

ADMINISTRATIVE RULE CRIMINAL

PENALTY AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

▶ repeals the authority in certain statutes to specify by administrative rule conduct that may constitute a misdemeanor or a felony in the statutory areas of Agriculture, Community and Culture, Alcoholic Beverage Control, Mines and Mining, Motor Vehicles, Public Funds and Accounts, Public Safety, Revenue and Taxation, and State Lands;

▶ brings certain administrative rule provisions into the statutory Motor Vehicle Code;

▶ provides for civil penalties regarding Motor Vehicles and Public Funds and Accounts;

▶ provides additional enforcement authority regarding motor vehicles, public safety, and revenue and taxation; and

▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 **4-38-7**, as last amended by Chapter 64, Laws of Utah 1993
- 31 **9-4-612**, as last amended by Chapter 28, Laws of Utah 2000
- 32 **32A-12-104**, as renumbered and amended by Chapter 23, Laws of Utah 1990
- 33 **40-6-12**, as last amended by Chapter 241, Laws of Utah 1991
- 34 **40-8-9**, as last amended by Chapter 194, Laws of Utah 2002
- 35 **41-3-210**, as last amended by Chapter 249, Laws of Utah 2000
- 36 **41-3-701**, as last amended by Chapters 165 and 221, Laws of Utah 1993
- 37 **41-3-702**, as last amended by Chapter 334, Laws of Utah 2003
- 38 **41-6a-1115**, as renumbered and amended by Chapter 2 and last amended by Chapter
- 39 111, Laws of Utah 2005
- 40 **51-7-22.4**, as last amended by Chapter 183, Laws of Utah 2005
- 41 **53-7-226**, as renumbered and amended by Chapter 234, Laws of Utah 1993
- 42 **59-14-212**, as last amended by Chapter 270, Laws of Utah 2001
- 43 **63C-9-301**, as last amended by Chapter 256, Laws of Utah 2006
- 44 **65A-3-1**, as last amended by Chapter 267, Laws of Utah 1995
- 45 **76-10-1233**, as enacted by Chapter 281, Laws of Utah 2005

46 ENACTS:

- 47 **76-10-1234**, Utah Code Annotated 1953

48

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

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

51 **4-38-7. Licenses -- Fees -- Duties of licensees.**

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

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

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

58 (4) Any person who holds a recognized race meet or who participates directly or

59 indirectly in a recognized race meet without being first licensed by the commission as required
60 under this chapter [~~or by the rules of the commission~~] and any person violating any [~~of the~~]
61 provisions of this chapter is [~~guilty of a class A misdemeanor~~] subject to penalties under
62 Section 4-2-15.

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

64 **9-4-612. Penalties for fraudulently obtaining or continuing to receive housing**
65 **assistance benefits.**

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

70 (a) change in household composition;

71 (b) employment change;

72 (c) change in marital status;

73 (d) receipt of any other monetary assistance;

74 (e) receipt of in-kind gifts; or

75 (f) any other material fact or change in circumstances which would affect the
76 determination of that person's eligibility to receive housing assistance benefits, or would affect
77 the amount of benefits for which he is eligible.

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

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

84 (4) No person may knowingly:

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

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

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

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

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

96 (b) a felony of the third degree if the value of the funds or other benefits received,
97 misappropriated, claimed, or applied for, is equal to or greater than \$1,000 but less than
98 \$5,000;

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

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

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

105 **32A-12-104. Violation of title a misdemeanor.**

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

108 Section 4. Section ~~40-6-12~~ is amended to read:

109 **40-6-12. Evasion of chapter or orders -- Penalties -- Limitation of actions.**

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

112 (i) making or causing to be made any false entry in any report, record, account, or
113 memorandum required by this chapter or by any [~~rule or~~] order;

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

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

119 (b) Upon conviction[~~, that~~] under Subsection (1), a person is subject to a fine of not
120 more than \$5,000 or imprisonment for a term not exceeding six months, or to both fine and

121 imprisonment.

122 (2) ~~[No]~~ Any suit, action, or other proceeding based upon a violation of this chapter or
 123 any rule or order of the board may be commenced ~~[or maintained unless it is commenced]~~ only
 124 within one year from the date of the alleged violation.

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

126 **40-8-9. Evasion of chapter or orders -- Penalties -- Limitations of actions --**
 127 **Violation of chapter or permit conditions -- Inspection -- Cessation order, abatement**
 128 **notice, or show cause order -- Suspension or revocation of permit -- Review -- Division**
 129 **enforcement authority -- Appeal provisions.**

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

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

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

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

149 (b) (i) If, on the basis of an inspection, the division determines that a condition or
 150 practice exists, or that a permittee is in violation of a requirement of this chapter or a permit
 151 condition required by this chapter, and the condition, practice, or violation also creates an

152 imminent danger to the health or safety of the public, or is causing, or can reasonably be
153 expected to cause significant, imminent environmental harm to land, air, or water resources,
154 the division shall immediately order a cessation of mining and operations or the portion
155 relevant to the condition, practice, or violation.

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

159 (iii) If the division finds that the ordered cessation of mining operations, or a portion of
160 the operation, will not completely abate the imminent danger to the health or safety of the
161 public or the significant imminent environmental harm to land, air, or water resources, the
162 division shall, in addition to the cessation order, impose affirmative obligations on the operator
163 requiring him to take whatever steps the division considers necessary to abate the imminent
164 danger or the significant environmental harm.

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

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

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

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

182 (d) (i) Notices and orders issued under this section shall set forth with reasonable

183 specificity:

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

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

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

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

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

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

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

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

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

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

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

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

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

212 (5) (a) (i) A permittee issued a notice or order by the division, pursuant to the
213 provisions of Subsections (3)(b) and (3)(c), or a person having an interest which may be

214 adversely affected by the notice or order, may apply to the board for review of the notice or
215 order within 30 days of receipt of the notice or order, or within 30 days of a modification,
216 vacation, or termination of the notice or order.

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

219 (iii) The investigation shall provide an opportunity for a public hearing at the request of
220 the applicant or the person having an interest which is or may be adversely affected, to enable
221 the applicant or that person to present information relating to the issuance and continuance of
222 the notice or order of the modification, vacation, or termination of the notice or order.

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

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

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

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

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

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

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

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

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

244 (e) Action by the board taken under this section or any other provision of the state

245 program shall be subject to judicial review by the appropriate district court within the state.

246 (6) A criminal proceeding for a violation of this chapter, or a [~~rule~~,] regulation[;] or
247 order issued under this chapter, shall be commenced within five years from the date of the
248 alleged violation.

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

250 **41-3-210. License holders -- Prohibitions and requirements.**

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

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

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

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

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

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

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

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

273 (h) dismantle or transport to a crusher for crushing or other disposition any motor
274 vehicle without first obtaining a dismantling or junk permit under Section 41-1a-1009,
275 41-1a-1010, or 41-1a-1011;

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

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

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

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

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

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

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

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

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

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

- 307 (r) alter a temporary permit in any manner;
- 308 (s) operate any principal place of business or additional place of business in a location
- 309 that does not comply with local ordinances, including zoning ordinances; [or]
- 310 (t) sell, display for sale, offer for sale, or exchange any new motor vehicle if the
- 311 licensee does not:
 - 312 (i) have a new motor vehicle dealer's license under Section 41-3-202; and
 - 313 (ii) possess a franchise from the manufacturer of the new motor vehicle sold, displayed
 - 314 for sale, offered for sale, or exchanged by the licensee[-]; or
 - 315 (u) as a new motor vehicle dealer or used motor vehicle dealer, encourage or conspire
 - 316 with any person who has not obtained a salesperson's license to solicit for prospective
 - 317 purchasers.
- 318 (2) (a) If a new motor vehicle is constructed in more than one stage, such as a motor
- 319 home, ambulance, or van conversion, the licensee shall advertise, represent, sell, and exchange
- 320 the vehicle as the make designated by the final stage manufacturer, except in those specific
- 321 situations where the licensee possesses a franchise from the initial or first stage manufacturer,
- 322 presumably the manufacturer of the motor vehicle's chassis.
- 323 (b) Sales of multiple stage manufactured motor vehicles shall include the transfer to the
- 324 purchaser of a valid manufacturer's statement or certificate of origin from each manufacturer
- 325 under Section 41-3-301.
- 326 (3) Each licensee, except salespersons, shall maintain and make available for
- 327 inspection by peace officers and employees of the division:
 - 328 (a) a record of every motor vehicle bought, or exchanged by the licensee or received or
 - 329 accepted by the licensee for sale or exchange;
 - 330 (b) a record of every used part or used accessory bought or otherwise acquired;
 - 331 (c) a record of every motor vehicle bought or otherwise acquired and wrecked or
 - 332 dismantled by the licensee;
 - 333 (d) all buyers' orders, contracts, odometer statements, temporary permit records,
 - 334 financing records, and all other documents related to the purchase, sale, or consignment of
 - 335 motor vehicles; and
 - 336 (e) a record of the name and address of the person to whom any motor vehicle or motor
 - 337 vehicle body, chassis, or motor vehicle engine is sold or otherwise disposed of and a

338 description of the motor vehicle by year, make, and vehicle identification number.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

403 (13) (a) A dismantler or dealer engaged in the business of dismantling motor vehicles
404 for the sale of parts or salvage shall identify any vehicles or equipment used by the dismantler
405 or dealer for transporting parts or salvage on the highways.

406 (b) The identification required under Subsection (13)(a) shall:

407 (i) include the name, address, and license number of the dismantler or dealer; and

408 (ii) be conspicuously displayed on both sides of the vehicle or equipment in clearly
409 legible letters and numerals not less than two inches in height.

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

411 **41-3-701. Violations as misdemeanors.**

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

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

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

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

418 **41-3-702. Civil penalty for violation.**

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

421 (a) Level I:

422 (i) [~~failure~~] failing to display business license;

423 (ii) [~~failure~~] failing to surrender license of salesperson because of termination,
424 suspension, or revocation;

425 (iii) [~~failure~~] failing to maintain a separation from nonrelated motor vehicle businesses
426 at licensed locations;

427 (iv) issuing a temporary permit improperly;

428 (v) [~~failure~~] failing to maintain records;

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

- 431 (vii) special plate violation; and
- 432 (viii) [~~failure~~] failing to maintain a sign at principal place of business.
- 433 (b) Level II:
- 434 (i) [~~failure~~] failing to report sale;
- 435 (ii) dismantling without a permit;
- 436 (iii) manufacturing without meeting construction or vehicle identification number
- 437 standards;
- 438 (iv) withholding customer license plates; or
- 439 (v) selling a motor vehicle on consecutive days of Saturday and Sunday.
- 440 (c) Level III:
- 441 (i) operating without a principal place of business;
- 442 (ii) selling a new motor vehicle without holding the franchise;
- 443 (iii) crushing a motor vehicle without proper evidence of ownership;
- 444 (iv) selling from an unlicensed location;
- 445 (v) altering a temporary permit;
- 446 (vi) refusal to furnish copies of records;
- 447 (vii) assisting an unlicensed dealer or salesperson in sales of motor vehicles; [~~and~~]
- 448 (viii) advertising violation[-];
- 449 (ix) failing to separately identify the fees required by Title 41, Chapter 1a, Motor
- 450 Vehicle Act; and
- 451 (x) encouraging or conspiring with unlicensed persons to solicit for prospective
- 452 purchasers.
- 453 (2) (a) The schedule of civil penalties for violations of Subsection (1) is:
- 454 (i) Level I: \$25 for the first offense, \$100 for the second offense, and \$250 for the third
- 455 and subsequent offenses;
- 456 (ii) Level II: \$100 for the first offense, \$250 for the second offense, and \$1,000 for the
- 457 third and subsequent offenses; and
- 458 (iii) Level III: \$250 for the first offense, \$1,000 for the second offense, and \$5,000 for
- 459 the third and subsequent offenses.
- 460 (b) When determining under this section if an offense is a second or subsequent
- 461 offense, only prior offenses committed within the 12 months prior to the commission of the

462 current offense may be considered.

463 (3) The following are civil violations in addition to criminal violations under Section
464 41-1a-1008:

465 (a) knowingly selling a salvage vehicle, as defined in Section 41-1a-1001, without
466 disclosing that the salvage vehicle has been repaired or rebuilt;

467 (b) knowingly making a false statement on a vehicle damage disclosure statement, as
468 defined in Section 41-1a-1001; or

469 (c) fraudulently certifying that a damaged motor vehicle is entitled to an unbranded
470 title, as defined in Section 41-1a-1001, when it is not.

471 (4) The civil penalty for a violation under Subsection (3) is:

472 (a) not less than \$1,000, or treble the actual damages caused by the person, whichever
473 is greater; and

474 (b) reasonable attorneys' fees and costs of the action.

475 (5) A civil action may be maintained by a purchaser or by the administrator.

476 Section 9. Section **41-6a-1115** is amended to read:

477 **41-6a-1115. Motor assisted scooters -- Conflicting provisions -- Restrictions --**

478 **Penalties.**

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

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

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

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

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

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

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

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

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

492 (a) in a public parking structure;

- 493 (b) on public property posted as an area prohibiting skateboards;
- 494 (c) on a highway consisting of a total of four or more lanes designated for regular
- 495 vehicular traffic;
- 496 (d) on a highway with a posted speed limit greater than 25 miles per hour;
- 497 (e) while carrying more persons at one time than the number for which it is designed;
- 498 or
- 499 (f) that has been structurally or mechanically altered from the original manufacturer's
- 500 design.

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

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

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

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

507 **51-7-22.4. Penalties for violation by certified investment advisers.**

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

- 511 (a) \$1,000 for each day of noncompliance for the investment adviser; and
- 512 (b) \$5,000 for each day of noncompliance for the firm or institution where the certified
 513 investment adviser is employed.

514 (2) In addition to any other penalty for a criminal violation of this chapter, the
 515 sentencing judge may impose any penalty or remedy provided for in Subsection
 516 51-7-22.5(1)(b).

517 (3) Funds collected under Subsection (1) shall be deposited in the General Fund.

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

519 **53-7-226. Violations -- Misdemeanor.**

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

- 521 (1) violates this part;
- 522 (2) violates any order made under this part;
- 523 (3) produces, reproduces, or uses the official seal of registration of the division in any

524 manner or for any purpose inconsistent with the ~~[rules of the board]~~ designated purpose of the
525 seal;

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

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

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

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

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

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

539 **59-14-212. Reporting of imported cigarettes -- Penalty.**

540 (1) Except as provided under Subsection (2), any manufacturer, distributor, wholesaler,
541 or retail dealer who under Section 59-14-205 affixes a stamp to an individual package or
542 container of cigarettes imported to the United States shall provide to the commission the
543 following as they pertain to the imported cigarettes:

544 (a) a copy of the importer's federal import permit;

545 (b) the customs form showing the tax information required by federal law;

546 (c) a statement signed under penalty of perjury by the manufacturer or importer that the
547 manufacturer or importer has complied with:

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

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

552 (d) the name of the person from whom the person affixing the stamp received the
553 cigarettes;

554 (e) the name of the person to whom the person affixing the stamp delivered the

555 cigarettes, unless the person receiving the cigarettes was the ultimate consumer;

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

557 (g) the brand and brand style of the cigarettes.

558 (2) Subsection (1) does not apply to cigarettes sold or intended to be sold as duty-free
559 merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C.
560 1555(b) and any implementing regulations unless the cigarettes are brought back into the
561 customs territory for resale within the customs territory.

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

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

567 (a) is guilty of a class B misdemeanor; and

568 (b) may be subject to:

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

570 (ii) a civil penalty imposed by the commission in an amount not to exceed the greater

571 of:

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

573 or

574 (B) \$5,000.

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

577 Section 13. Section **63C-9-301** is amended to read:

578 **63C-9-301. Board powers -- Subcommittees.**

579 (1) The board shall:

580 (a) except as provided in Subsection (2), exercise complete jurisdiction and
581 stewardship over capitol hill facilities, capitol hill grounds, and the capitol hill complex;

582 (b) preserve, maintain, and restore the capitol hill complex, capitol hill facilities,
583 capitol hill grounds, and their contents;

584 (c) before October 1 of each year, review and approve the executive director's annual
585 budget request for submittal to the governor and Legislature;

586 (d) by October 1 of each year, prepare and submit a recommended budget request for
587 the upcoming fiscal year for the capitol hill complex to:

- 588 (i) the governor, through the Governor's Office of Planning and Budget; and
- 589 (ii) the Legislature's appropriations subcommittee responsible for capitol hill facilities,
590 through the Office of Legislative Fiscal Analyst;

591 (e) review and approve the executive director's:

- 592 (i) annual work plan;
- 593 (ii) long-range master plan for the capitol hill complex, capitol hill facilities, and
594 capitol hill grounds; and
- 595 (iii) furnishings plan for placement and care of objects under the care of the board;

596 (f) approve all changes to the buildings and their grounds, including:

- 597 (i) restoration, remodeling, and rehabilitation projects;
- 598 (ii) usual maintenance program; and
- 599 (iii) any transfers or loans of objects under the board's care;

600 (g) define and identify all significant aspects of the capitol hill complex, capitol hill
601 facilities, and capitol hill grounds, after consultation with the:

- 602 (i) Division of Facilities Construction and Management;
- 603 (ii) State Library Division;
- 604 (iii) Division of Archives and Records Service;
- 605 (iv) Division of State History;
- 606 (v) Office of Museum Services; and
- 607 (vi) Arts Council;

608 (h) inventory, define, and identify all significant contents of the buildings and all
609 state-owned items of historical significance that were at one time in the buildings, after
610 consultation with the:

- 611 (i) Division of Facilities Construction and Management;
- 612 (ii) State Library Division;
- 613 (iii) Division of Archives and Records Service;
- 614 (iv) Division of State History;
- 615 (v) Office of Museum Services; and
- 616 (vi) Arts Council;

617 (i) maintain archives relating to the construction and development of the buildings, the
618 contents of the buildings and their grounds, including documents such as plans, specifications,
619 photographs, purchase orders, and other related documents, the original copies of which shall
620 be maintained by the Division of Archives and Records Service;

621 (j) comply with federal and state laws related to program and facility accessibility; and

622 (k) establish procedures for receiving, hearing, and deciding complaints or other issues
623 raised about the capitol hill complex, capitol hill facilities, and capitol hill grounds, or their
624 use.

625 (2) Notwithstanding Subsection (1)(a), the supervision and control of the legislative
626 area, as defined in Section 36-5-1, is reserved to the Legislature.

627 (3) (a) The board shall make rules to govern, administer, and regulate the capitol hill
628 complex, capitol hill facilities, and capitol hill grounds by following the procedures and
629 requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

630 (b) A person who violates a rule adopted by the board under the authority of this
631 Subsection (3) is ~~guilty of a class C misdemeanor.~~ subject to a civil penalty not to exceed
632 \$2,500 for each violation, plus the amount of any actual damages, expenses, and costs related
633 to the violation of the rule that are incurred by the state.

634 (c) The board may take any other legal action allowed by law.

635 (d) If any violation of a rule adopted by the board is also an offense under Title 76,
636 Utah Criminal Code, the violation is subject to the civil penalty, damages, expenses, and costs
637 allowed under this Subsection (3) in addition to any criminal prosecution.

638 ~~(e)~~ (e) The board may not apply this section or rules adopted under the authority of
639 this section in a manner that violates a person's rights under the Utah Constitution or the First
640 Amendment to the United States Constitution, including the right of persons to peaceably
641 assemble.

642 ~~(f)~~ (f) The board shall send proposed rules under this section to the legislative
643 general counsel and the governor's general counsel for review and comment before the board
644 adopts the rules.

645 (4) The board is exempt from the requirements of Title 63, Chapter 56, Utah
646 Procurement Code, but shall adopt procurement rules substantially similar to the requirements
647 of that chapter.

648 (5) (a) The board may:

649 (i) establish subcommittees made up of board members and members of the public to
650 assist and support the executive director in accomplishing the executive director's duties;

651 (ii) establish fees for the use of capitol hill facilities and capitol hill grounds;

652 (iii) assign and allocate specific duties and responsibilities to any other state agency, if
653 the other agency agrees to perform the duty or accept the responsibility;

654 (iv) contract with another state agency to provide services;

655 (v) delegate by specific motion of the board any authority granted to it by this section
656 to the executive director;

657 (vi) in conjunction with Salt Lake City, expend monies to improve or maintain public
658 property contiguous to East Capitol Boulevard and capitol hill;

659 (vii) provide wireless Internet service to the public without a fee in any capitol hill
660 facility; and

661 (viii) when necessary, consult with the:

662 (A) Division of Facilities Construction and Management;

663 (B) State Library Division;

664 (C) Division of Archives and Records Service;

665 (D) Division of State History;

666 (E) Office of Museum Services; and

667 (F) Arts Council.

668 (b) The board's provision of wireless Internet service under Subsection (5)(a)(vii) shall
669 be discontinued in the legislative area if the president of the Senate and the speaker of the
670 House of Representatives each submit a signed letter to the board indicating that the service is
671 disruptive to the legislative process and is to be discontinued.

672 (c) If a budget subcommittee is established by the board, the following shall serve as ex
673 officio, nonvoting members of the budget subcommittee:

674 (i) the legislative fiscal analyst, or the analyst's designee, who shall be from the Office
675 of Legislative Fiscal Analyst; and

676 (ii) the director of the Governor's Office of Planning and Budget, or the director's
677 designee, who shall be from the Governor's Office of Planning and Budget.

678 (d) If a preservation and maintenance subcommittee is established by the board, the

679 board may, by majority vote, appoint one or each of the following to serve on the
680 subcommittee as voting members of the subcommittee:

681 (i) an architect, who shall be selected from a list of three architects submitted by the
682 American Institute of Architects; or

683 (ii) an engineer, who shall be selected from a list of three engineers submitted by the
684 American Civil Engineers Council.

685 (e) If the board establishes any subcommittees, the board may, by majority vote,
686 appoint up to two people who are not members of the board to serve, at the will of the board, as
687 nonvoting members of a subcommittee.

688 (f) Members of each subcommittee shall, at the first meeting of each calendar year,
689 select one individual to act as chair of the subcommittee for a one-year term.

690 (6) (a) The board, and the employees of the board, may not move the office of the
691 governor, lieutenant governor, president of the Senate, speaker of the House of
692 Representatives, or a member of the Legislature from the State Capitol Building unless the
693 removal is approved by:

694 (i) the governor, in the case of the governor's office;

695 (ii) the lieutenant governor, in the case of the lieutenant governor's office;

696 (iii) the president of the Senate, in the case of the president's office or the office of a
697 member of the Senate; or

698 (iv) the speaker of the House of Representatives, in the case of the speaker's office or
699 the office of a member of the House.

700 (b) The board and the employees of the board have no control over the furniture,
701 furnishings, and decorative objects in the offices of the governor, lieutenant governor, or the
702 members of the Legislature except as necessary to inventory or conserve items of historical
703 significance owned by the state.

704 (c) The board and the employees of the board have no control over records and
705 documents produced by or in the custody of a state agency, official, or employee having an
706 office in a building on the capitol hill complex.

707 (d) Except for items identified by the board as having historical significance, and
708 except as provided in Subsection (6)(b), the board and the employees of the board have no
709 control over moveable furnishings and equipment in the custody of a state agency, official, or

710 employee having an office in a building on the capitol hill complex.

711 Section 14. Section **65A-3-1** is amended to read:

712 **65A-3-1. Trespassing on state lands -- Penalties.**

713 (1) A person is guilty of a class B misdemeanor and liable for the civil damages
714 prescribed in Subsection ~~[(2)]~~ (3) if ~~[he:-(a)]~~, without written authorization from the division,
715 the person:

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

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

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

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

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

723 ~~[(vi)]~~ (f) appropriates, alters, injures, or destroys any historical, prehistorical,
724 archaeological, or paleontological resource on state lands; ~~[or]~~

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

726 (g) camps on the beds of navigable lakes and rivers except in posted and designated
727 areas; or

728 (h) parks or operates motor vehicles on the beds of navigable lakes and rivers except in
729 those areas supervised by the Division of Parks and Recreation or other state or local
730 enforcement entity and which are posted as open to vehicle use.

731 (2) A person is guilty of a class C misdemeanor and liable for civil damages prescribed
732 in Subsection (3) if the person is in violation of any of the following regarding Bear Lake:

733 (a) From October 1 through April 30, motor vehicle use and camping or picnicking are
734 allowed on the exposed lake bed, except that:

735 (i) motor vehicles are not allowed on lands administered by the Division of Parks and
736 Recreation;

737 (ii) the speed limit is 20 miles per hour;

738 (iii) except as necessary to launch or retrieve watercraft, motor vehicles are not allowed
739 within 100 feet of the water's edge; and

740 (iv) motor vehicle travel parallel to the water's edge is allowed, except within 100 feet

741 of the water's edge.

742 (b) From May 1 through September 30, motor vehicle use and camping or picnicking
743 are allowed on the exposed lake bed, except that:

744 (i) motorized vehicle usage is not allowed in areas specifically posted prohibiting
745 usage;

746 (ii) the established speed limit is 15 miles per hour;

747 (iii) except as necessary to launch or retrieve watercraft, motor vehicles are not allowed
748 within 100 feet of the water's edge;

749 (iv) unless posted, no motor vehicles may travel parallel to the water's edge;

750 (v) camping and use of motorized vehicles are prohibited between the hours of 10 p.m.
751 and 7 a.m.; and

752 (vi) no campfires or fireworks are allowed.

753 ~~[(2)]~~ (3) A person who commits any act described in Subsection (1) or (2) is liable for
754 damages in the amount of:

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

757 (b) three times the ~~[amount]~~ value of damage committed; or

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

760 ~~[(3)]~~ (4) In addition to the damages described in Subsection ~~[(2)]~~ (3), a person found
761 guilty of a misdemeanor under Subsection (1) or (2) is subject to the penalties provided in
762 Section 76-3-204.

763 ~~[(4)]~~ (5) Money collected under this section shall be deposited in the fund in which
764 ~~[like]~~ similar revenues from that land would be deposited.

765 Section 15. Section **76-10-1233** is amended to read:

766 **76-10-1233. Content providers -- Material harmful to minors.**

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

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

772 [~~(3)~~] (2) If the attorney general determines that a content provider violates Subsection
773 (1), the attorney general shall:

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

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

778 [~~(4)~~] (3) If a content provider violates this section more than 30 days after receiving the
779 notice provided in Subsection [~~(3)~~] (2), the content provider is guilty of a third degree felony.

780 Section 16. Section **76-10-1234** is enacted to read:

781 **76-10-1234. Rulemaking authority.**

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

Legislative Review Note
as of **1-17-07 6:39 AM**

Office of Legislative Research and General Counsel

Legislative Committee Note
as of **01-17-07 1:11 PM**

The Administrative Rules Review Committee recommended this bill.

S.B. 138 - Administrative Rule Criminal Penalty 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, businesses, or local governments.

1/23/2007, 8:09:24 AM, Lead Analyst: Allred, S.

Office of the Legislative Fiscal Analyst