

## LEGISLATIVE BILL 498

Approved by the Governor April 30, 2003

Introduced by Dw. Pedersen, 39

AN ACT relating to motor vehicle industry licensing; to amend sections 60-1407, 60-1410, 60-1411, and 60-1416, Reissue Revised Statutes of Nebraska, and sections 60-1401.02, 60-1403.01, 60-1406, 60-1411.01, 60-1411.02, and 60-1413, Revised Statutes Supplement, 2002; to provide for a dealer's agent license; to provide duties, fees, and penalties; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 60-1401.02, Revised Statutes Supplement, 2002, is amended to read:

60-1401.02. For purposes of sections 60-1401.01 to 60-1440 and 60-2601 to 60-2607, unless the context otherwise requires:

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

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

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

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

(3) Motor vehicle dealer means any person, other than a bona fide consumer, actively and regularly engaged in the act of selling, leasing for a period of thirty or more days, or exchanging new or used motor vehicles, trailers, and manufactured homes who buys, sells, exchanges, causes the sale of, or offers or attempts to sell new or used motor vehicles. Such person is a motor vehicle dealer and subject to sections 60-1401.01 to 60-1440. Motor vehicle dealer does not include a lessor who was not involved in or associated with the selection, location, acquisition, or supply of a motor vehicle which is the subject of a lease agreement;

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

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

(6) Motor vehicle means any vehicle for which evidence of title is required as a condition precedent to registration under the laws of this state but does not include trailers;

(7) Used motor vehicle means every motor vehicle which has been sold, bargained, exchanged, or given away or for which title has been transferred from the person who first acquired it from the manufacturer, importer, dealer, or agent of the manufacturer or importer. A new motor vehicle is not considered a used motor vehicle until it has been placed in use by a bona fide consumer, notwithstanding the number of transfers of the motor vehicle;

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

(9) Trailer means trailers and semitrailers as defined in section 60-301 which are required to be licensed as commercial trailers, other vehicles without motive power constructed so as to permit their being used as conveyances upon the public streets and highways and so constructed as not to be attached to real estate and to permit the vehicle to be used for human habitation by one or more persons, and camping trailers, slide-in campers, fold-down campers, and fold-down tent trailers. Machinery and equipment to which wheels are attached and designed for being drawn by a motor vehicle are excluded from the provisions of sections 60-1401.01 to 60-1440;

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

(11) Motorcycle means every motor vehicle, except a tractor, having

a seat or saddle for use of the rider and designed to travel on not more than three wheels in contact with the ground and for which evidence of title is required as a condition precedent to registration under the laws of this state;

(12) Auction means a sale of motor vehicles and trailers of types required to be registered in this state, except such vehicles as are eligible for registration pursuant to section 60-305.09, sold or offered for sale at which the price offered is increased by the prospective buyers who bid against one another, the highest bidder becoming the purchaser. The holding of a farm auction or an occasional motor vehicle or trailer auction of not more than two auctions in a calendar year does not constitute an auction subject to sections 60-1401.01 to 60-1440;

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

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

(15) Motor vehicle, motorcycle, or trailer salesperson means any person who, for a salary, commission, or compensation of any kind, is employed directly by only one specified licensed Nebraska motor vehicle dealer, motorcycle dealer, or trailer dealer, except when the salesperson is working for two or more dealerships with common ownership, to sell, purchase, or exchange or to negotiate for the sale, purchase, or exchange of motor vehicles, motorcycles, or trailers. A person owning any part of more than one dealership may be a salesperson for each of such dealerships. For purposes of this section, common ownership means that there is at least an eighty percent interest in each dealership by one or more persons having ownership in such dealership;

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

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

(18) Distributor means a person, resident or nonresident of this state, who in whole or in part sells or distributes new motor vehicles, trailers, or motorcycles to dealers or who maintains distributors or representatives who sell or distribute motor vehicles, trailers, or motorcycles to dealers and also has the same meaning as the term franchisor as used in sections 60-1401.01 to 60-1440;

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

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

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

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

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

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

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

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

(22) Franchisor means a person who manufactures or distributes motor

vehicles and who may enter into a franchise;

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

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

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

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

(27) Established place of business means a permanent location within this state, easily accessible to the public, owned or leased by the applicant or a licensee for at least the term of the license year, and conforming with applicable zoning laws, at which the licensee conducts the business for which he or she is licensed and may be contacted by the public during posted reasonable business hours which shall be not less than forty hours per week. The established place of business shall have the following facilities: (a) Office space in a building or mobile home, which space shall be clean, dry, safe, and well lighted and in which shall be kept and maintained all books, records, and files necessary for the conduct of the licensed business, which premises, books, records, and files shall be available for inspection during regular business hours by any peace officer or investigator employed or designated by the board. Dealers shall, upon demand of the board's investigator, furnish copies of records so required when conducting any investigation of a complaint; (b) a sound and well-maintained sign which is legible from a public road and displayed with letters not less than eight inches in height and one contiguous area to display ten or more motor vehicles, motorcycles, or trailers in a presentable manner; (c) adequate repair facilities and tools to properly and actually service warranties on motor vehicles, motorcycles, or trailers sold at such place of business and to make other repairs arising out of the conduct of the licensee's business or, in lieu of such repair facilities, the licensee may enter into a contract for the provision of such service and file a copy thereof annually with the board and shall furnish to each buyer a written statement as to where such service will be provided as required by section 60-1417. The service facility shall be located in the same county as the licensee unless the board specifically authorizes the facility to be located elsewhere. Such facility shall maintain regular business hours and shall have suitable repair equipment and facilities to service and inspect the type of vehicles sold by the licensee. Investigators of the board may certify ongoing compliance with the service and inspection facilities or repair facilities; and (d) an operating telephone connected with a public telephone exchange and located on the premises of the established place of business with a telephone number listed by the public telephone exchange and available to the public during the required posted business hours. A mobile truck equipped with repair facilities to properly perform warranty functions and other repairs shall be deemed adequate repair facilities for trailers. The requirements of this subdivision shall apply to the place of business authorized under a supplemental motor vehicle, motorcycle, or trailer dealer's license;

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

(29) Factory branch means a branch office maintained in this state by a person who manufactures, assembles, or distributes motor vehicles, motorcycles, or trailers for the sale of such motor vehicles, motorcycles, or trailers to distributors or dealers or for directing or supervising, in whole or in part, its representatives in this state;

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

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

(32) Scrap metal processor means any person engaged in the business of buying vehicles, motorcycles, or parts thereof for the purpose of remelting or processing into scrap metal or who otherwise processes ferrous or nonferrous metallic scrap for resale. No scrap metal processor shall sell

vehicles or motorcycles without obtaining a wrecker or salvage dealer license;

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

(34) Bona fide consumer means an owner of a motor vehicle, motorcycle, or trailer who has acquired such vehicle for use in business or for pleasure purposes, who has been granted a certificate of title on such motor vehicle, motorcycle, or trailer, and who has registered such motor vehicle, motorcycle, or trailer, all in accordance with the laws of the residence of the owner, except that no owner who sells more than eight registered motor vehicles, motorcycles, or trailers within a twelve-month period shall qualify as a bona fide consumer;

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

(36) Manufactured home means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or forty body feet or more in length or when erected on site is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure, except that manufactured home includes any structure that meets all of the requirements of this subdivision other than the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5401 et seq. Manufactured home also includes any manufactured home designed and manufactured with more than one separate living unit for the purpose of multifamily living; and

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

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

Sec. 2. Section 60-1403.01, Revised Statutes Supplement, 2002, is amended to read:

60-1403.01. (1) No person shall engage in the business as, ~~or~~ serve in the capacity of, or act as a motor vehicle, trailer, or motorcycle dealer, wrecker or salvage dealer, salesperson, auction dealer, dealer's agent, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative in this state without being licensed by the board under the provisions of sections 60-1401.01 to 60-1440. No salesperson's license shall be issued to any person under the age of sixteen, and no dealer's license shall be issued to any minor. No wrecker or salvage dealer's license shall be issued or renewed unless the applicant has a permanent place of business at which the activity requiring licensing is performed and which conforms to all local laws.

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

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

Sec. 3. Section 60-1406, Revised Statutes Supplement, 2002, is amended to read:

60-1406. Licenses issued by the board under Chapter 60, article 14, shall be of the classes set out in this section and shall permit the business activities described in this section:

(1) Motor vehicle dealer's license. This license permits the licensee to engage in the business of selling or exchanging new, used, or new and used motor vehicles, trailers, and manufactured homes at the established place of business designated in the license and another place or places of business located within three hundred feet of the designated place of business

and within the city or county described in the original license. This license permits the sale of a trade-in or consignment mobile home greater than forty feet in length and eight feet in width and located at a place other than the dealer's established place of business. This license permits one person, either the licensee, if he or she is the individual owner of the licensed business, or a stockholder, officer, partner, or member of the licensee, to act as a motor vehicle, trailer, and manufactured home salesperson and the name of the authorized person shall appear on the license;

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

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

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

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

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

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

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

(9) Wrecker or salvage dealer license. This license permits the licensee to engage in the business of acquiring motor vehicles or trailers for the purpose of dismantling the motor vehicles or trailers and selling or otherwise disposing of the parts and accessories of motor vehicles or trailers;

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

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

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

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

(14) Dealer's agent license. This license permits the licensee to act as the buying agent for one or more licensed motor vehicle dealers, motorcycle dealers, or trailer dealers. The agent shall act in accordance with a written contract and file a copy of the contract with the board. The

dealer shall be bound by and liable for the actions of the agent. The dealer's agent shall disclose in writing to each dealer with which the agent contracts as an agent the names of all other dealers contracting with the agent. The agent shall make each purchase on behalf of and in the name of only one dealer and may purchase for dealers only at auctions and only from licensed dealers. The agent shall not act as a licensed dealer and is not authorized to sell any vehicle pursuant to this license.

Sec. 4. Section 60-1407, Reissue Revised Statutes of Nebraska, is amended to read:

60-1407. Any person desiring to apply for one or more of the types of licenses described in Chapter 60, article 14, shall submit to the board, in writing, the following required information: (1) The name and address of the applicant, if the applicant is an individual, his or her social security number, and the name under which he or she intends to conduct business. If the applicant is a partnership or limited liability company, it shall set forth the name and address of each partner or member thereof and the name under which the business is to be conducted. If the applicant is a corporation, it shall set forth the name of the corporation and the name and address of each of its principal officers; (2) the place or places, including the city or village and the street and street number, if any, where the business is to be conducted or the salesperson employed; (3) if the application is for a motor vehicle dealer's license, trailer dealer's license, or motorcycle dealer's license the name or names of the new motor vehicle or vehicles, new trailer or trailers, new motorcycle or motorcycles which the applicant has been enfranchised to sell or exchange and the name or names and address or addresses of the manufacturer or distributor who has enfranchised the applicant and a current copy of each existing franchise; (4) if the application is for any of the above-named classes of dealer's licenses, the name and address of the person who is to act as a motor vehicle, trailer, or motorcycle salesperson under such license if issued; (5) if the application is for a dealer's agent, the dealers for which the agent will be buying; and ~~(5)~~ (6) a description of the proposed place or places of business proposed to be operated in the event a license is granted together with (a) a statement whether the applicant owns or leases the proposed established place of business as defined in section 60-1401.02 and, if the proposed established place of business is leased, the applicant shall file a true and correct copy of the lease agreement, and (b) a description of the facilities for the display of motor vehicles, trailers, and motorcycles.

Sec. 5. Section 60-1410, Reissue Revised Statutes of Nebraska, is amended to read:

60-1410. The board shall prescribe the form of the license and each license shall have printed thereon the seal of its office. All licenses shall be mailed to each licensee except the license of each motor vehicle, motorcycle, or trailer ~~salesman~~ salesperson which shall be delivered or mailed to the motor vehicle, motorcycle, or trailer dealer by whom the motor vehicle, motorcycle, or trailer ~~salesman~~ salesperson is employed and be kept in the custody and control of such dealer. It shall be the duty of each dealer to conspicuously display his or her own license or licenses in his or her place or places of business.

The board shall prepare and deliver a pocket card for ~~salesmen~~ salespersons, dealer's agents, factory representatives, and distributor representatives. Such card shall certify that the person whose name appears thereon is a licensed motor vehicle, motorcycle, or trailer ~~salesman~~ salesperson, dealer's agent, factory representative, or distributor representative, as the case may be. Such motor vehicle or trailer ~~salesman's~~ salesperson's card shall also contain the name and address of the dealer employing ~~him~~ the salesperson.

Sec. 6. Section 60-1411, Reissue Revised Statutes of Nebraska, is amended to read:

60-1411. If ~~Should~~ a motor vehicle dealer, motorcycle dealer, or trailer dealer ~~change~~ changes the address of his or her place of business, ~~change~~ changes franchise, ~~add~~ adds another franchise, or ~~lose~~ loses a franchise for sale of new motor vehicles, motorcycles, or trailers, ~~he must~~ the dealer shall notify the board of such change within ten days prior to such change. Thereupon the license shall be corrected for the unexpired portion of the term at no additional fee except as provided in section 60-1411.01.

If ~~Should~~ any motor vehicle, trailer, or motorcycle ~~salesman~~ salesperson is discharged, ~~leave his~~ leaves his or her employer, or change his ~~changes his or her place of employment, the employer who last employed such~~ changes his or her place of employment, the employer who last employed such ~~salesman~~ salesperson shall forthwith return the license to the board. The ~~salesman's~~ salesperson's pocket card shall thereupon be returned by the ~~salesman~~ salesperson. The ~~salesman~~ salesperson shall be notified at his or

her last-known place of residence that his or her license has been returned to the board. It shall be unlawful for ~~him~~ the salesperson to act as a motor vehicle, motorcycle, or trailer ~~salesman~~ salesperson until a new license is secured.

If a dealer's agent changes his or her agent's status with any dealer, the agent shall notify the board. If the agent is no longer contracting with any dealer, the dealer's agent license shall lapse and the license and pocket card shall be returned to the board.

Sec. 7. Section 60-1411.01, Revised Statutes Supplement, 2002, is amended to read:

60-1411.01. (1) To pay the expenses of the administration, operation, maintenance, and enforcement of sections 60-1401.01 to 60-1440, the board shall collect with each application for each class of license fees not exceeding the following amounts:

- (a) ~~(1)~~ Motor vehicle dealer's license, two hundred dollars;
- (b) Supplemental ~~(2) supplemental~~ motor vehicle dealer's license, ten dollars;
- (c) Motor ~~(3) motor~~ vehicle or motorcycle salesperson's license, ten dollars;
- (d) Dealer's agent license, fifty dollars;
- (e) Motor ~~(4) motor~~ vehicle, motorcycle, or trailer manufacturer's license, three hundred dollars;
- (f) Distributor's ~~(5) distributor's~~ license, three hundred dollars;
- (g) Factory ~~(6) factory~~ representative's license, ten dollars;
- (h) Distributor ~~(7) distributor~~ representative's license, ten dollars;
- (i) Finance ~~(8) finance~~ company's license, two hundred dollars;
- (j) Wrecker ~~(9) wrecker~~ or salvage dealer's license, one hundred dollars;
- (k) Factory ~~(10) factory~~ branch license, one hundred dollars;
- (l) Motorcycle ~~(11) motorcycle~~ dealer's license, two hundred dollars;
- (m) Motor ~~(12) motor~~ vehicle auction dealer's license, two hundred dollars; and
- (n) Trailer ~~(13) trailer~~ dealer's license, two hundred dollars.

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

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

Sec. 8. Section 60-1411.02, Revised Statutes Supplement, 2002, is amended to read:

60-1411.02. The board may, upon its own motion, and shall, upon a sworn complaint in writing of any person, investigate the actions of any person acting, registered, or licensed under Chapter 60, article 14, as a motor vehicle dealer, trailer dealer, motor vehicle or trailer salesperson, dealer's agent, manufacturer, factory branch, distributor, factory representative, distributor representative, supplemental motor vehicle dealer, wrecker or salvage dealer, finance company, motorcycle dealer, or motor vehicle auction dealer or operating without a registration or license when such registration or license is required. The board may deny any application for a license, may revoke or suspend a license, may place the licensee or registrant on probation, may assess an administrative fine in an amount not to exceed five thousand dollars per violation, or may take any combination of such actions if the violator, applicant, registrant, or licensee including any officer, stockholder, partner, or limited liability company member or any person having any financial interest in the violator, applicant, registrant, or licensee:

(1) Has had any license issued under Chapter 60, article 14, revoked or suspended and, if the license has been suspended, has not complied with the terms of suspension;

(2) Has knowingly purchased, sold, or done business in stolen motor vehicles, motorcycles, or trailers or parts therefor;

(3) Has failed to provide and maintain an established place of business;

(4) Has been found guilty of any felony which has not been pardoned, has been found guilty of any misdemeanor concerning fraud or conversion, or has suffered any judgment in any civil action involving fraud, misrepresentation, or conversion. In the event felony charges are pending against an applicant, the board may refuse to issue a license to the applicant until there has been a final determination of the charges;

(5) Has made a false material statement in his or her application or any data attached to the application or to any investigator or employee of the board;

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

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

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

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

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

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

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

(13) Has failed to comply with any provisions of section 60-320, Chapter 60, article 1 or 14, or the rules or regulations adopted and promulgated by the board pursuant to Chapter 60, article 14;

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

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

(16) Has employed any unlicensed salesperson or salespersons;

(17) Has failed to comply with sections 60-132 to 60-138;

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

(19) Has conspired, as defined in section 28-202, with other persons to process titles in violation of Chapter 60, article 1.

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

Sec. 9. Section 60-1413, Revised Statutes Supplement, 2002, is amended to read:

60-1413. (1) Before the board denies any license or any registration as described in section 60-1417.02, revokes or suspends any such license or registration, places a licensee or registrant on probation, or assesses an administrative fine under section 60-1411.02, the board shall give the applicant, licensee, registrant, or violator a hearing on the matter unless the hearing is waived upon agreement between the applicant, licensee, registrant, or violator and the executive director, with the approval of the board. As a condition of the waiver, the applicant, licensee, registrant, or violator shall accept the fine or other administrative action. If the hearing is not waived, the board shall, at least thirty days prior to the date set for the hearing, notify the party in writing. Such notice in writing shall contain an exact statement of the charges against the party and the date and place of hearing. The party shall have full authority to be heard in person or by counsel before the board in reference to the charges. The written notice may be served by delivery personally to the party or by mailing the notice by registered or certified mail to the last-known business address of the party. If the applicant is a salesperson or dealer's agent, the board shall also notify the dealer employing or contracting with him or her or whose employ he or she seeks to enter by mailing the notice to the dealer's last-known business address. A stenographic record of all testimony presented at the hearings shall be made and preserved pending final disposition of the

complaint.

(2) When the licensee fails to maintain a bond as provided in section 60-1419, an established place of business, or liability insurance as prescribed by subsection (3) of section 60-1407.01, the license shall immediately expire. The executive director shall notify the licensee personally or by mailing the notice by registered or certified mail to the last-known address of the licensee that his or her license is revoked until a bond as required by section 60-1419 or liability insurance as prescribed by subsection (3) of section 60-1407.01 is furnished and approved in which event the license may be reinstated.

(3) Upon notice of the revocation or suspension of the license, the licensee shall immediately surrender the expired license to the executive director or his or her representative. If the license is suspended, the executive director or his or her representative shall return the license to the licensee at the time of the conclusion of the period of suspension. Failure to surrender the license as required in this section shall subject the licensee to the penalties provided in section 60-1416.

Sec. 10. Section 60-1416, Reissue Revised Statutes of Nebraska, is amended to read:

60-1416. Any person acting as a motor vehicle dealer, trailer dealer, wrecker or salvage dealer, motorcycle dealer, auction dealer, motor vehicle, motorcycle, or trailer salesperson, dealer's agent, manufacturer, factory representative, distributor, or distributor representative without having first obtained the license provided in section 60-1406 is guilty of a Class IV felony and is subject to the civil penalty provisions of section 60-1411.02.

Sec. 11. Original sections 60-1407, 60-1410, 60-1411, and 60-1416, Reissue Revised Statutes of Nebraska, and sections 60-1401.02, 60-1403.01, 60-1406, 60-1411.01, 60-1411.02, and 60-1413, Revised Statutes Supplement, 2002, are repealed.