

Amendment No. 616

Senate Amendment to Senate Bill No. 350 First Reprint (BDR 52-575)

Proposed by: Senator Atkinson

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

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

DLJ/BJF



Date: 4/24/2017

S.B. No. 350—Revises provisions governing the installation and use of certain technology devices in a motor vehicle. (BDR 52-575)



SENATE BILL NO. 350—SENATOR ATKINSON

MARCH 20, 2017

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions governing the installation and use of certain technology devices in a motor vehicle. (BDR 52-575)

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

~

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

AN ACT relating to trade regulations; prohibiting certain persons from installing, requiring to be installed or using certain technology devices in a motor vehicle in certain circumstances; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law defines activities that constitute deceptive trade practices and provides for the imposition of civil and criminal penalties against persons who engage in deceptive trade practices. (NRS 11.190, 41.600; chapter 598 of NRS) **Section 28** of this bill prohibits certain creditors or long-term lessors of certain motor vehicles from: (1) installing or requiring the installation of certain technology devices which record the location of a motor vehicle unless the consumer who has purchased or leased the motor vehicle is given written notice or agrees in writing to such installation; or (2) installing or using certain technology devices which can remotely disable a motor vehicle in the event of a default unless the consumer agrees in writing to such installation and use. **Section 28** also provides certain requirements for and restrictions on the use of such technology devices. **Section 29** of this bill imposes certain requirements and restrictions on ~~any person~~ **certain persons** who: (1) ~~manufactures~~ **manufacture** or ~~provide~~ **provide** such technology devices; (2) ~~install~~ **install** such technology devices; or (3) ~~possesses~~ **possess** or ~~obtain~~ **obtain** data from such technology devices. **Section 30** of this bill makes any violation of the provisions of **sections 28 and 29** a deceptive trade practice. **Sections 15-27** of this bill provide definitions for the provisions relating to the new deceptive trade practices established in **sections 28 and 29**. **Section 31** of this bill makes a conforming change. **Section 32** of this bill makes a conforming change to a provision of existing law that imposes certain requirements on retail installment contracts. (NRS 97.165)

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

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. (Deleted by amendment.)

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. (Deleted by amendment.)

Sec. 13. (Deleted by amendment.)

Sec. 14. (Deleted by amendment.)

Sec. 15. Chapter 598 of NRS is hereby amended by adding thereto the provisions set forth as sections 16 to 30, inclusive, of this act.

Sec. 16. *As used in sections 16 to 30, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 17 to 27, inclusive, of this act have the meanings ascribed in those sections.*

Sec. 17. *“Consumer” means:*

1. *A retail buyer who purchases a motor vehicle; or*

2. *A long-term lessee who leases a motor vehicle,*

↳ primarily for personal, family or household use.

Sec. 18. *“Creditor” means a lender, dealer or other secured party to a transaction for the purchase of a motor vehicle or the assignee of such a lender, dealer or other secured party.*

Sec. 19. *“Dealer” has the meaning ascribed to it in NRS 482.020.*

Sec. 20. *“Electronic tracking technology” means technology that enables the use of a global positioning satellite or similar technology to obtain or record the location of a motor vehicle.*

Sec. 21. *“Lease” has the meaning ascribed to it in NRS 482.053.*

Sec. 22. *“Long-term lessee” has the meaning ascribed to it in NRS 482.053.*

Sec. 23. *“Long-term lessor” has the meaning ascribed to it in NRS 482.053.*

Sec. 24. *“Retail buyer” has the meaning ascribed to it in NRS 97.085.*

Sec. 25. *“Retail installment contract” has the meaning ascribed to it in NRS 97.105.*

Sec. 26. *“Secured party” has the meaning ascribed to it in NRS 104.9102.*

Sec. 27. *“Starter interruption technology” means technology which can be used to remotely disable the starter of a motor vehicle or to remotely cause an audible sound in a motor vehicle, or both.*

Sec. 28. 1. *A creditor, in connection with a retail installment contract for the sale of a motor vehicle, or a long-term lessor, in connection with a lease of a motor vehicle, must not use, install or require to be installed in the motor vehicle any electronic tracking technology for the purpose of ascertaining or recording the location of the motor vehicle unless the:*

1 (a) Consumer agrees in writing to the installation of the electronic tracking
2 technology in the motor vehicle, provided that the agreement is optional and not a
3 required condition of the retail installment contract or lease; or

4 (b) Creditor or long-term lessor provides to the consumer, before the signing
5 of the retail installment contract or lease, written notification in a document that
6 is separate from the contract or lease and may be retained by the consumer, that
7 the motor vehicle is equipped with electronic tracking technology that may be
8 used by the creditor or lessor:

9 (1) To verify and maintain the operational status of the electronic
10 tracking technology;

11 (2) To service the contract or lease; or

12 (3) To locate the vehicle for repossession as provided by this section or by
13 any other provision of law.

14 2. A creditor, in connection with a retail installment contract for the sale of
15 a motor vehicle, or a long-term lessor, in connection with a lease of a motor
16 vehicle, must not install in the motor vehicle or use starter interruption
17 technology unless, before the signing of the contract or lease the consumer and
18 the creditor or long-term lessor enter into a written agreement, in a document
19 that is separate from the contract or lease, a copy of which may be retained by the
20 consumer and for which the consumer must provide written acknowledgment of
21 receipt, that the motor vehicle is equipped with starter interruption technology.
22 The agreement must provide that:

23 (a) The vehicle is equipped with starter interruption technology which may
24 only be used as provided in this subsection.

25 (b) The starter interruption technology may be used to disable the starter of
26 the motor vehicle remotely if the consumer is in default as provided in the retail
27 installment contract or lease, but in no case sooner than 30 days after the due
28 date of a missed payment by the consumer on the contract or lease.

29 (c) The use of starter interruption technology to disable the starter of the
30 motor vehicle constitutes constructive repossession for the purposes of applicable
31 law, including, without limitation, chapters 97, 104 and 104A of NRS.

32 (d) For the purposes of reducing or eliminating the risk of potential injury or
33 harm to the consumer and the health, safety and welfare of the public, starter
34 interruption technology must be designed, installed and operated only to prevent
35 a motor vehicle from being started and must not be used in a way that will:

36 (1) Disable the motor vehicle while it is being operated;

37 (2) Turn off the engine when the engine is running; or

38 (3) Cause an audible warning sound which lasts longer than 20 seconds
39 when the engine is started or turned off.

40 (e) Not less than 48 hours before the starter interruption technology is
41 engaged, the consumer must be provided with actual notice, in a form and
42 manner clearly stated in the agreement and which may consist of, without
43 limitation, a clear visual signal displayed in a place easily visible to the driver of
44 the motor vehicle.

45 (f) The consumer will be provided with the name, address and toll-free
46 telephone number of a person who has the authority to have the starter
47 interruption technology activated, deactivated or reinstated, as necessary.

48 (g) The consumer will be provided with the ability, in the event of an
49 emergency, to start and freely operate the vehicle not less than two times over a
50 48-hour period after the engagement of the starter interruption technology.

51 (h) In the event that the retail installment contract or lease for the motor
52 vehicle is assigned to a successor in interest or another secured party, the
53 successor in interest or other secured party must provide the consumer with his

or her name, address and toll-free telephone number in a commercially reasonable time and manner.

(i) The consumer must not be charged a fee or incur any cost for the installation or use of the starter interruption technology.

(j) A breach of the agreement by the creditor or long-term lessor constitutes a deceptive trade practice.

3. The provisions of this section:

(a) May not be waived by the consumer.

(b) Do not apply to a creditor or long-term lessor who ~~conducts~~ :

(1) Conducts a transaction for the installment sale or long-term lease of a motor vehicle intended for use by a business entity in the course or scope of business.

(2) Is the manufacturer, or a wholly owned affiliate of the manufacturer, of the motor vehicle which is the subject of the retail installment contract or long-term lease.

Sec. 29. 1. A person who manufactures or provides electronic tracking technology devices or starter interruption technology devices shall:

(a) Label each such device with the name of the manufacturer and a unique identifier that is designed to remain legible for the estimated useful life of the device.

(b) Keep records for each device for not less than the estimated useful life of the device that include, without limitation:

(1) The date of manufacture;

(2) The date of sale;

(3) The identity of the original purchaser; and

(4) If known, the identity of the person who initially installed the device.

(c) Provide to any installer of the device specific instructions on the proper installation of the device in a vehicle and retain records showing the exact instructions which were provided with each device, as identified with a unique identifier pursuant to paragraph (a).

(d) If he or she regains possession of a device and resells or provides it to another person, keep the records required pursuant to paragraphs (b) and (c).

2. A person who installs an electronic tracking technology device or a starter interruption technology device in a motor vehicle must:

(a) Hold a certification from the:

(1) Mobile Electronics Certified Professional program or its successor;

or

(2) National Institute for Automotive Service Excellence or its successor.

(b) Keep records of each installation conducted for not less than 3 years. Such records must include, without limitation:

(1) The date of installation;

(2) The unique identifier on each device as required by paragraph (a) of subsection 1; and

(3) A copy of the installation instructions provided by the manufacturer or provider of the device as required by paragraph (c) of subsection 1.

(c) If the installation is at the request of or on behalf of a creditor in connection with a retail installment contract for the sale of a motor vehicle or a long-term lessor in connection with the lease of a motor vehicle, provide a copy of the records required by paragraph (b) to the creditor or lessor or a designee of the creditor or lessor.

3. A person who possesses or obtains telemetry data related to a consumer that is collected by electronic tracking technology or starter interruption technology may not:

- (a) *Sell any telemetry data.*
- (b) *Provide any telemetry data to any person or entity other than:*
- (1) *The consumer;*
- (2) *A reposessor who is authorized pursuant to section 28 of this act to repossess the motor vehicle from which the telemetry data was obtained; or*
- (3) *A person authorized by law to possess or obtain such telemetry data.*
- (c) *Use any telemetry data for any purpose other than:*
- (1) *As needed to ensure that the electronic tracking technology or starter interruption technology is operating properly, provided that such use is brief and periodic;*
- (2) *To communicate an audible or visible warning to the consumer as authorized in section 28 of this act;*
- (3) *To activate starter interruption technology as authorized in section 28 of this act;*
- (4) *To locate a motor vehicle at the request of the consumer; or*
- (5) *To locate the motor vehicle for repossession as authorized in section 28 of this act.*
- (d) *Retain any telemetry data for a period of more than 180 days after collection of the data.*
- (e) *Fail to erase all electronically stored telemetry data and shred any physical copies of such data not more than 180 days after collection of the data.*
4. *The provisions of this section do not apply to the manufacturer, or a wholly owned affiliate of the manufacturer, of a motor vehicle which is equipped with electronic tracking technology or starter interruption technology or from which telemetry data is obtained.*
5. *As used in this section, unless the context otherwise requires:*
- (a) *“Device” means all physical parts and pieces which are required to allow for the operation of electronic tracking technology or starter interruption technology in a motor vehicle.*
- (b) *“Reposessor” has the meaning ascribed to it in NRS 648.015.*
- (c) *“Telemetry data” means any information collected by electronic tracking technology or starter interruption technology, regardless of whether such information is transmitted or retained in the device, and includes, without limitation, information pertaining to the location, speed and motion status of a motor vehicle.*

Sec. 30. 1. *Any violation of sections 28 and 29 of this act constitute a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.*

2. *A consumer who prevails in an action for a violation of section 28 or 29 of this act by a person who is a creditor in connection with a retail installment contract for the sale of a motor vehicle or a long-term lessor in connection with the lease of a motor vehicle, in addition to any other award or other remedy available pursuant to law, must be awarded the greater of:*

- (a) *Statutory damages pursuant to subsection 3 of NRS 104.9625, if applicable; or*
- (b) *\$1,000.*

Sec. 31. NRS 598.0999 is hereby amended to read as follows:

598.0999 1. Except as otherwise provided in NRS 598.0974, a person who violates a court order or injunction issued pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, upon a complaint brought by the Commissioner, the Director, the district attorney of any county of this State or the Attorney General shall forfeit and pay to the State General Fund a civil penalty of not more than \$10,000 for each violation. For the purpose of this section, the court issuing the order or injunction retains jurisdiction over the action or proceeding. Such civil

penalties are in addition to any other penalty or remedy available for the enforcement of the provisions of NRS 598.0903 to 598.0999, inclusive.

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

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

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

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

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

➤ The court may require the natural person, firm, or officer or managing agent of the corporation or association to pay to the aggrieved party damages on all profits derived from the knowing and willful engagement in a deceptive trade practice and treble damages on all damages suffered by reason of the deceptive trade 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, 598.100 to 598.2801, inclusive, 598.305 to 598.395, inclusive, 598.405 to 598.525, inclusive, 598.741 to 598.787, inclusive, ~~to~~ 598.840 to 598.966, inclusive, *or sections 16 to 30, inclusive, of this act*, 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. 32. 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 ~~and~~ *and section 28 of this act*, but:

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

6 (b) In a transaction involving the repair, alteration or improvement upon or in
7 connection with real property, the contract may be secured by a mortgage or deed
8 of trust on the real property contained in a separate document. Retail sales
9 transactions for home improvements which are financed or insured by the Federal
10 Housing Administration are not subject to the provisions of this chapter.

11 2. The contract must be dated, signed by the retail buyer and completed as to
12 all essential provisions, except as otherwise provided in NRS 97.205, 97.215 and
13 97.235. The printed or typed portion of the contract, other than instructions for
14 completion, must be in a size equal to at least 8-point type.

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

18 **Sec. 33.** This act becomes effective on July 1, 2017.