

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 51

Introduced by Vargas, 7; Lindstrom, 18.

Read first time January 10, 2019

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to the Motor Vehicle Industry Regulation Act;
2 to amend section 60-1411.03, Reissue Revised Statutes of Nebraska,
3 and sections 60-1407 and 60-1438.01, Revised Statutes Cumulative
4 Supplement, 2018; to change provisions relating to license
5 applications, prohibited acts, and franchise restrictions; and to
6 repeal the original sections.

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

1 Section 1. Section 60-1407, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 60-1407 Any person desiring to apply for one or more of the types of
4 licenses described in the Motor Vehicle Industry Regulation Act shall
5 submit to the board, in writing, the following required information:

6 (1) The name and address of the applicant, if the applicant is an
7 individual, his or her social security number, and the name under which
8 he or she intends to conduct business. If the applicant is a partnership
9 or limited liability company, it shall set forth the name and address of
10 each partner or member thereof and the name under which the business is
11 to be conducted. If the applicant is a corporation, it shall set forth
12 the name of the corporation and the name and address of each of its
13 principal officers;

14 (2) The place or places, including the city or village and the
15 street and street number, if any, where the business is to be conducted;

16 (3) If the application is for a motor vehicle dealer's license,
17 trailer dealer's license, or motorcycle dealer's license (a) the name or
18 names of the new motor vehicle or vehicles, new trailer or trailers, or
19 new motorcycle or motorcycles which the applicant has been enfranchised
20 to sell or exchange, (b) the name or names and address or addresses of
21 the manufacturer or distributor who has enfranchised the applicant, (c) a
22 current copy of each existing franchise, and (d) a description of the
23 community, as applicable;

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

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

30 (6) A description of the proposed place or places of business
31 proposed to be operated in the event a license is granted together with

1 (a) a statement whether the applicant owns or leases the proposed
2 established place of business and, if the proposed established place of
3 business is leased, the applicant shall file a true and correct copy of
4 the lease agreement, and (b) a description of the facilities for the
5 display of motor vehicles, trailers, and motorcycles;

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

9 (8) A statement that the licensee will comply with and be subject to
10 the act, the rules and regulations adopted and promulgated by the board,
11 and any amendments to the act and the rules and regulations existing on
12 the date of application.

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

17 Sec. 2. Section 60-1411.03, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 60-1411.03 It shall be unlawful for any licensee or motor vehicle
20 dealer to engage, directly or indirectly, in the following acts:

21 (1) To advertise and offer any year, make, engine size, model, type,
22 equipment, price, trade-in allowance, or terms or make other claims or
23 conditions pertaining to the sale, leasing, or rental of motor vehicles,
24 motorcycles, and trailers which are not truthful and clearly set forth;

25 (2) To advertise for sale, lease, or rental a specific motor
26 vehicle, motorcycle, or trailer which is not in the possession of the
27 dealer, owner, or advertiser and willingly shown and sold, as advertised,
28 illustrated, or described, at the advertised price and terms, at the
29 advertised address. Unless otherwise specified, a motor vehicle,
30 motorcycle, or trailer advertised for sale shall be in operable condition
31 and, on request, the advertiser thereof shall show records to

1 substantiate an advertised offer;

2 (3) To advertise a new motor vehicle, motorcycle, or trailer at a
3 price which does not include standard equipment with which it is fitted
4 or is ordinarily fitted, without disclosing such fact, or eliminating any
5 such equipment for the purpose of advertising a low price;

6 (4) To advertise (a) that the advertiser's prices are always or
7 generally lower than competitive prices and not met or equalled by others
8 or that the advertiser always or generally undersells competitors, (b)
9 that the advertiser's prices are always or generally the lowest or that
10 no other dealer has lower prices, (c) that the advertiser is never
11 undersold, or (d) that no other advertiser or dealer will have a lower
12 price;

13 (5) To advertise and make statements such as, Write Your Own Deal,
14 Name Your Own Price, or Name Your Own Monthly Payments and other
15 statements of a similar nature;

16 (6) To advertise by making disparaging comparisons with competitors'
17 services, quality, price, products, or business methods;

18 (7) To advertise by making the layout, headlines, illustrations, and
19 type size of an advertisement so as to convey or permit an erroneous
20 impression as to which motor vehicle, motorcycle, or trailer or motor
21 vehicles, motorcycles, or trailers are offered at featured prices. No
22 advertised offer, expression, or display of price, terms, downpayment,
23 trade-in allowance, cash difference, or savings shall be misleading by
24 itself, and any qualification to such offer, expression, or display shall
25 be clearly and conspicuously set forth in comparative type size and
26 style, location, and layout to prevent deception;

27 (8) To advertise the price of a motor vehicle, motorcycle, or
28 trailer without including all charges which the customer must pay for the
29 motor vehicle, motorcycle, or trailer, excepting state and local taxes
30 and license, title, and other fees. It shall be unlawful to advertise
31 prices described as unpaid balance unless they are the full cash selling

1 price and to advertise price which is not the full selling price even
2 though qualified with expressions such as with trade, with acceptable
3 trade, or other similar words;

4 (9) To advertise as at cost, below cost, below invoice, or
5 wholesale, unless the term used is strictly construed that the word cost
6 as used in this subdivision or in a similar meaning is the actual price
7 paid by the advertiser to the manufacturer for the motor vehicle,
8 motorcycle, or trailer so advertised;

9 (10) To advertise claims that Everybody Financed, No Credit
10 Rejected, or We Finance Anyone and other similar affirmative statements;

11 (11) To advertise a specific trade-in amount or range of amounts;

12 (12) To advertise the words Finance, Loan, or Discounts or others of
13 similar import in the firm name or trade style of a person offering motor
14 vehicles, motorcycles, and trailers for sale unless such person is
15 actually engaged in the finance business and offering only bona fide
16 repossessed motor vehicles, motorcycles, and trailers. It shall be
17 unlawful to use the word Repossessed in the name or trade style of a firm
18 in the advertising of motor vehicles, motorcycles, and trailers sold by
19 such a company unless they are bona fide repossessions sold for unpaid
20 balances due only. Advertisers offering repossessed automobiles for sale
21 shall be able to offer proof of repossession;

22 (13) To advertise the term Authorized Dealer in any way as to
23 mislead as to the make or makes of motor vehicles, motorcycles, or
24 trailers for which a dealer is franchised to sell at retail;

25 (14) To advertise or sell new motor vehicles, motorcycles, and
26 trailers by any person who is not the manufacturer or not enfranchised by
27 the manufacturer ~~of the motor vehicle, motorcycle, or trailer offered~~
28 without disclosing such the fact in each advertisement which includes the
29 motor vehicle, motorcycle, or trailer, and in writing in the lease or
30 purchase agreement that the licensee or motor vehicle dealer is not
31 enfranchised or authorized by the manufacturer for service under factory

1 warranty provisions. No person shall transfer ownership of a motor
2 vehicle, motorcycle, or trailer by reassignment on a manufacturer's
3 statement of origin unless the person is the manufacturer of the motor
4 vehicle, motorcycle, or trailer or is enfranchised to do so by the
5 manufacturer of the motor vehicle, motorcycle, or trailer;

6 (15) To advertise used motor vehicles, motorcycles, or trailers so
7 as to create the impression that they are new. Used motor vehicles,
8 motorcycles, and trailers of the current and preceding model year shall
9 be clearly identified as Used, Executive Driven, Demonstrator, or Driver
10 Training, and lease cars, taxicabs, fleet vehicles, police motor
11 vehicles, or motorcycles as may be the case and descriptions such as Low
12 Mileage or Slightly Driven may also be applied only when correct. The
13 terms demonstrator's, executive's, and official's motor vehicles,
14 motorcycles, or trailers shall not be used unless (a) they have never
15 been sold to a member of the public, (b) such terms describe motor
16 vehicles, motorcycles, or trailers used by new motor vehicle, motorcycle,
17 or trailer dealers or their employees for demonstrating performance
18 ability, and (c) such vehicles are advertised for sale as such only by an
19 authorized dealer in the same make of motor vehicle, motorcycle, or
20 trailer. Phrases such as Last of the Remaining, Closeout, or Final
21 Clearance and others of similar import shall not be used in advertising
22 used motor vehicles, motorcycles, and trailers so as to convey the
23 impression that the motor vehicles, motorcycles, and trailers offered are
24 holdover new motor vehicles, motorcycles, or ~~and~~ trailers. When new and
25 used motor vehicles, motorcycles, and trailers of the current and
26 preceding model year are offered in the same advertisement, such offers
27 shall be clearly separated by description, layout, and art treatment;

28 (16) To advertise executives' or officials' motor vehicles,
29 motorcycles, or trailers unless they have been used exclusively by the
30 personnel or executive of the motor vehicle, motorcycle, or trailer
31 manufacturer or by an executive of any authorized dealer of the same make

1 thereof and such motor vehicles, motorcycles, and trailers have not been
2 sold to a member of the public prior to the appearance of the
3 advertisement;

4 (17) To advertise motor vehicles, motorcycles, and trailers owned by
5 or in the possession of dealers without the name of the dealership or in
6 any other manner so as to convey the impression that they are being
7 offered by private parties;

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

10 (19) To advertise the terms auction or auction special and other
11 terms of similar import unless such terms are used in connection with
12 motor vehicles, motorcycles, and trailers offered or sold at a bona fide
13 auction to the highest bidder and under such other specific conditions as
14 may be required in the Motor Vehicle Industry Regulation Act;

15 (20) To advertise free driving trial unless it means a trial without
16 obligation of any kind and that the motor vehicle, motorcycle, or trailer
17 may be returned in the period specified without obligation or cost. A
18 driving trial advertised on a money back basis or with privilege of
19 exchange or applying money paid on another motor vehicle, motorcycle, or
20 trailer shall be so explained. Terms and conditions of driving trials,
21 free or otherwise, shall be set forth in writing for the customer;

22 (21) To advertise (a) the term Manufacturer's Warranty unless it is
23 used in advertising only in reference to cars covered by a bona fide
24 factory warranty for that particular make of motor vehicle, motorcycle,
25 or trailer. In the event only a portion of such warranty is remaining,
26 then reference to a warranty may be used only if stated that that unused
27 portion of the warranty is still in effect, (b) the term New Car
28 Guarantee except in connection with new motor vehicles, motorcycles, and
29 trailers, and (c) the terms Ninety-day Warranty, Fifty-fifty Guarantee,
30 Three-hundred-mile Guarantee, and Six-month Warranty, unless the major
31 terms and exclusions are sufficiently described in the advertisement;

1 (22) To advertise representations inconsistent with or contrary to
2 the fact that a motor vehicle, motorcycle, or trailer is sold as is and
3 without a guarantee. The customer contract shall clearly indicate when a
4 car will be sold with a guarantee and what that guarantee is and
5 similarly shall clearly indicate when a car is sold as is and without a
6 guarantee; and

7 (23) To advertise or to make any statement, declaration, or
8 representation in any advertisement that cannot be substantiated in fact,
9 and the burden of proof of the factual basis for the statement,
10 declaration, or representation shall be on the licensee or motor vehicle
11 dealer and not on the board.

12 Sec. 3. Section 60-1438.01, Revised Statutes Cumulative Supplement,
13 2018, is amended to read:

14 60-1438.01 (1) For purposes of this section, manufacturer or
15 distributor includes (a) a factory representative or a distributor
16 representative or (b) a person who is affiliated with a manufacturer or
17 distributor or who, directly or indirectly through an intermediary, is
18 controlled by, or is under common control with, the manufacturer or
19 distributor. A person is controlled by a manufacturer or distributor if
20 the manufacturer or distributor has the authority directly or indirectly,
21 by law or by agreement of the parties, to direct or influence the
22 management and policies of the person. A franchise agreement with a
23 Nebraska-licensed dealer which conforms to and is subject to the Motor
24 Vehicle Industry Regulation Act is not control for purposes of this
25 section.

26 ~~(2)(a) (2)~~ Except as provided in this section, a manufacturer or
27 distributor shall not directly or indirectly:

28 ~~(i) (a)~~ Own an interest in a franchise, franchisee, or consumer care
29 or service facility, except that a manufacturer or distributor may hold
30 stock in a publicly held franchise, franchisee, or consumer care or
31 service facility so long as the manufacturer or distributor does not by

1 virtue of holding such stock operate or control the franchise,
2 franchisee, or consumer care or service facility;

3 (ii) ~~(b)~~ Operate or control a franchise, franchisee, or consumer
4 care or service facility; or

5 (iii) ~~(c)~~ Act in the capacity of a franchisee or motor vehicle
6 dealer.

7 (b) This subsection does not apply to a manufacturer that:

8 (i) Does not have, and has not previously had, any franchisees
9 representing such manufacturer's line-make of motor vehicles,
10 motorcycles, or trailers in this state; and

11 (ii) Sells to the general public only the line-make of motor
12 vehicles, motorcycles, or trailers that it manufactures.

13 (3) A manufacturer or distributor may own an interest in a
14 franchisee or otherwise control a franchise for a period not to exceed
15 twelve months after the date the manufacturer or distributor acquires the
16 franchise if:

17 (a) The person from whom the manufacturer or distributor acquired
18 the franchise was a franchisee; and

19 (b) The franchise is for sale by the manufacturer or distributor.

20 (4) For purposes of broadening the diversity of its franchisees and
21 enhancing opportunities for qualified persons who lack the resources to
22 purchase a franchise outright, but for no other purpose, a manufacturer
23 or distributor may temporarily own an interest in a franchise if the
24 manufacturer's or distributor's participation in the franchise is in a
25 bona fide relationship with a franchisee and the franchisee:

26 (a) Has made a significant investment in the franchise, which
27 investment is subject to loss;

28 (b) Has an ownership interest in the franchise; and

29 (c) Operates the franchise under a plan to acquire full ownership of
30 the franchise within a reasonable time and under reasonable terms and
31 conditions.

1 (5) On a showing of good cause by a manufacturer or distributor, the
2 board may extend the time limit set forth in subsection (3) of this
3 section. An extension may not exceed twelve months. An application for an
4 extension after the first extension is granted is subject to protest by a
5 franchisee of the same line-make whose franchise is located in the same
6 community as the franchise owned or controlled by the manufacturer or
7 distributor.

8 (6) The prohibition in subdivision ~~(2)(a)(ii)~~ ~~(2)(b)~~ of this section
9 shall not apply to any manufacturer of manufactured housing, recreational
10 vehicles, or trailers.

11 (7) The prohibitions set forth in subsection (2) of this section
12 shall not apply to a manufacturer that:

13 (a) Does not own or operate more than two such dealers or dealership
14 locations in this state;

15 (b) Owned, operated, or controlled a warranty repair or service
16 facility in this state as of January 1, 2016;

17 (c) Manufactures engines for installation in a motor-driven vehicle
18 with a gross vehicle weight rating of more than sixteen thousand pounds
19 for which motor-driven vehicle evidence of title is required as a
20 condition precedent to registration under the laws of this state, if the
21 manufacturer is not otherwise a manufacturer of motor vehicles; and

22 (d) Provides to dealers on substantially equal terms access to all
23 support for completing repairs, including, but not limited to, parts and
24 assemblies, training and technical service bulletins, and other
25 information concerning repairs that the manufacturer provides to
26 facilities owned, operated, or controlled by the manufacturer.

27 Sec. 4. Original section 60-1411.03, Reissue Revised Statutes of
28 Nebraska, and sections 60-1407 and 60-1438.01, Revised Statutes
29 Cumulative Supplement, 2018, are repealed.