

LEGISLATIVE BILL 280

Approved by the Governor May 22, 1989

Introduced by Transportation Committee, Lamb, 43,
Chairperson; Beyer, 3; Schellpeper, 18;
Peterson, 21; Goodrich, 20; Byars, 30;
Rogers, 41

AN ACT relating to motor vehicles; to amend sections 60-1401.02, 60-1407.01, 60-1411.03, 60-1411.04, 60-1420, 60-1429, 60-1430, 60-1440, and 60-2701, Reissue Revised Statutes of Nebraska, 1943; to define and redefine terms; to change a provision relating to certain license applications; to prohibit motor vehicle dealers from committing certain acts relating to advertising; to change provisions relating to the termination of a motor vehicle franchise as prescribed; to change provisions relating to the sale or transfer of a motor vehicle franchise; to provide for the payment of costs upon the termination, cancellation, or noncontinuation of a franchise as prescribed; to change a penalty provision; to change a provision relating to actions for damages and relief; to provide a duty for the Revisor of Statutes; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 60-1401.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

60-1401.02. As used in For purposes of Chapter 60, article 14, and sections 60-2601 to 60-2607 and section 8 of this act, unless the context otherwise requires:

(1) Person shall mean every natural person, firm, copartnership, association, or corporation;

(2) Association shall mean any two or more persons acting with a common purpose, regardless of the relative degrees of involvement, and shall include, but not be limited to, the following persons so acting:

(a) A person and one or more of his or her family members. For purposes of this subdivision, family member shall mean an individual related to the

person by blood, marriage, adoption, or legal guardianship as the person's spouse, child, parent, brother, sister, grandchild, grandparent, ward, or legal guardian or any individual so related to the person's spouse; and

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

(3) Motor vehicle dealer shall mean any person engaged in the business of selling or exchanging new or used motor vehicles and trailers as defined in this act; and any person who buys, sells, exchanges, causes the sale of, or offers or attempts to sell seven five or more new or used motor vehicles in any one calendar year. Such person shall be deemed to be a motor vehicle dealer and subject to the provisions of this act Chapter 60, article 14;

(3) (4) Trailer dealer shall mean any person engaged in the business of selling or exchanging new or used trailers, and any person who buys, sells, exchanges, or offers or attempts to sell three or more new or used trailers in any one calendar year shall be deemed to be a trailer dealer and subject to the provisions of Chapter 60, article 14;

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

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

(6) (7) Used motor vehicle shall mean every motor vehicle which has been sold, bargained, exchanged, given away, or for which title has been transferred from the person who first acquired it from the manufacturer, or importer, dealer, or agent of the manufacturer or importer. A new motor vehicle shall not be considered a used motor vehicle until it has been placed in a bona fide consumer use, notwithstanding the number of transfers of such motor vehicle. Bona fide consumer use shall mean actual operation by an owner who acquired the vehicle for use in business or for pleasure purposes, and who has been granted a certificate of title on such motor vehicle, and who has registered such motor vehicle, all in accordance with the laws of the residence of the owner;

(7) (8) New motor vehicle shall mean all motor vehicles which are not included within the definition of

a used motor vehicle in subdivision ~~(6)~~ of this section;
~~(8)~~ (9) Trailer shall mean trailers and semitrailers, as defined in section 60-301, which are required to be licensed as commercial trailers, other vehicles without motive power constructed so as to permit their being used as conveyances upon the public streets and highways and so constructed as not to be attached to real estate and to permit the vehicle to be used for human habitation by one or more persons, and camping trailers, slide-in campers, fold-down campers, and fold-down tent trailers. Machinery and equipment to which wheels are attached and designed for being drawn by a motor vehicle shall be excluded from the provisions of Chapter 60, article 14;

(9) ~~(10)~~ Motorcycle dealer shall mean any person engaged in the business of selling or exchanging new or used motorcycles, as defined in this section and any person who buys, sells, exchanges, or offers or attempts to sell three or more new or used motorcycles in any one calendar year shall be deemed to be a motorcycle dealer and subject to the provisions of Chapter 60, article 14;

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

~~(11)~~ (12) Auction shall mean a sale of motor vehicles and trailers of types required to be registered in this state, except such vehicles as are eligible for registration pursuant to section 60-305.09, sold or offered for sale at which the price offered is increased by the prospective buyers who bid against one another, the highest bidder becoming the purchaser. The holding of a farm auction or an occasional motor vehicle or trailer auction of not more than two auctions in a calendar year shall not be construed as constituting an auction subject to Chapter 60, article 14;

~~(12)~~ (13) Auction dealer shall mean any person engaged in the business of conducting an auction for the sale of motor vehicles and trailers as defined in subdivision ~~(11)~~ of this section;

~~(13)~~ (14) Supplemental motor vehicle, trailer, motorcycle, or motor vehicle auction dealer shall mean any person holding either a motor vehicle, trailer, motorcycle, or motor vehicle auction dealer's license engaging in the business authorized by such license at a place of business that is more than three hundred feet

from any part of the place of business designated in the dealer's original license, but which is located within the city or county described in such original license;

{14} (15) Motor vehicle, motorcycle, or trailer salesperson shall mean any person who, for a salary, commission, or compensation of any kind, is employed directly by only one specified licensed Nebraska motor vehicle dealer, motorcycle dealer, or trailer dealer, except when the salesperson is working for two or more dealerships with common ownership, to sell, purchase, or exchange or to negotiate for the sale, purchase, or exchange of motor vehicles, motorcycles, or trailers. A person owning any part of more than one dealership may be a salesperson for each of such dealerships. Common ownership is defined for the purpose of this section to mean that there is at least an eighty percent interest in each dealership by one or more persons having ownership in such dealership;

{15} (16) Manufacturer shall mean any person, resident or nonresident of this state, who is engaged in the business of distributing, manufacturing, or assembling new motor vehicles, trailers, or motorcycles, and also shall have the same meaning as the term franchisor as used in Chapter 60, article 14;

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

{17} (18) Distributor shall mean a person, resident or nonresident of this state, who in whole or in part sells or distributes new motor vehicles, trailers, or motorcycles to dealers or who maintains distributors or representatives who sell or distribute motor vehicles, trailers, or motorcycles to dealers, and shall also have the same meaning as the term franchisor, as used in Chapter 60, article 14;

{18} (19) Finance company shall mean any person engaged in the business of financing sales of motor vehicles, motorcycles, or trailers, or purchasing or acquiring promissory notes, secured instruments, or other documents whereby such motor vehicles, motorcycles, or trailers are pledged as security for payment of obligations arising from such sales, and who may find it necessary to engage in the activity of repossession and the sale of the motor vehicles, motorcycles, or trailers so pledged;

~~(19)~~ (20) Franchise shall mean a contract between two or more persons when all of the following conditions are included:

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

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

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

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

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

~~(20)~~ (21) Franchisee shall mean a new motor vehicle dealer who receives motor vehicles from the franchisor under a franchise and who offers and sells such motor vehicles to the general public;

~~(21)~~ (22) Franchisor shall mean a person who manufactures or distributes motor vehicles and who may enter into a franchise;

~~(22)~~ (23) Community shall mean a franchisee's area of responsibility as stipulated in the franchise;

~~(23)~~ (24) Consumer care shall mean the performance, for the public, of necessary maintenance and repairs to motor vehicles;

~~(24)~~ (25) Sale, selling, and equivalent expressions shall mean the attempted act or acts either as principal, agent, or salesperson, or in any capacity whatsoever of selling, bartering, exchanging, or otherwise disposing of or negotiating, or offering or attempting to negotiate the sale, purchase, or exchange of or interest in any motor vehicle, trailer, or motorcycle, including the leasing thereof with a right or option to purchase under the terms of the lease;

~~(25)~~ (26) Established place of business shall mean a permanent location within this state, easily accessible to the public, owned or leased by the applicant or a licensee for at least the term of the license year, and conforming with applicable zoning laws, at which the licensee conducts the business for which he or she is licensed and may be contacted by the public during posted reasonable business hours which shall be not less than forty hours per week. The

established place of business shall have the following facilities: (a) Office space in a building or mobile home, which space shall be clean, dry, safe, and well lighted and in which shall be kept and maintained all books, records, and files necessary for the conduct of the licensed business, which premises, books, records, and files shall be available for inspection during regular business hours by any peace officer or investigator employed or designated by the board. Dealers shall, upon demand of the board's investigator, furnish copies of records so required when conducting any investigation of a complaint; (b) a sound and well-maintained sign which is legible from a public road and displayed with letters not less than eight inches in height and one contiguous area to display ten or more motor vehicles, motorcycles, or trailers in a presentable manner; (c) adequate repair facilities and tools to properly and actually service warranties on motor vehicles, motorcycles, or trailers sold at such place of business and to make other repairs arising out of the conduct of the licensee's business; or, in lieu of such repair facilities, the licensee may enter into a contract for the provision of such service and file a copy thereof annually with the board and shall furnish to each buyer a written statement as to where such service will be provided as required by section 60-1417. The service facility shall be located in the same county as the licensee; unless the board specifically authorizes the facility to be located elsewhere. Such facility shall maintain regular business hours and shall have suitable repair equipment and facilities to service and inspect the type of vehicles sold by the licensee. Investigators of the board may certify ongoing compliance with the service and inspection facilities or repair facilities; and (d) an operating telephone connected with a public telephone exchange and located on the premises of the established place of business with a telephone number listed by the public telephone exchange and available to the public during the required posted business hours. A mobile truck equipped with repair facilities to properly perform warranty functions and other repairs shall be deemed adequate repair facilities for trailers, as defined in Chapter 60, article 14. The above requirements shall not apply to the place of business authorized under a supplemental motor vehicle, motorcycle, or trailer dealer's license;

{26} {27} Retail, when used to describe a sale, shall mean a sale to any person other than a licensed dealer of any kind within the definitions of

this section;

{27} {28} Factory branch shall mean a branch office maintained in this state, by a person who manufactures, assembles, or distributes motor vehicles, motorcycles, or trailers, for the sale of such motor vehicles, motorcycles, or trailers to distributors or dealers or for directing or supervising, in whole or in part, its representatives in this state;

{28} {29} Distributor representative shall mean a representative employed by a distributor or distributor branch for the same purpose as set forth in subdivision {16} of the definition of factory representative in this section;

{29} {30} Board shall mean the Nebraska Motor Vehicle Industry Licensing Board;

{30} {31} Scrap metal processor shall mean any person engaged in the business of buying vehicles, motorcycles, or parts thereof for the purpose of remelting or processing into scrap metal, or who otherwise processes ferrous or nonferrous metallic scrap for resale. No scrap metal processor shall sell vehicles or motorcycles without obtaining a wrecker or salvage dealer license;

{31} {32} Designated family member shall mean the spouse, child, grandchild, parent, brother, or sister of the owner of a new motor vehicle dealership who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealership under the terms of the owner's will, who has been nominated in any other written instrument, or who, in the case of an incapacitated owner of such dealership, has been appointed by a court as the legal representative of the new motor vehicle dealer's property; and

{32} {33} This act shall mean Chapter 60, article 14.

Nothing in this act Chapter 60, article 14, shall apply to the State of Nebraska or any of its agencies or subdivisions. No insurance company, finance company, public utility company, fleet owner, or other person coming into possession of any motor vehicle, motorcycle, or trailer, as an incident to its regular business, who shall sell or exchange such motor vehicle, motorcycle, or trailer shall be considered a dealer as defined in this section, except persons whose regular business is leasing or renting motor vehicles, motorcycles, or trailers.

Sec. 2. That section 60-1407.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read

as follows:

60-1407.01. Upon the filing of any application, a staff member of the board shall endorse on it the date of filing. If no patent disqualification of the applicant is disclosed or if no valid objection to the granting of the application is apparent and if all requirements relative to the filing of the application appear to have been complied with, the chairperson of the board or executive director shall refer the application to a staff member for investigation and report. The report shall include:

(1) A statement as to whether or not the applicant or any person holding any financial interest in the applicant is for any reason disqualified by this act Chapter 60, article 14, from obtaining or exercising a license and whether or not the applicant has complied with all the requirements of this act Chapter 60, article 14, relative to the making and filing of his or her application;

(2) Information relating to any and all other matters and things which in the judgment of the staff member pertain to or affect the matter of the application or the issuance or exercise of the license applied for; and

(3) In the case of an application for a dealer's license, in addition to the foregoing:

(a) A description of the premises intended to become the licensed premises, and of the equipment and surrounding conditions;

(b) If the applicant has held a prior dealer's license for the same or any other premises within two years past, a statement as to the manner in which the premises have been operated and the business conducted under the previous license; and

(c) If the applicant proposes to engage in the business of selling new motor vehicles, motorcycles, or trailers a written statement from the applicable manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or such other evidence as prescribed by the board, that the applicant is authorized to sell or distribute such new motor vehicles.

After the filing of the report, the board may interview the applicant and notice of such interview must shall be given at least ten days prior to the interview.

The executive director shall not issue a license to any applicant or renew the license of any licensee if such applicant or licensee does not maintain

an established place of business as described in section 60-1401.02 or meet the requirement for a bond pursuant to section 60-1419. The executive director may not renew a motor vehicle dealer's license if such dealer cannot prove that he or she sold at least seven five motor vehicles during the previous licensing period.

Sec. 3. That section 60-1411.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

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

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

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

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

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

(6) To advertise by making disparaging comparisons with competitors' services, quality, price,

products, or business methods;

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

(8) To advertise the price of a motor vehicle, motorcycle, or trailer without including all charges which the customer must pay for the motor vehicle, motorcycle, or trailer, excepting state and local tax and license and title fees. It shall be unlawful to advertise prices described as unpaid balance, unless they are the full cash selling price and to advertise price which is not the full selling price even though qualified with expressions such as with trade, with acceptable trade, or other similar words;

(9) To advertise as at cost, below cost, below invoice, or wholesale, unless the term used shall be strictly construed that the word cost, as used above or in a similar meaning, shall be the actual price paid by the advertiser to the manufacturer for the motor vehicle, motorcycle, or trailer so advertised;

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

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

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

(13) To advertise the term Authorized Dealer in any way as to mislead as to the make or makes of

motor vehicles, motorcycles, or trailers for which a dealer is franchised to sell at retail;

(14) To advertise or sell new motor vehicles, motorcycles, and trailers by any person not enfranchised by the manufacturer of the motor vehicle, motorcycle, or trailer offered without disclosing the fact that the licensee or motor vehicle dealer is not enfranchised by the manufacturer for service under factory warranty provisions;

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

(16) To advertise executives' or officials' motor vehicles, motorcycles, or trailers unless they have been used exclusively by the personnel or executive of the motor vehicle, motorcycle, or trailer manufacturer or by an executive of any authorized dealer of the same make thereof and such motor vehicles, motorcycles, and trailers have not been sold to a member of the public prior to the appearance of the advertisement;

(17) To advertise motor vehicles, motorcycles, and trailers; owned by or in the possession of dealers;

without the name of the dealership or in any other manner so as to convey the impression that they are being offered by private parties;

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

(19) To advertise terms auction or auction special and other terms of similar import unless such terms shall be used in connection with motor vehicles, motorcycles, and trailers offered or sold at a bona fide auction to the highest bidder and under such other specific conditions as may be required in this act Chapter 60, article 14;

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

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

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

(23) To advertise or to make any statement, declaration, or representation in any advertisement that cannot be substantiated in fact, and the burden of proof of the factual basis for such statement, declaration, or representation is shall be on the licensee or motor

vehicle licensed dealer and not on the board.

Sec. 4. That section 60-1411.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

60-1411.04. The use, employment, or publication of advertising by any licensed licensee or motor vehicle dealer which does not comply with the provisions of section 60-1411.03 is hereby declared to be an unlawful act, and any licensed dealer person violating the provisions thereof such section shall be guilty of a Class V misdemeanor.

Sec. 5. That section 60-1420, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

60-1420. (1) Except as provided in subsection (2) of this section, no franchisor shall terminate or refuse to continue any franchise unless the franchisor has first established, in a hearing held pursuant to section 60-1425, that:

(a) The franchisor has good cause for termination or noncontinuance; and

(b) Upon termination or noncontinuance, another franchise in the same line-make will become effective in the same community, without diminution of the franchisee's service formerly provided, or that the community cannot be reasonably expected to support such a dealership; and

(c) The franchisor is willing and able to comply with section 8 of this act.

(2) Upon providing good and sufficient evidence to the board, a franchisor may terminate a franchise without such hearing (a) for a particular line-make if the franchisor discontinues that line-make, (b) if the franchisee's license as a motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealer is revoked pursuant to Chapter 60, article 14, or (c) upon a mutual written agreement of the franchisor and franchisee.

Sec. 6. That section 60-1429, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

60-1429. Notwithstanding the terms, provisions, or conditions of any agreement or franchise, the following shall not constitute good cause, as used in sections 60-1420 and 60-1422, for the termination or noncontinuance of a franchise, or for entering into a franchise for the establishment of an additional dealership in a community for the same line-make:

(1) The sole fact that the franchisor desires

further penetration of the market;

(2) The change of ownership of the franchisee's dealership or the change of executive management of the franchisee's dealership, unless the franchisor, having the burden of proof, proves that such change of ownership or executive management will be substantially detrimental to the distribution of the franchisor's motor ~~vehiele~~ vehicles, combination motor ~~vehiele and trailer~~, ~~moterevele~~ vehicles and trailers, motorcycles, or trailer products or to competition in the community. Substantially detrimental may include, but is not limited to, the failure of any proposed transferee or individual to meet the current criteria generally applied by the franchisor in qualifying new motor vehicle dealers; or

(3) The fact that the franchisee refused to purchase or accept delivery of any motor vehicle, combination motor vehicle and trailer, motorcycle, ~~or trailer~~, vehicle or vehicles, parts, or accessories, or any other commodity or service not ordered by the franchisee.

Sec. 7. That section 60-1430, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

60-1430. Notwithstanding the terms, provisions, or conditions ~~or~~ of any agreement or franchise, subject to the ~~provisions of~~ subdivision (2) of section 60-1429, in the event of the sale or a contract for sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer or in the event of change in the executive management of the franchisee's dealership, the franchisor shall give effect to such a change in the franchise unless (1) the transfer of the franchisee's license under ~~this act~~ Chapter 60, article 14, is denied or the new owner is unable to obtain a license under ~~this act~~ Chapter 60, article 14, as the case may be, or (2) the proposed sale or transfer of the business or change of executive management will be substantially detrimental to the distribution of the franchisor's motor vehicles, combination motor vehicles and trailers, motorcycles, or trailer products or to competition in the community if the franchisor has given written notice of such fact to the franchisee within sixty days of receipt by the franchisor of information reasonably necessary to evaluate the proposed change.

Sec. 8. (1) Upon the termination, cancellation, or noncontinuation of a franchise by the franchisor pursuant to Chapter 60, article 14, the

franchisor shall pay the franchisee:

(a) The dealer cost, plus any charges made by the franchisor for distribution, delivery, and taxes, less all allowances paid or credited to the franchisee by the franchisor, of unused, undamaged, and unsold motor vehicles in the franchisee's inventory acquired from the franchisor or another franchisee of the same line and made within the previous twelve months;

(b) The dealer cost, less all allowances paid or credited to the franchisee by the franchisor, for all unused, undamaged, and unsold supplies, parts, and accessories in original packaging, except that (i) in the case of sheet metal a comparable substitute for original packaging may be used if such supply, part, or accessory is offered for sale by the franchisor and was acquired from the franchisor or the predecessor franchisee as a part of the franchisee's initial inventory and (ii) in the case of a motorcycle franchise, the payment for such supplies, parts, and accessories shall be based upon the currently published dealer cost for all unused, undamaged, and unsold supplies, parts, and accessories currently offered for sale by the franchisor and originally acquired from the franchisor or the predecessor franchisee as a part of the franchisee's initial inventory, and all such supplies, parts, and accessories shall be currently identifiable and labeled and in the original packaging or a comparable substitute for the original packaging;

(c) The fair market value of each undamaged sign owned by the franchisee which bears a common name, trade name, or trademark of the franchisor if acquisition of such sign was recommended or required by the franchisor;

(d) The fair market value of all special tools, equipment, and furnishings acquired from the franchisor or sources approved by the franchisor which were recommended and required by the franchisor and are in good and usable condition except for reasonable wear and tear; and

(e) The cost of transporting, handling, packing, and loading motor vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings.

(2) The franchisor shall pay the franchisee the amounts specified in subsection (1) of this section within ninety days after the tender of the property if the franchisee has clear title to the property and is in a position to convey that title to the franchisor.

(3) This section shall not relieve a

franchisee from the obligation to mitigate damages upon termination, cancellation, or noncontinuation of the franchise.

Sec. 9. That section 60-1440, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

60-1440. (1) Any person who is or may be injured by a violation of Chapter 60, article 14, or any party to a franchise whose business or property is damaged by a violation of Chapter 60, article 14, relating to that franchise may bring an action for damages and equitable relief, including injunctive relief.

(2) When a violation of Chapter 60, article 14, can be shown to be willful or wanton, the court shall award damages. If the manufacturer engages in continued multiple violations of Chapter 60, article 14, the court may, in addition to any other damages, award court costs and attorney's fees.

(3) A new motor vehicle dealer, if he or she has not suffered any loss of money or property, may obtain final equitable relief if it can be shown that a violation of Chapter 60, article 14, by a manufacturer may have the effect of causing such loss of money or property.

(4) If any action to enforce any of the provisions of Chapter 60, article 14, is brought by a new motor vehicle dealer against a manufacturer and the new motor vehicle dealer prevails, he or she shall be awarded reasonable attorney's fees and the court shall assess costs against the manufacturer.

(5) If any dispute between a franchisor and franchisee becomes subject to resolution by means of binding arbitration, the provisions of Chapter 60, article 14, regulating the relationship of franchisor and franchisee shall apply in any such proceeding.

Sec. 10. That section 60-2701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

60-2701. As used in sections 60-2701 to 60-2709, unless the context otherwise requires:

(1) Consumer shall mean the purchaser, other than for purposes of resale, of a motor vehicle normally used for personal, family, household, or business purposes, any person to whom such motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty;

(2) Motor vehicle shall mean a new motor vehicle as defined in ~~subdivision (7) of~~ section 60-1401.02, which is sold in this state, excluding self-propelled mobile homes as defined in section 60-301; and

(3) Manufacturer's express warranty shall mean the written warranty, so labeled, of the manufacturer of a new motor vehicle.

Sec. 11. The Revisor of Statutes shall assign section 8 of this act to Chapter 60, article 14, and any reference to Chapter 60, article 14, shall include section 8 of this act.

Sec. 12. That original sections 60-1401.02, 60-1407.01, 60-1411.03, 60-1411.04, 60-1420, 60-1429, 60-1430, 60-1440, and 60-2701, Reissue Revised Statutes of Nebraska, 1943, are repealed.