

---

---

**Assembly Committee on Commerce and Labor**

This measure may be considered for action during today's work session.

April 6, 2015

**ASSEMBLY BILL 228**

**Revises provisions governing trade regulations. (BDR 52-999)**

**Sponsored by:** Committee on Commerce and Labor  
**Date Heard:** March 16, 2015  
**Fiscal Impact:** Effect on Local Government: No.  
Effect on the State: Yes.

Assembly Bill 228 specifies that the "single document rule" does not apply to the sale of a motor vehicle in which, by agreement of the parties, a device has been installed that can disable the vehicle remotely. The bill also provides for the regulation of the use of such devices in relation to the financing or leasing of a motor vehicle. It prohibits a party financing a motor vehicle from requiring a buyer or lessor to agree to the installation of such a device as a condition of the financing contract. The measure requires certain disclosures and notice requirements, and specifies that certain violations by a financier constitutes a deceptive trade practice.

**Amendments:** The proponents submitted the first attached amendment. The amendment makes it a deceptive trade practice for a creditor to install or use electronic tracking technology in a motor vehicle unless the creditor provides certain disclosures. A consumer must be allowed to cancel the tracking technology without affecting the vehicle financing, and the agreement to use the tracking technology must be optional and not a condition of financing.

The amendment also makes a creditor's installation or use of starter interrupt technology to disable a motor vehicle a deceptive trade practice unless the consumer is provided with certain disclosures. Under the proposal, starter interrupt technology is prohibited if: (1) a motor vehicle can be disabled while the engine is running; (2) the technology causes an audible warning that lasts longer than 20 seconds; and (3) if the consumer's payment is unpaid for less than ten days for the first instance of late payment, or less than five days for any subsequent payment or default under the contract. The amendment would cap statutory damages at \$1,000 for violations.

The second amendment was submitted by Paul J. Enos on behalf of the Nevada Trucking Association. The amendment specifies that the provisions of this bill do not apply in business to business transactions.

**Requested amendment to AB 228**

Submitted by: John P. Sande, III on behalf of Nevada Franchised Automobile Dealers Association and by John P. Sande, IV on behalf of the Payment Assurance Technology Association

Section 1. Chapter 598 of NRS is hereby amended by adding thereto a new section to read as follows:

***1. In connection with the retail installment sale, loan, or lease of a vehicle under this chapter, it shall be a deceptive trade practice under NRS 482.554 and NRS 598.915 to 598.925 for a creditor, to:***

***A. Install or use electronic tracking technology in a motor vehicle to obtain or record the location of the vehicle unless the creditor notifies the consumer in a written disclosure provided at the time of the transaction that the vehicle is equipped with electronic tracking technology and:***

***(1) The electronic tracking technology is used by the creditor to verify and maintain the operational status of the tracking technology, to service the retail installment contract, loan, or lease, or to locate the vehicle for repossession or recovery; or***

***(2) The electronic tracking technology is used as an optional service elected by the consumer and both of the following conditions are met:***

***(a) The agreement to utilize electronic tracking technology is optional and is not a condition of the retail installment contract, loan, or lease.***

***(b) The consumer is permitted to cancel the optional service at any point without affecting the retail installment contract, loan, or lease.***

***B. Install or use starter interrupt technology to disable a motor vehicle, unless:***

***(1) The creditor provides the consumer written disclosure at the time the parties enter into the transaction that:***

- (a) The motor vehicle is equipped with starter interrupt technology, which the creditor can use to disable the starter of the vehicle remotely;*
  - (b) The creditor shall activate the starter interrupt technology as set forth in section (4)(c), below; and*
  - (c) The name, address, and toll-free telephone number of the creditor for the purposes of communicating directly with the creditor concerning the security interest in the motor vehicle and the transaction.*
- (2) The consumer receives no less than 48 hours notice before the starter interrupt technology disables the vehicle; and*
- (3) In the event of an emergency, the consumer will be provided the ability to start a disabled motor vehicle for a period of not less than 24 hours.*
  
- 2. Creditor must obtain the consumer's consent to the use of electronic tracking technology and starter interrupt technology by signing the written disclosure described above.*
  
- 3. The consumer shall not be charged a fee for the installation or use of the electronic tracking technology or starter interrupt technology unless the consumer purchases optional services offered by the creditor.*
  
- 4. The use of the starter interrupt technology in a motor vehicle is prohibited if:*
  - (a) Disablement of the motor vehicle will occur while the engine is running;*
  - (b) The use of the starter interrupt technology causes an audible warning which lasts longer than 20 seconds upon starting or shutting off the engine of the motor vehicle;*
  - (c) If a scheduled payment is unpaid for less than 10 days for the first instance of late payment, or less than 5 days for any subsequent payment or for any other default under the retail installment contract, loan, or lease.*

5. *A failure to comply with any provision of this section may be awarded statutory damages not exceeding \$1,000.*
6. *As used in this section, unless the context otherwise requires:*
  - (a) *“Creditor” means a lender, dealer, as defined in NRS 482.020, or long-term lessor, as defined in NRS 482.053, or any assignee of the lender, dealer or long-term lessor of a motor vehicle.*
  - (b) *“Consumer” means a borrower, retail buyer, or lessee who purchases or leases a motor vehicle primarily for personal, family or household use.*
  - (c) *“Dealer” means a person who is actively engaged in the business of buying, selling, exchanging, or leasing new or used motor vehicles at retail and who has an established place of business.*
  - (d) *“Electronic tracking technology” means global positioning satellite or similar technology used to obtain or record the location of a motor vehicle.*
  - (e) *“Retail installment contract” has the meaning ascribed to it in NRS 97.105.*
  - (f) *“Starter interrupt technology” means technology used to remotely disable the starter of a motor vehicle.*
  - (g) *“Transaction” means a retail installment sale, loan or lease between a Creditor and a consumer, as applicable, for purchase, refinancing or lease of a motor vehicle, or the reinstatement of a purchase, refinance or lease of a motor vehicle.*

**Sec. 2.** NRS 97.299 is hereby amended to read as follows:

1. The Commissioner of Financial Institutions shall prescribe, by regulation, forms for the application for credit and **retail installment** contracts to be used in the sale of vehicles if:
  - (a) The sale involves the taking of a security interest to secure all or a part of the purchase price of the vehicle;
  - (b) The application for credit is made to or through the seller of the vehicle;
  - (c) The seller is a dealer; and

(d) The sale is not a commercial transaction.

2. The *application for credit and installment contracts* ~~[forms]~~ prescribed pursuant to subsection 1 ~~[must meet the requirements of NRS 97.165,]~~ must be accepted and acted upon by any lender to whom the application for credit is made and, in addition to the information required in NRS 97.185 and required to be disclosed in such a transaction by federal law, must:

(a) Identify and itemize the items embodied in the cash sale price, including the amount charged for a contract to service the vehicle after it is purchased.

(b) In specifying the amount of the buyer's down payment, identify the amounts paid in money and allowed for property given in trade and the amount of any manufacturer's rebate applied to the down payment.

(c) Contain a description of any property given in trade as part of the down payment.

(d) Contain a description of the method for calculating the unearned portion of the finance charge upon prepayment in full of the unpaid total of payments as prescribed in NRS 97.225.

(e) Contain a provision that default on the part of the buyer is only enforceable to the extent that:

(1) The buyer fails to make a payment as required by the agreement; or

(2) The prospect of payment, performance or realization of collateral is significantly impaired. The burden of establishing the prospect of significant impairment is on the seller.

(f) Include the following notice in at least 10-point bold type:

#### NOTICE TO BUYER

Do not sign this agreement before you read it or if it contains any blank spaces. You are entitled to a completed copy of this agreement. If you pay the amount due before the scheduled date of maturity of the indebtedness and you are not in default in the terms of the contract for more than 2 months, you are entitled to a refund of the unearned portion of the finance charge. If you fail to perform your obligations

under this agreement, the vehicle may be repossessed and you may be liable for the unpaid indebtedness evidenced by this agreement.

3. The Commissioner shall arrange for or otherwise cause the translation into Spanish of the forms prescribed pursuant to subsection 1.

4. If a change in state or federal law requires the Commissioner to amend the forms prescribed pursuant to subsection 1, the Commissioner need not comply with the provisions of chapter 233B of NRS when making those amendments.

5. As used in this section:

(a) "Commercial transaction" means any sale of a vehicle to a buyer who purchases the vehicle solely or primarily for commercial use or resale.

(b) "Dealer" has the meaning ascribed to it in NRS 482.020.

**Sec. 3.** This act becomes effective upon passage and approval for the purposes of adopting any regulation or performing any preparatory administrative tasks that are necessary to carry out the provisions of this act, and on October 1, 2015, for all other purposes.

## Proposed amendment to A.B. 228 by the Nevada Trucking Association

Paul J. Enos, CEO Nevada Trucking Association 775-843-7580

1 Section 1. Chapter 597 of NRS is hereby amended by adding hereto a new section to read as follows:

1. A financier of a motor vehicle shall not install or use electronic repossession technology in a motor vehicle which he or she finances to take possession of the motor vehicle, or without removal, to render the motor vehicle unusable, unless:

(a) After executing the financing contract, the parties to the contract enter into an agreement which:

- (1) Is contained in a separate document;
- (2) Is not a condition of the financing contract; and (3) Provides that:

(I) Electronic tracking technology may be used by the financier only to ensure that the electronic tracking technology is operating properly, to repossess the motor vehicle, to locate the motor vehicle for the purpose of servicing the financing contract or to keep the financing contract current;

(II) The debtor or lessee, as applicable, may cancel the agreement authorizing the use of electronic tracking technology at any time during the term of the financing contract without affecting the sale or lease of the motor vehicle or any term or condition of the financing contract; and

(III) After providing proper notice to the debtor or lessee, as applicable, pursuant to subsection 2, a financier may use starter interrupt technology to disable the motor vehicle following certain defaults or breaches of the financing contract; and

(b) At the time of the sale or lease of the motor vehicle, the financier provides the debtor or lessee, as applicable, with a written disclosure that the vehicle is equipped with electronic repossession technology and which includes, without limitation:

- (1) The nature of the defaults or breaches following which the financier may use the electronic repossession technology;
- (2) The prohibitions on the use of electronic repossession technology as provided in subsection 3;
- (3) The name, address and toll-free telephone number of the financier for the purposes of communicating directly with the financier concerning the security interest in the motor vehicle and the extension of credit; and
- (4) That in the event of an emergency, the debtor or lessee, as applicable, will be able to start a disabled vehicle for a minimum of 24 hours.

2. A financier of a motor vehicle shall provide written notice to the debtor or lessee, as applicable, before using the electronic repossession technology installed in a motor vehicle to disable the

motor vehicle. The written notice must be delivered by registered or certified mail, return receipt requested, a minimum of 2 days, excluding Saturdays, Sundays and holidays, before the financier disables the motor vehicle. The notice must include:

- (a) The name, address and telephone number of the financier;
- (b) The amount required to be paid by the debtor or lessee, as applicable, to cure the breach or default; and
- (c) Notice that in the event of an emergency the debtor or lessee, as applicable, will be provided the ability to start the disabled motor vehicle for a period of not less than 24 hours.

3. The use of electronic repossession technology in a motor vehicle which is financed by a financier is prohibited if:

- (a) Disablement of the motor vehicle will occur while the engine of the motor vehicle is running;
- (b) The electronic repossession technology causes an audible warning which lasts longer than 20 seconds upon starting or shutting off the engine of the motor vehicle;
- (c) The financier has reason to know that the use of the vehicle repossession technology will result in substantial injury or harm to the debtor or lessee, as applicable, the public health, safety or welfare, or will in any way adversely affect any third party; or
- (d) Less than 10 days have lapsed since the default or breach of contract by the debtor or lessee.

4. A debtor or lessee, as applicable, may not waive any of the provisions of this section.

5. The failure by a financier to comply with any provision of this section constitutes a deceptive trade practice in violation of NRS 598.0923, and a debtor or lessee, as applicable, may file a claim for relief. In addition to any other remedy available pursuant to NRS 41.600, chapter 598 of NRS or any other provision of law, a debtor or lessee, as applicable, who prevails in an action pursuant to this subsection must be awarded a minimum of \$1,000 as statutory damages, or damages pursuant to subsection 3 of NRS 104.9625, if applicable, whichever is greater.

6. The Commissioner of Financial Institutions shall prescribe, by regulation, forms for contracts for the use of electronic repossession technology.

7. As used in this section, unless the context otherwise requires:

- (a) "Electronic repossession technology" means a device that has electrical, digital, magnetic or wireless optical electromagnetic properties or similar capabilities, including, without limitation, electronic tracking technology and starter interrupt technology.
- (b) "Electronic tracking technology" means global positioning satellite or similar technology used to obtain or record the location of a motor vehicle.
- (c) "Financier" means a secured party who finances the sale of a motor vehicle, a lessor who leases a motor vehicle to a lessee or any successor in interest to such a secured party or lessor.



(d) “Financing contract” means a retail installment contract or lease agreement between a financier and a debtor or lessee, as applicable, for financing the purchase or lease of a motor vehicle.

(e) “Retail installment contract” has the meaning ascribed to it in NRS 97.105.

(f) “Secured party” has the meaning ascribed to it in NRS 104.9102.

(g) “Starter interrupt technology” means technology used to remotely disable the starter of a motor vehicle.

*These provisions shall not apply in business to business transactions.*

Sec. 2. NRS 97.165 is hereby amended to read as follows:

97.165 1. Every retail installment contract must be contained in a single document which must contain the entire agreement of the parties, including any promissory notes or other evidences of indebtedness between the parties relating to the transaction, except as otherwise provided in NRS 97.205 and 97.235, [and section 1 of this act](#), but:

(a) If the buyer’s obligation to pay the total of payments is represented by a promissory note secured by a chattel mortgage or other security agreement, the promissory note may be a separate instrument if the mortgage or security agreement recites the amount and terms of payment of that note and the promissory note recites that it is secured by a mortgage or security agreement.

(b) In a transaction involving the repair, alteration or improvement upon or in connection with real property, the contract may be secured by a mortgage or deed of trust on the real property contained in a separate document. Retail sales transactions for home improvements which are financed or insured by the Federal Housing Administration are not subject to the provisions of this chapter.

[\(c\) In a transaction involving the purchase of a motor vehicle, the parties may enter into an agreement contained in a separate document authorizing the use of electronic repossession technology in accordance with the provisions of section 1 of this act.](#)

2. The contract must be dated, signed by the retail buyer and completed as to all essential provisions, except as otherwise provided in NRS 97.205, 97.215 and 97.235. The printed or typed portion of the contract, other than instructions for completion, must be in a size equal to at least 8-point type.

3. Any fee charged to the retail buyer for his or her cancellation of a retail installment contract within 72 hours after its execution is prohibited unless notice of the fee is clearly set forth in the printed or typed portion of the contract.

[4. As used in this section, “electronic repossession technology” has the meaning ascribed to it in paragraph \(a\) of subsection 7 of section 1 of this act.](#)

1 Sec. 3. This act becomes effective upon passage and approval for the purposes of adopting any regulations or performing any preparatory administrative tasks that are necessary to carry out the provisions of this act, and on October 1, 2015, for all other purposes.