

1 **MOTOR VEHICLE BUSINESS REGULATION**

2 **AMENDMENTS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Patrick Painter**

6 Senate Sponsor: _____

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Motor Vehicle Business Regulation Act by amending provisions
11 related to certain motor vehicle business requirements and violations.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends the definition of new motor vehicle;
- 15 ▶ repeals certain dealer notice requirements to a lienholder if the dealer takes a
16 trade-in from a retail customer as part of the sale or lease of a motor vehicle and
17 there is an outstanding loan balance owing on the trade-in;
- 18 ▶ changes the penalty for selling a new motor vehicle to a nonfranchised dealer or
19 leasing company without licensing the motor vehicle from a Level I penalty to a
20 Level III penalty; and
- 21 ▶ makes technical changes.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



28 **41-3-102**, as last amended by Chapter 157, Laws of Utah 2003
29 **41-3-402**, as renumbered and amended by Chapter 234, Laws of Utah 1992
30 **41-3-702**, as last amended by Chapter 334, Laws of Utah 2003



31
32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **41-3-102** is amended to read:

34 **41-3-102. Definitions.**

35 As used in this chapter:

36 (1) "Administrator" means the motor vehicle enforcement administrator.

37 (2) "Agent" means a person other than a holder of any dealer's or salesperson's license
38 issued under this chapter, who for salary, commission, or compensation of any kind, negotiates
39 in any way for the sale, purchase, order, or exchange of three or more motor vehicles for any
40 other person in any 12-month period.

41 (3) "Auction" means a dealer engaged in the business of auctioning motor vehicles,
42 either owned or consigned, to the general public.

43 (4) "Board" means the advisory board created in Section 41-3-106.

44 (5) "Body shop" means a business engaged in rebuilding, restoring, repairing, or
45 painting primarily the body of motor vehicles damaged by collision or natural disaster.

46 (6) "Commission" means the State Tax Commission.

47 (7) "Crusher" means a person who crushes or shreds motor vehicles subject to
48 registration under Title 41, Chapter 1a, Motor Vehicle Act, to reduce the useable materials and
49 metals to a more compact size for recycling.

50 (8) (a) "Dealer" means a person:

51 (i) whose business in whole or in part involves selling new, used, or new and used
52 motor vehicles or off-highway vehicles; and

53 (ii) who sells, displays for sale, or offers for sale or exchange three or more new or
54 used motor vehicles or off-highway vehicles in any 12-month period.

55 (b) "Dealer" includes a representative or consignee of any dealer.

56 (9) (a) "Dismantler" means a person engaged in the business of dismantling motor
57 vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, for the resale of
58 parts or for salvage.

59 (b) "Dismantler" includes a person who dismantles three or more motor vehicles in any
60 12-month period.

61 (10) "Distributor" means a person who has a franchise from a manufacturer of motor
62 vehicles to distribute motor vehicles within this state and who in whole or in part sells or
63 distributes new motor vehicles to dealers or who maintains distributor representatives.

64 (11) "Distributor branch" means a branch office similarly maintained by a distributor
65 for the same purposes a factory branch is maintained.

66 (12) "Distributor representative" means a person and each officer and employee of the
67 person engaged as a representative of a distributor or distributor branch of motor vehicles to
68 make or promote the sale of the distributor or the distributor branch's motor vehicles, or for
69 supervising or contacting dealers or prospective dealers of the distributor or the distributor
70 branch.

71 (13) "Division" means the Motor Vehicle Enforcement Division created in Section
72 41-3-104.

73 (14) "Factory branch" means a branch office maintained by a person who manufactures
74 or assembles motor vehicles for sale to distributors, motor vehicle dealers, or who directs or
75 supervises the factory branch's representatives.

76 (15) "Factory representative" means a person and each officer and employee of the
77 person engaged as a representative of a manufacturer of motor vehicles or by a factory branch
78 to make or promote the sale of the manufacturer's or factory branch's motor vehicles, or for
79 supervising or contacting the dealers or prospective dealers of the manufacturer or the factory
80 branch.

81 (16) "Franchise" means a contract or agreement between a dealer and a manufacturer of
82 new motor vehicles or its distributor or factory branch by which the dealer is authorized to sell
83 any specified make or makes of new motor vehicles.

84 (17) "Manufacturer" means a person engaged in the business of constructing or
85 assembling new motor vehicles, ownership of which is customarily transferred by a
86 manufacturer's statement or certificate of origin, or a person who constructs three or more new
87 motor vehicles in any 12-month period.

88 (18) "Motorcycle" has the same meaning as defined in Section 41-1a-102.

89 (19) (a) "Motor vehicle" means a vehicle intended primarily for use and operation on

90 the highway that is:

91 (i) self-propelled; or

92 (ii) a trailer, travel trailer, or semitrailer.

93 (b) "Motor vehicle" does not include:

94 (i) mobile homes as defined in Section 41-1a-102;

95 (ii) trailers of 750 pounds or less unladen weight; and

96 (iii) farm tractors and other machines and tools used in the production, harvesting, and
97 care of farm products.

98 (20) "New motor vehicle" means a motor vehicle that has never been titled [or] and
99 registered and has been driven less than 7,500 miles, unless the motor vehicle is a trailer, travel
100 trailer, or semitrailer, in which case the mileage limit does not apply.

101 (21) "Off-highway vehicle" has the same meaning as provided in Section 41-22-2.

102 (22) "Pawnbroker" means a person whose business is to lend money on security of
103 personal property deposited with him.

104 (23) "Principal place of business" means a site or location in this state:

105 (a) devoted exclusively to the business for which the dealer, manufacturer,
106 remanufacturer, transporter, dismantler, crusher, or body shop is licensed, and businesses
107 incidental to them;

108 (b) sufficiently bounded by fence, chain, posts, or otherwise marked to definitely
109 indicate the boundary and to admit a definite description with space adequate to permit the
110 display of three or more new, or new and used, or used motor vehicles; and

111 (c) that includes a permanent enclosed building or structure large enough to
112 accommodate the office of the establishment and to provide a safe place to keep the books and
113 other records of the business, at which the principal portion of the business is conducted and
114 the books and records kept and maintained.

115 (24) "Remanufacturer" means a person who reconstructs used motor vehicles subject to
116 registration under Title 41, Chapter 1a, Motor Vehicle Act, to change the body style and
117 appearance of the motor vehicle or who constructs or assembles motor vehicles from used or
118 new and used motor vehicle parts, or who reconstructs, constructs, or assembles three or more
119 motor vehicles in any 12-month period.

120 (25) "Salesperson" means an individual who for a salary, commission, or compensation

121 of any kind, is employed either directly, indirectly, regularly, or occasionally by any new motor
122 vehicle dealer or used motor vehicle dealer to sell, purchase, or exchange or to negotiate for the
123 sale, purchase, or exchange of motor vehicles.

124 (26) "Semitrailer" has the same meaning as defined in Section 41-1a-102.

125 (27) "Small trailer" means a trailer that has an unladen weight of more than 750
126 pounds, but less than 2,000 pounds.

127 (28) "Special equipment" includes a truck mounted crane, cherry picker, material lift,
128 post hole digger, and a utility or service body.

129 (29) "Special equipment dealer" means a new or new and used motor vehicle dealer
130 engaged in the business of buying new incomplete motor vehicles with a gross vehicle weight
131 of 12,000 or more pounds and installing special equipment on the incomplete motor vehicle.

132 (30) "Trailer" has the same meaning as defined in Section 41-1a-102.

133 (31) "Transporter" means a person engaged in the business of transporting motor
134 vehicles as described in Section 41-3-202.

135 (32) "Travel trailer" has the same meaning as provided in Section 41-1a-102.

136 (33) "Used motor vehicle" means a vehicle that has been titled and registered to a
137 purchaser other than a dealer or has been driven 7,500 or more miles, unless the vehicle is a
138 trailer, or semitrailer, in which case the mileage limit does not apply.

139 (34) "Wholesale motor vehicle auction" means a dealer primarily engaged in the
140 business of auctioning consigned motor vehicles to dealers or dismantlers who are licensed by
141 this or any other jurisdiction.

142 Section 2. Section **41-3-402** is amended to read:

143 **41-3-402. Payoff of liens on motor vehicles traded in.**

144 (1) If a dealer takes a trade-in from a retail customer as part of the sale or lease of a
145 motor vehicle and there is an outstanding loan balance owing on the trade-in, then~~[(a) the~~
146 ~~dealer, within seven calendar days of the date of sale, must give written notice to the~~
147 ~~lienholder, as designated by the purchaser, that the vehicle has been traded in; (b)]~~ the dealer,
148 within 21 calendar days of the date of sale or lease, or within 15 calendar days of receiving
149 payment in full for the motor vehicle it sold, whichever date is earlier, shall remit payment to
150 the lienholder sufficient to pay off the lien on the traded-in motor vehicle, unless the underlying
151 contract of sale or lease contract has been rescinded before expiration of the 21 days~~];~~.

152 ~~[(c) if the underlying contract of sale has for any reason been rescinded before the~~
153 ~~expiration of 21 days, the dealer within five calendar days after the rescission shall give written~~
154 ~~notice to the lienholder that the contract of sale has been rescinded and that the motor vehicle~~
155 ~~originally traded in has been returned to the purchaser.]~~

156 (2) A lienholder who has been paid in full by a dealer in accordance with the terms of
157 this section shall deliver to the dealer a properly executed title that releases the lien within:

158 (a) one business day after the business day on which the funds are received when the
159 funds are in cash, cashier's check, certified check, teller's check, or other certified source of
160 funds;

161 (b) three business days after the business day on which the funds are received when the
162 funds are in the form of a check drawn on a local originating depository institution; or

163 (c) six business days after the business day on which the funds are received when the
164 funds are in the form of a check drawn on a nonlocal originating depository institution.

165 (3) If the final day for performing an act under this section falls on a Saturday, Sunday,
166 or a legal holiday, then the time for performance is extended to the immediately following
167 business day.

168 (4) A dealer's failure to comply with the provisions of this section subjects the dealer to
169 the sanctions set forth in Section 41-3-701.

170 (5) A person who trades in a motor vehicle to a dealer and who thereafter sustains loss
171 or damage as a result of a dealer's failure to pay off a properly recorded lien on the traded-in
172 motor vehicle within the time specified by Subsection (1)(b), may bring an action against the
173 offending dealer to recover damages proximately caused by the dealer's failure to comply with
174 the provisions of this section, together with costs and reasonable attorneys' fees.

175 Section 3. Section **41-3-702** is amended to read:

176 **41-3-702. Civil penalty for violation.**

177 (1) The following are civil violations under this chapter and are in addition to criminal
178 violations under this chapter:

179 (a) Level I:

180 (i) failure to display business license;

181 (ii) failure to surrender license of salesperson because of termination, suspension, or
182 revocation;

- 183 (iii) failure to maintain a separation from nonrelated motor vehicle businesses at
 184 licensed locations;
- 185 (iv) issuing a temporary permit improperly;
- 186 (v) failure to maintain records;
- 187 [~~(vi) selling a new motor vehicle to a nonfranchised dealer or leasing company without~~
 188 ~~licensing the motor vehicle;~~]
- 189 [~~(vii)~~ (vi) special plate violation; and
- 190 [~~(viii)~~ (vii) failure to maintain a sign at principal place of business.
- 191 (b) Level II:
- 192 (i) failure to report sale;
- 193 (ii) dismantling without a permit;
- 194 (iii) manufacturing without meeting construction or vehicle identification number
 195 standards;
- 196 (iv) withholding customer license plates; or
- 197 (v) selling a motor vehicle on consecutive days of Saturday and Sunday.
- 198 (c) Level III:
- 199 (i) operating without a principal place of business;
- 200 (ii) selling a new motor vehicle without holding the franchise;
- 201 (iii) crushing a motor vehicle without proper evidence of ownership;
- 202 (iv) selling from an unlicensed location;
- 203 (v) altering a temporary permit;
- 204 (vi) refusal to furnish copies of records;
- 205 (vii) assisting an unlicensed dealer or salesperson in sales of motor vehicles; ~~[and]~~
- 206 (viii) advertising violation~~[-]; and~~
- 207 (ix) selling a new motor vehicle to a nonfranchised dealer or leasing company without
 208 licensing the motor vehicle.
- 209 (2) (a) The schedule of civil penalties for violations of Subsection (1) is:
- 210 (i) Level I: \$25 for the first offense, \$100 for the second offense, and \$250 for the third
 211 and subsequent offenses;
- 212 (ii) Level II: \$100 for the first offense, \$250 for the second offense, and \$1,000 for the
 213 third and subsequent offenses; and

214 (iii) Level III: \$250 for the first offense, \$1,000 for the second offense, and \$5,000 for
215 the third and subsequent offenses.

216 (b) When determining under this section if an offense is a second or subsequent
217 offense, only prior offenses committed within the 12 months prior to the commission of the
218 current offense may be considered.

219 (3) The following are civil violations in addition to criminal violations under Section
220 41-1a-1008:

221 (a) knowingly selling a salvage vehicle, as defined in Section 41-1a-1001, without
222 disclosing that the salvage vehicle has been repaired or rebuilt;

223 (b) knowingly making a false statement on a vehicle damage disclosure statement, as
224 defined in Section 41-1a-1001; or

225 (c) fraudulently certifying that a damaged motor vehicle is entitled to an unbranded
226 title, as defined in Section 41-1a-1001, when it is not.

227 (4) The civil penalty for a violation under Subsection (3) is:

228 (a) not less than \$1,000, or treble the actual damages caused by the person, whichever
229 is greater; and

230 (b) reasonable attorneys' fees and costs of the action.

231 (5) A civil action may be maintained by a purchaser or by the administrator.

Legislative Review Note
as of 1-16-06 2:27 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0283

Motor Vehicle Business Regulation Amendments

20-Jan-06

11:32 AM

State Impact

This bill can be implemented within existing budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst