

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 709

Introduced by Pahls, 31.

Read first time January 09, 2008

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to motor vehicles; to amend sections 60-1403
2 and 60-1403.01, Reissue Revised Statutes of Nebraska,
3 sections 45-335, 60-111, 60-320, and 60-1401.02, Revised
4 Statutes Cumulative Supplement, 2006, and sections
5 60-101, 60-301, and 77-2703, Revised Statutes Supplement,
6 2007; to permit motor vehicle dealers and motorcycle
7 dealers to collect documents, taxes, and fees and issue
8 certificates of title, certificates of registration,
9 license plates, and validation and tonnage decals; to
10 provide powers and duties; to harmonize provisions; to
11 provide a duty for the Revisor of Statutes; and to repeal
12 the original sections.

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

1 Section 1. Section 45-335, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 45-335 For purposes of the Nebraska Installment Sales
4 Act, unless the context otherwise requires:

5 (1) Goods means all personal property, except money or
6 things in action, and includes goods which, at the time of sale or
7 subsequently, are so affixed to realty as to become part thereof
8 whether or not severable therefrom;

9 (2) Services means work, labor, and services of any kind
10 performed in conjunction with an installment sale but does not
11 include services for which the prices charged are required by law
12 to be established and regulated by the government of the United
13 States or any state;

14 (3) Buyer means a person who buys goods or obtains
15 services from a seller in an installment sale;

16 (4) Seller means a person who sells goods or furnishes
17 services to a buyer under an installment sale;

18 (5) Installment sale means any transaction, whether or
19 not involving the creation or retention of a security interest, in
20 which a buyer acquires goods or services from a seller pursuant to
21 an agreement which provides for a time-price differential and under
22 which the buyer agrees to pay all or part of the time-sale price in
23 one or more installments and within one hundred forty-five months,
24 except that installment contracts for the purchase of mobile
25 homes may exceed such one-hundred-forty-five-month limitation.

1 Installment sale does not include a consumer rental purchase
2 agreement defined in and regulated by the Consumer Rental Purchase
3 Agreement Act;

4 (6) Installment contract means an agreement entered into
5 in this state evidencing an installment sale except those otherwise
6 provided for in separate acts;

7 (7) Cash price or cash sale price means the price stated
8 in an installment contract for which the seller would have sold or
9 furnished to the buyer and the buyer would have bought or acquired
10 from the seller goods or services which are the subject matter
11 of the contract if such sale had been a sale for cash instead of
12 an installment sale. It may include the cash price of accessories
13 or services related to the sale such as delivery, installation,
14 alterations, modifications, and improvements and may include taxes
15 to the extent imposed on the cash sale. For purposes of sales of
16 motorcycles and motor vehicles, cash price or cash sale price may
17 also include any taxes and fees referred to in subsection (1) or
18 (3) of section 8 of this act;

19 (8) Basic time price means the cash sale price of the
20 goods or services which are the subject matter of an installment
21 contract plus the amount included therein, if a separate identified
22 charge is made therefor and stated in the contract, for insurance,
23 registration, certificate of title, and license fees, filing fees,
24 an origination fee, and fees and charges prescribed by law which
25 actually are or will be paid to public officials for determining

1 the existence of or for perfecting, releasing, or satisfying any
2 security related to the credit transaction or any charge for
3 nonfiling insurance if such charge does not exceed the amount of
4 fees and charges prescribed by law which would have been paid to
5 public officials for filing, perfecting, releasing, and satisfying
6 any security related to the credit transaction and less the amount
7 of the buyer's downpayment in money or goods or both;

8 (9) Time-price differential, however denominated or
9 expressed, means the amount, as limited in the Nebraska Installment
10 Sales Act, to be added to the basic time price;

11 (10) Time-sale price means the total of the basic time
12 price of the goods or services, the amount of the buyer's
13 downpayment in money or goods or both, and the time-price
14 differential;

15 (11) Sales finance company means a person purchasing one
16 or more installment contracts from one or more sellers. Sales
17 finance company includes, but is not limited to, a financial
18 institution or installment loan licensee, if so engaged;

19 (12) Director means the Director of Banking and Finance;

20 (13) Financial institution has the same meaning as in
21 section 8-101;

22 (14) Debt cancellation contract means a loan term
23 or contractual arrangement modifying loan terms under which a
24 financial institution agrees to cancel all or part of a buyer's
25 obligation to repay an extension of credit from the financial

1 institution upon the occurrence of a specified event. The debt
2 cancellation contract may be separate from or a part of other loan
3 documents. The term debt cancellation contract does not include
4 loan payment deferral arrangements in which the triggering event is
5 the buyer's unilateral election to defer repayment or the financial
6 institution's unilateral decision to allow a deferral of repayment;
7 and

8 (15) Debt suspension contract means a loan term or
9 contractual arrangement modifying loan terms under which a
10 financial institution agrees to suspend all or part of a buyer's
11 obligation to repay an extension of credit from the financial
12 institution upon the occurrence of a specified event. The debt
13 suspension contract may be separate from or a part of other loan
14 documents. The term debt suspension contract does not include loan
15 payment deferral arrangements in which the triggering event is the
16 buyer's unilateral election to defer repayment or the financial
17 institution's unilateral decision to allow a deferral of repayment.

18 Sec. 2. Section 60-101, Revised Statutes Supplement,
19 2007, is amended to read:

20 60-101 Sections 60-101 to 60-197 and section 4 of
21 this act shall be known and may be cited as the Motor Vehicle
22 Certificate of Title Act.

23 Sec. 3. Section 60-111, Revised Statutes Cumulative
24 Supplement, 2006, is amended to read:

25 60-111 Designated county official means the county

1 official, other than the county clerk, designated by a county board
2 to provide services pursuant to section 23-186. Beginning January
3 1, 2010, designated county official includes a motor vehicle dealer
4 or motorcycle dealer approved pursuant to section 9 of this act to
5 the extent permitted under section 8 of this act.

6 Sec. 4. If a motor vehicle dealer or motorcycle dealer
7 licensed and approved under Chapter 60, article 14, to collect and
8 submit taxes and fees to the county clerk or designated county
9 official and issue a certificate of title, with notation of lien,
10 if any, to a person to whom the dealer has sold a new or used
11 motorcycle, a new or used motor vehicle of ten-passenger capacity
12 or less, or a new or used truck, the county clerk or designated
13 county official shall accept the taxes and fees as if submitted by
14 the purchaser.

15 Sec. 5. Section 60-301, Revised Statutes Supplement,
16 2007, is amended to read:

17 60-301 Sections 60-301 to 60-3,221 and section 7 of
18 this act shall be known and may be cited as the Motor Vehicle
19 Registration Act.

20 Sec. 6. Section 60-320, Revised Statutes Cumulative
21 Supplement, 2006, is amended to read:

22 60-320 Designated county official means the county
23 official, other than the county treasurer, designated by a county
24 board to provide services pursuant to section 23-186. Beginning
25 January 1, 2010, designated county official includes a motor

1 vehicle dealer or motorcycle dealer approved pursuant to section 9
2 of this act to the extent permitted under section 8 of this act.

3 Sec. 7. If a motor vehicle dealer or motorcycle dealer
4 licensed and approved under Chapter 60, article 14, to collect and
5 submit taxes and fees to the county treasurer or designated county
6 official and issue a certificate of registration, license plates,
7 validation and tonnage decals, and other related documents to a
8 person to whom the dealer has sold a new or used motorcycle, a new
9 or used motor vehicle of ten-passenger capacity or less, or a new
10 or used truck, the county treasurer or designated county official
11 shall accept the taxes and fees as if submitted by the purchaser.

12 Sec. 8. (1) Beginning January 1, 2010, a motor vehicle
13 dealer or motorcycle dealer licensed under Chapter 60, article 14,
14 and approved under section 9 of this act may, when selling a new
15 or used motorcycle, a new or used motor vehicle of ten-passenger
16 capacity or less, or a new or used truck, provide services to
17 the purchasers relating to the issuance of certificates of title,
18 certificates of registration, license plates, and validation and
19 tonnage decals, the notation and cancellation of liens, and the
20 collection of taxes and fees for motor vehicles as provided in
21 the Motor Vehicle Certificate of Title Act, the Motor Vehicle
22 Registration Act, and the Nebraska Revenue Act of 1967. The dealer
23 shall collect:

24 (a) Copies of required documents, including proof of
25 insurance, and signatures on applications and other documents

1 required to obtain a certificate of title, to notate and cancel
2 liens, to obtain a certificate of registration, license plates,
3 and validation and tonnage decals, and to pay all taxes and fees
4 associated with purchasing, titling, and registering a motorcycle
5 or motor vehicle as required in the Motor Vehicle Certificate of
6 Title Act, the Motor Vehicle Registration Act, the Nebraska Revenue
7 Act of 1967, and sections 14-109 and 18-1214;

8 (b) Motor vehicle taxes imposed in section 60-3,185;

9 (c) Motor vehicle fees imposed in section 60-3,190;

10 (d) Registration fees imposed in the Motor Vehicle
11 Registration Act;

12 (e) License plate and validation decal fees imposed in
13 the Motor Vehicle Registration Act;

14 (f) Wheel taxes imposed under section 14-109 or 18-1214;

15 (g) Sales and use taxes imposed in the Nebraska Revenue
16 Act of 1967;

17 (h) Fees related to obtaining or transferring a
18 certificate of title, including any fees related to a lien notation
19 on the title, imposed in the Motor Vehicle Certificate of Title
20 Act; and

21 (i) Any taxes and fees associated with purchasing,
22 titling, and registering a motorcycle or motor vehicle.

23 (2) The dealer shall verify signatures and other
24 documents as required of a designated county official. The dealer
25 shall remit the taxes and fees collected under this section to the

1 county clerk and county treasurer or designated county official
2 pursuant to section 23-186 of the county in which the motor vehicle
3 has situs. The dealer shall not be entitled to retain a collection
4 fee for the collection of the sales tax under this section, and
5 the county treasurer or designated county official shall retain the
6 collection fee authorized in section 77-2703 for any sales taxes
7 remitted by a dealer.

8 (3) A dealer may charge a negotiable fee to the purchaser
9 for the services provided under this section. Any purchaser may
10 decline the services provided by a dealer without any penalty or
11 additional fee.

12 (4) The Department of Motor Vehicles may adopt and
13 promulgate rules and regulations to carry out this section. The
14 Director of Motor Vehicles shall work with county officials and
15 the board to implement a secure system that will easily allow
16 an approved dealer who chooses to provide the services permitted
17 under this section to accurately compute, collect, and submit the
18 taxes, fees, and documents under this section in a timely manner
19 and to accurately issue certificates of title, notations of lien,
20 certificates of registration, license plates, and validation and
21 tonnage decals in a timely manner.

22 (5) Nothing in this section shall alter the obligation of
23 the owner of a motor vehicle to properly title, register, license,
24 or insure a motor vehicle as required under the Motor Vehicle
25 Certificate of Title Act and the Motor Vehicle Registration Act.

1 Sec. 9. (1) To be approved to provide the services
2 delineated in subsection (1) of section 8 of this act, a motor
3 vehicle dealer or motorcycle dealer shall apply to the Department
4 of Motor Vehicles on a form as prescribed by the department
5 and submit an application fee established by the department. The
6 application shall include a request for the department to inspect
7 the capability of the dealer to connect electronically to the
8 state and county motor vehicle titling and registration system in
9 a secure manner. The dealer shall include information relating to
10 its electronic transmission technology and the personnel trained in
11 its use, its electronic security measures, and its recordkeeping
12 ability.

13 (2) The department may require a dealer to be
14 sufficiently bonded or insured prior to being approved under this
15 section.

16 (3) The department shall adopt and promulgate rules and
17 regulations establishing the standards for electronic transmission
18 technology, electronic security measures, recordkeeping
19 requirements, and training for approval under this section,
20 procedures for distribution to approved dealers of license plates,
21 validation and tonnage decals, and materials for issuance of
22 certificates of registration and certificates of title and notation
23 of liens, and procedures for dealers to provide to purchasers the
24 services delineated in subsection (1) of section 8 of this act.
25 The dealer shall be financially responsible for the cost and tax

1 value of any unaccounted inventory of license plates, validation
2 and tonnage decals, and other materials.

3 (4) The department may audit any records of a dealer
4 approved under this section.

5 (5) The department may revoke the approval of a dealer,
6 after notice and a hearing, if the dealer violates any provision
7 of the Motor Vehicle Certificate of Title Act, the Motor Vehicle
8 Registration Act, section 8 of this act, or any requirements of the
9 department under this section or otherwise acts in a manner that,
10 in the opinion of the Director of Motor Vehicles, adversely affects
11 the ability to provide the services delineated in subsection (1) of
12 section 8 of this act.

13 (6) The department may establish application and renewal
14 fees in an amount to cover the costs to the department associated
15 with implementing this section and section 8 of this act. The
16 department shall remit fees collected under this section to the
17 Department of Motor Vehicles Cash Fund.

18 Sec. 10. Section 60-1401.02, Revised Statutes Cumulative
19 Supplement, 2006, is amended to read:

20 60-1401.02 For purposes of Chapter 60, article 14, and
21 sections ~~60-1401.01 to 60-1440~~ and 60-2601 to 60-2607, unless the
22 context otherwise requires:

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

25 (2) Association means any two or more persons acting

1 with a common purpose, regardless of the relative degrees of
2 involvement, and includes, but is not limited to, the following
3 persons so acting:

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

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

12 (3) Motor vehicle dealer means any person, other than a
13 bona fide consumer, actively and regularly engaged in the act of
14 selling, leasing for a period of thirty or more days, or exchanging
15 new or used motor vehicles, trailers, and manufactured homes who
16 buys, sells, exchanges, causes the sale of, or offers or attempts
17 to sell new or used motor vehicles. Such person is a motor vehicle
18 dealer and subject to ~~sections 60-1401.01 to 60-1440.~~ Chapter 60,
19 article 14. Motor vehicle dealer does not include a lessor who
20 was not involved in or associated with the selection, location,
21 acquisition, or supply of a motor vehicle which is the subject of a
22 lease agreement;

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

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

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

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

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

19 (9) Trailer means semitrailers and trailers as defined
20 in sections 60-348 and 60-354, respectively, which are required to
21 be licensed as commercial trailers, other vehicles without motive
22 power constructed so as to permit their being used as conveyances
23 upon the public streets and highways and so constructed as not to
24 be attached to real estate and to permit the vehicle to be used
25 for human habitation by one or more persons, and camping trailers,

1 slide-in campers, fold-down campers, and fold-down tent trailers.
2 Machinery and equipment to which wheels are attached and designed
3 for being towed by a motor vehicle are excluded from the provisions
4 of ~~sections 60-1401.01 to 60-1440~~, Chapter 60, article 14;

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

8 (11) Motorcycle means every motor vehicle, except a
9 tractor, having a seat or saddle for use of the rider and designed
10 to travel on not more than three wheels in contact with the
11 ground and for which evidence of title is required as a condition
12 precedent to registration under the laws of this state;

13 (12) Auction means a sale of motor vehicles and trailers
14 of types required to be registered in this state, except such
15 vehicles as are eligible for registration pursuant to section
16 60-3,198, sold or offered for sale at which the price offered is
17 increased by the prospective buyers who bid against one another,
18 the highest bidder becoming the purchaser. The holding of a farm
19 auction or an occasional motor vehicle or trailer auction of not
20 more than two auctions in a calendar year does not constitute
21 an auction subject to ~~sections 60-1401.01 to 60-1440~~, Chapter 60,
22 article 14;

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

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

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

22 (16) Manufacturer means any person, resident or
23 nonresident of this state, who is engaged in the business of
24 distributing, manufacturing, or assembling new motor vehicles,
25 trailers, or motorcycles and also has the same meaning as the term

1 franchisor as used in ~~sections 60-1401.01 to 60-1440,~~ Chapter 60,
2 article 14;

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

9 (18) Distributor means a person, resident or nonresident
10 of this state, who in whole or in part sells or distributes
11 new motor vehicles, trailers, or motorcycles to dealers or who
12 maintains distributors or representatives who sell or distribute
13 motor vehicles, trailers, or motorcycles to dealers and also has
14 the same meaning as the term franchisor as used in ~~sections~~
15 ~~60-1401.01 to 60-1440,~~ Chapter 60, article 14;

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

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

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

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

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

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

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

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

17 (22) Franchisor means a person who manufactures or
18 distributes motor vehicles and who may enter into a franchise;

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

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

25 (25) Consumer care means the performance, for the public,

1 of necessary maintenance and repairs to motor vehicles;

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

11 (27) Established place of business means a permanent
12 location within this state, easily accessible to the public, owned
13 or leased by the applicant or a licensee for at least the term
14 of the license year, and conforming with applicable zoning laws,
15 at which the licensee conducts the business for which he or she
16 is licensed and may be contacted by the public during posted
17 reasonable business hours which shall be not less than forty
18 hours per week. The established place of business shall have the
19 following facilities: (a) Office space in a building or mobile
20 home, which space shall be clean, dry, safe, and well lighted
21 and in which shall be kept and maintained all books, records,
22 and files necessary for the conduct of the licensed business,
23 which premises, books, records, and files shall be available for
24 inspection during regular business hours by any peace officer or
25 investigator employed or designated by the board. Dealers shall,

1 upon demand of the board's investigator, furnish copies of records
2 so required when conducting any investigation of a complaint; (b)
3 a sound and well-maintained sign which is legible from a public
4 road and displayed with letters not less than eight inches in
5 height and one contiguous area to display ten or more motor
6 vehicles, motorcycles, or trailers in a presentable manner; (c)
7 adequate repair facilities and tools to properly and actually
8 service warranties on motor vehicles, motorcycles, or trailers sold
9 at such place of business and to make other repairs arising out
10 of the conduct of the licensee's business or, in lieu of such
11 repair facilities, the licensee may enter into a contract for the
12 provision of such service and file a copy thereof annually with the
13 board and shall furnish to each buyer a written statement as to
14 where such service will be provided as required by section 60-1417.
15 The service facility shall be located in the same county as the
16 licensee unless the board specifically authorizes the facility to
17 be located elsewhere. Such facility shall maintain regular business
18 hours and shall have suitable repair equipment and facilities to
19 service and inspect the type of vehicles sold by the licensee.
20 Investigators of the board may certify ongoing compliance with
21 the service and inspection facilities or repair facilities; and
22 (d) an operating telephone connected with a public telephone
23 exchange and located on the premises of the established place of
24 business with a telephone number listed by the public telephone
25 exchange and available to the public during the required posted

1 business hours. A mobile truck equipped with repair facilities
2 to properly perform warranty functions and other repairs shall be
3 deemed adequate repair facilities for trailers. The requirements of
4 this subdivision shall apply to the place of business authorized
5 under a supplemental motor vehicle, motorcycle, or trailer dealer's
6 license;

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

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

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

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

22 (32) Scrap metal processor means any person engaged in
23 the business of buying vehicles, motorcycles, or parts thereof
24 for the purpose of remelting or processing into scrap metal or
25 who otherwise processes ferrous or nonferrous metallic scrap for

1 resale. No scrap metal processor shall sell vehicles or motorcycles
2 without obtaining a wrecker or salvage dealer license;

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

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

21 (35) Violator means a person acting without a license or
22 registration as required by ~~sections 60-1401.01 to 60-1440~~; Chapter
23 60, article 14;

24 (36) Manufactured home means a structure, transportable
25 in one or more sections, which in the traveling mode is eight body

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

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

20 Nothing in sections ~~60-1401.01 to 60-1440~~ Chapter 60,
21 article 14, shall apply to the State of Nebraska or any of its
22 agencies or subdivisions. No insurance company, finance company,
23 public utility company, fleet owner, or other person coming into
24 possession of any motor vehicle, motorcycle, or trailer, as an
25 incident to its regular business, who sells or exchanges the

1 motor vehicle, motorcycle, or trailer shall be considered a dealer
2 except persons whose regular business is leasing or renting motor
3 vehicles, motorcycles, or trailers.

4 Sec. 11. Section 60-1403, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 60-1403 (1) The board may:

7 (a) Regulate the issuance and revocation of licenses in
8 accordance with and subject to ~~sections 60-1401.01 to 60-1440,~~
9 Chapter 60, article 14;

10 (b) Perform all acts and duties provided for in ~~such~~
11 ~~sections~~ Chapter 60, article 14, necessary to the administration
12 and enforcement of ~~such sections,~~ Chapter 60, article 14; and

13 (c) Make and enforce rules and regulations relating to
14 the administration of but not inconsistent with ~~such sections.~~
15 Chapter 60, article 14.

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

24 (3) Investigators employed by the board may enter upon
25 and inspect the facilities, the required records, and any vehicles,

1 trailers, or motorcycles found in any licensed motor vehicle,
2 motorcycle, or trailer dealer's established place or places of
3 business.

4 Sec. 12. Section 60-1403.01, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 60-1403.01 (1) No person shall engage in the business as,
7 serve in the capacity of, or act as a motor vehicle, trailer, or
8 motorcycle dealer, wrecker or salvage dealer, salesperson, auction
9 dealer, dealer's agent, manufacturer, factory branch, factory
10 representative, distributor, distributor branch, or distributor
11 representative in this state without being licensed by the board
12 under the provisions of sections ~~60-1401.01 to 60-1440.~~ Chapter
13 60, article 14. No salesperson's license shall be issued to any
14 person under the age of sixteen, and no dealer's license shall be
15 issued to any minor. No wrecker or salvage dealer's license shall
16 be issued or renewed unless the applicant has a permanent place of
17 business at which the activity requiring licensing is performed and
18 which conforms to all local laws.

19 (2) A license issued under sections ~~60-1401.01 to 60-1440~~
20 Chapter 60, article 14, shall authorize the holder thereof to
21 engage in the business or activities permitted by the license
22 subject to sections ~~60-1401.01 to 60-1440~~ Chapter 60, article 14,
23 and the rules and regulations adopted and promulgated by the board
24 under ~~such sections.~~ Chapter 60, article 14.

25 (3) This section shall not apply to a licensed real

1 estate salesperson or broker who negotiates for sale or sells a
2 trailer for any individual who is the owner of not more than two
3 trailers.

4 Sec. 13. Section 77-2703, Revised Statutes Supplement,
5 2007, is amended to read:

6 77-2703 (1) There is hereby imposed a tax at the rate
7 provided in section 77-2701.02 upon the gross receipts from all
8 sales of tangible personal property sold at retail in this state;
9 the gross receipts of every person engaged as a public utility,
10 as a community antenna television service operator or any person
11 involved in the connecting and installing of the services defined
12 in subdivision (8)(a), (b), (d), or (e) of section 77-2701.16, or
13 as a retailer of intellectual or entertainment properties referred
14 to in subsection (9) of section 77-2701.16; the gross receipts from
15 the sale of admissions in this state; the gross receipts from the
16 sale of warranties, guarantees, service agreements, or maintenance
17 agreements when the items covered are subject to tax under this
18 section; beginning January 1, 2008, the gross receipts from the
19 sale of bundled transactions when one or more of the products
20 included in the bundle are taxable; and the gross receipts from
21 the provision of services defined in subsection (10) of section
22 77-2701.16. Except as provided in section 77-2701.03, when there is
23 a sale, the tax shall be imposed at the rate in effect at the time
24 the gross receipts are realized under the accounting basis used by
25 the retailer to maintain his or her books and records.

1 (a) The tax imposed by this section shall be collected
2 by the retailer from the consumer. It shall constitute a part of
3 the purchase price and until collected shall be a debt from the
4 consumer to the retailer and shall be recoverable at law in the
5 same manner as other debts. The tax required to be collected by the
6 retailer from the consumer constitutes a debt owed by the retailer
7 to this state.

8 (b) It is unlawful for any retailer to advertise, hold
9 out, or state to the public or to any customer, directly or
10 indirectly, that the tax or part thereof will be assumed or
11 absorbed by the retailer, that it will not be added to the selling,
12 renting, or leasing price of the property sold, rented, or leased,
13 or that, if added, it or any part thereof will be refunded. The
14 provisions of this subdivision shall not apply to a public utility.

15 (c) The tax required to be collected by the retailer from
16 the purchaser, unless otherwise provided by statute or by rule and
17 regulation of the Tax Commissioner, shall be displayed separately
18 from the list price, the price advertised in the premises, the
19 marked price, or other price on the sales check or other proof of
20 sales, rentals, or leases.

21 (d) For the purpose of more efficiently securing the
22 payment, collection, and accounting for the sales tax and for the
23 convenience of the retailer in collecting the sales tax, it shall
24 be the duty of the Tax Commissioner to provide a schedule or
25 schedules of the amounts to be collected from the consumer or user

1 to effectuate the computation and collection of the tax imposed
2 by the Nebraska Revenue Act of 1967. Such schedule or schedules
3 shall provide that the tax shall be collected from the consumer
4 or user uniformly on sales according to brackets based on sales
5 prices of the item or items. Retailers may compute the tax due on
6 any transaction on an item or an invoice basis. The rounding rule
7 provided in section 77-3,117 applies.

8 (e) The use of tokens or stamps for the purpose of
9 collecting or enforcing the collection of the taxes imposed in the
10 Nebraska Revenue Act of 1967 or for any other purpose in connection
11 with such taxes is prohibited.

12 (f) For the purpose of the proper administration of the
13 provisions of the Nebraska Revenue Act of 1967 and to prevent
14 evasion of the retail sales tax, it shall be presumed that all
15 gross receipts are subject to the tax until the contrary is
16 established. The burden of proving that a sale of property is not
17 a sale at retail is upon the person who makes the sale unless he
18 or she takes from the purchaser (i) a resale certificate to the
19 effect that the property is purchased for the purpose of reselling,
20 leasing, or renting it, (ii) an exemption certificate pursuant to
21 subsection (7) of section 77-2705, or (iii) a direct payment permit
22 pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale
23 certificate, exemption certificate, or direct payment permit shall
24 be conclusive proof for the seller that the sale was made for
25 resale or was exempt or that the tax will be paid directly to the

1 state.

2 (g) In the rental or lease of automobiles, trucks,
3 trailers, semitrailers, and truck-tractors as defined in the Motor
4 Vehicle Registration Act, the tax shall be collected by the lessor
5 on the rental or lease price at the tax rate in effect on the date
6 the automobile, truck, trailer, semitrailer, or truck-tractor is
7 delivered to the lessee, except as otherwise provided within this
8 section.

9 (h) In the rental or lease of automobiles, trucks,
10 trailers, semitrailers, and truck-tractors as defined in the act,
11 for periods of one year or more, the lessor may elect not to
12 collect and remit the sales tax on the gross receipts and instead
13 pay a sales tax on the cost of such vehicle. If such election is
14 made, it shall be made pursuant to the following conditions:

15 (i) Notice of the desire to make such election shall
16 be filed with the Tax Commissioner and shall not become effective
17 until the Tax Commissioner is satisfied that the taxpayer has
18 complied with all conditions of this subsection and all rules and
19 regulations of the Tax Commissioner;

20 (ii) Such election when made shall continue in force and
21 effect for a period of not less than two years and thereafter until
22 such time as the lessor elects to terminate the election;

23 (iii) When such election is made, it shall apply to all
24 vehicles of the lessor rented or leased for periods of one year or
25 more except vehicles to be leased to common or contract carriers

1 who provide to the lessor a valid common or contract carrier
2 exemption certificate. If the lessor rents or leases other vehicles
3 for periods of less than one year, such lessor shall maintain his
4 or her books and records and his or her accounting procedure as the
5 Tax Commissioner prescribes; and

6 (iv) The Tax Commissioner by rule and regulation shall
7 prescribe the contents and form of the notice of election, a
8 procedure for the determination of the tax base of vehicles which
9 are under an existing lease at the time such election becomes
10 effective, the method and manner for terminating such election, and
11 such other rules and regulations as may be necessary for the proper
12 administration of this subdivision.

13 (i) The tax imposed by this section on the sales of
14 motor vehicles, semitrailers, and trailers as defined in sections
15 60-339, 60-348, and 60-354 shall be the liability of the purchaser
16 and, with the exception of motor vehicles, semitrailers, and
17 trailers registered pursuant to section 60-3,198, the tax shall be
18 collected by the county treasurer, ~~or~~ designated county official,
19 motor vehicle dealer, or motorcycle dealer as provided in the
20 Motor Vehicle Registration Act at the time the purchaser makes
21 application for the registration of the motor vehicle, semitrailer,
22 or trailer for operation upon the highways of this state. A motor
23 vehicle dealer or motorcycle dealer licensed and approved under
24 Chapter 60, article 14, may collect and submit to the county
25 treasurer or designated county official sales taxes as an agent

1 on behalf of the purchaser of a new or used motorcycle, a new
2 or used motor vehicle of ten-passenger capacity or less, or a
3 new or used truck. The tax imposed by this section on motor
4 vehicles, semitrailers, and trailers registered pursuant to section
5 60-3,198 shall be collected by the Department of Motor Vehicles
6 at the time the purchaser makes application for the registration
7 of the motor vehicle, semitrailer, or trailer for operation upon
8 the highways of this state. At the time of the sale of any motor
9 vehicle, semitrailer, or trailer, the seller shall (i) state on
10 the sales invoice the dollar amount of the tax imposed under this
11 section and (ii) furnish to the purchaser a certified statement of
12 the transaction, in such form as the Tax Commissioner prescribes,
13 setting forth as a minimum the total sales price, the allowance for
14 any trade-in, and the difference between the two. The sales tax due
15 shall be computed on the difference between the total sales price
16 and the allowance for any trade-in as disclosed by such certified
17 statement. Any seller who willfully understates the amount upon
18 which the sales tax is due shall be subject to a penalty of one
19 thousand dollars. A copy of such certified statement shall also
20 be furnished to the Tax Commissioner. Any seller who fails or
21 refuses to furnish such certified statement shall be guilty of
22 a misdemeanor and shall, upon conviction thereof, be punished by
23 a fine of not less than twenty-five dollars nor more than one
24 hundred dollars. If the seller fails to state on the sales invoice
25 the dollar amount of the tax due, the purchaser shall have the

1 right and authority to rescind any agreement for purchase and
2 to declare the purchase null and void. If the purchaser retains
3 such motor vehicle, semitrailer, or trailer in this state and
4 does not register it for operation on the highways of this state
5 within thirty days of the purchase thereof, the tax imposed by
6 this section shall immediately thereafter be paid by the purchaser
7 to the county treasurer, the designated county official, or the
8 Department of Motor Vehicles. If the tax is not paid on or
9 before the thirtieth day after its purchase, the county treasurer,
10 designated county official, or Department of Motor Vehicles shall
11 also collect from the purchaser interest from the thirtieth day
12 through the date of payment and sales tax penalties as provided in
13 the Nebraska Revenue Act of 1967. The county treasurer, designated
14 county official, or Department of Motor Vehicles shall report and
15 remit the tax so collected to the Tax Commissioner by the fifteenth
16 day of the following month. The county treasurer or designated
17 county official shall deduct and withhold for the use of the county
18 general fund, from all amounts required to be collected under
19 this subsection, the collection fee permitted to be deducted by
20 any retailer collecting the sales tax. The Department of Motor
21 Vehicles shall deduct, withhold, and deposit in the Motor Carrier
22 Division Cash Fund the collection fee permitted to be deducted by
23 any retailer collecting the sales tax. The collection fee shall
24 be forfeited if the county treasurer, designated county official,
25 or Department of Motor Vehicles violates any rule or regulation

1 pertaining to the collection of the use tax.

2 (j)(i) The tax imposed by this section on the sale of a
3 motorboat as defined in section 37-1204 shall be the liability of
4 the purchaser. The tax shall be collected by the county treasurer
5 or designated county official at the time the purchaser makes
6 application for the registration of the motorboat. At the time
7 of the sale of a motorboat, the seller shall (A) state on the
8 sales invoice the dollar amount of the tax imposed under this
9 section and (B) furnish to the purchaser a certified statement of
10 the transaction, in such form as the Tax Commissioner prescribes,
11 setting forth as a minimum the total sales price, the allowance for
12 any trade-in, and the difference between the two. The sales tax due
13 shall be computed on the difference between the total sales price
14 and the allowance for any trade-in as disclosed by such certified
15 statement. Any seller who willfully understates the amount upon
16 which the sales tax is due shall be subject to a penalty of one
17 thousand dollars. A copy of such certified statement shall also
18 be furnished to the Tax Commissioner. Any seller who fails or
19 refuses to furnish such certified statement shall be guilty of a
20 misdemeanor and shall, upon conviction thereof, be punished by a
21 fine of not less than twenty-five dollars nor more than one hundred
22 dollars. If the seller fails to state on the sales invoice the
23 dollar amount of the tax due, the purchaser shall have the right
24 and authority to rescind any agreement for purchase and to declare
25 the purchase null and void. If the purchaser retains such motorboat

1 in this state and does not register it within thirty days of the
2 purchase thereof, the tax imposed by this section shall immediately
3 thereafter be paid by the purchaser to the county treasurer or
4 designated county official. If the tax is not paid on or before
5 the thirtieth day after its purchase, the county treasurer or
6 designated county official shall also collect from the purchaser
7 interest from the thirtieth day through the date of payment and
8 sales tax penalties as provided in the Nebraska Revenue Act of
9 1967. The county treasurer or designated county official shall
10 report and remit the tax so collected to the Tax Commissioner by
11 the fifteenth day of the following month. The county treasurer or
12 designated county official shall deduct and withhold for the use of
13 the county general fund, from all amounts required to be collected
14 under this subsection, the collection fee permitted to be deducted
15 by any retailer collecting the sales tax. The collection fee shall
16 be forfeited if the county treasurer or designated county official
17 violates any rule or regulation pertaining to the collection of the
18 use tax.

19 (ii) In the rental or lease of motorboats, the tax shall
20 be collected by the lessor on the rental or lease price.

21 (k) The Tax Commissioner shall adopt and promulgate
22 necessary rules and regulations for determining the amount subject
23 to the taxes imposed by this section so as to insure that the
24 full amount of any applicable tax is paid in cases in which a
25 sale is made of which a part is subject to the taxes imposed by

1 this section and a part of which is not so subject and a separate
2 accounting is not practical or economical.

3 (2) A use tax is hereby imposed on the storage, use, or
4 other consumption in this state of property purchased, leased, or
5 rented from any retailer and on any transaction the gross receipts
6 of which are subject to tax under subsection (1) of this section
7 on or after June 1, 1967, for storage, use, or other consumption
8 in this state at the rate set as provided in subsection (1) of
9 this section on the sales price of the property or, in the case of
10 leases or rentals, of the lease or rental prices.

11 (a) Every person storing, using, or otherwise consuming
12 in this state property purchased from a retailer or leased or
13 rented from another person for such purpose shall be liable for the
14 use tax at the rate in effect when his or her liability for the
15 use tax becomes certain under the accounting basis used to maintain
16 his or her books and records. His or her liability shall not be
17 extinguished until the use tax has been paid to this state, except
18 that a receipt from a retailer engaged in business in this state
19 or from a retailer who is authorized by the Tax Commissioner, under
20 such rules and regulations as he or she may prescribe, to collect
21 the sales tax and who is, for the purposes of the Nebraska Revenue
22 Act of 1967 relating to the sales tax, regarded as a retailer
23 engaged in business in this state, which receipt is given to the
24 purchaser pursuant to subdivision (b) of this subsection, shall be
25 sufficient to relieve the purchaser from further liability for the

1 tax to which the receipt refers.

2 (b) Every retailer engaged in business in this state and
3 selling, leasing, or renting property for storage, use, or other
4 consumption in this state shall, at the time of making any sale,
5 collect any tax which may be due from the purchaser and shall give
6 to the purchaser, upon request, a receipt therefor in the manner
7 and form prescribed by the Tax Commissioner.

8 (c) The Tax Commissioner, in order to facilitate the
9 proper administration of the use tax, may designate such person or
10 persons as he or she may deem necessary to be use tax collectors
11 and delegate to such persons such authority as is necessary to
12 collect any use tax which is due and payable to the State of
13 Nebraska. The Tax Commissioner may require of all persons so
14 designated a surety bond in favor of the State of Nebraska to
15 insure against any misappropriation of state funds so collected.
16 The Tax Commissioner may require any tax official, city, county, or
17 state, to collect the use tax on behalf of the state. All persons
18 designated to or required to collect the use tax shall account for
19 such collections in the manner prescribed by the Tax Commissioner.
20 Nothing in this subdivision shall be so construed as to prevent the
21 Tax Commissioner or his or her employees from collecting any use
22 taxes due and payable to the State of Nebraska.

23 (d) All persons designated to collect the use tax and all
24 persons required to collect the use tax shall forward the total of
25 such collections to the Tax Commissioner at such time and in such

1 manner as the Tax Commissioner may prescribe. For all use taxes
2 collected prior to October 1, 2002, such collectors of the use tax
3 shall deduct and withhold from the amount of taxes collected two
4 and one-half percent of the first three thousand dollars remitted
5 each month and one-half of one percent of all amounts in excess
6 of three thousand dollars remitted each month as reimbursement
7 for the cost of collecting the tax. For use taxes collected on
8 and after October 1, 2002, such collectors of the use tax shall
9 deduct and withhold from the amount of taxes collected two and
10 one-half percent of the first three thousand dollars remitted each
11 month as reimbursement for the cost of collecting the tax. Any
12 such deduction shall be forfeited to the State of Nebraska if such
13 collector violates any rule, regulation, or directive of the Tax
14 Commissioner.

15 (e) For the purpose of the proper administration of the
16 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,
17 it shall be presumed that property sold, leased, or rented by any
18 person for delivery in this state is sold, leased, or rented for
19 storage, use, or other consumption in this state until the contrary
20 is established. The burden of proving the contrary is upon the
21 person who purchases, leases, or rents the property.

22 (f) For the purpose of the proper administration of the
23 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,
24 for the sale of property to an advertising agency which purchases
25 the property as an agent for a disclosed or undisclosed principal,

1 the advertising agency is and remains liable for the sales and
2 use tax on the purchase the same as if the principal had made the
3 purchase directly.

4 Sec. 14. The Revisor of Statutes shall assign sections 8
5 and 9 of this act to Chapter 60, article 14, and any reference to
6 Chapter 60, article 14, shall be construed to include sections 8
7 and 9 of this act.

8 Sec. 15. Original sections 60-1403 and 60-1403.01,
9 Reissue Revised Statutes of Nebraska, sections 45-335, 60-111,
10 60-320, and 60-1401.02, Revised Statutes Cumulative Supplement,
11 2006, and sections 60-101, 60-301, and 77-2703, Revised Statutes
12 Supplement, 2007, are repealed.