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SALE OF MOTOR VEHICLE

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Paula F. Julander

AN ACT RELATING TO MOTOR VEHICLES; PROHIBITING THE SALE OF A MOTOR VEHICLE ON CERTAIN DAYS; PROVIDING PENALTIES; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

41-3-210, as last amended by Chapter 165, Laws of Utah 1998

41-3-702, as last amended by Chapter 21, Laws of Utah 1999

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

Section 1. Section **41-3-210** is amended to read:

41-3-210. License holders -- Prohibitions.

(1) The holder of any license issued under this chapter may not:

(a) intentionally publish, display, or circulate any advertising that is misleading or inaccurate in any material fact or that misrepresents any of the products sold, manufactured, remanufactured, handled, or furnished by a licensee;

(b) intentionally publish, display, or circulate any advertising without identifying the seller as the licensee by including in the advertisement the full name under which the licensee is licensed or the licensee's number assigned by the division;

(c) violate this chapter or the rules made by the administrator;

(d) violate any law of the state respecting commerce in motor vehicles or any rule respecting commerce in motor vehicles made by any licensing or regulating authority of the state;

(e) engage in business as a new motor vehicle dealer, special equipment dealer, used motor vehicle dealer, motor vehicle crusher, or body shop without having in effect a bond as required in this chapter;

28 (f) act as a dealer, dismantler, crusher, manufacturer, transporter, remanufacturer, or body
29 shop without maintaining a principal place of business;

30 (g) engage in a business respecting the selling or exchanging of new or new and used
31 motor vehicles for which he is not licensed, including selling or exchanging a new motor vehicle
32 for which the licensee does not have a franchise, but this Subsection (1)(g) does not apply to a
33 special equipment dealer who sells a new special equipment motor vehicle with a gross vehicle
34 weight of 12,000 or more pounds after installing special equipment on the motor vehicle;

35 (h) dismantle or transport to a crusher for crushing or other disposition any motor vehicle
36 without first obtaining a dismantling or junk permit under Section 41-1a-1009, 41-1a-1010, or
37 41-1a-1011;

38 (i) as a new motor vehicle dealer, special equipment dealer, or used motor vehicle dealer
39 fail to give notice of sales or transfers as required in Section 41-3-301;

40 (j) advertise or otherwise represent, or knowingly allow to be advertised or represented on
41 his behalf or at his place of business, that no down payment is required in connection with the sale
42 of a motor vehicle when a down payment is required and the buyer is advised or induced to finance
43 a down payment by a loan in addition to any other loan financing the remainder of the purchase
44 price of the motor vehicle;

45 (k) as a crusher, crush or shred a motor vehicle brought to the crusher without obtaining
46 proper evidence of ownership of the motor vehicle; proper evidence of ownership is a certificate
47 of title endorsed according to law or a dismantling or junk permit issued under Section 41-1a-1009,
48 41-1a-1010, or 41-1a-1011;

49 (l) as a manufacturer or remanufacturer assemble a motor vehicle that does not comply
50 with construction, safety, or vehicle identification number standards fixed by law or rule of any
51 licensing or regulating authority;

52 (m) as anyone other than a salesperson licensed under this chapter, be present on a dealer
53 display space and contact prospective customers to promote the sale of the dealer's vehicles;

54 (n) sell, display for sale, or offer for sale motor vehicles at any location other than the
55 principal place of business or additional places of business licensed under this chapter; this
56 provision is construed to prevent dealers, salespersons, or any other representative of a dealership
57 from selling, displaying, or offering motor vehicles for sale from their homes or other unlicensed
58 locations;

59 (o) (i) as a dealer, dismantler, body shop, or manufacturer, maintain a principal place of
60 business or additional place of business that shares any common area with a business or activity
61 not directly related to motor vehicle commerce; or

62 (ii) maintain any places of business that share any common area with another dealer,
63 dismantler, body shop, or manufacturer;

64 (p) withhold delivery of license plates obtained by the licensee on behalf of a customer for
65 any reason, including nonpayment of any portion of the vehicle purchase price or down payment;

66 (q) issue a temporary permit for any vehicle that has not been sold by the licensee;

67 (r) alter a temporary permit in any manner;

68 (s) operate any principal place of business or additional place of business in a location that
69 does not comply with local ordinances, including zoning ordinances; or

70 (t) sell, display for sale, offer for sale, or exchange any new motor vehicle if the licensee
71 does not:

72 (i) have a new motor vehicle dealer's license under Section 41-3-202; and

73 (ii) possess a franchise from the manufacturer of the new motor vehicle sold, displayed
74 for sale, offered for sale, or exchanged by the licensee.

75 (2) (a) If a new motor vehicle is constructed in more than one stage, such as a motor home,
76 ambulance, or van conversion, the licensee shall advertise, represent, sell, and exchange the
77 vehicle as the make designated by the final stage manufacturer, except in those specific situations
78 where the licensee possesses a franchise from the initial or first stage manufacturer, presumably
79 the manufacturer of the motor vehicle's chassis.

80 (b) Sales of multiple stage manufactured motor vehicles shall include the transfer to the
81 purchaser of a valid manufacturer's statement or certificate of origin from each manufacturer under
82 Section 41-3-301.

83 (3) Each licensee, except salespersons, shall maintain and make available for inspection
84 by peace officers and employees of the division:

85 (a) a record of every motor vehicle bought, or exchanged by the licensee or received or
86 accepted by the licensee for sale or exchange;

87 (b) a record of every used part or used accessory bought or otherwise acquired;

88 (c) a record of every motor vehicle bought or otherwise acquired and wrecked or
89 dismantled by the licensee;

90 (d) all buyers' orders, contracts, odometer statements, temporary permit records, financing
91 records, and all other documents related to the purchase, sale, or consignment of motor vehicles;
92 and

93 (e) a record of the name and address of the person to whom any motor vehicle or motor
94 vehicle body, chassis, or motor vehicle engine is sold or otherwise disposed of and a description
95 of the motor vehicle by year, make, and vehicle identification number.

96 (4) Each licensee required by this chapter to keep records shall:

97 (a) be kept by the licensee at least for five years; and

98 (b) furnish copies of those records upon request to any peace officer or employee of the
99 division during reasonable business hours.

100 (5) A manufacturer, distributor, distributor representative, or factory representative may
101 not induce or attempt to induce by means of coercion, intimidation, or discrimination any dealer
102 to:

103 (a) accept delivery of any motor vehicle, parts, or accessories or any other commodity or
104 commodities, including advertising material not ordered by the dealer;

105 (b) order or accept delivery of any motor vehicle with special features, appliances,
106 accessories, or equipment not included in the list price of the motor vehicle as publicly advertised
107 by the manufacturer;

108 (c) order from any person any parts, accessories, equipment, machinery, tools, appliances,
109 or any other commodity;

110 (d) enter into an agreement with the manufacturer, distributor, distributor representative,
111 or factory representative of any of them, or to do any other act unfair to the dealer by threatening
112 to cancel any franchise or contractual agreement between the manufacturer, distributor, distributor
113 branch, or factory branch and the dealer;

114 (e) refuse to deliver to any dealer having a franchise or contractual arrangement for the
115 retail sale of new and unused motor vehicles sold or distributed by the manufacturer, distributor,
116 distributor branch or factory branch, any motor vehicle, publicly advertised for immediate delivery
117 within 60 days after the dealer's order is received; or

118 (f) unfairly, without regard to the equities of the dealer, cancel the franchise of any motor
119 vehicle dealer; the nonrenewal of a franchise or selling agreement without cause is a violation of
120 this subsection and is an unfair cancellation.

121 (6) A dealer may not assist an unlicensed dealer or salesperson in unlawful activity through
122 active or passive participation in sales, or by allowing use of his facilities or dealer license number,
123 or by any other means.

124 (7) (a) The holder of any new motor vehicle dealer license issued under this chapter may
125 not sell any new motor vehicle to:

126 (i) another dealer licensed under this chapter who does not hold a valid franchise for the
127 make of new motor vehicles sold, unless the selling dealer licenses and titles the new motor
128 vehicle to the purchasing dealer; or

129 (ii) any motor vehicle leasing or rental company located within this state, or who has any
130 branch office within this state, unless the dealer licenses and titles the new motor vehicle to the
131 purchasing, leasing, or rental company.

132 (b) Subsection (7)(a)(i) does not apply to the sale of a new incomplete motor vehicle with
133 a gross vehicle weight of 12,000 or more pounds to a special equipment dealer licensed under this
134 chapter.

135 (8) A dealer licensed under this chapter may not take on consignment any new motor
136 vehicle from anyone other than a new motor vehicle dealer, factory, or distributor who is licensed
137 and franchised to distribute or sell that make of motor vehicle in this or any other state.

138 (9) A body shop licensed under this chapter may not assist an unlicensed body shop in
139 unlawful activity through active or passive means or by allowing use of its facilities, name, body
140 shop number, or by any other means.

141 (10) A used motor vehicle dealer licensed under this chapter may not advertise, offer for
142 sale, or sell a new motor vehicle that has been driven less than 7,500 miles by obtaining a title only
143 to the vehicle and representing it as a used motor vehicle.

144 (11) (a) Except as provided in Subsection (11)(c), a dealer or salesperson licensed under
145 this chapter may not, on consecutive days of Saturday and Sunday, sell, offer for sale, lease, or
146 offer for lease a motor vehicle.

147 (b) Each day a motor vehicle is sold, offered for sale, leased, or offered for lease in
148 violation of Subsection (11)(a) and each motor vehicle sold, offered for sale, leased, or offered for
149 lease in violation of Subsection (11)(a) shall constitute a separate offense.

150 (c) The provisions of Subsection (11)(a) shall not apply to a dealer participating in a trade
151 show or exhibition if:

- 152 (i) there are five or more dealers participating in the trade show or exhibition; and
- 153 (ii) the trade show or exhibition takes place at a location other than the principal place of
- 154 business of one of the dealers participating in the trade show or exhibition.

155 Section 2. Section **41-3-702** is amended to read:

156 **41-3-702. Civil penalty for violation.**

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

159 (a) Level I:

160 (i) failure to display business license;

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

163 (iii) failure to maintain a separation from nonrelated motor vehicle businesses at licensed
164 locations;

165 (iv) issuing a temporary permit improperly;

166 (v) failure to maintain records;

167 (vi) selling a new motor vehicle to a nonfranchised dealer or leasing company without
168 licensing the motor vehicle;

169 (vii) special plate violation; and

170 (viii) failure to maintain a sign at principal place of business.

171 (b) Level II:

172 (i) failure to report sale;

173 (ii) advertising violation;

174 (iii) dismantling without a permit;

175 (iv) manufacturing without meeting construction or vehicle identification number
176 standards; [and]

177 (v) withholding customer license plates; or

178 (vi) selling a motor vehicle on consecutive days of Saturday and Sunday.

179 (c) Level III:

180 (i) operating without a principal place of business;

181 (ii) selling a new motor vehicle without holding the franchise;

182 (iii) crushing a motor vehicle without proper evidence of ownership;

- 183 (iv) selling from an unlicensed location;
- 184 (v) altering a temporary permit;
- 185 (vi) refusal to furnish copies of records; and
- 186 (vii) assisting an unlicensed dealer or salesperson in sales of motor vehicles.
- 187 (2) (a) The schedule of civil penalties for violations of Subsection (1) is:
- 188 (i) Level I: \$25 for the first offense, \$100 for the second offense, and \$250 for the third
- 189 and subsequent offenses;
- 190 (ii) Level II: \$100 for the first offense, \$250 for the second offense, and \$1,000 for the
- 191 third and subsequent offenses; and
- 192 (iii) Level III: \$250 for the first offense, \$1,000 for the second offense, and \$5,000 for the
- 193 third and subsequent offenses.
- 194 (b) When determining under this section if an offense is a second or subsequent offense,
- 195 only prior offenses committed within the 12 months prior to the commission of the current offense
- 196 may be considered.
- 197 (3) The following are civil violations in addition to criminal violations under Section
- 198 41-1a-1008:
- 199 (a) knowingly selling a salvage vehicle, as defined in Section 41-1a-1001, without
- 200 disclosing that the salvage vehicle has been repaired or rebuilt;
- 201 (b) knowingly making a false statement on a vehicle damage disclosure statement, as
- 202 defined in Section 41-1a-1001; or
- 203 (c) fraudulently certifying that a damaged motor vehicle is entitled to an unbranded title,
- 204 as defined in Section 41-1a-1001, when it is not.
- 205 (4) The civil penalty for a violation under Subsection (3) is:
- 206 (a) not less than \$1,000, or treble the actual damages caused by the person, whichever is
- 207 greater; and
- 208 (b) reasonable attorneys' fees and costs of the action.
- 209 (5) A civil action may be maintained by a purchaser or by the administrator.

Legislative Review Note

as of 1-25-00 10:20 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel