

MOTOR VEHICLE BUSINESS REGULATION

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sylvia S. Andersen

Senate Sponsor: Dan R. Eastman

LONG TITLE

General Description:

This bill modifies the New Automobile Franchise Act and the Motor Vehicles Code by amending motor vehicle business regulations.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ provides that the requirements for motor vehicle dealers apply to a person who sells off-highway motor vehicles;
- ▶ requires a provider of a motor vehicle dealer orientation class to submit the class curriculum to the Motor Vehicle Division for approval prior to teaching the class;
- ▶ requires a distributor who is either located in the state or has a branch office within the state to maintain a principal place of business;
- ▶ provides that a used motor vehicle dealer whose license has been suspended may liquidate any existing inventory by selling the remaining used motor vehicles to certain persons and provides that the fine for violating the liquidation provisions is a class A misdemeanor; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2008.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **13-14-102**, as last amended by Laws of Utah 2005, Chapters 167 and 249

33 **41-3-102**, as last amended by Laws of Utah 2003, Chapter 157

34 **41-3-201**, as last amended by Laws of Utah 2000, Chapter 311

35 **41-3-204**, as last amended by Laws of Utah 1998, Chapter 165

36 **41-3-206**, as last amended by Laws of Utah 1999, Chapter 239

37 **41-3-701**, as last amended by Laws of Utah 2007, Chapters 105 and 322

38 ENACTS:

39 **41-3-207.5**, Utah Code Annotated 1953



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

42 Section 1. Section **13-14-102** is amended to read:

43 **13-14-102. Definitions.**

44 As used in this chapter:

45 (1) "Advisory board" or "board" means the Utah Motor Vehicle Franchise Advisory
46 Board created in Section 13-14-103.

47 (2) "Affiliate" has the meaning set forth in Section 16-10a-102.

48 (3) "Aftermarket product" means any product or service not included in the
49 manufacturer's suggested retail price of the new motor vehicle, as that price appears on the label
50 required by 15 U.S.C. Sec. 1232(f).

51 (4) "Dealership" means a site or location in this state:

52 (a) at which a franchisee conducts the business of a new motor vehicle dealer; and

53 (b) that is identified as a new motor vehicle dealer's principal place of business for
54 licensing purposes under Section 41-3-204.

55 (5) "Department" means the Department of Commerce.

56 (6) "Executive director" means the executive director of the Department of Commerce.

57 (7) "Franchise" or "franchise agreement" means a written agreement, for a definite or

58 indefinite period, in which:

59 (a) a person grants to another person a license to use a trade name, trademark, service
60 mark, or related characteristic; and

61 (b) a community of interest exists in the marketing of new motor vehicles, new motor
62 vehicle parts, and services related to the sale or lease of new motor vehicles at wholesale or
63 retail.

64 (8) "Franchisee" means a person with whom a franchisor has agreed or permitted, in
65 writing or in practice, to purchase, sell, or offer for sale new motor vehicles manufactured,
66 produced, represented, or distributed by the franchisor.

67 (9) "Franchisor" means a person who has, in writing or in practice, agreed with or
68 permits a franchisee to purchase, sell, or offer for sale new motor vehicles manufactured,
69 produced, represented, or distributed by the franchisor, and includes:

70 (a) the manufacturer or distributor of the new motor vehicles;

71 (b) an intermediate distributor; and

72 (c) an agent, officer, or field or area representative of the franchisor.

73 (10) "Lead" means the referral by a franchisor to a franchisee of a potential customer
74 whose contact information was obtained from a franchisor's program, process, or system
75 designed to generate referrals for the purchase or lease of a new motor vehicle, or for service
76 work related to the franchisor's vehicles.

77 (11) "Line-make" means the motor vehicles that are offered for sale, lease, or
78 distribution under a common name, trademark, service mark, or brand name of the franchisor,
79 or manufacturer of the motor vehicle.

80 (12) "Mile" means 5,280 feet.

81 (13) "Motor home" means a self-propelled vehicle, primarily designed as a temporary
82 dwelling for travel, recreational, or vacation use.

83 (14) (a) "Motor vehicle" means:

84 (i) a travel trailer;

85 (ii) except as provided in Subsection (14)(b), a motor vehicle as defined in Section

86 41-3-102;

87 (iii) a semitrailer as defined in Section 41-1a-102;

88 (iv) a trailer as defined in Section 41-1a-102; and

89 (v) a recreational vehicle.

90 (b) "Motor vehicle" does not include:

91 (i) a motorcycle as defined in Section 41-1a-102[-];

92 (ii) an off-highway vehicle as defined in Section 41-3-102; and

93 (iii) a small trailer as defined in Section 41-3-102.

94 (15) "New motor vehicle" means a motor vehicle as defined in Subsection (14) that has
95 never been titled or registered and has been driven less than 7,500 miles, unless the motor
96 vehicle is a trailer, travel trailer, or semitrailer, in which case the mileage limit does not apply.

97 (16) "New motor vehicle dealer" is a person who is licensed under Subsection
98 41-3-202(1)(a) to sell new motor vehicles.

99 (17) "Notice" or "notify" includes both traditional written communications and all
100 reliable forms of electronic communication unless expressly prohibited by statute or rule.

101 (18) (a) "Recreational vehicle" means a vehicular unit other than a mobile home,
102 primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either
103 self-propelled or pulled by another vehicle.

104 (b) "Recreational vehicle" includes:

105 (i) a travel trailer;

106 (ii) a camping trailer;

107 (iii) a motor home;

108 (iv) a fifth wheel trailer; and

109 (v) a van.

110 (19) (a) "Relevant market area," except with respect to recreational vehicles, means:

111 (i) the county in which a dealership is to be established or relocated; and

112 (ii) the area within a ten-mile radius from the site of the new or relocated dealership.

113 (b) "Relevant market area," with respect to recreational vehicles, means:

114 (i) the county in which the dealership is to be established or relocated; and
115 (ii) the area within a 35-mile radius from the site of the new or relocated dealership.
116 (20) "Sale, transfer, or assignment" means any disposition of a franchise or an interest in
117 a franchise, with or without consideration, including a bequest, inheritance, gift, exchange,
118 lease, or license.

119 (21) "Serve" or "served," unless expressly indicated otherwise by statute or rule,
120 includes any reliable form of communication.

121 (22) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle
122 without motive power, designed as a temporary dwelling for travel, recreational, or vacation use
123 that does not require a special highway movement permit when drawn by a self-propelled motor
124 vehicle.

125 (23) "Written," "write," "in writing," or other variations of those terms shall include all
126 reliable forms of electronic communication.

127 Section 2. Section **41-3-102** is amended to read:

128 **41-3-102. Definitions.**

129 As used in this chapter:

130 (1) "Administrator" means the motor vehicle enforcement administrator.

131 (2) "Agent" means a person other than a holder of any dealer's or salesperson's license
132 issued under this chapter, who for salary, commission, or compensation of any kind, negotiates
133 in any way for the sale, purchase, order, or exchange of three or more motor vehicles for any
134 other person in any 12-month period.

135 (3) "Auction" means a dealer engaged in the business of auctioning motor vehicles,
136 either owned or consigned, to the general public.

137 (4) "Board" means the advisory board created in Section 41-3-106.

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

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

141 (7) "Crusher" means a person who crushes or shreds motor vehicles subject to

142 registration under Title 41, Chapter 1a, Motor Vehicle Act, to reduce the useable materials and
143 metals to a more compact size for recycling.

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

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

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

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

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

153 (b) "Dismantler" includes a person who dismantles three or more motor vehicles in any
154 12-month period.

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

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

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

165 (13) "Division" means the Motor Vehicle Enforcement Division created in Section
166 41-3-104.

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

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

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

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

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

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

- 185 (i) self-propelled; [~~or~~]
- 186 (ii) a trailer, travel trailer, or semitrailer[-]; or
- 187 (iii) an off-highway vehicle or small trailer.

188 (b) "Motor vehicle" does not include:

- 189 (i) mobile homes as defined in Section 41-1a-102;
- 190 (ii) trailers of 750 pounds or less unladen weight; and
- 191 (iii) farm tractors and other machines and tools used in the production, harvesting, and
192 care of farm products.

193 (20) "New motor vehicle" means a motor vehicle that has never been titled or registered
194 and has been driven less than 7,500 miles, unless the motor vehicle is [~~a~~] an off-highway vehicle,
195 small trailer, trailer, travel trailer, or semitrailer, in which case the mileage limit does not apply.

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

197 (22) "Pawnbroker" means a person whose business is to lend money on security of

198 personal property deposited with him.

199 (23) "Principal place of business" means a site or location in this state:

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

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

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

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

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

219 (26) "Semitrailer" has the same meaning as defined in Section 41-1a-102.

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

222 (28) "Special equipment" includes a truck mounted crane, cherry picker, material lift,
223 post hole digger, and a utility or service body.

224 (29) "Special equipment dealer" means a new or new and used motor vehicle dealer
225 engaged in the business of buying new incomplete motor vehicles with a gross vehicle weight of

226 12,000 or more pounds and installing special equipment on the incomplete motor vehicle.

227 (30) "Trailer" has the same meaning as defined in Section 41-1a-102.

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

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

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

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

237 Section 3. Section **41-3-201** is amended to read:

238 **41-3-201. Licenses required -- Restitution -- Education.**

239 (1) As used in this section, "new applicant" means a person who is applying for a
240 license that the person has not been issued during the previous licensing year.

241 (2) A person may not act as any of the following without having procured a license
242 issued by the administrator:

243 (a) a dealer[;];

244 (b) salvage vehicle buyer[;];

245 (c) salesperson[;];

246 (d) manufacturer[;];

247 (e) transporter[;];

248 (f) dismantler[;];

249 (g) distributor[;];

250 (h) factory branch and representative[;];

251 (i) distributor branch and representative[;];

252 (j) crusher[;];

253 (k) remanufacturer[~~and~~]; or

254 (1) body shop.

255 (3) (a) A person may not bid on or purchase a vehicle with a salvage certificate as
256 defined in Section 41-1a-1001 at or through ~~any~~ a motor vehicle auction unless the person is a
257 licensed salvage vehicle buyer.

258 (b) A person may not offer for sale, sell, or exchange a vehicle with a salvage certificate
259 as defined in Section 41-1a-1001 at or through ~~any~~ a motor vehicle auction except to a
260 licensed salvage vehicle buyer.

261 (4) A supplemental license shall be secured by a dealer, manufacturer, remanufacturer,
262 transporter, dismantler, crusher, or body shop for each additional place of business maintained
263 by ~~him~~ the licensee.

264 (5) A person who has been convicted of any law relating to motor vehicle commerce or
265 motor vehicle fraud may not be issued a license unless full restitution regarding those
266 convictions has been made.

267 (6) (a) The division may not issue a license to a new applicant for a new or used motor
268 vehicle dealer license, a new or used motorcycle dealer license, or a small trailer dealer license
269 unless the new applicant completes an eight-hour orientation class approved by the division that
270 includes education on motor vehicle laws and rules.

271 (b) The approved costs of the orientation class shall be paid by the new applicant.

272 (c) The class shall be completed by the new applicant and the applicant's partners,
273 corporate officers, bond indemnitors, and managers.

274 (d) (i) The division shall approve:

275 ~~(i)~~ (A) providers of the orientation class; and

276 ~~(ii)~~ (B) costs of the orientation class.

277 (ii) A provider of an orientation class shall submit the orientation class curriculum to the
278 division for approval prior to teaching the orientation class.

279 Section 4. Section **41-3-204** is amended to read:

280 **41-3-204. Licenses -- Principal place of business as prerequisite -- Change of**
281 **location -- Relinquishment on loss of principal place of business.**

282 (1) (a) The following licensees must maintain a principal place of business:

283 (i) dealers[;];

284 (ii) special equipment dealers[;];

285 (iii) manufacturers[;];

286 (iv) transporters[;];

287 (v) remanufacturers[;];

288 (vi) dismantlers[;];

289 (vii) crushers[; and];

290 (viii) body shops[-]; and

291 (ix) distributors who:

292 (A) are located within the state; or

293 (B) have a branch office within the state.

294 (b) The administrator may not issue a license under Subsection (1)(a) to an applicant
295 who does not have a principal place of business.

296 (c) If a licensee changes the location of his principal place of business, he shall
297 immediately notify the administrator and a new license shall be granted for the unexpired
298 portion of the term of the original license at no additional fee.

299 (2) (a) If a licensee loses possession of a principal place of business, the license is
300 automatically suspended and he shall immediately notify the administrator and upon demand by
301 the administrator deliver the license, pocket cards, special plates, and temporary permits to the
302 administrator.

303 (b) The administrator shall hold the licenses, cards, plates, and permits until the licensee
304 obtains a principal place of business.

305 Section 5. Section **41-3-206** is amended to read:

306 **41-3-206. Duration of licenses -- Expiration date -- Renewal.**

307 (1) Except as provided in Subsection (2), each license issued under this chapter expires
308 on June 30 of each year and may be renewed upon application and payment of a fee required
309 under Section 41-3-601, if the license has not been suspended or revoked.

310 (2) A motor vehicle salesperson's license expires as provided under Subsection (1) or
311 when the salesperson terminates employment with the dealer with whom he is licensed,
312 whichever comes first.

313 (3) (a) Beginning July 1, 1999, the division may not renew a license for a new or used
314 motor vehicle dealer's license, a new or used motorcycle dealer's license, or a small trailer
315 dealer's license unless the renewal applicant completes a three-hour class approved by the
316 division that includes education on new motor vehicle laws and rules.

317 (b) The approved costs of the class shall be paid by the renewal applicant.

318 (c) The class shall be completed by the renewal applicant or any designated
319 representative of the renewal applicant dealer.

320 (d) The division shall approve:

321 (i) the class providers; and

322 (ii) costs of the class.

323 Section 6. Section **41-3-207.5** is enacted to read:

324 **41-3-207.5. Liquidation of inventory for suspended used motor vehicle dealers.**

325 (1) A used motor vehicle dealer whose used motor vehicle dealer's license has been
326 suspended may liquidate any remaining inventory by selling the remaining used motor vehicles
327 to:

328 (a) a licensed auto auction;

329 (b) another licensed motor vehicle dealer; or

330 (c) to any person, but only after the used motor vehicle has been titled in the name of
331 the owner, partner, or corporate officer of the used motor vehicle dealer for at least 12 months.

332 (2) A dealer may sell inventory under Subsections (1)(a) and (b) for up to 90 days from
333 the date the dealer's used motor vehicle dealer's license was suspended.

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

335 **41-3-701. Violations as misdemeanors.**

336 (1) Except as otherwise provided in this chapter, any person who violates this chapter is
337 guilty of a class B misdemeanor.

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

339 (b) Once a person has met the criteria for the offense of acting as a dealer without a
340 license, each additional motor vehicle the person sells, displays for sale, offers for sale or
341 exchange, or leases in that 12-month period without becoming licensed under Section 41-3-202
342 is a separate violation.

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

345 (4) A person who violates Section 41-3-207.5 is guilty of a class A misdemeanor.

346 Section 8. **Effective date.**

347 This bill takes effect on July 1, 2008.