

ASSEMBLY BILL NO. 282—ASSEMBLYMEN AIZLEY;
OHRENSCHALL AND PIERCE

MARCH 15, 2013

JOINT SPONSOR: SENATOR SEGERBLOM

Referred to Committee on Transportation

SUMMARY—Revises provisions governing certain sales of motor vehicles. (BDR 43-640)

FISCAL NOTE: Effect on Local Government: No.
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 motor vehicles; providing that certain persons may recover on the bond or deposit that each broker, manufacturer, distributor, dealer and rebuilder of motor vehicles is required to procure or make with the Department of Motor Vehicles; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, each broker, manufacturer, distributor, dealer and rebuilder of motor vehicles is required to procure and file a surety bond with the Department of Motor Vehicles or make a deposit with the Department. Any person, including consumers as well as corporate entities, injured by the actions of such a broker, manufacturer, distributor, dealer or rebuilder is allowed to apply to the Director of the Department or to bring and maintain an action in any court of competent jurisdiction for compensation from the bond or deposit. (NRS 482.3333, 482.345, 482.346)

Additionally, under existing case law in Nevada, the phrase “any person,” as used in NRS 482.345(6), has been interpreted literally to allow any individual person or group of persons (including a finance company) who is injured by the actions of a broker, manufacturer, distributor, dealer or rebuilder of motor vehicles to apply for compensation from the bond that section requires to be procured and filed. (*Western Sur. Co. v. ADCO Credit, Inc.*, 127 Nev. Adv. Op. No. 8, 251 P.3d 714 (Mar. 17, 2011)) This bill amends NRS 482.3333, 482.345 and 482.346 to provide that bonds procured pursuant to NRS 482.3333 and 482.345 and deposits made in lieu of such bonds pursuant to NRS 482.346 may be used to



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18 compensate only a consumer, for any loss or damage established, and no other
19 person.

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

1 **Section 1.** NRS 482.3333 is hereby amended to read as
2 follows:

3 482.3333 1. Before a person may be licensed as a broker, the
4 person must procure and file with the Department a good and
5 sufficient bond in the amount of \$100,000 with a corporate surety
6 thereon licensed to do business within the State of Nevada,
7 approved as to form by the Attorney General, and conditioned that
8 the applicant shall conduct business as a broker without breaching a
9 consumer contract or engaging in a deceptive trade practice, fraud or
10 fraudulent representation, and without violation of the provisions of
11 this chapter.

12 2. The Department may allow a broker who provides services
13 for more than one category of vehicle described in subsection 1 of
14 NRS 482.345 at a principal place of business or at any branch
15 location within the same county as the principal place of business to
16 provide a good and sufficient bond for a single category of vehicle
17 and may consider that single bond sufficient coverage to include all
18 other categories of vehicles.

19 3. The bond must be continuous in form, and the total
20 aggregate liability on the bond must be limited to the payment of the
21 total amount of the bond.

22 4. The undertaking on the bond *is for the use and benefit of*
23 *the consumer and* includes any breach of a consumer contract,
24 deceptive trade practice, fraud, fraudulent representation or violation
25 of any of the provisions of this chapter by any employee of the
26 licensed broker who acts on behalf of the broker and within the
27 scope of his or her employment.

28 5. The bond must provide that *it is for the use and benefit of*
29 any ~~person injured by the action~~ *consumer* of the broker or an
30 employee of the broker ~~in violation of any provision of this chapter~~
31 ~~may apply to the Director, for good cause shown, for compensation~~
32 ~~from the bond.~~ *for any loss or damage established, including,*
33 *without limitation:*

- 34 (a) *Actual damages;*
35 (b) *Consequential damages;*
36 (c) *Incidental damages;*
37 (d) *Statutory damages;*
38 (e) *Damages for noneconomic loss; and*



1 *(f) Attorney's fees and costs.*

2 ➔ The surety issuing the bond shall appoint the Secretary of State as
3 its agent to accept service of notice or process for the surety in any
4 action upon the bond brought in a court of competent jurisdiction or
5 brought before the Director.

6 6. If a ~~person is injured by the actions of~~ *consumer has a*
7 *claim for relief against* a broker or an employee of the broker, the
8 ~~person~~ *consumer* may:

9 (a) Bring and maintain an action in any court of competent
10 jurisdiction. If the court enters:

11 (1) A judgment on the merits against the broker or employee,
12 the judgment is binding on the surety.

13 (2) A judgment other than on the merits against the broker or
14 employee, including, without limitation, a default judgment, the
15 judgment is binding on the surety only if the surety was given notice
16 and an opportunity to defend at least 20 days before the date on
17 which the judgment was entered against the broker or employee.

18 (b) Apply to the Director, for good cause shown, for
19 compensation from the bond. The Director may determine the
20 amount of compensation and the ~~person~~ *consumer* to whom it is to
21 be paid. The surety shall then make the payment.

22 (c) Settle the matter with the broker or employee. If such a
23 settlement is made, the settlement must be reduced to writing,
24 signed by both parties and acknowledged before any person
25 authorized to take acknowledgments in this State, and submitted to
26 the Director with a request for compensation from the bond. If the
27 Director determines that the settlement was reached in good faith
28 and there is no evidence of collusion or fraud between the parties in
29 reaching the settlement, the surety shall make the payment to the
30 ~~injured person~~ *consumer* in the amount agreed upon in the
31 settlement.

32 7. Any judgment entered by a court *in favor of a consumer*
33 *and* against a broker or an employee of the broker may be executed
34 through a writ of attachment, garnishment, execution or other legal
35 process, or the ~~person~~ *consumer* in whose favor the judgment was
36 entered may apply to the Director for compensation from the bond
37 of the broker or employee.

38 8. *As used in this section, "consumer" means any person who*
39 *comes into possession of a vehicle as a final user for any purpose*
40 *other than offering it for sale.*

41 **Sec. 2.** NRS 482.345 is hereby amended to read as follows:

42 482.345 1. Before any dealer's license, dealer's plate, special
43 dealer's plate, rebuilder's license or rebuilder's plate, distributor's
44 license or distributor's plate or manufacturer's license or
45 manufacturer's plate is furnished to a manufacturer, distributor,



1 dealer or rebuilder as provided in this chapter, the Department shall
2 require that the applicant make an application for such a license and
3 plate upon a form to be furnished by the Department, and the
4 applicant shall furnish such information as the Department requires,
5 including proof that the applicant has an established place of
6 business in this State, procure and file with the Department a good
7 and sufficient bond with a corporate surety thereon, duly licensed to
8 do business within the State of Nevada, approved as to form by the
9 Attorney General, and conditioned that the applicant or any
10 employee who acts on behalf of the applicant within the scope of his
11 or her employment shall conduct business as a dealer, distributor,
12 manufacturer or rebuilder without breaching a consumer contract or
13 engaging in a deceptive trade practice, fraud or fraudulent
14 representation, and without violation of the provisions of this
15 chapter. The bond must be:

16 (a) For a manufacturer, distributor, rebuilder or dealer who
17 manufactures, distributes or sells motorcycles, \$50,000.

18 (b) For a manufacturer, distributor, rebuilder or dealer who sells
19 vehicles other than motorcycles, trailers or travel trailers, \$100,000.

20 (c) For a manufacturer, distributor, rebuilder or dealer who sells
21 travel trailers or other dual purpose trailers that include living
22 quarters in their design, \$100,000.

23 (d) For a manufacturer, distributor, rebuilder or dealer who sells
24 horse trailers designed without living quarters or special purpose
25 trailers with an unladen weight of 3,501 pounds or more, \$50,000.

26 (e) For a manufacturer, distributor, rebuilder or dealer who sells
27 utility trailers or other special use trailers with an unladen weight of
28 3,500 pounds or less or trailers designed to carry boats, \$10,000.

29 2. The Department may, pursuant to a written agreement with
30 any manufacturer, distributor, rebuilder or dealer who has been
31 licensed to do business in this State for at least 5 years, allow a
32 reduction in the amount of the bond of the manufacturer, distributor,
33 rebuilder or dealer, if the business has been conducted in a manner
34 satisfactory to the Department for the preceding 5 years. No bond
35 may be reduced to less than 50 percent of the bond required
36 pursuant to subsection 1.

37 3. The Department may allow a manufacturer, distributor,
38 rebuilder or dealer who sells more than one category of vehicle as
39 described in subsection 1 at a principal place of business or at any
40 branch location within the same county as the principal place of
41 business to provide a good and sufficient bond for a single category
42 of vehicle and may consider that single bond sufficient coverage to
43 include all other categories of vehicles.



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4. The bond must be continuous in form, and the total aggregate liability on the bond must be limited to the payment of the total amount of the bond.

5. The undertaking on the bond *is for the use and benefit of the consumer and* includes any breach of a consumer contract, deceptive trade practice, fraud, fraudulent representation or violation of any of the provisions of this chapter by the representative of any licensed distributor or the salesperson of any licensed dealer, manufacturer or rebuilder who acts for the dealer, distributor, manufacturer or rebuilder on his or her behalf and within the scope of the employment of the representative or salesperson.

6. The bond must provide that *it is for the use and benefit of any ~~person~~ consumer ~~injured by the action~~ of the dealer, distributor, rebuilder, manufacturer, representative or salesperson ~~in violation of any provisions of this chapter may apply to the Director, for good cause shown, for compensation from the bond.~~ for any loss or damage established, including, without limitation:*

- (a) *Actual damages;*
- (b) *Consequential damages;*
- (c) *Incidental damages;*
- (d) *Statutory damages;*
- (e) *Damages for noneconomic loss; and*
- (f) *Attorney's fees and costs.*

↪ The surety issuing the bond shall appoint the Secretary of State as its agent to accept service of notice or process for the surety in any action upon the bond brought in a court of competent jurisdiction or brought before the Director.

7. If a ~~person~~ consumer ~~is injured by the actions of~~ *has a claim for relief against* a dealer, distributor, rebuilder, manufacturer, representative or salesperson, the ~~person~~ consumer may:

(a) Bring and maintain an action in any court of competent jurisdiction. If the court enters:

(1) A judgment on the merits against the dealer, distributor, rebuilder, manufacturer, representative or salesperson, the judgment is binding on the surety.

(2) A judgment other than on the merits against the dealer, distributor, rebuilder, manufacturer, representative or salesperson, including, without limitation, a default judgment, the judgment is binding on the surety only if the surety was given notice and an opportunity to defend at least 20 days before the date on which the judgment was entered against the dealer, distributor, rebuilder, manufacturer, representative or salesperson.

(b) Apply to the Director, for good cause shown, for compensation from the bond. The Director may determine the



1 amount of compensation and the ~~person~~ consumer to whom it is to
2 be paid. The surety shall then make the payment.

3 (c) Settle the matter with the dealer, distributor, rebuilder,
4 manufacturer, representative or salesperson. If such a settlement is
5 made, the settlement must be reduced to writing, signed by both
6 parties and acknowledged before any person authorized to take
7 acknowledgments in this State, and submitted to the Director with a
8 request for compensation from the bond. If the Director determines
9 that the settlement was reached in good faith and there is no
10 evidence of collusion or fraud between the parties in reaching the
11 settlement, the surety shall make the payment to the ~~injured person~~
12 consumer in the amount agreed upon in the settlement.

13 8. Any judgment entered by a court in favor of a consumer
14 and against a dealer, distributor, rebuilder, manufacturer,
15 representative or salesperson may be executed through a writ of
16 attachment, garnishment, execution or other legal process, or the
17 ~~person~~ consumer in whose favor the judgment was entered may
18 apply to the Director for compensation from the bond of the dealer,
19 distributor, rebuilder, manufacturer, representative or salesperson.

20 9. The Department shall not issue a license or plate pursuant to
21 subsection 1 to a manufacturer, distributor, rebuilder or dealer who
22 does not have and maintain an established place of business in this
23 State.

24 10. As used in this section, "consumer" means any person
25 who comes into possession of a vehicle as a final user for any
26 purpose other than offering it for sale.

27 Sec. 3. NRS 482.346 is hereby amended to read as follows:

28 482.346 1. In lieu of a bond, an applicant may deposit with
29 the Department, under terms prescribed by the Department:

30 (a) A like amount of lawful money of the United States or bonds
31 of the United States or of the State of Nevada of an actual market
32 value of not less than the amount fixed by the Department; or

33 (b) A savings certificate of a bank, credit union or savings and
34 loan association situated in Nevada, which must indicate an account
35 of an amount equal to the amount of the bond which would
36 otherwise be required by NRS 482.345 and that this amount is
37 unavailable for withdrawal except upon order of the Department.
38 Interest earned on the amount accrues to the account of the
39 applicant.

40 2. ~~IA~~ Except as otherwise provided in subsection 3, a deposit
41 made pursuant to subsection 1 may be disbursed by the Director, for
42 good cause shown and after notice and opportunity for hearing, in
43 an amount determined by the Director to compensate a person
44 injured by an action of the licensee, or released upon receipt of:



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(a) A court order requiring the Director to release all or a specified portion of the deposit; or

(b) A statement signed by the person or persons under whose name the deposit is made and acknowledged before any person authorized to take acknowledgments in this State, requesting the Director to release the deposit, or a specified portion thereof, and stating the purpose for which the release is requested.

3. *A deposit made pursuant to subsection 1 in lieu of a bond required by NRS 482.345 may only be disbursed to compensate a consumer. As used in this subsection, "consumer" has the meaning ascribed to it in NRS 482.345.*

4. When a deposit is made pursuant to subsection 1, liability under the deposit is in the amount prescribed by the Department. If the amount of the deposit is reduced or there is an outstanding court judgment for which the licensee is liable under the deposit, the license is automatically suspended. The license must be reinstated if the licensee:

(a) Files an additional bond pursuant to subsection 1 of NRS 482.345;

(b) Restores the deposit with the Department to the original amount required under this section; or

(c) Satisfies the outstanding judgment for which the licensee is liable under the deposit.

~~4.1~~ 5. A deposit made pursuant to subsection 1 may be refunded:

(a) By order of the Director, 3 years after the date the licensee ceases to be licensed by the Department, if the Director is satisfied that there are no outstanding claims against the deposit; or

(b) By order of court, at any time within 3 years after the date the licensee ceases to be licensed by the Department, upon evidence satisfactory to the court that there are no outstanding claims against the deposit.

~~5.1~~ 6. Any money received by the Department pursuant to subsection 1 must be deposited with the State Treasurer for credit to the Motor Vehicle Fund.

Sec. 4. This act becomes effective on July 1, 2013.

