

LEGISLATIVE BILL 333

Approved by the Governor April 16, 2003

Introduced by Burling, 33; Connealy, 16; Jones, 43

AN ACT relating to motor vehicles; to amend sections 23-186 and 60-6,355, Reissue Revised Statutes of Nebraska; to provide for certificates of title for all-terrain vehicles and minibikes; to define and redefine terms; to provide fees and penalties; to harmonize provisions; to provide a duty for the Revisor of Statutes; and to repeal the original sections.

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

Section 1. Sections 1 to 31 of this act apply to all-terrain vehicles as defined in section 60-6,355 and minibikes as defined in section 60-636. All new all-terrain vehicles and minibikes sold on or after January 1, 2004, shall be required to have a certificate of title. An owner of an all-terrain vehicle or minibike sold prior to such date may apply for a certificate of title for such all-terrain vehicle or minibike as provided in rules and regulations of the Department of Motor Vehicles.

Sec. 2. No manufacturer, importer, dealer, or other person shall sell or otherwise dispose of a new all-terrain vehicle or minibike to a dealer to be used by such dealer for purposes of display and resale without (1) delivering to such dealer a duly executed manufacturer's or importer's certificate with such assignments as may be necessary to show title in the purchaser and (2) having affixed to the all-terrain vehicle or minibike its vehicle identification number if it is not already affixed. No dealer shall purchase or acquire a new all-terrain vehicle or minibike without obtaining from the seller such manufacturer's or importer's certificate.

Sec. 3. Except as provided in section 2 of this act, no person shall sell or otherwise dispose of an all-terrain vehicle or minibike for which a certificate of title has been issued in Nebraska without (1) delivering to the purchaser or transferee of such all-terrain vehicle or minibike a certificate of title with such assignments thereon as may be necessary to show title in the purchaser and (2) having affixed to the all-terrain vehicle or minibike its vehicle identification number if it is not already affixed. No person shall bring into this state an all-terrain vehicle or minibike for which a certificate of title is required in Nebraska except for temporary use.

No purchaser or transferee shall receive a certificate of title which does not contain such assignments as may be necessary to show title in the purchaser or transferee. Possession of a certificate of title which does not meet this requirement shall be prima facie evidence of a violation of this section, and such purchaser or transferee, upon conviction, shall be subject to the penalties provided by section 31 of this act.

Sec. 4. Except as provided in section 17 of this act, no person acquiring an all-terrain vehicle or minibike, for which a certificate of title has been issued in Nebraska, from the owner thereof, whether such owner is a manufacturer, importer, dealer, or otherwise, shall acquire any right, title, claim, or interest in or to such vehicle or minibike until the acquiring person has had delivered to him or her physical possession of such all-terrain vehicle or minibike and a certificate of title or a duly executed manufacturer's or importer's certificate with such assignments as may be necessary to show title in the purchaser. No waiver or estoppel shall operate in favor of such person against a person having physical possession of such all-terrain vehicle or minibike and such certificate of title or manufacturer's or importer's certificate. No court in any case at law or in equity shall recognize the right, title, claim, or interest of any person in or to an all-terrain vehicle or minibike, for which a certificate of title has been issued in Nebraska, sold, disposed of, mortgaged, or encumbered, unless there is compliance with this section.

Sec. 5. A dealer need not apply for certificates of title for all-terrain vehicles or minibikes in stock or acquired for stock purposes, but upon transfer of such all-terrain vehicle or minibike in stock or acquired for stock purposes, the dealer shall give the transferee a reassignment of the certificate of title on such all-terrain vehicle or minibike or an assignment of a manufacturer's or importer's certificate. If all reassignments on the certificate of title have been used, the dealer shall obtain title in the dealer's name prior to any subsequent transfer.

Sec. 6. (1) The county clerk or designated county official pursuant

to section 23-186 shall be responsible for issuing and filing certificates of title for all-terrain vehicles and minibikes, and each county shall issue and file such certificates of title using the vehicle titling and registration computer system prescribed by the Department of Motor Vehicles. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the fee prescribed in section 14 of this act.

(2) If the owner of the all-terrain vehicle or minibike resides in Nebraska, the application shall be filed with the county clerk or designated county official of the county in which the owner resides. If the applicant is a nonresident, the application shall be filed in the county in which the transaction is consummated. The application for a certificate of title shall be filed within thirty days after the delivery of such all-terrain vehicle or minibike.

Sec. 7. (1) An application for a certificate of title for an all-terrain vehicle or a minibike shall include a statement that an identification inspection has been conducted on the all-terrain vehicle or minibike unless (a) the title sought is a salvage branded certificate of title or a nontransferable certificate of title, (b) the surrendered ownership document is a Nebraska certificate of title, a manufacturer's statement of origin, an importer's statement of origin, a United States Government Certificate of Release of an all-terrain vehicle or minibike, or a nontransferable certificate of title, (c) the title sought is the first title for the all-terrain vehicle or minibike sold directly by the manufacturer of the all-terrain vehicle or minibike to a dealer franchised by the manufacturer, or (d) the all-terrain vehicle or minibike was sold at an auction authorized by the manufacturer and purchased by a dealer franchised by the manufacturer of the all-terrain vehicle or minibike.

(2) The Department of Motor Vehicles shall prescribe a form to be executed by a dealer and submitted with an application for a certificate of title for all-terrain vehicles or minibikes exempt from inspection pursuant to subdivision (1)(c) or (d) of this section. The form shall clearly identify the all-terrain vehicle or minibike and state under penalty of law that the all-terrain vehicle or minibike is exempt from inspection.

(3) The statement that an identification inspection has been conducted shall be furnished by the county sheriff of any county or by any other holder of a certificate of training issued pursuant to section 60-121 and shall be in a format as determined by the department. The county clerk or designated county official pursuant to section 23-186 shall accept a certificate of inspection, approved by the Superintendent of Law Enforcement and Public Safety, from an officer of a state police agency of another state. For each inspection a fee of ten dollars shall be paid to the county treasurer. All such fees shall be credited to the county sheriff's vehicle inspection account within the county general fund. The identification inspection required by this subsection shall include examination and notation of the current odometer reading, if any, and a comparison of the vehicle identification number with the number listed on the ownership records, except that if a lien is registered against an all-terrain vehicle or minibike and recorded on the all-terrain vehicle's or minibike's ownership records, the county clerk or designated county official shall provide a copy of the ownership records for use in making such comparison. If such numbers are not identical, if there is reason to believe further inspection is necessary, or if the inspection is for a Nebraska assigned number, the person performing the inspection shall make a further inspection of the all-terrain vehicle or minibike which may include, but shall not be limited to, examination of other identifying numbers placed on the all-terrain vehicle or minibike by the manufacturer and an inquiry into the numbering system used by the state issuing such ownership records to determine ownership of an all-terrain vehicle or minibike. The identification inspection shall also include a statement that the vehicle identification number has been checked for entry in the National Crime Information Center and the Nebraska Crime Information Service. If there is cause to believe that odometer fraud exists, written notification shall be given to the office of the Attorney General. If after such inspection the sheriff or his or her designee determines that the all-terrain vehicle or minibike is not the all-terrain vehicle or minibike described by the ownership records, no statement shall be issued. In the case of an assembled all-terrain vehicle or minibike, such inspection shall include, but not be limited to, an examination of the records showing the date of receipt and source of each major component part.

Sec. 8. (1) Whenever a person applies for a certificate of title for an all-terrain vehicle or minibike, the county clerk or designated county official pursuant to section 23-186, subject to the approval of the Department

of Motor Vehicles, shall assign a distinguishing identification number to any all-terrain vehicle or minibike whenever such identification number is destroyed, obliterated, or missing. The owner of such an all-terrain vehicle or minibike to which such number is assigned shall have such number affixed to such all-terrain vehicle or minibike in a manner prescribed by the department. Before the certificate of title for an assigned number is released to the applicant by the county clerk or designated county official, the applicant must provide a statement that an identification inspection has been conducted pursuant to section 7 of this act. Upon application for a metallic assigned number plate, a nonrefundable fee of twenty dollars per all-terrain vehicle or minibike shall be paid to the department by the applicant.

(2) The department shall develop a metallic assigned number plate which can be permanently secured to an all-terrain vehicle or minibike by rivets. All distinguishing identification number plates shall display seventeen characters. When the manufacturer's vehicle identification number is known, it shall be used by the department as the assigned number. In the case of an assembled all-terrain vehicle or minibike, the department shall use a distinguishing identification number. The number shall include seventeen positions, the last two being "NE". The department shall, at the request of the county clerk or designated county official, provide the county clerk or designated county official with a number plate displaying a distinguishing identification number or the manufacturer's number provided by the county clerk or designated county official.

Sec. 9. (1) If a certificate of title has previously been issued for an all-terrain vehicle or minibike in this state, the application for a new certificate of title shall be accompanied by the certificate of title duly assigned except as otherwise provided in sections 1 to 31 of this act. If a certificate of title has not previously been issued for the all-terrain vehicle or minibike in this state, the application shall be accompanied by a manufacturer's or importer's certificate; a duly certified copy thereof; an affidavit by the owner affirming ownership; a certificate of title from another state; or a court order issued by a court of record. If the application for a certificate of title in this state is accompanied by a valid certificate of title issued by another state which meets that state's requirements for transfer of ownership, then the application may be accepted by this state.

(2) For purposes of this section, certificate of title includes a salvage certificate, a salvage branded certificate of title, or any other document of ownership issued by another state or jurisdiction for a salvage all-terrain vehicle or minibike. Only a salvage branded certificate of title shall be issued to any all-terrain vehicle or minibike conveyed upon a salvage certificate, a salvage branded certificate of title, or any other document of ownership issued by another state or jurisdiction for a salvage all-terrain vehicle or minibike.

(3) The county clerk or designated county official pursuant to section 23-186 shall retain the evidence of title presented by the applicant and on which the certificate of title is issued.

Sec. 10. The county clerk or designated county official pursuant to section 23-186 shall use reasonable diligence in ascertaining whether or not the statements in the application for a certificate of title are true by checking the application and documents accompanying the same with the records of all-terrain vehicles or minibikes in his or her office. If he or she is satisfied that the applicant is the owner of such all-terrain vehicle or minibike and that the application is in the proper form, the county clerk or designated county official shall issue a certificate of title over his or her signature and sealed with his or her seal.

Sec. 11. The certificate of title for an all-terrain vehicle or a minibike shall be obtained in the name of the purchaser upon application signed by the purchaser, except that (1) for titles to be held by husband and wife, applications may be accepted upon the signature of either one as a signature for himself or herself and as agent for his or her spouse and (2) for an applicant providing proof that he or she is a handicapped or disabled person as defined in section 18-1738, applications may be accepted upon the signature of the applicant's parent, legal guardian, foster parent, or agent.

Sec. 12. (1) The county clerk or designated county official pursuant to section 23-186 shall issue a certificate of title for an all-terrain vehicle or minibike in duplicate and retain one copy in his or her office. An electronic copy, in a form prescribed by the Department of Motor Vehicles, shall be transmitted on the day of issuance to the department. The county clerk or designated county official shall sign and affix his or her seal to the original certificate of title and, if there are no liens on the all-terrain vehicle or minibike, deliver the certificate to the applicant. If

there are one or more liens on the all-terrain vehicle or minibike, the certificate of title shall be delivered or mailed to the holder of the first lien on the day of issuance.

(2) The department shall prescribe a uniform method of numbering certificates of title.

(3) The county clerk or designated county official shall (a) file all certificates of title according to rules and regulations adopted and promulgated by the department, (b) maintain in the office indices for such certificates of title, (c) be authorized to destroy all previous records five years after a subsequent transfer has been made on an all-terrain vehicle or minibike, and (d) be authorized to destroy all certificates of title and all supporting records and documents which have been on file for a period of five years or more from the date of filing the certificate or a notation of lien, whichever occurs later. Any person holding a certificate of title to an all-terrain vehicle or minibike may refile the same with the county clerk or designated county official to prevent destruction of the records thereof pursuant to this subsection.

Sec. 13. (1) A certificate of title shall be printed upon safety security paper to be selected by the Department of Motor Vehicles. The certificate of title, manufacturer's statement of origin, and assignment of manufacturer's certificate shall be upon forms prescribed by the department and may include, but shall not be limited to, county of issuance, date of issuance, certificate of title number, previous certificate of title number, vehicle identification number, year, make, model, and body type of the all-terrain vehicle or minibike, name and address of the owner, acquisition date, issuing county clerk's or designated county official's signature and official seal, and sufficient space for the notation and release of liens, mortgages, or encumbrances, if any. The certificate of title shall include the words "not to be registered for road use".

(2) An assignment of certificate of title shall appear on each certificate of title and shall include, but not be limited to, a statement that the owner of the all-terrain vehicle or minibike assigns all his or her right, title, and interest in the all-terrain vehicle or minibike, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the owner or the owner's parent, legal guardian, foster parent, or agent in the case of an owner who is a handicapped or disabled person as defined in section 18-1738.

(3) A reassignment by a dealer shall appear on each certificate of title and shall include, but not be limited to, a statement that the dealer assigns all his or her right, title, and interest in the all-terrain vehicle or minibike, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the dealer or designated representative. Reassignments shall be printed on the reverse side of each certificate of title as many times as convenient. No dealer shall execute a reassignment on or transfer ownership by way of a manufacturer's statement of origin unless the dealer is franchised by the manufacturer of the all-terrain vehicle or minibike.

(4) The department may prescribe a secure power-of-attorney form and may contract with one or more persons to develop, provide, sell, and distribute secure power-of-attorney forms in the manner authorized or required by the federal Truth in Mileage Act of 1986 and any other federal law or regulation. Any secure power-of-attorney form authorized pursuant to a contract shall conform to the terms of the contract and be in strict compliance with the requirements of the department.

(5) The department may, with the approval of the Attorney General, require additional information on such forms.

Sec. 14. (1) A county clerk, a designated county official pursuant to section 23-186, or the Department of Motor Vehicles shall charge a fee of ten dollars for each replacement or duplicate copy of a certificate of title for all-terrain vehicles and minibikes, and the duplicate copy issued shall show only those unreleased liens of record. A fee of four dollars shall be charged for refiling a certificate of title pursuant to section 12 of this act. The fees shall be retained by the county or the department.

(2) The county clerk or designated county official or the department shall charge a fee of six dollars for each original certificate of title and a fee of three dollars for each notation of any lien on a certificate of title. The county clerk or designated county official shall retain for the county three dollars and twenty-five cents of the six dollars charged for each certificate of title and two dollars of the three dollars charged for each notation of lien. Two dollars charged for the certificate of title and the remaining one dollar charged for notation of any lien on a certificate of title shall be remitted to the State Treasurer for credit to the General Fund.

Twenty cents of the fee for a certificate of title shall be remitted to the State Treasurer for credit to a fund to be administered by the Consumer Protection Division of the Attorney General's office at the direction of the Attorney General for the purposes of the investigation and prosecution of fraud and theft of all-terrain vehicles and minibikes. Fifty-five cents of the fee charged for the certificate of title shall be remitted to the State Treasurer for credit to the Nebraska State Patrol Cash Fund.

(3) In addition to the fees prescribed in subsection (2) of this section, the county clerk or designated county official or the department shall charge a fee of four dollars for each certificate of title, each replacement or duplicate copy of a certificate of title, each refiling of a certificate of title, and each notation of lien on a certificate of title. The county clerk or designated county official or the department shall remit the fee charged under this subsection to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(4) The county clerk or designated county official shall remit all funds due the State Treasurer under this section and sections 7 and 8 of this act monthly and not later than the fifth day of the month following collection. The county clerk or designated county official shall remit fees not due the State of Nebraska to their respective county treasurers who shall credit the fees to the county general fund. All fees not otherwise provided for in this section received by the department pursuant to this section shall be deposited in the Motor Carrier Division Cash Fund.

Sec. 15. When an insurance company authorized to do business in Nebraska acquires an all-terrain vehicle or a minibike which has been properly titled and registered in a state other than Nebraska through payment of a total loss settlement on account of theft and the all-terrain vehicle or minibike has not become unusable for transportation through damage and has not sustained any malfunction beyond reasonable maintenance and repair, the company shall obtain the certificate of title from the owner and may make application for a nontransferable certificate of title by surrendering the certificate of title to the county clerk or designated county official pursuant to section 23-186. A nontransferable certificate of title shall be issued in the same manner and for the same fee as provided for a certificate of title in sections 6 to 14 of this act and shall be on a form prescribed by the Department of Motor Vehicles.

An all-terrain vehicle or minibike which has a nontransferable certificate of title shall not be sold or otherwise transferred or disposed of without first obtaining a certificate of title under sections 6 to 14 of this act.

When a nontransferable certificate of title is surrendered for a certificate of title, the application shall be accompanied by a statement from the insurance company stating that to the best of its knowledge the all-terrain vehicle or minibike has not become unusable for transportation through damage and has not sustained any malfunction beyond reasonable maintenance and repair. The statement shall not constitute or imply a warranty of condition to any subsequent purchaser or operator of the all-terrain vehicle or minibike.

Sec. 16. (1) The Department of Motor Vehicles may adopt and promulgate rules and regulations to insure uniform and orderly operation of sections 1 to 31 of this act, and the county clerks or designated county officials pursuant to section 23-186 of all counties shall conform to such rules and regulations and act at the direction of the department. The department shall also provide the county clerks and designated county officials with the necessary training for the proper administration of sections 1 to 31 of this act. The department shall receive all instruments relating to all-terrain vehicles and minibikes forwarded to it by the county clerks and designated county officials under such sections and shall maintain indices covering the state at large for the instruments so received. These indices shall be by motor number or by an identification number and alphabetically by the owner's name and shall be for the state at large and not for individual counties. The department shall provide and furnish the forms required by such sections, except manufacturers' or importers' certificates.

(2) The department shall check with its records all duplicate certificates of title received from the county clerks and designated county officials. If it appears that a certificate of title has been improperly issued, the department shall cancel the same. Upon cancellation of any certificate of title, the department shall notify the county clerk or designated county official who issued the same, and such county clerk or designated county official shall thereupon enter the cancellation upon his or her records. The department shall also notify the person to whom such certificate of title was issued, as well as any lienholders appearing thereon,

of the cancellation and shall demand the surrender of such certificate of title, but the cancellation shall not affect the validity of any lien noted thereon. The holder of such certificate of title shall return the same to the department forthwith.

(3) The county clerk or designated county official shall keep on hand a sufficient supply of blank forms which, except certificate of title forms, shall be furnished and distributed without charge to manufacturers, dealers, or other persons residing within the county.

Sec. 17. (1) Except as provided in section 18 of this act, the provisions of article 9, Uniform Commercial Code, shall never be construed to apply to or to permit or require the deposit, filing, or other record whatsoever of a security agreement, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or similar instrument or any copy of the same covering an all-terrain vehicle or minibike for which a certificate of title has been issued. Any mortgage, conveyance intended to operate as a security agreement as provided by article 9, Uniform Commercial Code, trust receipt, conditional sales contract, or other similar instrument covering an all-terrain vehicle or minibike, if such instrument is accompanied by delivery of such manufacturer's or importer's certificate and followed by actual and continued possession of the same by the holder of such instrument or, in the case of a certificate of title, if a notation of the same has been made by the county clerk or designated county official pursuant to section 23-186 or the Department of Motor Vehicles on the face thereof, shall be valid as against the creditors of the debtor, whether armed with process or not, and subsequent purchasers, secured parties, and other lienholders or claimants but otherwise shall not be valid against them, except that during any period in which an all-terrain vehicle or minibike is inventory, as defined in section 9-102, Uniform Commercial Code, held for sale by a person or corporation that is in the business of selling such all-terrain vehicles or minibikes, the filing provisions of article 9, Uniform Commercial Code, as applied to inventory, shall apply to a security interest in such all-terrain vehicle or minibike created by such person or corporation as debtor without the notation of lien on the instrument of title. A buyer at retail from a dealer of any all-terrain vehicle or minibike in the ordinary course of business shall take such all-terrain vehicle or minibike free of any security interest.

(2) Subject to subsection (1) of this section, all liens, security agreements, and encumbrances noted upon a certificate of title shall take priority according to the order of time in which the same are noted thereon by the county clerk or designated county official or the department. Exposure for sale of any all-terrain vehicle or minibike by the owner thereof with the knowledge or with the knowledge and consent of the holder of any lien, security agreement, or encumbrance on such all-terrain vehicle or minibike shall not render the same void or ineffective as against the creditors of such owner or holder of subsequent liens, security agreements, or encumbrances upon such all-terrain vehicle or minibike.

(3) The holder of a security agreement, trust receipt, conditional sales contract, or similar instrument, upon presentation of such instrument to the department, if the certificate of title was issued by the department, or to any county clerk or designated county official, together with the certificate of title and the fee prescribed for notation of lien, may have a notation of such lien made on the face of such certificate of title. The county clerk or designated county official or the department shall enter the notation and the date thereof over the signature of such officer or deputy and the seal of office. If noted by a county clerk or designated county official, he or she shall on that day notify the department which shall note the lien on its records. The county clerk or designated county official or the department shall also indicate by appropriate notation and on such instrument itself the fact that such lien has been noted on the certificate of title.

(4) The county clerk or designated county official or the department, upon receipt of a lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments together with the fee prescribed for notation of lien, shall notify the first lienholder to deliver to the county clerk or designated county official or the department, within fifteen days from the date of notice, the certificate of title to permit notation of such junior lien and, after such notation of lien, the county clerk or designated county official or the department shall deliver the certificate of title to the first lienholder. The holder of a certificate of title who refuses to deliver a certificate of title to the county clerk or designated county official or the department for the purpose of showing a junior lien on such certificate of title within fifteen days from the date when notified to do so shall be liable for damages to such junior lienholder for the amount of damages such junior lienholder suffered by reason of the

holder of the certificate of title refusing to permit the showing of such lien on the certificate of title.

(5) When such lien is discharged, the holder shall, within fifteen days after payment is received, note a cancellation of the lien on the face of the certificate of title over his, her, or its signature and deliver the certificate of title to the county clerk or designated county official or the department which shall note the cancellation of the lien on the face of the certificate of title and on the records of such office. If delivered to a county clerk or designated county official, he or she shall on that day notify the department which shall note the cancellation on its records. The county clerk or designated county official or the department shall then return the certificate of title to the owner or as otherwise directed by the owner. The cancellation of lien shall be noted on the certificate of title without charge.

Sec. 18. (1) Any security interest in an all-terrain vehicle or minibike perfected pursuant to article 9, Uniform Commercial Code, before, on, or after January 1, 2004, shall continue to be perfected until (a) the financing statement perfecting such security interest is terminated or lapses in the absence of the filing of a continuation statement pursuant to article 9, Uniform Commercial Code, or (b) an all-terrain vehicle or minibike certificate of title is issued and a lien noted on the face thereof pursuant to section 17 of this act.

(2) Any lien noted on the face of an all-terrain vehicle or minibike certificate of title pursuant to subsection (1), (3), or (4) of this section, on behalf of the holder of a security interest in the all-terrain vehicle or minibike which was previously perfected pursuant to article 9, Uniform Commercial Code, shall have priority as of the date such security interest was originally perfected.

(3) The holder of a certificate of title for an all-terrain vehicle or minibike shall, upon request, surrender the certificate of title to a holder of a previously perfected security interest in the all-terrain vehicle or minibike to permit notation of a lien on the certificate of title and shall do such other acts as may be required to permit such notation.

(4) If the owner of an all-terrain vehicle or minibike subject to a security interest perfected pursuant to article 9, Uniform Commercial Code, fails or refuses to obtain a certificate of title after January 1, 2004, the security interest holder may obtain a certificate of title in the name of the owner of the all-terrain vehicle or minibike following the procedures of section 6 of this act and may have a lien noted on the certificate of title pursuant to section 17 of this act.

(5) The assignment, release, or satisfaction of a security interest in an all-terrain vehicle or minibike shall be governed by the laws under which it was perfected.

Sec. 19. In the event of (1) the transfer of ownership of an all-terrain vehicle or minibike by operation of law as upon inheritance, devise, or bequest, order in bankruptcy, insolvency, replevin, or execution sale, (2) the engine of an all-terrain vehicle or minibike being replaced by another engine, (3) an all-terrain vehicle or minibike being sold to satisfy storage or repair charges, or (4) repossession being had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, the county clerk or designated county official pursuant to section 23-186 of the county in which the last certificate of title to such all-terrain vehicle or minibike was issued or the Department of Motor Vehicles if the last certificate of title was issued by the department, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to such all-terrain vehicle or minibike, and upon payment of the fee prescribed in section 14 of this act and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto. If the prior certificate of title issued for such all-terrain vehicle or minibike provided for joint ownership with right of survivorship, a new certificate of title shall be issued to a subsequent purchaser upon the assignment of the prior certificate of title by the surviving owner and presentation of satisfactory proof of death of the deceased owner. Only an affidavit by the person or agent of the person to whom possession of such all-terrain vehicle or minibike has so passed, setting forth facts entitling him or her to such possession and ownership, together with a copy of the journal entry, court order, or instrument upon which such claim of possession and ownership is founded, shall be considered satisfactory proof of ownership and right of possession, except that if the applicant cannot produce such proof of ownership, he or she may submit to the department such evidence as he

or she may have, and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize the county clerk or designated county official to issue a certificate of title, as the case may be. If from the records in the office of the county clerk or designated county official or the department there appear to be any liens on such all-terrain vehicle or minibike, such certificate of title shall contain a statement of such liens unless the application is accompanied by proper evidence of their satisfaction or extinction. If the county in which the last certificate of title to such all-terrain vehicle or minibike was issued cannot be determined, the application for title shall be processed by the county clerk or designated county official of the county where the court entering the journal entry or order is located or the county where the instrument was executed upon which such claim of possession and ownership is founded, as the case may be.

Sec. 20. (1) In the event of a lost or destroyed certificate of title, the owner of the all-terrain vehicle or minibike or the holder of a lien on the all-terrain vehicle or minibike shall apply, upon a form prescribed by the Department of Motor Vehicles, to the department, if the certificate of title was issued by the department, or to any county clerk or designated county official pursuant to section 23-186 for a certified copy of the certificate of title and shall pay the fee prescribed by section 14 of this act. The application shall be signed and sworn to by the person making the application or a person authorized to sign under section 11 of this act. Thereupon the county clerk or designated county official, with the approval of the department, or the department shall issue a certified copy of the certificate of title to the person entitled to receive the certificate of title. If the records of the title have been destroyed pursuant to section 12 of this act, the county clerk or designated county official shall issue a duplicate certificate of title to the person entitled to receive the same upon such showing as the county clerk or designated county official may deem sufficient. If the applicant cannot produce such proof of ownership, he or she may apply directly to the department and submit such evidence as he or she may have, and the department may, if it finds the evidence sufficient, authorize the county clerk or designated county official to issue a duplicate certificate of title. The new purchaser shall be entitled to receive an original certificate of title upon presentation of the assigned duplicate copy of the certificate of title, properly assigned to the new purchaser, to the county clerk or designated county official prescribed in section 6 of this act.

(2) Any purchaser of an all-terrain vehicle or minibike for which a certificate of title was lost or destroyed may at the time of purchase require the seller of the same to indemnify him or her and all subsequent purchasers of the all-terrain vehicle or minibike against any loss which he, she, or they may suffer by reason of any claim presented upon the original certificate. In the event of the recovery of the original certificate of title by the owner, he or she shall forthwith surrender the same to the county clerk or designated county official or the department for cancellation.

Sec. 21. (1) Each owner of an all-terrain vehicle or minibike and each person mentioned as owner in the last certificate of title, when the all-terrain vehicle or minibike is dismantled, destroyed, or changed in such a manner that it loses its character as an all-terrain vehicle or minibike or changed in such a manner that it is not the all-terrain vehicle or minibike described in the certificate of title, shall surrender his or her certificate of title to the county clerk or designated county official pursuant to section 23-186 of the county where such certificate of title was issued or, if issued by the Department of Motor Vehicles, to the department. If the certificate of title is surrendered to the county clerk or designated county official, he or she shall, with the consent of any holders of any liens noted thereon, enter a cancellation upon his or her records and shall notify the department of such cancellation. If the certificate is surrendered to the department, it shall, with the consent of any holder of any lien noted thereon, enter a cancellation upon its records.

(2) Upon cancellation of a certificate of title in the manner prescribed by this section, the county clerk or designated county official and the department may cancel and destroy all certificates and all memorandum certificates in that chain of title.

Sec. 22. For purposes of sections 22 to 28 of this act:

(1) Cost of repairs means the estimated or actual retail cost of parts needed to repair an all-terrain vehicle or minibike plus the cost of labor computed by using the hourly labor rate and time allocations for repair that are customary and reasonable. Retail cost of parts and labor rates may be based upon collision estimating manuals or electronic computer estimating

systems customarily used in the insurance industry;

(2) Late model all-terrain vehicle or minibike means an all-terrain vehicle or minibike which has (a) a manufacturer's model year designation of, or later than, the year in which the all-terrain vehicle or minibike was wrecked, damaged, or destroyed, or any of the six preceding years or (b) a retail value of more than one thousand five hundred dollars until January 1, 2005, a retail value of more than one thousand seven hundred fifty dollars until January 1, 2010, and a retail value of more than one thousand seven hundred fifty dollars increased by two hundred fifty dollars every five years thereafter;

(3) Manufacturer buyback means the designation of an all-terrain vehicle or minibike with an alleged nonconformity when the all-terrain vehicle or minibike (a) has been replaced by a manufacturer or (b) has been repurchased by a manufacturer as the result of court judgment, arbitration, or any voluntary agreement entered into between the manufacturer or its agent and a consumer;

(4) Previously salvaged means the designation of a rebuilt or reconstructed all-terrain vehicle or minibike which was previously required to be issued a salvage branded certificate of title and which has been inspected as provided in section 7 of this act;

(5) Retail value means the actual cash value, fair market value, or retail value of an all-terrain vehicle or minibike as (a) set forth in a current edition of any nationally recognized compilation, including automated data bases, of retail values or (b) determined pursuant to a market survey of comparable all-terrain vehicles or minibikes with respect to condition and equipment; and

(6) Salvage means the designation of an all-terrain vehicle or minibike which is:

(a) A late model all-terrain vehicle or minibike which has been wrecked, damaged, or destroyed to the extent that the estimated total cost of repair to rebuild or reconstruct the all-terrain vehicle or minibike to its condition immediately before it was wrecked, damaged, or destroyed and to restore the all-terrain vehicle or minibike to a condition for legal operation, meets or exceeds seventy-five percent of the retail value of the all-terrain vehicle or minibike at the time it was wrecked, damaged, or destroyed; or

(b) Voluntarily designated by the owner of the all-terrain vehicle or minibike as a salvage all-terrain vehicle or minibike by obtaining a salvage branded certificate of title, without respect to the damage to, age of, or value of the all-terrain vehicle or minibike.

Sec. 23. A certificate of title shall disclose in writing, from any records readily accessible to the Department of Motor Vehicles or county officials or a law enforcement officer, anything which indicates that an all-terrain vehicle or minibike was previously issued a title in another jurisdiction that bore any word or symbol signifying that the all-terrain vehicle or minibike was damaged, including, but not limited to, older model salvage, unrebuildable, parts only, scrap, junk, nonrepairable, reconstructed, rebuilt, flood damaged, damaged, buyback, or any other indication, symbol, or word of like kind, and the name of the jurisdiction issuing the previous title.

Sec. 24. When an insurance company acquires a salvage all-terrain vehicle or minibike through payment of a total loss settlement on account of damage, the company shall obtain the certificate of title from the owner, surrender such certificate of title to the county clerk or designated county official pursuant to section 23-186, and make application for a salvage branded certificate of title which shall be assigned when the company transfers ownership. An insurer shall take title to a salvage all-terrain vehicle or minibike for which a total loss settlement is made unless the owner of the all-terrain vehicle or minibike elects to retain the all-terrain vehicle or minibike. If the owner elects to retain the all-terrain vehicle or minibike, the insurance company shall notify the Department of Motor Vehicles of such fact in a format prescribed by the department. The department shall immediately enter the salvage brand onto the computerized record of the all-terrain vehicle or minibike. The insurance company shall also notify the owner of the owner's responsibility to comply with this section. The owner shall, within ten days after the settlement of the loss, forward the properly endorsed acceptable certificate of title to the county clerk or designated county official in the county designated in section 6 of this act. The county clerk or designated county official shall, upon receipt of the certificate of title, issue a salvage branded certificate of title for the all-terrain vehicle or minibike.

Sec. 25. Whenever a title is issued in this state for an

all-terrain vehicle or minibike that is designated a salvage, previously salvaged, or manufacturer buyback, the following title brands shall be required: Salvage, previously salvaged, or manufacturer buyback. A certificate branded salvage, previously salvaged, or manufacturer buyback shall be administered in the same manner and for the same fee as provided for a certificate of title in sections 6 to 14 of this act. When a salvage branded certificate of title is surrendered for a certificate of title branded previously salvaged, the application for a certificate of title shall be accompanied by a statement of inspection as provided in section 7 of this act.

Sec. 26. Any person who acquires ownership of a salvage or manufacturer buyback all-terrain vehicle or minibike, for which he or she does not obtain a salvage branded or manufacturer buyback branded certificate of title, shall surrender the certificate of title to the county clerk or designated county official pursuant to section 23-186 and make application for a salvage branded or manufacturer buyback branded certificate of title within thirty days after acquisition or prior to the sale or resale of the all-terrain vehicle or minibike or any major component part of such all-terrain vehicle or minibike or use of any major component part of the all-terrain vehicle or minibike, whichever occurs earlier.

Sec. 27. Any person who knowingly transfers a wrecked, damaged, or destroyed all-terrain vehicle or minibike in violation of sections 22 to 28 of this act is guilty of a Class IV felony.

Sec. 28. Nothing in sections 22 to 28 of this act shall be construed to require the actual repair of a wrecked, damaged, or destroyed all-terrain vehicle or minibike to be designated as salvage.

Sec. 29. Every sheriff, chief of police, or member of the Nebraska State Patrol having knowledge of a stolen all-terrain vehicle or minibike shall immediately furnish the Department of Motor Vehicles with full information in connection therewith. The department whenever it receives a report of the theft or conversion of an all-terrain vehicle or a minibike, whether owned in this or any other state, together with the make and manufacturer's serial number or motor number, shall make a distinctive record thereof and file the same in the numerical order of the manufacturer's serial number with the index records of the all-terrain vehicles or minibikes of such make. The department shall prepare a report listing all-terrain vehicles or minibikes stolen and recovered as disclosed by the reports submitted to it, and the report shall be distributed as it may deem advisable. In the event of the receipt from any county clerk or designated county official pursuant to section 23-186 of a copy of a certificate of title to such all-terrain vehicle or minibike, the department shall immediately notify the rightful owner thereof and the county clerk or designated county official who issued such certificate of title, and if upon investigation it appears that such certificate of title was improperly issued, the department shall immediately cancel the same. In the event of the recovery of a stolen or converted all-terrain vehicle or minibike, the owner shall immediately notify the department, which shall cause the record of the theft or conversion to be removed from its file.

Sec. 30. Whoever (1) forges any certificate of title or manufacturer's or importer's certificate to an all-terrain vehicle or minibike, any assignment of either certificate, or any cancellation of any lien on an all-terrain vehicle or minibike, (2) holds or uses such certificate, assignment, or cancellation knowing the same to have been forged, (3) procures or attempts to procure a certificate of title to an all-terrain vehicle or minibike or passes or attempts to pass a certificate of title or any assignment thereof to an all-terrain vehicle or minibike, knowing or having reason to believe that such all-terrain vehicle or minibike has been stolen, (4) sells or offers for sale in this state an all-terrain vehicle or minibike on which the motor number or manufacturer's serial number has been destroyed, removed, covered, altered, or defaced with knowledge of such destruction, removal, covering, alteration, or defacement of such motor number or manufacturer's serial number, or (5) knowingly uses a false or fictitious name, knowingly gives a false or fictitious address, knowingly makes any false statement in any application or affidavit required under sections 1 to 31 of this act or in a bill of sale or sworn statement of ownership, or otherwise knowingly commits a fraud in any application shall be guilty of a Class IV felony.

Sec. 31. (1) A person who operates in this state an all-terrain vehicle or minibike for which a certificate of title is required without having such certificate in accordance with sections 1 to 31 of this act or upon which the certificate of title has been canceled shall be guilty of a Class III misdemeanor.

(2) A person who is a dealer or acting on behalf of a dealer and who

acquires, purchases, holds, or displays for sale a new all-terrain vehicle or minibike without having obtained a manufacturer's or importer's certificate or a certificate of title therefor as provided for in sections 1 to 31 of this act shall be guilty of a Class III misdemeanor.

(3) A person who fails to surrender any certificate of title upon cancellation of the same by the Department of Motor Vehicles and notice thereof as prescribed in sections 1 to 31 of this act shall be guilty of a Class III misdemeanor.

(4) A person who fails to surrender the certificate of title to the county clerk or designated county official pursuant to section 23-186 as provided in section 21 of this act in case of the destruction or dismantling or change of an all-terrain vehicle or minibike in such respect that it is not the all-terrain vehicle or minibike described in the certificate of title shall be guilty of a Class III misdemeanor.

(5) A person who purports to sell or transfer an all-terrain vehicle or minibike without delivering to the purchaser or transferee thereof a certificate of title or a manufacturer's or importer's certificate thereto duly assigned to such purchaser as provided in sections 1 to 31 of this act shall be guilty of a Class III misdemeanor.

(6) A person who knowingly alters or defaces a Nebraska certificate of title shall be guilty of a Class III misdemeanor.

(7) Except as otherwise provided in section 27 or 30 of this act, a person who violates any of the other provisions of sections 1 to 31 of this act or any lawful rules or regulations adopted and promulgated pursuant to such sections shall be guilty of a Class III misdemeanor.

Sec. 32. Section 23-186, Reissue Revised Statutes of Nebraska, is amended to read:

23-186. A county board may consolidate under the office of a designated county official the services provided to the public by the county assessor, the county clerk, and the county treasurer relating to the issuance of certificates of title, registration certificates, certificates of number, license plates, and renewal decals, notation and cancellation of liens, and collection of taxes and fees for motor vehicles, all-terrain vehicles, minibikes, and motorboats as provided in the State Boat Act and sections 18-1738, 18-1738.01, 60-106, 60-107, 60-108, 60-110, 60-111, 60-112, 60-113, 60-115, 60-119, 60-122, 60-301 to 60-347, 60-6,322, 60-1803, 60-3002, and 60-3007 and sections 1 to 31 of this act. In a county in which a city of the metropolitan class is located, the county board may designate the county treasurer to provide the services. In any other county, the county board may designate the county assessor, the county clerk, or the county treasurer to provide the services.

Sec. 33. Section 60-6,355, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,355. For purposes of sections 60-6,355 to 60-6,362, all-terrain vehicle shall mean any motorized off-highway vehicle which (1) is fifty inches or less in width, (2) has a dry weight of ~~six~~ nine hundred pounds or less, (3) travels on three or more low-pressure tires, (4) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger, (5) has a seat or saddle designed to be straddled by the operator, and (6) has handlebars or any other steering assembly for steering control.

All-terrain vehicles which have been modified to include additional equipment not required by sections 60-6,357 and 60-6,358 shall not be required to be registered under Chapter 60, article 3.

Sec. 34. The Revisor of Statutes shall assign sections 1 to 31 of this act within Chapter 60, article 1.

Sec. 35. Original sections 23-186 and 60-6,355, Reissue Revised Statutes of Nebraska, are repealed.