

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; 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: (1) repossessing a vehicle from a debtor before default; or (2) committing
5 any act against a consumer who contracted with the person for the sale of a vehicle
6 which entitles the consumer to certain remedies provided in law pursuant to the
7 Uniform Commercial Code. (NRS 104.9625)
8 Existing law requires certain brokers, dealers, special dealers, rebuilders,
9 distributors and manufacturers of vehicles and dealers, lessors and manufacturers of
10 off-highway vehicles to procure and file with the Department of Motor Vehicles a
11 bond, which is a prerequisite to licensure by the Department. The surety issuing the
12 bond is required to appoint the Secretary of State as its agent to accept service of
13 notice or process in any action upon the bond. (NRS 482.3333, 482.345, 490.278)
14 **Sections 7-9** of this bill instead require the surety to appoint the Commissioner of
15 Insurance as its agent. **Sections 7-9** also add to the description of the uses of the
16 bond by a consumer to include violations of the chapters of NRS governing:
17 (1) particular cases concerning persons, including, without limitation, certain acts
18 of fraud against a consumer; (2) retail installment sales of goods and services; (3)
19 the Uniform Commercial Code, as adopted in NRS; and (4) deceptive trade
20 practices. **Section 7** also adds to the list of the uses of the bond by a consumer



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21 against a broker to include conversion, negligent misrepresentation and abuse of
22 process by the broker.

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

- 1 **Section 1.** (Deleted by amendment.)
2 **Sec. 2.** (Deleted by amendment.)
3 **Sec. 3.** NRS 598.092 is hereby amended to read as follows:
4 598.092 A person engages in a “deceptive trade practice” when
5 in the course of his or her business or occupation he or she:
6 1. Knowingly fails to identify goods for sale or lease as being
7 damaged by water.
8 2. Solicits by telephone or door to door as a lessor or seller,
9 unless the lessor or seller identifies himself or herself, whom he or
10 she represents and the purpose of his or her call within 30 seconds
11 after beginning the conversation.
12 3. Knowingly states that services, replacement parts or repairs
13 are needed when no such services, replacement parts or repairs are
14 actually needed.
15 4. Fails to make delivery of goods or services for sale or lease
16 within a reasonable time or to make a refund for the goods or
17 services, if he or she allows refunds.
18 5. Advertises or offers an opportunity for investment and:
19 (a) Represents that the investment is guaranteed, secured or
20 protected in a manner which he or she knows or has reason to know
21 is false or misleading;
22 (b) Represents that the investment will earn a rate of return
23 which he or she knows or has reason to know is false or misleading;
24 (c) Makes any untrue statement of a material fact or omits to
25 state a material fact which is necessary to make another statement,
26 considering the circumstances under which it is made, not
27 misleading;
28 (d) Fails to maintain adequate records so that an investor may
29 determine how his or her money is invested;
30 (e) Fails to provide information to an investor after a reasonable
31 request for information concerning his or her investment;
32 (f) Fails to comply with any law or regulation for the marketing
33 of securities or other investments; or
34 (g) Represents that he or she is licensed by an agency of the
35 State to sell or offer for sale investments or services for investments
36 if he or she is not so licensed.
37 6. Charges a fee for advice with respect to investment of
38 money and fails to disclose:



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

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

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

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

13 9. Fails, in a consumer transaction that is rescinded, cancelled
14 or otherwise terminated in accordance with the terms of an
15 agreement, advertisement, representation or provision of law, to
16 promptly restore to a person entitled to it a deposit, down payment
17 or other payment or, in the case of property traded in but not
18 available, the agreed value of the property or fails to cancel within a
19 specified time or an otherwise reasonable time an acquired security
20 interest. This subsection does not apply to a person who is holding a
21 deposit, down payment or other payment on behalf of another if all
22 parties to the transaction have not agreed to the release of the
23 deposit, down payment or other payment.

24 10. *Repossesses a vehicle from a debtor pursuant to NRS*
25 *104.9609 before default by the debtor as defined in the form for*
26 *the contract for the sale of the vehicle prescribed by the*
27 *Commissioner of Financial Institutions pursuant to NRS 97.299.*

28 11. *Commits an act against a consumer who entered into a*
29 *contract for the sale of a vehicle with the person which entitles the*
30 *consumer to any remedy available pursuant to NRS 104.9625.*

31 12. Fails to inform customers, if he or she does not allow
32 refunds or exchanges, that he or she does not allow refunds or
33 exchanges by:

34 (a) Printing a statement on the face of the lease or sales receipt;

35 (b) Printing a statement on the face of the price tag; or

36 (c) Posting in an open and conspicuous place a sign at least 8 by
37 10 inches in size with boldface letters,

38 ↳ specifying that no refunds or exchanges are allowed.

39 ~~H1~~ 13. Knowingly and willfully violates NRS 597.7118 or
40 597.7125.

41 ~~H2~~ 14. Knowingly takes advantage of another person's
42 inability reasonably to protect his or her own rights or interests in a
43 consumer transaction when such an inability is due to illiteracy, or
44 to a mental or physical infirmity or another similar condition which



1 manifests itself as an incapability to understand the language or
2 terms of any agreement.

3 **Sec. 4.** (Deleted by amendment.)

4 **Sec. 5.** (Deleted by amendment.)

5 **Sec. 6.** (Deleted by amendment.)

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

7 482.3333 1. Before a person may be licensed as a broker, the
8 person must procure and file with the Department a good and
9 sufficient bond in the amount of \$100,000 with a corporate surety
10 thereon licensed to do business within the State of Nevada,
11 approved as to form by the Attorney General, and conditioned that
12 the applicant shall conduct business as a broker without breaching a
13 consumer contract or engaging in a deceptive trade practice, fraud or
14 fraudulent representation, and without violation of the provisions of
15 this chapter.

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

23 3. The bond must be continuous in form, and the total
24 aggregate liability on the bond must be limited to the payment of the
25 total amount of the bond.

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

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

- 36 (a) Actual damages;
- 37 (b) Consequential damages;
- 38 (c) Incidental damages;
- 39 (d) Statutory damages;
- 40 (e) Damages for noneconomic loss; and
- 41 (f) Attorney's fees and costs.

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



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

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

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

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

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

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

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

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

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

35 482.345 1. Before any dealer's license, dealer's plate, special
36 dealer's plate, rebuilder's license or rebuilder's plate, distributor's
37 license or distributor's plate or manufacturer's license or
38 manufacturer's plate is furnished to a manufacturer, distributor,
39 dealer or rebuilder as provided in this chapter, the Department shall
40 require that the applicant make an application for such a license and
41 plate upon a form to be furnished by the Department, and the
42 applicant shall furnish such information as the Department requires,
43 including proof that the applicant has an established place of
44 business in this State, procure and file with the Department a good
45 and sufficient bond with a corporate surety thereon, duly licensed to



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

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

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

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

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

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

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

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

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

40 5. The undertaking on the bond is for the use and benefit of the
41 consumer and includes any breach of a consumer contract, deceptive
42 trade practice, fraud, fraudulent representation or violation of any of
43 the provisions of this chapter *or chapter 41, 97, 104, 104A or 598 of*
44 *NRS* by the representative of any licensed distributor or the
45 salesperson of any licensed dealer, manufacturer or rebuilder who



1 acts for the dealer, distributor, manufacturer or rebuilder on his or
2 her behalf and within the scope of the employment of the
3 representative or salesperson.

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

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

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

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

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

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

26 (2) A judgment other than on the merits against the dealer,
27 distributor, rebuilder, manufacturer, representative or salesperson,
28 including, without limitation, a default judgment, the judgment is
29 binding on the surety only if the surety was given notice and an
30 opportunity to defend at least 20 days before the date on which the
31 judgment was entered against the dealer, distributor, rebuilder,
32 manufacturer, representative or 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 consumer to whom it is to be paid.
36 The surety shall then make the payment.

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



1 settlement, the surety shall make the payment to the consumer in the
2 amount agreed upon in the settlement.

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

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

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

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

18 490.270 1. Except as otherwise provided in subsection 9 and
19 NRS 490.280, before any off-highway vehicle dealer, long-term or
20 short-term lessor or manufacturer is issued a license pursuant to this
21 chapter, the Department shall require that the applicant procure and
22 file with the Department a good and sufficient bond with a corporate
23 surety thereon, duly licensed to do business within the State of
24 Nevada, approved as to form by the Attorney General and
25 conditioned that the applicant or any employee who acts on the
26 applicant's behalf within the scope of his or her employment shall
27 conduct his or her business as an off-highway vehicle dealer, long-
28 term or short-term lessor or manufacturer without breaching a
29 consumer contract or engaging in a deceptive trade practice, fraud or
30 fraudulent representation and without violation of the provisions of
31 this chapter. The bond must be in the amount of \$50,000.

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

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

43 4. The undertaking on the bond includes any breach of a
44 consumer contract, deceptive trade practice, fraud, fraudulent
45 representation or violation of any of the provisions of this chapter *or*



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

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

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

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

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

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

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

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



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

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

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

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

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

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