

ASSEMBLY BILL NO. 228—COMMITTEE
ON COMMERCE AND LABOR

MARCH 5, 2015

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing trade regulations.
(BDR 52-999)

FISCAL NOTE: Effect on Local Government: No.
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 trade regulations; authorizing a creditor who finances the sale or lease of a motor vehicle to install under certain circumstances certain devices in the motor vehicle which he or she finances; revising provisions relating to retail installment contracts; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill authorizes a creditor who finances the sale or lease of a motor vehicle to install under certain circumstances devices in the motor vehicle which the creditor finances or leases, which devices are used to remotely locate or disable a motor vehicle upon breach or default of the financing contract by the consumer.

Existing law requires certain retail installment contracts to be contained in a single document which must contain the entire agreement of the parties. (NRS 97.165) **Sections 2 and 2.5** of this bill remove that requirement, commonly known as the "single document rule," with regard to applications for credit and retail installment contracts relating to the sale, loan or lease of certain motor vehicles.

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

Section 1. Chapter 598 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A creditor, in connection with a credit or retail installment sale, loan or lease of a motor vehicle shall not install or use



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1 *electronic tracking technology in a motor vehicle which he or she*
2 *finances to obtain or record the location of the motor vehicle*
3 *unless:*

4 *(a) The creditor provides written notification to the consumer*
5 *before the transaction that the motor vehicle is equipped with*
6 *electronic tracking technology and that the electronic tracking*
7 *technology may be used by the creditor to verify and maintain the*
8 *operational status of the electronic tracking technology, to service*
9 *the transaction or to locate the vehicle for repossession or*
10 *recovery; or*

11 *(b) The consumer elects to have the electronic tracking*
12 *technology installed in the motor vehicle and the agreement to*
13 *utilize the electronic tracking technology is optional and is not a*
14 *condition of the sale, loan or lease.*

15 2. A creditor, in connection with a credit or retail installment
16 sale, loan or lease of a motor vehicle, shall not install or use
17 starter interrupt technology to disable a motor vehicle unless:

18 *(a) The creditor provides written notification to the consumer*
19 *before the transaction that:*

20 *(1) The motor vehicle is equipped with starter interrupt*
21 *technology;*

22 *(2) The creditor may use the starter interrupt technology to*
23 *disable the starter of the vehicle remotely; and*

24 *(3) The creditor may only activate the starter interrupt*
25 *technology as provided for in this section; and*

26 *(b) The creditor provides written notification to the consumer*
27 *informing the consumer:*

28 *(1) Of the name, address and toll-free telephone number of*
29 *the creditor for the purposes of communicating directly with the*
30 *creditor concerning the security interest in the motor vehicle and*
31 *the extension of credit;*

32 *(2) That in the event the security interest or loan associated*
33 *with the vehicle is transferred to a successor-in-interest, the*
34 *successor-in-interest must provide the name, address and toll-free*
35 *telephone number of the creditor to the consumer in a*
36 *commercially reasonable time and manner;*

37 *(3) That the consumer must receive notice not less than 48*
38 *hours before the starter interrupt technology disables the vehicle;*
39 *and*

40 *(4) That in the event of an emergency, the consumer will be*
41 *provided the ability to start the disabled vehicle for a minimum of*
42 *24 hours after the initial disablement.*

43 3. The use of starter interrupt technology in a motor vehicle
44 which is financed or leased by a creditor is prohibited if:



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(a) Disablement of the motor vehicle will occur while the engine of the motor vehicle is running;

(b) The use of the starter interrupt technology causes an audible warning which lasts longer than 20 seconds upon starting or shutting off the engine of the motor vehicle;

(c) Less than 10 days have lapsed since the default or breach of the contract by the consumer, if the default or breach of the contract is the first such instance of a default or breach of the contract by the consumer; or

(d) Less than 5 days have lapsed since the default or breach of the contract by the consumer, if the default or breach of the contract is not the first such instance of a default or breach of the contract by the consumer.

4. The failure by a creditor to comply with any provision of this section constitutes a deceptive trade practice in violation of NRS 598.0923, and a consumer may file a claim for relief. In addition to any other remedy available pursuant to NRS 41.600, NRS 598.0903 to 598.0999, inclusive, and section 1 of this act or any other provision of law, a consumer who prevails in an action pursuant to this subsection must be awarded a maximum of \$1,000 as statutory damages.

5. The provisions of this section do not apply to a transaction between a creditor and a business entity that purchases or leases motor vehicles for use within the scope of the business.

6. As used in this section, unless the context otherwise requires:

(a) "Consumer" means a borrower, retail buyer or lessee who purchases or leases a motor vehicle primarily for personal, family or household use.

(b) "Creditor" means a lender, dealer or long-term lessor or any assignee of a lender, dealer or long-term lessor of a motor vehicle.

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

(d) "Electronic tracking technology" means global positioning satellite or similar technology used to obtain or record the location of a motor vehicle.

(e) "Lease" has the meaning ascribed to it in NRS 482.053.

(f) "Long-term lessor" has the meaning ascribed to it in NRS 482.053.

(g) "Retail installment contract" has the meaning ascribed to it in NRS 97.105.

(h) "Starter interrupt technology" means technology used to remotely disable the starter of a motor vehicle.

(i) "Transaction" means a retail installment sale, loan or lease between a creditor and a consumer, as applicable, for the



purchase, refinance or lease of a motor vehicle, or the reinstatement of a purchase, refinance or lease of a motor vehicle.

Sec. 1.1. NRS 598.0903 is hereby amended to read as follows:

598.0903 As used in NRS 598.0903 to 598.0999, inclusive, *and section 1 of this act*, unless the context otherwise requires, the words and terms defined in NRS 598.0905 to 598.0947, inclusive, have the meanings ascribed to them in those sections.

Sec. 1.2. NRS 598.0923 is hereby amended to read as follows:

598.0923 A person engages in a “deceptive trade practice” when in the course of his or her business or occupation he or she knowingly:

1. Conducts the business or occupation without all required state, county or city licenses.

2. Fails to disclose a material fact in connection with the sale or lease of goods or services.

3. Violates a state or federal statute or regulation relating to the sale or lease of goods or services.

4. Uses coercion, duress or intimidation in a transaction.

5. As the seller in a land sale installment contract, fails to:

(a) Disclose in writing to the buyer:

(1) Any encumbrance or other legal interest in the real property subject to such contract; or

(2) Any condition known to the seller that would affect the buyer’s use of such property.

(b) Disclose the nature and extent of legal access to the real property subject to such agreement.

(c) Record the land sale installment contract pursuant to NRS 111.315 within 30 calendar days after the date upon which the seller accepts the first payment from the buyer under such a contract.

(d) Pay the tax imposed on the land sale installment contract pursuant to chapter 375 of NRS.

(e) Include terms in the land sale installment contract providing rights and protections to the buyer that are substantially the same as those under a foreclosure pursuant to chapter 40 of NRS.

➤ As used in this subsection, “land sale installment contract” has the meaning ascribed to it in paragraph (d) of subsection 1 of NRS 375.010.

6. *Violates the provisions of section 1 of this act.*

Sec. 1.4. NRS 598.0955 is hereby amended to read as follows:

598.0955 1. The provisions of NRS 598.0903 to 598.0999, inclusive, *and section 1 of this act* do not apply to:

(a) Conduct in compliance with the orders or rules of, or a statute administered by, a federal, state or local governmental agency.



(b) Publishers, including outdoor advertising media, advertising agencies, broadcasters or printers engaged in the dissemination of information or reproduction of printed or pictorial matter who publish, broadcast or reproduce material without knowledge of its deceptive character.

(c) Actions or appeals pending on July 1, 1973.

2. The provisions of NRS 598.0903 to 598.0999, inclusive, *and section 1 of this act* do not apply to the use by a person of any service mark, trademark, certification mark, collective mark, trade name or other trade identification which was used and not abandoned prior to July 1, 1973, if the use was in good faith and is otherwise lawful except for the provisions of NRS 598.0903 to 598.0999, inclusive ~~H~~, *and section 1 of this act*.

Sec. 1.5. NRS 598.0963 is hereby amended to read as follows:

598.0963 1. Whenever the Attorney General is requested in writing by the Commissioner or the Director to represent him or her in instituting a legal proceeding against a person who has engaged or is engaging in a deceptive trade practice, the Attorney General may bring an action in the name of the State of Nevada against that person on behalf of the Commissioner or Director.

2. The Attorney General may institute criminal proceedings to enforce the provisions of NRS 598.0903 to 598.0999, inclusive ~~H~~, *and section 1 of this act*. The Attorney General is not required to obtain leave of the court before instituting criminal proceedings pursuant to this subsection.

3. If the Attorney General has reason to believe that a person has engaged or is engaging in a deceptive trade practice, the Attorney General may bring an action in the name of the State of Nevada against that person to obtain a temporary restraining order, a preliminary or permanent injunction, or other appropriate relief.

4. If the Attorney General has cause to believe that a person has engaged or is engaging in a deceptive trade practice, the Attorney General may issue a subpoena to require the testimony of any person or the production of any documents, and may administer an oath or affirmation to any person providing such testimony. The subpoena must be served upon the person in the manner required for service of process in this State or by certified mail with return receipt requested. An employee of the Attorney General may personally serve the subpoena.

Sec. 1.6. NRS 598.0967 is hereby amended to read as follows:

598.0967 1. The Commissioner and the Director, in addition to other powers conferred upon them by NRS 598.0903 to 598.0999, inclusive, *and section 1 of this act*, may issue subpoenas to require the attendance of witnesses or the production of documents, conduct hearings in aid of any investigation or inquiry



1 and prescribe such forms and adopt such regulations as may be
2 necessary to administer the provisions of NRS 598.0903 to
3 598.0999, inclusive **H**, and **section 1 of this act**. Such regulations
4 may include, without limitation, provisions concerning the
5 applicability of the provisions of NRS 598.0903 to 598.0999,
6 inclusive, **and section 1 of this act** to particular persons or
7 circumstances.

8 2. Service of any notice or subpoena must be made as provided
9 in N.R.C.P. 45(c).

10 **Sec. 1.8.** NRS 598.0999 is hereby amended to read as follows:

11 598.0999 1. Except as otherwise provided in NRS 598.0974,
12 a person who violates a court order or injunction issued pursuant to
13 the provisions of NRS 598.0903 to 598.0999, inclusive, **and section**
14 **1 of this act** upon a complaint brought by the Commissioner, the
15 Director, the district attorney of any county of this State or the
16 Attorney General shall forfeit and pay to the State General Fund a
17 civil penalty of not more than \$10,000 for each violation. For the
18 purpose of this section, the court issuing the order or injunction
19 retains jurisdiction over the action or proceeding. Such civil
20 penalties are in addition to any other penalty or remedy available for
21 the enforcement of the provisions of NRS 598.0903 to 598.0999,
22 inclusive **H**, **and section 1 of this act**.

23 2. Except as otherwise provided in NRS 598.0974, in any
24 action brought pursuant to the provisions of NRS 598.0903 to
25 598.0999, inclusive, **and section 1 of this act**, if the court finds that
26 a person has willfully engaged in a deceptive trade practice, the
27 Commissioner, the Director, the district attorney of any county in
28 this State or the Attorney General bringing the action may recover a
29 civil penalty not to exceed \$5,000 for each violation. The court in
30 any such action may, in addition to any other relief or
31 reimbursement, award reasonable attorney's fees and costs.

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

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

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

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

40 ➤ The court may require the natural person, firm, or officer or
41 managing agent of the corporation or association to pay to the
42 aggrieved party damages on all profits derived from the knowing
43 and willful engagement in a deceptive trade practice and treble
44 damages on all damages suffered by reason of the deceptive trade
45 practice.



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

5. If a person violates any provision of NRS 598.0903 to 598.0999, inclusive, *and section 1 of this act*, 598.100 to 598.2801, inclusive, 598.305 to 598.395, inclusive, 598.405 to 598.525, inclusive, 598.741 to 598.787, inclusive, or 598.840 to 598.966, inclusive, fails to comply with a judgment or order of any court in this State concerning a violation of such a provision, or fails to comply with an assurance of discontinuance or other agreement concerning an alleged violation of such a provision, the Commissioner or the district attorney of any county may bring an action in the name of the State of Nevada seeking:

(a) The suspension of the person's privilege to conduct business within this State; or

(b) If the defendant is a corporation, dissolution of the corporation.

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

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

(a) The suspension of the person's privilege to conduct business within this State; or

(b) If the defendant is a corporation, dissolution of the corporation.

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

Sec. 1.9. NRS 11.190 is hereby amended to read as follows:

11.190 Except as otherwise provided in NRS 40.4639, 125B.050 and 217.007, actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows:

1. Within 6 years:

(a) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.



(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

(b) An action for any article charged on an account in a store.

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

(d) An action against a person alleged to have committed a deceptive trade practice in violation of NRS 598.0903 to 598.0999, inclusive, **and section 1 of this act**, but the cause of action shall be deemed to accrue when the aggrieved party discovers, or by the exercise of due diligence should have discovered, the facts constituting the deceptive trade practice.

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for waste or trespass of real property, but when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the waste or trespass.

(c) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof, but in all cases where the subject of the action is a domestic animal usually included in the term “livestock,” which has a recorded mark or brand upon it at the time of its loss, and which strays or is stolen from the true owner without the owner’s fault, the statute does not begin to run against an action for the recovery of the animal until the owner has actual knowledge of such facts as would put a reasonable person upon inquiry as to the possession thereof by the defendant.

(d) Except as otherwise provided in NRS 112.230 and 166.170, an action for relief on the ground of fraud or mistake, but the cause of action in such a case shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(e) An action pursuant to NRS 40.750 for damages sustained by a financial institution or other lender because of its reliance on certain fraudulent conduct of a borrower, but the cause of action in such a case shall be deemed to accrue upon the discovery by the financial institution or other lender of the facts constituting the concealment or false statement.

4. Within 2 years:



(a) An action against a sheriff, coroner or constable upon liability incurred by acting in his or her official capacity and in virtue of his or her office, or by the omission of an official duty, including the nonpayment of money collected upon an execution.

(b) An action upon a statute for a penalty or forfeiture, where the action is given to a person or the State, or both, except when the statute imposing it prescribes a different limitation.

(c) An action for libel, slander, assault, battery, false imprisonment or seduction.

(d) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(e) Except as otherwise provided in NRS 11.215, an action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person apply only to causes of action which accrue after March 20, 1951.

(f) An action to recover damages under NRS 41.740.

5. Within 1 year:

(a) An action against an officer, or officer de facto to recover goods, wares, merchandise or other property seized by the officer in his or her official capacity, as tax collector, or to recover the price or value of goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention or sale of, or injury to, goods, wares, merchandise or other personal property seized, or for damages done to any person or property in making the seizure.

(b) An action against an officer, or officer de facto for money paid to the officer under protest, or seized by the officer in his or her official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

Sec. 2. NRS 97.165 is hereby amended to read as follows:

97.165 1. Every retail installment contract must be contained in a single document which must contain the entire agreement of the parties, including any promissory notes or other evidences of indebtedness between the parties relating to the transaction, except as otherwise provided in NRS 97.205 , ~~and~~ 97.235, **97.299 and section 1 of this act**, but:

(a) If the buyer's obligation to pay the total of payments is represented by a promissory note secured by a chattel mortgage or other security agreement, the promissory note may be a separate instrument if the mortgage or security agreement recites the amount and terms of payment of that note and the promissory note recites that it is secured by a mortgage or security agreement.

(b) In a transaction involving the repair, alteration or improvement upon or in connection with real property, the contract



1 may be secured by a mortgage or deed of trust on the real property
2 contained in a separate document. Retail sales transactions for home
3 improvements which are financed or insured by the Federal Housing
4 Administration are not subject to the provisions of this chapter.

5 2. The contract must be dated, signed by the retail buyer and
6 completed as to all essential provisions, except as otherwise
7 provided in NRS 97.205, 97.215 and 97.235. The printed or typed
8 portion of the contract, other than instructions for completion, must
9 be in a size equal to at least 8-point type.

10 3. Any fee charged to the retail buyer for his or her cancellation
11 of a retail installment contract within 72 hours after its execution is
12 prohibited unless notice of the fee is clearly set forth in the printed
13 or typed portion of the contract.

14 **Sec. 2.5.** NRS 97.299 is hereby amended to read as follows:

15 97.299 1. The Commissioner of Financial Institutions shall
16 prescribe, by regulation, forms for the application for credit and
17 **retail installment** contracts to be used in the sale of vehicles if:

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

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

22 (c) The seller is a dealer; and

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

24 2. The ~~forms~~ **application for credit and retail installment**
25 **contracts** prescribed pursuant to subsection 1 ~~must meet the~~
26 ~~requirements of NRS 97.165,~~ **are not required to be contained in a**
27 **single document in accordance with the requirements prescribed**
28 **in NRS 97.165. The application for credit and retail installment**
29 **contracts** must be accepted and acted upon by any lender to whom
30 the application for credit is made and, in addition to the information
31 required in NRS 97.185 and required to be disclosed in such a
32 transaction by federal law, must:

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

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

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

42 (d) Contain a description of the method for calculating the
43 unearned portion of the finance charge upon prepayment in full of
44 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) 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. 3. This act becomes effective upon passage and approval for the purposes of adopting any regulations or performing any preparatory administrative tasks that are necessary to carry out the provisions of this act, and on October 1, 2015, for all other purposes.

