officer. If such evidence is admitted by the hearing officer, it must be marked as the exhibit of the offering party.

14. The hearing officer shall indicate for the record that the hearing is terminated and that he or she will issue a written decision after considering all of the evidence admitted pursuant to NRS 233B.123.

15. Notice of the order of the ~~{Commissioner or Director}~~ *hearing officer* must be served on all parties in accordance with NRS 233B.125. The order of the ~~{Commissioner or Director}~~ *hearing officer* becomes effective after proper service of the notice.

Sec. 33. NAC 598.168 is hereby amended to read as follows:

598.168 ~~{H-}~~ 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.

~~{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.*

Sec. 34. NAC 598.170 is hereby amended to read as follows:

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

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.

Sec. 35. NAC 598.172 is hereby amended to read as follows:

598.172 Payment of any costs, fees, fines, penalties, charges or restitution authorized by statute or regulation to be collected by the ~~{Division.}~~ *Unit or Attorney General*, or ordered by the ~~{Commissioner or the Director}~~ *hearing officer* to be paid by a party pursuant to ~~{paragraph (b) or (c) of subsection 2 of}~~ NRS ~~{598.0971}~~ *598.0903 to 598.0999, inclusive*, or any regulation must be made by cashier's check, money order, ~~{or}~~ other certified instruments *or any method of electronic transfer of money allowed by the Unit or Attorney General, if required*, payable to the ~~{Division.}~~ *Unit or Attorney General*.

Sec. 36. NAC 598.550 is hereby amended to read as follows:

598.550 1. Each tour broker and tour operator shall register with the ~~{Division.}~~ *Unit* on a form provided by the ~~{Division.}~~ *Unit*. An applicant for registration shall include with his or her application the required security in proper form.

2. Upon receipt of an application for registration from a tour broker or tour operator that includes the required security in proper form, the ~~{Division.}~~ *Unit* will issue a certificate of

registration to the tour broker or tour operator. The certificate of registration is not transferable or assignable.

3. A tour broker or tour operator shall display the certificate of registration in an area within his or her business so that the certificate of registration is visible to the public.

Sec. 37. NAC 598.560 is hereby amended to read as follows:

598.560 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:

STATE OF NEVADA

~~{THE}~~ DEPARTMENT OF BUSINESS AND INDUSTRY

CONSUMER AFFAIRS ~~{DIVISION}~~

~~1850 EAST SAHARA AVENUE, SUITE 101~~

~~LAS VEGAS, NEVADA 89104~~ ***UNIT***

(The physical address of the Unit as listed on the Internet website of the Unit)

(The address of the Internet website of the Unit)

IN CLARK COUNTY CALL: (702) ~~{486-7355}~~ ***486-2750***

ALL OTHER AREAS CALL TOLL FREE: ~~{1-800-326-5202}~~ ***1-844-594-7275***

Sec. 38. NAC 598.1025, 598.1045, 598.106, 598.110, 598.142, 598.148, 598.166, 598.174, 598.500, 598.510 and 598.520 are hereby repealed.

TEXT OF REPEALED SECTIONS

598.1025 “Complainant” defined. (NRS 598.0967, 598.731)

“Complainant” means a person who makes a complaint to the Division.

598.1045 “Division” defined. (NRS 598.0967, 598.731)

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

598.106 “Order to show cause” defined. (NRS 598.0967, 598.731)

“Order to show cause” means an order issued by the Commissioner pursuant to subsection 1 of NRS 598.0971 directed to a person to show cause why the Commissioner should not order the person to cease and desist from engaging in a deceptive trade practice.

598.110 Informal resolution of complaint through memorandum of understanding.

1. The Commissioner and a person alleged to have committed a deceptive trade practice may informally resolve any complaints involving the deceptive trade practice by entering into a memorandum of understanding.

2. The memorandum of understanding must:

(a) Be in a form approved by the Commissioner; and

(b) Provide for payment of restitution by the person alleged to have committed a deceptive trade practice to each consumer aggrieved by that deceptive trade practice.

3. The memorandum of understanding must not be used to assess penalties or the costs of investigating a complaint against the alleged violator.

4. By executing a memorandum of understanding pursuant to this section, the Commissioner is not precluded from initiating civil proceedings or accepting an assurance of discontinuance from a person pursuant to NRS 598.0979 if the Commissioner determines that the alleged violator breached the terms of the memorandum of understanding or committed or attempted to commit a deceptive trade practice after the execution of the memorandum of understanding.

5. Execution of a memorandum of understanding does not affect the right of a consumer to pursue a private remedy against a person alleged to have committed a deceptive trade practice.

6. A memorandum of understanding is not an admission of a violation for any purpose.

598.142 Order to show cause: Form. (NRS 598.0967, 598.731) 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 (name of commissioner), Commissioner, Consumer Affairs Division, Department of Business and Industry, State of Nevada, pursuant to Nevada Revised Statutes (hereinafter "NRS") Section 598.0971, and hereby ORDERS (name of respondent) to show cause, if any, why the Commissioner should not order (Name of Respondent) to cease and desist from engaging in the following deceptive trade practices, in violation of NRS (section or sections of NRS being violated):

(Describe all alleged violations, using one paragraph for each alleged violation.)

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 or certified mail, return receipt requested, no later than (date).

TAKE NOTICE that the Commissioner has reasonable cause to believe, upon investigation, that (name of respondent) has been engaged or is engaging in the foregoing deceptive trade practices 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 Commissioner determines that (name of respondent) has violated any of the provisions of NRS 598.0903 to 598.0999, inclusive, as alleged, or if (name of respondent) fails to appear for the hearing after being properly served with this Order, the Commissioner may make a written report of findings of fact concerning the violation and cause to be served a copy thereof upon (name of respondent) and any intervener at the hearing.

TAKE FURTHER NOTICE that if the Commissioner determines in the report that any such violation has occurred, the Commissioner may order (name of respondent) to:

1. Cease and desist from engaging in the practice or other activity constituting the violation;
2. Pay the cost of reporting services, fees for experts and other witnesses, charges for the rental of a hearing room if such a room is not available to the Commissioner free of charge, charges for providing an independent hearing officer, if any, and charges incurred for service of

process, if (name of respondent) is adjudicated to have committed a violation of NRS 598.0903 to 598.0999, inclusive; and

3. Provide restitution for any money or property improperly received or obtained as a result of the violation.

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, 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 Division of the Department of Business and Industry.

598.148 Affidavits. (NRS 598.0967, 598.731)

1. A party that wishes to have an affidavit introduced in evidence at any hearing of the Division must, at least 10 days before the date set for hearing, serve upon the opposing party, either personally or by registered or certified mail, return receipt requested, a copy of the affidavit which is proposed to be introduced in evidence.

2. A notice, in substantially the following form, must be served upon the opposing party at the same time:

The accompanying affidavit of (name of affiant) will be introduced in evidence at the hearing set for the(day) of(month) of(year). (name of affiant) will not be called to testify orally and you will not be entitled to cross-examine (name of affiant) unless you place in the mail or personally deliver to the undersigned your request to cross-examine (name of affiant)

not later than 7 days after the date on which this notice and the enclosed affidavit were served upon you.

(Signature of party or counsel)

(Name of party or counsel)

(Address)

(Telephone number)

3. Unless the opposing party, within 7 days after service of a copy of the affidavit and notice, places in the mail, as evidenced by the postmarked date on the envelope, or personally delivers to the party proposing to introduce the affidavit a request to cross-examine the affiant, the opposing party shall be deemed to have waived his or her right to cross-examine the affiant, and the affidavit, if introduced in evidence, must be given the same weight as if the affiant had testified orally.

4. If an opportunity to cross-examine an affiant is not afforded to the opposing party after the opposing party so requests pursuant to this section, the affidavit may be introduced in evidence, but the affidavit must be given the same weight as other hearsay evidence.

598.166 Review of order; entry of final order; filing of petition for judicial review.
(NRS 598.0967, 598.731)

1. If the hearing officer is a designee of the Commissioner or Director, the Director will review the order and enter the final order affirming, modifying or setting aside the decision.

2. If a decision is rendered orally, the time to file a petition for judicial review does not begin to run until:

(a) The decision and order are reduced to writing and signed by the Commissioner or Director; and

(b) Written notice of the decision and of the order is mailed, postage prepaid, to the parties.

598.174 Rehearing. (NRS 598.0967, 598.731)

1. If a petition for judicial review of the decision has not been filed, upon written application by a party within 15 days after service of a copy of the decision and order, a rehearing may be ordered upon such terms and conditions as the hearing officer considers just and proper.

2. An application for rehearing must not be granted except upon a showing that:

(a) A party was not properly served with a notice to appear;

(b) There is additional evidence that is material, necessary and reasonably calculated to change the decision of the hearing officer, and good cause existed for the failure to present that evidence at the hearing;

(c) A material fact or point of law was overlooked or misconstrued as set forth in the decision; or

(d) There has been a change in the laws affecting the decision.

3. The application for rehearing must:

(a) Be supported by an affidavit of the party or his or her counsel showing cause for failing to appear or failing to present the evidence at the hearing;

(b) State with particularity:

(1) The reason why the additional evidence is necessary and material and why the additional evidence was not introduced at the hearing; or

(2) The material fact or point of law which, in the opinion of the party, has been overlooked or misconstrued;

(c) Contain every argument in support of the position of the party that he or she desires to present;

(d) Not exceed 10 pages in length; and

(e) Be served upon the opposing party at least 10 days before the date of the rehearing.

4. Matters already presented in briefs or oral arguments may not be reargued in the application for rehearing. No point may be raised for the first time in an application for rehearing.

5. A party may file and serve an answer to the application for rehearing. The answer must be filed within 5 days after the party receives the application for rehearing.

6. An application for rehearing does not operate to stay the order or excuse compliance with or suspend the effectiveness of the challenged order, except as otherwise ordered by the Commissioner or the Director.

7. An application for rehearing does not toll the time for filing a petition for judicial review.

8. Oral argument on an application for rehearing must not be allowed.

9. If an application is granted, upon rehearing, rebuttal evidence to the additional evidence must be allowed. After rehearing, the Commissioner or the Director may modify his or her decision and order as the additional evidence may warrant.

598.500 Display of certificate of registration. (NRS 598.0967) A seller of travel shall display the certificate of registration issued by the Division to the seller of travel pursuant to NRS 598.365 in an area within his or her business so that the certificate of registration is visible to the public.

598.510 “Seller of travel” exclusions interpreted. (NRS 598.0967)

1. With regard to a hotel that provides or arranges travel services for its patrons or guests, the exclusion for the term “seller of travel” as set forth in subsection 2 of NRS 598.335:

(a) Applies only to persons actually employed by the hotel.

(b) Does not apply to lessees, independent contractors and other persons who are not employees of the hotel.

2. With regard to a person who, for compensation, transports persons or property by air, land, rail or water, the exclusion for the term “seller of travel” as set forth in subsection 2 of NRS 598.335 applies only to persons whose businesses are limited to providing such transportation.

598.520 Exemption from security requirement. (NRS 598.0967)

The security requirement set forth in NRS 598.375 that a seller of travel deposit with the Division a bond, irrevocable letter of credit or certificate of deposit does not apply to a person engaged in business as a seller of travel if the person submits to the Division, in such form as the Division prescribes, evidence satisfactory to the Commissioner that the person is an employee, agent or independent contractor of a seller of travel who:

1. Is in compliance with the requirement to provide such security and that the person is covered by the security deposited with the Division by the seller of travel; or

2. Is exempt from the requirement to provide such security.