

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1148

FINAL READING

Introduced by Friesen, 34.

Read first time January 19, 2022

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to the Nebraska Motor Vehicle Industry
2 Licensing Board; to amend sections 60-1403, 60-1413, 60-1414,
3 60-1417.02, 60-1427, 60-1428, and 60-1435, Reissue Revised Statutes
4 of Nebraska; to provide for the employment of a hearing officer; to
5 harmonize provisions; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 60-1403, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 60-1403 (1) The board may:

4 (a) Regulate the issuance and revocation of licenses in accordance
5 with and subject to the Motor Vehicle Industry Regulation Act;

6 (b) Perform all acts and duties provided for in the act necessary to
7 the administration and enforcement of the act;~~and~~

8 (c) Make and enforce rules and regulations relating to the
9 administration of but not inconsistent with the act; and -

10 (d) Employ a hearing officer who shall conduct preliminary hearings
11 on behalf of the board and make recommendations to the board on any issue
12 or matter which the board deems proper.

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

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

24 (4) With respect to any action taken by the board, if a controlling
25 number of the members of the board are active participants in the vehicle
26 market in which the action is taken, the chairperson shall review the
27 action taken and, upon completion of such review, modify, alter, approve,
28 or reject the board's action.

29 Sec. 2. Section 60-1413, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 60-1413 (1) Before the board denies any license or any registration

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

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

1 approved in which event the license may be reinstated.

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

9 Sec. 3. Section 60-1414, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 60-1414 In the preparation and conduct of such hearings, the members
12 of the board and executive director, or hearing officer employed by the
13 board, shall have the power to require the attendance and testimony of
14 any witness and the production of any papers or documents in order to
15 assure a fair trial. They may sign and issue subpoenas therefor and
16 administer oaths and examine witnesses and take any evidence they deem
17 pertinent to the determination of the charges. Any witnesses so
18 subpoenaed shall be entitled to the same fees as prescribed by law in
19 judicial proceedings in the district court of this state in a civil
20 action and mileage at the same rate provided in section 81-1176 for state
21 employees. The payment of such fees and mileage must be out of and kept
22 within the limits of the funds provided for the administration of the
23 board. The party against whom such charges may be filed shall have the
24 right to obtain from the executive director a subpoena for any witnesses
25 which he or she may desire at such hearing and depositions may be taken
26 as in civil court cases in the district court. Any information obtained
27 from the books and records of the person complained against may not be
28 used against the person complained against as the basis for a criminal
29 prosecution under the laws of this state.

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

1 60-1417.02 (1) Except as otherwise provided in subsection (5) of
2 this section, any person who engages in or attempts to engage in the
3 selling of motor vehicles or trailers at an auction licensed pursuant to
4 the Motor Vehicle Industry Regulation Act shall register to do so.
5 Registration shall be made on a form provided by the auction dealer and
6 approved by the board. A copy of the registration shall serve as proof of
7 registration for the calendar year. The registration information shall be
8 made available and accessible to the board by the auction dealer within
9 seventy-two hours after the registrant has met the registration
10 requirements and such registration is issued. Such registration
11 information shall be maintained and made accessible to the board by the
12 auction dealer for two years. It shall be the duty of the auction dealer
13 to ensure that no seller participates in any sales activities until and
14 unless registration has been received by the auction dealer or unless
15 such seller is otherwise licensed under the act.

16 (2) The information required on the registration form shall include,
17 but not be limited to, the following: (a) The legal name of the
18 registrant; (b) the registrant's current mailing address and telephone
19 number; (c) the business name and address of the person with whom the
20 registrant is associated; and (d) whether or not the registrant is
21 bonded.

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

25 (4) Any person who is convicted of any violation of the act pursuant
26 to section 60-1411.02 may be denied the right to be registered at all
27 licensed auctions of this state following a hearing before the board, or
28 hearing officer employed by the board, as prescribed in section 60-1413.

29 (5) A licensed motor vehicle dealer may conduct an auction of excess
30 inventory of used vehicles without being licensed as an auction dealer or
31 registered under this section if the auction conforms to the requirements

1 of this subsection. The licensed motor vehicle dealer shall conduct the
2 auction upon the licensed premises of the dealer, shall sell only used
3 motor vehicles, trailers, or manufactured homes, shall sell only to motor
4 vehicle dealers licensed in Nebraska, shall not sell any vehicles on
5 consignment, and shall not sell any vehicles directly to the public.

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

8 60-1427 Upon hearing, the franchisor shall have the burden of proof
9 to establish that under the Motor Vehicle Industry Regulation Act the
10 franchisor should be granted permission to terminate or not continue the
11 franchise, to change the franchisee's community, or to enter into a
12 franchise establishing an additional motor vehicle, combination motor
13 vehicle and trailer, motorcycle, or trailer dealership.

14 Nothing contained in the act shall be construed to require or
15 authorize any investigation by the board of any matter before the board
16 under the provisions of sections 60-1420 to 60-1435. Upon hearing, the
17 board, or hearing officer employed by the board, shall hear the evidence
18 introduced by the parties. The hearing officer employed by the board
19 shall make a recommendation to the board solely upon the record so made.
20 The board and shall make its decision solely upon the record so made.

21 Sec. 6. Section 60-1428, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 60-1428 The rules of civil procedure relating to discovery and
24 inspection shall apply to hearings held under the Motor Vehicle Industry
25 Regulation Act, and the board may issue orders to give effect to such
26 rules.

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

1 Evidence which would be admissible under the issues in a state or
2 federal court action shall be admissible in a hearing held by the board
3 or hearing officer employed by the board. The board shall apportion all
4 costs between the parties.

5 Sec. 7. Section 60-1435, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 60-1435 Any party to a hearing before the board, or hearing officer
8 employed by the board, may appeal any final order entered in such
9 hearing, and the appeal shall be in accordance with the Administrative
10 Procedure Act.

11 Sec. 8. Original sections 60-1403, 60-1413, 60-1414, 60-1417.02,
12 60-1427, 60-1428, and 60-1435, Reissue Revised Statutes of Nebraska, are
13 repealed.