

LEGISLATIVE BILL 564

Approved by the Governor May 24, 1995

Introduced by Day, 19

AN ACT relating to motor vehicles; to amend sections 60-1401.02, 60-1406, 60-1411.03, 60-1413, 60-1416, and 60-1417, Reissue Revised Statutes of Nebraska, and sections 60-114, 60-1403, and 60-1411.02, Revised Statutes Supplement, 1994; to change provisions relating to transfers of title, licensing, and regulation by the Nebraska Motor Vehicle Industry Licensing Board; to redefine terms; to change a penalty provision; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. Section 60-114, Revised Statutes Supplement, 1994, is amended to read:

60-114. A certificate of title shall be printed upon safety security paper to be selected by the Department of Motor Vehicles. The certificate of title, manufacturer's statement of origin, and assignment of manufacturer's certificate shall be upon forms prescribed by the department and may include, but shall not be limited to, county of issuance, date of issuance, certificate of title number, previous certificate of title number, vehicle identification number, year, make, model, and body type of the vehicle, name and address of the owner, acquisition date, issuing county clerk's or designated county official's signature and official seal, and sufficient space for the notation and release of liens, mortgages, or encumbrances, if any.

An assignment of certificate of title shall appear on each certificate of title and shall include, but not be limited to, a statement that the owner of the vehicle assigns all his or her right, title, and interest in the vehicle, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the owner or the owner's parent, legal guardian, foster parent, or agent in the case of an owner who is a handicapped or disabled person as defined in section 18-1738.

A reassignment by a licensed dealer shall appear on each certificate of title and shall include, but not be limited to, a statement that the dealer assigns all his or her right, title, and interest in the vehicle, the name and address of the assignee, the name and address of the lienholder or secured party, if any, the signature of the licensed dealer or designated representative, and the dealer license number. Reassignments shall be printed on the reverse side of each certificate of title as many times as convenient. No dealer shall execute a reassignment on or transfer ownership by way of a manufacturer's statement of origin unless the dealer is enfranchised by the manufacturer of the motor vehicle.

The department may prescribe a secure power-of-attorney form and may contract with one or more persons to develop, provide, sell, and distribute secure power-of-attorney forms in the manner authorized or required by the federal Truth in Mileage Act of 1986, and amendments thereto, and any other federal law or regulation. Any secure power-of-attorney form authorized pursuant to a contract shall conform to the terms of the contract and be in strict compliance with the requirements of the department.

The department may, with the approval of the Attorney General, require additional information on such forms.

Sec. 2. Section 60-1401.02, Reissue Revised Statutes of Nebraska, is amended to read:

60-1401.02. For purposes of Chapter 60, article 14, and sections 60-2601 to 60-2607, unless the context otherwise requires:

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

(2) Association shall mean means any two or more persons acting with a common purpose, regardless of the relative degrees of involvement, and shall include includes, but is not be 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 shall mean 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 ~~shall mean means~~ any person, other than a bona fide consumer, actively and regularly engaged in the business act of selling, ~~leasing for a period of thirty or more days,~~ or exchanging new or used motor vehicles and trailers who buys, sells, exchanges, causes the sale of, or offers or attempts to sell new or used motor vehicles. Such person ~~shall be deemed to be is~~ a motor vehicle dealer and subject to Chapter 60, article 14;

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

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

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

(7) Used motor vehicle ~~shall mean 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 ~~shall is not be~~ considered a used motor vehicle until it has been placed in use by a bona fide consumer, notwithstanding the number of transfers of ~~such the~~ motor vehicle;

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

(9) Trailer ~~shall mean 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 ~~shall be~~ excluded from the provisions of Chapter 60, article 14;

(10) Motorcycle dealer ~~shall mean 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 ~~shall mean 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 ~~shall mean 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 ~~shall not be construed as constituting does not constitute~~ an auction subject to Chapter 60, article 14;

(13) Auction dealer ~~shall mean means~~ any person engaged in the business of conducting an auction for the sale of motor vehicles and trailers, ~~as defined in this section;~~

(14) Supplemental motor vehicle, trailer, motorcycle, or motor vehicle auction dealer ~~shall mean 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 ~~shall mean 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. ~~Common ownership is defined for the purpose of this section to mean 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 shall mean 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 shall have has the same meaning as the term franchisor as used in Chapter 60, article 14;

(17) Factory representative shall mean 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 shall mean 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 shall also have has the same meaning as the term franchisor as used in Chapter 60, article 14;

(19) Finance company shall mean 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 whereby such 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 shall mean 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 shall mean 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 shall mean means a person who manufactures or distributes motor vehicles and who may enter into a franchise;

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

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

(25) Sale, selling, and equivalent expressions shall mean 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 thereof 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;

(26) Established place of business shall mean 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 ~~above~~ requirements of this subdivision shall not apply to the place of business authorized under a supplemental motor vehicle, motorcycle, or trailer dealer's license;

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

(28) Factory branch shall mean 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;

(29) Distributor representative shall mean 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;

(30) Board shall mean means the Nebraska Motor Vehicle Industry Licensing Board;

(31) Scrap metal processor shall mean 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;

(32) Designated family member shall mean 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;

(33) Bona fide consumer shall mean 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; and

(34) Violator means a person acting without a license or registration as required by Chapter 60, article 14; and

(35) This act shall mean Chapter 60, article 14.

Nothing in Chapter 60, article 14, 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 shall sell or exchange such sells or exchanges the motor vehicle, motorcycle, or trailer shall be considered a dealer as defined in this section, except persons whose regular business is leasing or renting motor vehicles, motorcycles, or trailers.

Sec. 3. Section 60-1403, Revised Statutes Supplement, 1994, is amended to read:

60-1403. (1) The board shall have full power to may:

(a) Regulate the issuance and revocation of licenses in accordance with and subject to sections 60-1401.01 to 60-1440;

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

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

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

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

Sec. 4. Section 60-1406, Reissue Revised Statutes of Nebraska, is amended to read:

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

(1) Motor vehicle dealer's license. This license shall permit permits the licensee to engage in the business of selling or exchanging new, used, or new and used motor vehicles and trailers as defined in section 60-1401.02 at the established place of business designated in such the license and another place or places of business located within three hundred feet of such the designated place of business and within the city or county described in such the original license. This license shall permit 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 shall permit permits one person, either the licensee, if he or she is the individual owner of such the licensed business, or a stockholder, officer, partner, or member of such the licensee, to act as a motor vehicle and trailer salesperson and the name of such the authorized person shall appear on the license;

(2) Motor vehicle, motorcycle, or trailer salesperson license. This license shall permit permits the licensee to engage in the activities of a motor vehicle, motorcycle, or trailer salesperson, as defined in section 60-1401.02. This license shall permit permits the one person named thereon on the license to act as a salesperson;

(3) Manufacturer license. This license shall permit permits the licensee to engage in the activities of a motor vehicle, motorcycle, or trailer manufacturer, or manufacturer's factory branch, as defined in section 60-1401.02;

(4) Distributor license. This license shall permit permits the licensee to engage in the activities of a motor vehicle, motorcycle, or trailer distributor, as defined in section 60-1401.02;

(5) Factory representative license. This license shall permit permits the licensee to engage in the activities of a factory branch representative, as defined in section 60-1401.02;

(6) Factory branch license. This license shall permit permits the licensee to maintain a branch office as defined in section 60-1401.02 in this state;

(7) Distributor representative license. This license shall permit permits the licensee to engage in the activities of a distributor representative, as defined in section 60-1401.02;

(8) Finance company license. This license as defined in section 60-1401.02 shall permit 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 shall permit permits the licensee to engage in the business of acquiring motor vehicles or trailers solely 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; thereof as defined in section 60-1401.02;

(10) Supplemental motor vehicle, motorcycle, or trailer dealer's license. This license shall permit 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 shall permit permits the licensee to engage in the business of selling or exchanging new, used, or new and used motorcycles as defined in section 60-1401.02 at the established place of business designated in such the license and another place or places of business located within three hundred feet of such the designated place of business and within the city or county described in such the original license. This form of license shall permit permits one person named thereon on the license, either the licensee, if he or she is the individual owner of such the licensed business, or a stockholder, officer, partner, or member of such the licensee, to act as a motorcycle salesperson and the name of the such authorized person shall appear on the license; and

(12) Motor vehicle auction dealer's license. This license shall permit permits the licensee to engage in the business of selling motor vehicles and trailers, as defined in section 60-1401.02. This form of license shall permit permits one person named thereon on the license, either the licensee, if he or she is the individual owner of such the licensed business, or a stockholder, officer, partner, or member of such the licensee, to act as a motor vehicle auction dealer's salesperson and the name of the authorized person shall appear on the license.

Sec. 5. Section 60-1411.02, Revised Statutes Supplement, 1994, 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, 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 shall have the power to may deny any application for a license, to may revoke or suspend a license, to may place the licensee or registrant on probation, to may assess an administrative fine in an amount not to exceed five thousand dollars per violation, or to 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, as defined in section 60-1401.02;

(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 thereto to the application;

(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 ~~the 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 ~~the provisions~~ of 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 ~~the provisions~~ of sections 60-132 to 60-138;

(18) Has engaged in any unfair methods of competition or unfair or deceptive acts or practices prohibited under Chapter 87, article 3; or

(19) Has conspired, as defined in section 28-202, with other persons to process titles in violation of ~~the provisions~~ 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. 6. Section 60-1411.03, Reissue Revised Statutes of Nebraska, is amended to read:

60-1411.03. It shall be unlawful for any licensee or motor vehicle dealer to engage, directly or indirectly, in the following acts:

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

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

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

(4) To advertise (a) that the advertiser's prices are always or generally lower than competitive prices and not met or equalled by others or that the advertiser always or generally undersells competitors, (b) that the advertiser's prices are always or generally the lowest or that no other dealer has lower prices, (c) that the advertiser is never undersold, or (d) that no other advertiser or dealer will have a lower price;

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

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

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

(8) To advertise the price of a motor vehicle, motorcycle, or trailer without including all charges which the customer must pay for the motor vehicle, motorcycle, or trailer, excepting state and local tax and license and title fees. It shall be unlawful to advertise prices described as unpaid balance, unless they are the full cash selling price and to advertise price which is not the full selling price even though qualified with expressions such as with trade, with acceptable trade, or other similar words;

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

(10) To advertise claims that Everybody Financed, No Credit

Rejected, or We Finance Anyone and other similar affirmative statements;

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

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

(13) To advertise the term Authorized Dealer in any way as to mislead as to the make or makes of motor vehicles, motorcycles, or trailers for which a dealer is franchised to sell at retail;

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

(15) To advertise used motor vehicles, motorcycles, or trailers so as to create the impression that they are new. Used motor vehicles, motorcycles, and trailers of the current and preceding model year shall be clearly identified as Used, Executive Driven, Demonstrator, or Driver Training, and lease cars, taxicabs, fleet vehicles, police motor vehicles, or motorcycles as may be the case and descriptions such as Low Mileage or Slightly Driven may also be applied only when correct. The terms demonstrator's, executive's, and official's motor vehicles, motorcycles, or trailers shall not be used unless (a) they have never been sold to a member of the public, (b) and unless such terms describe motor vehicles, motorcycles, or trailers used by new motor vehicle, motorcycle, or trailer dealers or their employees for demonstrating performance ability, and unless (c) such vehicles are advertised for sale as such only by an authorized dealer in the same make of motor vehicle, motorcycle, or trailer. Phrases such as Last of the Remaining, Closeout, or Final Clearance and others of similar import shall not be used in advertising used motor vehicles, motorcycles, and trailers so as to convey the impression that the motor vehicles, motorcycles, and trailers offered are holdover new motor vehicles, motorcycles, and trailers. When new and used motor vehicles, motorcycles, and trailers of the current and preceding model year are offered in the same advertisement, such offers shall be clearly separated by description, layout, and art treatment;

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

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

(18) To advertise the term wholesale in connection with the retail offering of used motor vehicles, motorcycles, and trailers;

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

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

(21) To advertise (a) the term Manufacturer's Warranty, unless it is used in advertising only in reference to cars covered by a bona fide factory warranty for that particular make of motor vehicle, motorcycle, or trailer.

In the event only a portion of such warranty is remaining, then reference to a warranty may be used only if stated that that unused portion of the warranty is still in effect, (b) the term New Car Guarantee, except in connection with new motor vehicles, motorcycles, and trailers, and (c) the terms Ninety-day Warranty, Fifty-fifty Guarantee, Three-hundred-mile Guarantee, and Six-month Warranty, unless the major terms and exclusions are sufficiently described in the advertisement;

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

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

Sec. 7. Section 60-1413, Reissue Revised Statutes of Nebraska, 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. 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 ~~such the~~ charges. The written notice may be served by delivery personally to the party or by mailing ~~such the~~ notice by registered or certified mail to the last-known business address of ~~such the~~ party. If the applicant is a salesperson, the board shall also notify the dealer employing him or her or whose employ he or she seeks to enter by mailing ~~such the~~ notice to the dealer's last-known business address. A stenographic record of all testimony presented at ~~such 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, ~~or an established place of business, or liability insurance as prescribed by subsection (3) of section 60-1407.01,~~ the license shall ~~immediately expire,~~ ~~forthwith.~~ The executive director shall notify the licensee personally or by mailing the notice by registered or certified mail to the last-known address of ~~such 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. 8. 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, manufacturer, factory representative, distributor, or distributor representative ~~as defined in section 60-1401-02~~ without having first obtained the license provided in section 60-1406 ~~shall be~~ is guilty of a Class IV felony and is ~~subject to the civil penalty provisions of section 60-1411.02.~~

Sec. 9. Section 60-1417, Reissue Revised Statutes of Nebraska, is amended to read:

60-1417. Every motor vehicle, motorcycle, or trailer sale, except between a manufacturer or distributor, shall be evidenced by an instrument in writing upon a form that may be promulgated by the board and approved by the Attorney General which shall contain all the agreements of the parties and shall be signed by the buyer and seller or a duly acknowledged agent of the seller. Prior to or concurrent with any such motor vehicle, motorcycle, or trailer sale, the seller shall deliver to the buyer ~~one instrument written documentation~~ which shall contain the following information:

- (1) Name of seller;

- (2) Name of buyer;
- (3) Year of model and identification number;
- (4) Cash sale price;
- (5) Year and model of trailer and serial number, if any;
- (6) The amount of buyer's downpayment and whether made in money or goods or partly in money and partly in goods, including a brief description of any goods traded in;
- (7) The difference between subdivisions (4) and (6) of this section;
- (8) The amount included for insurance if a separate charge is made **therefor for insurance**, specifying the types of coverages;
- ~~(9) If the sale is an installment sale:~~
- (a) The basic time price, which is the sum of subdivisions (7) and (8) of this section;
- ~~(10) (b) The time-price differential;~~
- (11) (c) The amount of the time-price balance, which is the sum of subdivisions ~~(9) and (10) of this section (a) and (b) of this subdivision~~, payable in installments by the buyer to the seller;
- ~~(12) (d) The number, amount, and due date or period of each installment payment; and~~
- (13) (e) The time-sales price;
- (14) (10) Whether the sale is as is or subject to warranty and, if subject to warranty, specifying the warranty; and
- (15) (11) If repairs or inspections arising out of the conduct of a dealer's business cannot be provided by the dealer in any representations or warranties that may arise, the instrument shall so state that fact and shall provide the purchaser with the location of a facility where such repairs or inspections, as provided for in the service contract, can be accomplished.
- A copy of all such instruments and written documentation shall be retained in the file of the dealer for five years from the date of sale. The dealer shall keep a copy of the odometer statement required by section 60-134 which is furnished to him or her for each motor vehicle the dealer purchases or sells. The dealer shall keep such statements for five years from the date of the transaction as shown on the odometer statement.

Sec. 10. This act becomes operative on January 1, 1996.

Sec. 11. Original sections 60-1401.02, 60-1406, 60-1411.03, 60-1413, 60-1416, and 60-1417, Reissue Revised Statutes of Nebraska, and sections 60-114, 60-1403, and 60-1411.02, Revised Statutes Supplement, 1994, are repealed.