

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 50

FINAL READING

Introduced by Fischer, 43.

Read first time January 8, 2009

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to motor vehicles; to amend section 60-1401.02,
2 Revised Statutes Cumulative Supplement, 2008; to change
3 provisions relating to manufacturers; and to repeal the
4 original section.

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

1 Section 1. Section 60-1401.02, Revised Statutes
2 Cumulative Supplement, 2008, is amended to read:

3 60-1401.02 For purposes of sections 60-1401.01 to 60-1440
4 and 60-2601 to 60-2607, unless the context otherwise requires:

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

7 (2) Association means any two or more persons acting
8 with a common purpose, regardless of the relative degrees of
9 involvement, and includes, but is not limited to, the following
10 persons so acting:

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

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

19 (3) Motor vehicle dealer means any person, other than a
20 bona fide consumer, actively and regularly engaged in the act of
21 selling, leasing for a period of thirty or more days, or exchanging
22 new or used motor vehicles, trailers, and manufactured homes who
23 buys, sells, exchanges, causes the sale of, or offers or attempts
24 to sell new or used motor vehicles. Such person is a motor vehicle
25 dealer and subject to sections 60-1401.01 to 60-1440. Motor vehicle

1 dealer does not include a lessor who was not involved in or
2 associated with the selection, location, acquisition, or supply of
3 a motor vehicle which is the subject of a lease agreement;

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

7 (5) Wrecker or salvage dealer means any person who
8 acquires one or more motor vehicles or trailers for the purpose
9 of dismantling them for the purpose of reselling the parts or
10 reselling the vehicles as scrap;

11 (6) Motor vehicle means any vehicle for which evidence of
12 title is required as a condition precedent to registration under
13 the laws of this state but does not include trailers. Motor vehicle
14 also means any engine, transmission, or rear axle, regardless of
15 whether attached to a vehicle chassis, that is manufactured for
16 installation in any motor-driven vehicle with a gross vehicle
17 weight rating of more than sixteen thousand pounds for which
18 motor-driven vehicle evidence of title is required as a condition
19 precedent to registration under the laws of this state;

20 (7) Used motor vehicle means every motor vehicle which
21 has been sold, bargained, exchanged, or given away or for which
22 title has been transferred from the person who first acquired
23 it from the manufacturer, importer, dealer, or agent of the
24 manufacturer or importer. A new motor vehicle is not considered
25 a used motor vehicle until it has been placed in use by a bona

1 bona fide consumer, notwithstanding the number of transfers of the motor
2 vehicle;

3 (8) New motor vehicle means all motor vehicles which are
4 not included within the definition of a used motor vehicle in this
5 section;

6 (9) Trailer means semitrailers and trailers as defined
7 in sections 60-348 and 60-354, respectively, which are required to
8 be licensed as commercial trailers, other vehicles without motive
9 power constructed so as to permit their being used as conveyances
10 upon the public streets and highways and so constructed as not to
11 be attached to real estate and to permit the vehicle to be used
12 for human habitation by one or more persons, and camping trailers,
13 slide-in campers, fold-down campers, and fold-down tent trailers.
14 Machinery and equipment to which wheels are attached and designed
15 for being towed by a motor vehicle are excluded from the provisions
16 of sections 60-1401.01 to 60-1440;

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

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

25 (12) Auction means a sale of motor vehicles and trailers

1 of types required to be registered in this state, except such
2 vehicles as are eligible for registration pursuant to section
3 60-3,198, sold or offered for sale at which the price offered is
4 increased by the prospective buyers who bid against one another,
5 the highest bidder becoming the purchaser. The holding of a farm
6 auction or an occasional motor vehicle or trailer auction of not
7 more than two auctions in a calendar year does not constitute an
8 auction subject to sections 60-1401.01 to 60-1440;

9 (13) Auction dealer means any person engaged in the
10 business of conducting an auction for the sale of motor vehicles
11 and trailers;

12 (14) Supplemental motor vehicle, trailer, motorcycle,
13 or motor vehicle auction dealer means any person holding either
14 a motor vehicle, trailer, motorcycle, or motor vehicle auction
15 dealer's license engaging in the business authorized by such
16 license at a place of business that is more than three hundred feet
17 from any part of the place of business designated in the dealer's
18 original license but which is located within the city or county
19 described in such original license;

20 (15) Motor vehicle, motorcycle, or trailer salesperson
21 means any person who, for a salary, commission, or compensation of
22 any kind, is employed directly by only one specified licensed
23 Nebraska motor vehicle dealer, motorcycle dealer, or trailer
24 dealer, except when the salesperson is working for two or more
25 dealerships with common ownership, to sell, purchase, or exchange

1 or to negotiate for the sale, purchase, or exchange of motor
2 vehicles, motorcycles, or trailers. A person owning any part
3 of more than one dealership may be a salesperson for each of
4 such dealerships. For purposes of this section, common ownership
5 means that there is at least an eighty percent interest in
6 each dealership by one or more persons having ownership in such
7 dealership;

8 (16) Manufacturer means any person, resident or
9 nonresident of this state, who is engaged in the business of
10 distributing, manufacturing, or assembling new motor vehicles,
11 trailers, or motorcycles and also has the same meaning as the term
12 franchisor as used in sections 60-1401.01 to 60-1440;

13 (17) Factory representative means a representative
14 employed by a person who manufactures or assembles motor vehicles,
15 motorcycles, or trailers, or by a factory branch, for the purpose
16 of promoting the sale of its motor vehicles, motorcycles, or
17 trailers to, or for supervising or contacting, its dealers or
18 prospective dealers in this state;

19 (18) Distributor means a person, resident or nonresident
20 of this state, who in whole or in part sells or distributes
21 new motor vehicles, trailers, or motorcycles to dealers or who
22 maintains distributors or representatives who sell or distribute
23 motor vehicles, trailers, or motorcycles to dealers and also has
24 the same meaning as the term franchisor as used in sections
25 60-1401.01 to 60-1440;

1 (19) Finance company means any person engaged in the
2 business of financing sales of motor vehicles, motorcycles, or
3 trailers, or purchasing or acquiring promissory notes, secured
4 instruments, or other documents by which the motor vehicles,
5 motorcycles, or trailers are pledged as security for payment of
6 obligations arising from such sales and who may find it necessary
7 to engage in the activity of repossession and the sale of the motor
8 vehicles, motorcycles, or trailers so pledged;

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

11 (a) A commercial relationship of definite duration or
12 continuing indefinite duration is involved;

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

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

17 (d) The operation of the franchisee's business is
18 substantially associated with the franchisor's trademark, service
19 mark, trade name, advertising, or other commercial symbol
20 designating the franchisor; and

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

24 (21) Franchisee means a new motor vehicle dealer who
25 receives motor vehicles from the franchisor under a franchise and

1 who offers and sells such motor vehicles to the general public;

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

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

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

10 (25) Consumer care means the performance, for the public,
11 of necessary maintenance and repairs to motor vehicles;

12 (26) Sale, selling, and equivalent expressions mean the
13 attempted act or acts either as principal, agent, or salesperson
14 or in any capacity whatsoever of selling, bartering, exchanging,
15 or otherwise disposing of or negotiating or offering or attempting
16 to negotiate the sale, purchase, or exchange of or interest in any
17 motor vehicle, trailer, or motorcycle, including the leasing of any
18 motor vehicle, trailer, or motorcycle for a period of thirty or
19 more days with a right or option to purchase under the terms of the
20 lease;

21 (27) Established place of business means a permanent
22 location within this state, easily accessible to the public, owned
23 or leased by the applicant or a licensee for at least the term
24 of the license year, and conforming with applicable zoning laws,
25 at which the licensee conducts the business for which he or she

1 is licensed and may be contacted by the public during posted
2 reasonable business hours which shall be not less than forty
3 hours per week. The established place of business shall have the
4 following facilities: (a) Office space in a building or mobile
5 home, which space shall be clean, dry, safe, and well lighted
6 and in which shall be kept and maintained all books, records,
7 and files necessary for the conduct of the licensed business,
8 which premises, books, records, and files shall be available for
9 inspection during regular business hours by any peace officer or
10 investigator employed or designated by the board. Dealers shall,
11 upon demand of the board's investigator, furnish copies of records
12 so required when conducting any investigation of a complaint; (b)
13 a sound and well-maintained sign which is legible from a public
14 road and displayed with letters not less than eight inches in
15 height and one contiguous area to display ten or more motor
16 vehicles, motorcycles, or trailers in a presentable manner; (c)
17 adequate repair facilities and tools to properly and actually
18 service warranties on motor vehicles, motorcycles, or trailers sold
19 at such place of business and to make other repairs arising out
20 of the conduct of the licensee's business or, in lieu of such
21 repair facilities, the licensee may enter into a contract for the
22 provision of such service and file a copy thereof annually with the
23 board and shall furnish to each buyer a written statement as to
24 where such service will be provided as required by section 60-1417.
25 The service facility shall be located in the same county as the

1 licensee unless the board specifically authorizes the facility to
2 be located elsewhere. Such facility shall maintain regular business
3 hours and shall have suitable repair equipment and facilities to
4 service and inspect the type of vehicles sold by the licensee.
5 Investigators of the board may certify ongoing compliance with
6 the service and inspection facilities or repair facilities; and
7 (d) an operating telephone connected with a public telephone
8 exchange and located on the premises of the established place of
9 business with a telephone number listed by the public telephone
10 exchange and available to the public during the required posted
11 business hours. A mobile truck equipped with repair facilities
12 to properly perform warranty functions and other repairs shall be
13 deemed adequate repair facilities for trailers. The requirements of
14 this subdivision shall apply to the place of business authorized
15 under a supplemental motor vehicle, motorcycle, or trailer dealer's
16 license;

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

20 (29) Factory branch means a branch office maintained in
21 this state by a person who manufactures, assembles, or distributes
22 motor vehicles, motorcycles, or trailers for the sale of such motor
23 vehicles, motorcycles, or trailers to distributors or dealers
24 or for directing or supervising, in whole or in part, its
25 representatives in this state;

1 (30) Distributor representative means a representative
2 employed by a distributor or distributor branch for the same
3 purpose as set forth in the definition of factory representative in
4 this section;

5 (31) Board means the Nebraska Motor Vehicle Industry
6 Licensing Board;

7 (32) Scrap metal processor means any person engaged in
8 the business of buying vehicles, motorcycles, or parts thereof
9 for the purpose of remelting or processing into scrap metal or
10 who otherwise processes ferrous or nonferrous metallic scrap for
11 resale. No scrap metal processor shall sell vehicles or motorcycles
12 without obtaining a wrecker or salvage dealer license;

13 (33) Designated family member means the spouse, child,
14 grandchild, parent, brother, or sister of the owner of a new
15 motor vehicle dealership who, in the case of the owner's death,
16 is entitled to inherit the ownership interest in the new motor
17 vehicle dealership under the terms of the owner's will, who has
18 been nominated in any other written instrument, or who, in the case
19 of an incapacitated owner of such dealership, has been appointed
20 by a court as the legal representative of the new motor vehicle
21 dealer's property;

22 (34) Bona fide consumer means an owner of a motor
23 vehicle, motorcycle, or trailer who has acquired such vehicle for
24 use in business or for pleasure purposes, who has been granted a
25 certificate of title on such motor vehicle, motorcycle, or trailer,

1 and who has registered such motor vehicle, motorcycle, or trailer,
2 all in accordance with the laws of the residence of the owner,
3 except that no owner who sells more than eight registered motor
4 vehicles, motorcycles, or trailers within a twelve-month period
5 shall qualify as a bona fide consumer;

6 (35) Violator means a person acting without a license or
7 registration as required by sections 60-1401.01 to 60-1440;

8 (36) Manufactured home means a structure, transportable
9 in one or more sections, which in the traveling mode is eight body
10 feet or more in width or forty body feet or more in length or when
11 erected on site is three hundred twenty or more square feet and
12 which is built on a permanent chassis and designed to be used as
13 a dwelling with or without a permanent foundation when connected
14 to the required utilities and includes the plumbing, heating, air
15 conditioning, and electrical systems contained in the structure,
16 except that manufactured home includes any structure that meets
17 all of the requirements of this subdivision other than the size
18 requirements and with respect to which the manufacturer voluntarily
19 files a certification required by the United States Secretary
20 of Housing and Urban Development and complies with the standards
21 established under the National Manufactured Housing Construction
22 and Safety Standards Act of 1974, as such act existed on September
23 1, 2001, 42 U.S.C. 5401 et seq.; and

24 (37) Dealer's agent means a person who acts as a buying
25 agent for one or more motor vehicle dealers, motorcycle dealers, or

1 trailer dealers.

2 Nothing in sections 60-1401.01 to 60-1440 shall apply to
3 the State of Nebraska or any of its agencies or subdivisions. No
4 insurance company, finance company, public utility company, fleet
5 owner, or other person coming into possession of any motor vehicle,
6 motorcycle, or trailer, as an incident to its regular business, who
7 sells or exchanges the motor vehicle, motorcycle, or trailer shall
8 be considered a dealer except persons whose regular business is
9 leasing or renting motor vehicles, motorcycles, or trailers.

10 Sec. 2. Original section 60-1401.02, Revised Statutes
11 Cumulative Supplement, 2008, is repealed.