

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 816**Introduced by Fischer, 43.****Read first time January 08, 2010****Committee: Transportation and Telecommunications****A BILL**

1 FOR AN ACT relating to motor vehicle industry regulation; to
2 amend sections 25-2602.01, 28-1316, 44-3526, 60-1401.01,
3 60-1402, 60-1403, 60-1403.01, 60-1404, 60-1405, 60-1406,
4 60-1407, 60-1407.01, 60-1407.02, 60-1407.03, 60-1407.04,
5 60-1411.03, 60-1415, 60-1415.01, 60-1417.02, 60-1420,
6 60-1421, 60-1422, 60-1427, 60-1428, 60-1430, 60-1430.01,
7 60-1430.02, 60-1432, 60-1436, 60-1437, 60-1438,
8 60-1438.01, 60-1440, 60-2602, 60-2603, 60-2604, and
9 71-4603, Reissue Revised Statutes of Nebraska, sections
10 60-194, 60-373, 60-375, 60-380, 60-381, 60-3,116,
11 60-1411.01, 60-1411.02, and 60-2701, Revised Statutes
12 Cumulative Supplement, 2008, sections 60-144, 60-164,
13 and 60-1401.02, Revised Statutes Supplement, 2009, and
14 section 60-1409, Reissue Revised Statutes of Nebraska,

1 as amended, by section 36, Legislative Bill 3, One
2 Hundred First Legislature, First Special Session, 2009;
3 to name an act; to transfer definitions; to define and
4 redefine terms; to change provisions relating to licenses
5 and franchises; to prohibit certain acts; to harmonize
6 provisions; to repeal the original sections; and to
7 declare an emergency.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 25-2602.01, Reissue Revised Statutes
2 of Nebraska, is amended to read:

3 25-2602.01 (a) A written agreement to submit any existing
4 controversy to arbitration is valid, enforceable, and irrevocable
5 except upon such grounds as exist at law or in equity for the
6 revocation of any contract.

7 (b) A provision in a written contract to submit to
8 arbitration any controversy thereafter arising between the parties
9 is valid, enforceable, and irrevocable, except upon such grounds as
10 exist at law or in equity for the revocation of any contract, if
11 the provision is entered into voluntarily and willingly.

12 (c) The Uniform Arbitration Act applies to arbitration
13 agreements between employers and employees or between their
14 respective representatives.

15 (d) Contract provisions agreed to by the parties to a
16 contract control over contrary provisions of the act other than
17 subsections (e) and (f) of this section.

18 (e) Subsections (a) and (b) of this section do not apply
19 to a claim for workers' compensation.

20 (f) Subsection (b) of this section does not apply to:

21 (1) A claim arising out of personal injury based on tort;
22 (2) A claim under the Nebraska Fair Employment Practice
23 Act;

24 (3) Any agreement between parties covered by sections
25 60-1401.01 to 60-1440; the Motor Vehicle Industry Regulation Act;

1 and

2 (4) Except as provided in section 44-811, any agreement
3 concerning or relating to an insurance policy other than a contract
4 between insurance companies including a reinsurance contract.

5 (g) When a conflict exists, the Uniform Arbitration Act
6 shall not apply to the Uniform Act on Interstate Arbitration and
7 Compromise of Death Taxes and sections 44-811, 44-4824, 54-404 to
8 54-406, 60-2701 to 60-2709, and 70-1301 to 70-1329.

9 Sec. 2. Section 28-1316, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 28-1316 (1) A person commits the offense of unlawful use
12 of locks and keys if he or she:

13 (a) Sells, offers to sell, or gives to any person other
14 than a law enforcement agency, dealer licensed under the provisions
15 of Chapter 60, article 14, Motor Vehicle Industry Regulation Act,
16 motor vehicle manufacturer, or person regularly carrying on the
17 profession of a locksmith any try-out key, manipulation key, wiggle
18 key, or any other device designed to be used in place of the normal
19 change key of any motor vehicle; or

20 (b) Has in his or her possession any try-out key, wiggle
21 key, manipulation key, or any other device designed to be used in
22 place of the normal change key of any motor vehicle unless he or
23 she is a locksmith, locksmith manufacturer, dealer licensed under
24 the provisions of Chapter 60, article 14, Motor Vehicle Industry
25 Regulation Act, motor vehicle manufacturer, or law enforcement

1 agency; or

2 (c) Duplicates a master key for anyone unless written

3 permission has been granted by the person who has legal control of

4 the master key. All master keys shall be stamped with the words

5 DO NOT DUPLICATE. All duplications of master keys shall also be

6 stamped with the words DO NOT DUPLICATE.

7 (2) Nothing in subsection (1) of this section shall be

8 construed to make it unlawful if:

9 (a) The owner of two or more vehicles possesses a change

10 key that can be used on two or more vehicles that he or she owns;

11 or

12 (b) Such owner changes the locks on such vehicle so that

13 they are keyed alike; or

14 (c) Any person makes or duplicates the original change

15 keys for such an owner; or

16 (d) Anyone stamps any other type of key with the words DO

17 NOT DUPLICATE.

18 (3) Unlawful use of locks and keys is a Class III

19 misdemeanor.

20 Sec. 3. Section 44-3526, Reissue Revised Statutes of

21 Nebraska, is amended to read:

22 44-3526 The Motor Vehicle Service Contract Reimbursement

23 Insurance Act shall not apply to motor vehicle service contracts

24 (1) (a) issued by a motor vehicle manufacturer or importer for

25 the motor vehicles manufactured or imported by that manufacturer

1 or importer and (b) sold by a franchised motor vehicle dealer
2 licensed pursuant to Chapter 60, article 14, the Motor Vehicle
3 Industry Regulation Act or (2) issued and sold directly by a motor
4 vehicle manufacturer or importer licensed pursuant to Chapter 60,
5 article 14, the Motor Vehicle Industry Regulation Act for the motor
6 vehicles manufactured or imported by that manufacturer or importer.

7 Sec. 4. Section 60-144, Revised Statutes Supplement,
8 2009, is amended to read:

9 60-144 (1) (a) Except as provided in subdivisions (b),
10 (c), and (d) of this subsection, the county clerk or designated
11 county official shall be responsible for issuing and filing
12 certificates of title for vehicles, and each county shall issue
13 and file such certificates of title using the vehicle titling
14 and registration computer system prescribed by the department.
15 Application for a certificate of title shall be made upon a form
16 prescribed by the department. All applications shall be accompanied
17 by the appropriate fee or fees.

18 (b) The department shall issue and file certificates
19 of title for Nebraska-based fleet vehicles. Application for a
20 certificate of title shall be made upon a form prescribed by
21 the department. All applications shall be accompanied by the
22 appropriate fee or fees.

23 (c) The department shall issue and file certificates of
24 title for state-owned vehicles. Application for a certificate of
25 title shall be made upon a form prescribed by the department. All

1 applications shall be accompanied by the appropriate fee or fees.

2 (d) The department shall issue certificates of title
3 pursuant to section 60-142.06. Application for a certificate of
4 title shall be made upon a form prescribed by the department. All
5 applications shall be accompanied by the appropriate fee or fees.

6 (2) If the owner of an all-terrain vehicle or a minibike
7 resides in Nebraska, the application shall be filed with the county
8 clerk or designated county official of the county in which the
9 owner resides.

10 (3) (a) Except as otherwise provided in subdivision (b) of
11 this subsection, if a vehicle, other than an all-terrain vehicle or
12 a minibike, has situs in Nebraska, the application shall be filed
13 with the county clerk or designated county official of the county
14 in which the vehicle has situs.

15 (b) If a motor vehicle dealer licensed under Chapter 60,
16 article 14, the Motor Vehicle Industry Regulation Act applies for
17 a certificate of title for a vehicle, the application may be filed
18 with the county clerk or designated county official of any county.

19 (4) If the owner of a vehicle is a nonresident, the
20 application shall be filed in the county in which the transaction
21 is consummated.

22 (5) The application shall be filed within thirty days
23 after the delivery of the vehicle.

24 (6) All applicants registering a vehicle pursuant to
25 section 60-3,198 shall file the application for a certificate

1 of title with the Division of Motor Carrier Services of the
2 department. The division shall deliver the certificate to the
3 applicant if there are no liens on the vehicle. If there are
4 any liens on the vehicle, the division shall deliver or mail the
5 certificate of title to the holder of the first lien on the day of
6 issuance. All certificates of title issued by the division shall be
7 issued in the manner prescribed for the county clerk or designated
8 county official in section 60-152.

9 Sec. 5. Section 60-164, Revised Statutes Supplement,
10 2009, is amended to read:

11 60-164 (1) The department shall implement an electronic
12 title and lien system for vehicles no later than January 1, 2011.
13 The director shall designate the date for the implementation of
14 the system. Beginning on the implementation date, the holder of
15 a security interest, trust receipt, conditional sales contract,
16 or similar instrument regarding a vehicle may file a lien
17 electronically as prescribed by the department. Beginning on
18 the implementation date, upon receipt of an application for a
19 certificate of title for a vehicle, any lien filed electronically
20 shall become part of the electronic certificate of title record
21 created by the county clerk, designated county official, or
22 department maintained on the electronic title and lien system.
23 Beginning on the implementation date, if an application for
24 a certificate of title indicates that there is a lien or
25 encumbrance on a vehicle or if a lien or notice of lien has been

1 filed electronically, the department shall retain an electronic
2 certificate of title record and shall note and cancel such liens
3 electronically on the system. The department shall provide access
4 to the electronic certificate of title records for motor vehicle
5 dealers and lienholders who participate in the system by a method
6 determined by the director.

7 (2) Except as provided in section 60-165, the provisions
8 of article 9, Uniform Commercial Code, shall never be construed
9 to apply to or to permit or require the deposit, filing,
10 or other record whatsoever of a security agreement, conveyance
11 intended to operate as a mortgage, trust receipt, conditional sales
12 contract, or similar instrument or any copy of the same covering a
13 vehicle. Any mortgage, conveyance intended to operate as a security
14 agreement as provided by article 9, Uniform Commercial Code, trust
15 receipt, conditional sales contract, or other similar instrument
16 covering a vehicle, if such instrument is accompanied by delivery
17 of such manufacturer's or importer's certificate and followed by
18 actual and continued possession of the same by the holder of
19 such instrument or, in the case of a certificate of title, if a
20 notation of the same has been made electronically as prescribed in
21 subsection (1) of this section or by the county clerk, designated
22 county official, or department on the face of the certificate of
23 title or on the electronic certificate of title record, shall be
24 valid as against the creditors of the debtor, whether armed with
25 process or not, and subsequent purchasers, secured parties, and

1 other lienholders or claimants but otherwise shall not be valid
2 against them, except that during any period in which a vehicle is
3 inventory, as defined in section 9-102, Uniform Commercial Code,
4 held for sale by a person or corporation that is required to be
5 licensed as provided in ~~Chapter 60, article 14, the Motor Vehicle~~
6 Industry Regulation Act and is in the business of selling such
7 vehicles, the filing provisions of article 9, Uniform Commercial
8 Code, as applied to inventory, shall apply to a security interest
9 in such vehicle created by such person or corporation as debtor
10 without the notation of lien on the certificate of title. A buyer
11 of a vehicle at retail from a dealer required to be licensed as
12 provided in ~~Chapter 60, article 14, the Motor Vehicle Industry~~
13 Regulation Act shall take such vehicle free of any security
14 interest. A purchase-money security interest, as defined in section
15 9-103, Uniform Commercial Code, in a vehicle is perfected against
16 the rights of judicial lien creditors and execution creditors on
17 and after the date the purchase-money security interest attaches.

18 (3) Subject to subsections (1) and (2) of this section,
19 all liens, security agreements, and encumbrances noted upon a
20 certificate of title or an electronic certificate of title record
21 and all liens noted electronically as prescribed in subsection (1)
22 of this section shall take priority according to the order of time
23 in which the same are noted by the county clerk, designated county
24 official, or department. Exposure for sale of any vehicle by the
25 owner thereof with the knowledge or with the knowledge and consent

1 of the holder of any lien, security agreement, or encumbrance on
2 such vehicle shall not render the same void or ineffective as
3 against the creditors of such owner or holder of subsequent liens,
4 security agreements, or encumbrances upon such vehicle.

5 (4) The holder of a security agreement, trust
6 receipt, conditional sales contract, or similar instrument, upon
7 presentation of such instrument to the department, or to any county
8 clerk or designated county official, together with the certificate
9 of title and the fee prescribed for notation of lien, may have
10 a notation of such lien made on the face of such certificate of
11 title. The owner of a vehicle may present a valid out-of-state
12 certificate of title issued to such owner for such vehicle with a
13 notation of lien on such certificate of title and the prescribed
14 fee to the county clerk, designated county official, or department
15 and have the notation of lien made on the new certificate of title
16 issued pursuant to section 60-144 without presenting a copy of the
17 lien instrument. The county clerk or designated county official or
18 the department shall enter the notation and the date thereof over
19 the signature of the person making the notation and the seal of the
20 office. If noted by a county clerk or designated county official,
21 he or she shall on that day notify the department which shall note
22 the lien on its records. The county clerk or designated county
23 official or the department shall also indicate by appropriate
24 notation and on such instrument itself the fact that such lien has
25 been noted on the certificate of title.

1 (5) A transaction does not create a sale or a security
2 interest in a vehicle, other than an all-terrain vehicle or a
3 minibike, merely because it provides that the rental price is
4 permitted or required to be adjusted under the agreement either
5 upward or downward by reference to the amount realized upon sale or
6 other disposition of the vehicle.

7 (6) The county clerk or designated county official or
8 the department, upon receipt of a lien instrument duly signed by
9 the owner in the manner prescribed by law governing such lien
10 instruments together with the fee prescribed for notation of lien,
11 shall notify the first lienholder to deliver to the county clerk
12 or designated county official or the department, within fifteen
13 days after the date of notice, the certificate of title to permit
14 notation of such other lien and, after notation of such other lien,
15 the county clerk or designated county official or the department
16 shall deliver the certificate of title to the first lienholder.
17 The holder of a certificate of title who refuses to deliver a
18 certificate of title to the county clerk or designated county
19 official or the department for the purpose of showing such other
20 lien on such certificate of title within fifteen days after the
21 date of notice shall be liable for damages to such other lienholder
22 for the amount of damages such other lienholder suffered by reason
23 of the holder of the certificate of title refusing to permit the
24 showing of such lien on the certificate of title.

25 (7) Beginning on the implementation date of the

1 electronic title and lien system, upon receipt of a subsequent
2 lien instrument duly signed by the owner in the manner prescribed
3 by law governing such lien instruments or a notice of lien filed
4 electronically, together with an application for notation of
5 the subsequent lien, the fee prescribed in section 60-154, and,
6 if a printed certificate of title exists, the presentation of
7 the certificate of title, the county clerk, designated county
8 official, or department shall make notation of such other lien.
9 If the certificate of title is not an electronic certificate of
10 title record, the county clerk, designated county official, or
11 department, upon receipt of a lien instrument duly signed by
12 the owner in the manner prescribed by law governing such lien
13 instruments together with the fee prescribed for notation of lien,
14 shall notify the first lienholder to deliver to the county clerk,
15 designated county official, or department, within fifteen days
16 after the date of notice, the certificate of title to permit
17 notation of such other lien. After such notation of lien, the
18 lien shall become part of the electronic certificate of title
19 record created by the county clerk, designated county official, or
20 department which is maintained on the electronic title and lien
21 system. The holder of a certificate of title who refuses to deliver
22 a certificate of title to the county clerk, designated county
23 official, or department for the purpose of noting such other lien
24 on such certificate of title within fifteen days after the date
25 when notified to do so shall be liable for damages to such other

1 lienholder for the amount of damages such other lienholder suffered
2 by reason of the holder of the certificate of title refusing to
3 permit the noting of such lien on the certificate of title.

4 (8) When a lien is discharged, the holder shall, within
5 fifteen days after payment is received, note a cancellation of the
6 lien on the certificate of title over his, her, or its signature
7 and deliver the certificate of title to the county clerk or
8 designated county official or the department, which shall note the
9 cancellation of the lien on the face of the certificate of title
10 and on the records of such office. If delivered to a county clerk
11 or designated county official, he or she shall on that day notify
12 the department which shall note the cancellation on its records.
13 The county clerk or designated county official or the department
14 shall then return the certificate of title to the owner or as
15 otherwise directed by the owner. The cancellation of lien shall be
16 noted on the certificate of title without charge. For an electronic
17 certificate of title record, the lienholder shall, within fifteen
18 days after payment is received when such lien is discharged,
19 notify the department electronically or provide written notice of
20 such lien release, in a manner prescribed by the department, to
21 the county clerk, designated county official, or department. The
22 department shall note the cancellation of lien and, if no other
23 liens exist, issue the certificate of title to the owner or as
24 otherwise directed by the owner or lienholder. If the holder of
25 the title cannot locate a lienholder, a lien may be discharged

1 ten years after the date of filing by presenting proof that thirty
2 days have passed since the mailing of a written notice by certified
3 mail, return receipt requested, to the last-known address of the
4 lienholder.

5 Sec. 6. Section 60-194, Revised Statutes Cumulative
6 Supplement, 2008, is amended to read:

7 60-194 No licensed motor vehicle dealer shall have in his
8 or her possession as inventory for sale any used motor vehicle of
9 an age of less than twenty-five years for which the dealer does not
10 have in his or her possession the transferor's statement required
11 by section 60-192 unless a certificate of title has been issued for
12 such motor vehicle in the name of the dealer. Violation of sections
13 60-190 to 60-196 shall be grounds for suspension or revocation of a
14 motor vehicle dealer's license under the provisions of Chapter 60,
15 article 14. Motor Vehicle Industry Regulation Act.

16 Sec. 7. Section 60-373, Revised Statutes Cumulative
17 Supplement, 2008, is amended to read:

18 60-373 (1) Each licensed motor vehicle dealer or trailer
19 dealer as defined in section 60-1401.02 sections 38 and 49 of
20 this act, respectively, doing business in this state, in lieu of
21 registering each motor vehicle or trailer which such dealer owns
22 of a type otherwise required to be registered, or any full-time
23 or part-time employee or agent of such dealer may, if the motor
24 vehicle or trailer displays dealer number plates:

25 (a) Operate or tow the motor vehicle or trailer upon

1 the highways of this state solely for purposes of transporting,
2 testing, demonstrating, or use in the ordinary course and conduct
3 of business as a motor vehicle or trailer dealer. Such use may
4 include personal or private use by the dealer and personal or
5 private use by any bona fide employee licensed pursuant to Chapter
6 60, article 14, the Motor Vehicle Industry Regulation Act, if
7 the employee can be verified by payroll records maintained at the
8 dealership as ordinarily working more than thirty hours per week or
9 fifteen hundred hours per year at the dealership;

10 (b) Operate or tow the motor vehicle or trailer upon the
11 highways of this state for transporting industrial equipment held
12 by the licensee for purposes of demonstration, sale, rental, or
13 delivery; or

14 (c) Sell the motor vehicle or trailer.

15 (2) Each licensed manufacturer as defined in section
16 60-1401.02 36 of this act which actually manufactures or assembles
17 motor vehicles or trailers within this state, in lieu of
18 registering each motor vehicle or trailer which such manufacturer
19 owns of a type otherwise required to be registered, or any employee
20 of such manufacturer may operate or tow the motor vehicle or
21 trailer upon the highways of this state solely for purposes of
22 transporting, testing, demonstrating to prospective customers, or
23 use in the ordinary course and conduct of business as a motor
24 vehicle or trailer manufacturer, upon the condition that any such
25 motor vehicle or trailer display thereon, in the manner prescribed

1 in section 60-3,100, dealer number plates as provided for in
2 section 60-3,114.

3 (3) In no event shall such plates be used on motor
4 vehicles or trailers hauling other than automotive or trailer
5 equipment, complete motor vehicles, or trailers which are inventory
6 of such licensed dealer or manufacturer unless there is issued by
7 the department a special permit specifying the hauling of other
8 products. This section shall not be construed to allow a dealer
9 to operate a motor vehicle or trailer with dealer number plates
10 for the delivery of parts inventory. A dealer may use such motor
11 vehicle or trailer to pick up parts to be used for the motor
12 vehicle or trailer inventory of the dealer.

13 Sec. 8. Section 60-375, Revised Statutes Cumulative
14 Supplement, 2008, is amended to read:

15 60-375 (1) A finance company which is licensed to
16 do business in this state may, in lieu of registering each
17 motor vehicle or trailer repossessed, upon the payment of a
18 fee of ten dollars, make an application to the department
19 for a repossession registration certificate and one repossession
20 license plate. Additional pairs of repossession certificates and
21 repossession license plates may be procured for a fee of ten
22 dollars each. Repossession license plates may be used only for
23 operating or towing motor vehicles or trailers on the highways for
24 the purpose of repossession, demonstration, and disposal of such
25 motor vehicles or trailers. The repossession certificate shall be

1 displayed on demand for any motor vehicle or trailer which has a
2 repossession license plate. A finance company shall be entitled to
3 a dealer license plate only in the event such company is licensed
4 as a motor vehicle dealer or trailer dealer under Chapter 60,
5 article 14. the Motor Vehicle Industry Regulation Act.

6 (2) Repossession license plates shall be prefixed with a
7 large letter R and be serially numbered from 1 to distinguish them
8 from each other. Such license plates shall be displayed only on the
9 rear of a repossessed motor vehicle or trailer.

10 Sec. 9. Section 60-380, Revised Statutes Cumulative
11 Supplement, 2008, is amended to read:

12 60-380 Any motor vehicle or trailer owned by a dealer
13 licensed under Chapter 60, article 14, the Motor Vehicle Industry
14 Regulation Act and bearing other than dealer license plates shall
15 be conclusively presumed not to be a part of the dealer's inventory
16 and not for demonstration or sale and therefor not eligible for
17 any exemption from taxes or fees applicable to motor vehicles or
18 trailers with dealer license plates.

19 Sec. 10. Section 60-381, Revised Statutes Cumulative
20 Supplement, 2008, is amended to read:

21 60-381 Whenever a manufacturer or dealer licensed under
22 Chapter 60, article 14, the Motor Vehicle Industry Regulation Act
23 maintains a branch or subagency, the manufacturer or dealer shall
24 apply for a separate registration for such branch or subagency and
25 shall pay therefor the fees provided in section 60-3,114 for the

1 registration of motor vehicles or trailers owned by or under the
2 control of the manufacturer or dealer, and the determination of the
3 department upon the question whether any establishment constitutes
4 a branch or subagency, within the intent of this section, shall be
5 conclusive. No manufacturer, dealer, or employee of a manufacturer
6 or dealer shall cause or permit the display or other use of
7 any license plate or certificate of registration which has been
8 issued to such manufacturer or dealer except upon motor vehicles or
9 trailers owned by such manufacturer or dealer.

10 Sec. 11. Section 60-3,116, Revised Statutes Cumulative
11 Supplement, 2008, is amended to read:

12 60-3,116 (1) Any licensed dealer or manufacturer may,
13 upon payment of an annual fee of two hundred fifty dollars, make
14 an application, on a form approved by the Nebraska Motor Vehicle
15 Industry Licensing Board, to the county treasurer or designated
16 county official of the county in which his or her place of business
17 is located for a certificate and one personal-use dealer license
18 plate for the type of motor vehicle or trailer the dealer has been
19 authorized by the Nebraska Motor Vehicle Industry Licensing Board
20 to sell and demonstrate. Additional personal-use dealer license
21 plates may be procured upon payment of an annual fee of two hundred
22 fifty dollars each, subject to the same limitations as provided
23 in section 60-3,114 as to the number of additional dealer license
24 plates. A personal-use dealer license plate may be displayed on
25 a motor vehicle having a gross weight including any load of six

1 thousand pounds or less belonging to the dealer, may be used in the
2 same manner as a dealer license plate, and may be used for personal
3 or private use of the dealer, the dealer's immediate family, or any
4 bona fide employee of the dealer licensed pursuant to Chapter 60,
5 article 14. the Motor Vehicle Industry Regulation Act.

6 (2) Personal-use dealer license plates shall have the
7 same design and shall be displayed as provided in sections 60-370
8 and 60-3,100.

9 Sec. 12. Sections 60-1401.01 to 60-1440, this section,
10 and sections 15 to 53 of this act shall be known and may be cited
11 as the Motor Vehicle Industry Regulation Act.

12 Any amendments to the act shall apply to franchises
13 subject to the act which are entered into, amended, altered,
14 modified, renewed, or extended after the date of the amendments to
15 the act except as otherwise specifically provided in the act.

16 Sec. 13. Section 60-1401.01, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 60-1401.01 (1) The Legislature finds and declares that
19 the distribution and sales of motor vehicles, motorcycles, and
20 trailers in the State of Nebraska vitally affects the general
21 economy of the state, the public interest, the public welfare, and
22 public safety and that in order to promote the public interest
23 and the public welfare and in the exercise of its police power,
24 it is necessary to regulate motor vehicle, motorcycle, and trailer
25 dealers, manufacturers, distributors, and their representatives

1 doing business in the State of Nebraska.

2 (2) The Legislature further finds that the sales of
3 motor vehicles, motorcycles, and trailers are involved to a large
4 extent in a franchise system established between manufacturers
5 and dealers and hereby declares that the sale of motor vehicles,
6 motorcycles, and trailers to the public in the state under the
7 franchise system includes more than the mere transfer of title,
8 being a continuing obligation of the manufacturer, distributor and
9 dealer to the buying public affecting the public interest; that
10 the termination or failure of the established relationship between
11 the manufacturer, distributor and dealer without cause or good
12 faith denies to the general buying public its right to availability
13 of continuing post-sale mechanical and operational services and
14 precludes the relationship, expected and implied at the time of
15 sale, between the buyer and the seller necessary to insure safe
16 operating condition of the vehicle.

17 (3) The Legislature further finds and declares that the
18 distribution and sale of motor vehicles in the state under the
19 franchise system vitally affects commerce, the general economy of
20 the state, and the welfare of the citizens of the state requiring
21 the exercise of its police power to insure the public welfare,
22 to regulate commerce, to establish guidelines for enforcement of a
23 fair and equitable balance between parties to such franchises, and
24 to provide judicial relief from unfair and inequitable practices
25 affecting the public interest.

1 Sec. 14. Section 60-1401.02, Revised Statutes Supplement,
2 2009, is amended to read:

3 60-1401.02 For purposes of the Motor Vehicle Industry
4 Regulation Act, the definitions found in sections 15 to 52 of this
5 act apply. sections 60-1401.01 to 60-1440 and 60-2601 to 60-2607,
6 unless the context otherwise requires.

7 (1) Person means every natural person, firm, partnership,
8 limited liability company, association, or corporation;

9 (2) Association means any two or more persons acting
10 with a common purpose, regardless of the relative degrees of
11 involvement, and includes, but is not limited to, the following
12 persons so acting:

13 (a) A person and one or more of his or her family
14 members. For purposes of this subdivision, family member means an
15 individual related to the person by blood, marriage, adoption, or
16 legal guardianship as the person's spouse, child, parent, brother,
17 sister, grandchild, grandparent, ward, or legal guardian or any
18 individual so related to the person's spouse; and

19 (b) Two or more persons living in the same dwelling unit,
20 whether or not related to each other;

21 (3) Motor vehicle dealer means any person, other than a
22 bona fide consumer, actively and regularly engaged in the act of
23 selling, leasing for a period of thirty or more days, or exchanging
24 new or used motor vehicles, trailers, and manufactured homes who
25 buys, sells, exchanges, causes the sale of, or offers or attempts

1 to sell new or used motor vehicles. Such person is a motor vehicle
2 dealer and subject to sections 60-1401.01 to 60-1440. Motor vehicle
3 dealer does not include a lessor who was not involved in or
4 associated with the selection, location, acquisition, or supply of
5 a motor vehicle which is the subject of a lease agreement;

6 (4) Trailer dealer means any person, other than a bona
7 fide consumer, actively and regularly engaged in the business of
8 selling or exchanging new or used trailers and manufactured homes;

9 (5) Wrecker or salvage dealer means any person who
10 acquires one or more motor vehicles or trailers for the purpose
11 of dismantling them for the purpose of reselling the parts or
12 reselling the vehicles as scrap;

13 (6) Motor vehicle means any vehicle for which evidence of
14 title is required as a condition precedent to registration under
15 the laws of this state but does not include trailers. Motor vehicle
16 also means any engine, transmission, or rear axle, regardless of
17 whether attached to a vehicle chassis, that is manufactured for
18 installation in any motor-driven vehicle with a gross vehicle
19 weight rating of more than sixteen thousand pounds for which
20 motor-driven vehicle evidence of title is required as a condition
21 precedent to registration under the laws of this state;

22 (7) Used motor vehicle means every motor vehicle which
23 has been sold, bargained, exchanged, or given away or for which
24 title has been transferred from the person who first acquired
25 it from the manufacturer, importer, dealer, or agent of the

1 manufacturer or importer. A new motor vehicle is not considered
2 a used motor vehicle until it has been placed in use by a bona
3 fide consumer, notwithstanding the number of transfers of the motor
4 vehicle;

5 (8) New motor vehicle means all motor vehicles which are
6 not included within the definition of a used motor vehicle in this
7 section;

8 (9) Trailer means semitrailers and trailers as defined
9 in sections 60-348 and 60-354, respectively, which are required to
10 be licensed as commercial trailers, other vehicles without motive
11 power constructed so as to permit their being used as conveyances
12 upon the public streets and highways and so constructed as not to
13 be attached to real estate and to permit the vehicle to be used
14 for human habitation by one or more persons, and camping trailers,
15 slide-in campers, fold-down campers, and fold-down tent trailers.
16 Machinery and equipment to which wheels are attached and designed
17 for being towed by a motor vehicle are excluded from the provisions
18 of sections 60-1401.01 to 60-1440;

19 (10) Motorcycle dealer means any person, other than a
20 bona fide consumer, actively and regularly engaged in the business
21 of selling or exchanging new or used motorcycles;

22 (11) Motorcycle means every motor vehicle, except a
23 tractor, having a seat or saddle for use of the rider and designed
24 to travel on not more than three wheels in contact with the
25 ground and for which evidence of title is required as a condition

1 precedent to registration under the laws of this state;

2 (12) Auction means a sale of motor vehicles and trailers
3 of types required to be registered in this state, except such
4 vehicles as are eligible for registration pursuant to section
5 60-3,198, sold or offered for sale at which the price offered is
6 increased by the prospective buyers who bid against one another,
7 the highest bidder becoming the purchaser. The holding of a farm
8 auction or an occasional motor vehicle or trailer auction of not
9 more than two auctions in a calendar year does not constitute an
10 auction subject to sections 60-1401.01 to 60-1440;

11 (13) Auction dealer means any person engaged in the
12 business of conducting an auction for the sale of motor vehicles
13 and trailers;

14 (14) Supplemental motor vehicle, trailer, motorcycle,
15 or motor vehicle auction dealer means any person holding either
16 a motor vehicle, trailer, motorcycle, or motor vehicle auction
17 dealer's license engaging in the business authorized by such
18 license at a place of business that is more than three hundred feet
19 from any part of the place of business designated in the dealer's
20 original license but which is located within the city or county
21 described in such original license;

22 (15) Motor vehicle, motorcycle, or trailer salesperson
23 means any person who, for a salary, commission, or compensation of
24 any kind, is employed directly by only one specified licensed
25 Nebraska motor vehicle dealer, motorcycle dealer, or trailer

1 dealer, except when the salesperson is working for two or more
2 dealerships with common ownership, to sell, purchase, or exchange
3 or to negotiate for the sale, purchase, or exchange of motor
4 vehicles, motorcycles, or trailers. A person owning any part
5 of more than one dealership may be a salesperson for each of
6 such dealerships. For purposes of this section, common ownership
7 means that there is at least an eighty percent interest in
8 each dealership by one or more persons having ownership in such
9 dealership;

10 (16) Manufacturer means any person, resident or
11 nonresident of this state, who is engaged in the business of
12 distributing, manufacturing, or assembling new motor vehicles,
13 trailers, or motorcycles and also has the same meaning as the term
14 franchiser as used in sections 60-1401.01 to 60-1440;

15 (17) Factory representative means a representative
16 employed by a person who manufactures or assembles motor vehicles,
17 motorcycles, or trailers, or by a factory branch, for the purpose
18 of promoting the sale of its motor vehicles, motorcycles, or
19 trailers to, or for supervising or contacting, its dealers or
20 prospective dealers in this state;

21 (18) Distributor means a person, resident or nonresident
22 of this state, who in whole or in part sells or distributes
23 new motor vehicles, trailers, or motorcycles to dealers or who
24 maintains distributors or representatives who sell or distribute
25 motor vehicles, trailers, or motorcycles to dealers and also has

1 the same meaning as the term franchisor as used in sections
2 60-1401.01 to 60-1440;

3 (19) Finance company means any person engaged in the
4 business of financing sales of motor vehicles, motorcycles, or
5 trailers, or purchasing or acquiring promissory notes, secured
6 instruments, or other documents by which the motor vehicles,
7 motorcycles, or trailers are pledged as security for payment of
8 obligations arising from such sales and who may find it necessary
9 to engage in the activity of repossession and the sale of the motor
10 vehicles, motorcycles, or trailers so pledged;

11 (20) Franchise means a contract between two or more
12 persons when all of the following conditions are included:

13 (a) A commercial relationship of definite duration or
14 continuing indefinite duration is involved;

15 (b) The franchisee is granted the right to offer and sell
16 motor vehicles manufactured or distributed by the franchisor;

17 (c) The franchisee, as an independent business,
18 constitutes a component of the franchisor's distribution system;

19 (d) The operation of the franchisee's business is
20 substantially associated with the franchisor's trademark, service
21 mark, trade name, advertising, or other commercial symbol
22 designating the franchisor; and

23 (e) The operation of the franchisee's business is
24 substantially reliant on the franchisor for the continued supply of
25 motor vehicles, parts, and accessories;

1 (21) Franchisee means a new motor vehicle dealer who
2 receives motor vehicles from the franchisor under a franchise and
3 who offers and sells such motor vehicles to the general public;

4 (22) Franchisor means a person who manufactures or
5 distributes motor vehicles and who may enter into a franchise;

6 (23) Community means a franchisee's area of
7 responsibility as stipulated in the franchise;

8 (24) Line-make means the motor vehicles that are offered
9 for sale, lease, or distribution under a common name, trademark,
10 service mark, or brand name of the franchisor or manufacturer of
11 the motor vehicle;

12 (25) Consumer care means the performance, for the public,
13 of necessary maintenance and repairs to motor vehicles;

14 (26) Sale, selling, and equivalent expressions mean the
15 attempted act or acts either as principal, agent, or salesperson
16 or in any capacity whatsoever of selling, bartering, exchanging,
17 or otherwise disposing of or negotiating or offering or attempting
18 to negotiate the sale, purchase, or exchange of or interest in any
19 motor vehicle, trailer, or motorcycle, including the leasing of any
20 motor vehicle, trailer, or motorcycle for a period of thirty or
21 more days with a right or option to purchase under the terms of the
22 lease;

23 (27) Established place of business means a permanent
24 location within this state, easily accessible to the public, owned
25 or leased by the applicant or a licensee for at least the term

1 of the license year, and conforming with applicable zoning laws,
2 at which the licensee conducts the business for which he or she
3 is licensed and may be contacted by the public during posted
4 reasonable business hours which shall be not less than forty
5 hours per week. The established place of business shall have the
6 following facilities: (a) Office space in a building or mobile
7 home, which space shall be clean, dry, safe, and well lighted
8 and in which shall be kept and maintained all books, records,
9 and files necessary for the conduct of the licensed business,
10 which premises, books, records, and files shall be available for
11 inspection during regular business hours by any peace officer or
12 investigator employed or designated by the board. Dealers shall,
13 upon demand of the board's investigator, furnish copies of records
14 so required when conducting any investigation of a complaint; (b)
15 a sound and well-maintained sign which is legible from a public
16 road and displayed with letters not less than eight inches in
17 height and one contiguous area to display ten or more motor
18 vehicles, motorcycles, or trailers in a presentable manner; (c)
19 adequate repair facilities and tools to properly and actually
20 service warranties on motor vehicles, motorcycles, or trailers sold
21 at such place of business and to make other repairs arising out
22 of the conduct of the licensee's business or, in lieu of such
23 repair facilities, the licensee may enter into a contract for the
24 provision of such service and file a copy thereof annually with the
25 board and shall furnish to each buyer a written statement as to

1 where such service will be provided as required by section 60-1417.
2 The service facility shall be located in the same county as the
3 licensee unless the board specifically authorizes the facility to
4 be located elsewhere. Such facility shall maintain regular business
5 hours and shall have suitable repair equipment and facilities to
6 service and inspect the type of vehicles sold by the licensee.
7 Investigators of the board may certify ongoing compliance with
8 the service and inspection facilities or repair facilities; and
9 (d) an operating telephone connected with a public telephone
10 exchange and located on the premises of the established place of
11 business with a telephone number listed by the public telephone
12 exchange and available to the public during the required posted
13 business hours. A mobile truck equipped with repair facilities
14 to properly perform warranty functions and other repairs shall be
15 deemed adequate repair facilities for trailers. The requirements of
16 this subdivision shall apply to the place of business authorized
17 under a supplemental motor vehicle, motorcycle, or trailer dealer's
18 license;

19 (28) Retail, when used to describe a sale, means a sale
20 to any person other than a licensed dealer of any kind within the
21 definitions of this section;

22 (29) Factory branch means a branch office maintained in
23 this state by a person who manufactures, assembles, or distributes
24 motor vehicles, motorcycles, or trailers for the sale of such motor
25 vehicles, motorcycles, or trailers to distributors or dealers

1 or for directing or supervising, in whole or in part, its
2 representatives in this state;

3 (30) Distributor representative means a representative
4 employed by a distributor or distributor branch for the same
5 purpose as set forth in the definition of factory representative in
6 this section;

7 (31) Board means the Nebraska Motor Vehicle Industry
8 Licensing Board;

9 (32) Scrap metal processor means any person engaged in
10 the business of buying vehicles, motorcycles, or parts thereof
11 for the purpose of remelting or processing into scrap metal or
12 who otherwise processes ferrous or nonferrous metallic scrap for
13 resale. No scrap metal processor shall sell vehicles or motorcycles
14 without obtaining a wrecker or salvage dealer license;

15 (33) Designated family member means the spouse, child,
16 grandchild, parent, brother, or sister of the owner of a new
17 motor vehicle dealership who, in the case of the owner's death,
18 is entitled to inherit the ownership interest in the new motor
19 vehicle dealership under the terms of the owner's will, who has
20 been nominated in any other written instrument, or who, in the case
21 of an incapacitated owner of such dealership, has been appointed
22 by a court as the legal representative of the new motor vehicle
23 dealer's property;

24 (34) Bona fide consumer means an owner of a motor
25 vehicle, motorcycle, or trailer who has acquired such vehicle for

1 use in business or for pleasure purposes, who has been granted a
2 certificate of title on such motor vehicle, motorcycle, or trailer,
3 and who has registered such motor vehicle, motorcycle, or trailer,
4 all in accordance with the laws of the residence of the owner,
5 except that no owner who sells more than eight registered motor
6 vehicles, motorcycles, or trailers within a twelve-month period
7 shall qualify as a bona fide consumer;

8 (35) Violator means a person acting without a license or
9 registration as required by sections 60-1401.01 to 60-1440;

10 (36) Manufactured home means a structure, transportable
11 in one or more sections, which in the traveling mode is eight body
12 feet or more in width or forty body feet or more in length or when
13 erected on site is three hundred twenty or more square feet and
14 which is built on a permanent chassis and designed to be used as
15 a dwelling with or without a permanent foundation when connected
16 to the required utilities and includes the plumbing, heating, air
17 conditioning, and electrical systems contained in the structure,
18 except that manufactured home includes any structure that meets
19 all of the requirements of this subdivision other than the size
20 requirements and with respect to which the manufacturer voluntarily
21 files a certification required by the United States Secretary
22 of Housing and Urban Development and complies with the standards
23 established under the National Manufactured Housing Construction
24 and Safety Standards Act of 1974, as such act existed on September
25 1, 2001, 42 U.S.C. 5401 et seq., and

1 (37) Dealer's agent means a person who acts as a buying
2 agent for one or more motor vehicle dealers, motorcycle dealers, or
3 trailer dealers.

4 Nothing in sections 60-1401.01 to 60-1440 shall apply to
5 the State of Nebraska or any of its agencies or subdivisions. No
6 insurance company, finance company, public utility company, fleet
7 owner, or other person coming into possession of any motor vehicle,
8 motorcycle, or trailer, as an incident to its regular business, who
9 sells or exchanges the motor vehicle, motorcycle, or trailer shall
10 be considered a dealer except persons whose regular business is
11 leasing or renting motor vehicles, motorcycles, or trailers.

12 Sec. 15. Association means any two or more persons acting
13 with a common purpose, regardless of the relative degrees of
14 involvement, and includes, but is not limited to, the following
15 persons so acting:

16 (1) A person and one or more of his or her family
17 members. For purposes of this subdivision, family member means an
18 individual related to the person by blood, marriage, adoption, or
19 legal guardianship as the person's spouse, child, parent, brother,
20 sister, grandchild, grandparent, ward, or legal guardian or any
21 individual so related to the person's spouse; and

22 (2) Two or more persons living in the same dwelling unit,
23 whether or not related to each other.

24 Sec. 16. Auction means a sale of motor vehicles and
25 trailers of types required to be registered in this state, except

1 such vehicles as are eligible for registration pursuant to section
2 60-3,198, sold or offered for sale at which the price offered is
3 increased by the prospective buyers who bid against one another,
4 the highest bidder becoming the purchaser. The holding of a farm
5 auction or an occasional motor vehicle or trailer auction of not
6 more than two auctions in a calendar year does not constitute an
7 auction subject to the Motor Vehicle Industry Regulation Act.

8 Sec. 17. Auction dealer means any person engaged in the
9 business of conducting an auction for the sale of motor vehicles
10 and trailers.

11 Sec. 18. Board means the Nebraska Motor Vehicle Industry
12 Licensing Board.

13 Sec. 19. Bona fide consumer means an owner of a motor
14 vehicle, motorcycle, or trailer who has acquired such vehicle for
15 use in business or for pleasure purposes, who has been granted a
16 certificate of title on such motor vehicle, motorcycle, or trailer,
17 and who has registered such motor vehicle, motorcycle, or trailer,
18 all in accordance with the laws of the residence of the owner,
19 except that no owner who sells more than eight registered motor
20 vehicles, motorcycles, or trailers within a twelve-month period
21 shall qualify as a bona fide consumer.

22 Sec. 20. Coerce means to compel a dealer or manipulate a
23 dealer to behave in an involuntary way, whether through action or
24 inaction, by use of threats, intimidation, trickery, or some other
25 form of pressure or force.

1 Sec. 21. Community means a franchisee's area of
2 responsibility as stipulated in the franchise or, if the franchise
3 fails to designate a community, (1) the community of the franchisee
4 is the area surrounding the location of the franchisee in a
5 five-mile radius from the dealership if the location is within
6 a city of the metropolitan class and (2) the community of the
7 franchisee is the county in which the franchisee is located if the
8 location is not within a city of the metropolitan class.

9 Sec. 22. Consumer care means the performance, for the
10 public, of necessary maintenance and repairs to motor vehicles.

11 Sec. 23. Dealer's agent means a person who acts as a
12 buying agent for one or more motor vehicle dealers, motorcycle
13 dealers, or trailer dealers.

14 Sec. 24. Designated family member means the spouse,
15 child, grandchild, parent, brother, or sister of the owner of a new
16 motor vehicle dealership who, in the case of the owner's death,
17 is entitled to inherit the ownership interest in the new motor
18 vehicle dealership under the terms of the owner's will, who has
19 been nominated in any other written instrument, or who, in the case
20 of an incapacitated owner of such dealership, has been appointed
21 by a court as the legal representative of the new motor vehicle
22 dealer's property.

23 Sec. 25. Distributor means a person, resident or
24 nonresident of this state, who, in whole or in part, sells or
25 distributes new motor vehicles, trailers, or motorcycles to dealers

1 or who maintains distributors or representatives who sell or
2 distribute motor vehicles, trailers, or motorcycles to dealers and
3 also has the same meaning as the term franchisor.

4 Sec. 26. Distributor representative means a
5 representative employed by a distributor or distributor branch
6 for the same purpose as set forth in the definition of factory
7 representative.

8 Sec. 27. (1) Established place of business means a
9 permanent location within this state, easily accessible to the
10 public, owned or leased by the applicant or a licensee for at least
11 the term of the license year, and conforming with applicable zoning
12 laws, at which the licensee conducts the business for which he or
13 she is licensed and may be contacted by the public during posted
14 reasonable business hours which shall be not less than forty hours
15 per week.

16 (2) The established place of business shall have the
17 following facilities:

18 (a) Office space in a building or mobile home, which
19 space shall be clean, dry, safe, and well lighted and in
20 which shall be kept and maintained all books, records, and files
21 necessary for the conduct of the licensed business, which premises,
22 books, records, and files shall be available for inspection
23 during regular business hours by any peace officer or investigator
24 employed or designated by the board. Dealers shall, upon demand
25 of the board's investigator, furnish copies of records so required

1 when conducting any investigation of a complaint;

2 (b) A sound and well-maintained sign which is legible
3 from a public road and displayed with letters not less than eight
4 inches in height and one contiguous area to display ten or more
5 motor vehicles, motorcycles, or trailers in a presentable manner;

6 (c) Adequate repair facilities and tools to properly
7 and actually service warranties on motor vehicles, motorcycles,
8 or trailers sold at such place of business and to make other
9 repairs arising out of the conduct of the licensee's business or,
10 in lieu of such repair facilities, the licensee may enter into a
11 contract for the provision of such service and file a copy thereof
12 annually with the board and shall furnish to each buyer a written
13 statement as to where such service will be provided as required by
14 section 60-1417. The service facility shall be located in the same
15 county as the licensee unless the board specifically authorizes
16 the facility to be located elsewhere. Such facility shall maintain
17 regular business hours and shall have suitable repair equipment and
18 facilities to service and inspect the type of vehicles sold by the
19 licensee. Investigators of the board may certify ongoing compliance
20 with the service and inspection facilities or repair facilities;
21 and

22 (d) An operating telephone connected with a public
23 telephone exchange and located on the premises of the established
24 place of business with a telephone number listed by the public
25 telephone exchange and available to the public during the required

1 posted business hours.

2 (3) A mobile truck equipped with repair facilities to
3 properly perform warranty functions and other repairs shall be
4 deemed adequate repair facilities for trailers.

5 (4) The requirements of this section shall apply to the
6 place of business authorized under a supplemental motor vehicle,
7 motorcycle, or trailer dealer's license.

8 Sec. 28. Factory branch means a branch office maintained
9 in this state by a person who manufactures, assembles, or
10 distributes motor vehicles, motorcycles, or trailers for the sale
11 of such motor vehicles, motorcycles, or trailers to distributors or
12 dealers or for directing or supervising, in whole or in part, its
13 representatives in this state.

14 Sec. 29. Factory representative means a representative
15 employed by a person who manufactures or assembles motor vehicles,
16 motorcycles, or trailers, or by a factory branch, for the purpose
17 of promoting the sale of its motor vehicles, motorcycles, or
18 trailers to, or for supervising or contacting, its dealers or
19 prospective dealers in this state.

20 Sec. 30. Finance company means any person engaged in
21 the business of financing sales of motor vehicles, motorcycles,
22 or trailers, or purchasing or acquiring promissory notes, secured
23 instruments, or other documents by which the motor vehicles,
24 motorcycles, or trailers are pledged as security for payment of
25 obligations arising from such sales and who may find it necessary

1 to engage in the activity of repossession and the sale of the motor
2 vehicles, motorcycles, or trailers so pledged.

3 Sec. 31. Franchise means a contract between two or more
4 persons when all of the following conditions are included:

5 (1) A commercial relationship of definite duration or
6 continuing indefinite duration is involved;

7 (2) The franchisee is granted the right to offer and sell
8 motor vehicles manufactured or distributed by the franchisor;

9 (3) The franchisee, as an independent business,
10 constitutes a component of the franchisor's distribution system;

11 (4) The operation of the franchisee's business is
12 substantially associated with the franchisor's trademark, service
13 mark, trade name, advertising, or other commercial symbol
14 designating the franchisor; and

15 (5) The operation of the franchisee's business is
16 substantially reliant on the franchisor for the continued supply of
17 motor vehicles, parts, and accessories.

18 Sec. 32. Franchisee means a new motor vehicle dealer who
19 receives motor vehicles from the franchisor under a franchise and
20 who offers and sells such motor vehicles to the general public.

21 Sec. 33. Franchisor means a person who manufactures or
22 distributes motor vehicles and who may enter into a franchise.

23 Sec. 34. Line-make means the motor vehicles that are
24 offered for sale, lease, or distribution under a common name,
25 trademark, service mark, or brand name of the franchisor or

1 manufacturer of the motor vehicle or a factory branch.

2 Sec. 35. Manufactured home means a structure,
3 transportable in one or more sections, which in the traveling mode
4 is eight body feet or more in width or forty body feet or more in
5 length or when erected on site is three hundred twenty or more
6 square feet and which is built on a permanent chassis and designed
7 to be used as a dwelling with or without a permanent foundation
8 when connected to the required utilities and includes the plumbing,
9 heating, air conditioning, and electrical systems contained in the
10 structure, except that manufactured home includes any structure
11 that meets all of the requirements of this section other than
12 the size requirements and with respect to which the manufacturer
13 voluntarily files a certification required by the United States
14 Secretary of Housing and Urban Development and complies with
15 the standards established under the National Manufactured Housing
16 Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et
17 seq. as such act existed on January 1, 2010.

18 Sec. 36. Manufacturer means any person, resident or
19 nonresident of this state, who is engaged in the business of
20 distributing, manufacturing, or assembling a line-make of new motor
21 vehicles, trailers, or motorcycles and distributes them directly
22 or indirectly through one or more distributors to one or more new
23 motor vehicle, trailer, or motorcycle dealers in this state and
24 also has the same meaning as the term franchisor.

25 Manufacturer also includes a central or principal sales

1 corporation or other entity through which, by contractual agreement
2 or otherwise, a manufacturer distributes its products.

3 Sec. 37. Motor vehicle means any vehicle for which
4 evidence of title is required as a condition precedent to
5 registration under the laws of this state but does not include
6 trailers.

7 Motor vehicle also means any engine, transmission, or
8 rear axle, regardless of whether attached to a vehicle chassis,
9 that is manufactured for installation in any motor-driven vehicle
10 with a gross vehicle weight rating of more than sixteen thousand
11 pounds for which motor-driven vehicle evidence of title is required
12 as a condition precedent to registration under the laws of this
13 state.

14 Sec. 38. Motor vehicle dealer means any person, other
15 than a bona fide consumer, actively and regularly engaged in the
16 act of selling, leasing for a period of thirty or more days, or
17 exchanging new or used motor vehicles, trailers, and manufactured
18 homes who buys, sells, exchanges, causes the sale of, or offers or
19 attempts to sell new or used motor vehicles. Such person is a motor
20 vehicle dealer and subject to the Motor Vehicle Industry Regulation
21 Act.

22 Motor vehicle dealer does not include a lessor who
23 was not involved in or associated with the selection, location,
24 acquisition, or supply of a motor vehicle which is the subject of a
25 lease agreement.

1 Sec. 39. Motor vehicle, motorcycle, or trailer
2 salesperson means any person who, for a salary, commission,
3 or compensation of any kind, is employed directly by only one
4 specified licensed Nebraska motor vehicle dealer, motorcycle
5 dealer, or trailer dealer, except when the salesperson is working
6 for two or more dealerships with common ownership, to sell,
7 purchase, or exchange or to negotiate for the sale, purchase, or
8 exchange of motor vehicles, motorcycles, or trailers. A person
9 owning any part of more than one dealership may be a salesperson
10 for each of such dealerships. For purposes of this section, common
11 ownership means that there is at least an eighty percent interest
12 in each dealership by one or more persons having ownership in such
13 dealership.

14 Sec. 40. Motorcycle means every motor vehicle, except a
15 tractor, having a seat or saddle for use of the rider and designed
16 to travel on not more than three wheels in contact with the
17 ground and for which evidence of title is required as a condition
18 precedent to registration under the laws of this state.

19 Sec. 41. Motorcycle dealer means any person, other than a
20 bona fide consumer, actively and regularly engaged in the business
21 of selling or exchanging new or used motorcycles.

22 Sec. 42. New motor vehicle means all motor vehicles which
23 are not included within the definition of a used motor vehicle.

24 Sec. 43. Person means every natural person, firm,
25 partnership, limited liability company, association, or

1 corporation.

2 Sec. 44. Retail, when used to describe a sale, means
3 a sale to any person other than a licensed dealer of any kind
4 licensed under the Motor Vehicle Industry Regulation Act.

5 Sec. 45. Sale, selling, and equivalent expressions
6 mean the attempted act or acts either as principal, agent, or
7 salesperson or in any capacity whatsoever of selling, bartering,
8 exchanging, or otherwise disposing of or negotiating or offering
9 or attempting to negotiate the sale, purchase, or exchange of or
10 interest in any motor vehicle, trailer, or motorcycle, including
11 the leasing of any motor vehicle, trailer, or motorcycle for a
12 period of thirty or more days with a right or option to purchase
13 under the terms of the lease.

14 Sec. 46. Scrap metal processor means any person engaged
15 in the business of buying vehicles, motorcycles, or parts thereof
16 for the purpose of remelting or processing into scrap metal or
17 who otherwise processes ferrous or nonferrous metallic scrap for
18 resale.

19 No scrap metal processor shall sell vehicles or
20 motorcycles without obtaining a wrecker or salvage dealer license.

21 Sec. 47. Supplemental motor vehicle, trailer, motorcycle,
22 or motor vehicle auction dealer means any person holding either
23 a motor vehicle, trailer, motorcycle, or motor vehicle auction
24 dealer's license engaging in the business authorized by such
25 license at a place of business that is more than three hundred feet

1 from any part of the place of business designated in the dealer's
2 original license but which is located within the city or county
3 described in such original license.

4 Sec. 48. Trailer means semitrailers and trailers as
5 defined in sections 60-348 and 60-354, respectively, which are
6 required to be licensed as commercial trailers, other vehicles
7 without motive power constructed so as to permit their being
8 used as conveyances upon the public streets and highways and so
9 constructed as not to be attached to real estate and to permit the
10 vehicle to be used for human habitation by one or more persons,
11 and camping trailers, slide-in campers, fold-down campers, and
12 fold-down tent trailers.

13 Machinery and equipment to which wheels are attached and
14 designed for being towed by a motor vehicle are excluded from the
15 Motor Vehicle Industry Regulation Act.

16 Sec. 49. Trailer dealer means any person, other than a
17 bona fide consumer, actively and regularly engaged in the business
18 of selling or exchanging new or used trailers and manufactured
19 homes.

20 Sec. 50. Used motor vehicle means every motor vehicle
21 which has been sold, bargained, exchanged, or given away or for
22 which title has been transferred from the person who first acquired
23 it from the manufacturer, importer, dealer, or agent of the
24 manufacturer or importer.

25 A new motor vehicle is not considered a used motor

1 vehicle until it has been placed in use by a bona fide consumer,
2 notwithstanding the number of transfers of the motor vehicle.

3 Sec. 51. Violator means a person acting without a
4 license or registration as required by the Motor Vehicle Industry
5 Regulation Act.

6 Sec. 52. Wrecker or salvage dealer means any person who
7 acquires one or more motor vehicles or trailers for the purpose
8 of dismantling them for the purpose of reselling the parts or
9 reselling the vehicles as scrap.

10 Sec. 53. (1) Nothing in the Motor Vehicle Industry
11 Regulation Act shall apply to the State of Nebraska or any of its
12 agencies or subdivisions.

13 (2) No insurance company, finance company, public utility
14 company, fleet owner, or other person coming into possession of
15 any motor vehicle, motorcycle, or trailer, as an incident to
16 its regular business, who sells or exchanges the motor vehicle,
17 motorcycle, or trailer shall be considered a dealer except persons
18 whose regular business is leasing or renting motor vehicles,
19 motorcycles, or trailers.

20 Sec. 54. Section 60-1402, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 60-1402 (1) There is hereby established the Nebraska
23 Motor Vehicle Industry Licensing Board which shall consist of the
24 Director of Motor Vehicles, who shall be chairman the chairperson
25 of the board, and nine members appointed by the Governor as

1 follows: One factory representative, one member of the general
2 public, and one motorcycle dealer, all of whom shall be appointed
3 from the state at large, one new motor vehicle dealer from each of
4 the three congressional districts of the state as the districts are
5 constituted on October 19, 1963, and two used motor vehicle dealers
6 and one trailer dealer or combination motor vehicle or trailer
7 dealer, not more than one used motor vehicle dealer being appointed
8 from the same congressional district as they are constituted on
9 October 19, 1963, and the trailer dealer or combination motor
10 vehicle or trailer dealer being appointed from the state at large.
11 No / PROVIDED, that no member of the board shall participate in
12 any manner in a proceeding before the board involving his or her
13 licensed business.

14 (2) On October 19, 1963, the Governor shall appoint a
15 new motor vehicle dealer and a trailer dealer or combination motor
16 vehicle or trailer dealer to the board. In making the appointments,
17 the Governor shall appoint one of the new members for one year and
18 one for two years as designated by him the Governor in making the
19 appointments. On January 1, 1972, the Governor shall appoint one
20 factory representative and one member of the general public to the
21 board, designating one to serve for a term of one year and one
22 for a term of two years. On January 1, 1974, the Governor shall
23 appoint one motorcycle dealer to serve for a term of three years.
24 At the expiration of the term of any appointed member of the board,
25 the Governor shall appoint a successor for a term of three years.

1 In the event of a vacancy on the board, the Governor shall fill
2 such vacancy by appointing a member to serve during the unexpired
3 term of the member whose office has become vacant. No member
4 appointed shall serve more than two consecutive terms. The action
5 of the majority of the members of the board shall be deemed the
6 action of the board. All appointments made to the board, except the
7 Director of Motor Vehicles, shall be confirmed by the Legislature
8 if in session. In the event the Legislature is not in session
9 all appointments including appointments to fill a vacancy shall be
10 temporary appointments until the next meeting of the Legislature
11 when the Governor shall nominate some person to fill the office.
12 Any person so nominated who is confirmed by the Legislature shall
13 hold his office during the remainder of the term. No appointed
14 person may act as a member of the board while holding any other
15 elective or appointive state or federal office except the Director
16 of Motor Vehicles. All appointed members of the board shall be paid
17 fifty dollars for each day actually engaged in the performance of
18 their duties and be entitled to their reasonable traveling expenses
19 in the performance of their duties.

20 Sec. 55. Section 60-1403, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 60-1403 (1) The board may:

23 (a) Regulate the issuance and revocation of licenses in
24 accordance with and subject to ~~sections 60-1401.01 to 60-1440; the~~
25 Motor Vehicle Industry Regulation Act;

1 (b) Perform all acts and duties provided for in ~~such~~
2 ~~sections~~ the act necessary to the administration and enforcement of
3 ~~such sections~~; the act; and

4 (c) Make and enforce rules and regulations relating to
5 the administration of but not inconsistent with ~~such sections~~ the
6 act.

7 (2) The board shall adopt a seal, which may be either an
8 engraved or ink stamp seal, with the words Nebraska Motor Vehicle
9 Industry Licensing Board and such other devices as the board may
10 desire included on the seal by which it shall authenticate the acts
11 of its office. Copies of all records and papers in the office of
12 the board under the hand and seal of its office shall be received
13 in evidence in all cases equally and with like effect as the
14 original.

15 (3) Investigators employed by the board may enter upon
16 and inspect the facilities, the required records, and any vehicles,
17 trailers, or motorcycles found in any licensed motor vehicle,
18 motorcycle, or trailer dealer's established place or places of
19 business.

20 Sec. 56. Section 60-1403.01, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 60-1403.01 (1) No person shall engage in the business as,
23 serve in the capacity of, or act as a motor vehicle, trailer, or
24 motorcycle dealer, wrecker or salvage dealer, salesperson, auction
25 dealer, dealer's agent, manufacturer, factory branch, factory

1 representative, distributor, distributor branch, or distributor
2 representative in this state without being licensed by the board
3 under the provisions of sections 60-1401.01 to 60-1440. Motor
4 Vehicle Industry Regulation Act. No salesperson's license shall be
5 issued to any person under the age of sixteen, and no dealer's
6 license shall be issued to any minor. No wrecker or salvage
7 dealer's license shall be issued or renewed unless the applicant
8 has a permanent place of business at which the activity requiring
9 licensing is performed and which conforms to all local laws.

10 (2) A license issued under sections 60-1401.01 to 60-1440
11 the act shall authorize the holder thereof to engage in the
12 business or activities permitted by the license subject to sections
13 60-1401.01 to 60-1440 the act and the rules and regulations adopted
14 and promulgated by the board under such sections. the act.

15 (3) This section shall not apply to a licensed real
16 estate salesperson or broker who negotiates for sale or sells a
17 trailer for any individual who is the owner of not more than two
18 trailers.

19 Sec. 57. Section 60-1404, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 60-1404 The board shall have the authority to employ
22 an executive director who shall direct and administer the affairs
23 of the board and who shall keep a record of all proceedings,
24 transactions, communications, and official acts of the board.
25 He or she shall be custodian of all records of the board and

1 perform such other duties as the board may require. The executive
2 director shall call a meeting of the board at the direction of
3 the chairperson thereof or upon a written request of two or more
4 members thereof. The executive director, with the approval of the
5 board, is authorized to employ an attorney at a minimum salary of
6 six hundred dollars per month together with such other employees,
7 including staff for its attorney, as may be necessary to properly
8 carry out Chapter 60, article 14, the Motor Vehicle Industry
9 Regulation Act, to fix the salaries of such employees, and to make
10 such other expenditures as are necessary to properly carry out
11 Chapter 60, article 14. the act. The office of the board shall be
12 maintained in the State Capitol at Lincoln and all files, records,
13 and property of the board shall at all times be and remain therein.
14 The executive director shall be the board's representative in the
15 administration of Chapter 60, article 14, the act, and he or she
16 shall insure that the policies and directives of the board are
17 carried out.

18 Sec. 58. Section 60-1405, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 60-1405 The Attorney General shall render to the Nebraska
21 Motor Vehicle Industry Licensing Board opinions on all questions of
22 law, relating to the interpretation of the provisions of Chapter
23 60, article 14, Motor Vehicle Industry Regulation Act or arising in
24 the administration thereof. He The Attorney General shall act as
25 attorney for the board in all actions and proceedings brought by or

1 against it under or pursuant to any of the provisions of Chapter
2 60, article 14; PROVIDED, all the act. All fees and expenses of the
3 Attorney General for such duties shall be paid out of the Nebraska
4 Motor Vehicle Industry Licensing Fund.

5 Sec. 59. Section 60-1406, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 60-1406 Licenses issued by the board under Chapter 60,
8 article 14, the Motor Vehicle Industry Regulation Act shall be of
9 the classes set out in this section and shall permit the business
10 activities described in this section:

11 (1) Motor vehicle dealer's license. This license permits
12 the licensee to engage in the business of selling or exchanging
13 new, used, or new and used motor vehicles, trailers, and
14 manufactured homes at the established place of business designated
15 in the license and another place or places of business located
16 within three hundred feet of the designated place of business and
17 within the city or county described in the original license. This
18 license permits the sale of a trade-in or consignment mobile home
19 greater than forty feet in length and eight feet in width and
20 located at a place other than the dealer's established place of
21 business. This license permits one person, either the licensee, if
22 he or she is the individual owner of the licensed business, or a
23 stockholder, officer, partner, or member of the licensee, to act as
24 a motor vehicle, trailer, and manufactured home salesperson and the
25 name of the authorized person shall appear on the license;

1 (2) Motor vehicle, motorcycle, or trailer salesperson
2 license. This license permits the licensee to engage in the
3 activities of a motor vehicle, motorcycle, or trailer salesperson.
4 This license permits the one person named on the license to act as
5 a salesperson;

6 (3) Manufacturer license. This license permits the
7 licensee to engage in the activities of a motor vehicle,
8 motorcycle, or trailer manufacturer or manufacturer's factory
9 branch;

10 (4) Distributor license. This license permits the
11 licensee to engage in the activities of a motor vehicle,
12 motorcycle, or trailer distributor;

13 (5) Factory representative license. This license permits
14 the licensee to engage in the activities of a factory branch
15 representative;

16 (6) Factory branch license. This license permits the
17 licensee to maintain a branch office in this state;

18 (7) Distributor representative license. This license
19 permits the licensee to engage in the activities of a distributor
20 representative;

21 (8) Finance company license. This license permits the
22 licensee to engage in the activities of repossession of motor
23 vehicles or trailers and the sale of such motor vehicles or
24 trailers so repossessed;

25 (9) Wrecker or salvage dealer license. This license

1 permits the licensee to engage in the business of acquiring motor
2 vehicles or trailers for the purpose of dismantling the motor
3 vehicles or trailers and selling or otherwise disposing of the
4 parts and accessories of motor vehicles or trailers;

5 (10) Supplemental motor vehicle, motorcycle, or trailer
6 dealer's license. This license permits the licensee to engage in
7 the business of selling or exchanging motor vehicles, motorcycles,
8 or trailers of the type designated in his or her dealer's license
9 at a specified place of business which is located more than three
10 hundred feet from any part of the place of business designated in
11 the original motor vehicle, motorcycle, or trailer dealer's license
12 but which is located within the city or county described in such
13 original license;

14 (11) Motorcycle dealer's license. This license permits
15 the licensee to engage in the business of selling or exchanging
16 new, used, or new and used motorcycles at the established place
17 of business designated in the license and another place or places
18 of business located within three hundred feet of the designated
19 place of business and within the city or county described in the
20 original license. This form of license permits one person named on
21 the license, either the licensee, if he or she is the individual
22 owner of the licensed business, or a stockholder, officer, partner,
23 or member of the licensee, to act as a motorcycle salesperson and
24 the name of the authorized person shall appear on the license;

25 (12) Motor vehicle auction dealer's license. This license

1 permits the licensee to engage in the business of selling motor
2 vehicles and trailers. This form of license permits one person
3 named on the license, either the licensee, if he or she is
4 the individual owner of the licensed business, or a stockholder,
5 officer, partner, or member of the licensee, to act as a motor
6 vehicle auction dealer's salesperson and the name of the authorized
7 person shall appear on the license;

8 (13) Trailer dealer's license. This license permits the
9 licensee to engage in the business of selling or exchanging new,
10 used, or new and used trailers and manufactured homes at the
11 established place of business designated in the license and another
12 place or places of business located within three hundred feet of
13 the designated place of business and within the city or county
14 described in the original license. This form of license permits one
15 person named on the license, either the licensee, if he or she is
16 the individual owner of the licensed business, or a stockholder,
17 officer, partner, or member of the licensee, to act as a trailer
18 and manufactured home salesperson and the name of the authorized
19 person shall appear on the license; and

20 (14) Dealer's agent license. This license permits the
21 licensee to act as the buying agent for one or more licensed motor
22 vehicle dealers, motorcycle dealers, or trailer dealers. The agent
23 shall act in accordance with a written contract and file a copy
24 of the contract with the board. The dealer shall be bound by and
25 liable for the actions of the agent. The dealer's agent shall

1 disclose in writing to each dealer with which the agent contracts
2 as an agent the names of all other dealers contracting with the
3 agent. The agent shall make each purchase on behalf of and in
4 the name of only one dealer and may purchase for dealers only at
5 auctions and only from licensed dealers. The agent shall not act
6 as a licensed dealer and is not authorized to sell any vehicle
7 pursuant to this license.

8 Sec. 60. Section 60-1407, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 60-1407 Any person desiring to apply for one or more of
11 the types of licenses described in Chapter 60, article 14, the
12 Motor Vehicle Industry Regulation Act shall submit to the board, in
13 writing, the following required information:

14 (1) The name and address of the applicant, if the
15 applicant is an individual, his or her social security number, and
16 the name under which he or she intends to conduct business. If
17 the applicant is a partnership or limited liability company, it
18 shall set forth the name and address of each partner or member
19 thereof and the name under which the business is to be conducted.
20 If the applicant is a corporation, it shall set forth the name of
21 the corporation and the name and address of each of its principal
22 officers;

23 (2) The place or places, including the city or village
24 and the street and street number, if any, where the business is to
25 be conducted or the salesperson employed;

1 (3) If the application is for a motor vehicle dealer's
2 license, trailer dealer's license, or motorcycle dealer's license
3 (a) the name or names of the new motor vehicle or vehicles,
4 new trailer or trailers, new motorcycle or motorcycles which the
5 applicant has been enfranchised to sell or exchange, (b) the
6 name or names and address or addresses of the manufacturer or
7 distributor who has enfranchised the applicant, (c) a current
8 copy of each existing franchise, and (d) a description of the
9 community; ~~as defined in section 60-1401.02 designated in the~~
10 ~~franchise agreement or, if the franchise agreement fails to~~
11 ~~designate a community, (i) the community of the franchisee is~~
12 ~~the area surrounding the location of the franchisee in a five-mile~~
13 ~~radius from the dealership if the location is within a city of the~~
14 ~~metropolitan class and (ii) the community of the franchisee is the~~
15 ~~county in which the franchisee is located if the location is not~~
16 ~~within a city of the metropolitan class;~~

17 (4) If the application is for any of the above-named
18 classes of dealer's licenses, the name and address of the
19 person who is to act as a motor vehicle, trailer, or motorcycle
20 salesperson under such license if issued;

21 (5) If the application is for a dealer's agent, the
22 dealers for which the agent will be buying; and

23 (6) A description of the proposed place or places of
24 business proposed to be operated in the event a license is granted
25 together with (a) a statement whether the applicant owns or leases

1 the proposed established place of business as defined in section
2 60-1401.02 and, if the proposed established place of business is
3 leased, the applicant shall file a true and correct copy of the
4 lease agreement, and (b) a description of the facilities for the
5 display of motor vehicles, trailers, and motorcycles;--

6 (7) If the application is for a manufacturer's license,
7 a statement regarding the manufacturer's compliance with the Motor
8 Vehicle Industry Regulation Act; and

9 (8) A statement that the licensee will comply with and
10 be subject to the act, the rules and regulations adopted and
11 promulgated by the board, and any amendments to the act and the
12 rules and regulations existing on the date of application.

13 Subdivision (3)(d) of this section shall not be construed
14 to require any licensee who has a franchise on August 31, 2003, to
15 show good cause to be in the same community as any other licensee
16 who has a franchise of the same line-make in the same community on
17 August 31, 2003.

18 Sec. 61. Section 60-1407.01, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 60-1407.01 (1) Upon the filing of any application, a
21 staff member of the board shall endorse on it the date of filing.
22 If no patent disqualification of the applicant is disclosed or if
23 no valid objection to the granting of the application is apparent
24 and if all requirements relative to the filing of the application
25 appear to have been complied with, the chairperson of the board or

1 executive director shall refer the application to a staff member
2 for investigation and report. The report shall include:

3 (a) A statement as to whether or not the applicant or any
4 person holding any financial interest in the applicant is for any
5 reason disqualified by Chapter 60, article 14, the Motor Vehicle
6 Industry Regulation Act from obtaining or exercising a license and
7 whether or not the applicant has complied with all the requirements
8 of Chapter 60, article 14, the act relative to the making and
9 filing of his or her application;

10 (b) Information relating to any and all other matters and
11 things which in the judgment of the staff member pertain to or
12 affect the matter of the application or the issuance or exercise of
13 the license applied for; and

14 (c) In the case of an application for a dealer's license:

15 (i) A description of the premises intended to become the
16 licensed premises and of the equipment and surrounding conditions;

17 (ii) If the applicant has held a prior dealer's license
18 for the same or any other premises within two years past, a
19 statement as to the manner in which the premises have been operated
20 and the business conducted under the previous license; and

21 (iii) If the applicant proposes to engage in the business
22 of selling new motor vehicles, motorcycles, or trailers, a written
23 statement from the applicable manufacturer, factory branch, factory
24 representative, distributor, distributor branch, or distributor
25 representative, or such other evidence as prescribed by the board,

1 that the applicant is authorized to sell or distribute such new
2 motor vehicles, motorcycles, or trailers.

3 (2) After the filing of the report, the board may
4 interview the applicant. Notice of such interview shall be given at
5 least ten days prior to the interview.

6 (3) The executive director shall not issue or renew a
7 license if the applicant or licensee does not (a) maintain an
8 established place of business, (b) meet the requirement for a bond
9 pursuant to section 60-1419, (c) present a certificate or policy
10 of insurance written by an insurance carrier duly authorized to
11 do business in this state which gives the effective dates of
12 coverage indicating that it is in force, which covers the fleet of
13 motor vehicles owned by the applicant or licensee in the ordinary
14 course of business, and which provides liability coverage as
15 described in sections 60-534 and 60-538, and (d) present evidence
16 of compliance with the insurance requirements of the Nebraska
17 Workers' Compensation Act, and (e) meet requirements for licensure
18 and comply with the Motor Vehicle Industry Regulation Act, the
19 rules and regulations adopted and promulgated by the board, and any
20 amendments to the act and the rules and regulations. The executive
21 director shall refuse to renew a motor vehicle dealer's license if
22 the dealer cannot prove that he or she sold at least five motor
23 vehicles during the previous licensing period. The requirement
24 under subdivision (c) of this subsection for a certificate or
25 policy of insurance shall not apply to trailer dealers.

1 (4) The board shall revoke the license of any licensee
2 if, after December 31, 1991, it comes to the attention of the board
3 that the policy of motor vehicle liability coverage required under
4 subdivision (3)(c) of this section is no longer in force.

5 (5) Nothing in this section shall be construed to change
6 any existing liability or to create any new liability. The
7 requirement under subdivision (3)(c) of this section for liability
8 coverage shall not be construed to imply that the insurance of the
9 dealer or dealership is the primary source of coverage for a claim
10 involving the fleet.

11 Sec. 62. Section 60-1407.02, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 60-1407.02 It shall be unlawful for any person holding
14 a Nebraska sales tax permit, except a dealer licensed pursuant
15 to Chapter 60, article 14, the Motor Vehicle Industry Regulation
16 Act, to sell or offer for sale any motor vehicle, motorcycle,
17 or trailer, not owned by such person, on the premises covered by
18 such sales tax permit. Any person violating the provisions of this
19 section shall be guilty of a Class IV misdemeanor.

20 Sec. 63. Section 60-1407.03, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 60-1407.03 Notwithstanding the other provisions of
23 Chapter 60, article 14, the Motor Vehicle Industry Regulation Act
24 restricting sales to an established place of business, any motor
25 vehicle, motorcycle, or trailer dealer licensed in accordance with

1 Chapter 60, article 14, the act may be granted a special permit
2 to display and sell passenger cars, motor vehicles, motorcycles,
3 trailers, or self-propelled motor homes at fairs, sports shows,
4 vacation shows, and similar events, subject to the conditions
5 established by sections 60-1407.02 to 60-1407.04.

6 Sec. 64. Section 60-1407.04, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 60-1407.04 The event for which such a permit is sought
9 under section 60-1407.03 must be approved by the board. In
10 determining approval, the board shall consider the size, location,
11 duration, sponsors, and purpose of the event. Approval shall not be
12 given to any event sponsored solely by a dealer or dealers, or for
13 which the sole or primary purpose is the sale of motor vehicles,
14 motorcycles, trailers, or self-propelled mobile homes.

15 Sec. 65. Section 60-1409, Reissue Revised Statutes of
16 Nebraska, as amended by section 36, Legislative Bill 3, One Hundred
17 First Legislature, First Special Session, 2009, is amended to read:

18 60-1409 The Nebraska Motor Vehicle Industry Licensing
19 Fund is created. All fees collected under Chapter 60, article 14,
20 the Motor Vehicle Industry Regulation Act shall be remitted by
21 the board, as collected, to the State Treasurer for credit to the
22 fund. Such fund shall be appropriated by the Legislature for the
23 operations of the Nebraska Motor Vehicle Industry Licensing Board
24 and shall be paid out from time to time by warrants of the Director
25 of Administrative Services on the State Treasurer for authorized

1 expenditures upon duly itemized vouchers executed as provided by
2 law and approved by the chairperson of the board or the executive
3 secretary, except that transfers from the fund to the General Fund
4 may be made at the direction of the Legislature through June 30,
5 2011. The expenses of conducting the office must always be kept
6 within the income collected and reported to the State Treasurer by
7 such board. Such office and expense thereof shall not be supported
8 or paid from the General Fund, and all money deposited in the
9 Nebraska Motor Vehicle Industry Licensing Fund shall be expended
10 only for such office and expense thereof and, unless determined by
11 the board, it shall not be required to expend any funds to any
12 person or any other governmental agency.

13 Any money in the Nebraska Motor Vehicle Industry
14 Licensing Fund available for investment shall be invested by the
15 state investment officer pursuant to the Nebraska Capital Expansion
16 Act and the Nebraska State Funds Investment Act. The fund shall be
17 audited annually by the Auditor of Public Accounts.

18 The State Treasurer shall transfer five hundred thousand
19 dollars from the Nebraska Motor Vehicle Industry Licensing Fund to
20 the General Fund within fifteen days after July 1, 2002.

21 Sec. 66. Section 60-1411.01, Revised Statutes Cumulative
22 Supplement, 2008, is amended to read:

23 60-1411.01 (1) Until January 1, 2008, to pay the expenses
24 of the administration, operation, maintenance, and enforcement of
25 sections 60-1401.01 to 60-1440, the board shall collect with each

1 application for each class of license fees not exceeding the
2 following amounts:

3 (a) Motor vehicle dealer's license, two hundred dollars;

4 (b) Supplemental motor vehicle dealer's license, ten
5 dollars;

6 (c) Motor vehicle or motorcycle salesperson's license,
7 ten dollars;

8 (d) Dealer's agent license, fifty dollars;

9 (e) Motor vehicle, motorcycle, or trailer manufacturer's
10 license, three hundred dollars;

11 (f) Distributor's license, three hundred dollars;

12 (g) Factory representative's license, ten dollars;

13 (h) Distributor representative's license, ten dollars;

14 (i) Finance company's license, two hundred dollars;

15 (j) Wrecker or salvage dealer's license, one hundred
16 dollars;

17 (k) Factory branch license, one hundred dollars;

18 (l) Motorcycle dealer's license, two hundred dollars;

19 (m) Motor vehicle auction dealer's license, two hundred
20 dollars; and

21 (n) Trailer dealer's license, two hundred dollars.

22 (2) On and after January 1, 2008, to (1) To pay
23 the expenses of the administration, operation, maintenance, and
24 enforcement of sections 60-1401.01 to 60-1440, the Motor Vehicle
25 Industry Regulation Act, the board shall collect with each

1 application for each class of license fees not exceeding the
2 following amounts:

3 (a) Motor vehicle dealer's license, four hundred dollars;

4 (b) Supplemental motor vehicle dealer's license, twenty
5 dollars;

6 (c) Motor vehicle or motorcycle salesperson's license,
7 twenty dollars;

8 (d) Dealer's agent license, one hundred dollars;

9 (e) Motor vehicle, motorcycle, or trailer manufacturer's
10 license, six hundred dollars;

11 (f) Distributor's license, six hundred dollars;

12 (g) Factory representative's license, twenty dollars;

13 (h) Distributor representative's license, twenty dollars;

14 (i) Finance company's license, four hundred dollars;

15 (j) Wrecker or salvage dealer's license, two hundred
16 dollars;

17 (k) Factory branch license, two hundred dollars;

18 (l) Motorcycle dealer's license, four hundred dollars;

19 (m) Motor vehicle auction dealer's license, four hundred
20 dollars; and

21 (n) Trailer dealer's license, four hundred dollars.

22 (3) (2) The fees shall be fixed by the board and
23 shall not exceed the amount actually necessary to sustain the
24 administration, operation, maintenance, and enforcement of ~~sections~~
25 ~~60-1401.01 to 60-1440.~~ the act.

1 ~~(4)~~ (3) Such licenses, if issued, shall expire on
2 December 31 next following the date of the issuance thereof.
3 Any motor vehicle, motorcycle, or trailer dealer changing its
4 location shall not be required to obtain a new license if the new
5 location is within the same city limits or county, all requirements
6 of law are complied with, and a fee of twenty-five dollars is
7 paid, but any change of ownership of any licensee shall require
8 a new application for a license and a new license. Change of
9 name of licensee without change of ownership shall require the
10 licensee to obtain a new license and pay a fee of five dollars.
11 Applications shall be made each year for a new or renewal license.
12 If the applicant is an individual, the application shall include
13 the applicant's social security number.

14 Sec. 67. Section 60-1411.02, Revised Statutes Cumulative
15 Supplement, 2008, is amended to read:

16 60-1411.02 The board may, upon its own motion, and shall,
17 upon a sworn complaint in writing of any person, investigate
18 the actions of any person acting, registered, or licensed under
19 Chapter 60, article 14, the Motor Vehicle Industry Regulation
20 Act as a motor vehicle dealer, trailer dealer, motor vehicle or
21 trailer salesperson, dealer's agent, manufacturer, factory branch,
22 distributor, factory representative, distributor representative,
23 supplemental motor vehicle dealer, wrecker or salvage dealer,
24 finance company, motorcycle dealer, or motor vehicle auction
25 dealer or operating without a registration or license when such

1 registration or license is required. The board may deny any
2 application for a license, may revoke or suspend a license, may
3 place the licensee or registrant on probation, may assess an
4 administrative fine in an amount not to exceed five thousand
5 dollars per violation, or may take any combination of such actions
6 if the violator, applicant, registrant, or licensee including any
7 officer, stockholder, partner, or limited liability company member
8 or any person having any financial interest in the violator,
9 applicant, registrant, or licensee:

- 10 (1) Has had any license issued under Chapter 60, article
11 14, the act revoked or suspended and, if the license has been
12 suspended, has not complied with the terms of suspension;
13 (2) Has knowingly purchased, sold, or done business in
14 stolen motor vehicles, motorcycles, or trailers or parts therefor;
15 (3) Has failed to provide and maintain an established
16 place of business;
17 (4) Has been found guilty of any felony which has not
18 been pardoned, has been found guilty of any misdemeanor concerning
19 fraud or conversion, or has suffered any judgment in any civil
20 action involving fraud, misrepresentation, or conversion. In the
21 event felony charges are pending against an applicant, the board
22 may refuse to issue a license to the applicant until there has been
23 a final determination of the charges;
24 (5) Has made a false material statement in his or her
25 application or any data attached to the application or to any

1 investigator or employee of the board;

2 (6) Has willfully failed to perform any written agreement
3 with any consumer or retail buyer;

4 (7) Has made a fraudulent sale, transaction, or
5 repossession, or created a fraudulent security interest as defined
6 in the Uniform Commercial Code, in a motor vehicle, trailer, or
7 motorcycle;

8 (8) Has failed to notify the board of a change in the
9 location of his or her established place or places of business and
10 in the case of a salesperson has failed to notify the board of any
11 change in his or her employment;

12 (9) Has willfully failed to deliver to a purchaser a
13 proper certificate of ownership for a motor vehicle, trailer, or
14 motorcycle sold by the licensee or to refund the full purchase
15 price if the purchaser cannot legally obtain proper certification
16 of ownership within thirty days;

17 (10) Has forged the signature of the registered or legal
18 owner on a certificate of title;

19 (11) Has failed to comply with Chapter 60, article 14,
20 the act and any orders, rules, or regulations of the board adopted
21 and promulgated under Chapter 60, article 14, the act;

22 (12) Has failed to comply with the advertising and
23 selling standards established in section 60-1411.03;

24 (13) Has failed to comply with any provisions of the
25 Motor Vehicle Certificate of Title Act, the Motor Vehicle Industry

1 Regulation Act, the Motor Vehicle Registration Act, Chapter 60,
2 article 14, or the rules or regulations adopted and promulgated by
3 the board pursuant to Chapter 60, article 14, the Motor Vehicle
4 Industry Regulation Act;

5 (14) Has failed to comply with any provision of Chapter
6 71, article 46, or with any code, standard, rule, or regulation
7 adopted or made under the authority of or pursuant to Chapter 71,
8 article 46;

9 (15) Has willfully defrauded any retail buyer or other
10 person in the conduct of the licensee's business;

11 (16) Has employed any unlicensed salesperson or
12 salespersons;

13 (17) Has failed to comply with sections 60-190 to 60-196;

14 (18) Has engaged in any unfair methods of competition or
15 unfair or deceptive acts or practices prohibited under the Uniform
16 Deceptive Trade Practices Act; or

17 (19) Has conspired, as defined in section 28-202, with
18 other persons to process certificates of title in violation of the
19 Motor Vehicle Certificate of Title Act.

20 If the violator, applicant, registrant, or licensee is a
21 publicly held corporation, the board's authority shall extend only
22 to the corporation and its managing officers and directors.

23 Sec. 68. Section 60-1411.03, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 60-1411.03 It shall be unlawful for any licensee or motor

1 vehicle dealer to engage, directly or indirectly, in the following
2 acts:

3 (1) To advertise and offer any year, make, engine size,
4 model, type, equipment, price, trade-in allowance, or terms or make
5 other claims or conditions pertaining to the sale, leasing, or
6 rental of motor vehicles, motorcycles, and trailers which are not
7 truthful and clearly set forth;

8 (2) To advertise for sale, lease, or rental a specific
9 motor vehicle, motorcycle, or trailer which is not in the
10 possession of the dealer, owner, or advertiser and willingly
11 shown and sold, as advertised, illustrated, or described, at the
12 advertised price and terms, at the advertised address. Unless
13 otherwise specified, a motor vehicle, motorcycle, or trailer
14 advertised for sale shall be in operable condition and, on request,
15 the advertiser thereof shall show records to substantiate an
16 advertised offer;

17 (3) To advertise a new motor vehicle, motorcycle, or
18 trailer at a price which does not include standard equipment with
19 which it is fitted or is ordinarily fitted, without disclosing
20 such fact, or eliminating any such equipment for the purpose of
21 advertising a low price;

22 (4) To advertise (a) that the advertiser's prices are
23 always or generally lower than competitive prices and not met
24 or equalled by others or that the advertiser always or generally
25 undersells competitors, (b) that the advertiser's prices are always

1 or generally the lowest or that no other dealer has lower prices,
2 (c) that the advertiser is never undersold, or (d) that no other
3 advertiser or dealer will have a lower price;

4 (5) To advertise and make statements such as, Write Your
5 Own Deal, Name Your Own Price, or Name Your Own Monthly Payments
6 and other statements of a similar nature;

7 (6) To advertise by making disparaging comparisons
8 with competitors' services, quality, price, products, or business
9 methods;

10 (7) To advertise by making the layout, headlines,
11 illustrations, and type size of an advertisement so as to convey
12 or permit an erroneous impression as to which motor vehicle,
13 motorcycle, or trailer or motor vehicles, motorcycles, or trailers
14 are offered at featured prices. No advertised offer, expression,
15 or display of price, terms, downpayment, trade-in allowance, cash
16 difference, or savings shall be misleading by itself, and any
17 qualification to such offer, expression, or display shall be
18 clearly and conspicuously set forth in comparative type size and
19 style, location, and layout to prevent deception;

20 (8) To advertise the price of a motor vehicle,
21 motorcycle, or trailer without including all charges which the
22 customer must pay for the motor vehicle, motorcycle, or trailer,
23 excepting state and local taxes and license, title, and other
24 fees. It shall be unlawful to advertise prices described as
25 unpaid balance unless they are the full cash selling price and to

1 advertise price which is not the full selling price even though
2 qualified with expressions such as with trade, with acceptable
3 trade, or other similar words;

4 (9) To advertise as at cost, below cost, below invoice,
5 or wholesale, unless the term used is strictly construed that the
6 word cost as used in this subdivision or in a similar meaning is
7 the actual price paid by the advertiser to the manufacturer for the
8 motor vehicle, motorcycle, or trailer so advertised;

9 (10) To advertise claims that Everybody Financed, No
10 Credit Rejected, or We Finance Anyone and other similar affirmative
11 statements;

12 (11) To advertise a specific trade-in amount or range of
13 amounts;

14 (12) To advertise the words Finance, Loan, or Discounts
15 or others of similar import in the firm name or trade style of a
16 person offering motor vehicles, motorcycles, and trailers for sale
17 unless such person is actually engaged in the finance business and
18 offering only bona fide repossessed motor vehicles, motorcycles,
19 and trailers. It shall be unlawful to use the word Repossessed
20 in the name or trade style of a firm in the advertising of motor
21 vehicles, motorcycles, and trailers sold by such a company unless
22 they are bona fide repossessions sold for unpaid balances due only.
23 Advertisers offering repossessed automobiles for sale shall be able
24 to offer proof of repossession;

25 (13) To advertise the term Authorized Dealer in any

1 way as to mislead as to the make or makes of motor vehicles,
2 motorcycles, or trailers for which a dealer is franchised to sell
3 at retail;

4 (14) To advertise or sell new motor vehicles,
5 motorcycles, and trailers by any person not enfranchised by the
6 manufacturer of the motor vehicle, motorcycle, or trailer offered
7 without disclosing the fact in each advertisement which includes
8 the motor vehicle, motorcycle, or trailer, and in writing in the
9 lease or purchase agreement that the licensee or motor vehicle
10 dealer is not enfranchised by the manufacturer for service under
11 factory warranty provisions. No person shall transfer ownership
12 of a motor vehicle by reassignment on a manufacturer's statement
13 of origin unless the person is enfranchised to do so by the
14 manufacturer of the motor vehicle;

15 (15) To advertise used motor vehicles, motorcycles, or
16 trailers so as to create the impression that they are new.
17 Used motor vehicles, motorcycles, and trailers of the current
18 and preceding model year shall be clearly identified as Used,
19 Executive Driven, Demonstrator, or Driver Training, and lease cars,
20 taxicabs, fleet vehicles, police motor vehicles, or motorcycles
21 as may be the case and descriptions such as Low Mileage or
22 Slightly Driven may also be applied only when correct. The
23 terms demonstrator's, executive's, and official's motor vehicles,
24 motorcycles, or trailers shall not be used unless (a) they have
25 never been sold to a member of the public, (b) such terms describe

1 motor vehicles, motorcycles, or trailers used by new motor vehicle,
2 motorcycle, or trailer dealers or their employees for demonstrating
3 performance ability, and (c) such vehicles are advertised for
4 sale as such only by an authorized dealer in the same make of
5 motor vehicle, motorcycle, or trailer. Phrases such as Last of
6 the Remaining, Closeout, or Final Clearance and others of similar
7 import shall not be used in advertising used motor vehicles,
8 motorcycles, and trailers so as to convey the impression that the
9 motor vehicles, motorcycles, and trailers offered are holdover new
10 motor vehicles, motorcycles, and trailers. When new and used motor
11 vehicles, motorcycles, and trailers of the current and preceding
12 model year are offered in the same advertisement, such offers shall
13 be clearly separated by description, layout, and art treatment;

14 (16) To advertise executives' or officials' motor
15 vehicles, motorcycles, or trailers unless they have been used
16 exclusively by the personnel or executive of the motor vehicle,
17 motorcycle, or trailer manufacturer or by an executive of any
18 authorized dealer of the same make thereof and such motor vehicles,
19 motorcycles, and trailers have not been sold to a member of the
20 public prior to the appearance of the advertisement;

21 (17) To advertise motor vehicles, motorcycles, and
22 trailers owned by or in the possession of dealers without the name
23 of the dealership or in any other manner so as to convey the
24 impression that they are being offered by private parties;

25 (18) To advertise the term wholesale in connection with

1 the retail offering of used motor vehicles, motorcycles, and
2 trailers;

3 (19) To advertise the terms auction or auction special
4 and other terms of similar import unless such terms are used in
5 connection with motor vehicles, motorcycles, and trailers offered
6 or sold at a bona fide auction to the highest bidder and under such
7 other specific conditions as may be required in Chapter 60, article
8 14, the Motor Vehicle Industry Regulation Act;

9 (20) To advertise free driving trial unless it means a
10 trial without obligation of any kind and that the motor vehicle,
11 motorcycle, or trailer may be returned in the period specified
12 without obligation or cost. A driving trial advertised on a
13 money back basis or with privilege of exchange or applying money
14 paid on another motor vehicle, motorcycle, or trailer shall be
15 so explained. Terms and conditions of driving trials, free or
16 otherwise, shall be set forth in writing for the customer;

17 (21) To advertise (a) the term Manufacturer's Warranty
18 unless it is used in advertising only in reference to cars covered
19 by a bona fide factory warranty for that particular make of motor
20 vehicle, motorcycle, or trailer. In the event only a portion of
21 such warranty is remaining, then reference to a warranty may be
22 used only if stated that that unused portion of the warranty
23 is still in effect, (b) the term New Car Guarantee except in
24 connection with new motor vehicles, motorcycles, and trailers,
25 and (c) the terms Ninety-day Warranty, Fifty-fifty Guarantee,

1 Three-hundred-mile Guarantee, and Six-month Warranty, unless the
2 major terms and exclusions are sufficiently described in the
3 advertisement;

4 (22) To advertise representations inconsistent with or
5 contrary to the fact that a motor vehicle, motorcycle, or trailer
6 is sold as is and without a guarantee. The customer contract shall
7 clearly indicate when a car will be sold with a guarantee and what
8 that guarantee is and similarly shall clearly indicate when a car
9 is sold as is and without a guarantee; and

10 (23) To advertise or to make any statement, declaration,
11 or representation in any advertisement that cannot be substantiated
12 in fact, and the burden of proof of the factual basis for the
13 statement, declaration, or representation shall be on the licensee
14 or motor vehicle dealer and not on the board.

15 Sec. 69. Section 60-1415, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 60-1415 (1) The board shall state in writing, officially
18 signed by the chairperson or vice-chairperson and the executive
19 director, its findings and determination after such hearing and
20 its order in the matter. If the board determines and orders
21 that an applicant is not qualified to receive a license or
22 registration, no license or registration shall be granted. If the
23 board determines that the party has willfully or through undue
24 negligence been guilty of any violation of Chapter 60, article 14,
25 the Motor Vehicle Industry Regulation Act or any rule or regulation

1 adopted and promulgated by the board under authority of Chapter
2 60, article 14, the act, the board may suspend or revoke the
3 license or registration, place the party on probation, assess an
4 administrative fine, or take any combination of such actions. In
5 determining the amount of the fine, the board may consider the
6 appropriateness of the penalty with respect to the gravity of the
7 violation, the history of previous violations, and any attempt made
8 by the party to retaliate against another party for seeking relief
9 pursuant to the laws, rules, or regulations relating to motor
10 vehicle industry licensing. The board may also, after hearing,
11 assess an additional administrative fine in an amount not to exceed
12 five thousand dollars for each day a violation continues if a
13 party fails to obey a direct order of the board or repeats the
14 same violation within forty-eight months of the previous violation.
15 The imposition of any such additional administrative fine shall
16 commence one month after the initial order of the board or any
17 final order on appeal if taken for failure to obey a direct order
18 of the board and on the date of the second or subsequent violation
19 for repeat violations within forty-eight months. The board may make
20 a demand on a violator for restitution to a harmed consumer. The
21 party may appeal the decision of the board. The appeal shall be in
22 accordance with the Administrative Procedure Act.

23 (2) All money collected by the board as an administrative
24 fine shall be remitted on a monthly basis to the State Treasurer
25 for credit to the permanent school fund. The board shall remit

1 administrative fines to the State Treasurer on a monthly basis
2 for distribution in accordance with Article VII, section 5, of
3 the Constitution of Nebraska. Any administrative fine imposed under
4 this section and unpaid shall constitute a debt to the State of
5 Nebraska which may be collected by lien foreclosure or sued for and
6 recovered in any proper form of action, in the name of the State of
7 Nebraska, in the district court of the county in which the violator
8 resides or owns property.

9 Sec. 70. Section 60-1415.01, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 60-1415.01 Whenever the board shall believe from evidence
12 satisfactory to it that any person has violated or is violating any
13 provisions of Chapter 60, article 14, the Motor Vehicle Industry
14 Regulation Act, the board may, in addition to any other remedy,
15 bring an action in the name and on behalf of the State of Nebraska
16 against such person and any other person concerned in or in any way
17 participating in or about to participate in practices or acts in
18 violation of Chapter 60, article 14, the act to enjoin such person
19 and such other person from continuing the same. In any such action,
20 the board may apply for and on due showing be entitled to have
21 issued the court's subpoena, requiring forthwith the appearance
22 of any defendant, his agent and employees and the production of
23 documents, books, and records as may appear necessary for the
24 hearing of such petition to testify and give evidence concerning
25 the acts or conduct of practices or things complained of in such

1 application for injunction. In such action an order or judgment may
2 be entered awarding such preliminary or final injunctions as may be
3 proper.

4 Sec. 71. Section 60-1417.02, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 60-1417.02 (1) Any person who engages in or attempts to
7 engage in the selling of motor vehicles or trailers at an auction
8 licensed pursuant to Chapter 60, article 14, the Motor Vehicle
9 Industry Regulation Act shall register to do so. Registration shall
10 be made on a form provided by the auction dealer and approved
11 by the board. A copy of the registration shall serve as proof of
12 registration for the calendar year. The registration information
13 shall be made available and accessible to the board by the auction
14 dealer within seventy-two hours after the registrant has met the
15 registration requirements and such registration is issued. Such
16 registration information shall be maintained and made accessible to
17 the board by the auction dealer for two years. It shall be the duty
18 of the auction dealer to ensure that no seller participates in any
19 sales activities until and unless registration has been received
20 by the auction dealer or unless such seller is otherwise licensed
21 under Chapter 60, article 14. the act.

22 (2) The information required on the registration form
23 shall include, but not be limited to, the following: (a) The
24 legal name of the registrant; (b) the registrant's current mailing
25 address and telephone number; (c) the business name and address of

1 the person with whom the registrant is associated; and (d) whether
2 or not the registrant is bonded.

3 (3) The registration form shall be signed by the
4 registrant and an authorized representative of the auction and
5 shall be notarized by a notary public.

6 (4) Any person who is convicted of any violation of
7 Chapter 60, article 14, the act pursuant to section 60-1411.02, may
8 be denied the right to be registered at all licensed auctions of
9 this state following a hearing before the board as prescribed in
10 section 60-1413.

11 Sec. 72. Section 60-1420, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 60-1420 (1) Except as provided in subsection (2) of this
14 section, no franchisor shall terminate or refuse to continue any
15 franchise unless the franchisor has first established, in a hearing
16 held pursuant to section 60-1425, that:

17 (a) The franchisor has good cause for termination or
18 noncontinuance;

19 (b) Upon termination or noncontinuance, another franchise
20 in the same line-make will become effective in the same community,
21 without diminution of the franchisee's service formerly provided,
22 or that the community cannot be reasonably expected to support such
23 a dealership; and

24 (c) The franchisor is willing and able to comply with
25 section 60-1430.02.

1 (2) Upon providing good and sufficient evidence to the
2 board, a franchisor may terminate a franchise without such hearing
3 (a) for a particular line-make if the franchisor discontinues that
4 line-make, (b) if the franchisee's license as a motor vehicle,
5 combination motor vehicle and trailer, motorcycle, or trailer
6 dealer is revoked pursuant to Chapter 60, article 14, the Motor
7 Vehicle Industry Regulation Act, or (c) upon a mutual written
8 agreement of the franchisor and franchisee.

9 Sec. 73. Section 60-1421, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 60-1421 If franchisor is permitted to terminate or not
12 continue a franchise, and is further permitted not to enter into
13 a franchise, for the line-make in the community, no franchise
14 shall thereafter be entered into for the sale of a motor vehicle,
15 combination motor vehicle and trailer, motorcycle, or trailer
16 dealer of that line-make in the community, unless the franchisor
17 has first established, in a hearing held under the provisions of
18 Chapter 60, article 14, Motor Vehicle Industry Regulation Act that
19 there has been a change of circumstances so that the community at
20 that time can be reasonably expected to support the dealership.

21 Sec. 74. Section 60-1422, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 60-1422 No franchisor shall enter into any franchise
24 for the purpose of establishing an additional motor vehicle,
25 combination motor vehicle and trailer, motorcycle, or trailer

1 dealership or warranty repair service facility, in any community in
2 which the same line-make is then represented, unless the franchisor
3 has first established in a hearing held under Chapter 60, article
4 14, the Motor Vehicle Industry Regulation Act that there is
5 good cause for such additional motor vehicle, combination motor
6 vehicle and trailer, motorcycle, or trailer dealership under such
7 franchise, or warranty repair service facility, and that it is in
8 the public interest.

9 Sec. 75. Section 60-1427, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 60-1427 Upon hearing, the franchisor shall have the
12 burden of proof to establish that under the provisions of Chapter
13 60, article 14, the Motor Vehicle Industry Regulation Act the
14 franchisor should be granted permission to terminate or not
15 continue the franchise, or to enter into a franchise establishing
16 an additional motor vehicle, combination motor vehicle and trailer,
17 motorcycle, or trailer dealership.

18 Nothing contained in Chapter 60, article 14, the act
19 shall be construed to require or authorize any investigation by
20 the board of any matter before the board under the provisions of
21 sections 60-1420 to 60-1435. Upon hearing, the board shall hear
22 the evidence introduced by the parties and shall make its decision
23 solely upon the record so made.

24 Sec. 76. Section 60-1428, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 60-1428 The rules of civil procedure relating to
2 discovery and inspection shall apply to hearings held under the
3 provisions of Chapter 60, article 14, Motor Vehicle Industry
4 Regulation Act, and the board may issue orders to give effect to
5 such rules.

6 If issues are raised which would involve violations of
7 any state or federal antitrust or price-fixing law, all discovery
8 and inspection proceedings which would be available under such
9 issues in a state or federal court action shall be available to
10 the parties to the hearing, and the board may issue orders to give
11 effect to such proceedings.

12 Evidence which would be admissible under the issues in
13 a state or federal court action shall be admissible in a hearing
14 held by the board. The board shall apportion all costs between the
15 parties.

16 Sec. 77. Section 60-1430, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 60-1430 Notwithstanding the terms, provisions, or
19 conditions of any agreement or franchise, subject to subdivision
20 (2) of section 60-1429, in the event of the sale or a contract for
21 sale or transfer of ownership of the franchisee's dealership by
22 sale or transfer of the business or by stock transfer or in the
23 event of change in the executive management of the franchisee's
24 dealership, the franchisor shall give effect to such a change in
25 the franchise unless (1) the transfer of the franchisee's license

1 under Chapter 60, article 14, the Motor Vehicle Industry Regulation
2 Act is denied or the new owner is unable to obtain a license under
3 Chapter 60, article 14, the act, as the case may be, or (2) the
4 proposed sale or transfer of the business or change of executive
5 management will be substantially detrimental to the distribution
6 of the franchisor's motor vehicles, combination motor vehicles and
7 trailers, motorcycles, or trailer products or to competition in the
8 community if the franchisor has given written notice of such fact
9 to the franchisee within sixty days of receipt by the franchisor of
10 information reasonably necessary to evaluate the proposed change.

11 Sec. 78. Section 60-1430.01, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 60-1430.01 (1) Any designated family member of a deceased
14 or incapacitated new motor vehicle dealer may succeed the dealer
15 in the ownership or operation of the dealership under the
16 existing dealer agreement if the designated family member gives
17 the manufacturer or distributor written notice of his or her
18 intention to succeed to the dealership within one hundred twenty
19 days after the dealer's death or incapacity, agrees to be bound
20 by all of the terms and conditions of the dealer agreement, and
21 meets the current criteria generally applied by the manufacturer or
22 distributor in qualifying new motor vehicle dealers. A manufacturer
23 or distributor may refuse to honor the existing dealer agreement
24 with the designated family member only for good cause.

25 (2) The manufacturer or distributor may request from

1 a designated family member such personal financial data as is
2 reasonably necessary to determine whether the existing dealer
3 agreement should be honored. The designated family member shall
4 supply the personal and financial data promptly upon the request.

5 (3) If a manufacturer or distributor believes that
6 good cause exists for refusing to honor that succession, the
7 manufacturer or distributor may, within sixty days after receipt
8 of the notice of the designated family member's intent to succeed
9 the dealer in the ownership and operation of the dealership, or
10 within sixty days after the receipt of the requested personal
11 and financial data, whichever is later, serve upon the designated
12 family member notice of its refusal to approve the succession.

13 (4) The notice of the manufacturer or distributor
14 provided in subsection (3) of this section shall state the
15 specific ground for the refusal to approve the succession and that
16 discontinuance of the agreement shall take effect not less than
17 ninety days after the date the notice is served.

18 (5) If notice of refusal is not served within the
19 sixty days provided for in subsection (3) of this section, the
20 dealer agreement shall continue in effect and shall be subject to
21 termination only as otherwise permitted by Chapter 60, article 14.
22 the Motor Vehicle Industry Regulation Act.

23 (6) This section shall not preclude a new motor vehicle
24 dealer from designating any person as his or her successor by
25 written instrument filed with the manufacturer or distributor,

1 and if such an instrument is filed, it alone shall determine
2 the succession rights to the management and operation of the
3 dealership.

4 Sec. 79. Section 60-1430.02, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 60-1430.02 (1) Upon the termination, cancellation, or
7 noncontinuation of a franchise by the franchisor or franchisee
8 pursuant to Chapter 60, article 14, the Motor Vehicle Industry
9 Regulation Act, the franchisor shall pay the franchisee:

10 (a) The dealer cost, plus any charges made by the
11 franchisor for distribution, delivery, and taxes, less all
12 allowances paid or credited to the franchisee by the franchisor, of
13 unused, undamaged, and unsold motor vehicles in the franchisee's
14 inventory acquired from the franchisor or another franchisee of the
15 same line and make within the previous twelve months;

16 (b) The dealer cost, less all allowances paid or credited
17 to the franchisee by the franchisor, for all unused, undamaged,
18 and unsold supplies, parts, and accessories in original packaging,
19 except that (i) in the case of sheet metal a comparable substitute
20 for original packaging may be used if such supply, part, or
21 accessory is offered for sale by the franchisor and was acquired
22 from the franchisor or the predecessor franchisee as a part of the
23 franchisee's initial inventory and (ii) in the case of a motorcycle
24 franchise, the payment for such supplies, parts, and accessories
25 shall be based upon the currently published dealer cost for all

1 unused, undamaged, and unsold supplies, parts, and accessories
2 currently offered for sale by the franchisor and originally
3 acquired from the franchisor or the predecessor franchisee as a
4 part of the franchisee's initial inventory, and all such supplies,
5 parts, and accessories shall be currently identifiable and labeled
6 and in the original packaging or a comparable substitute for the
7 original packaging;

8 (c) The fair market value of each undamaged sign owned by
9 the franchisee which bears a common name, trade name, or trademark
10 of the franchisor if acquisition of such sign was recommended or
11 required by the franchisor;

12 (d) The fair market value of all special tools,
13 equipment, and furnishings acquired from the franchisor or sources
14 approved by the franchisor which were recommended and required by
15 the franchisor and are in good and usable condition except for
16 reasonable wear and tear; and

17 (e) The cost of transporting, handling, packing, and
18 loading motor vehicles, supplies, parts, accessories, signs,
19 special tools, equipment, and furnishings.

20 (2) The franchisor shall pay the franchisee the amounts
21 specified in subsection (1) of this section within ninety days
22 after the tender of the property if the franchisee has clear title
23 to the property and is in a position to convey that title to the
24 franchisor.

25 (3) (a) If the termination, cancellation, or nonrenewal

1 of a franchise is the result of the termination, elimination,
2 or cessation of a line-make by the manufacturer, distributor, or
3 factory branch, then, in addition to the payments to the franchisee
4 pursuant to subsection (1) of this section, the manufacturer,
5 distributor, or factory branch shall be liable to the franchisee
6 for an amount at least equivalent to the fair market value of the
7 franchise for the line-make, which shall be the greater of that
8 value determined as of (i) the date the franchisor announces the
9 action that results in termination, cancellation, or nonrenewal
10 of the line-make or (ii) the date the action that resulted in
11 termination, cancellation, or nonrenewal of the line-make first
12 became general knowledge. In determining the fair market value
13 of a franchise for a line-make, if the line-make is not the
14 only line-make for which the franchisee holds a franchise in the
15 dealership facilities, the franchisee shall also be entitled to
16 compensation for the contribution of the line-make to payment of
17 the rent or to covering obligations for the fair rental value of
18 the franchise facilities for the period set forth in subdivision
19 (b) of this subsection. Fair market value of the franchise for the
20 line-make shall only include the goodwill value of the franchise
21 for that line-make in the franchisee's community.

22 (b) If the line-make is the only line-make for which
23 the franchisee holds a franchise, the manufacturer, distributor,
24 or factory branch shall also pay assistance with respect to the
25 franchise facilities leased or owned by the franchisee as follows:

1 (i) The manufacturer, distributor, or factory branch
2 shall pay the franchisee a sum equivalent to the rent for the
3 unexpired term of the lease or two years' rent, whichever is less;
4 or

5 (ii) If the franchisee owns the franchise facilities,
6 the manufacturer, distributor, or factory branch shall pay the
7 franchisee a sum equivalent to the reasonable rental value of the
8 franchise facilities for two years.

9 (c) To be entitled to franchise facilities assistance
10 from the manufacturer, distributor, or factory branch, the
11 franchisee shall have the obligation to mitigate damages by listing
12 the franchise facilities for lease or sublease with a licensed real
13 estate agent within thirty days after the effective date of the
14 termination of the franchise and by reasonably cooperating with
15 the real estate agent in the performance of the agent's duties and
16 responsibilities. If the franchisee is able to lease or sublease
17 the franchise facilities on terms that are consistent with local
18 zoning requirements to preserve the right to sell motor vehicles
19 from the franchise facilities and the terms of the franchisee's
20 lease, the franchisee shall be obligated to pay the manufacturer
21 the net revenue received from such mitigation, but only following
22 receipt of franchise facilities assistance payments pursuant to
23 subdivision (3)(b) of this section and only up to the total amount
24 of franchise facilities assistance payments that the franchisee has
25 received.

1 (3) (4) This section shall not relieve a franchisee from
2 the any other obligation to mitigate damages upon termination,
3 cancellation, or noncontinuation of the franchise.

4 Sec. 80. Section 60-1432, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 60-1432 If a franchisor enters into or attempts to enter
7 into a franchise, whether upon termination or refusal to continue
8 another franchise or upon the establishment of an additional
9 motor vehicle, combination motor vehicle and trailer, motorcycle,
10 or trailer dealership in a community where the same line-make
11 is then represented, without first complying with the provisions
12 of Chapter 60, article 14, Motor Vehicle Industry Regulation
13 Act, no license under Chapter 60, article 14, the act shall be
14 issued to that franchisee or proposed franchisee to engage in the
15 business of selling motor vehicles, combination motor vehicles and
16 trailers, motorcycles, or trailers manufactured or distributed by
17 that franchisor.

18 Sec. 81. Section 60-1436, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 60-1436 A manufacturer or distributor shall not require
21 or coerce any new motor vehicle dealer in this state to do any of
22 the following:

23 (1) Order or accept delivery of any new motor vehicle,
24 part or accessory, equipment, or other commodity not required
25 by law which was not voluntarily ordered by the new motor

1 vehicle dealer. This section shall not be construed to prevent
2 the manufacturer or distributor from requiring that new motor
3 vehicle dealers carry a reasonable inventory of models offered for
4 sale by the manufacturer or distributor;

5 (2) Offer or accept delivery of any new motor vehicle
6 with special features, accessories, or equipment not included in
7 the list price of the new motor vehicle as publicly advertised by
8 the manufacturer or distributor;

9 (3) Participate monetarily in any advertising campaign or
10 contest or purchase any promotional materials, display devices, or
11 display decorations or materials at the expense of the new motor
12 vehicle dealer;

13 (4) Join, contribute to, or affiliate with an advertising
14 association;

15 (4) (5) Enter into any agreement with the manufacturer
16 or distributor or do any other act prejudicial to the new motor
17 vehicle dealer by threatening to terminate a dealer agreement or
18 any contractual agreement or understanding existing between the
19 dealer and the manufacturer or distributor. Notice in good faith to
20 any dealer of the dealer's violation of any terms or provisions of
21 the dealer agreement shall not constitute a violation of Chapter
22 60, article 14, the Motor Vehicle Industry Regulation Act;

23 (5) (6) Change the capital structure of the new motor
24 vehicle dealership or the means by or through which the dealer
25 finances the operation of the dealership, if the dealership at

1 all times meets any reasonable capital standards determined by the
2 manufacturer in accordance with uniformly applied criteria;

3 (6) (7) Refrain from participation in the management of,
4 investment in, or the acquisition of any other line of new motor
5 vehicle or related products as long as the dealer maintains a
6 reasonable line of credit for each make or line of vehicle, remains
7 in compliance with reasonable facilities requirements, and makes no
8 change in the principal management of the dealer;

9 (7) (8) Prospectively assent to a release, assignment,
10 novation, waiver, or estoppel which would relieve any person from
11 liability imposed by Chapter 60, article 14, the act or require any
12 controversy between the new motor vehicle dealer and a manufacturer
13 or distributor to be referred to a person other than the duly
14 constituted courts of the state or the United States, if the
15 referral would be binding upon the new motor vehicle dealer;

16 (8) (9) Change the location of the new motor vehicle
17 dealership or make any substantial alterations to the dealership
18 premises, if such changes or alterations would be unreasonable;

19 (9) (10) Release, convey, or otherwise provide customer
20 information if to do so is unlawful or if the customer objects
21 in writing to doing so, unless the information is necessary for
22 the manufacturer, factory branch, or distributor to meet its
23 obligations to consumers or the new motor vehicle dealer including
24 vehicle recalls or other requirements imposed by state or federal
25 law; and

1 (10) (11) Release to any unaffiliated third party
2 any customer information which has been provided by the new
3 motor vehicle dealer to the manufacturer except as provided in
4 subdivision ~~(9)~~ (10) of this section;—

5 (12) Establish in connection with the sale of a motor
6 vehicle prices at which the dealer must sell products or services
7 not manufactured or distributed by the manufacturer or distributor,
8 whether by agreement, program, incentive provision, or otherwise;
9 or

10 (13) Underutilize the dealer's facilities by requiring or
11 coercing a dealer to exclude or remove from the dealer's facilities
12 operations for selling or servicing a line-make of motor vehicles
13 for which the dealer has a franchise agreement to utilize the
14 facilities.

15 Any action prohibited for a manufacturer or distributor
16 under the Motor Vehicle Industry Regulation Act is also prohibited
17 for a subsidiary which is wholly owned or controlled by contract
18 by a manufacturer or distributor or in which a manufacturer
19 or distributor has more than a ten percent ownership interest,
20 including a financing division.

21 Sec. 82. Section 60-1437, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 60-1437 In addition to the restrictions imposed by
24 section 60-1436, a manufacturer or distributor shall not:

25 (1) Fail to deliver new motor vehicles or new motor

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1 vehicle parts or accessories within a reasonable time and in
2 reasonable quantities relative to the new motor vehicle dealer's
3 market area and facilities, unless the failure is caused by acts or
4 occurrences beyond the control of the manufacturer or distributor
5 or unless the failure results from an order by the new motor
6 vehicle dealer in excess of quantities reasonably and fairly
7 allocated by the manufacturer or distributor;

1 dollars shall apply to all vehicles in the dealer's inventory which
2 were subject to the price reduction. A price difference applicable
3 to a new model or series of motor vehicles at the time of the
4 introduction of the new model or series shall not be considered a
5 price increase or price decrease. This subdivision shall not apply
6 to price changes caused by the following:

7 (a) The addition to a motor vehicle of required or
8 optional equipment pursuant to state or federal law;

9 (b) In the case of foreign-made vehicles or components,
10 revaluation of the United States dollar; or

11 (c) Any increase in transportation charges due to an
12 increase in rates charged by a common carrier or other transporter;

13 ~~or~~

14 (5) Fail or refuse to sell or offer to sell to all
15 franchised new motor vehicle dealers in a line-make every new
16 motor vehicle sold or offered for sale to any franchised new
17 motor vehicle dealer of the same line-make. However, the failure
18 to deliver any such new motor vehicle shall not be considered
19 a violation of this section if the failure is due to a lack
20 of manufacturing capacity or to a strike or labor difficulty, a
21 shortage of materials, a freight embargo, or any other cause over
22 which the franchisor has no control. A manufacturer or distributor
23 shall not require that any of its new motor vehicle dealers
24 located in this state pay any extra fee, purchase unreasonable or
25 unnecessary quantities of advertising displays or other materials,

1 or remodel, renovate, or recondition the new motor vehicle dealer's
2 existing facilities in order to receive any particular model or
3 series of vehicles manufactured or distributed by the manufacturer
4 for which the dealers have a valid franchise. Notwithstanding
5 the provisions of this subdivision, nothing contained in this
6 section shall be deemed to prohibit or prevent a manufacturer
7 from requiring that its franchised dealers located in this state
8 purchase special tools or equipment, stock reasonable quantities
9 of certain parts, or participate in training programs which are
10 reasonably necessary for those dealers to sell or service any model
11 or series of new motor vehicles. This subdivision shall not apply
12 to manufacturers of recreational vehicles; -

13 (6) Fail to offer dealers of a specific line-make a
14 new franchise agreement containing substantially similar terms and
15 conditions for sales of the line-make if the ownership of the
16 manufacturer or distributor changes or there is a change in the
17 plan or system of distribution;

18 (7) Take an adverse action against a dealer because the
19 dealer sells or leases a motor vehicle that is later exported
20 to a location outside the United States. A franchise provision
21 that allows a manufacturer or distributor to take adverse action
22 against a dealer because the dealer sells or leases a motor vehicle
23 that is later exported to a location outside the United States is
24 enforceable only if, at the time of the original sale or lease,
25 the dealer knew or reasonably should have known that the motor

1 vehicle would be exported to a location outside the United States.
2 A dealer is presumed to have no actual knowledge that a motor
3 vehicle the dealer sells or leases will be exported to a location
4 outside the United States if, under the laws of a state of the
5 United States (a) the motor vehicle is titled, (b) the motor
6 vehicle is registered, and (c) applicable state and local taxes
7 are paid for the motor vehicle. Such presumption may be rebutted
8 by direct, clear, and convincing evidence that the dealer had
9 actual knowledge or reasonably should have known at the time of the
10 original sale or lease that the motor vehicle would be exported to
11 a location outside the United States. Except as otherwise permitted
12 by subdivision (7) of this section, a franchise provision that
13 allows a manufacturer or distributor to take adverse action against
14 a dealer because the dealer sells or leases a motor vehicle that is
15 later exported to a location outside the United States is void and
16 unenforceable;

17 (8) Discriminate against a dealer holding a franchise for
18 a line-make of the manufacturer or distributor in favor of other
19 dealers in this state of the same line-make in this state by:
20 (a) Selling or offering to sell a new motor vehicle to
21 a dealer at a lower actual price, including the price for vehicle
22 transportation, than the actual price at which the same model
23 similarly equipped is offered to or is available to another dealer
24 in this state during a similar time period; or
25 (b) Using a promotional program or device or an

1 incentive, payment, or other benefit, whether paid at the time
2 of the sale of the new motor vehicle to the dealer or later,
3 that results in the sale or offer to sell a new motor vehicle
4 to a dealer at a lower price, including the price for vehicle
5 transportation, than the price at which the same model similarly
6 equipped is offered or is available to another dealer in this
7 state during a similar time period. This subdivision shall not
8 prohibit a promotional or incentive program that is functionally
9 available to competing dealers of the same line-make in this state
10 on substantially comparable terms; or

11 (9) Make any express or implied statement or
12 representation directly or indirectly that the dealer is under
13 any obligation whatsoever to offer to sell or sell any extended
14 service contract or extended maintenance plan offered, sold,
15 backed by, or sponsored by the manufacturer or distributor or
16 to sell, assign, or transfer any of the dealer's retail sales
17 contracts or leases in this state on motor vehicles manufactured
18 or sold by the manufacturer or distributor to a finance company
19 or class of finance companies, leasing company or class of leasing
20 companies, or other specified person, because of any relationship
21 or affiliation between the manufacturer or distributor and the
22 finance company or companies, leasing company or leasing companies,
23 or the specified person or persons.

24 Any such statements, threats, promises, acts, contracts,
25 or offers of contracts, when their effect may be to lessen or

1 eliminate competition or tend to create a monopoly, are declared
2 unfair trade practices and unfair methods of competition and are
3 prohibited.

4 Sec. 83. Section 60-1438, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 60-1438 (1) Each new motor vehicle manufacturer or
7 distributor shall specify in writing to each of its new motor
8 vehicle dealers licensed in this state the dealer's obligations for
9 preparation, delivery, and warranty service on its products. The
10 manufacturer or distributor shall compensate the new motor vehicle
11 dealer for warranty service which such manufacturer or distributor
12 requires the dealer to provide. The manufacturer or distributor
13 shall provide the new motor vehicle dealer with the schedule of
14 compensation to be paid to the dealer for parts, work, and service
15 and the time allowance for the performance of the work and service.

16 (2) The schedule of compensation shall include reasonable
17 compensation for diagnostic work, as well as repair service, parts,
18 and labor. Time allowances for the diagnosis and performance of
19 warranty work and service shall be reasonable and adequate for
20 the work to be performed. In the determination of what constitutes
21 reasonable compensation under this section, the principal factors
22 to be given consideration shall be the prevailing wage rates being
23 paid by dealers in the community in which the dealer is doing
24 business, and in no event shall the compensation of the dealer for
25 warranty parts and labor be less than the rates charged by the

1 dealer for like parts and service to retail or fleet customers, as
2 long as such rates are reasonable.

3 (3) A manufacturer or distributor shall not do any of the
4 following:

5 (a) Fail to perform any warranty obligation;
6 (b) Fail to include in written notices of factory recalls
7 to new motor vehicle owners and dealers the expected date by which
8 necessary parts and equipment will be available to dealers for the
9 correction of the defects; or

10 (c) Fail to compensate any of the new motor vehicle
11 dealers licensed in this state for repairs effected by the recall.

12 (4) All claims made by a new motor vehicle dealer
13 pursuant to this section for labor and parts shall be paid within
14 thirty days after their approval. All claims shall be either
15 approved or disapproved by the manufacturer or distributor within
16 thirty days after their receipt on a proper form generally used by
17 the manufacturer or distributor and containing the usually required
18 information therein. Any claim not specifically disapproved in
19 writing within thirty days after the receipt of the form shall be
20 considered to be approved and payment shall be made within thirty
21 days. The manufacturer has the right to audit the claims for two
22 years after payment and to charge back to the new motor vehicle
23 dealer the amount of any false, or fraudulent, or unsubstantiated
24 claim. A manufacturer may not deny a claim based solely on
25 a dealer's incidental failure to comply with a specific claim

1 processing requirement, such as a clerical error that does not put
2 into question the legitimacy of the claim.

3 (5) The warranty obligations set forth in this section
4 shall also apply to any manufacturer of a new motor vehicle
5 transmission, engine, or rear axle that separately warrants its
6 components to customers.

7 Sec. 84. Section 60-1438.01, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 60-1438.01 (1) For purposes of this section, manufacturer
10 or distributor includes (a) a factory representative or a
11 distributor representative or (b) a person who is affiliated with a
12 manufacturer or distributor or who, directly or indirectly through
13 an intermediary, is controlled by, or is under common control
14 with, the manufacturer or distributor. A person is controlled by a
15 manufacturer or distributor if the manufacturer or distributor has
16 the authority directly or indirectly, by law or by agreement of the
17 parties, to direct or influence the management and policies of the
18 person. A franchise agreement with a Nebraska-licensed dealer which
19 conforms to and is subject to sections 60-1401.01 to 60-1440 the
20 Motor Vehicle Industry Regulation Act is not control for purposes
21 of this section.

22 (2) Except as provided in this section, a manufacturer or
23 distributor shall not directly or indirectly:

24 (a) Own an interest in a franchise, franchisee, or
25 consumer care or service facility, except that a manufacturer

1 or distributor may hold stock in a publicly held franchise,
2 franchisee, or consumer care or service facility so long as the
3 manufacturer or distributor does not by virtue of holding such
4 stock operate or control the franchise, franchisee, or consumer
5 care or service facility;

6 (b) Operate or control a franchise, franchisee, or
7 consumer care or service facility; or

8 (c) Act in the capacity of a franchisee.

9 (3) A manufacturer or distributor may own an interest in
10 a franchisee or otherwise control a franchise for a period not to
11 exceed twelve months after the date the manufacturer or distributor
12 acquires the franchise if:

13 (a) The person from whom the manufacturer or distributor
14 acquired the franchise was a franchisee; and

15 (b) The franchise is for sale by the manufacturer or
16 distributor.

17 (4) For purposes of broadening the diversity of its
18 franchisees and enhancing opportunities for qualified persons who
19 lack the resources to purchase a franchise outright, but for no
20 other purpose, a manufacturer or distributor may temporarily own
21 an interest in a franchise if the manufacturer's or distributor's
22 participation in the franchise is in a bona fide relationship with
23 a franchisee and the franchisee:

24 (a) Has made a significant investment in the franchise,
25 which investment is subject to loss;

1 (b) Has an ownership interest in the franchise; and
2 (c) Operates the franchise under a plan to acquire full
3 ownership of the franchise within a reasonable time and under
4 reasonable terms and conditions.

5 (5) On a showing of good cause by a manufacturer or
6 distributor, the board may extend the time limit set forth in
7 subsection (3) of this section. An extension may not exceed twelve
8 months. An application for an extension after the first extension
9 is granted is subject to protest by a franchisee of the same
10 line-make whose franchise is located in the same community as the
11 franchise owned or controlled by the manufacturer or distributor.

12 (6) The prohibition in subdivision (2)(b) of this section
13 shall not apply to any manufacturer of manufactured housing,
14 recreational vehicles, or trailers.

15 Sec. 85. Section 60-1440, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 60-1440 (1) Any person who is or may be injured by a
18 violation of Chapter 60, article 14, the Motor Vehicle Industry
19 Regulation Act or any party to a franchise whose business or
20 property is damaged by a violation of Chapter 60, article 14, the
21 act relating to that franchise may bring an action for damages and
22 equitable relief, including injunctive relief.

23 (2) When a violation of Chapter 60, article 14, the
24 act can be shown to be willful or wanton, the court shall
25 award damages. If the manufacturer engages in continued multiple

1 violations of Chapter 60, article 14, the act, the court may, in
2 addition to any other damages, award court costs and attorney's
3 fees.

4 (3) A new motor vehicle dealer, if he or she has not
5 suffered any loss of money or property, may obtain final equitable
6 relief if it can be shown that a violation of Chapter 60, article
7 14, the act by a manufacturer may have the effect of causing such
8 loss of money or property.

9 (4) If any action to enforce any of the provisions of
10 Chapter 60, article 14, the act is brought by a new motor vehicle
11 dealer against a manufacturer and the new motor vehicle dealer
12 prevails, he or she shall be awarded reasonable attorney's fees and
13 the court shall assess costs against the manufacturer.

14 (5) If any dispute between a franchisor and franchisee
15 becomes subject to resolution by means of binding arbitration,
16 the provisions of Chapter 60, article 14, the act regulating the
17 relationship of franchisor and franchisee shall apply in any such
18 proceeding.

19 Sec. 86. Section 60-2602, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 60-2602 Whenever any wrecker or salvage dealer who is
22 required to be licensed pursuant to Chapter 60, article 14, the
23 Motor Vehicle Industry Regulation Act acquires, after August 26,
24 1983, any material which is or may have been a vehicle or major
25 component part_i,

1 (1) the The wrecker or salvage dealer shall determine by
2 means of a driver's license, state identification card, certificate
3 of employer's federal identification number, or license issued by
4 the board, the identity of the person or firm from whom such
5 material is acquired; and

6 (2) each Each such wrecker or salvage dealer shall
7 maintain a record of the following information:

8 (a) The name and address of the person or firm from whom
9 such material was acquired;

10 (b) The means by which such person or firm was
11 identified, including the number and issuing state of any driver's
12 license or state identification card, the federal employer's
13 identification number, or the licensee's number issued by the
14 board;

15 (c) A general description of the material acquired,
16 including, but not limited to, if available and identifiable, the
17 year, make, model, manufacturer's vehicle identification number,
18 and any other identifying marks or numbers, of any vehicle or major
19 component part; and

20 (d) The date of acquisition, the purchase price,
21 including the value and description of any material traded, and the
22 type of payment, including the number of any check or draft issued
23 or received in exchange for such material.

24 Sec. 87. Section 60-2603, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 60-2603 Any wrecker or salvage dealer licensed by the
2 board pursuant to Chapter 60, article 14, the Motor Vehicle
3 Industry Regulation Act having possession on August 26, 1983,
4 of both a salvage vehicle and a certificate of title for such
5 vehicle, either issued to or assigned to such a person, shall not
6 be required to obtain a salvage branded certificate of title for
7 such vehicle except upon transfer of the vehicle to a person not
8 required to be licensed as a wrecker or salvage dealer by the
9 board.

10 Sec. 88. Section 60-2604, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 60-2604 Any wrecker or salvage dealer required to be
13 licensed by the board pursuant to Chapter 60, article 14, the
14 Motor Vehicle Industry Regulation Act having possession on August
15 26, 1983, of a major component part, shall include in his or her
16 regular business records the information required to be recorded by
17 subdivision (2) of section 60-2602, to the extent such information
18 is available.

19 Sec. 89. Section 60-2701, Revised Statutes Cumulative
20 Supplement, 2008, is amended to read:

21 60-2701 As used in sections 60-2701 to 60-2709, unless
22 the context otherwise requires:

23 (1) Consumer shall mean the purchaser, other than for
24 purposes of resale, of a motor vehicle normally used for personal,
25 family, household, or business purposes, any person to whom such

1 motor vehicle is transferred for the same purposes during the
2 duration of an express warranty applicable to such motor vehicle,
3 and any other person entitled by the terms of such warranty to
4 enforce the obligations of the warranty;

5 (2) Motor vehicle shall mean a new motor vehicle as
6 defined in section ~~60-1401.02~~ 42 of this act which is sold in
7 this state, excluding recreational vehicles as defined in section
8 60-347; and

9 (3) Manufacturer's express warranty shall mean the
10 written warranty, so labeled, of the manufacturer of a new motor
11 vehicle.

12 Sec. 90. Section 71-4603, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 71-4603 For purposes of the Uniform Standard Code for
15 Manufactured Homes and Recreational Vehicles, unless the context
16 otherwise requires:

17 (1) Camping trailer means a vehicular portable unit
18 mounted on wheels and constructed with collapsible partial side
19 walls which fold for towing by another vehicle and unfold at the
20 campsite to provide temporary living quarters for recreational,
21 camping, or travel use;

22 (2) Commission means the Public Service Commission;

23 (3) Dealer means a person licensed by the state pursuant
24 to Chapter 60, article 14, the Motor Vehicle Industry Regulation
25 Act as a dealer in manufactured homes or recreational vehicles

1 or any other person, other than a manufacturer, who sells, offers
2 to sell, distributes, or leases manufactured homes or recreational
3 vehicles primarily to persons who in good faith purchase or lease
4 a manufactured home or recreational vehicle for purposes other than
5 resale;

6 (4) Defect means a failure to conform to an applicable
7 construction standard that renders the manufactured home or
8 recreational vehicle or any component of the manufactured home or
9 recreational vehicle not fit for the ordinary use for which it was
10 intended but does not result in an unreasonable risk of injury or
11 death to occupants;

12 (5) Distributor means any person engaged in the sale and
13 distribution of manufactured homes or recreational vehicles for
14 resale;

15 (6) Failure to conform means a defect, a serious defect,
16 noncompliance, or an imminent safety hazard related to the code;

17 (7) Fifth-wheel trailer means a unit mounted on wheels,
18 designed to provide temporary living quarters for recreational,
19 camping, or travel use, of such size or weight as not to require
20 a special highway movement permit, of gross trailer area not to
21 exceed four hundred square feet in the setup mode, and designed to
22 be towed by a motorized vehicle that contains a towing mechanism
23 that is mounted above or forward of the tow vehicle's rear axle;

24 (8) Gross trailer area means the total plan area measured
25 on the exterior to the maximum horizontal projections of exterior

1 wall in the setup mode and includes all siding, corner trims,
2 moldings, storage spaces, expandable room sections regardless of
3 height, and areas enclosed by windows but does not include roof
4 overhangs. Storage lofts contained within the basic unit shall
5 have ceiling heights less than five feet and shall not constitute
6 additional square footage. Appurtenances, as defined in subdivision
7 (2)(k) of section 60-6,288, shall not be considered in calculating
8 the gross trailer area as provided in such subdivision;

9 (9) Imminent safety hazard means a hazard that presents
10 an imminent and unreasonable risk of death or severe personal
11 injury;

12 (10) Manufactured home means a structure, transportable
13 in one or more sections, which in the traveling mode is eight body
14 feet or more in width or forty body feet or more in length or when
15 erected on site is three hundred twenty or more square feet and
16 which is built on a permanent chassis and designed to be used as
17 a dwelling with or without a permanent foundation when connected
18 to the required utilities and includes the plumbing, heating, air
19 conditioning, and electrical systems contained in the structure,
20 except that manufactured home includes any structure that meets
21 all of the requirements of this subdivision other than the size
22 requirements and with respect to which the manufacturer voluntarily
23 files a certification required by the United States Secretary
24 of Housing and Urban Development and complies with the standards
25 established under the National Manufactured Housing Construction

1 and Safety Standards Act of 1974, as such act existed on September
2 1, 2001, 42 U.S.C. 5401 et seq.;

3 (11) Manufactured-home construction means all activities
4 relating to the assembly and manufacture of a manufactured home,
5 including, but not limited to, activities relating to durability,
6 quality, and safety;

7 (12) Manufactured-home safety means the performance of a
8 manufactured home in such a manner that the public is protected
9 against any unreasonable risk of the occurrence of accidents due
10 to the design or construction of such manufactured home or any
11 unreasonable risk of death or injury to the user or to the public
12 if such accidents do occur;

13 (13) Manufacturer means any person engaged in
14 manufacturing, assembling, or completing manufactured homes or
15 recreational vehicles;

16 (14) Motor home means a vehicular unit primarily designed
17 to provide temporary living quarters which are built into an
18 integral part of, or permanently attached to, a self-propelled
19 motor vehicle chassis or van, containing permanently installed
20 independent life-support systems that meet the state standard
21 for recreational vehicles and providing at least four of
22 the following facilities: Cooking; refrigeration or ice box;
23 self-contained toilet; heating, air conditioning, or both; a
24 potable water supply system including a faucet and sink; separate
25 one-hundred-twenty-nominal-volt electrical power supply; or LP gas

1 supply;

2 (15) Noncompliance means a failure to comply with an
3 applicable construction standard that does not constitute a defect,
4 a serious defect, or an imminent safety hazard;

5 (16) Park trailer means a vehicular unit which meets the
6 following criteria:

7 (a) Built on a single chassis mounted on wheels;

8 (b) Designed to provide seasonal or temporary living
9 quarters which may be connected to utilities necessary for
10 operation of installed fixtures and appliances;

11 (c) Constructed to permit setup by persons without
12 special skills using only hand tools which may include lifting,
13 pulling, and supporting devices; and

14 (d) Having a gross trailer area not exceeding four
15 hundred square feet when in the setup mode;

16 (17) Person means any individual, partnership, limited
17 liability company, company, corporation, or association engaged in
18 manufacturing, selling, offering to sell, or leasing manufactured
19 homes or recreational vehicles;

20 (18) Purchaser means the first person purchasing a
21 manufactured home or recreational vehicle in good faith for
22 purposes other than resale;

23 (19) Recreational vehicle means a vehicular type unit
24 primarily designed as temporary living quarters for recreational,
25 camping, or travel use, which unit either has its own motive power

1 or is mounted on or towed by another vehicle. Recreational vehicle
2 includes, but is not limited to, travel trailer, park trailer,
3 camping trailer, truck camper, motor home, and van conversion;

4 (20) Seal means a device or insignia issued by the
5 Department of Health and Human Services Regulation and Licensure
6 prior to May 1, 1998, or by the Public Service Commission on
7 or after May 1, 1998, to be displayed on the exterior of a
8 manufactured home or recreational vehicle to evidence compliance
9 with state standards. The federal manufactured-home label shall be
10 recognized as a seal;

11 (21) Serious defect means a failure to conform to an
12 applicable construction standard that renders the manufactured home
13 or recreational vehicle or any component of the manufactured home
14 or recreational vehicle not fit for the ordinary use for which it
15 was intended and which results in an unreasonable risk of injury or
16 death to the occupants;

17 (22) Travel trailer means a vehicular unit mounted
18 on wheels, designed to provide temporary living quarters for
19 recreational, camping, or travel use of such size or weight as
20 not to require special highway movement permits when towed by a
21 motorized vehicle and of gross trailer area less than four hundred
22 square feet;

23 (23) Truck camper means a portable unit constructed to
24 provide temporary living quarters for recreational, travel, or
25 camping use, consisting of a roof, floor, and sides and designed to

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1 be loaded onto and unloaded from the bed of a pickup truck; and

2 (24) Van conversion means a completed vehicle permanently

3 altered cosmetically, structurally, or both which has been

4 recertified by the state as a multipurpose passenger vehicle

5 but which does not conform to or otherwise meet the definition

6 of a motor home in this section and which contains at

7 least one plumbing, heating, or one-hundred-twenty-nominal-volt

8 electrical component subject to the provisions of the state

9 standard for recreational vehicles. Van conversion does not

10 include any such vehicle that lacks any plumbing, heating, or

11 one-hundred-twenty-nominal-volt electrical system but contains an

12 extension of the low-voltage automotive circuitry.

13 Sec. 91. Original sections 25-2602.01, 28-1316, 44-3526,
14 60-1401.01, 60-1402, 60-1403, 60-1403.01, 60-1404, 60-1405,
15 60-1406, 60-1407, 60-1407.01, 60-1407.02, 60-1407.03, 60-1407.04,
16 60-1411.03, 60-1415, 60-1415.01, 60-1417.02, 60-1420, 60-1421,
17 60-1422, 60-1427, 60-1428, 60-1430, 60-1430.01, 60-1430.02,
18 60-1432, 60-1436, 60-1437, 60-1438, 60-1438.01, 60-1440, 60-2602,
19 60-2603, 60-2604, and 71-4603, Reissue Revised Statutes of
20 Nebraska, sections 60-194, 60-373, 60-375, 60-380, 60-381,
21 60-3,116, 60-1411.01, 60-1411.02, and 60-2701, Revised Statutes
22 Cumulative Supplement, 2008, sections 60-144, 60-164, and
23 60-1401.02, Revised Statutes Supplement, 2009, and section 60-1409,
24 Reissue Revised Statutes of Nebraska, as amended by section 36,
25 Legislative Bill 3, One Hundred First Legislature, First Special

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1 Session, 2009, are repealed.

2 Sec. 92. Since an emergency exists, this act takes effect
3 when passed and approved according to law.