

ASSEMBLY BILL NO. 262—ASSEMBLYMAN CARRILLO

MARCH 7, 2017

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to contracts for the sale of vehicles. (BDR 52-937)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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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 contracts for the sale of vehicles; expanding the circumstances under which certain actions taken by a seller against a buyer of a vehicle are deceptive trade practices; defining the term “knowingly” for the purposes of provisions governing deceptive trade practices; revising provisions relating to sureties who issue bonds to brokers, dealers, special dealers, rebuilders, distributors and manufacturers of vehicles and dealers, lessors and manufacturers of off-highway vehicles; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law defines certain conduct by a person who is engaging in his or her  
2 business or occupation as a deceptive trade practice. (NRS 598.092) **Section 3** of  
3 this bill adds to the list of conduct that is considered a deceptive trade practice a  
4 person knowingly: (1) repossessing a vehicle from a debtor before default; or (2)  
5 committing any act against a consumer who contracted with the person for the sale  
6 of a vehicle which entitles the consumer to certain remedies provided in law  
7 pursuant to the Uniform Commercial Code. (NRS 104.9625) **Section 1** of this bill  
8 defines “knowingly” for the purposes of the provisions governing deceptive trade  
9 practices. **Sections 2 and 4-6** of this bill make conforming changes.

10 Existing law requires certain brokers, dealers, special dealers, rebuilders,  
11 distributors and manufacturers of vehicles and dealers, lessors and manufacturers of  
12 off-highway vehicles to procure and file with the Department of Motor Vehicles a  
13 bond, which is a prerequisite to licensure by the Department. The surety issuing the  
14 bond is required to appoint the Secretary of State as its agent to accept service of  
15 notice or process in any action upon the bond. (NRS 482.3333, 482.345, 490.278)  
16 **Sections 7-9** of this bill instead require the surety to appoint the Commissioner of  
17 Insurance as its agent. **Sections 7-9** also add to the description of the uses of the  
18 bond by a consumer to include violations of the chapters of NRS governing:



19 (1) particular cases concerning persons, including, without limitation, certain acts  
20 of fraud against a consumer; (2) retail installment sales of goods and services; (3)  
21 the Uniform Commercial Code, as adopted in NRS; and (4) deceptive trade  
22 practices.

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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 *“Knowingly” imports a knowledge that the facts exist which*  
4 *constitute the act or omission, and does not require knowledge of*  
5 *the prohibition against the act or omission. Knowledge of any*  
6 *particular fact may be inferred from the knowledge of such other*  
7 *facts as should put an ordinarily prudent person upon inquiry.*

8 **Sec. 2.** NRS 598.0903 is hereby amended to read as follows:

9 598.0903 As used in NRS 598.0903 to 598.0999, inclusive,  
10 *and section 1 of this act*, unless the context otherwise requires, the  
11 words and terms defined in NRS 598.0905 to 598.0947, inclusive,  
12 *and section 1 of this act* have the meanings ascribed to them in  
13 those sections.

14 **Sec. 3.** NRS 598.092 is hereby amended to read as follows:

15 598.092 A person engages in a “deceptive trade practice” when  
16 in the course of his or her business or occupation he or she:

17 1. Knowingly fails to identify goods for sale or lease as being  
18 damaged by water.

19 2. Solicits by telephone or door to door as a lessor or seller,  
20 unless the lessor or seller identifies himself or herself, whom he or  
21 she represents and the purpose of his or her call within 30 seconds  
22 after beginning the conversation.

23 3. Knowingly states that services, replacement parts or repairs  
24 are needed when no such services, replacement parts or repairs are  
25 actually needed.

26 4. Fails to make delivery of goods or services for sale or lease  
27 within a reasonable time or to make a refund for the goods or  
28 services, if he or she allows refunds.

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

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

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

35 (c) Makes any untrue statement of a material fact or omits to  
36 state a material fact which is necessary to make another statement,



1 considering the circumstances under which it is made, not  
2 misleading;

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

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

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

9 (g) Represents that he or she is licensed by an agency of the  
10 State to sell or offer for sale investments or services for investments  
11 if he or she is not so licensed.

12 6. Charges a fee for advice with respect to investment of  
13 money and fails to disclose:

14 (a) That he or she is selling or offering to lease goods or services  
15 and, if he or she is, their identity; or

16 (b) That he or she is licensed by an agency of any state or of the  
17 United States to sell or to offer for sale investments or services for  
18 investments or holds any other license related to the service he or  
19 she is providing.

20 7. Notifies any person, by any means, as a part of an  
21 advertising plan or scheme, that he or she has won a prize and that  
22 as a condition of receiving the prize he or she must purchase or lease  
23 goods or services.

24 8. Knowingly misrepresents the legal rights, obligations or  
25 remedies of a party to a transaction.

26 9. Fails, in a consumer transaction that is rescinded, cancelled  
27 or otherwise terminated in accordance with the terms of an  
28 agreement, advertisement, representation or provision of law, to  
29 promptly restore to a person entitled to it a deposit, down payment  
30 or other payment or, in the case of property traded in but not  
31 available, the agreed value of the property or fails to cancel within a  
32 specified time or an otherwise reasonable time an acquired security  
33 interest. This subsection does not apply to a person who is holding a  
34 deposit, down payment or other payment on behalf of another if all  
35 parties to the transaction have not agreed to the release of the  
36 deposit, down payment or other payment.

37 10. **Knowingly:**

38 (a) **Repossesses a vehicle from a debtor pursuant to NRS**  
39 **104.9609 before default by the debtor as defined in the form for**  
40 **the contract for the sale of the vehicle prescribed by the**  
41 **Commissioner of Financial Institutions pursuant to NRS 97.299;**  
42 **or**

43 (b) **Commits an act against a consumer who entered into a**  
44 **contract for the sale of a vehicle with the person which entitles the**  
45 **consumer to any remedy available pursuant to NRS 104.9625.**



1 **11.** Fails to inform customers, if he or she does not allow  
2 refunds or exchanges, that he or she does not allow refunds or  
3 exchanges by:

- 4 (a) Printing a statement on the face of the lease or sales receipt;
- 5 (b) Printing a statement on the face of the price tag; or
- 6 (c) Posting in an open and conspicuous place a sign at least 8 by  
7 10 inches in size with boldface letters,  
8 ↪ specifying that no refunds or exchanges are allowed.

9 ~~111~~ **12.** Knowingly and willfully violates NRS 597.7118 or  
10 597.7125.

11 ~~112~~ **13.** Knowingly takes advantage of another person's  
12 inability reasonably to protect his or her own rights or interests in a  
13 consumer transaction when such an inability is due to illiteracy, or  
14 to a mental or physical infirmity or another similar condition which  
15 manifests itself as an incapability to understand the language or  
16 terms of any agreement.

17 **Sec. 4.** NRS 598.0955 is hereby amended to read as follows:

18 598.0955 1. The provisions of NRS 598.0903 to 598.0999,  
19 inclusive, **and section 1 of this act** do not apply to:

20 (a) Conduct in compliance with the orders or rules of, or a  
21 statute administered by, a federal, state or local governmental  
22 agency.

23 (b) Publishers, including outdoor advertising media, advertising  
24 agencies, broadcasters or printers engaged in the dissemination of  
25 information or reproduction of printed or pictorial matter who  
26 publish, broadcast or reproduce material without knowledge of its  
27 deceptive character.

28 (c) Actions or appeals pending on July 1, 1973.

29 2. The provisions of NRS 598.0903 to 598.0999, inclusive, **and**  
30 **section 1 of this act** do not apply to the use by a person of any  
31 service mark, trademark, certification mark, collective mark, trade  
32 name or other trade identification which was used and not  
33 abandoned prior to July 1, 1973, if the use was in good faith and is  
34 otherwise lawful except for the provisions of NRS 598.0903 to  
35 598.0999, inclusive ~~11~~, **and section 1 of this act**.

36 **Sec. 5.** NRS 598.0971 is hereby amended to read as follows:

37 598.0971 1. If, after an investigation, the Commissioner has  
38 reasonable cause to believe that any person has been engaged or is  
39 engaging in any deceptive trade practice in violation of NRS  
40 598.0903 to 598.0999, inclusive, **and section 1 of this act**, the  
41 Commissioner may issue an order directed to the person to show  
42 cause why the Director should not order the person to cease and  
43 desist from engaging in the practice and to pay an administrative  
44 fine. The order must contain a statement of the charges and a notice  
45 of a hearing to be held thereon. The order must be served upon the



1 person directly or by certified or registered mail, return receipt  
2 requested.

3 2. An administrative hearing on any action brought by the  
4 Commissioner must be conducted before the Director or his or her  
5 designee.

6 3. If, after conducting a hearing pursuant to the provisions of  
7 subsection 2, the Director or his or her designee determines that the  
8 person has violated any of the provisions of NRS 598.0903 to  
9 598.0999, inclusive, *and section 1 of this act*, or if the person fails  
10 to appear for the hearing after being properly served with the  
11 statement of charges and notice of hearing, the Director or his or her  
12 designee shall issue an order setting forth his or her findings of fact  
13 concerning the violation and cause to be served a copy thereof upon  
14 the person and any intervener at the hearing. If the Director or his or  
15 her designee determines in the report that such a violation has  
16 occurred, he or she may order the violator to:

17 (a) Cease and desist from engaging in the practice or other  
18 activity constituting the violation;

19 (b) Pay the costs of conducting the investigation, costs of  
20 conducting the hearing, costs of reporting services, fees for experts  
21 and other witnesses, charges for the rental of a hearing room if such  
22 a room is not available to the Director or his or her designee free of  
23 charge, charges for providing an independent hearing officer, if any,  
24 and charges incurred for any service of process, if the violator is  
25 adjudicated to have committed a violation of NRS 598.0903 to  
26 598.0999, inclusive ~~†~~, *and section 1 of this act*;

27 (c) Provide restitution for any money or property improperly  
28 received or obtained as a result of the violation; and

29 (d) Impose an administrative fine of \$1,000 or treble the amount  
30 of restitution ordered, whichever is greater.

31 ➤ The order must be served upon the person directly or by certified  
32 or registered mail, return receipt requested. The order becomes  
33 effective upon service in the manner provided in this subsection.

34 4. Any person whose pecuniary interests are directly and  
35 immediately affected by an order issued pursuant to subsection 3 or  
36 who is aggrieved by the order may petition for judicial review in the  
37 manner provided in chapter 233B of NRS. Such a petition must be  
38 filed within 30 days after the service of the order. The order  
39 becomes final upon the filing of the petition.

40 5. If a person fails to comply with any provision of an order  
41 issued pursuant to subsection 3, the Commissioner or the Director  
42 may, through the Attorney General, at any time after 30 days after  
43 the service of the order, cause an action to be instituted in the  
44 district court of the county wherein the person resides or has his or  
45 her principal place of business requesting the court to enforce the



1 provisions of the order or to provide any other appropriate  
2 injunctive relief.

3 6. If the court finds that:

4 (a) The violation complained of is a deceptive trade practice;

5 (b) The proceedings by the Director or his or her designee  
6 concerning the written report and any order issued pursuant to  
7 subsection 3 are in the interest of the public; and

8 (c) The findings of the Director or his or her designee are  
9 supported by the weight of the evidence,

10 ➤ the court shall issue an order enforcing the provisions of the order  
11 of the Director or his or her designee.

12 7. An order issued pursuant to subsection 6 may include:

13 (a) A provision requiring the payment to the Consumer Affairs  
14 Division of the Department of Business and Industry of a penalty of  
15 not more than \$5,000 for each act amounting to a failure to comply  
16 with the Director's or designee's order;

17 (b) An order that the person cease doing business within this  
18 State; and

19 (c) Such injunctive or other equitable or extraordinary relief as  
20 is determined appropriate by the court.

21 8. Any aggrieved party may appeal from the final judgment,  
22 order or decree of the court in a like manner as provided for appeals  
23 in civil cases.

24 9. Upon the violation of any judgment, order or decree issued  
25 pursuant to subsection 6 or 7, the Commissioner, after a hearing  
26 thereon, may proceed in accordance with the provisions of  
27 NRS 598.0999.

28 **Sec. 6.** NRS 598.0999 is hereby amended to read as follows:

29 598.0999 1. Except as otherwise provided in NRS 598.0974,  
30 a person who violates a court order or injunction issued pursuant to  
31 the provisions of NRS 598.0903 to 598.0999, inclusive, **and section**  
32 ***1 of this act*** upon a complaint brought by the Commissioner, the  
33 Director, the district attorney of any county of this State or the  
34 Attorney General shall forfeit and pay to the State General Fund a  
35 civil penalty of not more than \$10,000 for each violation. For the  
36 purpose of this section, the court issuing the order or injunction  
37 retains jurisdiction over the action or proceeding. Such civil  
38 penalties are in addition to any other penalty or remedy available for  
39 the enforcement of the provisions of NRS 598.0903 to 598.0999,  
40 inclusive ***H***, **and section 1 of this act.**

41 2. Except as otherwise provided in NRS 598.0974, in any  
42 action brought pursuant to the provisions of NRS 598.0903 to  
43 598.0999, inclusive, **and section 1 of this act**, if the court finds that  
44 a person has willfully engaged in a deceptive trade practice, the  
45 Commissioner, the Director, the district attorney of any county in



1 this State or the Attorney General bringing the action may recover a  
2 civil penalty not to exceed \$5,000 for each violation. The court in  
3 any such action may, in addition to any other relief or  
4 reimbursement, award reasonable attorney's fees and costs.

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

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

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

10 (c) For the third and all subsequent offenses, is guilty of a  
11 category D felony and shall be punished as provided in  
12 NRS 193.130.

13 ↪ The court may require the natural person, firm, or officer or  
14 managing agent of the corporation or association to pay to the  
15 aggrieved party damages on all profits derived from the knowing  
16 and willful engagement in a deceptive trade practice and treble  
17 damages on all damages suffered by reason of the deceptive trade  
18 practice.

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

24 5. If a person violates any provision of NRS 598.0903  
25 to 598.0999, inclusive, *and section 1 of this act*, 598.100 to  
26 598.2801, inclusive, 598.305 to 598.395, inclusive, 598.405  
27 to 598.525, inclusive, 598.741 to 598.787, inclusive, or 598.840 to  
28 598.966, inclusive, fails to comply with a judgment or order of any  
29 court in this State concerning a violation of such a provision, or fails  
30 to comply with an assurance of discontinuance or other agreement  
31 concerning an alleged violation of such a provision, the  
32 Commissioner or the district attorney of any county may bring an  
33 action in the name of the State of Nevada seeking:

34 (a) The suspension of the person's privilege to conduct business  
35 within this State; or

36 (b) If the defendant is a corporation, dissolution of the  
37 corporation.

38 ↪ The court may grant or deny the relief sought or may order other  
39 appropriate relief.

40 6. If a person violates any provision of NRS 228.500 to  
41 228.640, inclusive, fails to comply with a judgment or order of any  
42 court in this State concerning a violation of such a provision, or fails  
43 to comply with an assurance of discontinuance or other agreement  
44 concerning an alleged violation of such a provision, the Attorney



1 General may bring an action in the name of the State of Nevada  
2 seeking:

3 (a) The suspension of the person's privilege to conduct business  
4 within this State; or

5 (b) If the defendant is a corporation, dissolution of the  
6 corporation.

7 ↪ The court may grant or deny the relief sought or may order other  
8 appropriate relief.

9 **Sec. 7.** NRS 482.3333 is hereby amended to read as follows:

10 482.3333 1. Before a person may be licensed as a broker, the  
11 person must procure and file with the Department a good and  
12 sufficient bond in the amount of \$100,000 with a corporate surety  
13 thereon licensed to do business within the State of Nevada,  
14 approved as to form by the Attorney General, and conditioned that  
15 the applicant shall conduct business as a broker without breaching a  
16 consumer contract or engaging in a deceptive trade practice, fraud or  
17 fraudulent representation, and without violation of the provisions of  
18 this chapter.

19 2. The Department may allow a broker who provides services  
20 for more than one category of vehicle described in subsection 1 of  
21 NRS 482.345 at a principal place of business or at any branch  
22 location within the same county as the principal place of business to  
23 provide a good and sufficient bond for a single category of vehicle  
24 and may consider that single bond sufficient coverage to include all  
25 other categories of vehicles.

26 3. The bond must be continuous in form, and the total  
27 aggregate liability on the bond must be limited to the payment of the  
28 total amount of the bond.

29 4. The undertaking on the bond is for the use and benefit of the  
30 consumer and includes any breach of a consumer contract, deceptive  
31 trade practice, fraud, fraudulent representation or violation of any of  
32 the provisions of this chapter *or chapter 41, 97, 104, 104A or 598 of*  
33 *NRS* by any employee of the licensed broker who acts on behalf of  
34 the broker and within the scope of his or her employment.

35 5. The bond must provide that it is for the use and benefit of  
36 any consumer of the broker or an employee of the broker for any  
37 loss or damage established, including, without limitation:

38 (a) Actual damages;

39 (b) Consequential damages;

40 (c) Incidental damages;

41 (d) Statutory damages;

42 (e) Damages for noneconomic loss; and

43 (f) Attorney's fees and costs.

44 ↪ The surety issuing the bond shall appoint the ~~Secretary of State~~  
45 *Commissioner of Insurance* as its agent to accept service of notice





1 or process for the surety in any action upon the bond brought in a  
2 court of competent jurisdiction or brought before the Director.

3 6. If a consumer has a claim for relief against a broker or an  
4 employee of the broker, the consumer may:

5 (a) Bring and maintain an action in any court of competent  
6 jurisdiction. If the court enters:

7 (1) A judgment on the merits against the broker or employee,  
8 the judgment is binding on the surety.

9 (2) A judgment other than on the merits against the broker or  
10 employee, including, without limitation, a default judgment, the  
11 judgment is binding on the surety only if the surety was given notice  
12 and an opportunity to defend at least 20 days before the date on  
13 which the judgment was entered against the broker or employee.

14 (b) Apply to the Director, for good cause shown, for  
15 compensation from the bond. The Director may determine the  
16 amount of compensation and the consumer to whom it is to be paid.  
17 The surety shall then make the payment.

18 (c) Settle the matter with the broker or employee. If such a  
19 settlement is made, the settlement must be reduced to writing,  
20 signed by both parties and acknowledged before any person  
21 authorized to take acknowledgments in this State, and submitted to  
22 the Director with a request for compensation from the bond. If the  
23 Director determines that the settlement was reached in good faith  
24 and there is no evidence of collusion or fraud between the parties in  
25 reaching the settlement, the surety shall make the payment to the  
26 consumer in the amount agreed upon in the settlement.

27 7. Any judgment entered by a court in favor of a consumer and  
28 against a broker or an employee of the broker may be executed  
29 through a writ of attachment, garnishment, execution or other legal  
30 process, or the consumer in whose favor the judgment was entered  
31 may apply to the Director for compensation from the bond of the  
32 broker or employee.

33 8. As used in this section, "consumer" means any person who  
34 comes into possession of a vehicle as a final user for any purpose  
35 other than offering it for sale.

36 **Sec. 8.** NRS 482.345 is hereby amended to read as follows:

37 482.345 1. Before any dealer's license, dealer's plate, special  
38 dealer's plate, rebuilder's license or rebuilder's plate, distributor's  
39 license or distributor's plate or manufacturer's license or  
40 manufacturer's plate is furnished to a manufacturer, distributor,  
41 dealer or rebuilder as provided in this chapter, the Department shall  
42 require that the applicant make an application for such a license and  
43 plate upon a form to be furnished by the Department, and the  
44 applicant shall furnish such information as the Department requires,  
45 including proof that the applicant has an established place of



1 business in this State, procure and file with the Department a good  
2 and sufficient bond with a corporate surety thereon, duly licensed to  
3 do business within the State of Nevada, approved as to form by the  
4 Attorney General, and conditioned that the applicant or any  
5 employee who acts on behalf of the applicant within the scope of his  
6 or her employment shall conduct business as a dealer, distributor,  
7 manufacturer or rebuilder without breaching a consumer contract or  
8 engaging in a deceptive trade practice, fraud or fraudulent  
9 representation, and without violation of the provisions of this  
10 chapter. The bond must be:

11 (a) For a manufacturer, distributor, rebuilder or dealer who  
12 manufactures, distributes or sells motorcycles, \$50,000.

13 (b) For a manufacturer, distributor, rebuilder or dealer who sells  
14 vehicles other than motorcycles, trailers or travel trailers, \$100,000.

15 (c) For a manufacturer, distributor, rebuilder or dealer who sells  
16 travel trailers or other dual purpose trailers that include living  
17 quarters in their design, \$100,000.

18 (d) For a manufacturer, distributor, rebuilder or dealer who sells  
19 horse trailers designed without living quarters or special purpose  
20 trailers with an unladen weight of 3,501 pounds or more, \$50,000.

21 (e) For a manufacturer, distributor, rebuilder or dealer who sells  
22 utility trailers or other special use trailers with an unladen weight of  
23 3,500 pounds or less or trailers designed to carry boats, \$10,000.

24 2. The Department may, pursuant to a written agreement with  
25 any manufacturer, distributor, rebuilder or dealer who has been  
26 licensed to do business in this State for at least 5 years, allow a  
27 reduction in the amount of the bond of the manufacturer, distributor,  
28 rebuilder or dealer, if the business has been conducted in a manner  
29 satisfactory to the Department for the preceding 5 years. No bond  
30 may be reduced to less than 50 percent of the bond required  
31 pursuant to subsection 1.

32 3. The Department may allow a manufacturer, distributor,  
33 rebuilder or dealer who sells more than one category of vehicle as  
34 described in subsection 1 at a principal place of business or at any  
35 branch location within the same county as the principal place of  
36 business to provide a good and sufficient bond for a single category  
37 of vehicle and may consider that single bond sufficient coverage to  
38 include all other categories of vehicles.

39 4. The bond must be continuous in form, and the total  
40 aggregate liability on the bond must be limited to the payment of the  
41 total amount of the bond.

42 5. The undertaking on the bond is for the use and benefit of the  
43 consumer and includes any breach of a consumer contract, deceptive  
44 trade practice, fraud, fraudulent representation or violation of any of  
45 the provisions of this chapter *or chapter 41, 97, 104, 104A or 598 of*



1 **NRS** by the representative of any licensed distributor or the  
2 salesperson of any licensed dealer, manufacturer or rebuilder who  
3 acts for the dealer, distributor, manufacturer or rebuilder on his or  
4 her behalf and within the scope of the employment of the  
5 representative or salesperson.

6 6. The bond must provide that it is for the use and benefit of  
7 any consumer of the dealer, distributor, rebuilder, manufacturer,  
8 representative or salesperson for any loss or damage established,  
9 including, without limitation:

- 10 (a) Actual damages;
- 11 (b) Consequential damages;
- 12 (c) Incidental damages;
- 13 (d) Statutory damages;
- 14 (e) Damages for noneconomic loss; and
- 15 (f) Attorney's fees and costs.

16 ➔ The surety issuing the bond shall appoint the ~~Secretary of State~~  
17 **Commissioner of Insurance** as its agent to accept service of notice  
18 or process for the surety in any action upon the bond brought in a  
19 court of competent jurisdiction or brought before the Director.

20 7. If a consumer has a claim for relief against a dealer,  
21 distributor, rebuilder, manufacturer, representative or salesperson,  
22 the consumer may:

23 (a) Bring and maintain an action in any court of competent  
24 jurisdiction. If the court enters:

25 (1) A judgment on the merits against the dealer, distributor,  
26 rebuilder, manufacturer, representative or salesperson, the judgment  
27 is binding on the surety.

28 (2) A judgment other than on the merits against the dealer,  
29 distributor, rebuilder, manufacturer, representative or salesperson,  
30 including, without limitation, a default judgment, the judgment is  
31 binding on the surety only if the surety was given notice and an  
32 opportunity to defend at least 20 days before the date on which the  
33 judgment was entered against the dealer, distributor, rebuilder,  
34 manufacturer, representative or salesperson.

35 (b) Apply to the Director, for good cause shown, for  
36 compensation from the bond. The Director may determine the  
37 amount of compensation and the consumer to whom it is to be paid.  
38 The surety shall then make the payment.

39 (c) Settle the matter with the dealer, distributor, rebuilder,  
40 manufacturer, representative or salesperson. If such a settlement is  
41 made, the settlement must be reduced to writing, signed by both  
42 parties and acknowledged before any person authorized to take  
43 acknowledgments in this State, and submitted to the Director with a  
44 request for compensation from the bond. If the Director determines  
45 that the settlement was reached in good faith and there is no



1 evidence of collusion or fraud between the parties in reaching the  
2 settlement, the surety shall make the payment to the consumer in the  
3 amount agreed upon in the settlement.

4 8. Any judgment entered by a court in favor of a consumer and  
5 against a dealer, distributor, rebuilder, manufacturer, representative  
6 or salesperson may be executed through a writ of attachment,  
7 garnishment, execution or other legal process, or the consumer in  
8 whose favor the judgment was entered may apply to the Director for  
9 compensation from the bond of the dealer, distributor, rebuilder,  
10 manufacturer, representative or salesperson.

11 9. The Department shall not issue a license or plate pursuant to  
12 subsection 1 to a manufacturer, distributor, rebuilder or dealer who  
13 does not have and maintain an established place of business in this  
14 State.

15 10. As used in this section, "consumer" means any person who  
16 comes into possession of a vehicle as a final user for any purpose  
17 other than offering it for sale.

18 **Sec. 9.** NRS 490.270 is hereby amended to read as follows:

19 490.270 1. Except as otherwise provided in subsection 9 and  
20 NRS 490.280, before any off-highway vehicle dealer, long-term or  
21 short-term lessor or manufacturer is issued a license pursuant to this  
22 chapter, the Department shall require that the applicant procure and  
23 file with the Department a good and sufficient bond with a corporate  
24 surety thereon, duly licensed to do business within the State of  
25 Nevada, approved as to form by the Attorney General and  
26 conditioned that the applicant or any employee who acts on the  
27 applicant's behalf within the scope of his or her employment shall  
28 conduct his or her business as an off-highway vehicle dealer, long-  
29 term or short-term lessor or manufacturer without breaching a  
30 consumer contract or engaging in a deceptive trade practice, fraud or  
31 fraudulent representation and without violation of the provisions of  
32 this chapter. The bond must be in the amount of \$50,000.

33 2. The Department may, pursuant to a written agreement with  
34 any off-highway vehicle dealer, long-term or short-term lessor or  
35 manufacturer who has been licensed to do business in this State for  
36 at least 5 years, allow a reduction in the amount of the bond of the  
37 off-highway vehicle dealer, lessor or manufacturer if such business  
38 has been conducted in a manner satisfactory to the Department for  
39 the preceding 5 years. No bond may be reduced to less than 50  
40 percent of the bond required pursuant to subsection 1.

41 3. The bond must be continuous in form, and the total  
42 aggregate liability on the bond must be limited to the payment of the  
43 total amount of the bond.

44 4. The undertaking on the bond includes any breach of a  
45 consumer contract, deceptive trade practice, fraud, fraudulent



1 representation or violation of any of the provisions of this chapter *or*  
2 *chapter 41, 97, 104, 104A or 598 of NRS* by the representative or  
3 off-highway vehicle salesperson of any licensed off-highway  
4 vehicle dealer, long-term or short-term lessor or manufacturer who  
5 acts on behalf of the off-highway vehicle dealer, lessor or  
6 manufacturer and within the scope of the employment of the  
7 representative or off-highway vehicle salesperson.

8 5. The bond must provide that any person injured by the action  
9 of the off-highway vehicle dealer, long-term or short-term lessor,  
10 manufacturer, representative or off-highway vehicle salesperson in  
11 violation of any provision of this chapter may apply to the Director,  
12 for good cause shown, for compensation from the bond. The surety  
13 issuing the bond shall appoint the ~~Secretary of State~~  
14 *Commissioner of Insurance* as its agent to accept service of notice  
15 or process for the surety in any action upon the bond brought in a  
16 court of competent jurisdiction or brought before the Director.

17 6. If a person is injured by the actions of an off-highway  
18 vehicle dealer, long-term or short-term lessor, manufacturer,  
19 representative or off-highway vehicle salesperson, the person may:

20 (a) Bring and maintain an action in any court of competent  
21 jurisdiction. If the court enters:

22 (1) A judgment on the merits against the off-highway vehicle  
23 dealer, lessor, manufacturer, representative or off-highway vehicle  
24 salesperson, the judgment is binding on the surety.

25 (2) A judgment other than on the merits against the off-  
26 highway vehicle dealer, lessor, manufacturer, representative or off-  
27 highway vehicle salesperson, including, without limitation, a default  
28 judgment, the judgment is binding on the surety only if the surety  
29 was given notice and an opportunity to defend at least 20 days  
30 before the date on which the judgment was entered against the off-  
31 highway vehicle dealer, lessor, manufacturer, representative or off-  
32 highway vehicle salesperson.

33 (b) Apply to the Director, for good cause shown, for  
34 compensation from the bond. The Director may determine the  
35 amount of compensation and the person to whom it is to be paid.  
36 The surety shall then make the payment.

37 (c) Settle the matter with the off-highway vehicle dealer, lessor,  
38 manufacturer, representative or off-highway vehicle salesperson. If  
39 such a settlement is made, the settlement must be reduced to writing,  
40 signed by both parties and acknowledged before any person  
41 authorized to take acknowledgments in this State and submitted to  
42 the Director with a request for compensation from the bond. If the  
43 Director determines that the settlement was reached in good faith  
44 and there is no evidence of collusion or fraud between the parties in



1 reaching the settlement, the surety shall make the payment to the  
2 injured person in the amount agreed upon in the settlement.

3 7. Any judgment entered by a court against an off-highway  
4 vehicle dealer, long-term or short-term lessor, manufacturer,  
5 representative or off-highway vehicle salesperson may be executed  
6 through a writ of attachment, garnishment, execution or other legal  
7 process, or the person in whose favor the judgment was entered may  
8 apply to the Director for compensation from the bond of the off-  
9 highway vehicle dealer, lessor, manufacturer, representative or off-  
10 highway vehicle salesperson.

11 8. The Department shall not issue a license pursuant to  
12 subsection 1 to an off-highway vehicle dealer, long-term or short-  
13 term lessor or manufacturer who does not have and maintain an  
14 established place of business in this State.

15 9. The provisions of this section do not apply to any off-  
16 highway vehicle dealer, long-term or short-term lessor or  
17 manufacturer who has met the requirements of NRS 482.3333,  
18 482.345 or 482.346 with respect to:

19 (a) A bond greater than or equal to the amount prescribed in  
20 subsection 1 if the undertaking on the bond includes the activities  
21 described in subsection 4; or

22 (b) A deposit greater than or equal to the amount of the bond  
23 that would otherwise be required by subsection 1.

