

LEGISLATIVE BILL 477

Approved by the Governor April 26, 2011

Introduced by Fischer, 43.

FOR AN ACT relating to the Motor Vehicle Industry Regulation Act; to amend sections 60-1401, 60-1420, 60-1424, 60-1425, 60-1427, 60-1429, 60-1436, 60-1437, 60-1438, and 60-1438.01, Reissue Revised Statutes of Nebraska; to change provisions relating to manufacturers, distributors, and motor vehicle dealers; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 60-1401, Reissue Revised Statutes of Nebraska, is amended to read:

60-1401 Sections 60-1401 to 60-1440 shall be known and may be cited as the Motor Vehicle Industry Regulation Act.

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

All amendments to the act shall apply upon the issuance or renewal of a dealer's or manufacturer's license.

Sec. 2. Section 60-1420, Reissue Revised Statutes of Nebraska, is amended to read:

60-1420 (1) Except as provided in subsection (2) or (3) of this section, no franchisor shall terminate or refuse to continue any franchise or change a franchisee's community unless the franchisor has first established, in a hearing held pursuant to section 60-1425, that:

(a) The franchisor has good cause for termination, ~~or noncontinuance,~~ or change;

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

(c) ~~The~~ Upon termination or noncontinuance, the franchisor is willing and able to comply with section 60-1430.02.

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

(3) A franchisor may change a franchisee's community without a hearing if the franchisor notifies the franchisee of the proposed change at least thirty days before the change, provides the franchisee an opportunity to object, and enters into an agreement with the franchisee regarding the change of the franchisee's community. If no agreement is reached, the franchisor shall comply with sections 60-1420 to 60-1435 prior to changing the franchisee's community.

Sec. 3. Section 60-1424, Reissue Revised Statutes of Nebraska, is amended to read:

60-1424 If a franchisor seeks to terminate or not continue any franchise or change a franchisee's community, or seeks to enter into a franchise establishing an additional motor vehicle, combination motor vehicle and trailer, motorcycle or trailer dealership of the same line-make, the franchisor shall file an application with the board for permission to terminate or not continue the franchise, to change a franchisee's community, or ~~for permission~~ to enter into a franchise for additional representation of the same line-make in that community, except that no application needs to be filed to change a franchisee's community if an agreement has been entered into as provided in subsection (3) of section 60-1420.

Sec. 4. Section 60-1425, Reissue Revised Statutes of Nebraska, is amended to read:

60-1425 Upon receiving an application under ~~the provisions~~ of section 60-1424, the board shall enter an order fixing a time, which shall be within ninety days of the date of such order, and place of hearing, and shall send by certified or registered mail, with return receipt requested, a copy of the order to the franchisee whose franchise the franchisor seeks to terminate, ~~or not continue,~~ or change. If the application requests permission to change

a franchisee's community or establish an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership, a copy of the order shall be sent to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of orders shall be addressed to the franchisee at the place where the business is conducted. The board may also give notice of franchisor's application to any other parties whom the board may deem interested persons, such notice to be in the form and substance and given in the manner the board deems appropriate. Any person who can show an interest in the application may become a party to the hearing, whether or not he or she receives notice, but a party not receiving notice shall be limited to participation at the hearing on the question of the public interest in the termination or continuation of the franchise, the change in community, or ~~in~~ the establishment of an additional motor vehicle dealership.

Sec. 5. Section 60-1427, Reissue Revised Statutes of Nebraska, is amended to read:

60-1427 Upon hearing, the franchisor shall have the burden of proof to establish that under the Motor Vehicle Industry Regulation Act the franchisor should be granted permission to terminate or not continue the franchise, to change the franchisee's community, or to enter into a franchise establishing an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership.

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

Sec. 6. Section 60-1429, Reissue Revised Statutes of Nebraska, is amended to read:

60-1429 Notwithstanding the terms, provisions, or conditions of any agreement or franchise, the following shall not constitute good cause, as used in sections 60-1420 and 60-1422, for the termination or noncontinuation of a franchise, for changing the franchisee's community, or for entering into a franchise for the establishment of an additional dealership in a community for the same line-make:

(1) The sole fact that the franchisor desires further penetration of the market;

(2) The change of ownership of the franchisee's dealership or the change of executive management of the franchisee's dealership unless the franchisor, having the burden of proof, proves that such change of ownership or executive management will be substantially detrimental to the distribution of the franchisor's motor vehicles, combination motor vehicles and trailers, motorcycles, or trailer products or to competition in the community. Substantially detrimental may include, but is not limited to, the failure of any proposed transferee or individual to meet the current criteria generally applied by the franchisor in qualifying new motor vehicle dealers; or

(3) The fact that the franchisee refused to purchase or accept delivery of any motor vehicle, combination motor vehicle and trailer, motorcycle, trailer, vehicle parts or accessories, or other commodity or service not ordered by the franchisee.

Sec. 7. Section 60-1436, Reissue Revised Statutes of Nebraska, is amended to read:

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

(1) Order or accept delivery of any new motor vehicle, part or accessory, equipment, or other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer or retain any part or accessory that the dealer has not sold within twelve months if the part or accessory was not obtained through a specific order initiated by the dealer but was specified for, sold to, and shipped to the dealer pursuant to an automatic ordering system, if the part or accessory is in the condition required for return, and if the part or accessory is returned within thirty days after such twelve-month period. For purposes of this subdivision, automatic ordering system means a computerized system required by the franchisor, manufacturer, or distributor that automatically specifies parts and accessories for sale and shipment to the dealer without specific order thereof initiated by the dealer. The manufacturer, factory branch, distributor, or distributor branch shall not charge a restocking or handling fee for any part or accessory returned under this subdivision. In determining whether parts or accessories in the dealer's inventory were specified and sold under an automated ordering system, the parts and accessories in the

dealer's inventory are presumed to be the most recent parts and accessories that were sold to the dealer. This section shall not be construed to prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor;

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

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

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

(5) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement shall not constitute a violation of the Motor Vehicle Industry Regulation Act;

(6) Change the capital structure of the new motor vehicle dealership or the means by or through which the dealer finances the operation of the dealership, if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria;

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

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

(9) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, if such changes or alterations would be unreasonable, including unreasonably requiring a franchisee to establish, maintain, or continue exclusive sales facilities, sales display space, personnel, service, parts, or administrative facilities for a line-make, unless such exclusivity is reasonable and otherwise justified by reasonable business considerations. In making that determination, the franchisor shall take into consideration the franchisee's compliance with facility requirements as required by the franchise agreement. The franchisor shall have the burden of proving that business considerations justify exclusivity;

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

(11) Release to any unaffiliated third party any customer information which has been provided by the new motor vehicle dealer to the manufacturer except as provided in subdivision (10) of this section. A manufacturer, importer, or distributor may not share, sell, or transfer customer information, obtained from a dealer and not otherwise publicly available, to other dealers franchised by the manufacturer while the originating dealer is still a franchised dealer of the manufacturer unless otherwise agreed to by the originating dealer. A manufacturer, importer, or distributor may not use any nonpublic personal information, as that term is used in 16 C.F.R. part 313, which is obtained from a dealer unless such use falls within one or more of the exceptions to opt out requirements under 16 C.F.R. 313.14 or 313.15;

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

(13) Underutilize the dealer's facilities by requiring or coercing a dealer to exclude or remove from the dealer's facilities operations for selling or servicing a line-make of motor vehicles for which the dealer has

a franchise agreement to utilize the facilities, except that this subdivision does not prohibit a manufacturer from requiring an exclusive sales area within the facilities that are in compliance with reasonable requirements for the facilities if the dealer complies with subdivision (9) of this section; or-

(14) (a) Enter into any agreement with a manufacturer, factory branch, distributor, distributor branch, or one of its affiliates which gives site control of the premises of the dealer that does not terminate upon the occurrence of any of the following events:

(i) The right of the franchisor to manufacture or distribute the line-make of vehicles covered by the dealer's franchise is sold, assigned, or otherwise transferred by the manufacturer, factory branch, distributor, or distributor branch to another; or

(ii) The final termination of the dealer's franchise for any reason unless an agreement for site control is voluntarily negotiated separately and apart from the franchise agreement and consideration has been offered by the manufacturer and accepted by the dealer. If a dealer voluntarily terminates and has entered into a separately negotiated site control agreement, the agreement may survive the termination if the agreement clearly states that fact.

(b) For purposes of this subdivision, site control means the contractual right to control in any way the commercial use and development of the premises upon which a dealer's business operations are located, including the right to approve of additional or different uses for the property beyond those of its franchise, the right to lease or sublease the dealer's property, or the right or option to purchase the dealer's property.

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

Sec. 8. Section 60-1437, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(2) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor or, if a line-make is allocated among new motor vehicle dealers, refuse to disclose to any new motor vehicle dealer that handles the same line-make the system of allocation, including, but not limited to, a complete breakdown by model, and a concise listing of dealerships with an explanation of the derivation of the allocation system, including its mathematical formula in a clear and comprehensible form;

(3) Refuse to disclose to a new motor vehicle dealer the total number of new motor vehicles of a given model which the manufacturer or distributor has sold during the current model year within the dealer's marketing district, zone, or region, whichever geographical area is the smallest;

(4) Increase the price of any new motor vehicle which the new motor vehicle dealer had ordered and delivered to the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer shall constitute evidence of such order. In the event of manufacturer or distributor price reduction or cash rebate, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of five dollars shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. A price difference applicable to a new model or series of motor vehicles at the time of the introduction of the new model or series shall not be considered a price increase or price decrease. This subdivision shall not apply to price changes caused by the following:

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

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

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

(5) Fail or refuse to sell or offer to sell to all franchised new motor vehicle dealers in a line-make every new motor vehicle sold or offered for sale to any franchised new motor vehicle dealer of the same line-make. However, the failure to deliver any such new motor vehicle shall not be considered a violation of this section if the failure is due to a lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo, or any other cause over which the franchisor has no control. A manufacturer or distributor shall not require that any of its new motor vehicle dealers located in this state pay any extra fee, purchase unreasonable or unnecessary quantities of advertising displays or other materials, or remodel, renovate, or recondition the new motor vehicle dealer's existing facilities in order to receive any particular model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the provisions of this subdivision, nothing contained in this section shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this state purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of new motor vehicles. This subdivision shall not apply to manufacturers of recreational vehicles;

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

(7) Take an adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States. A franchise provision that allows a manufacturer or distributor to take adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States is enforceable only if, at the time of the original sale or lease, the dealer knew or reasonably should have known that the motor vehicle would be exported to a location outside the United States. A dealer is presumed to have no knowledge that a motor vehicle the dealer sells or leases will be exported to a location outside the United States if, under the laws of a state of the United States (a) the motor vehicle is titled, (b) the motor vehicle is registered, and (c) applicable state and local taxes are paid for the motor vehicle. Such presumption may be rebutted by direct, clear, and convincing evidence that the dealer knew or reasonably should have known at the time of the original sale or lease that the motor vehicle would be exported to a location outside the United States. Except as otherwise permitted by subdivision (7) of this section, a franchise provision that allows a manufacturer or distributor to take adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States is void and unenforceable;

(8) Discriminate against a dealer holding a franchise for a line-make of the manufacturer or distributor in favor of other dealers of the same line-make in this state by:

(a) Selling or offering to sell a new motor vehicle to a dealer at a lower actual price, including the price for vehicle transportation, than the actual price at which the same model similarly equipped is offered to or is available to another dealer in this state during a similar time period; or

(b) Using a promotional program or device or an incentive, payment, or other benefit, whether paid at the time of the sale of the new motor vehicle to the dealer or later, that results in the sale or offer to sell a new motor vehicle to a dealer at a lower price, including the price for vehicle transportation, than the price at which the same model similarly equipped is offered or is available to another dealer in this state during a similar time period. This subdivision shall not prohibit a promotional or incentive program that is functionally available to competing dealers of the same line-make in this state on substantially comparable terms; ~~or~~

(9) Make any express or implied statement or representation directly or indirectly that the dealer is under any obligation whatsoever to offer to sell or sell any extended service contract, ~~or~~ extended maintenance plan, gap policy, gap waiver, or other aftermarket product or service offered, sold, backed by, or sponsored by the manufacturer or distributor or to sell, assign, or transfer any of the dealer's retail sales contracts or leases in this state on motor vehicles manufactured or sold by the manufacturer or distributor to a finance company or class of finance companies, leasing company or class of leasing companies, or other specified person, because of any relationship or

affiliation between the manufacturer or distributor and the finance company or companies, leasing company or leasing companies, or the specified person or persons; or-

(10) Prohibit a franchisee from acquiring a line-make of new motor vehicles solely because the franchisee owns or operates a franchise of the same line-make in a contiguous market.

Any such statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and are prohibited.

Sec. 9. Section 60-1438, Reissue Revised Statutes of Nebraska, is amended to read:

60-1438 (1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery, and warranty service on its products. The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service which such manufacturer or distributor requires the dealer to provide, including warranty and recall obligations related to repairing and servicing motor vehicles and all parts and components included in or manufactured for installation in the motor vehicles of the manufacturer or distributor. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, work, and service and the time allowance for the performance of the work and service.

~~(2)~~ (2) (a) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration shall be the prevailing wage rates being paid by dealers in the community in which the dealer is doing business, and in no event shall the compensation of the dealer for warranty parts and labor be less than the rates charged by the dealer for like parts and service to retail or fleet customers, as long as such rates are reasonable. In determining prevailing wage rates, the rate of compensation for labor for that portion of repair orders for routine maintenance, such as oil and fluid changes, shall not be used.

(b) For purposes of this section, compensation for parts may be determined by calculating the price paid by the dealer for parts, including all shipping and other charges, multiplied by the sum of one and the dealer's average percentage markup over the price paid by the dealer for parts purchased by the dealer from the manufacturer and sold at retail. The dealer may establish average percentage markup by submitting to the manufacturer one hundred sequential customer-paid service repair orders or ninety days of customer-paid service repair orders, whichever is less, covering repairs made no more than one hundred eighty days before the submission and declaring what the average percentage markup is. Within thirty days after receipt of the repair orders, the manufacturer may audit the submitted repair orders and approve or deny approval of the average percentage markup based on the audit. The average percentage markup shall go into effect forty-five days after the approval based on that audit. If the manufacturer denies approval of the average percentage markup declared by the dealer, the dealer may file a complaint with the board. The manufacturer shall have the burden to establish that the denial was reasonable. If the board determines that the denial was not reasonable, the denial shall be deemed a violation of the Motor Vehicle Industry Regulation Act subject to the enforcement procedures of the act. Only retail sales not involving warranty repairs or parts supplied for routine vehicle maintenance shall be considered in calculating average percentage markup. No manufacturer shall require a dealer to establish average percentage markup by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations. A dealer shall not request a change in the average percentage markup more than twice in one calendar year.

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

(a) Fail to perform any warranty obligation;

(b) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects; or

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

(4) A dealer's claim for warranty compensation may be denied only if:

- (a) The dealer's claim is based on a nonwarranty repair;
- (b) The dealer lacks documentation for the claim;
- (c) The dealer fails to comply with specific substantive terms and conditions of the franchisor's warranty compensation program; or
- (d) The manufacturer has a bona fide belief based on competent evidence that the dealer's claim is intentionally false, fraudulent, or misrepresented.

~~(4)~~ (5) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be made within six months after completing the work and shall be paid within thirty days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within thirty days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within thirty days after the receipt of the form shall be considered to be approved and payment shall be made within thirty days. The manufacturer has the right to audit the claims for ~~two years~~ one year after payment, except that if the manufacturer has reasonable cause to believe that a claim submitted by a dealer is intentionally false or fraudulent, the manufacturer has the right to audit the claims for four years after payment. For purposes of this subsection, reasonable cause means a bona fide belief based upon evidence that the issues of fact are such that a person of ordinary caution, prudence, and judgment could believe that a claim was intentionally false or fraudulent. As a result of an audit authorized under this subsection, the manufacturer has the right and to charge back to the new motor vehicle dealer the amount of any false or fraudulent previously paid claim after the new motor vehicle dealer has had notice and an opportunity to participate in all franchisor internal appeal processes as well as all available legal processes. The requirement to approve and pay the claim within thirty days after receipt of the claim does not preclude chargebacks for any fraudulent claim previously paid. A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error that does not put into question the legitimacy of the claim. If a claim is rejected for a clerical error, the dealer may resubmit a corrected claim in a timely manner.

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

(7) This section does not apply to recreational vehicles.

Sec. 10. Section 60-1438.01, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(a) Own an interest in a franchise, franchisee, or consumer care or service facility, except that a manufacturer or distributor may hold stock in a publicly held franchise, franchisee, or consumer care or service facility so long as the manufacturer or distributor does not by virtue of holding such stock operate or control the franchise, franchisee, or consumer care or service facility;

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

(c) Act in the capacity of a franchisee or motor vehicle dealer.

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

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

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

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

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

(b) Has an ownership interest in the franchise; and

(c) Operates the franchise under a plan to acquire full ownership of the franchise within a reasonable time and under reasonable terms and conditions.

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

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

Sec. 11. Original sections 60-1401, 60-1420, 60-1424, 60-1425, 60-1427, 60-1429, 60-1436, 60-1437, 60-1438, and 60-1438.01, Reissue Revised Statutes of Nebraska, are repealed.