

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 346

Introduced by Lowe, 37; at the request of the Governor.

Read first time January 12, 2017

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to the Motor Vehicle Industry Regulation Act;
2 to amend sections 60-1406, 60-1407, 60-1410, 60-1411, 60-1411.01,
3 60-1411.02, 60-1413, and 60-1416, Reissue Revised Statutes of
4 Nebraska, and section 60-1403.01, Revised Statutes Cumulative
5 Supplement, 2016; to eliminate the requirement for a motor vehicle,
6 motorcycle, or trailer salesperson license; to harmonize provisions;
7 and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 60-1403.01, Revised Statutes Cumulative
2 Supplement, 2016, is amended to read:

3 60-1403.01 (1) No person shall engage in the business as, serve in
4 the capacity of, or act as a motor vehicle, trailer, or motorcycle
5 dealer, wrecker or salvage dealer, ~~salesperson~~, auction dealer, dealer's
6 agent, manufacturer, factory branch, factory representative, distributor,
7 distributor branch, or distributor representative in this state without
8 being licensed by the board under the Motor Vehicle Industry Regulation
9 Act. ~~No salesperson's license shall be issued to any person under the age~~
10 ~~of sixteen, and no dealer's license shall be issued to any minor. No~~
11 wrecker or salvage dealer's license shall be issued or renewed unless the
12 applicant has a permanent place of business at which the activity
13 requiring licensing is performed and which conforms to all local laws.

14 (2) A license issued under the act shall authorize the holder
15 thereof to engage in the business or activities permitted by the license
16 subject to the act and the rules and regulations adopted and promulgated
17 by the board under the act.

18 (3) This section shall not apply to a licensed real estate
19 salesperson or broker who negotiates for sale or sells a trailer for any
20 individual who is the owner of not more than two trailers.

21 (4) This section shall not restrict a licensed motor vehicle dealer
22 from conducting an auction as provided in subsection (5) of section
23 60-1417.02.

24 Sec. 2. Section 60-1406, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 60-1406 Licenses issued by the board under the Motor Vehicle
27 Industry Regulation Act shall be of the classes set out in this section
28 and shall permit the business activities described in this section:

29 (1) Motor vehicle dealer's license. This license permits the
30 licensee to engage in the business of selling or exchanging new, used, or
31 new and used motor vehicles, trailers, and manufactured homes at the

1 established place of business designated in the license and another place
2 or places of business located within three hundred feet of the designated
3 place of business and within the city or county described in the original
4 license. This license permits the sale of a trade-in or consignment
5 mobile home greater than forty feet in length and eight feet in width and
6 located at a place other than the dealer's established place of business.
7 This license permits one person, either the licensee, if he or she is the
8 individual owner of the licensed business, or a stockholder, officer,
9 partner, or member of the licensee, to act as a motor vehicle, trailer,
10 and manufactured home salesperson and the name of the authorized person
11 shall appear on the license;

12 ~~(2) Motor vehicle, motorcycle, or trailer salesperson license. This~~
13 ~~license permits the licensee to engage in the activities of a motor~~
14 ~~vehicle, motorcycle, or trailer salesperson. This license permits the one~~
15 ~~person named on the license to act as a salesperson;~~

16 ~~(2) (3) Manufacturer license. This license permits the licensee to~~
17 ~~engage in the activities of a motor vehicle, motorcycle, or trailer~~
18 ~~manufacturer or manufacturer's factory branch;~~

19 ~~(3) (4) Distributor license. This license permits the licensee to~~
20 ~~engage in the activities of a motor vehicle, motorcycle, or trailer~~
21 ~~distributor;~~

22 ~~(4) (5) Factory representative license. This license permits the~~
23 ~~licensee to engage in the activities of a factory branch representative;~~

24 ~~(5) (6) Factory branch license. This license permits the licensee to~~
25 ~~maintain a branch office in this state;~~

26 ~~(6) (7) Distributor representative license. This license permits the~~
27 ~~licensee to engage in the activities of a distributor representative;~~

28 ~~(7) (8) Finance company license. This license permits the licensee~~
29 ~~to engage in the activities of repossession of motor vehicles or trailers~~
30 ~~and the sale of such motor vehicles or trailers so repossessed;~~

31 ~~(8) (9) Wrecker or salvage dealer license. This license permits the~~

1 licensee to engage in the business of acquiring motor vehicles or
2 trailers for the purpose of dismantling the motor vehicles or trailers
3 and selling or otherwise disposing of the parts and accessories of motor
4 vehicles or trailers;

5 (9) ~~(10)~~ Supplemental motor vehicle, motorcycle, or trailer dealer's
6 license. This license permits the licensee to engage in the business of
7 selling or exchanging motor vehicles, motorcycles, or trailers of the
8 type designated in his or her dealer's license at a specified place of
9 business which is located more than three hundred feet from any part of
10 the place of business designated in the original motor vehicle,
11 motorcycle, or trailer dealer's license but which is located within the
12 city or county described in such original license;

13 (10) ~~(11)~~ Motorcycle dealer's license. This license permits the
14 licensee to engage in the business of selling or exchanging new, used, or
15 new and used motorcycles at the established place of business designated
16 in the license and another place or places of business located within
17 three hundred feet of the designated place of business and within the
18 city or county described in the original license. This form of license
19 permits one person named on the license, either the licensee, if he or
20 she is the individual owner of the licensed business, or a stockholder,
21 officer, partner, or member of the licensee, to act as a motorcycle
22 salesperson and the name of the authorized person shall appear on the
23 license;

24 (11) ~~(12)~~ Motor vehicle auction dealer's license. This license
25 permits the licensee to engage in the business of selling motor vehicles
26 and trailers. This form of license permits one person named on the
27 license, either the licensee, if he or she is the individual owner of the
28 licensed business, or a stockholder, officer, partner, or member of the
29 licensee, to act as a motor vehicle auction dealer's salesperson and the
30 name of the authorized person shall appear on the license;

31 (12) ~~(13)~~ Trailer dealer's license. This license permits the

1 licensee to engage in the business of selling or exchanging new, used, or
2 new and used trailers and manufactured homes at the established place of
3 business designated in the license and another place or places of
4 business located within three hundred feet of the designated place of
5 business and within the city or county described in the original license.
6 This form of license permits one person named on the license, either the
7 licensee, if he or she is the individual owner of the licensed business,
8 or a stockholder, officer, partner, or member of the licensee, to act as
9 a trailer and manufactured home salesperson and the name of the
10 authorized person shall appear on the license; and

11 (13) ~~(14)~~ Dealer's agent license. This license permits the licensee
12 to act as the buying agent for one or more licensed motor vehicle
13 dealers, motorcycle dealers, or trailer dealers. The agent shall act in
14 accordance with a written contract and file a copy of the contract with
15 the board. The dealer shall be bound by and liable for the actions of the
16 agent. The dealer's agent shall disclose in writing to each dealer with
17 which the agent contracts as an agent the names of all other dealers
18 contracting with the agent. The agent shall make each purchase on behalf
19 of and in the name of only one dealer and may purchase for dealers only
20 at auctions and only from licensed dealers. The agent shall not act as a
21 licensed dealer and is not authorized to sell any vehicle pursuant to
22 this license.

23 Sec. 3. Section 60-1407, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 60-1407 Any person desiring to apply for one or more of the types of
26 licenses described in the Motor Vehicle Industry Regulation Act shall
27 submit to the board, in writing, the following required information:

28 (1) The name and address of the applicant, if the applicant is an
29 individual, his or her social security number, and the name under which
30 he or she intends to conduct business. If the applicant is a partnership
31 or limited liability company, it shall set forth the name and address of

1 each partner or member thereof and the name under which the business is
2 to be conducted. If the applicant is a corporation, it shall set forth
3 the name of the corporation and the name and address of each of its
4 principal officers;

5 (2) The place or places, including the city or village and the
6 street and street number, if any, where the business is to be conducted
7 ~~or the salesperson employed;~~

8 (3) If the application is for a motor vehicle dealer's license,
9 trailer dealer's license, or motorcycle dealer's license (a) the name or
10 names of the new motor vehicle or vehicles, new trailer or trailers, or
11 new motorcycle or motorcycles which the applicant has been enfranchised
12 to sell or exchange, (b) the name or names and address or addresses of
13 the manufacturer or distributor who has enfranchised the applicant, (c) a
14 current copy of each existing franchise, and (d) a description of the
15 community;

16 (4) If the application is for any of the above-named classes of
17 dealer's licenses, the name and address of the person who is to act as a
18 motor vehicle, trailer, or motorcycle salesperson under such license if
19 issued;

20 (5) If the application is for a dealer's agent, the dealers for
21 which the agent will be buying;

22 (6) A description of the proposed place or places of business
23 proposed to be operated in the event a license is granted together with
24 (a) a statement whether the applicant owns or leases the proposed
25 established place of business and, if the proposed established place of
26 business is leased, the applicant shall file a true and correct copy of
27 the lease agreement, and (b) a description of the facilities for the
28 display of motor vehicles, trailers, and motorcycles;

29 (7) If the application is for a manufacturer's license, a statement
30 regarding the manufacturer's compliance with the Motor Vehicle Industry
31 Regulation Act; and

1 (8) A statement that the licensee will comply with and be subject to
2 the act, the rules and regulations adopted and promulgated by the board,
3 and any amendments to the act and the rules and regulations existing on
4 the date of application.

5 Subdivision (3)(d) of this section shall not be construed to require
6 any licensee who has a franchise on August 31, 2003, to show good cause
7 to be in the same community as any other licensee who has a franchise of
8 the same line-make in the same community on August 31, 2003.

9 Sec. 4. Section 60-1410, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 60-1410 The board shall prescribe the form of the license and each
12 license shall have printed thereon the seal of its office. All licenses
13 shall be mailed to each licensee ~~except the license of each motor~~
14 ~~vehicle, motorcycle, or trailer salesperson which shall be delivered or~~
15 ~~mailed to the motor vehicle, motorcycle, or trailer dealer by whom the~~
16 ~~motor vehicle, motorcycle, or trailer salesperson is employed and be kept~~
17 ~~in the custody and control of such dealer.~~ It shall be the duty of each
18 dealer to conspicuously display his or her own license or licenses in his
19 or her place or places of business.

20 The board shall prepare and deliver a pocket card for ~~salespersons,~~
21 ~~dealer's agents, factory representatives, and distributor~~
22 ~~representatives.~~ Such card shall certify that the person whose name
23 appears thereon is a licensed ~~motor vehicle, motorcycle, or trailer~~
24 ~~salesperson,~~ dealer's agent, factory representative, or distributor
25 representative, as the case may be. ~~Such motor vehicle or trailer~~
26 ~~salesperson's card shall also contain the name and address of the dealer~~
27 ~~employing the salesperson.~~

28 Sec. 5. Section 60-1411, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 60-1411 If a motor vehicle dealer, motorcycle dealer, or trailer
31 dealer changes the address of his or her place of business, changes

1 franchise, adds another franchise, or loses a franchise for sale of new
2 motor vehicles, motorcycles, or trailers, the dealer shall notify the
3 board of such change within ten days prior to such change. Thereupon the
4 license shall be corrected for the unexpired portion of the term at no
5 additional fee except as provided in section 60-1411.01.

6 ~~If any motor vehicle, trailer, or motorcycle salesperson is~~
7 ~~discharged, leaves his or her employer, or changes his or her place of~~
8 ~~employment, the employer who last employed the salesperson shall~~
9 ~~forthwith return the license to the board. The salesperson's pocket card~~
10 ~~shall thereupon be returned by the salesperson. The salesperson shall be~~
11 ~~notified at his or her last known place of residence that his or her~~
12 ~~license has been returned to the board. It shall be unlawful for the~~
13 ~~salesperson to act as a motor vehicle, motorcycle, or trailer salesperson~~
14 ~~until a new license is secured.~~

15 If a dealer's agent changes his or her agent's status with any
16 dealer, the agent shall notify the board. If the agent is no longer
17 contracting with any dealer, the dealer's agent license shall lapse and
18 the license and pocket card shall be returned to the board.

19 Sec. 6. Section 60-1411.01, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 60-1411.01 (1) To pay the expenses of the administration, operation,
22 maintenance, and enforcement of the Motor Vehicle Industry Regulation
23 Act, the board shall collect with each application for each class of
24 license fees not exceeding the following amounts:

- 25 (a) Motor vehicle dealer's license, four hundred dollars;
- 26 (b) Supplemental motor vehicle dealer's license, twenty dollars;
- 27 ~~(c) Motor vehicle or motorcycle salesperson's license, twenty~~
28 ~~dollars;~~
- 29 ~~(c)~~ (d) Dealer's agent license, one hundred dollars;
- 30 ~~(d)~~ (e) Motor vehicle, motorcycle, or trailer manufacturer's
31 license, six hundred dollars;

- 1 ~~(e)~~ ~~(f)~~ Distributor's license, six hundred dollars;
- 2 ~~(f)~~ ~~(g)~~ Factory representative's license, twenty dollars;
- 3 ~~(g)~~ ~~(h)~~ Distributor representative's license, twenty dollars;
- 4 ~~(h)~~ ~~(i)~~ Finance company's license, four hundred dollars;
- 5 ~~(i)~~ ~~(j)~~ Wrecker or salvage dealer's license, two hundred dollars;
- 6 ~~(j)~~ ~~(k)~~ Factory branch license, two hundred dollars;
- 7 ~~(k)~~ ~~(l)~~ Motorcycle dealer's license, four hundred dollars;
- 8 ~~(l)~~ ~~(m)~~ Motor vehicle auction dealer's license, four hundred
- 9 dollars; and
- 10 ~~(m)~~ ~~(n)~~ Trailer dealer's license, four hundred dollars.

11 (2) The fees shall be fixed by the board and shall not exceed the
12 amount actually necessary to sustain the administration, operation,
13 maintenance, and enforcement of the act.

14 (3) Such licenses, if issued, shall expire on December 31 next
15 following the date of the issuance thereof. Any motor vehicle,
16 motorcycle, or trailer dealer changing its location shall not be required
17 to obtain a new license if the new location is within the same city
18 limits or county, all requirements of law are complied with, and a fee of
19 twenty-five dollars is paid, but any change of ownership of any licensee
20 shall require a new application for a license and a new license. Change
21 of name of licensee without change of ownership shall require the
22 licensee to obtain a new license and pay a fee of five dollars.
23 Applications shall be made each year for a new or renewal license. If the
24 applicant is an individual, the application shall include the applicant's
25 social security number.

26 Sec. 7. Section 60-1411.02, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 60-1411.02 The board may, upon its own motion, and shall, upon a
29 sworn complaint in writing of any person, investigate the actions of any
30 person acting, registered, or licensed under the Motor Vehicle Industry
31 Regulation Act as a motor vehicle dealer, trailer dealer, ~~motor vehicle~~

1 ~~or trailer salesperson,~~ dealer's agent, manufacturer, factory branch,
2 distributor, factory representative, distributor representative,
3 supplemental motor vehicle dealer, wrecker or salvage dealer, finance
4 company, motorcycle dealer, or motor vehicle auction dealer or operating
5 without a registration or license when such registration or license is
6 required. The board may deny any application for a license, may revoke or
7 suspend a license, may place the licensee or registrant on probation, may
8 assess an administrative fine in an amount not to exceed five thousand
9 dollars per violation, or may take any combination of such actions if the
10 violator, applicant, registrant, or licensee including any officer,
11 stockholder, partner, or limited liability company member or any person
12 having any financial interest in the violator, applicant, registrant, or
13 licensee:

14 (1) Has had any license issued under the act revoked or suspended
15 and, if the license has been suspended, has not complied with the terms
16 of suspension;

17 (2) Has knowingly purchased, sold, or done business in stolen motor
18 vehicles, motorcycles, or trailers or parts therefor;

19 (3) Has failed to provide and maintain an established place of
20 business;

21 (4) Has been found guilty of any felony which has not been pardoned,
22 has been found guilty of any misdemeanor concerning fraud or conversion,
23 or has suffered any judgment in any civil action involving fraud,
24 misrepresentation, or conversion. In the event felony charges are pending
25 against an applicant, the board may refuse to issue a license to the
26 applicant until there has been a final determination of the charges;

27 (5) Has made a false material statement in his or her application or
28 any data attached to the application or to any investigator or employee
29 of the board;

30 (6) Has willfully failed to perform any written agreement with any
31 consumer or retail buyer;

1 (7) Has made a fraudulent sale, transaction, or repossession, or
2 created a fraudulent security interest as defined in the Uniform
3 Commercial Code, in a motor vehicle, trailer, or motorcycle;

4 (8) Has failed to notify the board of a change in the location of
5 his or her established place or places of business ~~and in the case of a~~
6 ~~salesperson has failed to notify the board of any change in his or her~~
7 ~~employment;~~

8 (9) Has willfully failed to deliver to a purchaser a proper
9 certificate of ownership for a motor vehicle, trailer, or motorcycle sold
10 by the licensee or to refund the full purchase price if the purchaser
11 cannot legally obtain proper certification of ownership within thirty
12 days;

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

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

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

19 (13) Has failed to comply with any provisions of the Motor Vehicle
20 Certificate of Title Act, the Motor Vehicle Industry Regulation Act, the
21 Motor Vehicle Registration Act, or the rules or regulations adopted and
22 promulgated by the board pursuant to the Motor Vehicle Industry
23 Regulation Act;

24 (14) Has failed to comply with any provision of Chapter 71, article
25 46, or with any code, standard, rule, or regulation adopted or made under
26 the authority of or pursuant to Chapter 71, article 46;

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

29 ~~(16) Has employed any unlicensed salesperson or salespersons;~~

30 (16) ~~(17)~~ Has failed to comply with sections 60-190 to 60-196;

31 (17) ~~(18)~~ Has engaged in any unfair methods of competition or unfair

1 or deceptive acts or practices prohibited under the Uniform Deceptive
2 Trade Practices Act;

3 (18) ~~(19)~~ Has conspired, as defined in section 28-202, with other
4 persons to process certificates of title in violation of the Motor
5 Vehicle Certificate of Title Act; or

6 (19) ~~(20)~~ Has violated the Guaranteed Asset Protection Waiver Act.

7 If the violator, applicant, registrant, or licensee is a publicly
8 held corporation, the board's authority shall extend only to the
9 corporation and its managing officers and directors.

10 Sec. 8. Section 60-1413, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 60-1413 (1) Before the board denies any license or any registration
13 as described in section 60-1417.02, revokes or suspends any such license
14 or registration, places a licensee or registrant on probation, or
15 assesses an administrative fine under section 60-1411.02, the board shall
16 give the applicant, licensee, registrant, or violator a hearing on the
17 matter unless the hearing is waived upon agreement between the applicant,
18 licensee, registrant, or violator and the executive director, with the
19 approval of the board. As a condition of the waiver, the applicant,
20 licensee, registrant, or violator shall accept the fine or other
21 administrative action. If the hearing is not waived, the board shall, at
22 least thirty days prior to the date set for the hearing, notify the party
23 in writing. Such notice in writing shall contain an exact statement of
24 the charges against the party and the date and place of hearing. The
25 party shall have full authority to be heard in person or by counsel
26 before the board in reference to the charges. The written notice may be
27 served by delivery personally to the party or by mailing the notice by
28 registered or certified mail to the last-known business address of the
29 party. If the applicant is a ~~salesperson~~ or dealer's agent, the board
30 shall also notify the dealer employing or contracting with him or her or
31 whose employ he or she seeks to enter by mailing the notice to the

1 dealer's last-known business address. A stenographic record of all
2 testimony presented at the hearings shall be made and preserved pending
3 final disposition of the complaint.

4 (2) When the licensee fails to maintain a bond as provided in
5 section 60-1419, an established place of business, or liability insurance
6 as prescribed by subsection (3) of section 60-1407.01, the license shall
7 immediately expire. The executive director shall notify the licensee
8 personally or by mailing the notice by registered or certified mail to
9 the last-known address of the licensee that his or her license is revoked
10 until a bond as required by section 60-1419 or liability insurance as
11 prescribed by subsection (3) of section 60-1407.01 is furnished and
12 approved in which event the license may be reinstated.

13 (3) Upon notice of the revocation or suspension of the license, the
14 licensee shall immediately surrender the expired license to the executive
15 director or his or her representative. If the license is suspended, the
16 executive director or his or her representative shall return the license
17 to the licensee at the time of the conclusion of the period of
18 suspension. Failure to surrender the license as required in this section
19 shall subject the licensee to the penalties provided in section 60-1416.

20 Sec. 9. Section 60-1416, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 60-1416 Any person acting as a motor vehicle dealer, trailer dealer,
23 wrecker or salvage dealer, motorcycle dealer, auction dealer, ~~motor~~
24 ~~vehicle, motorcycle, or trailer salesperson,~~ dealer's agent,
25 manufacturer, factory representative, distributor, or distributor
26 representative without having first obtained the license provided in
27 section 60-1406 is guilty of a Class IV felony and is subject to the
28 civil penalty provisions of section 60-1411.02.

29 Sec. 10. Original sections 60-1406, 60-1407, 60-1410, 60-1411,
30 60-1411.01, 60-1411.02, 60-1413, and 60-1416, Reissue Revised Statutes of
31 Nebraska, and section 60-1403.01, Revised Statutes Cumulative Supplement,

1 2016, are repealed.