

LEGISLATIVE BILL 754

Approved by the Governor April 15, 1974

Introduced by Carpenter, 48

AN ACT to amend sections 60-1401.02, 60-1403.01, 60-1404, 60-1406, 60-1407.03, 60-1407.06, 60-1409, 60-1411.01, 60-1411.03, 60-1415, 60-1416, 60-1417, and 60-1419, Revised Statutes Supplement, 1972, section 60-1402, Revised Statutes Supplement, 1973, and section 60-1411.02, Revised Statutes Supplement, 1972, as amended by section 10, Legislative Bill 826, Eighty-third Legislature, Second Session, 1974, relating to motor vehicles; to redefine terms; to provide a per diem; to provide disqualifications for any license; to provide for an attorney; to provide for the use of funds; to permit specified sales other than at the established place of business; to change fees; to grant power to deny any application for license or to revoke or suspend any license for employment of an unlicensed salesman; to change provisions for unauthorized acts; to change the penalty for acting as dealer without a license; to provide for showing whether a sale is pursuant to a warranty; to provide the time to keep copies of instruments; to increase the penal provision of bonds; to require the taking of title when selling on consignment except as prescribed; to provide procedures; and to repeal the original sections.

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

Section 1. That section 60-1401.02, Revised Statutes Supplement, 1972, be amended to read as follows:

60-1401.02. As used in this act, unless the context otherwise requires:

(1) Person shall mean every natural person, firm, copartnership, association, or corporation;

(2) Motor vehicle dealer shall mean any person engaged in the business of selling or exchanging new or used motor vehicles and trailers as defined in this act, and any person who buys, sells or exchanges three or more new or used motor vehicles in any one calendar year shall be deemed to be a motor vehicle dealer and subject to the provisions of this act;

(3) Trailer dealer shall mean any person engaged in the business of selling or exchanging new or used trailers, and any person, who buys, sells or exchanges three or more new or used trailers in any one calendar year shall be deemed to be a trailer dealer and subject to the provisions of this act;

(4) Wrecker or salvage dealer shall mean any person who buys or otherwise acquires three or more motor vehicles, motorcycles, or trailers solely for the purpose of dismantling them and selling or otherwise disposing of the parts and accessories thereof;

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

(6) Used motor vehicle shall mean every motor vehicle which has been sold, bargained, exchanged, given away, or for which title has been transferred from the person who first acquired it from the manufacturer or importer, dealer, or agent of the manufacturer or importer; Provided, that a new motor vehicle shall not be considered as a used motor vehicle until it has been placed in a bona fide consumer use, notwithstanding the number of transfers of such motor vehicle; and bona fide consumer use shall mean actual operation by an owner who acquired the vehicle for use in business or for pleasure purposes and who has been granted a certificate of title on such motor vehicle and has registered such motor vehicle, all in accordance with the laws of the residence of the owner;

(7) New motor vehicle shall mean all motor vehicles which are not included within the definition of a used motor vehicle in subdivision (6) of this section;

(8) Trailer shall mean trailers and semitrailers, as defined in section 60-301, which are required to be licensed as commercial trailers, and 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; Provided, that machinery and equipment to which wheels are attached and designed for being drawn by a motor vehicle shall be excluded from the provisions of this act;

(9) Motorcycle dealer shall mean any person engaged in the business of selling or exchanging new or used motorcycles as defined in this section and any person who buys, sells, or exchanges three or more new or used motorcycles in any one calendar year shall be deemed to be a motorcycle dealer and subject to the provisions of this act;

(10) Motorcycle shall mean 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;

(11) Auction shall mean a public sale of motor vehicles and trailers of types required to be registered in this state 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;

(12) Auction dealer shall mean any person engaged in the business of selling motor vehicles and trailers as defined in subdivision (11) of this section; Provided, that the holding of a farm auction or an occasional motor vehicle, trailer, or motorcycle dealer's auction of not more than two auctions in a calendar year shall not be construed as constituting an auction dealer subject to the provisions of this act;

(13) Supplemental motor vehicle, trailer, motorcycle, or motor vehicle auction dealer shall mean 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;

(14) Motor vehicle, motorcycle, or trailer salesman shall mean 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 salesman 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; Provided, a person owning any part of more than one dealership may be a salesman for each of such dealerships. Common ownership is defined for the purpose

of this section to mean that there is at least an eighty per cent interest in each dealership by one or more persons having ownership in such dealership;

(15) Manufacturer shall mean 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 the same meaning as the term franchisor as used in this act;

(16) Factory representative shall mean 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;

(17) Distributor shall mean 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;

(18) Finance company shall mean 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 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;

(19) Franchise shall mean 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 franchisor's distribution system;

(d) The operation of franchisee's business is substantially associated with the franchisor's trade-mark, 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 franchisor for the continued supply of motor vehicles, parts, and accessories;

(20) Franchisee shall mean a person who receives motor vehicles from the franchisor under a franchise and who offers and sells such motor vehicles to the general public;

(21) Franchisor shall mean a person who manufactures or distributes motor vehicles and who may enter into a franchise;

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

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

(24) Sale, selling, and equivalent expressions shall mean the attempted act or acts either as principal, agent, salesman, 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 with a right or option to purchase under the terms of the lease;

(25) Established place of business shall mean 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 is licensed and may be contacted at all reasonable hours by the public. 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 books, records, and files shall be available for inspection by the board's representatives at all reasonable hours; (b) a sign displayed with letters not less than twelve 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 with the board and shall furnish to each buyer a written statement as to where such service will be provided; Provided, that a mobile truck equipped with repair facilities to properly perform warranty functions and other repairs shall be deemed adequate repair facilities for trailers, as defined in this act; provided further, that the above requirements shall not apply to the place of business authorized under a supplemental motor vehicle, motorcycle, or trailer dealer's license, except that such place of business shall have a sign with letters of not less than twelve inches in height identifying such supplemental place of business; and provided further, that where one corporation controls one or more other corporations doing business and licensed under the provisions of this act, only the controlling corporation must comply with the requirements of an established place of business pertaining to recordkeeping as set forth in this subdivision;

(26) Wholesaler shall mean a person in this state who sells at wholesale used motor vehicles or used trailers to motor vehicle dealers or trailer dealers;

(27) Factory branch shall mean a branch office maintained in this state, by a person who manufactures or assembles 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;

(28) Distributor representative shall mean a representative employed by a distributor or distributor branch for the same purpose as set forth in subdivision (16) of this section;

(29) Board shall mean the Nebraska Motor Vehicle Industry Licensing Board; and

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

Nothing in this act 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 motor vehicle, motorcycle, or trailer shall be considered a dealer as defined in this section.

Sec. 2. That section 60-1402, Revised Statutes Supplement, 1973, be amended to read as follows:

60-1402. (1) There is hereby established the Nebraska Motor Vehicle Industry Licensing Board which shall consist of the Director of Motor Vehicles, who shall be chairman of the board, and nine members appointed by the Governor as follows: One factory representative, one member of the general public, and one motorcycle dealer, all of whom shall be appointed from the state at large, one new motor vehicle dealer from each of the three congressional districts of the state as the districts are constituted on October 19, 1963, and two used motor vehicle dealers and one trailer dealer or combination motor vehicle or trailer dealer, not more than one used motor vehicle dealer being appointed from the same congressional district as they are constituted on October 19, 1963, and the trailer dealer or combination motor vehicle or trailer dealer being appointed from the state at large; Provided, that no member of the board shall participate in any manner in a proceeding before the board involving his licensed business.

(2) On October 19, 1963, the Governor shall appoint a new motor vehicle dealer and a trailer dealer or combination motor vehicle or trailer dealer to the board. In making the appointments, the Governor shall appoint one of the new members for one year and one for two years as designated by him in making the appointments. On January 1, 1972, the Governor shall appoint one factory representative and one member of the general public to the board, designating one to serve for a term of one year and one for a term of two years. On January 1, 1974, the Governor shall appoint one motorcycle dealer to serve for a term of three years. At the expiration of the term of any appointed member of the board, the Governor shall appoint a successor for a term of three years. In the event of a vacancy on the board, the Governor shall fill such vacancy by appointing a member to serve during the unexpired term of the member whose office has become vacant. The action of the majority of the members of the board shall be deemed the action of the board. All appointments made to the board, except the Director of Motor Vehicles, shall be confirmed by the Legislature if in session. In the event the Legislature is not in session all appointments including appointments to fill a vacancy shall be temporary appointments until the next meeting of the Legislature

when the Governor shall nominate some person to fill the office. Any person so nominated who is confirmed by the Legislature shall hold his office during the remainder of the term. No appointed person may act as a member of the board while holding any other elective or appointive state or federal office except the Director of Motor Vehicles. All appointed members of the board shall ~~serve without compensation but shall be paid fifty dollars for each day actually engaged in the performance of their duties~~ and be entitled to their reasonable traveling expenses in the performance of their duties.

Sec. 3. That section 60-1403.01, Revised Statutes Supplement, 1972, be amended to read as follows:

60-1403.01. No person shall engage in the business as or serve in the capacity of, or act as a motor vehicle, trailer, or motorcycle dealer, salesman, auction dealer, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative in this state without being licensed by the board under the provisions of this act. ~~No salesman's license shall be issued to any person under the age of sixteen, and no dealer's license shall be issued to any minor.~~ A license issued under this act shall authorize the holder thereof to engage in the business or activities permitted by the license; Provided, that the provisions of this section shall not apply to a licensed real estate salesman or broker who negotiates for sale, or sells a trailer for any individual who is the owner of not more than two trailers.

Sec. 4. That section 60-1404, Revised Statutes Supplement, 1972, be amended to read as follows:

60-1404. The board shall employ an executive secretary who shall keep a record of all proceedings, transactions, communications, and official acts of the board. He shall be custodian of all records of the board and perform such other duties as the board may require. The executive secretary shall call a meeting of the board at the direction of the chairman thereof or upon a written request of two or more members thereof. The board is authorized to employ an attorney at a minimum salary of six hundred dollars per month together with such other employees, including staff for its attorney, as may be necessary to properly carry out the provisions of sections 60-1401 to 60-1449 ~~60-1435~~, to fix the salaries of such employees, and to make such other expenditures as are necessary to properly carry out the provisions of sections 60-1401 to 60-1449 ~~60-1435~~. The office of the board shall be maintained in the State

Capitol at Lincoln and all files, records, and property of the board shall at all times be and remain therein.

Sec. 5. That section 60-1406, Revised Statutes Supplement, 1972, be amended to read as follows:

60-1406. Licenses issued by the board under the provisions of sections 60-1401 to 60-1419 shall be of the classes hereinafter set out and shall permit the following described business activities:

(1) Motor vehicle dealer's license. This license shall permit 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 license and another place or places of business located within three hundred feet of such designated place of business, and within the city or county described in such original license. This license shall permit 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 one person, either the licensee, if he is the individual owner of such licensed business or a stockholder, officer, or copartner of such licensee to act as a motor vehicle and trailer salesman and the name of such authorized person shall appear on the license;

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

(3) Manufacturer license. This license shall permit 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 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 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 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 the licensee to engage in the activities of a distributor representative as defined in section 66-4404 ~~60-1401.02~~;

(8) Finance company license. This license, as defined in section 60-1401.02, shall permit 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) Wholesale license. This license shall permit the licensee to sell at wholesale, as defined in section 60-1401.02;

~~(10) Trailer dealer's license. This license shall permit the licensee to engage in the business of selling or exchanging new, used or new and used trailers, as defined in section 60-4404.02. This license shall permit one person, either the licensee, if he is the individual owner of such licensed business or a stockholder, officer or copartner of such licensee to act as a trailer salesman and the name of such authorized person shall appear on the license;~~

(10) Wrecker or salvage dealer license. This license shall permit 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 thereof as defined in section 60-1401.02;

(11) Supplemental motor vehicle, motorcycle, or trailer dealer's license. This license shall permit the licensee to engage in the business of selling or exchanging motor vehicles, motorcycles, or trailers of the type designated in his 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;

(12) Motorcycle dealer's license. This license shall permit 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. This form of license shall permit one person named thereon, either the licensee, if he is the individual owner of

such licensed business, or a stockholder, officer, or copartner of such licensee, to act as a motorcycle salesman and the name of such authorized person shall appear on the license; and

~~444~~ 113 Motor vehicle auction dealer's license. This license shall permit the licensee to engage in the business of selling motor vehicles and trailers as defined in section 60-14C1.02. This form of license shall permit one person named thereon, either the licensee, if he is the individual owner of such licensed business, or a stockholder or officer or copartner of such licensee to act as a motor vehicle auction dealer's salesman and the name of the authorized person shall appear on the license.

Sec. 6. That section 60-14C7.03, Revised Statutes Supplement, 1972, be amended to read as follows:

60-14C7.03. Notwithstanding the other provisions of Chapter 60, article 14, restricting sales to an established place of business, any licensed motor vehicle, motorcycle, or trailer dealer may be granted a special permit to display and sell motorcycles, trailers, or self-propelled ~~settle~~ motor homes at fairs, sports shows, vacation shows, and similar events, subject to the conditions established by sections 60-14C7.02 to 60-14C7.05.

Sec. 7. That section 60-14C7.06, Revised Statutes Supplement, 1972, be amended to read as follows:

60-14C7.06. The board may adopt rules and regulations establishing procedures for the issuance of such special permits. The fee for each such special permit shall be not more than the same fee as established for a dealer's license pursuant to section 60-1411.01.

Sec. 8. That section 60-14C9, Revised Statutes Supplement, 1972, be amended to read as follows:

60-14C9. All fees collected under this act shall be paid by the board, as collected, into the state treasury. The State Treasurer shall enter and carry on his records all such collections in a separate fund to be designated as the Nebraska Motor Vehicle Industry Licensing Fund. Such fund shall ~~when specifically be~~ appropriated by the Legislature for that purpose, for the operations of the Nebraska Motor Vehicle Industry Licensing Board, and shall be paid out from time to time by warrants of the Director of Administrative Services on the State Treasurer for authorized expenditures upon duly itemized vouchers executed as provided by law and

approved by the chairman of the board. The expenses of conducting the office must always be kept within the income collected and reported to the State Treasurer by such board. Such office and expense thereof shall not be supported or paid from the General Fund: and all money deposited in such fund shall be expended only for such office and expense thereof and, unless determined by the board, it shall not be required to expend any funds to any person or any other governmental agency. Any money in the Nebraska Motor Vehicle Industry Licensing Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to 72-1244 and 72-1246 to 72-1259 and the fund shall be audited annually by the Auditor of Public Accounts.

Sec. 9. That section 60-1411.01, Revised Statutes Supplement, 1972, be amended to read as follows:

60-1411.01. To pay the expenses of the administration, operation, maintenance, and enforcement of this act, the board shall collect with each application for each class of license fees not exceeding the following amounts: (1) Motor vehicle dealer's license, thirty-five fifty dollars; (2) supplemental motor vehicle dealer's license, ten dollars; (3) trailer dealer's license, thirty-five fifty dollars; (4) motor vehicle, motorcycle, or trailer salesman's license, three dollars; (5) motor vehicle, motorcycle, or trailer manufacturer's license, two hundred fifty dollars; (6) distributor's or wholesaler's license, two hundred fifty dollars; (7) factory representative's license, ten dollars; (8) distributor representative's license, ten dollars; (9) finance company's license, thirty-five fifty dollars; (10) wrecker or salvage dealer's license, thirty-five fifty dollars; (11) factory branch license, thirty-five fifty dollars; (12) motorcycle dealer's license, thirty-five fifty dollars; and (13) motor vehicle auction dealer's license, thirty-five fifty dollars; 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 this act. Fifteen dollars of the license fee for each dealer's license of any class shall be an inspection fee, and shall not be refunded if the application is denied because of the applicant's failure to meet the requirements of this act. 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 provided all requirements of law are complied with and a fee of ten

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.

Sec. 10. That section 60-1411.02, Revised Statutes Supplement, 1972, as amended by section 10, Legislative Bill 826, Eighty-third Legislature, Second Session, 1974, be amended to read as follows:

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 licensed as a motor vehicle dealer, trailer dealer, motor vehicle or trailer salesman, manufacturer, factory branch, distributor, wholesaler, factory representative, distributor representative, supplemental motor vehicle dealer, wrecker or salvage dealer, finance company, motorcycle dealer or motor vehicle auction dealer. It shall have the power to deny any application for a license or to revoke or suspend any license issued under the provisions of this act when the applicant or licensee including any officer, stockholder, partner, or any person having any financial interest in the applicant or licensee:

(1) Has had any license, issued to him under the provisions of this act, 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 thereof;

(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; or, in the event felony charges are pending against an applicant, then no license shall be issued to an applicant until there has been a final determination of the charges;

(5) Has made a false material statement in his application or any data attached thereto;

(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 address of his established place or places of business and in the case of a salesman has failed to notify the board of any change in his 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;

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

(11) Has failed to comply with the provisions of this act and any orders, rules or regulations of the board promulgated under the act;

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

(13) Has failed to comply with the provisions of section 60-320, Chapter 60, article 1, the provisions of this act or rules or regulations promulgated by the board under the provisions thereof;

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

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

~~(16) Has employed any unlicensed salesman or salesmen; or~~

~~(17) Has failed to comply with the provisions of Chapter 60, article 17 or 23.~~

Sec. 11. That section 60-1411.03, Revised Statutes Supplement, 1972, be amended to read as follows:

60-1411.03. It shall be unlawful for any licensee 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, 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 possession of the dealer, owner or advertiser and willingly shown and sold, as advertised, illustrated, or described, at advertised price and terms, at the advertised address; Provided, that 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, 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, down payment, 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, 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, license and title fees; Provided, that 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 or in a similar meaning, shall be 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, 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, 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; Provided, that it is 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; and provided further, that advertisers offering repossessed automobiles for sale must 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 enfranchised by the manufacturer of the motor vehicle, motorcycle or trailer offered. Misleading terms such as Factory Fresh, and Paper on the Doors, shall not be used unless such

motor vehicles, motorcycles and trailers are new;

(15) To advertise used motor vehicles, motorcycles or trailers so as to create the impression that they are new; Provided, that (a) used motor vehicles, motorcycles and trailers of the current and preceding model year must be clearly identified as Used, Executive Driven, or 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, Slightly Driven may also be applied only when correct; (b) the terms demonstrator's, executive's and official's motor vehicles, motorcycles, or trailers shall not be used unless they have never been sold to a member of the public 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 such vehicles are advertised for sale as such only by an authorized dealer in the same make of motor vehicle, motorcycle or trailer; (c) phrases such as last of the Remaining, Closeout, 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; and (d) 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 dealer or in any other manner so as to convey the impression that they are being offered by private parties;

(18) To advertise specific or supposed mileage to odometer reading unless such mileage representation can be substantiated by the records of the dealer;

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

(20) To advertise terms auction or auction special and other terms of similar import unless such terms shall be 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 this act;

(21) To advertise equipment, accessory, or other merchandise as free (a) if its cost, or any part of its cost, is included in the price of the motor vehicle, motorcycle or trailer, (b) if it is offered contingent upon any sale, or (c) if the motor vehicle, motorcycle or trailer can be purchased for a lesser price without such equipment, accessory or merchandise;

(22) 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; Provided, that a driving trial 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;

(23) 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; Provided, that 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 all of the terms thereof are described in the advertisement; and

(24) 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; Provided, that 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

(25) 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 statement, declaration, or representation is on the licensed dealer and not on the board.

Sec. 12. That section 60-1415, Revised Statutes Supplement, 1972, be amended to read as follows:

60-1415. The board shall state in writing, officially signed by ~~all the members concurring therein~~ the chairman or vice-chairman and the executive secretary, its findings and determination after such hearing and its order in the matter. If the board shall determine and order that an applicant is not qualified to receive a license, no license shall be granted. If the board shall determine that the license holder has willfully or through undue negligence been guilty of any violation of the provisions of this act, or any rule or regulation adopted or made by the board under authority of the provisions of this act, his license may be suspended or revoked, ~~or he may be placed on probation.~~ The board shall make a demand on a dealer or licensee for restitution to a harmed consumer. Should the applicant for a license or a license holder desire to appeal from the decision of the board, he shall, within ten days, file an appeal bond with the board in the sum of five hundred one thousand dollars and ~~file an original action in the district court~~ he shall, within thirty days after service on him of the final decision or order of the board, file a petition in the district court in the county where such action was taken, which appeal shall be governed by the provisions of section 84-917. Pending the final determination of such action, he shall not, except as permitted by the court to which appeal is taken, be permitted to do business as a motor vehicle dealer, trailer dealer, motorcycle dealer, motor vehicle auction dealer, motor vehicle or trailer salesman, manufacturer, wholesaler, distributor, factory representative, factory branch, distributor representative, supplemental motor vehicle dealer, wrecker or salvage dealer, or finance company.

Sec. 13. That section 60-1416, Revised Statutes Supplement, 1972, be amended to read as follows:

60-1416. Any person acting as a motor vehicle or trailer dealer, motor vehicle or trailer salesman, manufacturer, distributor, factory representative, wholesaler, wrecker or salvage dealer, or distributor representative as defined in section 60-1401.02 without having first obtained the license provided in section

60-1406, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not to exceed less than one hundred dollars nor more than five hundred dollars or not to exceed six months' imprisonment, or by both such a fine and imprisonment.

Sec. 14. That section 60-1417, Revised Statutes Supplement, 1972, be amended to read as follows:

60-1417. Every motor vehicle, motorcycle, or trailer sale, except between a manufacturer, a distributor or a dealer, 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 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 down payment, 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, specifying the types of coverages; (9) the basic time price, which is the sum of subdivisions (7) and (8) of this section; (10) the time price differential; (11) the amount of the time price balance, which is the sum of subdivisions (9) and (10) of this section payable in installments by the buyer to the seller; (12) the number, amount, and due date or period of each installment payment; ~~and~~ (13) the time sales price; ~~and~~ (14) whether the sale is as is or subject to warranty and, if subject to warranty, specifying the warranty. A copy of all such instruments shall be retained in the file of the dealer for five years from the date of sale.

Sec. 15. That section 60-1419, Revised Statutes Supplement, 1972, be amended to read as follows:

60-1419. Applicants for a motor vehicle dealer's license, trailer dealer's license, wholesaler's license, or motorcycle dealer's license shall, at the time of making application, furnish a corporate surety bond in the penal sum of ten thousand dollars, but for the year 1975 and thereafter shall, at the time of making application, furnish a corporate surety bond in the penal sum of twenty thousand dollars, and applicants for a

motor vehicle auction dealer's license shall, at the time of making application, furnish a corporate surety bond in the penal sum of not less than one hundred thousand dollars, on a form to be prescribed by the Attorney General of the State of Nebraska. The bond shall provide (1) that the applicant will faithfully perform all the terms and conditions of said license, (2) that the licensed dealer will fully indemnify any person or other dealer by reason of any loss suffered because of (a) the substitution of any motor vehicle or trailer other than the one selected by the purchaser, (b) the dealer's failure to deliver to the purchaser a clear and marketable title, (c) the dealer's misappropriation of any funds belonging to the purchaser, (d) any alteration on the part of the dealer so as to deceive the purchaser as to the year model of any motor vehicle or trailer, and (e) any false and fraudulent representations or deceitful practices whatever in representing any motor vehicle or trailer, and (3) that the motor vehicle, motorcycle, motor vehicle auction, or trailer dealer or wholesaler shall well, truly, and faithfully comply with all the provisions of his license and the acts of the Legislature relating thereto. The aggregate liability of the surety shall in no event exceed the penalty of said bond.

Sec. 16. When any dealer, except an auction dealer selling at auction, sells any unit on consignment, he must take title to such unit in his own name.

Sec. 17. That original sections 60-1401.02, 60-1403.01, 60-1404, 60-1406, 60-1407.03, 60-1407.06, 60-1409, 60-1411.01, 60-1411.03, 60-1415, 60-1416, 60-1417, and 60-1419, Revised Statutes Supplement, 1972, section 60-1402, Revised Statutes Supplement, 1973, and section 60-1411.02, Revised Statutes Supplement, 1972, as amended by section 10, Legislative Bill 826, Eighty-third Legislature, Second Session, 1974, are repealed.