

MOTOR VEHICLE BUSINESS AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Don L. Ipson

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill modifies the Motor Vehicles Code by amending provisions relating to motor vehicle business.

Highlighted Provisions:

This bill:

- ▶ amends priority rights for certain security interests in certain motor vehicles;
- ▶ amends constructive notice provisions for liens and encumbrances against vehicles, vessels, and outboard motors;
- ▶ provides that certain corporate surety bonds shall be conditioned upon the dealer not violating certain provisions;
- ▶ provides that reasonable cause for denial, suspension, or revocation of a license includes having had a license revoked within five years from the date of application;
- ▶ specifies certain acts or practices that are unlawful for a motor vehicle business licensee to engage in;
- ▶ amends provisions relating to the payoff of liens on motor vehicles traded in; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

30 AMENDS:

31 **41-1a-601**, as last amended by Laws of Utah 2007, Chapter 272

32 **41-1a-604**, as last amended by Laws of Utah 1992, Chapter 218 and renumbered and
33 amended by Laws of Utah 1992, Chapter 1

34 **41-1a-606**, as last amended by Laws of Utah 2000, Chapter 252

35 **41-3-205**, as last amended by Laws of Utah 2007, Chapter 267

36 **41-3-209**, as last amended by Laws of Utah 2008, Chapter 382

37 **41-3-402**, as last amended by Laws of Utah 2006, Chapter 108

38 ENACTS:

39 **41-3-211**, Utah Code Annotated 1953

40 REPEALS AND REENACTS:

41 **41-1a-605**, as last amended by Laws of Utah 2006, Chapter 252



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

44 Section 1. Section **41-1a-601** is amended to read:

45 **41-1a-601. Lien validity -- Security interest.**

46 (1) Except as provided under Subsection (2) or (3), a lien upon a vehicle, vessel, or
47 outboard motor, except a lien dependent upon possession, is not valid against the creditors of
48 an owner acquiring a lien by levy or attachment, or subsequent purchasers, or encumbrancers
49 without notice until Sections 41-1a-602 through 41-1a-606 have been complied with.

50 (2) Security interests in inventory consisting in part of vehicles subject to registration
51 under this chapter, that are held for sale by a person in the business of selling goods of that
52 kind, shall be perfected under Section 70A-9a-310, except that:

53 (a) buyers in the ordinary course of business, as defined in Section 70A-1a-201, take
54 free of the security interests as provided in Section 70A-9a-320[-]; and

55 (b) security interests of persons extending credit to buyers in the ordinary course of
56 business, as defined in Section 70A-1a-201, take free of the security interests as provided in
57 Section 70A-9a-320.

58 (3) Security interests in inventory consisting in part of vehicles subject to registration
59 under this chapter, which are held for sale by a person in the business of selling goods of that
60 kind, shall be perfected under Section 70A-9a-310, except that a lienholder with a security
61 interest noted on the title shall have priority unless the lienholder has been paid in full in
62 accordance with Section 41-3-402.

63 Section 2. Section **41-1a-604** is amended to read:

64 **41-1a-604. Filing effective to give notice of liens.**

65 The filing and the issuance of a new certificate of title under Sections 41-1a-602 and
66 41-1a-603 constitute constructive notice of all liens and encumbrances against the vehicle,
67 vessel, and outboard motor to creditors of the owner, to a person financing the inventory of a
68 motor vehicle dealer that sells or offers the vehicle for sale, and to subsequent purchasers and
69 encumbrancers.

70 Section 3. Section **41-1a-605** is repealed and reenacted to read:

71 **41-1a-605. Constructive notice.**

72 (1) If a person files an application in the form for an original certificate of title in
73 accordance with Section 41-1a-602 within 30 days after the owner receives a delivery of the
74 vehicle, vessel, or outboard motor, constructive notice dates from the time of the execution of
75 the document creating the security interest, and the security interest takes priority over the
76 rights of a buyer, lessee, or lien creditor which arise after the time of execution of the
77 document creating the security interest.

78 (2) If a person files an application in the form for an original certificate of title
79 pursuant to Section 41-1a-602 after 30 days after the owner receives delivery of the vehicle,
80 vessel, or outboard motor, constructive notice dates from the time of filing of the document
81 creating the security interest, and the security interest takes priority over the rights of a buyer,
82 lessee, or lien creditor as of the time of filing.

83 (3) If a person relocates a motor vehicle within the state with a title issued by another
84 state bearing a lien, the rights of the lienholder are perfected in accordance with the law of the
85 state issuing the title.

86 Section 4. Section **41-1a-606** is amended to read:

87 **41-1a-606. Method of giving notice -- Exceptions.**

88 The method provided in Sections 41-1a-602 through 41-1a-605, for giving
89 [~~constructive~~] notice of a lien or encumbrance upon a registered vehicle is exclusive except for
90 liens dependent upon possession and any lien or encumbrance filed as provided under this
91 chapter, which are exempt from the provisions of Section 70A-9a-311, and other provisions of
92 law that otherwise require or relate to the recording or filing of instruments creating or
93 evidencing title retention or other liens or encumbrances upon vehicles of a type subject to
94 registration under this chapter.

95 Section 5. Section **41-3-205** is amended to read:

96 **41-3-205. Licenses -- Bonds required -- Maximum liability -- Action against**
97 **surety -- Loss of bond.**

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

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

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

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

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

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

109 (c) The form of the bond:

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

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

112 (A) fraud;

113 (B) fraudulent representation; [~~or~~]

114 (C) violating Subsection 41-3-301(1) which requires a dealer to submit or deliver a
115 certificate of title or manufacturer's certificate of origin; [~~and~~] or

116 (D) violating Subsection 41-3-402(1) which requires payoff of liens on motor vehicles
117 traded in; and

118 (iii) may be continuous in form.

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

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

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

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

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

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

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

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

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

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

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

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

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

148 (b) A surety or principal may not be awarded attorney fees that exceed \$2,500 for an
149 interpleader action filed under Subsection (3)(d).

150 (5) (a) (i) If a dealer, body shop, or crusher loses possession of the bond required by
151 this chapter, the dealer, body shop, or crusher license is automatically suspended.

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

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

157 (6) A representative or consignee of a dealer is not required to file a bond if the dealer
158 for whom the representative or consignee acts fully complies with the provisions of this
159 chapter.

160 Section 6. Section **41-3-209** is amended to read:

161 **41-3-209. Administrator's findings -- Suspension and revocation of license.**

162 (1) If the administrator finds that an applicant is not qualified to receive a license, a
163 license may not be granted.

164 (2) (a) If the administrator finds that there is reasonable cause to deny, suspend, or
165 revoke a license issued under this chapter, the administrator shall deny, suspend, or revoke the
166 license.

167 (b) Reasonable cause for denial, suspension, or revocation of a license includes, in
168 relation to the applicant or license holder or any of its partners, officers, or directors:

169 (i) lack of a principal place of business;

- 170 (ii) lack of a sales tax license required under Title 59, Chapter 12, Sales and Use Tax
171 Act;
- 172 (iii) lack of a bond in effect as required by this chapter;
- 173 (iv) current revocation or suspension of a dealer, dismantler, auction, or salesperson
174 license issued in another state;
- 175 (v) nonpayment of required fees;
- 176 (vi) making a false statement on any application for a license under this chapter or for
177 special license plates;
- 178 (vii) a violation of any state or federal law involving motor vehicles;
- 179 (viii) a violation of any state or federal law involving controlled substances;
- 180 (ix) charges filed with any county attorney, district attorney, or U.S. attorney in any
181 court of competent jurisdiction for a violation of any state or federal law involving motor
182 vehicles;
- 183 (x) a violation of any state or federal law involving fraud; [~~or~~]
- 184 (xi) a violation of any state or federal law involving a registerable sex offense under
185 Section 77-27-21.5[~~;~~]; or
- 186 (xii) having had a license issued under this chapter revoked within five years from the
187 date of application.
- 188 (c) Any action taken by the administrator under Subsection (2)(b)(ix) shall remain in
189 effect until a final resolution is reached by the court involved or the charges are dropped.
- 190 (3) If the administrator finds that the license holder has been convicted by a court of
191 competent jurisdiction of violating any of the provisions of this chapter or any rules made by
192 the administrator, or finds other reasonable cause, the administrator may, by complying with
193 the emergency procedures of Title 63G, Chapter 4, Administrative Procedures Act:
- 194 (a) suspend the license on terms and for a period of time the administrator finds
195 reasonable; or
- 196 (b) revoke the license.
- 197 (4) (a) After suspending or revoking a license, the administrator may take reasonable

198 action to:

199 (i) notify the public that the licensee is no longer in business; and

200 (ii) prevent the former licensee from violating the law by conducting business without
201 a license.

202 (b) Action under Subsection (4)(a) may include signs, banners, barriers, locks,
203 bulletins, and notices.

204 (c) Any business being conducted incidental to the business for which the former
205 licensee was licensed may continue to operate subject to the preventive action taken under this
206 subsection.

207 Section 7. Section **41-3-211** is enacted to read:

208 **41-3-211. Unlawful acts or practices.**

209 (1) A licensee may not knowingly or intentionally engage in any of the following
210 unlawful acts or practices:

211 (a) provide a financial institution or person being contacted to provide financing for
212 the purchase of a motor vehicle, a motor vehicle contract of sale, document of sale, contract,
213 request for proposal, or other document that does not accurately state:

214 (i) the terms of the motor vehicle purchase; or

215 (ii) if the vehicle is a rebuilt vehicle;

216 (b) sell a motor vehicle to a purchaser that is subject to financing that is not the motor
217 vehicle described in a motor vehicle contract of sale, document of sale, contract, request for
218 proposal, or other document as of the time the contract of sale, document of sale, contract,
219 request for proposal, or other document provided to the financial institution or person
220 providing financing; or

221 (c) make payments on any loan or lease on a motor vehicle subject to a loan or lease
222 that is subject to the payoff requirements of Subsection 41-3-402(1).

223 (2) The provisions of Subsection (1)(c) do not prohibit a dealer from making one or
224 more loan or lease payments for a motor vehicle if making the payments is:

225 (a) stated in writing in a motor vehicle contract of sale, document of sale, contract,

226 request for proposal, or other document; or

227 (b) stated in the notice to the lienholder of the trade-in of the vehicle as required by
228 Subsection 41-3-402(5).

229 (3) A person who violates the provisions of this section is subject to the penalties
230 provided in Section 41-3-701 and Subsection 41-3-702(1)(a).

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

232 **41-3-402. Payoff of liens on motor vehicles traded in.**

233 (1) If a dealer takes a trade-in from a retail customer as part of the sale or lease of a
234 motor vehicle and there is an outstanding loan balance owing on the trade-in, then the
235 dealer[-];

236 (a) within 21 calendar days of the date of sale or lease, or within 15 calendar days of
237 receiving payment in full for the motor vehicle it sold, whichever date is earlier, shall remit
238 payment to the lienholder sufficient to pay off the lien on the traded in motor vehicle, unless
239 the underlying contract of sale or lease contract has been rescinded before expiration of the 21
240 days[-]; and

241 (b) shall remit payment to the lienholder sufficient to pay off the lien on the traded in
242 motor vehicle prior to selling the motor vehicle unless Subsection (2) is complied with.

243 (2) (a) A dealer shall, at the time of sale of a motor vehicle with a trade-in, notify in
244 writing the person trading in the vehicle that the person remains responsible for any unpaid
245 loan, lease, or other obligation related to the vehicle being traded in.

246 (b) The person trading in the vehicle must separately acknowledge receipt of the
247 notice and acknowledge in writing the person's continuing obligation related to the vehicle
248 being traded in.

249 (3) The notice and acknowledgment required under Subsection (2) may be combined
250 with an authorization for payoff and shall contain the following:

251 (a) the customer's name;

252 (b) the customer's address;

253 (c) the dealer's name;

254 (d) the dealer's address;
255 (e) notice to the customer that the motor vehicle the customer is trading in is subject to
256 an unpaid loan, lease, or other obligation;
257 (f) notice to the customer that the customer remains responsible for the unpaid loan,
258 lease, or other obligation despite the trade-in of the motor vehicle; and
259 (g) acknowledgment by signature of the customer that the customer remains
260 responsible for payment of the unpaid loan, lease, or other obligation.
261 (4) (a) A dealer shall, within seven calendar days of the date of a trade-in, notify a
262 lienholder on the motor vehicle that the vehicle has been traded in.
263 (b) The notice under Subsection (4)(a) is not required if the lien is fully satisfied
264 within seven calendar days of the date of a trade-in.
265 ~~[(2) A lienholder who has been paid in full by a dealer in accordance with the terms of~~
266 ~~this section shall deliver to the dealer a properly executed title that releases the lien within:]~~
267 ~~[(a) one business day after the business day on which the funds are received when the~~
268 ~~funds are in cash, cashier's check, certified check, teller's check, or other certified source of~~
269 ~~funds;]~~
270 ~~[(b) three business days after the business day on which the funds are received when~~
271 ~~the funds are in the form of a check drawn on a local originating depository institution; or]~~
272 ~~[(c) six business days after the business day on which the funds are received when the~~
273 ~~funds are in the form of a check drawn on a nonlocal originating depository institution.]~~
274 (5) The notice to the lienholder required by Subsection (4) may be combined with an
275 authorization for payoff or a notice to the person trading in the motor vehicle subject to the
276 lien and shall contain the following:
277 (a) notice that a motor vehicle subject to the lienholder's lien has been traded in;
278 (b) notice that the person trading in the motor vehicle subject to the lien has been
279 provided with a notice as required by Subsection (3);
280 (c) the date the motor vehicle was traded in; and
281 (d) (i) a statement that payment for the lien accompanies the notice; or

282 (ii) a statement that payment will be made within the time frame required under
283 Subsection (1).

284 **(6) A lienholder shall deliver to the dealer a properly executed title that releases the**
285 **lien within nine calendar days after the day on which the funds are received if the lienholder:**

286 **(a) has possession of the title for the motor vehicle; and**

287 **(b) has been paid in full.**

288 **(7) (a) A lienholder who does not have possession of the title but has its account paid**
289 **in full by a dealer shall provide the dealer with a written statement that the lienholder no**
290 **longer claims a lien against the motor vehicle.**

291 **(b) The statement described in Subsection (7)(a) shall be provided within the time**
292 **limit required by Subsection (6).**

293 ~~[(3)]~~ **(8)** If the final day for performing an act under this section falls on a Saturday,
294 Sunday, or a legal holiday, then the time for performance is extended to the immediately
295 following business day.

296 ~~[(4)]~~ **(9)** A dealer's failure to comply with the provisions of this section subjects the
297 dealer to the sanctions set forth in Section 41-3-701.

298 ~~[(5)]~~ **(10)** A person who trades in a motor vehicle to a dealer and who thereafter
299 sustains loss or damage as a result of a dealer's failure to pay off a properly recorded lien on
300 the traded in motor vehicle within the time specified by Subsection (1)~~[(b)]~~, may bring an
301 action against the offending dealer to recover damages proximately caused by the dealer's
302 failure to comply with the provisions of this section, together with costs and reasonable
303 ~~[attorneys']~~ attorney fees.