

## LEGISLATIVE BILL 1148

Approved by the Governor April 18, 2022

Introduced by Friesen, 34.

A BILL FOR AN ACT relating to the Nebraska Motor Vehicle Industry Licensing Board; to amend sections 60-1403, 60-1413, 60-1414, 60-1417.02, 60-1427, 60-1428, and 60-1435, Reissue Revised Statutes of Nebraska; to provide for the employment of a hearing officer; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 60-1403, Reissue Revised Statutes of Nebraska, is amended to read:

60-1403 (1) The board may:

(a) Regulate the issuance and revocation of licenses in accordance with and subject to the Motor Vehicle Industry Regulation Act;

(b) Perform all acts and duties provided for in the act necessary to the administration and enforcement of the act; ~~and~~

(c) Make and enforce rules and regulations relating to the administration of but not inconsistent with the act; ~~and~~ -

(d) Employ a hearing officer who shall conduct preliminary hearings on behalf of the board and make recommendations to the board on any issue or matter which the board deems proper.

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

(3) Investigators employed by the board may enter upon and inspect the facilities, the required records, and any vehicles, trailers, or motorcycles found in any licensed motor vehicle, motorcycle, or trailer dealer's established place or places of business.

(4) With respect to any action taken by the board, if a controlling number of the members of the board are active participants in the vehicle market in which the action is taken, the chairperson shall review the action taken and, upon completion of such review, modify, alter, approve, or reject the board's action.

Sec. 2. Section 60-1413, Reissue Revised Statutes of Nebraska, is amended to read:

60-1413 (1) Before the board denies any license or any registration as described in section 60-1417.02, revokes or suspends any such license or registration, places a licensee or registrant on probation, or assesses an administrative fine under section 60-1411.02, the board, or hearing officer employed by the board, shall give the applicant, licensee, registrant, or violator a hearing on the matter unless the hearing is waived upon agreement between the applicant, licensee, registrant, or violator and the executive director, with the approval of the board. As a condition of the waiver, the applicant, licensee, registrant, or violator shall accept the fine or other administrative action. If the hearing is not waived, the board shall, at least thirty days prior to the date set for the hearing, notify the party in writing. Such notice in writing shall contain an exact statement of the charges against the party and the date and place of hearing. The party shall have full authority to be heard in person or by counsel before the board, or hearing officer employed by the board, in reference to the charges. The written notice may be served by delivery personally to the party or by mailing the notice by registered or certified mail to the last-known business address of the party. If the applicant is a dealer's agent, the board shall also notify the dealer employing or contracting with him or her or whose employ he or she seeks to enter by mailing the notice to the dealer's last-known business address. A stenographic record of all testimony presented at the hearings shall be made and preserved pending final disposition of the complaint.

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

(3) Upon notice of the revocation or suspension of the license, the licensee shall immediately surrender the expired license to the executive director or his or her representative. If the license is suspended, the executive director or his or her representative shall return the license to the licensee at the time of the conclusion of the period of suspension. Failure to surrender the license as required in this section shall subject the licensee to

the penalties provided in section 60-1416.

Sec. 3. Section 60-1414, Reissue Revised Statutes of Nebraska, is amended to read:

60-1414 In the preparation and conduct of such hearings, the members of the board and executive director, or hearing officer employed by the board, shall have the power to require the attendance and testimony of any witness and the production of any papers or documents in order to assure a fair trial. They may sign and issue subpoenas therefor and administer oaths and examine witnesses and take any evidence they deem pertinent to the determination of the charges. Any witnesses so subpoenaed shall be entitled to the same fees as prescribed by law in judicial proceedings in the district court of this state in a civil action and mileage at the same rate provided in section 81-1176 for state employees. The payment of such fees and mileage must be out of and kept within the limits of the funds provided for the administration of the board. The party against whom such charges may be filed shall have the right to obtain from the executive director a subpoena for any witnesses which he or she may desire at such hearing and depositions may be taken as in civil court cases in the district court. Any information obtained from the books and records of the person complained against may not be used against the person complained against as the basis for a criminal prosecution under the laws of this state.

Sec. 4. Section 60-1417.02, Reissue Revised Statutes of Nebraska, is amended to read:

60-1417.02 (1) Except as otherwise provided in subsection (5) of this section, any person who engages in or attempts to engage in the selling of motor vehicles or trailers at an auction licensed pursuant to the Motor Vehicle Industry Regulation Act shall register to do so. Registration shall be made on a form provided by the auction dealer and approved by the board. A copy of the registration shall serve as proof of registration for the calendar year. The registration information shall be made available and accessible to the board by the auction dealer within seventy-two hours after the registrant has met the registration requirements and such registration is issued. Such registration information shall be maintained and made accessible to the board by the auction dealer for two years. It shall be the duty of the auction dealer to ensure that no seller participates in any sales activities until and unless registration has been received by the auction dealer or unless such seller is otherwise licensed under the act.

(2) The information required on the registration form shall include, but not be limited to, the following: (a) The legal name of the registrant; (b) the registrant's current mailing address and telephone number; (c) the business name and address of the person with whom the registrant is associated; and (d) whether or not the registrant is bonded.

(3) The registration form shall be signed by the registrant and an authorized representative of the auction and shall be notarized by a notary public.

(4) Any person who is convicted of any violation of the act pursuant to section 60-1411.02 may be denied the right to be registered at all licensed auctions of this state following a hearing before the board, or hearing officer employed by the board, as prescribed in section 60-1413.

(5) A licensed motor vehicle dealer may conduct an auction of excess inventory of used vehicles without being licensed as an auction dealer or registered under this section if the auction conforms to the requirements of this subsection. The licensed motor vehicle dealer shall conduct the auction upon the licensed premises of the dealer, shall sell only used motor vehicles, trailers, or manufactured homes, shall sell only to motor vehicle dealers licensed in Nebraska, shall not sell any vehicles on consignment, and shall not sell any vehicles directly to the public.

Sec. 5. Section 60-1427, Reissue Revised Statutes of Nebraska, is amended to read:

60-1427 Upon hearing, the franchisor shall have the burden of proof to establish that under the Motor Vehicle Industry Regulation Act the franchisor should be granted permission to terminate or not continue the franchise, to change the franchisee's community, or to enter into a franchise establishing an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership.

Nothing contained in the act shall be construed to require or authorize any investigation by the board of any matter before the board under the provisions of sections 60-1420 to 60-1435. Upon hearing, the board, or hearing officer employed by the board, shall hear the evidence introduced by the parties. The hearing officer employed by the board shall make a recommendation to the board solely upon the record so made. The board and shall make its decision solely upon the record so made.

Sec. 6. Section 60-1428, Reissue Revised Statutes of Nebraska, is amended to read:

60-1428 The rules of civil procedure relating to discovery and inspection shall apply to hearings held under the Motor Vehicle Industry Regulation Act, and the board may issue orders to give effect to such rules.

If issues are raised which would involve violations of any state or federal antitrust or price-fixing law, all discovery and inspection proceedings which would be available under such issues in a state or federal court action shall be available to the parties to the hearing, and the board may issue orders to give effect to such proceedings.

Evidence which would be admissible under the issues in a state or federal court action shall be admissible in a hearing held by the board or hearing

officer employed by the board. The board shall apportion all costs between the parties.

Sec. 7. Section 60-1435, Reissue Revised Statutes of Nebraska, is amended to read:

60-1435 Any party to a hearing before the board, or hearing officer employed by the board, may appeal any final order entered in such hearing, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 8. Original sections 60-1403, 60-1413, 60-1414, 60-1417.02, 60-1427, 60-1428, and 60-1435, Reissue Revised Statutes of Nebraska, are repealed.