

POWERSPORT DEALER ASSOCIATION

AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Brent H. Goodfellow

This act modifies the Motor Vehicles Code by adding a person who sells off-highway vehicles to the definition of dealer. This act requires off-highway vehicle dealers to obtain the same dealer license permits as new and used motorcycle and small trailer dealers. This act includes off-highway vehicle dealers in the same bonding and licensing fee provisions as new and used motorcycle and small trailer dealers. This act makes technical changes.

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

AMENDS:

41-3-102, as last amended by Chapters 165 and 339, Laws of Utah 1998

41-3-202, as last amended by Chapter 311, Laws of Utah 2000

41-3-205, as last amended by Chapter 239, Laws of Utah 1999

41-3-601, as last amended by Chapter 311, Laws of Utah 2000

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

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

41-3-102. Definitions.

As used in this chapter:

- (1) "Administrator" means the motor vehicle enforcement administrator.
- (2) "Agent" means a person other than a holder of any dealer's or salesperson's license issued under this chapter, who for salary, commission, or compensation of any kind, negotiates in any way for the sale, purchase, order, or exchange of three or more motor vehicles for any other person in any 12-month period.
- (3) "Auction" means a dealer engaged in the business of auctioning motor vehicles, either owned or consigned, to the general public.
- (4) "Board" means the advisory board created in Section 41-3-106.

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

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

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

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

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

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

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

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

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

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

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

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

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

41-3-104.

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

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

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

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

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

(19) (a) "Motor vehicle" means a vehicle intended primarily for use and operation on the highway that is:

(i) self-propelled; or

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

(b) "Motor vehicle" does not include:

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

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

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

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

semitrailer, in which case the mileage limit does not apply.

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

~~[(21)]~~ (22) "Pawnbroker" means a person whose business is to lend money on security of personal property deposited with him.

~~[(22)]~~ (23) "Principal place of business" means a site or location in this state:

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

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

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

~~[(23)]~~ (24) "Remanufacturer" means a person who reconstructs used motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, to change the body style and appearance of the motor vehicle or who constructs or assembles motor vehicles from used or new and used motor vehicle parts, or who reconstructs, constructs, or assembles three or more motor vehicles in any 12-month period.

~~[(24)]~~ (25) "Salesperson" means an individual who for a salary, commission, or compensation of any kind, is employed either directly, indirectly, regularly, or occasionally by any new motor vehicle dealer or used motor vehicle dealer to sell, purchase, or exchange or to negotiate for the sale, purchase, or exchange of motor vehicles.

~~[(25)]~~ (26) "Semitrailer" has the same meaning as defined in Section 41-1a-102.

~~[(26)]~~ (27) "Small trailer" means a trailer that has an unladen weight of more than 750 pounds, but less than 2,000 pounds.

~~[(27)]~~ (28) "Special equipment" includes a truck mounted crane, cherry picker, material

lift, post hole digger, and a utility or service body.

~~[(28)]~~ (29) "Special equipment dealer" means a new or new and used motor vehicle dealer engaged in the business of buying new incomplete motor vehicles with a gross vehicle weight of 12,000 or more pounds and installing special equipment on the incomplete motor vehicle.

~~[(29)]~~ (30) "Trailer" has the same meaning as defined in Section 41-1a-102.

~~[(30)]~~ (31) "Transporter" means a person engaged in the business of transporting motor vehicles as described in Section 41-3-202.

~~[(31)]~~ (32) "Travel trailer" has the same meaning as provided in Section 41-1a-102.

~~[(32)]~~ (33) "Used motor vehicle" means a vehicle that has been titled and registered to a purchaser other than a dealer or has been driven 7,500 or more miles, unless the vehicle is a trailer, or semitrailer, in which case the mileage limit does not apply.

~~[(33)]~~ (34) "Wholesale motor vehicle auction" means a dealer primarily engaged in the business of auctioning consigned motor vehicles to dealers or dismantlers who are licensed by this or any other jurisdiction.

Section 2. Section **41-3-202** is amended to read:

41-3-202. Licenses -- Classes and scope.

(1) A new motor vehicle dealer's license permits the licensee to:

(a) offer for sale, sell, or exchange new motor vehicles if the licensee possesses a franchise from the manufacturer of the motor vehicle offered for sale, sold, or exchanged by the licensee;

(b) offer for sale, sell, or exchange used motor vehicles;

(c) operate as a body shop; and

(d) dismantle motor vehicles.

(2) A used motor vehicle dealer's license permits the licensee to:

(a) offer for sale, sell, or exchange used motor vehicles;

(b) operate as a body shop; and

(c) dismantle motor vehicles.

(3) A new motorcycle, off-highway vehicle, and small trailer dealer's license permits the licensee to:

(a) offer for sale, sell, or exchange new motorcycles, off-highway vehicles, or small trailers if the licensee possesses a franchise from the manufacturer of the motorcycle, off-highway vehicle, or small trailer offered for sale, sold, or exchanged by the licensee;

(b) offer for sale, sell, or exchange used motorcycles, off-highway vehicles, or small trailers; and

(c) dismantle motorcycles, off-highway vehicles, or small trailers.

(4) A used motorcycle, off-highway vehicle, and small trailer dealer's license permits the licensee to:

(a) offer for sale, sell, or exchange used motorcycles, off-highway vehicles, and small trailers; and

(b) dismantle motorcycles, off-highway vehicles, or small trailers.

(5) A salesperson's license permits the licensee to act as a motor vehicle salesperson and is valid for employment with only one dealer at a time.

(6) (a) A manufacturer's license permits the licensee to construct or assemble motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, at an established place of business and to remanufacture motor vehicles.

(b) Under rules made by the administrator, the licensee may issue and install vehicle identification numbers on manufactured motor vehicles.

(c) The licensee may franchise and appoint dealers to sell manufactured motor vehicles by notifying the division of the franchise or appointment.

(7) A transporter's license permits the licensee to transport or deliver motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, from a manufacturing, assembling, or distributing point or from a dealer, to dealers, distributors, or sales agents of a manufacturer or remanufacturer, to or from detail or repair shops, and to financial institutions or places of storage from points of repossession.

(8) A dismantler's license permits the licensee to dismantle motor vehicles subject to

registration under Title 41, Chapter 1a, Motor Vehicle Act, for the purpose of reselling parts or for salvage, or selling dismantled or salvage vehicles to a crusher or other dismantler.

(9) A distributor or factory branch and distributor branch's license permits the licensee to sell and distribute new motor vehicles, parts, and accessories to their franchised dealers.

(10) A representative's license, for factory representatives or distributor representatives permits the licensee to contact his authorized dealers for the purpose of making or promoting the sale of motor vehicles, parts, and accessories.

(11) (a) (i) A remanufacturer's license permits the licensee to construct, reconstruct, assemble, or reassemble motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, from used or new motor vehicles or parts.

(ii) Evidence of ownership of parts and motor vehicles used in remanufacture shall be available to the division upon demand.

(b) Under rules made by the administrator, the licensee may issue and install vehicle identification numbers on remanufactured motor vehicles.

(12) A crusher's license permits the licensee to engage in the business of crushing or shredding motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, for the purpose of reducing the useable materials and metals to a more compact size for recycling.

(13) A body shop's license permits the licensee to rebuild, restore, repair, or paint primarily the body of motor vehicles damaged by collision or natural disaster, and to dismantle motor vehicles.

(14) A special equipment dealer's license permits the licensee to:

(a) buy incomplete new motor vehicles with a gross vehicle weight of 12,000 or more pounds from a new motor vehicle dealer and sell the new vehicle with the special equipment installed without a franchise from the manufacturer;

(b) offer for sale, sell, or exchange used motor vehicles;

(c) operate as a body shop; and

(d) dismantle motor vehicles.

(15) (a) A salvage vehicle buyer license permits the licensee to bid on or purchase a vehicle with a salvage certificate as defined in Section 41-1a-1001 at any motor vehicle auction.

(b) A salvage vehicle buyer license may only be issued to a motor vehicle dealer, dismantler, or body shop who qualifies under rules made by the division and is licensed in any state as a motor vehicle dealer, dismantler, or body shop.

(c) The division may not issue more than two salvage vehicle buyer licenses to any one dealer, dismantler, or body shop.

(d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the administrator shall make rules establishing qualifications of an applicant for a salvage vehicle buyer license. The criteria shall include:

- (i) business history;
- (ii) salvage vehicle qualifications;
- (iii) ability to properly handle and dispose of environmental hazardous materials associated with salvage vehicles; and
- (iv) record in demonstrating compliance with the provisions of this chapter.

Section 3. Section **41-3-205** is amended to read:

41-3-205. Licenses -- Bonds required -- Maximum liability -- Action against surety -- Loss of bond.

(1) (a) Before a dealer's, special equipment dealer's, crusher's, or body shop's license is issued, the applicant shall file with the administrator a corporate surety bond in the amount of:

- (i) \$50,000 for a motor vehicle dealer's license;
- (ii) \$20,000 for a special equipment dealer's license;
- (iii) \$1,000 for a motorcycle, off-highway vehicle, or small trailer dealer's or crusher's license; or
- (iv) \$10,000 for a body shop's license.

(b) The corporate surety shall be licensed to do business within the state and have a rating of at least B+ by the A.M. Best Company.

(c) The form of the bond:

- (i) shall be approved by the attorney general;
 - (ii) shall be conditioned upon the applicant's conducting business as a dealer without fraud, fraudulent representation, or without violating Section 41-3-210; and
 - (iii) may be continuous in form.
 - (d) The total aggregate liability on the bond to all persons making claims, regardless of the number of claimants or the number of years a bond remains in force, may not exceed the amount of the bond.
- (2) A cause of action under Subsection (1) may not be maintained against a surety unless:
- (a) a claim is filed in writing with the administrator within one year after the cause of action arose; and
 - (b) the action is commenced within two years after the claim was filed with the administrator.
- (3) A person making a claim on the bond shall be awarded attorneys' fees in cases successfully prosecuted or settled against the surety or principal if the bond has not been depleted.
- (4) (a) (i) If a dealer, body shop, or crusher loses possession of the bond required by this chapter, the dealer, body shop, or crusher license is automatically suspended.
- (ii) All licenses, pocket cards, temporary permits, and special plates issued to the licensee shall be immediately returned to the administrator.
 - (b) A dealer, body shop, or crusher may not continue to use or permit to be used licenses, pocket cards, temporary permits, or special plates until the required bond is on file with the administrator and the license has been reinstated.
- (5) A representative or consignee of a dealer is not required to file a bond if the dealer for whom the representative or consignee acts fully complies with the provisions of this chapter.

Section 4. Section **41-3-601** is amended to read:

41-3-601. Fees.

- (1) To pay for administering and enforcing this chapter, the administrator shall collect fees determined by the commission under Section 63-38-3.2 for each of the following:

- (a) new motor vehicle dealer's license;
- (b) used motor vehicle dealer's license;
- (c) new motorcycle, off-highway vehicle, and small trailer dealer;
- (d) used motorcycle, off-highway vehicle, and small trailer dealer;
- (e) motor vehicle salesperson's license;
- (f) motor vehicle salesperson's transfer or reissue fee;
- (g) motor vehicle manufacturer's license;
- (h) motor vehicle transporter's license;
- (i) motor vehicle dismantler's license;
- (j) motor vehicle crusher's license;
- (k) motor vehicle remanufacturer's license;
- (l) body shop's license;
- (m) distributor or factory branch and distributor branch's license;
- (n) representative's license;
- (o) dealer plates;
- (p) dismantler plates;
- (q) manufacturer plates;
- (r) transporter plates;
- (s) damaged plate replacement;
- (t) in-transit permits;
- (u) loaded demonstration permits;
- (v) additional place of business; and
- (w) special equipment dealer's license.

(2) To pay for training certified vehicle inspectors and enforcement under Sections 41-1a-1001 through 41-1a-1008, the State Tax Commission shall establish and the administrator shall collect inspection fees determined by the commission under Section 63-38-3.2.

(3) (a) At the time of application, the administrator shall collect a fee of \$200 for each salvage vehicle buyer license.

(b) The administrator may retain a portion of the fee under Subsection (3)(a) to offset the administrator's actual costs of administering and enforcing salvage vehicle buyer licenses.