

Amendment No. 533

Assembly Amendment to Assembly Bill No. 290 (BDR 43-917)

Proposed by: Assembly Committee on Transportation**Amendment Box:** Replaces Amendment No. 373.**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

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"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) green bold dashed underlining is newly added transitory language.

BFG/BJE



Date: 4/20/2009

A.B. No. 290—Makes various changes relating to the sale of used vehicles.
(BDR 43-917)



ASSEMBLY BILL NO. 290—ASSEMBLYMEN SPIEGEL, KOIVISTO; AIZLEY, ATKINSON,
BOBZIEN, CONKLIN, HAMBRICK, HOGAN, KIHUEN, KIRKPATRICK,
MANENDO, MCCLAIN, MUNFORD, OHRENSCHALL AND STEWART

MARCH 11, 2009

JOINT SPONSOR: SENATOR COPENING

Referred to Committee on Transportation

SUMMARY—Makes various changes relating to the sale of used vehicles.
(BDR 43-917)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for
Term of Imprisonment in County or City Jail or Detention
Facility.
Effect on the State: Yes.

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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 vehicles; revising provisions governing the applicability of the implied warranty of merchantability to the sale of a used vehicle by a used vehicle dealer; prohibiting a used vehicle dealer from excluding, modifying, negating or limiting the implied warranty of merchantability; providing remedies for a purchaser if a used vehicle does not conform with the implied warranty of merchantability; providing that a purchaser of a used vehicle may waive the implied warranty of merchantability under certain circumstances; requiring a contract for the sale of a used vehicle by a used vehicle dealer to contain certain statements; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 4 of this bill provides that in a contract for the sale of a used vehicle by a used vehicle dealer, the implied warranty of merchantability codified in NRS 104.2314 expires at midnight on the 15th day after delivery of the used vehicle or upon the used vehicle being driven 500 miles, whichever occurs first. **Section 4** additionally prohibits a used vehicle dealer from excluding, modifying, negating or limiting the implied warranty of merchantability or limiting any right or remedy of the purchaser for failure of the used vehicle to conform with the implied warranty of merchantability. **Section 5** of this bill provides that a used vehicle conforms with the implied warranty of merchantability if the used vehicle functions substantially free of certain defects. **Section 5** additionally provides certain remedies to the purchaser if the used vehicle does not conform with the implied warranty of merchantability, including returning the used vehicle to the used vehicle dealer and receiving

a refund of the full amount paid by the purchaser toward the purchase price of the used vehicle. These remedies are in addition to any other remedies provided by existing law.

Section 6 of this bill provides that a contract for the sale of a used vehicle by a used vehicle dealer must contain a statement providing that the used vehicle is fit for ordinary use for 15 days or 500 miles after delivery of the used vehicle to the purchaser, whichever occurs first. **Section 7** of this bill provides that a purchaser may waive the implied warranty of merchantability for a particular defect under certain circumstances. **Section 8** of this bill provides that if a used vehicle dealer violates certain provisions of this bill, the contract for the sale of a used vehicle is voidable by the purchaser. Section 7.5 of this bill provides that the provisions of sections 2-8 of this bill do not apply to the sale of a used vehicle which is covered by an express warranty of a manufacturer.

Section 15.5 of this bill provides that the forms for the application for credit and contracts to be used in the sale of a used vehicle prescribed by the Commissioner of Financial Institutions must contain statements substantially similar to the statements described in sections 6 and 7 of this bill. (NRS 97.299)

Existing law provides various protections for a person who purchases a used vehicle which has been driven 75,000 miles or more. (NRS 482.36661-482.36667) **Sections 10-14** of this bill make those provisions applicable to any used vehicle sold by a used vehicle dealer, regardless of the mileage of the used vehicle.

Section 16 of this bill repeals certain provisions governing express written warranties provided by a used vehicle dealer. ~~It and the imposition of administrative fines.~~ (NRS 482.36662, 482.36663, ~~482.36666~~)

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

Section 1. Chapter 482 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.

Sec. 2. *"Implied warranty of merchantability" means the implied warranty described in NRS 104.2314.*

Sec. 3. *To the extent of any conflict with the provisions of chapter 104 of NRS, the provisions of NRS 482.36655 to 482.36667, inclusive, and sections 2 to 8, inclusive, of this act control with respect to the sale in this State of a used vehicle by a used vehicle dealer.*

Sec. 4. *1. The implied warranty of merchantability in a contract for the sale of a used vehicle by a used vehicle dealer expires:*

(a) At midnight on the 15th calendar day after the date of delivery of the used vehicle to the purchaser; or

(b) Upon the used vehicle being driven 500 miles after its delivery to the purchaser,

whichever occurs earlier.

2. A used vehicle dealer shall not exclude, modify, negate or limit the implied warranty of merchantability with respect to the sale of a used vehicle or limit any right or remedy of the purchaser for failure of the used vehicle to conform with the implied warranty of merchantability.

3. For the purposes of this section, the computation of:

(a) Days following the date of delivery of the used vehicle to the purchaser must not include any day on which the used vehicle fails to conform with the implied warranty of merchantability.

(b) Miles driven must not include miles driven to obtain or in connection with the repair, service or diagnostic testing of a used vehicle which fails to conform with the implied warranty of merchantability.

1 **Sec. 5. 1. A used vehicle that is sold by a used vehicle dealer conforms**
2 **with the implied warranty of merchantability if the used vehicle functions**
3 **substantially free of any defect which:**

4 (a) **Significantly limits the use of the used vehicle on any public highway;**
5 **and**

6 (b) **Is not the result of any damage that occurs after the sale of the used**
7 **vehicle, including, without limitation, damage resulting from off-road use,**
8 **racing, towing, abuse, misuse, neglect, failure to perform ordinary maintenance**
9 **or failure to maintain adequate levels of oil, engine coolant or other required**
10 **fluids or lubricants.**

11 2. **If, during the effective period of the warranty of merchantability, the**
12 **purchaser of a used vehicle discovers a defect that constitutes the failure of**
13 **the used vehicle to conform with the implied warranty of merchantability, the**
14 **purchaser shall notify the used vehicle dealer as soon as practicable, but not later**
15 **than 30 days after the purchaser discovers the defect.**

16 3. **Before a purchaser may pursue the remedy prescribed in subsection 4:**

17 (a) **The purchaser must give the notice required by subsection 2;**

18 (b) **The used vehicle dealer must have a reasonable opportunity to repair the**
19 **used vehicle; and**

20 (c) **The purchaser must pay one-half of the cost of the first two repairs that**
21 **are necessary to bring the used vehicle into conformity with the implied warranty**
22 **of merchantability, but not more than \$25 for each repair.**

23 4. **If, after a reasonable opportunity, the used vehicle dealer is unable to**
24 **repair the used vehicle to conform with the implied warranty of merchantability,**
25 **the purchaser may elect to return the used vehicle to the used vehicle dealer who**
26 **shall:**

27 (a) **Accept the return of the used vehicle; and**

28 (b) **Not later than 5 business days after the return of the vehicle:**

29 (1) **Refund to the purchaser the full amount paid by the purchaser**
30 **toward the purchase price of the used vehicle; and**

31 (2) **Satisfy any security interest taken in the used vehicle.**

32 5. **A used vehicle dealer is not liable under this section to the purchaser for**
33 **any amount other than the amount described in subsection 4, unless the used**
34 **vehicle dealer had actual knowledge of or should have known of a defect in the**
35 **used vehicle as a result of the circumstances in which the used vehicle was**
36 **acquired or sold and did not disclose the defect to the purchaser.**

37 **6. The remedy provided in this section is not exclusive and is intended to**
38 **supplement existing law.**

39 **Sec. 6. 1. A contract for the sale of a used vehicle by a used vehicle dealer**
40 **must contain the following conspicuous statement printed in boldface type and**
41 **not less than 10-point font:**

42
43 *Nevada law requires that this used vehicle be fit for the ordinary purposes*
44 *for which the used vehicle is used for 15 days or 500 miles after delivery*
45 *of the used vehicle to you (the purchaser), whichever occurs earlier,*
46 *except with regard to particular defects disclosed on the first page of this*
47 *contract. You (the purchaser) will not have to pay more than \$25 for each*
48 *of the first two repairs if this warranty is violated.*

49
50 2. *The statement required by subsection 1 does not create an express*
51 *warranty in a contract for the sale of a used vehicle by a used vehicle dealer.*

52 **Sec. 7. A purchaser may waive the implied warranty of merchantability in a**
53 **contract for the sale of a used vehicle only:**

1. *For a particular defect in the used vehicle; and*
2. *If the following conditions are satisfied:*
 - (a) *The used vehicle dealer fully and accurately discloses the particular defect to the purchaser;*
 - (b) *The purchaser agrees to purchase the used vehicle after the disclosure of the particular defect is made; and*
 - (c) *The purchaser, before taking delivery of the used vehicle, signs and dates the following conspicuous statement which must be printed on the first page of the contract in boldface type and not less than 10-point font:*

Attention purchaser: Sign here only if the used vehicle dealer has disclosed to you that this used vehicle has the following particular defects and you agree to purchase the used vehicle after this disclosure:

1. _____
2. _____
3. _____

Sec. 7.5. *The provisions of sections 2 to 8, inclusive, of this act do not apply to the sale by a used vehicle dealer of a used vehicle which is covered by an express warranty of a manufacturer.*

Sec. 8. *If a used vehicle dealer violates any provision of sections 2 to 8, inclusive, of this act, the contract for the sale of a used vehicle is voidable by the purchaser.*

Sec. 9. NRS 482.36655 is hereby amended to read as follows:

482.36655 As used in NRS 482.36655 to 482.36667, inclusive, *and sections 2 to 8, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS 482.3666 and 482.366605 *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 10. NRS 482.36661 is hereby amended to read as follows:

482.36661 Before a used vehicle dealer may sell to a retail customer a used vehicle, ~~the odometer of which registers 75,000 miles or more,~~ the used vehicle dealer must conduct a reasonably thorough inspection of the soundness and safety of the vehicle's engine and drivetrain and disclose in writing any defects in the engine or drivetrain known to him or which he reasonably should have known after he conducts the inspection.

Sec. 11. NRS 482.36664 is hereby amended to read as follows:

482.36664 1. A retail customer who purchases a used vehicle ~~the odometer of which registers 75,000 miles or more~~ may submit to the Department a written complaint regarding the used vehicle dealer ~~if~~ only after making a good faith attempt to resolve the complaint with the used vehicle dealer. The Department shall, within 10 days after it receives a complaint pursuant to this section, provide a copy of the complaint to the used vehicle dealer who is the subject of the complaint.

2. A complaint submitted by the retail customer pursuant to subsection 1 must include:

(a) A clear and concise statement of the complaint and the facts relating to the complaint;

(b) Copies of any documents relating to the complaint; and

(c) A statement of the manner in which the retail customer wishes to have the complaint resolved.

3. Upon receipt of a complaint pursuant to this section, the Department shall investigate the complaint and determine whether the used vehicle dealer who is the subject of the complaint has violated the provisions of NRS 482.36655 to 482.36667, inclusive, *and sections 2 to 8, inclusive, of this act* or the regulations adopted by the Department pursuant thereto.

4. If the Department determines that a used vehicle dealer has violated the provisions of NRS 482.36655 to 482.36667, inclusive, *and sections 2 to 8, inclusive, of this act* or the regulations adopted by the Department pursuant thereto, the Department shall notify the used vehicle dealer of that determination and recommend to the dealer the actions that he may take to resolve the complaint.

5. A retail customer or used vehicle dealer who is aggrieved by the decision of the Department may appeal the decision to the Director.

Sec. 12. NRS 482.36665 is hereby amended to read as follows:

482.36665 The Department shall maintain a record of the complaints submitted to the Department pursuant to NRS 482.36664. The record must include a statement of whether the dealer was found to have violated the provisions of NRS 482.36655 to 482.36667, inclusive, *and sections 2 to 8, inclusive, of this act* or the regulations adopted pursuant thereto, and if so, whether the used vehicle dealer resolved the complaint in the manner recommended by the Department or in any other manner acceptable to the Department and the retail customer who filed the complaint.

Sec. 13. ~~NRS 482.36666 is hereby amended to read as follows:~~

~~482.36666 1. If the Department determines from the record maintained pursuant to NRS 482.36665 that on more than three occasions a used vehicle dealer has:~~

~~(a) Been found to have violated the provisions of NRS 482.36655 to 482.36667, inclusive, and sections 2 to 8, inclusive, of this act or the regulations adopted pursuant thereto; and~~

~~(b) Failed to resolve those complaints in the manner recommended by the Department pursuant to NRS 482.36664 or in any other manner acceptable to the Department and the retail customer who filed the complaint;~~

~~the Department may impose an administrative fine, not to exceed \$2,500, for each additional violation of the provisions of NRS 482.36655 to 482.36667, inclusive [], and sections 2 to 8, inclusive of this act. The Department shall afford to any person so fined an opportunity for a hearing pursuant to the provisions of NRS 233B.121.~~

~~2. All administrative fines collected by the Department pursuant to subsection 1 must be deposited with the State Treasurer to the credit of the Account for Regulation of Used Vehicle Dealers, which is hereby created in the State Highway Fund. Money in the Account may be used only for the administration of NRS 481.048 and NRS 482.36655 to 482.36667, inclusive [], and sections 2 to 8, inclusive, of this act.~~

~~3. In addition to any other remedy provided by law, the Department may compel compliance with NRS 482.36655 to 482.36667, inclusive, and sections 2 to 8, inclusive, of this act, and any regulation adopted pursuant thereto, by injunction or other appropriate remedy, and the Department may institute and maintain in the name of the State of Nevada any such enforcement proceedings. (Deleted by amendment.)~~

Sec. 14. NRS 482.36667 is hereby amended to read as follows:

482.36667 The Department may adopt regulations to carry out the provisions of NRS 482.36655 to 482.36667, inclusive ~~1~~, *and sections 2 to 8, inclusive, of this act.*

Sec. 15. NRS 41.600 is hereby amended to read as follows:

41.600 1. An action may be brought by any person who is a victim of consumer fraud.

2. As used in this section, "consumer fraud" means:

(a) An unlawful act as defined in NRS 119.330;

(b) An unlawful act as defined in NRS 205.2747;

(c) An act prohibited by NRS 482.36655 to 482.36667, inclusive ~~§~~, and *sections 2 to 8, inclusive, of this act;*

(d) An act prohibited by NRS 482.351; or

(e) A deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive.

3. If the claimant is the prevailing party, the court shall award him:

(a) Any damages that he has sustained; and

(b) His costs in the action and reasonable attorney's fees.

4. Any action brought pursuant to this section is not an action upon any contract underlying the original transaction.

Sec. 15.5. NRS 97.299 is hereby amended to read as follows:

97.299 1. The Commissioner of Financial Institutions shall prescribe, by regulation, forms for the application for credit and 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 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) 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. The form for the application for credit and contract to be used in the sale of a used vehicle prescribed by the Commissioner pursuant to subsection 1 must

contain statements that are substantially similar to the statements described in subsection 1 of section 6 of this act and paragraph (c) of subsection 2 of section 7 of this act.

6. 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.

(c) "Used vehicle" has the meaning ascribed to it in NRS 482.132.

Sec. 16. NRS 482.36662, ~~and~~ 482.36663 and 482.36666 are hereby repealed.

Sec. 17. This act becomes effective upon passage and approval for the purpose of adopting regulations and on October 1, 2009, for all other purposes.

TEXT OF REPEALED SECTIONS

482.36662 Written warranty required under certain circumstances; contents of warranty.

1. A used vehicle dealer who sells to a retail customer a used vehicle the odometer of which registers 75,000 miles or more shall provide to that retail customer an express written warranty which complies with the requirements set forth in subsection 2 and is valid for the period set forth in the schedule of warranties created pursuant to NRS 482.36663, if the used vehicle dealer is the subject of more than three substantiated complaints filed against him with the Department of Motor Vehicles during a 12-month period.

2. An express written warranty required pursuant to subsection 1 must contain a statement that, in the event the operation of the used vehicle becomes impaired as a result of a defect in a component or system of the vehicle's engine or drivetrain, the used vehicle dealer shall, with reasonable promptness, correct the defect or cause the defect to be corrected.

482.36663 Duration of warranty. If an express written warranty is provided to a retail customer for a used vehicle pursuant to NRS 482.36662, the duration of the warranty must be determined pursuant to this section. If, on the date the vehicle was purchased from the used vehicle dealer, the odometer in the used vehicle registered:

1. At least 75,000 but less than 80,001 miles, the warranty is valid for a period of 30 days therefrom or until the odometer in the vehicle registers 1,000 miles more than on the date the vehicle was purchased from the used vehicle dealer, whichever occurs earlier.

2. At least 80,001 but less than 85,001 miles, the warranty is valid for a period of 20 days therefrom or until the odometer in the vehicle registers 600 miles more than on the date the vehicle was purchased from the used vehicle dealer, whichever occurs earlier.

3. At least 85,001 but less than 90,001 miles, the warranty is valid for a period of 10 days therefrom or until the odometer in the vehicle registers 300 miles more than on the date the vehicle was purchased from the used vehicle dealer, whichever occurs earlier.

4. At least 90,001 but less than 100,001 miles, the warranty is valid for a period of 5 days therefrom or until the odometer in the vehicle registers 150 miles more than on the date the vehicle was purchased from the used vehicle dealer, whichever occurs earlier.

5. At least 100,001 miles, the warranty is valid for a period of 2 days therefrom or until the odometer in the vehicle registers 100 miles more than on the date the vehicle was purchased from the used vehicle dealer, whichever occurs earlier.

☞ The period for which a warranty is valid pursuant to this section must be tolled during any period in which the dealer has possession of the vehicle or the operation of the vehicle is impaired and the vehicle is inoperable due to a defect in the vehicle's engine or drivetrain.

482.3666 Administrative fines; opportunity for hearing; deposit of fines; injunctions and other remedies.

1. If the Department determines from the record maintained pursuant to NRS 482.3665 that on more than three occasions a used vehicle dealer has:

(a) Been found to have violated the provisions of NRS 482.36655 to 482.36667, inclusive, or the regulations adopted pursuant thereto; and

(b) Failed to resolve those complaints in the manner recommended by the Department pursuant to NRS 482.36664 or in any other manner acceptable to the Department and the retail customer who filed the complaint.

☞ the Department may impose an administrative fine, not to exceed \$2,500, for each additional violation of the provisions of NRS 482.36655 to 482.36667, inclusive. The Department shall afford to any person so fined an opportunity for a hearing pursuant to the provisions of NRS 233B.121.

2. All administrative fines collected by the Department pursuant to subsection 1 must be deposited with the State Treasurer to the credit of the Account for Regulation of Used Vehicle Dealers, which is hereby created in the State Highway Fund. Money in the Account may be used only for the administration of NRS 481.048 and NRS 482.36655 to 482.36667, inclusive.

3. In addition to any other remedy provided by law, the Department may compel compliance with NRS 482.36655 to 482.36667, inclusive, and any regulation adopted pursuant thereto, by injunction or other appropriate remedy, and the Department may institute and maintain in the name of the State of Nevada any such enforcement proceedings.