



Pacific Law Journal Review of Selected Nevada Legislative

Volume 1979 | Issue 1

Article 49

1-1-1979

Motor Vehicles; Leasing

Lorne Malkiewich

Follow this and additional works at: <https://scholarlycommons.pacific.edu/nlr>



Part of the [Legislation Commons](#)

Recommended Citation

Lorne Malkiewich, *Motor Vehicles; Leasing*, 1979 U. PAC. L. REV. (1979).

Available at: <https://scholarlycommons.pacific.edu/nlr/vol1979/iss1/49>

This Legislative Review is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in Pacific Law Journal Review of Selected Nevada Legislative by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

at 1778 (NRS 690B.030, repealed by 1973 Nev. Stats. ch. 530 §58, at 841).

11. Compare NRS 484.263 (as amended by Ch. 684 §3) with 1977 Nev. Stats. ch. 461 §1, at 915 (NRS 484.263).
12. Ch. 660 §9 (repealing NRS 698.200; 1977 Nev. Stats. ch. 523 §2, at 1093).
13. Compare NRS 482.215 (as amended by Ch. 684 §1) with 1977 Nev. Stats. ch. 463 §16, at 923 (NRS 482.215).
15. Compare NRS 485.200 (as amended by Ch. 600 §3) with 1973 Nev. Stats. ch. 747 §9, at 1546 (NRS 485.200).
16. Compare NRS 485.308 (as amended by Ch. 660 §4) with 1973 Nev. Stats. ch. 530 §54, at 837 (NRS 485.308).
17. Ch. 684 §4 (adding to NRS Ch. 690B).
18. Id.
19. Id. §4 ¶ 2 (adding to NRS Ch. 690B).
20. Id. §§1, 2 (amending NRS 482.215(3)(e), 482.280(2)(a)).
21. Id. §§1, 2 (amending NRS 482.215(3)(f), 482.280(2)(b)).
22. Id. §3 (amending NRS 484.263(1)).
23. Id. §3 (adding NRS 484.263(2), 484.263(3)).

MOTOR VEHICLES; LEASING

Adds to NRS Chapter 100

Amends NRS 97.105

SB 262 (Blackmore); STATS 1979, Ch 597

(Sections 1,2,7-12 effective June 2, 1979;

Sections 3-6 effective September 1, 1979)

Chapter 597 specifies the rights and liabilities of vehicle lessors and lessees at the termination of the lease and also requires certain disclosures in commercial vehicle leases.¹

Chapter 597 applies specifically to "open-end" vehicle leases.² "Open-end" vehicle leases (commercial and non-commercial) base the lessee's liability at the termination of the lease on the vehicle's residual value. The lessee is liable for the difference between the residual value and either the estimated residual value or the unamortized capitalized cost of the vehicle. Under the "estimated residual value" method, the lessee guarantees the estimated value of the vehicle at the termination

of the lease. If the actual residual value is less than the estimate, the lessee is liable for the difference. Under the "unamortized capitalized cost" method, the value of the vehicle is established at the outset of the agreement (the "capitalized cost," that is, the cost plus a finance charge). A portion of each payment is applied to the capitalized cost, gradually diminishing the lessee's obligation (amortization).³ At the termination of the lease, the lessee guarantees the unamortized capitalized cost. If the residual value of the vehicle is less than the unamortized capitalized cost, the lessee is liable for the difference.⁴

Vehicle leases provide the lessor, as owner of the vehicle, with the tax advantages of depreciation allowances⁵ and investment tax credits.⁶ However, the court in Nevada National Bank v. Huff⁷ characterized an open-end lease as an installment sales contract, with a "down payment" reserved for the termination of the agreement.⁸ This ruling could eliminate some of the tax advantages of vehicle leases.

Chapter 597 amends NRS 97.105 to exclude from the definition of "retail installment contract" vehicle leases where the lessee may purchase the vehicle for a sum substantially equal to the residual value or the unamortized capitalized cost of the vehicle, if the payment is not nominal.⁹

Chapter 597 defines such agreements as either "vehicle leases" or "commercial vehicle leases." A "vehicle lease" (as used in the act) is a bailment or lease of a single vehicle for more than four months, where the lessee's liability upon termination of the lease is based on the unamortized capitalized cost of the vehicle.¹⁰ A "commercial vehicle lease" is a vehicle lease for commercial or business purposes, for an obligation not exceeding \$25,000.¹¹

Chapter 597 requires certain disclosures in commercial vehicle leases and provides for determining the residual value of a vehicle at the termination of any vehicle lease. Chapter 597 does not affect leases of a) more than one vehicle;¹² b) vehicles weighing more than 10,000 pounds; c) vehicles used exclusively upon stationary rails or tracks; or d) vehicles moved by human power.¹³ Leases unaffected by Chapter 597 will probably be governed by the Uniform Commercial Code and its interpretative case law.¹⁴

All Vehicle Leases

Chapter 597 provides a method of determining the residual value of a vehicle at

the termination of a lease (both commercial and consumer). If the lessee's liability is based on the residual value of the vehicle, and the parties do not agree to a value or a method of determining the value, the lessor may obtain third party bids.¹⁵ The lessor must act in "good faith"¹⁶ and in a commercially reasonable manner in obtaining the bids; the fact that a better price could have been obtained does not in itself make the lessor's action unreasonable.¹⁷ If the price obtained is current in any recognized market, the lessor has acted reasonably.¹⁸ The highest bid, or the actual sale price (whichever is higher) is the residual value.¹⁹

The lessor must give the lessee written notice fifteen days before taking action to establish the residual value.²⁰ The notice must list all actual and estimated charges, and inform the lessee of his maximum liability, his right to submit a bid, and the probable value of the vehicle as estimated in the Kelley Blue Book or its equivalent.²¹

The lessee may bid any time before the lessor establishes the value of the vehicle.²² The bid is to establish the value of the vehicle; the lessee need not have a purchase option to submit a bid.²³ If the lessor accepts the bid, the lessee has five days to tender the purchase price.²⁴ If the lessee tenders the purchase price and the lessor refuses to sell (no purchase option), the lessee's bid establishes the residual value of the vehicle.²⁵ If the lessee does not tender the purchase price, the next highest bid establishes the residual value.²⁶ The lessor may not recover any deficiency from the lessee unless he establishes the residual value of the vehicle in this manner.²⁷

These provisions apply to all vehicle leases entered into, terminating, or expiring after June 2, 1979.²⁸

Commercial Vehicle Leases

Chapter 597 requires certain disclosures in commercial vehicle leases.²⁹ Many of these disclosures are required by Federal law in consumer leases.³⁰ In all commercial vehicle leases, the lessor must supply the lessee with a dated written statement identifying the lessor, lessee and the vehicle.³¹ The statement must specify all payments and the amount or method of determining the lessee's liability at the end of the lease.³² The lessor must disclose that the lessee's liability is based on the difference between the residual value of the vehicle and either the estimated residual value or the unamortized capitalized cost of the vehicle, if either method is

used to determine the lessee's liability.³³ If the lessee's liability is based on the estimated residual value or the unamortized cost of the vehicle, the statement must include the fair market value of the vehicle at the inception of the lease and the aggregate cost of the lease.³⁴ A lessee is not liable for the difference between the unamortized capitalized cost and the actual residual value of the vehicle unless the lessor discloses the estimated residual value and the lessee specifically agrees to the use of an amount other than the estimated residual value.³⁵ The statement must identify all warranties, and specify which party is responsible for insuring and maintaining the vehicle.³⁶ All of these disclosures may be made in the lease contract.³⁷

If the lessor does not comply with the disclosure requirements, he is liable to the lessee for any actual damages, 25% of the total amount of monthly payments under the lease (not less than \$100 or more than \$1,000), and reasonable attorney's fees to enforce the liability.³⁸ The lessor is not liable if he corrects the error within fifteen days after discovery,³⁹ or if the violation is an unintentional result of a "bona fide error."⁴⁰ Multiple disclosure failures in a single lease entitles a lessee to a single recovery, but continued failure to disclose after recovery gives rise to an additional cause of action.⁴¹

If the lessee's expiration liability is based on the estimated residual value of the vehicle, the estimate must be a reasonable approximation of the actual residual value.⁴² There is a rebuttable presumption that the estimate is unreasonable if it exceeds the actual residual value by more than three times the monthly payment.⁴³ The presumption does not apply if the vehicle is damaged beyond reasonable wear and use; the lease must set reasonable standards for wear and use.⁴⁴

If the lessee's expiration liability is based on residual value, the lessee may obtain, at his expense, an appraisal by a third party agreed to by the lessor; an appraisal by an agreed third party is binding.⁴⁵

These provisions apply to commercial leases entered into, terminating, or expiring on or after September 1, 1979.⁴⁶

Lorne Malkiewich

FOOTNOTES

1. The requirements for commercial vehicle leases are similar to the provisions of the Consumer Leasing Act of 1976, Pub.L.No. 94-240, 90 Stat. 257 (15 U.S.C. §§1601(b), 1667-1667e (1976)) which applies to consumer leases but not to commercial leases.
2. 1979 Nev. Stats. ch. 597 (hereinafter "Ch. 597") §2 ¶ 1,4 (adding to NRS Ch. 100). See M & M Leasing Corporation v. Seattle-First National Bank, 391 F.Supp. 1290, 1293-94 (D.C. Wash. 1975); modified, 563 F.2d 1377, 1379 (9th Cir. 1977).
3. See Addressograph-Multigraph Corporation v. United States, 78 F.Supp. 111, 122, n.1 (Ct. of Claims 1948) (amortization is the gradual extinction of a future obligation in advance of maturity by periodic contributions to a sinking fund).
4. See Nevada National Bank v. Huff, 94 Nev. Adv. Op. 140 at 4, n.1, 582 P.2d 364, 368, n.1 (1978).
5. I.R.C. §167(a).
6. I.R.C. §46.
7. 94 Nev. Adv. Op. 140, 582 P.2d 364 (1978).
8. 94 Nev. Adv. Op. 140 at 4, n.1, 582 P.2d at 368, n.1.
9. Ch. 597 §11 (adding NRS 97.105(3)).
10. Id. §2 ¶ 4 (adding to NRS Ch. 100).
11. Id. §2 ¶1 (adding to NRS Ch. 100).
12. Id. §2 ¶ 1, 4 (adding to NRS Ch. 100).
13. Id. §2 ¶ 3 (adding to NRS Ch. 100).
14. Nevada National Bank v. Huff, 94 Nev. Adv. Op. 140 at 5, 582 P.2d at 368.
15. Ch. 597 §7 ¶1 (Adding to NRS Ch. 100).
16. See NRS 104.1201(19) defining "good faith."
17. Ch. 597 §7 ¶ 2 (adding to NRS Ch. 100).
18. Id.
19. Id. §7 ¶ 3 (adding to NRS Ch. 100).
20. Id. §8 ¶1 (adding to NRS Ch. 100).
21. Id. §8 ¶ 2 (adding to NRS Ch. 100).
22. Id. §9 ¶1 (adding to NRS Ch. 100).
23. Id.
24. Id. §9 ¶ 2 (adding to NRS Ch. 100).
25. Id. §9 ¶ 2(a) (adding to NRS Ch. 100).
26. Id. §9 ¶ 2(b) (adding to NRS Ch. 100).
27. Id. §10 (adding to NRS Ch. 100).
28. Id. §12 ¶1

29. Id. §3 (adding to NRS Ch. 100).
30. Compare id. with 15 U.S.C. §1667a (1976) (federal law regulating consumer leases).
31. Ch. 597 §3 ¶1(a) (adding to NRS Ch. 100). Compare id. with 15 U.S.C. §1667a (1976).
32. Ch. 597 §3 ¶1(b)-1(e),1(i) (adding to NRS Ch. 100). Compare id. with 15 U.S.C. §1667a(2)-(5), (9) (1976).
33. Ch. 597 §3 ¶1(l) (adding to NRS Ch. 100).
34. Id. §3 ¶1(j) (adding to NRS Ch. 100). Compare id. with 15 U.S.C. §1667a(10) (1976).
35. Ch. 597 §3 ¶2 (adding to NRS Ch. 100).
36. Id. §3 ¶1(f), (g) (adding to NRS Ch. 100). Compare id. with 15 U.S.C. §1667a(6), (7) (1976).
37. Ch. 597 §3 ¶3 (adding to NRS Ch. 100).
38. Id. §4 ¶1 (adding to NRS Ch. 100). Compare id. with 15 U.S.C. §1640(a) (1976).
39. Ch. 597 §4 ¶2 (adding to NRS Ch. 100). Compare id. with 15 U.S.C. §1640(b) (1976).
40. Ch. 597 §4 ¶3 (adding to NRS Ch. 100). Compare id. with 15 U.S.C. §1640(c) (1976).
41. Ch. 597 §4 ¶5 (adding to NRS Ch. 100).
42. Id. §5 ¶1 (adding to NRS Ch. 100). Compare id. with 15 U.S.C. §1667b(a) (1976).
43. Ch. 597 §5 ¶2 (adding to NRS Ch. 100). Compare id. with 15 U.S.C. §1667b(a) (1976).
44. Id.
45. Ch. 597 §6 (adding to NRS Ch. 100). Compare id. with 15 U.S.C. §1667b(c) (1976).
46. Ch. 597 §12 ¶2.

PROPERTY; SOLAR EASEMENTS BY AGREEMENTS

Adds to NRS Chapter 111

SB 289 (Committee on Judiciary); STATS 1979, Ch 314

(Effective May 10, 1979)

Chapter 314 provides for the creation of solar easements by grant. The grant must be signed by the grantor and then properly recorded in the county where the