

MOTOR VEHICLE DEALER PERFORMANCE

BOND AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dan R. Eastman

House Sponsor: Patrick Painter

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ provides that a surety or principal may not make a payment on a surety bond until six months have expired after the first claim on a bond was filed;
- ▶ provides that after six months after a claim on a bond has been filed, the surety or principal shall assess the validity of all bond claims and submit a distribution assessment to all bond claimants;
- ▶ provides that if the total verifiable bond claims do not exceed the bond amount, the claimants shall receive the full amount of all valid bond claims;
- ▶ provides that if the total verifiable bond claims exceed the bond amount, the bond proceeds shall be distributed pro rata to bond claimants of all valid bond claims;
- ▶ provides that if a distribution assessment is not unanimously approved by all bond claimants, the surety or principal shall file an interpleader action in the state district court where the defaulting dealer is licensed;
- ▶ provides that a surety or principal may not be awarded attorney fees that exceed \$2,500 for an interpleader action; and



28 ▶ makes technical changes.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **41-3-205**, as last amended by Chapter 90, Laws of Utah 2005



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

38 Section 1. Section **41-3-205** is amended to read:

39 **41-3-205. Licenses -- Bonds required -- Maximum liability -- Action against**
40 **surety -- Loss of bond.**

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

43 (i) \$50,000 until June 30, 2006, and \$75,000 on or after July 1, 2006, for a motor
44 vehicle dealer's license;

45 (ii) \$20,000 until June 30, 2006, and \$75,000 on or after July 1, 2006, for a special
46 equipment dealer's license;

47 (iii) \$10,000 for a motorcycle, off-highway vehicle, or small trailer dealer's or crusher's
48 license; or

49 (iv) \$20,000 for a body shop's license.

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

52 (c) The form of the bond:

53 (i) shall be approved by the attorney general;

54 (ii) shall be conditioned upon the applicant's conducting business as a dealer without:

55 (A) fraud;

56 (B) fraudulent representation; or

57 (C) violating Subsection 41-3-301(1) which requires a dealer to submit or deliver a
58 certificate of title or manufacturer's certificate of origin; and

59 (iii) may be continuous in form.

60 (d) The total aggregate liability on the bond to all persons making claims, regardless of
61 the number of claimants or the number of years a bond remains in force, may not exceed the
62 amount of the bond.

63 (2) (a) A cause of action under Subsection (1) may not be maintained against a surety
64 unless:

65 (i) a claim is filed in writing with the administrator within one year after the cause of
66 action arose; and

67 (ii) the action is commenced within two years after the claim was filed with the
68 administrator.

69 (b) The surety or principal shall notify the administrator if a claim on the bond is
70 successfully prosecuted or settled against the surety or principal.

71 (3) (a) A surety or principal may not make a payment on a surety bond to any claimant
72 until six months have expired from the date when the first claim on the bond was filed with the
73 surety or principal in writing.

74 (b) After six months have expired following the filing of the first bond claim, the
75 surety or principal shall:

76 (i) assess the validity of all claims on the bond; and

77 (ii) submit a distribution assessment determined in accordance with Subsection (3)(c)
78 regarding the bond proceeds to the claimants of valid claims for approval.

79 (c) (i) If the total verifiable claims on the bond are less than the bond amount, then
80 each bond claimant shall be entitled to the full amount of a valid claim.

81 (ii) If the total verifiable claims exceed the bond amount, then the proceeds shall be
82 distributed pro rata to the bond claimants of valid claims.

83 (d) If the distribution assessment under Subsection (3)(b) is not unanimously approved
84 by the claimants of all valid claims on the bond, the principal or surety shall file an interpleader
85 action in the state district court where the defaulting dealer was licensed.

86 [~~3~~] (4) (a) A person making a claim on the bond shall be awarded attorneys' fees in
87 cases successfully prosecuted or settled against the surety or principal if the bond has not been
88 depleted.

89 (b) A surety or principal may not be awarded attorney fees that exceed \$2,500 for an

90 interpleader action filed under Subsection (3)(d).

91 [~~4~~] (5) (a) (i) If a dealer, body shop, or crusher loses possession of the bond required
92 by this chapter, the dealer, body shop, or crusher license is automatically suspended.

93 (ii) All licenses, pocket cards, temporary permits, and special plates issued to the
94 licensee shall be immediately returned to the administrator.

95 (b) A dealer, body shop, or crusher may not continue to use or permit to be used
96 licenses, pocket cards, temporary permits, or special plates until the required bond is on file
97 with the administrator and the license has been reinstated.

98 [~~5~~] (6) A representative or consignee of a dealer is not required to file a bond if the
99 dealer for whom the representative or consignee acts fully complies with the provisions of this
100 chapter.

Legislative Review Note
as of 1-15-07 4:29 PM

Office of Legislative Research and General Counsel

S.B. 54 - Motor Vehicle Dealer Performance Bond Amendments

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or local governments. Enactment may affect bonding companies due to the limit on attorney fees they may receive for an interpleader action and the new waiting period from the time the first claim is made on a bond before payment may be made.

1/22/2007, 3:01:20 PM, Lead Analyst: Tennert, J.

Office of the Legislative Fiscal Analyst