

ASSEMBLY BILL NO. 298—ASSEMBLYMAN FLORES

MARCH 16, 2021

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to noncommercial vehicle leases. (BDR 8-782)

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 vehicles; establishing the conditions under which a default by a lessee in a consumer vehicle lease may be enforced; setting forth certain requirements for a consumer vehicle lease; requiring certain lessors to use a lease agreement that satisfies those requirements; authorizing certain civil actions; revising certain definitions for certain purposes; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law imposes certain requirements on the lessor of a vehicle in connection with a “commercial vehicle lease,” which is generally defined by existing law to mean a lease of a single vehicle for a period of more than 4 months primarily for business or commercial purposes. (NRS 100.095, 100.105)

Sections 1.5-5.5 of this bill establish provisions that govern a “consumer vehicle lease,” which is generally defined in **section 6** of this bill to mean a lease of a single vehicle for a period of more than 4 months, primarily for personal, family or household purposes. **Section 1.5** of this bill establishes the conditions under which the lessor in a consumer vehicle lease can enforce a term regarding a default by the lessee. **Section 2** of this bill requires a lessor who is a dealer to use a lease agreement for a consumer vehicle lease of a used vehicle that satisfies certain requirements and includes certain provisions, notices and disclosures that are established by that section. **Sections 4 and 5** of this bill set forth certain requirements for a consumer vehicle lease which are similar to certain requirements for retail installment contracts set forth in existing law. (NRS 97.165, 97.215) **Section 5.5** of this bill provides that a violation of existing law concerning vehicle leases or **sections 1.5-5.5** constitutes a deceptive trade practice, and authorizes a lessee and certain other persons to bring a civil action against a lessor for the violation. **Section 5.5** further provides that if the person bringing the action is the



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prevailing party, the court is required to award: (1) the person's actual damages; (2) any appropriate equitable relief; and (3) the person's costs and attorney's fees.

Existing law defines the term "vehicle lease" to generally include only leases of a single vehicle for a period of more than 4 months where the lessee's obligation upon termination or expiration of the lease is based on the excess of the unamortized capitalized cost of the vehicle over its residual value. (NRS 100.095) Existing law sets forth certain requirements for the establishment of the residual value of the vehicle at the termination or expiration of such a lease. (NRS 100.145, 100.155) **Section 6** defines the terms "closed-end vehicle lease" and "consumer vehicle lease" and revises the definition of the term "open-end vehicle lease" to establish that the lessee's obligation upon termination or expiration of the lease is based on the difference between the residual value of the leased vehicle and its realized value. **Sections 7-9** of this bill change the term "vehicle lease" to "open-end consumer vehicle lease" to account for the addition of the provisions of **sections 1.5-5.5** concerning a consumer vehicle lease while maintaining the requirements of existing law concerning the establishment of the residual value of a leased vehicle.

Section 10 of this bill makes a conforming change to indicate the proper placement of **sections 1.5-5.5** in the Nevada Revised Statutes.

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

Section 1. Chapter 100 of NRS is hereby amended by adding thereto the provisions set forth as sections 1.5 to 5.5, inclusive, of this act.

Sec. 1.5. *Default on the part of the lessee in a consumer vehicle lease is only enforceable to the extent that:*

1. The lessee fails to make a payment as required by the lease agreement, but in no case less than 30 days after the date required by the lease 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 lessor.

Sec. 2. 1. A lessor who is a dealer shall use a lease agreement in connection with a consumer vehicle lease for a used vehicle that:

(a) Is accepted and acted upon by the lessor and any other person necessary to effectuate the lease.

(b) Contains any information required to be disclosed by the Consumer Leasing Act of 1976, 15 U.S.C. §§ 1667 et seq., and the regulations adopted pursuant thereto, including, without limitation, 12 C.F.R. Part 1013, commonly known as Regulation M.

(c) If the lease provides for the sale of goods or services, identifies and itemizes the goods sold or to be sold or services furnished or rendered or to be furnished or rendered and the price of each item of goods or services.



(d) Contains a provision that default on the part of the lessee is only enforceable to the extent that:

(1) The lessee fails to make a payment as required by the agreement, but in no case less than 30 days after the date required by the lease 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 lessor.

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

NOTICE TO LESSEE

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 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.

(f) Limits late fees to the lesser of \$15 or 8 percent of any installment amount in default for more than 10 days.

(g) Contains a term regarding residual value in substantially the following form:

Residual value is the value of the leased vehicle at the end of the lease term, as estimated or assigned by the lessor. The residual value is the amount you will have to pay if you decide to buy this vehicle at the end of the lease term.

(h) Contains a term regarding early termination in substantially the following form:

If you terminate this lease before the end of the lease term, you will be responsible for the early termination charge. The early termination charge is the amount you still owe on the vehicle under the lease agreement, commonly referred to as the adjusted lease balance, minus the vehicle's current fair market value as estimated in the then current version of the Kelley Blue Book or its equivalent.

(i) Contains a term regarding default charges in substantially the following form:

If you default under the terms of this agreement, you will be liable for the adjusted lease balance described in



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paragraph (h) plus any actual costs incurred by the lessor to repossess the vehicle, prepare it for disposition and dispose of it by sale or other means minus the amounts received by the lessor from the disposition of the vehicle and the cancellation of any optional product or service you purchased as part of this agreement.

2. Before a lessor who is a dealer obtains the signature of a lessee on a consumer vehicle lease for a used vehicle, the lessor shall provide the lessee with the disclosures set forth in this subsection. The disclosures must:

(a) Identify the vehicle and identify and itemize any other goods or services included in the lease and, if the lease provides for the sale of goods or services, identify and itemize the goods sold or to be sold or services furnished or rendered or to be furnished or rendered and the price of the vehicle and each other item of goods or services.

(b) Be provided to the lessee before he or she signs the lease agreement, in a form the lessee can keep.

(c) Contain the signature of the lessee and any other party obligated by the terms of the lease agreement.

(d) Contain a notice that default on the part of the lessee is only enforceable to the extent that:

(1) The lessee fails to make a payment as required by the lease agreement, but in no case less than 30 days after the date required by the lease 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 lessor.

(e) Provide to the lessee the following notices in both English and Spanish in at least 14-point bold type:

NOTICE TO LESSEE

THIS IS NOT A SALES CONTRACT

THIS IS A LEASE. YOU ARE NOT BUYING THIS CAR. YOU WILL NOT OWN IT AT THE END OF THE CONTRACT TERM WITHOUT PAYING ADDITIONAL MONEY.

ESTE ES UN CONTRATO DE ARRENDAMIENTO. NO VAS A COMPRAR ESTE AUTO. USTED NO SERÁ DUEÑO AL FINAL DEL CONTRATO CON EL PAGO DE DINERO ADICIONAL.



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NOTICE TO LESSEE

READ EVERYTHING CAREFULLY

Do not sign the agreement provided by the lessor before you read it or if it contains any blank spaces. You are entitled to a completed copy of the agreement. If there are oral promises not included in the written agreement, the written agreement will prevail. If you fail to perform your obligations under the agreement, the vehicle may be repossessed and you may be liable for the unpaid indebtedness evidenced by the agreement.

NOTICE TO LESSEE

THERE IS NO COOLING-OFF PERIOD

Nevada law does not provide for a "cooling off" or other cancellation period for vehicle leases. Therefore, you cannot later cancel the lease simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. You may cancel the lease only with the agreement of the lessor or for legal cause, such as fraud.

3. If a lessor who is a dealer fails to obtain the signature of a lessee on the disclosures required by subsection 2 before obtaining the signature of the lessee on a consumer vehicle lease for a used vehicle, the consumer vehicle lease shall be deemed a retail installment contract for the sale of the vehicle.

4. If a consumer vehicle lease for a used vehicle includes a provision that conflicts with a provision of this section, the provision of this section will control.

5. As used in this section:

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

(b) "Used vehicle" has the meaning ascribed to it in NRS 482.132.

Sec. 3. (Deleted by amendment.)

Sec. 4. 1. Except as otherwise provided in NRS 598.9715, every consumer vehicle lease 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.

2. The consumer vehicle lease must be dated, signed by the lessor and completed as to all essential provisions, except as otherwise provided in section 5 of this act. The printed or typed



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portion of the lease, other than instructions for completion, must be in a size equal to at least 8-point type.

Sec. 5. The lessor shall not obtain the signature of the lessee to any consumer vehicle lease when it contains blank spaces of items which are essential provisions of the transaction.

Sec. 5.5. 1. A violation of NRS 100.095 to 100.175, inclusive, and sections 1.5 to 5.5, inclusive, of this act constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive. A lessee or other person who is a debtor or secondary obligor under the consumer vehicle lease may bring a civil action in any court of competent jurisdiction for such violation.

2. If the person bringing the action pursuant to subsection 1 is the prevailing party, the court shall award the person:

- (a) Any damages that the person has sustained;
- (b) Any equitable relief that the court deems appropriate; and
- (c) The person's costs in the action and reasonable attorney's fees.

Sec. 6. NRS 100.095 is hereby amended to read as follows:

100.095 As used in NRS 100.095 to 100.175, inclusive, ~~and~~ and sections 1.5 to 5.5, inclusive, of this act:

1. "Closed-end vehicle lease" means a vehicle lease, other than an open-end vehicle lease, commonly referred to as a walk-away lease, in which the lessee is not responsible for the residual value of the leased vehicle at the end of the term of the lease.

2. "Commercial vehicle lease" means a bailment or lease of a single vehicle by a person for a period of more than 4 months for a total contractual obligation not exceeding \$25,000, primarily for business or commercial purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the vehicle at the termination or expiration of the lease. The term includes a bailment or lease where the lessee becomes or may become owner of the vehicle by payment to the lessor of an amount which is substantially equal to the residual value or the unamortized capitalized cost, if the payment is not nominal. The term does not include a bailment or lease where the lessee contracts to pay as compensation for use of the vehicle a sum substantially equivalent to or in excess of the capitalized cost of the vehicle and it is agreed that the lessee may become the owner for no other consideration or for a nominal consideration.

~~{2}~~ 3. "Consumer vehicle lease" means a contract in the form of a bailment or lease of a single vehicle by a person for a period of more than 4 months, primarily for personal, family or household purposes, whether or not the lessee has the option to



1 *purchase or otherwise become the owner of the vehicle at the*
2 *expiration of the lease. The term includes:*

3 *(a) A closed-end vehicle lease;*

4 *(b) An open-end vehicle lease; and*

5 *(c) A bailment or lease entered into primarily for personal,*
6 *family or household purposes where the lessee becomes or may*
7 *become owner of the vehicle by payment to the lessor of an*
8 *amount which is substantially equal to the residual value or the*
9 *unamortized capitalized cost, if the payment is not nominal.*

10 *4. "Dealer" has the meaning ascribed to it in NRS 482.020.*

11 *5. "Open-end vehicle lease" means a vehicle lease where the*
12 *lessee's obligation upon termination or expiration of the lease is*
13 *based on the difference between the residual value of the leased*
14 *vehicle and its realized value.*

15 *6. "Person" includes any governmental entity.*

16 ~~13.1~~ 7. "Vehicle" means every device in, upon or by which any
17 person or property is or may be transported upon a public highway,
18 except devices:

19 (a) Moved by human power;

20 (b) Used exclusively upon stationary rails or tracks; or

21 (c) Having a gross vehicle weight of more than 10,000 pounds,
22 exclusive of the weight of any slide-in camper as defined in NRS
23 482.113 which may be on it.

24 ➤ The term does not include electric personal assistive mobility
25 devices as defined in NRS 482.029.

26 ~~14. "Vehicle lease" means a bailment or lease of a single~~
27 ~~vehicle by a person for a period of more than 4 months where the~~
28 ~~lessee's obligation upon termination or expiration of the lease is~~
29 ~~based on the excess of the unamortized capitalized cost of the~~
30 ~~vehicle over its residual value as established pursuant to the~~
31 ~~provisions of NRS 100.145. The term includes a bailment or lease~~
32 ~~where the lessee becomes or may become owner of the vehicle by~~
33 ~~payment to the lessor of an amount which is substantially equal to~~
34 ~~the residual value or the unamortized capitalized cost, if the~~
35 ~~payment is not nominal.]~~

36 **Sec. 7.** NRS 100.145 is hereby amended to read as follows:

37 100.145 1. Where the lessee's liability on the date any **open-**
38 **end consumer** vehicle lease or commercial vehicle lease terminates
39 or expires is based on the residual value of the vehicle at that time
40 and the lessor and lessee do not agree in writing on that value or on
41 another method of establishing it, the lessor may, subject to the
42 provisions of NRS 100.165, for the purpose of establishing residual
43 value and thereby providing the basis for determining the lessee's
44 liability, obtain written bids from third persons.



2. The lessor shall act in good faith and in a commercially reasonable manner in obtaining bids for the vehicle. The fact that a better price could have been obtained at a different time or in a different method from that selected by the lessor is not of itself sufficient to establish that the lessor did not act in a commercially reasonable manner. If the lessor obtains bids at the price current in any recognized market for such a vehicle at the time of the bidding, the lessor has acted in a commercially reasonable manner.

3. The highest effective bid obtained pursuant to this section or NRS 100.165, where applicable, or the actual sale price, whichever is higher, establishes the residual value of the vehicle.

Sec. 8. NRS 100.155 is hereby amended to read as follows:

100.155 1. The lessor shall give the lessee written notice of his or her intention to establish the residual value of the vehicle under the *open-end consumer* vehicle lease or commercial vehicle lease at least 15 days before that action is taken. The notice must be given in person to the lessee or sent by mail to the address of the lessee shown on the lease, or to the lessee's last known address, unless the lessee has notified the lessor in writing of a different address.

2. The notice must:

(a) List separately any actual or estimated charges due under the *open-end consumer* vehicle lease or commercial vehicle lease as of the date of the notice, notwithstanding any possible limitations on the liability of the lessee provided by the Consumer Leasing Act of 1976 (15 U.S.C. § 1667b);

(b) Inform the lessee that the lessee has the right to submit a written bid for the purchase of the vehicle before its value is established; and

(c) Inform the lessee of the probable residual value of comparable vehicles on the date of the notice as estimated in the then current version of the Kelley Blue Book or its equivalent.

3. If the lease is not in default and has not been terminated before its scheduled expiration, the notice must also inform the lessee that his or her maximum total liability under the *open-end consumer* vehicle lease or commercial vehicle lease is limited to three times the average payment allocable to a monthly period under the lease if the estimated residual value exceeds the actual residual value and the difference is not the result of physical damage to the vehicle beyond reasonable wear and use or to excessive use.

Sec. 9. NRS 100.175 is hereby amended to read as follows:

100.175 If the lessor under ~~1a~~ *an open-end consumer* vehicle lease or a commercial vehicle lease fails to comply with NRS 100.145 to 100.165, inclusive, the lessor may not recover any deficiency from the lessee.



1 **Sec. 10.** NRS 104A.2104 is hereby amended to read as
2 follows:

3 104A.2104 1. A lease, although subject to this Article, is also
4 subject to any applicable:

5 (a) Certificate of title statute of this State, including any
6 applicable provision of chapters 482, 488, 489 and 490 of NRS;

7 (b) Certificate of title statute of another jurisdiction (NRS
8 104A.2105); or

9 (c) Consumer protection statute of this State, including any
10 applicable provision of NRS 97.297, 97.299, 97.301 and 100.095 to
11 100.175, inclusive, *and sections 1.5 to 5.5, inclusive, of this act* and
12 a final decision of a court of this State concerning the protection of
13 consumers rendered before January 1, 1990.

14 2. In case of conflict between this Article, other than NRS
15 104A.2105, subsection 3 of NRS 104A.2304 and subsection 3 of
16 NRS 104A.2305, and a statute or decision referred to in subsection
17 1, the statute or decision controls.

18 3. Failure to comply with an applicable law has only the effect
19 specified therein.

