

MOTOR VEHICLE BUSINESS REGULATION ACT

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley M. Daw

Senate Sponsor: Kevin T. Van Tassell

LONG TITLE

General Description:

This bill modifies the Motor Vehicle Business Regulation Act by amending provisions relating to motor vehicle dealers.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ provides that a pawnbroker engaged in selling, exchanging, or pawning motor vehicles is considered as coming into possession of the motor vehicles incident to the person's regular business and shall be licensed as a used motor vehicle dealer;
- ▶ provides that a person engaged in a title lending, check cashing, or deferred deposit lending business that comes into possession of motor vehicles incident to the person's regular business and sells the motor vehicle under contractual rights that it may have in the motor vehicle is not considered a dealer;
- ▶ specifies additional requirements that must be included in an application for a motor vehicle dealer license;
- ▶ specifies requirements for temporary and permanent additional places of business for used motor vehicle dealers;
- ▶ establishes information that shall be included in orientation materials for a provider of an orientation class;
- ▶ provides that a person may not, for a fee, commission, or other form of compensation, arrange, offer to arrange, or broker a transaction involving the sale

30 or lease of more than two used motor vehicles in any 12 consecutive month period, unless the
31 person is licensed as a new or used motor vehicle dealer; and

32 ▶ makes technical changes.

33 **Monies Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **41-3-102**, as last amended by Laws of Utah 2008, Chapter 388

40 **41-3-103**, as renumbered and amended by Laws of Utah 1992, Chapter 234

41 **41-3-105**, as last amended by Laws of Utah 2008, Chapter 382

42 **41-3-201**, as last amended by Laws of Utah 2009, Chapter 234

43 **41-3-201.5**, as last amended by Laws of Utah 2007, Chapter 105

44 **41-3-201.7**, as last amended by Laws of Utah 2009, Chapter 234



46 *Be it enacted by the Legislature of the state of Utah:*

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

48 **41-3-102. Definitions.**

49 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

80 (12) "Distributor representative" means a person and each officer and employee of the
81 person engaged as a representative of a distributor or distributor branch of motor vehicles to
82 make or promote the sale of the distributor or the distributor branch's motor vehicles, or for
83 supervising or contacting dealers or prospective dealers of the distributor or the distributor
84 branch.

85 (13) "Division" means the Motor Vehicle Enforcement Division created in Section

86 41-3-104.

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

90 (15) "Factory representative" means a person and each officer and employee of the
91 person engaged as a representative of a manufacturer of motor vehicles or by a factory branch
92 to make or promote the sale of the manufacturer's or factory branch's motor vehicles, or for
93 supervising or contacting the dealers or prospective dealers of the manufacturer or the factory
94 branch.

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

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

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

103 (19) (a) "Motor vehicle" means a vehicle that is:

- 104 (i) self-propelled;
- 105 (ii) a trailer, travel trailer, or semitrailer; or
- 106 (iii) an off-highway vehicle or small trailer.

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

- 108 (i) mobile homes as defined in Section 41-1a-102;
- 109 (ii) trailers of 750 pounds or less unladen weight; and
- 110 (iii) farm tractors and other machines and tools used in the production, harvesting, and
111 care of farm products.

112 (20) "New motor vehicle" means a motor vehicle that has never been titled or
113 registered and has been driven less than 7,500 miles, unless the motor vehicle is an

114 off-highway vehicle, small trailer, trailer, travel trailer, or semitrailer, in which case the
115 mileage limit does not apply.

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

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

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

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

123 (b) sufficiently bounded by fence, chain, posts, or otherwise marked to definitely
124 indicate the boundary and to admit a definite description with space adequate to permit the
125 display of three or more new, or new and used, or used motor vehicles and sufficient parking
126 for the public; and

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

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

136 (25) "Salesperson" means an individual who for a salary, commission, or
137 compensation of any kind, is employed either directly, indirectly, regularly, or occasionally by
138 any new motor vehicle dealer or used motor vehicle dealer to sell, purchase, or exchange or to
139 negotiate for the sale, purchase, or exchange of motor vehicles.

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

141 (27) "Small trailer" means a trailer that has an unladen weight of more than 750

142 pounds, but less than 2,000 pounds.

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

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

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

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

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

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

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

158 Section 2. Section **41-3-103** is amended to read:

159 **41-3-103. Exceptions to "dealer" definition -- Dealer licensed in other state.**

160 Under this chapter:

161 (1) (a) An insurance company, bank, finance company, company registered as a title
162 lender under Title 7, Chapter 24, Title Lender Registration Act, company registered as a check
163 cashier or deferred deposit lender under Title 7, Chapter 23, Check Cashing and Deferred
164 Deposit Lending Registration Act, public utility company, commission impound yard, federal
165 or state governmental agency, or any political subdivision of any of them or any other person
166 coming into possession of a motor vehicle as an incident to its regular business, that sells the
167 motor vehicle under contractual rights that it may have in the motor vehicle is not considered a
168 dealer.

169 (b) A person who sells or exchanges only those motor vehicles that [~~he~~] the person has

170 owned for over 12 months is not considered a dealer.

171 (2) (a) A person engaged in leasing motor vehicles is not considered as coming into
172 possession of the motor vehicles incident to [~~his~~] the person's regular business[~~, and~~].

173 (b) [~~a~~] A pawnbroker engaged in selling, exchanging, or pawning motor vehicles is
174 [~~not~~] considered as coming into possession of the motor vehicles incident to [~~his~~] the person's
175 regular business and must be licensed as a used motor vehicle dealer.

176 (3) A person currently licensed as a dealer or salesperson by another state or country
177 and not currently under license suspension or revocation by the administrator may only sell
178 motor vehicles in this state to licensed dealers, dismantlers, or manufacturers, and only at their
179 places of business.

180 Section 3. Section **41-3-105** is amended to read:

181 **41-3-105. Administrator's powers and duties -- Administrator and investigators**
182 **to be law enforcement officers.**

183 (1) The administrator may make rules to carry out the purposes of this chapter and
184 Sections 41-1a-1001 through 41-1a-1007 according to the procedures and requirements of
185 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

186 (2) (a) The administrator may employ clerks, deputies, and assistants necessary to
187 discharge the duties under this chapter and may designate the duties of those clerks, deputies,
188 and assistants.

189 (b) The administrator, assistant administrator, and all investigators shall be law
190 enforcement officers certified by peace officer standards and training as required by Section
191 53-13-103.

192 (3) (a) The administrator may investigate any suspected or alleged violation of:

- 193 (i) this chapter;
- 194 (ii) Title 41, Chapter 1a, Motor Vehicle Act;
- 195 (iii) any law concerning motor vehicle fraud; or
- 196 (iv) any rule made by the administrator.

197 (b) The administrator may bring an action in the name of the state against any person

198 to enjoin a violation found under Subsection (3)(a).
199 (4) (a) The administrator may prescribe forms to be used for applications for licenses.
200 (b) The administrator may require information from the applicant concerning the
201 applicant's fitness to be licensed.
202 (c) Each application for a license shall contain:
203 (i) if the applicant is an individual, the name and residence address of the applicant
204 and the trade name, if any, under which the applicant intends to conduct business;
205 (ii) if the applicant is a partnership, the name and residence address of each partner,
206 whether limited or general, and the name under which the partnership business will be
207 conducted;
208 (iii) if the applicant is a corporation, the name of the corporation, and the name and
209 residence address of each of its principal officers and directors;
210 (iv) a complete description of the principal place of business, including:
211 (A) the municipality, with the street and number, if any;
212 (B) if located outside of any municipality, a general description so that the location
213 can be determined; and
214 (C) any other places of business operated and maintained by the applicant in
215 conjunction with the principal place of business; [~~and~~]
216 (v) if the application is for a new motor vehicle dealer's license, the name of each
217 motor vehicle the applicant has been enfranchised to sell or exchange, the name and address of
218 the manufacturer or distributor who has enfranchised the applicant, and the names and
219 addresses of the individuals who will act as salespersons under authority of the license[-];
220 (vi) at least five years of business history;
221 (vii) the federal tax identification number issued to the dealer; and
222 (viii) the sales and use tax license number issued to the dealer under Title 59, Chapter
223 12, Sales and Use Tax Act.
224 (5) The administrator may adopt a seal with the words "Motor Vehicle Enforcement
225 Administrator, State of Utah," to authenticate the acts of the administrator's office.

226 (6) (a) The administrator may require that the licensee erect or post signs or devices on
227 the licensee’s principal place of business and any other sites, equipment, or locations operated
228 and maintained by the licensee in conjunction with the licensee’s business.

229 (b) The signs or devices shall state the licensee's name, principal place of business,
230 type and number of licenses, and any other information that the administrator considers
231 necessary to identify the licensee.

232 (c) The administrator may make rules in accordance with Title 63G, Chapter 3, Utah
233 Administrative Rulemaking Act, determining allowable size and shape of signs or devices,
234 their lettering and other details, and their location.

235 (7) (a) The administrator shall provide for quarterly meetings of the advisory board
236 and may call special meetings.

237 (b) Notices of all meetings shall be sent to each member not fewer than five days prior
238 to the meeting.

239 (8) The administrator, the officers and inspectors of the division designated by the
240 commission, and peace officers shall:

241 (a) make arrests upon view and without warrant for any violation committed in their
242 presence of any of the provisions of this chapter, or Title 41, Chapter 1a, Motor Vehicle Act;

243 (b) when on duty, upon reasonable belief that a motor vehicle, trailer, or semitrailer is
244 being operated in violation of any provision of Title 41, Chapter 1a, Motor Vehicle Act,
245 require the driver of the vehicle to stop, exhibit the person’s driver license and the registration
246 card issued for the vehicle and submit to an inspection of the vehicle, the license plates, and
247 registration card;

248 (c) serve all warrants relating to the enforcement of the laws regulating the operation
249 of motor vehicles, trailers, and semitrailers;

250 (d) investigate traffic accidents and secure testimony of witnesses or persons involved;
251 and

252 (e) investigate reported thefts of motor vehicles, trailers, and semitrailers.

253 (9) The administrator may contract with a public prosecutor to provide additional

254 prosecution of this chapter.

255 Section 4. Section **41-3-201** is amended to read:

256 **41-3-201. Licenses required -- Restitution -- Education.**

257 (1) As used in this section, "new applicant" means a person who is applying for a
258 license that the person has not been issued during the previous licensing year.

259 (2) A person may not act as any of the following without having procured a license
260 issued by the administrator:

261 (a) a dealer;

262 (b) salvage vehicle buyer;

263 (c) salesperson;

264 (d) manufacturer;

265 (e) transporter;

266 (f) dismantler;

267 (g) distributor;

268 (h) factory branch and representative;

269 (i) distributor branch and representative;

270 (j) crusher;

271 (k) remanufacturer; or

272 (l) body shop.

273 (3) (a) Except as provided in Subsection (3)(c), a person may not bid on or purchase a
274 vehicle with a salvage certificate as defined in Section 41-1a-1001 at or through a motor
275 vehicle auction unless the person is a licensed salvage vehicle buyer.

276 (b) Except as provided in Subsection (3)(c), a person may not offer for sale, sell, or
277 exchange a vehicle with a salvage certificate as defined in Section 41-1a-1001 at or through a
278 motor vehicle auction except to a licensed salvage vehicle buyer.

279 (c) A person may offer for sale, sell, or exchange a vehicle with a salvage certificate as
280 defined in Section 41-1a-1001 at or through a motor vehicle auction:

281 (i) to an out-of-state or out-of-country purchaser not licensed under this section, but

282 that is authorized to do business in the domestic or foreign jurisdiction in which the person is
283 domiciled or registered to do business; and

284 (ii) subject to the restriction in Subsection (3)(d), to an in-state purchaser not licensed
285 under this section that:

286 (A) is registered to do business in Utah; and

287 (B) has a Utah sales tax license.

288 (d) An operator of a motor vehicle auction may only offer for sale, sell, or exchange
289 five vehicles with a salvage certificate as defined in Section 41-1a-1001 at or through a motor
290 vehicle auction in any 12 month period to an in-state purchaser that does not have a salvage
291 vehicle buyer license issued in accordance with Subsection 41-3-202(15).

292 (e) (i) An in-state purchaser of a vehicle with a salvage certificate as defined in
293 Section 41-1a-1001 that is purchased at or through a motor vehicle auction shall title the
294 vehicle within 15 days of the purchase if the purchaser does not have a salvage vehicle buyer
295 license, dealer license, body shop license, or dismantler license issued in accordance with
296 Section 41-3-202.

297 (ii) An operator of a motor vehicle auction may not offer for sale, sell, or exchange
298 additional vehicles with a salvage certificate as defined in Section 41-1a-1001 at or through a
299 motor vehicle auction to a purchaser if notified that the purchaser has not titled previously
300 purchased vehicles with a salvage certificate as required under Subsection (3)(e)(i).

301 (f) The commission may impose an administrative entrance fee established in
302 accordance with the procedures and requirements of Section 63J-1-504 not to exceed \$10 on a
303 person not holding a license described in Subsection (3)(e)(i) that enters the physical premises
304 of a motor vehicle auction for the purpose of viewing available salvage vehicles prior to an
305 auction.

306 (4) (a) An operator of a motor vehicle auction shall keep a record of the sale of each
307 salvage vehicle.

308 (b) A record described under Subsection (4)(a) shall contain:

309 (i) the purchaser's name and address; and

310 (ii) the year, make, and vehicle identification number for each salvage vehicle sold.

311 (c) An operator of a motor vehicle auction shall:

312 (i) retain the record described in this Subsection (4) for five years from the date of
313 sale; and

314 (ii) make a record described in this Subsection (4) available for inspection by the
315 division at the location of the motor vehicle auction during normal business hours.

316 (5) (a) An operator of a motor vehicle auction that sells a salvage vehicle to a person
317 that is an out-of-country buyer shall:

318 (i) stamp on the face of the title so as not to obscure the name, date, or mileage
319 statement the words "FOR EXPORT ONLY" in all capital, black letters; and

320 (ii) stamp in each unused reassignment space on the back of the title the words "FOR
321 EXPORT ONLY."

322 (b) The words "FOR EXPORT ONLY" shall be:

323 (i) at least two inches wide; and

324 (ii) clearly legible.

325 (6) A supplemental license shall be secured by a dealer, manufacturer, remanufacturer,
326 transporter, dismantler, crusher, or body shop for each additional place of business maintained
327 by the licensee.

328 (7) A person who has been convicted of any law relating to motor vehicle commerce
329 or motor vehicle fraud may not be issued a license unless full restitution regarding those
330 convictions has been made.

331 (8) (a) The division may not issue a license to a new applicant for a new or used motor
332 vehicle dealer license, a new or used motorcycle dealer license, or a small trailer dealer license
333 unless the new applicant completes an eight-hour orientation class approved by the division
334 that includes education on motor vehicle laws and rules.

335 (b) The approved costs of the orientation class shall be paid by the new applicant.

336 (c) The class shall be completed by the new applicant and the applicant's partners,
337 corporate officers, bond indemnitors, and managers.

- 338 (d) (i) The division shall approve:
- 339 (A) providers of the orientation class; and
- 340 (B) costs of the orientation class.
- 341 (ii) A provider of an orientation class shall submit the orientation class curriculum to
- 342 the division for approval prior to teaching the orientation class.
- 343 (iii) A provider of an orientation class shall include in the orientation materials:
- 344 (A) ethics training;
- 345 (B) motor vehicle title and registration processes;
- 346 (C) provisions of Title 13, Chapter 5, Unfair Practices Act, relating to motor vehicles;
- 347 (D) Department of Insurance requirements relating to motor vehicles;
- 348 (E) Department of Public Safety requirements relating to motor vehicles;
- 349 (F) federal requirements related to motor vehicles as determined by the division; and
- 350 (G) any required disclosure compliance forms as determined by the division.

351 Section 5. Section **41-3-201.5** is amended to read:

352 **41-3-201.5. Brokering of a new motor vehicle without a license prohibited.**

- 353 (1) (a) A person may not, for a fee, commission, or other form of compensation,
- 354 arrange, offer to arrange, or broker a transaction involving the sale or lease of more than two;
- 355 (i) new or used motor vehicles in any 12 consecutive month period, unless the person
- 356 is licensed under Subsection 41-3-202(1)[:]; or
- 357 (ii) used motor vehicles in any 12 consecutive month period, unless the person is
- 358 licensed under Subsection 41-3-202(2).

359 (b) Each transaction a person arranges, offers to arrange, or brokers involving the sale

360 or lease of a motor vehicle for a fee, commission, or other form of compensation is a separate

361 violation under this section if:

- 362 (i) the person has for a fee, commission, or other form of compensation, arranged,
- 363 offered to arrange, or brokered the sale or lease of more than two new or used motor vehicles
- 364 within the previous 12 consecutive month period; and
- 365 (ii) the person is not licensed under Subsection 41-3-202(1).

366 (2) A person who violates this section is guilty of a class B misdemeanor.

367 Section 6. Section 41-3-201.7 is amended to read:

368 **41-3-201.7. Supplemental license for additional place of business restrictions --**

369 **Exception.**

370 (1) (a) Subject to the requirements of Subsection (2), a supplemental license for an
371 additional place of business issued pursuant to Subsection 41-3-201(6) may only be issued to
372 a dealer if the dealer is:

373 [~~(a)~~] (i) licensed in accordance with Section 41-3-202;

374 [~~(b)~~] (ii) bonded in accordance with Section 41-3-205; and

375 [~~(c)~~] (iii) in compliance with existing rules promulgated by the administrator of the
376 division under Section 41-3-105.

377 (b) A supplemental license for a permanent additional place of business may only be
378 issued to a used motor vehicle dealer if:

379 (i) the dealer independently satisfies the bond requirements under Section 41-3-205
380 for the permanent additional place of business;

381 (ii) the dealer is in compliance with existing rules promulgated by the administrator of
382 the division under Section 41-3-105; and

383 (iii) the permanent additional place of business meets all the requirements for a
384 principal place of business.

385 (2) (a) Except as provided in Subsections (2)(c) and (3), a supplemental license for an
386 additional place of business issued pursuant to Subsection 41-3-201(6) for a new motor
387 vehicle dealer may not be issued for an additional place of business that is beyond the
388 geographic specifications outlined as the area of responsibility in the dealer's franchise
389 agreement.

390 (b) A new motor vehicle dealer shall provide the administrator with a copy of the
391 portion of the new motor vehicle dealer's franchise agreement identifying the dealer's area of
392 responsibility before being issued a supplemental license for an additional place of business.

393 (c) The restrictions under Subsections (2)(a) and (b) do not apply to a new motor

394 vehicle dealer if the license for an additional place of business is being issued for the sale of
395 used motor vehicles.

396 (3) The provisions of Subsection (2) do not apply if the additional place of business is
397 a trade show or exhibition if:

398 (a) there are five or more dealers participating in the trade show or exhibition; and

399 (b) the trade show or exhibition takes place at a location other than the principal place
400 of business of one of the dealers participating in the trade show or exhibition.

401 (4) A supplemental license for a temporary additional place of business issued to a
402 used motor vehicle dealer may not be for longer than 10 consecutive days.