

LEGISLATIVE BILL 106

Approved by the Governor April 7, 1993

Introduced by Byars, 30

AN ACT relating to motor vehicle industry licensing; to amend sections 60-1413 and 60-1415, Reissue Revised Statutes of Nebraska, 1943, and section 60-1411.02, Revised Statutes Supplement, 1992; to provide for administrative fines and probation; to change provisions relating to hearings; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 60-1411.02, Revised Statutes Supplement, 1992, 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 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 deny any application for a license, or to revoke or suspend any a license, to place the licensee or registrant on probation, to assess an administrative fine in an amount not to exceed five thousand dollars per violation, or to take any combination of such actions if issued under Chapter 60, article 14, when the applicant, registrant, or licensee including any officer, stockholder, or partner; or any person having any financial interest in the applicant, registrant, or licensee:

(1) Has had any license; issued ~~to him or her~~ 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;

(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 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, ~~or~~ 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 Chapter 60, article 23;

(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 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. 2. That section 60-1413, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

60-1413. Before the board ~~shall deny~~ denies any license or any registration; as described in section 60-1417.02, ~~or before revoking or suspending~~ 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 issued hereunder, it shall give the applicant, ~~or holder of the license~~ licensee, registrant, or violator a hearing on the matter. ~~It~~ The board shall, at least ~~ten~~ thirty days prior to the date set for the hearing, notify the ~~applicant or license holder of the license~~ party in writing. Such notice in writing shall contain an exact statement of the charges against ~~him or her~~ the party and the date and place of hearing. The ~~applicant or license holder~~ party shall have full authority to be heard in person or by counsel before the board in reference to such charges. The written notice may be served by delivery personally to the ~~applicant or holder of license,~~ party or by mailing such notice by registered or certified mail to the last-known business address of such ~~applicant or license holder~~ 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 notice to the dealer's last-known business address. A stenographic record of all testimony presented at such hearings shall be made and preserved pending final disposition of the complaint.

When the licensee fails to maintain a bond as provided in section 60-1419; or an established place of business, ~~as defined in section 60-1401.02,~~ the license shall 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 ~~license holder~~ licensee that his or her license is revoked until a bond as required by ~~the provisions of~~ section 60-1419 is furnished and approved in which event the license may be reinstated.

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 ~~as~~ provided in section 60-1416.

Sec. 3. That section 60-1415, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

60-1415. (1) The board shall state in writing, officially signed by the chairperson or vice-chairperson and the executive director, its findings and determination after such hearing and its order in the matter. If the board ~~shall determine and order~~ determines and orders that an applicant is not qualified to receive a license ~~or registration,~~ no license ~~or registration~~ shall be granted. If the board ~~shall determine~~ determines that the ~~license holder~~ party has willfully or through undue negligence been guilty of any violation of Chapter 60, article 14, or any rule or regulation adopted and promulgated by the board under authority of Chapter 60, article 14, ~~his or her license may be suspended or revoked, or he or she may be placed on probation~~ the board may suspend or revoke the license or registration, place the party on probation, assess an administrative fine, or take any combination of such actions. In determining the amount of the fine, the board may consider the

appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and any attempt made by the party to retaliate against another party for seeking relief pursuant to the laws, rules, or regulations relating to motor vehicle industry licensing. The board may also, after hearing, assess an additional administrative fine in an amount not to exceed five thousand dollars for each day a violation continues if a party fails to obey a direct order of the board or repeats the same violation within forty-eight months of the previous violation. The imposition of any such additional administrative fine shall commence one month after the initial order of the board or any final order on appeal if taken for failure to obey a direct order of the board and on the date of the second or subsequent violation for repeat violations within forty-eight months. The board may make a demand on a ~~dealer or licensee violator~~ for restitution to a harmed consumer. The ~~applicant for a license or a license holder party~~ may appeal the decision of the board. ~~The~~ , and the appeal shall be in accordance with the Administrative Procedure Act.

(2) All money collected by the board as an administrative fine shall be remitted on a monthly basis to the State Treasurer for credit to the permanent school fund. Any administrative fine imposed under this section and unpaid shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper form of action, in the name of the State of Nebraska, in the district court of the county in which the violator resides or owns property.

Sec. 4. That original sections 60-1413 and 60-1415, Reissue Revised Statutes of Nebraska, 1943, and section 60-1411.02, Revised Statutes Supplement, 1992, are repealed.