

Amendment No. 669

Assembly Amendment to Senate Bill No. 234 First Reprint (BDR 43-386)

Proposed by: Assembly Committee on Transportation**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

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 underlining* is newly added transitory language.

AAK/WLK



Date: 5/24/2011

S.B. No. 234—Revises provisions relating to motor vehicle dealers. (BDR 43-386)



SENATE BILL NO. 234—SENATOR HORSFORD

MARCH 10, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions relating to motor vehicle dealers. (BDR 43-386)

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.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to vehicles; prohibiting a manufacturer from requiring a dealer to alter substantially an existing facility of the dealer or construct a new facility; 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; revising provisions governing the modification or replacement of a franchise; revising provisions relating to unfair practices; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

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 in certain circumstances and provides that any such 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.

Section 9 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 and make of vehicles.

Section 16 of this bill provides that the forms for the application for credit and contracts to be used in the sale of vehicles prescribed by the Commissioner of Financial Institutions must contain a provision which provides that if the seller elects to rescind the contract, the seller must provide notice to the buyer not less than 20 days after the date of the contract.

Section 10 of this bill provides that a refusal to accept an amended claim for parts and labor or a claim that was not filed before the manufacturer's deadline that is submitted within 60 days after the claim was first filed or was due is an unfair practice. **Section 10** also makes an audit confirming a warranty repair, sales incentive or rebate performed more than 9 months after a claim was made an unfair practice. **Section 11** of this bill prohibits a manufacturer from preventing a dealer from disclosing a service, repair guidance or recall notice or providing certain information relating to warranty coverage.

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 5, inclusive, of this act.

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 and NRS 482.36311 to 482.36425, inclusive, and section 3 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.*

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

Sec. 9. 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 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. 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 franchise agreement that is substantially similar to the franchise agreement offered to other dealers of the same line and make of vehicles.

1 **Sec. 10.** NRS 482.36385 is hereby amended to read as follows:

2 482.36385 It is an unfair act or practice for any manufacturer, distributor or
3 factory branch, directly or through any representative, to:

4 1. Compete with a dealer. A manufacturer or distributor shall not be deemed
5 to be competing when operating a previously existing dealership temporarily for a
6 reasonable period, or in a bona fide retail operation which is for sale to any
7 qualified person at a fair and reasonable price, or in a bona fide relationship in
8 which a person has made a significant investment subject to loss in the dealership
9 and can reasonably expect to acquire full ownership of the dealership on reasonable
10 terms and conditions.

11 2. Discriminate unfairly among its dealers, or fail without good cause to
12 comply with franchise agreements, with respect to warranty reimbursement or
13 authority granted to its dealers to make warranty adjustments with retail customers.

14 3. Fail to compensate a dealer fairly for the work and services which the
15 dealer is required to perform in connection with the delivery and preparation
16 obligations under any franchise, or fail to compensate a dealer fairly for labor, parts
17 and other expenses incurred by the dealer under the manufacturer's warranty
18 agreements. The manufacturer shall set forth in writing the respective obligations of
19 a dealer and the manufacturer in the preparation of a vehicle for delivery, and as
20 between them a dealer's liability for a defective product is limited to the obligation
21 so set forth. Fair compensation includes diagnosis and reasonable administrative
22 and clerical costs. The dealer's compensation for parts and labor to satisfy a
23 warranty must not be less than the amount of money charged to its various retail
24 customers for parts and labor that are not covered by a warranty. If parts are
25 supplied by the manufacturer, including exchanged parts and assembled
26 components, the dealer is entitled with respect to each part to an amount not less
27 than the dealer's normal retail markup for the part. This subsection does not apply
28 to compensation for any part, system, fixture, appliance, furnishing, accessory or
29 feature of a motor home or recreational vehicle that is designed, used and
30 maintained primarily for nonvehicular, residential purposes.

31 4. Fail to ~~{pay}~~:

32 (a) *Pay* all claims made by dealers for compensation for delivery and
33 preparation work, transportation claims, special campaigns and work to satisfy
34 warranties within 30 days after approval, or fail to approve or disapprove such
35 claims within 30 days after receipt ~~{, or disapprove}~~;

36 (b) *Disapprove* any claim without notice to the dealer in writing of the grounds
37 for disapproval ~~{}~~;

38 (c) *Accept an amended claim for labor and parts if the amended claim is*
39 *submitted not later than 60 days after the date on which the manufacturer or*
40 *distributor notifies the dealer that the claim has been disapproved and the*
41 *disapproval was based on the dealer's failure to comply with a specific*
42 *requirement for processing the claim, including, without limitation, a clerical*
43 *error or other administrative technicality that does not relate to the legitimacy of*
44 *the claim.*

45 ↳ Failure to approve or disapprove or to pay within the specified time limits in an
46 individual case does not constitute a violation of this section if the failure is because
47 of reasons beyond the control of the manufacturer, distributor or factory branch.

48 5. Sell a new vehicle to a person who is not licensed as a new vehicle dealer
49 under the provisions of this chapter.

50 6. Use false, deceptive or misleading advertising or engage in deceptive acts
51 in connection with the manufacturer's or distributor's business.

52 7. Perform an audit to confirm a warranty repair, sales incentive or rebate
53 more than ~~{+2}~~ 9 months after the date ~~{of the transaction,}~~ *on which the claim was*

1 *made. An audit of a dealer's records pursuant to this subsection may be*
2 *conducted by the manufacturer or distributor on a reasonable basis, and a*
3 *dealer's claim for warranty or sales incentive compensation must not be denied*
4 *except for good cause, including, without limitation, performance of nonwarranty*
5 *repairs, lack of material documentation, fraud or misrepresentation. A dealer's*
6 *failure to comply with the specific requirements of the manufacturer or*
7 *distributor for processing the claim does not constitute grounds for the denial of*
8 *the claim or the reduction of the amount of compensation to the dealer if*
9 *reasonable documentation or other evidence has been presented to substantiate*
10 *the claim. The manufacturer or distributor shall not deny a claim or reduce the*
11 *amount of compensation to the dealer for warranty repairs to resolve a condition*
12 *discovered by the dealer during the course of a separate repair.*

13 8. Prohibit or prevent a dealer from appealing the results of an audit to
14 confirm a warranty repair, sales incentive or rebate, or to require that such an
15 appeal be conducted at a location other than the dealer's place of business.

16 **Sec. 11.** NRS 482.36389 is hereby amended to read as follows:

17 482.36389 A manufacturer shall not ~~require~~:

18 1. **Require** a dealer to disclose information concerning a customer to the
19 manufacturer or a third party if the customer objects or the disclosure is otherwise
20 unlawful ~~H~~; or

21 2. **Prohibit or prevent a dealer from disclosing a service, repair guidance or**
22 **recall notice that is documented by the manufacturer or notifying customers of**
23 **available warranty coverage and expiration dates of existing warranty coverage.**

24 **Sec. 12.** (Deleted by amendment.)

25 **Sec. 13.** (Deleted by amendment.)

26 **Sec. 14.** (Deleted by amendment.)

27 **Sec. 15.** (Deleted by amendment.)

28 **Sec. 15.5. Chapter 97 of NRS is hereby amended by adding thereto a**
29 **new section to read as follows:**

30 **Notwithstanding the provisions of any contract to the contrary, default on the**
31 **part of the buyer is only enforceable to the extent that:**

32 1. **The buyer fails to make a payment as required by the agreement; or**

33 2. **The prospect of payment, performance or realization of collateral is**
34 **significantly impaired. The burden of establishing the prospect of significant**
35 **impairment is on the seller.**

36 **Sec. 16.** NRS 97.299 is hereby amended to read as follows:

37 97.299 1. The Commissioner of Financial Institutions shall prescribe, by
38 regulation, forms for the application for credit and contracts to be used in the sale of
39 vehicles if:

40 (a) The sale involves the taking of a security interest to secure all or a part of
41 the purchase price of the vehicle;

42 (b) The application for credit is made to or through the seller of the vehicle;

43 (c) The seller is a dealer; and

44 (d) The sale is not a commercial transaction.

45 2. The forms prescribed pursuant to subsection 1 must meet the requirements
46 of NRS 97.165, must be accepted and acted upon by any lender to whom the
47 application for credit is made and, in addition to the information required in NRS
48 97.185 and required to be disclosed in such a transaction by federal law, must:

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

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

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

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

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

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

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

(f) *Contain a provision which provides that if the seller ~~elects to rescind the contract~~ exercises a valid option to cancel the vehicle sale as a result of being unable to assign the contract to a financial institution with whom the seller regularly does business, the seller must ~~provide~~ hand-deliver or send prepaid by United States mail written notice to the buyer not less than 20 days after the date of the contract.*

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

NOTICE TO BUYER

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

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

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

5. As used in this section:

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

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

Sec. 17. (Deleted by amendment.)

Sec. 17.5. The Commissioner of Financial Institutions shall adopt the regulations required by section 16 of this act on or before October 1, 2011.

Sec. 18. 1. This section and sections 16 and 17.5 of this act become effective upon passage and approval for the purpose of adopting regulations and on October 1, 2011, for all other purposes.

2. Sections 1 to ~~15.4~~ 15.5, inclusive, and 17 of this act become effective on October 1, 2011.

3. The amendatory provisions of section 16 of this act expire by limitation on September 30, 2012.