

Amendment No. 522

Assembly Amendment to Assembly Bill No. 249

(BDR 43-136)

Proposed by: Committee on Commerce and Labor**Amendment Box:****Resolves Conflicts with:** N/A**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: No

Adoption of this amendment will MAINTAIN a 2/3s majority vote requirement for final passage of AB249 (§§ 12, 15).

ASSEMBLY ACTION	Initial and Date	SENATE ACTION	Initial and Date
Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____	Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____
Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____	Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____
Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____	Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____

Amend section 1, page 2, line 8, by deleting “**Director**” and inserting:*“Director, or his designee,”.*

Amend section 1, page 2, by deleting line 10 and inserting:

*“State Controller shall:**(a) Draw his warrant, payable to the Department; or**(b) Electronically transfer money to the appropriate account of the Department,**↪ as appropriate, in”.*

Amend sec. 12, page 3, by deleting line 13 and inserting:

“fine of not more than \$10,000 against”.

Amend sec. 12, pages 3 and 4, by deleting lines 22 through 44 on page 3 and lines 1 through 8 on page 4, and inserting:

“and then, after the customer returns the vehicle with no damage other than reasonable wear and tear, the seller:

(1) Fails to return any down payment or other consideration in full, including, returning a vehicle accepted in trade;

(2) Knowingly makes a false representation to the customer that the customer must sign another contract for the sale of the vehicle on less favorable terms; or

(3) Fails to use the disclosure as required in subsection 3.

(b) Uses a contract for the sale of the vehicle or a security agreement that materially differs from the form prescribed by law.”.

Amend sec. 12, page 4, line 9, by deleting “(i)” and inserting “(c)”.

Amend sec. 12, page 4, line 12, by deleting “(j)” and inserting “(d)”.

Amend sec. 12, page 4, line 14, after “3.” by inserting:

“If a seller of a vehicle exercises a valid option to cancel the sale of a vehicle to a customer, the seller must provide a disclosure, and the customer must sign that disclosure, before the seller and customer may enter into a new agreement for the sale of the same vehicle on different terms, or for the sale of a different vehicle. The Department shall prescribe the form of the disclosure by regulation.

4.”.

Amend sec. 12, page 4, line 17, by deleting “4. The” and inserting:

“5. Except as otherwise provided in this subsection, the”.

Amend sec. 12, page 4, line 18, after “*law.*” by inserting:

“The Department may not impose a fine pursuant to this section against any person who engages in a deceptive trade practice if a fine has previously been imposed against that person pursuant to NRS 598.0903 to 598.0999, inclusive, for the same act.”.

Amend sec. 16, page 7, by deleting lines 1 through 3 and inserting:

“bond. The Director may determine the amount of compensation and the person to whom it is to be paid. The surety”.

Amend sec. 16, page 7, by deleting lines 17 through 20 and inserting:

“distributor, rebuilder, manufacturer, representative or salesman may be executed through a writ of attachment,”.

Amend the bill as a whole by deleting sec. 18 and adding:

“Sec. 18. (Deleted by amendment.)”.

Amend sec. 24, page 10, line 14, after “487.790” by inserting “*1.*”.

Amend sec. 24, page 10, line 15, by deleting “1.” and inserting “[1-] (*a*)”.

Amend sec. 24, page 10, line 16, by deleting “2.” and inserting “[2-] (*b*)”.

Amend sec. 24, page 10, line 17, after “repair” by inserting:

“, not including any cost associated with painting any portion of the vehicle,”.

Amend sec. 24, page 10, by deleting lines 20 through 26 and inserting:

“2. The term does not include [a] :

(a) A nonrepairable vehicle ; ~~for other~~

(b) A motor vehicle which is 10 model years old or older and which ~~requires only the replacement of the hood, trunk lid, grill assembly or two or fewer quarter panels, doors, bumper~~

~~assemblies, headlight assemblies, taillight assemblies, or any combination thereof, to restore the vehicle to its condition before it]~~, *to restore the vehicle to its condition before it was wrecked, destroyed or otherwise damaged and regardless of cost, requires the replacement of only:*

(1) The hood;

(2) The trunk lid;

(3) Two or fewer of the following parts or assemblies, which may be bolted or unbolted:

(I) Doors;

(II) A grill assembly;

(III) A bumper assembly;

(IV) A headlight assembly; or

(V) A taillight assembly; or

(4) Any combination of subparagraph (1), (2) or (3); or

(c) A motor vehicle, regardless of the age of the vehicle, for which the cost to repair the vehicle, not including any cost associated with painting any portion of the vehicle, is less than 65 percent of the fair market value of the vehicle immediately before the vehicle was wrecked, destroyed or otherwise damaged.

3. For the purposes of this section, the model”.

Amend the bill as a whole by deleting sections 26 and 27 and adding:

“Secs. 26 and 27. (Deleted by amendment.)”.

Amend sec. 28, page 11, by deleting lines 16 through 42 and inserting:

“Sec. 28. Chapter 108 of NRS is hereby amended by adding thereto a new section to read as follows:

The Department of Motor Vehicles may adopt such regulations as it deems necessary to ensure that persons who, pursuant to NRS 108.265 to 108.360, inclusive, have liens for storing, maintaining, keeping or repairing of vehicles required to be registered with the Department pursuant to chapter 482 of NRS, comply with all statutory provisions that are applicable to processing the lien.”.

Amend the bill as a whole by deleting sections 30 through 33 and adding:

“**Secs. 30-33.** (Deleted by amendment.)”.

Amend sec. 35, page 16, line 2, by deleting:

“*or should have known*”.

Amend the bill as a whole by adding new sections designated sections 40 through 44, following sec. 39, to read as follows:

“**Sec. 40.** Chapter 598 of NRS is hereby amended by adding thereto a new section to read as follows:

A civil penalty must not be imposed against any person who engages in a deceptive trade practice pursuant to NRS 598.0903 to 598.0999, inclusive, in a civil proceeding brought by the Commissioner, Director or Attorney General if a fine has previously been imposed against that person by the Department of Motor Vehicles pursuant to section 12 of this act, for the same act.

Sec. 41. NRS 598.0903 is hereby amended to read as follows:

598.0903 As used in NRS 598.0903 to 598.0999, inclusive, *and section 40 of this act*, unless the context otherwise requires, the words and terms defined in NRS 598.0905 to 598.0947, inclusive, have the meanings ascribed to them in those sections.

Sec. 42. NRS 598.0971 is hereby amended to read as follows:

598.0971 1. If, after an investigation, the Commissioner has reasonable cause to believe that any person has been engaged or is engaging in any deceptive trade practice in violation of NRS 598.0903 to 598.0999, inclusive, the Commissioner may issue an order directed to the person to show cause why the Commissioner should not order the person to cease and desist from engaging in the practice. The order must contain a statement of the charges and a notice of a hearing to be held thereon. The order must be served upon the person directly or by certified or registered mail, return receipt requested.

2. If, after conducting a hearing pursuant to the provisions of subsection 1, the Commissioner determines that the person has violated any of the provisions of NRS 598.0903 to 598.0999, inclusive, or if the person fails to appear for the hearing after being properly served with the statement of charges and notice of hearing, the Commissioner may make a written report of his findings of fact concerning the violation and cause to be served a copy thereof upon the person and any intervener at the hearing. If the Commissioner determines in the report that such a violation has occurred, he may order the violator to:

- (a) Cease and desist from engaging in the practice or other activity constituting the violation;
- (b) Pay the costs 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 any service of process, if the violator is adjudicated to have committed a violation of NRS 598.0903 to 598.0999, inclusive; and
- (c) Provide restitution for any money or property improperly received or obtained as a result of the violation.

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

3. Any person whose pecuniary interests are directly and immediately affected by an order issued pursuant to subsection 2 or who is aggrieved by the order may petition for judicial review in the manner provided in chapter 233B of NRS. Such a petition must be filed within 30 days after the service of the order. The order becomes final upon the filing of the petition.

4. If a person fails to comply with any provision of an order issued pursuant to subsection 2, the Commissioner may, through the Attorney General, at any time after 30 days after the service of the order, cause an action to be instituted in the district court of the county wherein the person resides or has his principal place of business requesting the court to enforce the provisions of the order or to provide any other appropriate injunctive relief.

5. If the court finds that:

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

(b) The proceedings by the Commissioner concerning the written report and any order issued pursuant to subsection 2 are in the interest of the public; and

(c) The findings of the Commissioner are supported by the weight of the evidence,

↪ the court shall issue an order enforcing the provisions of the order of the Commissioner.

6. ~~[An]~~ ***Except as otherwise provided in section 40 of this act, an*** order issued pursuant to subsection 5 may include:

(a) A provision requiring the payment to the Commissioner of a penalty of not more than \$5,000 for each act amounting to a failure to comply with the Commissioner's order; or

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

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

8. Upon the violation of any judgment, order or decree issued pursuant to subsection 5 or 6, the Commissioner, after a hearing thereon, may proceed in accordance with the provisions of NRS 598.0999.

Sec. 43. NRS 598.0973 is hereby amended to read as follows:

598.0973 1. ~~Ha~~ *Except as otherwise provided in section 40 of this act, in* any action brought pursuant to NRS 598.0979 to 598.099, inclusive, if the court finds that a person has engaged in a deceptive trade practice directed toward an elderly or disabled person, the court may, in addition to any other civil or criminal penalty, impose a civil penalty of not more than \$10,000 for each violation.

2. In determining whether to impose a civil penalty pursuant to subsection 1, the court shall consider whether:

(a) The conduct of the person was in disregard of the rights of the elderly or disabled person;

(b) The person knew or should have known that his conduct was directed toward an elderly or disabled person;

(c) The elderly or disabled person was more vulnerable to the conduct of the person because of the age, health, infirmity, impaired understanding, restricted mobility or disability of the elderly or disabled person;

(d) The conduct of the person caused the elderly or disabled person to suffer actual and substantial physical, emotional or economic damage;

(e) The conduct of the person caused the elderly or disabled person to suffer:

- (1) Mental or emotional anguish;
 - (2) The loss of the primary residence of the elderly or disabled person;
 - (3) The loss of the principal employment or source of income of the elderly or disabled person;
 - (4) The loss of money received from a pension, retirement plan or governmental program;
 - (5) The loss of property that had been set aside for retirement or for personal or family care and maintenance;
 - (6) The loss of assets which are essential to the health and welfare of the elderly or disabled person; or
 - (7) Any other interference with the economic well-being of the elderly or disabled person, including the encumbrance of his primary residence or principal source of income; or
- (f) Any other factors that the court deems to be appropriate.

Sec. 44. NRS 598.0999 is hereby amended to read as follows:

598.0999 1. ~~[A]~~ *Except as otherwise provided in section 40 of this act, a* person who violates a court order or injunction issued pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, upon a complaint brought by the Commissioner, the Director, the district attorney of any county of this State or the Attorney General shall forfeit and pay to the State General Fund a civil penalty of not more than \$10,000 for each violation. For the purpose of this section, the court issuing the order or injunction retains jurisdiction over the action or proceeding. Such civil penalties are in addition to

any other penalty or remedy available for the enforcement of the provisions of NRS 598.0903 to 598.0999, inclusive.

2. ~~{In}~~ *Except as otherwise provided in section 40 of this act, in* any action brought pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, if the court finds that a person has willfully engaged in a deceptive trade practice, the Commissioner, the Director, the district attorney of any county in this State or the Attorney General bringing the action may recover a civil penalty not to exceed \$2,500 for each violation. The court in any such action may, in addition to any other relief or reimbursement, award reasonable attorney's fees and costs.

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

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

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

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

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

5. If a person violates any provision of NRS 598.0903 to 598.0999, inclusive, 598.100 to 598.2801, inclusive, 598.305 to 598.395, inclusive, 598.405 to 598.525, inclusive, 598.741 to 598.787, inclusive, or 598.840 to 598.966, inclusive, fails to comply with a judgment or order of any court in this State concerning a violation of such a provision, or fails to comply with an assurance of discontinuance or other agreement concerning an alleged violation of such a provision, the

Commissioner or the district attorney of any county may bring an action in the name of the State of Nevada seeking:

- (a) The suspension of the person's privilege to conduct business within this State; or
- (b) If the defendant is a corporation, dissolution of the corporation.

➡ The court may grant or deny the relief sought or may order other appropriate relief.

6. If a person violates any provision of NRS 228.500 to 228.640, inclusive, fails to comply with a judgment or order of any court in this State concerning a violation of such a provision, or fails to comply with an assurance of discontinuance or other agreement concerning an alleged violation of such a provision, the Attorney General may bring an action in the name of the State of Nevada seeking:

- (a) The suspension of the person's privilege to conduct business within this State; or
- (b) If the defendant is a corporation, dissolution of the corporation.

➡ The court may grant or deny the relief sought or may order other appropriate relief.”.

Amend the title of the bill to read as follows:

“AN ACT relating to vehicles; authorizing the Director of the Department of Motor Vehicles to expend money appropriated by the Legislature to assist in the acquisition of certain evidence; authorizing the Department to impose an administrative fine against a person who engages in certain deceptive trade practices relating to the purchase or sale of a vehicle under certain circumstances; authorizing a person who is injured by a bonded dealer, distributor, rebuilder, manufacturer, representative or salesman to bring an action or to apply to the Director for compensation from the bond; providing that a rebuilt vehicle may not be registered unless it is inspected and certified by a garageman or the

owner of a body shop; prohibiting a person from removing certain markings on a certificate of title for a rebuilt vehicle; authorizing the Department to adopt certain regulations relating to liens on vehicles; revising the duties of a manufacturer or its agent or authorized dealer concerning the sale, lease or transfer of ownership of a vehicle that fails to conform to certain express warranties; providing penalties; and providing other matters properly relating thereto.”.