

Amendment No. 802

Assembly Amendment to Senate Bill No. 246 Third Reprint (BDR 43-989)

Proposed by: Assemblyman Atkinson

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of S.B. 246 (§§ 5, 14).

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.

JRS/TMC



Date: 5/17/2009

S.B. No. 246—Revises provisions governing the sale of vehicles. (BDR 43-989)



SENATE BILL NO. 246—SENATORS TOWNSEND, HARDY; CEGAVSKE, HORSFORD, LEE,
MATHEWS, MCGINNESS AND RHOADS

MARCH 16, 2009

Referred to Committee on Energy, Infrastructure and Transportation

SUMMARY—Revises provisions governing the sale of vehicles. (BDR 43-989)

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: 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 vehicles; revising provisions governing the applicability of the implied warranty of merchantability to the sale of a used vehicle by a used vehicle dealer; providing remedies for a purchaser if a used vehicle does not conform with the implied warranty of merchantability; requiring a contract for the sale of a used vehicle by a used vehicle dealer to contain certain statements; prohibiting a manufacturer from requiring a dealer to alter substantially an existing facility of the dealer or construct a new facility except under certain circumstances; prohibiting a manufacturer from taking adverse action against a dealer relating to the exportation of a vehicle outside the United States except under certain circumstances; providing for the licensure of an agent of a broker; revising provisions governing the modification or replacement of a franchise; establishing fees; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Section 1.3 of this bill provides that in a contract for the sale of a used vehicle by a
2 used vehicle dealer, the implied warranty of merchantability codified in NRS 104.2314
3 expires at midnight on the 15th day after delivery of the used vehicle or upon the used
4 vehicle being driven 500 miles, whichever occurs first. Section 1.3 also prohibits a used
5 vehicle dealer from excluding, modifying, negating or limiting the implied warranty of
6 merchantability or limiting any right or remedy of the purchaser for failure of the used
7 vehicle to conform with the implied warranty of merchantability. Section 1.4 of this bill
8 provides that a used vehicle conforms with the implied warranty of merchantability if
9 the used vehicle functions substantially free of certain defects. Section 1.4 further
10 provides certain remedies to the purchaser if the used vehicle does not conform with the
11 implied warranty of merchantability, including returning the used vehicle to the used
12 vehicle dealer and receiving a refund of the full amount paid by the purchaser toward
13 the purchase price of the used vehicle. These remedies are in addition to any other
14 remedies provided by existing law.

Section 1.5 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 1.6 of this bill provides that a purchaser may waive the implied warranty of merchantability for a particular defect under certain circumstances. Section 1.8 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 1.7 of this bill provides that the provisions of sections 1.1-1.8 of this bill do not apply to the sale of a used vehicle which is covered by an express warranty of a manufacturer.

Section 2 of this bill prohibits a manufacturer from requiring a dealer to alter substantially an existing facility or to construct a new facility for any new vehicles that are handled by the dealer under certain circumstances. **Section 2** also provides that such a requirement constitutes a modification of the franchise of the dealer.

Section 3 of this bill prohibits a manufacturer from taking adverse action against a dealer who sells a vehicle which is later exported outside the United States, unless the dealer had actual knowledge of or reasonably should have known of the exportation of the vehicle.

Sections 5 and 14 of this bill provide for the licensure of an agent for a broker of vehicles in this State. A person who violates the provisions governing the licensure of such agents is guilty of a misdemeanor.

Section 8 of this bill provides that if a manufacturer is purchased by another manufacturer or entity, a dealer must be offered a franchise agreement that is substantially similar to the franchise agreement offered to other dealers of the same line-make vehicles. **Section 8** defines such vehicles as those vehicles which are offered for sale, lease or distribution under the same name, trademark, service mark or brand of the manufacturer of the vehicles. (NRS 482.36354)

Section 13.7 of this bill provides that the forms for the application for credit and contract 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 1.5 and 1.6 of this bill.

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 13.2-13.5 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 14.5 of this bill repeals certain provisions governing express written warranties provided by a used vehicle dealer and the imposition of administrative fines.

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 ~~1.1~~ **1.1** to 5, inclusive, of this act.

Sec. 1.1. “Implied warranty of merchantability” means the implied warranty described in NRS 104.2314.

Sec. 1.2. 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 1.1 to 1.8, inclusive, of this act control with respect to the sale in this State of a used vehicle by a used vehicle dealer.

Sec. 1.3. 1. The implied warranty of merchantability in a contract for the sale of a used vehicle by a used vehicle dealer expires:

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

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

5 whichever occurs earlier.

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

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

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

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

17 Sec. 1.4. 1. A used vehicle that is sold by a used vehicle dealer conforms
18 with the implied warranty of merchantability if the used vehicle functions
19 substantially free of any defect which:

20 (a) Significantly limits the use of the used vehicle on any public highway;
21 and

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

27 2. If, during the effective period of the warranty of merchantability, the
28 purchaser of a used vehicle discovers a defect that constitutes the failure of
29 the used vehicle to conform with the implied warranty of merchantability, the
30 purchaser shall notify the used vehicle dealer as soon as practicable, but not later
31 than 30 days after the purchaser discovers the defect.

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

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

34 (b) The used vehicle dealer must have a reasonable opportunity to repair the
35 used vehicle; and

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

39 4. If, after a reasonable opportunity, the used vehicle dealer is unable to
40 repair the used vehicle to conform with the implied warranty of merchantability,
41 the purchaser may elect to return the used vehicle to the used vehicle dealer who
42 shall:

43 (a) Accept the return of the used vehicle; and

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

45 (1) Refund to the purchaser the full amount paid by the purchaser
46 toward the purchase price of the used vehicle; and

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

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

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

Sec. 1.5. 1. A contract for the sale of a used vehicle by a used vehicle dealer must contain the following conspicuous statement printed in boldface type and not less than 10-point font:

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

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

Sec. 1.6. A purchaser may waive the implied warranty of merchantability in a 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. 1.7. The provisions of sections 1.1 to 1.8, 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. 1.8. If a used vehicle dealer violates any provision of sections 1.1 to 1.8, inclusive, of this act, the contract for the sale of a used vehicle is voidable by the purchaser.

Sec. 2. 1. A manufacturer shall not require a dealer:

(a) To alter substantially an existing facility of the dealer; or

(b) To construct a new facility,

↳ for any new vehicles that are handled by the dealer, unless the alteration or new construction constitutes a reasonable facility requirement in accordance with the franchise agreement.

2. If a manufacturer requires a substantial alteration of an existing facility of the dealer or requires the dealer to construct a new facility, that requirement constitutes a modification of the franchise of the dealer for the purposes of this section, NRS 482.36311 to 482.36425, inclusive, and sections 3 and 4 of this act.

Sec. 3. A manufacturer shall not modify the franchise of a dealer or take any adverse action against a dealer that sells a vehicle which is later exported outside the United States, unless the dealer had actual knowledge of or reasonably should have known of the exportation of the vehicle.

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

2 **Sec. 5.** *1. A person shall not engage in the activity of an agent for a*
3 *broker, or act in the capacity of an agent in this State without first having*
4 *received a license or temporary permit from the Department. Before issuing a*
5 *license or temporary permit to engage in the activity of an agent, the Department*
6 *shall require the applicant to submit to the Department:*

7 (a) *An application, signed and verified by the applicant, stating:*

8 (1) *That the applicant is to engage in the activity of an agent;*

9 (2) *The name, residence address and social security number of the*
10 *applicant; and*

11 (3) *The name and address of the employer of the applicant.*

12 (b) *Proof of the employment of the applicant by a broker at the time the*
13 *application is filed.*

14 (c) *A statement as to whether any previous application of the applicant has*
15 *been denied or any previous license of the applicant has been revoked.*

16 (d) *Payment of a nonrefundable license fee of \$75. The license expires on*
17 *December 31 of each calendar year and may be renewed annually upon the*
18 *payment of a fee of \$40.*

19 (e) *For initial licensure, a complete set of his fingerprints and written*
20 *permission authorizing the Department to forward those fingerprints to the*
21 *Central Repository for Nevada Records of Criminal History for submission to the*
22 *Federal Bureau of Investigation for its report.*

23 (f) *Any other information the Department determines necessary.*

24 2. *The Department may issue a 60-day temporary permit to an applicant*
25 *who has submitted a complete application and paid the required fee.*

26 3. *A license to act as an agent of a broker issued pursuant to this section*
27 *does not authorize a person to engage in the business of selling mobile homes.*

28 4. *The Department may deny an application for a license as an agent or*
29 *suspend or revoke a license issued pursuant to this section upon any of the*
30 *following grounds:*

31 (a) *Failure of the applicant to establish by proof satisfactory to the*
32 *Department that he is employed by a broker.*

33 (b) *Conviction of a felony.*

34 (c) *Conviction of a gross misdemeanor.*

35 (d) *Conviction of a misdemeanor for a violation of any of the provisions of*
36 *this chapter.*

37 (e) *Falsification of the application.*

38 (f) *Evidence of unfitness as described in NRS 482.3255.*

39 (g) *Failure of the applicant to provide any information determined necessary*
40 *by the Department to process the application.*

41 (h) *Any reason determined by the Director to be in the best interests of the*
42 *public.*

43 5. *An agent shall not engage in any activity, or act in any other capacity as*
44 *an agent other than for the account of, or for and on behalf of, a single employer,*
45 *at a specified place of business of that employer, who must be a broker.*

46 6. *If an application for a license as an agent is denied, the applicant may*
47 *reapply for a license not less than 6 months after the denial.*

48 7. *An agent's license must be posted in a conspicuous place on the premises*
49 *of the broker by whom the agent is employed.*

50 8. *If an agent ceases to be employed by a broker, his license to act as an*
51 *agent is automatically suspended and his right to act as an agent immediately*
52 *ceases, and he shall not engage in the activity of an agent until he has:*

1 (a) Paid the Department a transfer fee of \$20 and submitted a certificate of
2 employment indicating that he has been reemployed by a broker; and

3 (b) Presented a current temporary permit or new license to the broker by
4 whom he is employed.

5 9. If an agent changes his residential address, he shall submit a written
6 notice of the change to the Department within 10 days after the change occurs.

7 10. If a person who holds a temporary permit to act as an agent ceases to be
8 employed by a broker, his permit to act as an agent is automatically suspended,
9 his right to act as an agent immediately ceases and his application for licensure
10 must be denied until he has:

11 (a) Paid the Department a transfer fee of \$20 and submitted a certificate of
12 employment indicating that he has been reemployed by a broker; and

13 (b) Presented a current temporary permit or new license to the broker by
14 whom he is employed.

15 11. A broker who employs an agent shall notify the Department of the
16 termination of employment of the agent not later than 10 days after the date of
17 termination by forwarding the license of the agent to the Department.

18 12. Any person who fails to comply with the provisions of this section is
19 guilty of a misdemeanor except as otherwise provided in NRS 482.555.

20 13. As used in this section, "agent" means a person who is employed by a
21 broker and who, for a fee or any other consideration, assists the broker in
22 offering to provide to another person the service of arranging, negotiating or
23 assisting in the purchase of a new or used vehicle which has not been registered
24 or for which an ownership interest has not been taken by the broker.

25 Sec. 6. NRS 482.319 is hereby amended to read as follows:

26 482.319 1. Except as otherwise provided in subsection 5, a natural person
27 who applies for the issuance or renewal of a license issued pursuant to the
28 provisions of NRS 482.318 to 482.363105, inclusive, *and section 5 of this act* shall
29 submit to the Department the statement prescribed by the Division of Welfare and
30 Supportive Services of the Department of Health and Human Services pursuant to
31 NRS 425.520. The statement must be completed and signed by the applicant.

32 2. The Department shall include the statement required pursuant to subsection
33 1 in:

34 (a) The application or any other forms that must be submitted for the issuance
35 or renewal of the license; or

36 (b) A separate form prescribed by the Department.

37 3. A license may not be issued or renewed by the Department pursuant to the
38 provisions of NRS 482.318 to 482.363105, inclusive, *and section 5 of this act* if the
39 applicant is a natural person who:

40 (a) Fails to submit the statement required pursuant to subsection 1; or

41 (b) Indicates on the statement submitted pursuant to subsection 1 that he is
42 subject to a court order for the support of a child and is not in compliance with the
43 order or a plan approved by the district attorney or other public agency enforcing
44 the order for the repayment of the amount owed pursuant to the order.

45 4. If an applicant indicates on the statement submitted pursuant to subsection
46 1 that he is subject to a court order for the support of a child and is not in
47 compliance with the order or a plan approved by the district attorney or other public
48 agency enforcing the order for the repayment of the amount owed pursuant to the
49 order, the Department shall advise the applicant to contact the district attorney or
50 other public agency enforcing the order to determine the actions that the applicant
51 may take to satisfy the arrearage.

52 5. If a licensee renews an existing license electronically, the licensee shall
53 keep the original of the statement required pursuant to subsection 1 at his place of

business for not less than 3 years after submitting the electronic renewal. The statement must be available during business hours for inspection by any authorized agent of the Director or the State of Nevada.

Sec. 7. NRS 482.3195 is hereby amended to read as follows:

482.3195 1. If the Department receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is the holder of a license issued pursuant to NRS 482.318 to 482.363105, inclusive, *and section 5 of this act*, the Department shall deem the license issued to that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the Department receives a letter issued to the holder of the license by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the license has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

2. The Department shall reinstate a license issued pursuant to NRS 482.318 to 482.363105, inclusive, *and section 5 of this act* that has been suspended by a district court pursuant to NRS 425.540 if the Department receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose license was suspended stating that the person whose license was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

Sec. 7.5. NRS 482.36311 is hereby amended to read as follows:

482.36311 As used in NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act*, unless the context otherwise requires, the words and terms defined in NRS 482.36318 to 482.36348, inclusive, have the meanings ascribed to them in those sections.

Sec. 8. NRS 482.36354 is hereby amended to read as follows:

482.36354 1. A manufacturer or distributor shall not modify the franchise of a dealer or replace the franchise with another franchise if the modification or replacement would have a substantially adverse effect upon the dealer's investment or his obligations to provide sales and service, unless:

(a) The manufacturer or distributor has given written notice of its intention to the Director and the dealer affected by the intended modification or replacement; and

(b) Either of the following conditions occurs:

(1) The dealer does not file a protest with the Director within 30 days after receiving the notice; or

(2) After a protest has been filed with the Director and the Director has conducted a hearing, the Director issues an order authorizing the manufacturer or distributor to modify or replace the franchise.

2. The notice required by subsection 1 must be given to the dealer and to the Director at least 60 days before the date on which the intended action is to take place.

3. If a manufacturer or distributor changes the area of primary responsibility of a dealer, the change constitutes a modification of the franchise of the dealer for the purposes of NRS 482.36311 to 482.36425, inclusive ~~§~~, *and sections 2, 3 and 4 of this act*. As used in this subsection, "area of primary responsibility" means the geographic area in which a dealer, pursuant to a franchise agreement, is responsible for selling, servicing and otherwise representing the products of a manufacturer or distributor.

4. Notwithstanding the provisions of this section, if a manufacturer is purchased by another manufacturer or entity, a dealer must be offered a

1 *franchise agreement that is substantially similar to the franchise agreement*
2 *offered to other dealers of the same line-make vehicles.*

3 5. *As used in this section, "line-make vehicles" means those vehicles which*
4 *are offered for sale, lease or distribution under the same name, trademark,*
5 *service mark or brand of the manufacturer of the vehicles.*

6 **Sec. 8.2.** NRS 482.36366 is hereby amended to read as follows:

7 482.36366 1. Each witness, other than an officer or employee of the State or
8 of a political subdivision of the State or an expert witness, who appears by order of
9 the Director in a hearing pursuant to NRS 482.36311 to 482.36425, inclusive, *and*
10 *sections 2, 3 and 4 of this act* is entitled to receive for his attendance the same fees
11 allowed by law to witnesses in civil cases. Except as otherwise provided in
12 subsection 2, the amount must be paid by the party at whose request the witness is
13 ordered to appear.

14 2. The Director may assess other costs against the parties as he deems
15 appropriate. After any hearing on a protest filed pursuant to NRS 482.36352,
16 482.36354 or 482.36357, if the Director determines that the manufacturer or
17 distributor has failed to establish that there is good cause to terminate, refuse to
18 continue, modify or replace a franchise, or to establish an additional dealership or
19 relocate an existing dealership, the Director shall award to the dealer his attorney's
20 fees and costs.

21 3. For the purposes of this section, "costs" includes:

22 (a) Except as otherwise provided in paragraph (b), any applicable cost set forth
23 in NRS 18.005; and

24 (b) The actual amount of any fees paid by a dealer to an expert witness in
25 connection with the hearing.

26 **Sec. 8.4.** NRS 482.3638 is hereby amended to read as follows:

27 482.3638 It is an unfair act or practice for any manufacturer, distributor or
28 factory branch, directly or through any representative, to:

29 1. Require a dealer to agree to a release, assignment, novation, waiver or
30 estoppel which purports to relieve any person from liability imposed by this
31 chapter, or require any controversy between a dealer and a manufacturer, distributor
32 or representative to be referred to any person or agency except as set forth in this
33 chapter if that referral would be binding on the dealer, except that this section does
34 not prevent the parties from mutually agreeing to arbitration pursuant to law.

35 2. Require a dealer to agree to the jurisdiction, venue or tribunal in which a
36 controversy arising under the provisions of the franchise agreement may or may not
37 be submitted for resolution, or prohibit a dealer from bringing an action in any
38 forum allowed by Nevada law.

39 3. Require a dealer to agree to a term or condition of a franchise agreement
40 which violates any provision of NRS 482.36311 to 482.36425, inclusive *H*, *and*
41 *sections 2, 3 and 4 of this act.*

42 4. Require a dealer to waive a trial by jury in actions involving the
43 manufacturer, distributor or factory branch.

44 5. Increase prices of new vehicles which the dealer had ordered for private
45 retail consumers before his receipt of the written official notification of a price
46 increase. A sales contract signed by a retail consumer constitutes evidence of each
47 order. Price changes applicable to new models or series of vehicles at the time of
48 the introduction of the new models or series shall not be deemed a price increase.
49 Price changes caused by:

50 (a) The addition to a vehicle of equipment formerly optional as standard or
51 required equipment pursuant to state or federal law;

52 (b) Revaluation of the United States dollar in the case of foreign-made
53 vehicles; or

(c) Transportation cost increases,
are not subject to this subsection.

6. Deny the principal owner the opportunity to designate his spouse, a member of his family, a qualified manager, or a trust or other artificial person controlled by any of them as entitled to participate in the ownership of:

(a) The franchised dealership;

(b) A successor franchised dealership for 2 years or a longer reasonable time after the incapacity of the principal owner; or

(c) A successor franchised dealership after the death of the principal in accordance with NRS 482.36396 to 482.36414, inclusive.

7. Modify unilaterally, replace, enter into, relocate, terminate or refuse to renew a franchise in violation of law.

8. Terminate or refuse to approve a transfer of a franchise for a dealership, or honor the right of succession set forth in a franchise agreement or refuse to approve the transfer of a controlling interest in a dealership because the dealer has, before October 1, 1997, established an additional franchise to sell or service another line or make of new vehicles in the same facility as the existing dealership.

9. Prevent a dealer from establishing, on or after October 1, 1997, an additional franchise to sell or service another line or make of new vehicles in the same facility as the existing dealership if the dealer:

(a) Submits a written request for approval of the additional franchise to the manufacturer, distributor or factory branch of the existing dealership;

(b) Complies with the reasonable requirements for approval set forth in the franchise of the existing dealership; and

(c) Obtains the approval of the manufacturer, distributor or factory branch of the existing dealership.

The manufacturer, distributor or factory branch shall notify the dealer in writing of its decision to approve or deny the request within 90 days after receipt of the request. The manufacturer, distributor or factory branch shall not unreasonably withhold its approval. If the request is denied, the material reasons for the denial must be stated. Failure to approve or deny the request, in writing, within 90 days has the effect of approval.

Sec. 8.6. NRS 482.36423 is hereby amended to read as follows:

482.36423 1. Whenever it appears that a person has violated, is violating or is threatening to violate any provision of NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act*, any person aggrieved thereby may apply to the district court in the county where the defendant resides, or in the county where the violation or threat of violation occurs, for injunctive relief to restrain the person from continuing the violation or threat of violation.

2. In addition to any other judicial relief, any dealer or person who assumes the operation of a franchise pursuant to NRS 482.36396 to 482.36414, inclusive, who is injured in his business or property by reason of a violation of NRS 482.36311 to 482.36425, inclusive, *and sections 2, 3 and 4 of this act* may bring an action in the district court in which the dealership is located, and may recover three times the pecuniary loss sustained by him, and the cost of suit, including a reasonable attorney's fee. The amount of pecuniary loss sustained by a dealer, pursuant to subsection 7 of NRS 482.3638, is the fair market value of the franchised dealership at the time of notification of termination, refusal to continue or unilateral modification of a franchise.

3. Any artificial person created and existing under the laws of any other state, territory, foreign government or the government of the United States, or any person residing outside the State, who grants a franchise to any dealer in this State may be

served with any legal process in any action for injunctive relief or civil damages in the following manner:

(a) By delivering a copy of the process to the Director; and

(b) By mailing to the last known address of the manufacturer or distributor, by certified mail, return receipt requested, a copy of the summons and a copy of the complaint, together with copies of any petition or order for injunctive relief.

4. The defendant has 30 days, exclusive of the day of service, within which to answer or plead.

5. The method of service provided in this section is cumulative and may be utilized with, after or independently of all other methods of service.

Sec. 8.8. NRS 482.36425 is hereby amended to read as follows:

482.36425 1. Any manufacturer or distributor who willfully violates any provision of NRS 482.36311 to 482.36425, inclusive, **and sections 2, 3 and 4 of this act** is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation and for each act of violation. All civil penalties recovered must be paid to the State of Nevada.

2. Whenever it appears that a manufacturer or distributor has violated, is violating or is threatening to violate any provision of NRS 482.36311 to 482.36425, inclusive, **and sections 2, 3 and 4 of this act**, the Attorney General may institute a civil suit in any district court of this State for injunctive relief to restrain the violation or threat of violation or, if the violation or threat is willful, for the assessment and recovery of the civil penalty, or both.

Sec. 9. (Deleted by amendment.)

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. (Deleted by amendment.)

Sec. 13. (Deleted by amendment.)

Sec. 13.1. **NRS 482.36655 is hereby amended to read as follows:**

482.36655 As used in NRS 482.36655 to 482.36667, inclusive, **and sections 1.1 to 1.8, inclusive, of this act**, unless the context otherwise requires, the words and terms defined in NRS 482.3666 and 482.366605 **and section 1.1 of this act** have the meanings ascribed to them in those sections.

Sec. 13.2. **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. 13.3. **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 ~~to~~ **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 1.1 to 1.8, 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 1.1 to 1.8, 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. 13.4. 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 1.1 to 1.8, 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. 13.5. 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 § , and sections 1.1 to 1.8, inclusive, of this act.

Sec. 13.6. 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 1.1 to 1.8, 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. 13.7. 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

1 application for credit is made and, in addition to the information required in NRS
2 97.185 and required to be disclosed in such a transaction by federal law, must:

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

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

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

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

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

14
15 NOTICE TO BUYER

16
17 Do not sign this agreement before you read it or if it contains any blank
18 spaces. You are entitled to a completed copy of this agreement. If you pay
19 the amount due before the scheduled date of maturity of the indebtedness
20 and you are not in default in the terms of the contract for more than 2
21 months, you are entitled to a refund of the unearned portion of the finance
22 charge. If you fail to perform your obligations under this agreement, the
23 vehicle may be repossessed and you may be liable for the unpaid
24 indebtedness evidenced by this agreement.
25

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

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

31 5. *The form for the application for credit and the contract to be used in the*
32 *sale of a used vehicle prescribed by the Commissioner pursuant to subsection 1*
33 *must contain statements that are substantially similar to the statements described*
34 *in subsection 1 of section 1.5 of this act and paragraph (c) of subsection 2 of*
35 *section 1.6 of this act.*

36 6. As used in this section:

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

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

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

41 Sec. 14. Section 5 of this act is hereby amended to read as follows:

42 Sec. 5. 1. A person shall not engage in the activity of an agent for a
43 broker, or act in the capacity of an agent in this State without first having
44 received a license or temporary permit from the Department. Before issuing
45 a license or temporary permit to engage in the activity of an agent, the
46 Department shall require the applicant to submit to the Department:

47 (a) An application, signed and verified by the applicant, stating:

48 (1) That the applicant is to engage in the activity of an agent;

49 (2) The name [redacted] and residence address [redacted and social security number]
50 of the applicant; and

51 (3) The name and address of the employer of the applicant.

52 (b) Proof of the employment of the applicant by a broker at the time the
53 application is filed.

(c) A statement as to whether any previous application of the applicant has been denied or any previous license of the applicant has been revoked.

(d) Payment of a nonrefundable license fee of \$75. The license expires on December 31 of each calendar year and may be renewed annually upon the payment of a fee of \$40.

(e) For initial licensure, a complete set of his fingerprints and written permission authorizing the Department to forward those fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.

(f) Any other information the Department determines necessary.

2. The Department may issue a 60-day temporary permit to an applicant who has submitted a complete application and paid the required fee.

3. A license to act as an agent of a broker issued pursuant to this section does not authorize a person to engage in the business of selling mobile homes.

4. The Department may deny an application for a license as an agent or suspend or revoke a license issued pursuant to this section upon any of the following grounds:

(a) Failure of the applicant to establish by proof satisfactory to the Department that he is employed by a broker.

(b) Conviction of a felony.

(c) Conviction of a gross misdemeanor.

(d) Conviction of a misdemeanor for a violation of any of the provisions of this chapter.

(e) Falsification of the application.

(f) Evidence of unfitness as described in NRS 482.3255.

(g) Failure of the applicant to provide any information determined necessary by the Department to process the application.

(h) Any reason determined by the Director to be in the best interests of the public.

5. An agent shall not engage in any activity, or act in any other capacity as an agent other than for the account of, or for and on behalf of, a single employer, at a specified place of business of that employer, who must be a broker.

6. If an application for a license as an agent is denied, the applicant may reapply for a license not less than 6 months after the denial.

7. An agent's license must be posted in a conspicuous place on the premises of the broker by whom the agent is employed.

8. If an agent ceases to be employed by a broker, his license to act as an agent is automatically suspended and his right to act as an agent immediately ceases, and he shall not engage in the activity of an agent until he has:

(a) Paid the Department a transfer fee of \$20 and submitted a certificate of employment indicating that he has been reemployed by a broker; and

(b) Presented a current temporary permit or new license to the broker by whom he is employed.

9. If an agent changes his residential address, he shall submit a written notice of the change to the Department within 10 days after the change occurs.

10. If a person who holds a temporary permit to act as an agent ceases to be employed by a broker, his permit to act as an agent is automatically

suspended, his right to act as an agent immediately ceases and his application for licensure must be denied until he has:

(a) Paid the Department a transfer fee of \$20 and submitted a certificate of employment indicating that he has been reemployed by a broker; and

(b) Presented a current temporary permit or new license to the broker by whom he is employed.

11. A broker who employs an agent shall notify the Department of the termination of employment of the agent not later than 10 days after the date of termination by forwarding the license of the agent to the Department.

12. Any person who fails to comply with the provisions of this section is guilty of a misdemeanor except as otherwise provided in NRS 482.555.

13. As used in this section, "agent" means a person who is employed by a broker and who, for a fee or any other consideration, assists the broker in offering to provide to another person the service of arranging, negotiating or assisting in the purchase of a new or used vehicle which has not been registered or for which an ownership interest has not been taken by the broker.

Sec. 14.5. NRS 482.36662, 482.36663 and 482.36666 are hereby repealed.

Sec. 15. 1. This section and sections 1 ~~(to 4, inclusive)~~, 2, 3 and 7.5 to 13, inclusive, of this act become effective upon passage and approval.

2. Sections 1.1 to 1.8, inclusive, 13.1 to 13.7, inclusive, and 14.5 of this act become effective upon passage and approval for the purpose of adopting regulations and on October 1, 2009, for all other purposes.

3. Sections 5, 6 and 7 of this act become effective on July 1, 2010.

~~2.4~~ 4. Section 5 of this act expires by limitation on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment of the support of one or more children,

are repealed by the Congress of the United States.

~~4.4~~ 5. Section 14 of this act becomes effective on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,

are repealed by the Congress of the United States.

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 registers:

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.

482.36666 Administrative fines; opportunity for hearing; deposit of fines; injunctions and other remedies.

1. If the Department determines from the record maintained pursuant to NRS 482.36665 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, 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.