

1 **ADMINISTRATIVE RULE CRIMINAL**

2 **PENALTY AMENDMENTS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: David Ure**

6 Senate Sponsor: _____

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies certain statutes granting authority to assess criminal penalties.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ repeals the authority in certain statutes to specify by administrative rule what
14 conduct constitutes a misdemeanor or a felony in these areas:

15 • Agriculture, Community and Culture, Alcoholic Beverage Control, Mines and
16 Mining, Motor Vehicles, Public Funds and Accounts, Public Safety, Revenue
17 and Taxation, State Lands, and the Utah Criminal Code.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **4-38-7**, as last amended by Chapter 64, Laws of Utah 1993

25 **9-4-612**, as last amended by Chapter 28, Laws of Utah 2000

26 **32A-12-104**, as renumbered and amended by Chapter 23, Laws of Utah 1990

27 **40-6-12**, as last amended by Chapter 241, Laws of Utah 1991



- 28 **40-8-9**, as last amended by Chapter 194, Laws of Utah 2002
- 29 **41-3-210**, as last amended by Chapter 249, Laws of Utah 2000
- 30 **41-3-701**, as last amended by Chapters 165 and 221, Laws of Utah 1993
- 31 **41-3-702**, as last amended by Chapter 334, Laws of Utah 2003
- 32 **41-6a-1115**, as renumbered and amended by Chapter 2 and last amended by Chapter
- 33 111, Laws of Utah 2005
- 34 **51-7-22.4**, as last amended by Chapter 183, Laws of Utah 2005
- 35 **53-7-226**, as renumbered and amended by Chapter 234, Laws of Utah 1993
- 36 **59-14-212**, as last amended by Chapter 270, Laws of Utah 2001
- 37 **65A-3-1**, as last amended by Chapter 267, Laws of Utah 1995
- 38 **76-10-1233 (Effective 05/01/06)**, as enacted by Chapter 281, Laws of Utah 2005

39 ENACTS:

- 40 **76-10-1234**, Utah Code Annotated 1953



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

43 Section 1. Section **4-38-7** is amended to read:

44 **4-38-7. Licenses -- Fees -- Duties of licensees.**

45 (1) The commission may grant licenses for participation in racing and other activities
46 associated with racetracks.

47 (2) The commission shall establish a schedule of fees for the application for and
48 renewal and reinstatement of all licenses issued under this chapter.

49 (3) Each person holding a license under this chapter shall comply with this chapter and
50 with all rules promulgated and all orders issued by the commission under this chapter.

51 (4) Any person who holds a recognized race meet or who participates directly or
52 indirectly in a recognized race meet without being first licensed by the commission as required
53 under this chapter [~~or by the rules of the commission~~] and any person violating any of the
54 provisions of this chapter is [~~guilty of a class A misdemeanor~~] liable for a civil or criminal
55 penalty under Section 4-2-15.

56 Section 2. Section **9-4-612** is amended to read:

57 **9-4-612. Penalties for fraudulently obtaining or continuing to receive housing**
58 **assistance benefits.**

59 (1) No person may knowingly, by misrepresentation, impersonation, or any other
60 fraudulent means, make any false statement to housing authority personnel or, after being
61 accepted as a recipient of housing authority benefits, fail to disclose to housing authority
62 personnel any:

- 63 (a) change in household composition;
- 64 (b) employment change;
- 65 (c) change in marital status;
- 66 (d) receipt of any other monetary assistance;
- 67 (e) receipt of in-kind gifts; or
- 68 (f) any other material fact or change in circumstances which would affect the
69 determination of that person's eligibility to receive housing assistance benefits, or would affect
70 the amount of benefits for which he is eligible.

71 (2) No person may fail to disclose any of the information described in Subsection (1)
72 for the purpose of obtaining or continuing to receive funds or other housing assistance benefits
73 to which he is not entitled, or in an amount larger than that to which he is entitled.

74 (3) No person who has duties relating to the administration of any housing authority
75 program may fraudulently misappropriate any funds or other assistance with which he has been
76 entrusted, or of which he has gained possession by virtue of his position.

77 (4) No person may knowingly:

78 (a) file or falsify any claim, report, or document required by state or federal law~~[, rule]~~,
79 or provider agreement, to obtain or attempt to obtain unauthorized housing assistance benefits
80 under this chapter; or

81 (b) attempt to commit, or aid or abet the commission of, any act prohibited by this
82 section.

83 (5) The punishment for violation of any provision of this section by a housing
84 assistance recipient is determined by the cumulative value of the funds or other benefits he
85 received from all the frauds he committed, and not by each separate instance of fraud.

86 (6) The punishment for the offenses of this section are:

87 (a) a felony of the second degree if the value of the funds or other benefits received,
88 misappropriated, claimed, or applied for, is equal to or exceeds \$5,000;

89 (b) a felony of the third degree if the value of the funds or other benefits received,

90 misappropriated, claimed, or applied for, is equal to or greater than \$1,000 but less than
91 \$5,000;

92 (c) a class A misdemeanor if the value of the funds or other benefits received,
93 misappropriated, claimed, or applied for, is equal to or greater than \$300 but less than \$1,000;
94 or

95 (d) a class B misdemeanor if the value of the funds or other benefits received,
96 misappropriated, claimed, or applied for, is less than \$300.

97 Section 3. Section **32A-12-104** is amended to read:

98 **32A-12-104. Violation of title a misdemeanor.**

99 Any person who violates this title [~~or the commission rules adopted under this title~~] is
100 guilty of a class B misdemeanor, unless otherwise provided in this title.

101 Section 4. Section **40-6-12** is amended to read:

102 **40-6-12. Evasion of chapter or rules -- Penalties -- Limitation of actions.**

103 (1) (a) A person is guilty of a class A misdemeanor if, for the purpose of evading this
104 chapter or any [~~rule or~~] order of the board, he is convicted of any of the following:

105 (i) making or causing to be made any false entry in any report, record, account, or
106 memorandum required by this chapter or by any rule or order;

107 (ii) omitting or causing to be omitted from any report, record, account, or
108 memorandum, full, true, and correct entries as required by this chapter or by any [~~rule or~~]
109 order; or

110 (iii) removing from this state or destroying, mutilating, altering, or falsifying any
111 record, account, or memorandum.

112 (b) Upon conviction, that person is subject to a fine of not more than \$5,000 or
113 imprisonment for a term not exceeding six months, or to both fine and imprisonment.

114 (2) No suit, action, or other proceeding based upon a violation of this chapter or any
115 rule or order of the board may be commenced or maintained unless it is commenced within one
116 year from the date of the alleged violation.

117 Section 5. Section **40-8-9** is amended to read:

118 **40-8-9. Evasion of chapter or rules -- Penalties -- Limitations of actions --**
119 **Violation of chapter or permit conditions -- Inspection -- Cessation order, abatement**
120 **notice, or show cause order -- Suspension or revocation of permit -- Review -- Division**

121 **enforcement authority -- Appeal provisions.**

122 (1) (a) A person, owner, or operator who willfully or knowingly evades this chapter, or
123 who for the purpose of evading this chapter or any [~~rule or~~] order issued under this chapter,
124 willfully or knowingly makes or causes to be made any false entry in any report, record,
125 account, or memorandum required by this chapter, or by the [~~rule or~~] order, or who willfully or
126 knowingly omits or causes to be omitted from a report, record, account, or memorandum, full,
127 true, and correct entries as required by this chapter, or by the [~~rule or~~] order, or who willfully or
128 knowingly removes from this state or destroys, mutilates, alters, or falsifies any record,
129 account, or memorandum, is guilty of a misdemeanor and, upon conviction, is subject to a fine
130 of not more than \$10,000 for each violation.

131 (b) Each day of willful failure to comply with an emergency order is a separate
132 violation.

133 (2) No suit, action, or other proceeding based upon a violation of this chapter, or any
134 rule or order issued under this chapter, may be commenced or maintained unless the suit,
135 action, or proceeding is commenced within five years from the date of the alleged violation.

136 (3) (a) If, on the basis of information available, the division has reason to believe that a
137 person is in violation of a requirement of this chapter or a permit condition required by this
138 chapter, the division shall immediately order inspection of the mining operation at which the
139 alleged violation is occurring, unless the information available to the division is a result of a
140 previous inspection of the mining operation.

141 (b) (i) If, on the basis of an inspection, the division determines that a condition or
142 practice exists, or that a permittee is in violation of a requirement of this chapter or a permit
143 condition required by this chapter, and the condition, practice, or violation also creates an
144 imminent danger to the health or safety of the public, or is causing, or can reasonably be
145 expected to cause significant, imminent environmental harm to land, air, or water resources,
146 the division shall immediately order a cessation of mining and operations or the portion
147 relevant to the condition, practice, or violation.

148 (ii) The cessation order shall remain in effect until the division determines that the
149 condition, practice, or violation has been abated, or until modified, vacated, or terminated by
150 the division.

151 (iii) If the division finds that the ordered cessation of mining operations, or a portion of

152 the operation, will not completely abate the imminent danger to the health or safety of the
153 public or the significant imminent environmental harm to land, air, or water resources, the
154 division shall, in addition to the cessation order, impose affirmative obligations on the operator
155 requiring him to take whatever steps the division considers necessary to abate the imminent
156 danger or the significant environmental harm.

157 (c) (i) If, on the basis of an inspection, the division determines that a permittee is in
158 violation of a requirement of this chapter or a permit condition required by this chapter, but the
159 violation does not create an imminent danger to the health or safety of the public or cannot be
160 reasonably expected to cause significant, imminent environmental harm to land, air, or water
161 resources, the division shall issue a notice to the permittee or his agent specifying a reasonable
162 time, but not more than 90 days, for the abatement of the violation and providing an
163 opportunity for a conference with the division.

164 (ii) If, upon expiration of the period of time as originally fixed or subsequently
165 extended, for good cause shown, and upon the written finding of the division, the division finds
166 that the violation has not been abated, it shall immediately order a cessation of mining
167 operations or the portion of the mining operation relevant to the violation.

168 (iii) The cessation order shall remain in effect until the division determines that the
169 violation has been abated or until modified, vacated, or terminated by the division pursuant to
170 this Subsection (3).

171 (iv) In the order of cessation issued by the division under this Subsection (3), the
172 division shall determine the steps necessary to abate the violation in the most expeditious
173 manner possible and shall include the necessary measures in the order.

174 (d) (i) Notices and orders issued under this section shall set forth with reasonable
175 specificity:

176 (A) the nature of the violation and the remedial action required;

177 (B) the period of time established for abatement; and

178 (C) a reasonable description of the portion of the mining and reclamation operation to
179 which the notice or order applies.

180 (ii) Each notice or order issued under this section shall be given promptly to the
181 permittee or his agent by the division, and the notices and orders shall be in writing and shall
182 be signed by the director, or his authorized representative who issues notices or orders.

183 (iii) A notice or order issued under this section may be modified, vacated, or
184 terminated by the division, but any notice or order issued under this section which requires
185 cessation of mining by the operator shall expire within 30 days of the actual notice to the
186 operator, unless a conference is held with the division.

187 (4) (a) The division may request the attorney general to institute a civil action for relief,
188 including a permanent or temporary injunction, restraining order, or any other appropriate order
189 in the district court for the district in which the mining and reclamation operation is located, or
190 in which the permittee of the operation has his principal office, if the permittee or his agent:

191 (i) violates or fails or refuses to comply with an order or decision issued by the division
192 under this chapter;

193 (ii) interferes with, hinders, or delays the division, or its authorized representatives, in
194 carrying out the provisions of this chapter;

195 (iii) refuses to admit the authorized representatives to the mine;

196 (iv) refuses to permit inspection of the mine by the authorized representative; or

197 (v) refuses to furnish any information or report requested by the division in furtherance
198 of the provisions of this chapter.

199 (b) (i) The court shall have jurisdiction to provide the appropriate relief.

200 (ii) Relief granted by the court to enforce an order under Subsection (4)(a)(i) shall
201 continue in effect until the completion or final termination of all proceedings for review of that
202 order under this chapter, unless, prior to this completion or termination, the district court
203 granting the relief sets it aside or modifies the order.

204 (5) (a) (i) A permittee issued a notice or order by the division, pursuant to the
205 provisions of Subsections (3)(b) and (3)(c), or a person having an interest which may be
206 adversely affected by the notice or order, may apply to the board for review of the notice or
207 order within 30 days of receipt of the notice or order, or within 30 days of a modification,
208 vacation, or termination of the notice or order.

209 (ii) Upon receipt of this application, the board shall pursue an investigation as it
210 considers appropriate.

211 (iii) The investigation shall provide an opportunity for a public hearing at the request of
212 the applicant or the person having an interest which is or may be adversely affected, to enable
213 the applicant or that person to present information relating to the issuance and continuance of

214 the notice or order of the modification, vacation, or termination of the notice or order.

215 (iv) The filing of an application for review under this Subsection (5)(a) shall not
216 operate as a stay of an order or notice.

217 (b) (i) The permittee and other interested persons shall be given written notice of the
218 time and place of the hearing at least five days prior to the hearing.

219 (ii) This hearing shall be of record and shall be subject to judicial review.

220 (c) (i) Pending completion of the investigation and hearing required by this section, the
221 applicant may file with the board a written request that the board grant temporary relief from
222 any notice or order issued under this section, with a detailed statement giving the reasons for
223 granting this relief.

224 (ii) The board shall issue an order or decision granting or denying this relief
225 expeditiously.

226 (d) (i) Following the issuance of an order to show cause as to why a permit should not
227 be suspended or revoked pursuant to this section, the board shall hold a public hearing, after
228 giving written notice of the time, place, and date of the hearing.

229 (ii) The hearing shall be of record and shall be subject to judicial review.

230 (iii) Within 60 days following the public hearing, the board shall issue and furnish to
231 the permittee and all other parties to the hearing, a written decision, and the reasons for the
232 decision, regarding suspension or revocation of the permit.

233 (iv) If the board revokes the permit, the permittee shall immediately cease mining
234 operations on the permit area and shall complete reclamation within a period specified by the
235 board, or the board shall declare the performance bonds forfeited for the operation.

236 (e) Action by the board taken under this section or any other provision of the state
237 program shall be subject to judicial review by the appropriate district court within the state.

238 (6) A criminal proceeding for a violation of this chapter, or a rule, regulation, or order
239 issued under this chapter, shall be commenced within five years from the date of the alleged
240 violation.

241 Section 6. Section **41-3-210** is amended to read:

242 **41-3-210. License holders -- Prohibitions.**

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

244 (a) intentionally publish, display, or circulate any advertising that is misleading or

245 inaccurate in any material fact or that misrepresents any of the products sold, manufactured,
246 remanufactured, handled, or furnished by a licensee;

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

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

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

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

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

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

265 (h) dismantle or transport to a crusher for crushing or other disposition any motor
266 vehicle without first obtaining a dismantling or junk permit under Section 41-1a-1009,
267 41-1a-1010, or 41-1a-1011;

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

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

275 (k) as a crusher, crush or shred a motor vehicle brought to the crusher without

276 obtaining proper evidence of ownership of the motor vehicle; proper evidence of ownership is
277 a certificate of title endorsed according to law or a dismantling or junk permit issued under
278 Section 41-1a-1009, 41-1a-1010, or 41-1a-1011;

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

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

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

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

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

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

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

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

300 (s) operate any principal place of business or additional place of business in a location
301 that does not comply with local ordinances, including zoning ordinances; [~~or~~]

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

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

305 (ii) possess a franchise from the manufacturer of the new motor vehicle sold, displayed
306 for sale, offered for sale, or exchanged by the licensee[~~;~~]; or

307 (u) as a new motor vehicle dealer or used motor vehicle dealer, encourage or conspire
308 with any person who has not obtained a salesperson's license to solicit for prospective
309 purchasers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

367 (b) Subsection (7)(a)(i) does not apply to the sale of a new incomplete motor vehicle
368 with a gross vehicle weight of 12,000 or more pounds to a special equipment dealer licensed

369 under this chapter.

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

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

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

380 (11) (a) Except as provided in Subsection (11)(c), or in cases of undue hardship or
381 emergency as provided by rule by the division, a dealer or salesperson licensed under this
382 chapter may not, on consecutive days of Saturday and Sunday, sell, offer for sale, lease, or offer
383 for lease a motor vehicle.

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

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

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

390 (ii) the trade show or exhibition takes place at a location other than the principal place
391 of business of one of the dealers participating in the trade show or exhibition.

392 (12) For purposes of imposing the sales and use tax under Title 59, Chapter 12, Sales
393 and Use Tax Act, a licensee issuing a temporary permit under Section 41-3-302 shall separately
394 identify the fees required by Title 41, Chapter 1a, Motor Vehicle Act.

395 Section 7. Section **41-3-701** is amended to read:

396 **41-3-701. Violations as misdemeanors.**

397 (1) Except as otherwise provided in this chapter, any person who violates this chapter
398 [~~or any rule made by the administrator~~] is guilty of a class B misdemeanor.

399 (2) A person who violates Section 41-3-201 is guilty of a class A misdemeanor.

400 (3) A person who violates Section 41-3-301 is guilty of a class A misdemeanor unless
401 the selling dealer complies with the requirements of Section 41-3-403.

402 Section 8. Section **41-3-702** is amended to read:

403 **41-3-702. Civil penalty for violation.**

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

406 (a) Level I:

407 (i) failure to display business license;

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

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

412 (iv) issuing a temporary permit improperly;

413 (v) failure to maintain records;

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

416 (vii) special plate violation; and

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

418 (b) Level II:

419 (i) failure to report sale;

420 (ii) dismantling without a permit;

421 (iii) manufacturing without meeting construction or vehicle identification number
422 standards;

423 (iv) withholding customer license plates; or

424 (v) selling a motor vehicle on consecutive days of Saturday and Sunday.

425 (c) Level III:

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

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

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

429 (iv) selling from an unlicensed location;

430 (v) altering a temporary permit;

- 431 (vi) refusal to furnish copies of records;
- 432 (vii) assisting an unlicensed dealer or salesperson in sales of motor vehicles; ~~and~~
- 433 (viii) advertising violation[-];
- 434 (ix) failure to separately identify the fees required by Title 41, Chapter 1a, Motor
- 435 Vehicle Act; and
- 436 (x) encouraging or conspiring with unlicensed persons to solicit for prospective
- 437 purchasers.
- 438 (2) (a) The schedule of civil penalties for violations of Subsection (1) is:
- 439 (i) Level I: \$25 for the first offense, \$100 for the second offense, and \$250 for the third
- 440 and subsequent offenses;
- 441 (ii) Level II: \$100 for the first offense, \$250 for the second offense, and \$1,000 for the
- 442 third and subsequent offenses; and
- 443 (iii) Level III: \$250 for the first offense, \$1,000 for the second offense, and \$5,000 for
- 444 the third and subsequent offenses.
- 445 (b) When determining under this section if an offense is a second or subsequent
- 446 offense, only prior offenses committed within the 12 months prior to the commission of the
- 447 current offense may be considered.
- 448 (3) The following are civil violations in addition to criminal violations under Section
- 449 41-1a-1008:
- 450 (a) knowingly selling a salvage vehicle, as defined in Section 41-1a-1001, without
- 451 disclosing that the salvage vehicle has been repaired or rebuilt;
- 452 (b) knowingly making a false statement on a vehicle damage disclosure statement, as
- 453 defined in Section 41-1a-1001; or
- 454 (c) fraudulently certifying that a damaged motor vehicle is entitled to an unbranded
- 455 title, as defined in Section 41-1a-1001, when it is not.
- 456 (4) The civil penalty for a violation under Subsection (3) is:
- 457 (a) not less than \$1,000, or treble the actual damages caused by the person, whichever
- 458 is greater; and
- 459 (b) reasonable attorneys' fees and costs of the action.
- 460 (5) A civil action may be maintained by a purchaser or by the administrator.
- 461 Section 9. Section **41-6a-1115** is amended to read:

462 **41-6a-1115. Motor assisted scooters -- Conflicting provisions -- Restrictions --**
463 **Penalties.**

464 (1) (a) Except as otherwise provided in this section, a motor assisted scooter is subject
465 to the provisions under this chapter for a bicycle, moped, or a motor-driven cycle.

466 (b) For a person operating a motor assisted scooter, the following provisions do not
467 apply:

468 (i) seating positions under Section 41-6a-1501;

469 (ii) required lights, horns, and mirrors under Section 41-6a-1506;

470 (iii) entitlement to full use of a lane under Subsection 41-6a-1502(1); and

471 (iv) driver licensing requirements under Section 53-3-202.

472 (2) A person under 15 years of age may not operate a motor assisted scooter using the
473 motor unless the person is under the direct supervision of the person's parent or guardian.

474 (3) A person under eight years of age may not operate a motor assisted scooter with the
475 motor running on any public property, highway, path, or sidewalk.

476 (4) A person may not operate a motor assisted scooter:

477 (a) in a public parking structure;

478 (b) on public property posted as an area prohibiting skateboards;

479 (c) on a highway consisting of a total of four or more lanes designated for regular
480 vehicular traffic;

481 (d) on a highway with a posted speed limit greater than 25 miles per hour;

482 (e) while carrying more persons at one time than the number for which it is designed;

483 or

484 (f) that has been structurally or mechanically altered from the original manufacturer's
485 design.

486 (5) Except where posted or prohibited by ~~rule or~~ local ordinance, a motor assisted
487 scooter is considered a nonmotorized vehicle if it is being used with the motor turned off.

488 (6) An owner may not authorize or knowingly permit a person to operate a motor
489 assisted scooter in violation of this section.

490 (7) A person who violates this section is guilty of a class C misdemeanor.

491 Section 10. Section **51-7-22.4** is amended to read:

492 **51-7-22.4. Penalties for violation by certified investment advisers.**

493 (1) ~~[Each]~~ An intentional violation by a certified investment adviser ~~[who intentionally~~
494 ~~violates]~~ of Section 51-7-7, 51-7-11, or 51-7-11.5, or ~~[who intentionally violates]~~ any rule or
495 order under this chapter is ~~[guilty of a third degree felony.]~~ punishable by a civil penalty of:

496 (a) \$1,000 for each day of noncompliance for the responsible person; and

497 (b) \$5,000 for each day of noncompliance for the firm or institution.

498 (2) In addition to any other penalty for a criminal violation of this chapter, the
499 sentencing judge may impose any penalty or remedy provided for in Subsection
500 51-7-22.5(1)(b).

501 Section 11. Section **53-7-226** is amended to read:

502 **53-7-226. Violations -- Misdemeanor.**

503 A person is guilty of a class B misdemeanor if he:

504 (1) violates this part;

505 (2) violates any order made under this part;

506 (3) produces, reproduces, or uses the official seal of registration of the division in any
507 manner or for any purpose inconsistent with the ~~[rules of the board]~~ designated purpose of the
508 seal;

509 (4) removes, uses, or damages service tags or other labels or markings ~~[required by the~~
510 ~~board]~~ in a manner inconsistent with the ~~[rules of the board]~~ designated use of the service tag;

511 (5) engages in the sale, storage, or handling of class C fireworks without a permit
512 where a local government requires a permit;

513 (6) sells at retail, transports, possesses, or discharges ~~[fireworks that are not approved~~
514 ~~under rules made by the board]~~ class C dangerous explosives as defined in Section 53-7-202;

515 (7) performs or intends to perform services or induces the public to enter into any
516 obligation relating to the performance of those services that are untrue, misleading, or
517 reasonably known to be untrue or misleading; or

518 (8) builds in violation of the division's plan review or written instructions conducted on
519 building specifications, building plans, or amendments of those specifications or plans as
520 required under this part.

521 Section 12. Section **59-14-212** is amended to read:

522 **59-14-212. Reporting of imported cigarettes -- Penalty.**

523 (1) Except as provided under Subsection (2), any manufacturer, distributor, wholesaler,

524 or retail dealer who under Section 59-14-205 affixes a stamp to an individual package or
525 container of cigarettes imported to the United States shall provide to the commission the
526 following as they pertain to the imported cigarettes:

- 527 (a) a copy of the importer's federal import permit;
- 528 (b) the customs form showing the tax information required by federal law;
- 529 (c) a statement signed under penalty of perjury by the manufacturer or importer that the
530 manufacturer or importer has complied with:

- 531 (i) 15 U.S.C. 1333 of the Federal Cigarette Labeling and Advertising Act, regarding
532 warning labels and other package information; and

- 533 (ii) 15 U.S.C. 1335a of the Federal Cigarette Labeling and Advertising Act, regarding
534 reporting of added ingredients;

- 535 (d) the name of the person from whom the person affixing the stamp received the
536 cigarettes;

- 537 (e) the name of the person to whom the person affixing the stamp delivered the
538 cigarettes, unless the person receiving the cigarettes was the ultimate consumer;

- 539 (f) the quantity of cigarettes in the package or container; and

- 540 (g) the brand and brand style of the cigarettes.

- 541 (2) Subsection (1) does not apply to cigarettes sold or intended to be sold as duty-free
542 merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C.
543 1555(b) and any implementing regulations unless the cigarettes are brought back into the
544 customs territory for resale within the customs territory.

- 545 (3) The information under Subsection (1) shall be provided on a quarterly basis
546 [~~pursuant to rules established by the commission in accordance with Title 63, Chapter 46a,~~
547 ~~Utah Administrative Rulemaking Act~~] on forms specified by the agency.

- 548 (4) A person who fails to comply with the reporting requirement or provides false or
549 misleading information under Subsection (1):

- 550 (a) is guilty of a class B misdemeanor; and

- 551 (b) may be subject to:

- 552 (i) revocation or suspension of a license issued under Section 59-14-202; and

- 553 (ii) a civil penalty imposed by the commission in an amount not to exceed the greater
554 of:

555 (A) 500% of the retail value of the cigarettes for which a report was not properly made;
556 or

557 (B) \$5,000.

558 (5) The information under Subsection (1) may be disclosed by the commission as
559 provided under Subsection 59-1-403(3)(g).

560 Section 13. Section **65A-3-1** is amended to read:

561 **65A-3-1. Trespassing on state lands -- Penalties.**

562 (1) A person is guilty of a class B misdemeanor and liable for the civil damages
563 prescribed in Subsection (2) if he~~[:(a)]~~, without written authorization from the division:

564 ~~[(i)]~~ (a) removes, extracts, uses, consumes, or destroys any mineral resource, gravel,
565 sand, soil, vegetation, or improvement on state lands;

566 ~~[(ii)]~~ (b) grazes livestock on state lands;

567 ~~[(iii)]~~ (c) uses, occupies, or constructs improvements or structures on state lands;

568 ~~[(iv)]~~ (d) uses or occupies state lands for more than 30 days after the cancellation or
569 expiration of written authorization;

570 ~~[(v)]~~ (e) knowingly and willfully uses state lands for commercial gain; or

571 ~~[(vi)]~~ (f) appropriates, alters, injures, or destroys any historical, prehistorical,
572 archaeological, or paleontological resource on state lands~~[:or]~~.

573 ~~[(b) uses or occupies state lands in violation of division rules.]~~

574 (2) A person who commits any act described in Subsection (1) is liable for damages in
575 the amount of:

576 (a) three times the value of the mineral or other resource removed, destroyed, or
577 extracted;

578 (b) three times the amount of damage committed; or

579 (c) three times the consideration which would have been charged by the division for
580 use of the land during the period of trespass.

581 (3) In addition to the damages described in Subsection (2), a person found guilty of a
582 misdemeanor under Subsection (1) is subject to the penalties provided in Section 76-3-204.

583 (4) Money collected under this section shall be deposited in the fund in which like
584 revenues from that land would be deposited.

585 Section 14. Section **76-10-1233 (Effective 05/01/06)** is amended to read:

586 **76-10-1233 (Effective 05/01/06). Content providers -- Material harmful to minors.**

587 (1) A content provider that is domiciled in Utah, or generates or hosts content in Utah,
588 shall restrict access to material harmful to minors.

589 [~~(2) The Division of Consumer Protection shall make rules in accordance with Title 63,
590 Chapter 46a, Utah Administrative Rulemaking Act, to establish acceptable rating methods to
591 be implemented by a content provider under Subsection (1).]~~

592 [~~(3)~~] (2) If the attorney general determines that a content provider violates Subsection
593 (1), the attorney general shall:

594 (a) notify the content provider that the content provider is in violation of Subsection
595 (1); and

596 (b) notify the content provider that the content provider has 30 days to comply with
597 Subsection (1) or be subject to Subsection [~~(4)~~] (3).

598 [~~(4)~~] (3) If a content provider violates this section more than 30 days after receiving the
599 notice provided in Subsection [~~(3)~~] (2), the content provider is guilty of a third degree felony.

600 Section 15. Section **76-10-1234** is enacted to read:

601 **76-10-1234. Rulemaking authority.**

602 The Division of Consumer Protection shall make rules in accordance with Title 63,
603 Chapter 46a, Utah Administrative Rulemaking Act, to establish acceptable rating methods to
604 be implemented by a content provider under Subsection 76-10-1233(1).

Legislative Review Note
as of 1-24-06 8:16 AM

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

Legislative Committee Note
as of 01-24-06 10:33 AM

The Administrative Rules Review Committee recommended this bill.

Fiscal Note
Bill Number HB0317

Administrative Rule Criminal Penalty Amendments

01-Feb-06

4:52 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst