

Representative Don L. Ipson proposes the following substitute bill:

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



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **41-1a-601**, as last amended by Laws of Utah 2007, Chapter 272

31 **41-1a-604**, as last amended by Laws of Utah 1992, Chapter 218 and renumbered and
32 amended by Laws of Utah 1992, Chapter 1

33 **41-1a-606**, as last amended by Laws of Utah 2000, Chapter 252

34 **41-3-205**, as last amended by Laws of Utah 2007, Chapter 267

35 **41-3-209**, as last amended by Laws of Utah 2008, Chapter 382

36 **41-3-402**, as last amended by Laws of Utah 2006, Chapter 108

37 ENACTS:

38 **41-3-211**, Utah Code Annotated 1953

39 REPEALS AND REENACTS:

40 **41-1a-605**, as last amended by Laws of Utah 2006, Chapter 252



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

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

44 **41-1a-601. Lien validity -- Security interest.**

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

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

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

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

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

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

63 **41-1a-604. Filing effective to give notice of liens.**

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

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

70 **41-1a-605. Constructive notice.**

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

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

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

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

86 **41-1a-606. Method of giving notice -- Exceptions.**

87 The method provided in Sections 41-1a-602 through 41-1a-605, for giving

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

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

95 **41-3-205. Licenses -- Bonds required -- Maximum liability -- Action against**
96 **surety -- Loss of bond.**

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

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

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

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

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

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

108 (c) The form of the bond:

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

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

111 (A) fraud;

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

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

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

117 (iii) may be continuous in form.

118 (d) The total aggregate liability on the bond to all persons making claims, regardless of

119 the number of claimants or the number of years a bond remains in force, may not exceed the
120 amount of the bond.

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

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

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

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

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

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

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

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

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

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

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

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

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

149 (5) (a) (i) If a dealer, body shop, or crusher loses possession of the bond required by

150 this chapter, the dealer, body shop, or crusher license is automatically suspended.

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

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

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

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

160 **41-3-209. Administrator's findings -- Suspension and revocation of license.**

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

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

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

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

169 (ii) lack of a sales tax license required under Title 59, Chapter 12, Sales and Use Tax
170 Act;

171 (iii) lack of a bond in effect as required by this chapter;

172 (iv) current revocation or suspension of a dealer, dismantler, auction, or salesperson
173 license issued in another state;

174 (v) nonpayment of required fees;

175 (vi) making a false statement on any application for a license under this chapter or for
176 special license plates;

177 (vii) a violation of any state or federal law involving motor vehicles;

178 (viii) a violation of any state or federal law involving controlled substances;

179 (ix) charges filed with any county attorney, district attorney, or U.S. attorney in any
180 court of competent jurisdiction for a violation of any state or federal law involving motor

181 vehicles;

182 (x) a violation of any state or federal law involving fraud; [or]

183 (xi) a violation of any state or federal law involving a registerable sex offense under
184 Section 77-27-21.5[~~7~~]; or

185 (xii) having had a license issued under this chapter revoked within five years from the
186 date of application.

187 (c) Any action taken by the administrator under Subsection (2)(b)(ix) shall remain in
188 effect until a final resolution is reached by the court involved or the charges are dropped.

189 (3) If the administrator finds that the license holder has been convicted by a court of
190 competent jurisdiction of violating any of the provisions of this chapter or any rules made by
191 the administrator, or finds other reasonable cause, the administrator may, by complying with
192 the emergency procedures of Title 63G, Chapter 4, Administrative Procedures Act:

193 (a) suspend the license on terms and for a period of time the administrator finds
194 reasonable; or

195 (b) revoke the license.

196 (4) (a) After suspending or revoking a license, the administrator may take reasonable
197 action to:

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

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

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

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

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

207 **41-3-211. Unlawful acts or practices.**

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

210 (a) provide a financial institution or person being contacted to provide financing for the
211 purchase of a motor vehicle, a motor vehicle contract of sale, document of sale, contract,

212 request for proposal, or other document that does not accurately state:

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

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

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

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

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

224 (a) stated in writing in a motor vehicle contract of sale, document of sale, contract,
225 request for proposal, or other document; or

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

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

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

231 **41-3-402. Payoff of liens on motor vehicles traded in.**

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

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

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

242 (2) (a) A dealer shall, at the time of sale of a motor vehicle with a trade-in, notify in

243 writing the person trading in the vehicle that the person remains responsible for any unpaid
244 loan, lease, or other obligation related to the vehicle being traded in.

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

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

250 (a) the customer's name;

251 (b) the customer's address;

252 (c) the dealer's name;

253 (d) the dealer's address;

254 (e) notice to the customer that the motor vehicle the customer is trading in is subject to
255 an unpaid loan, lease, or other obligation;

256 (f) notice to the customer that the customer remains responsible for the unpaid loan,
257 lease, or other obligation despite the trade-in of the motor vehicle; and

258 (g) acknowledgment by signature of the customer that the customer remains
259 responsible for payment of the unpaid loan, lease, or other obligation.

260 (4) (a) A dealer shall, within seven calendar days of the date of a trade-in, notify a
261 lienholder on the motor vehicle that the vehicle has been traded in.

262 (b) The notice under Subsection (4)(a) is not required if the lien is fully satisfied within
263 seven calendar days of the date of a trade-in.

264 ~~[(2) A lienholder who has been paid in full by a dealer in accordance with the terms of~~
265 ~~this section shall deliver to the dealer a properly executed title that releases the lien within:]~~

266 ~~[(a) one business day after the business day on which the funds are received when the~~
267 ~~funds are in cash, cashier's check, certified check, teller's check, or other certified source of~~
268 ~~funds;]~~

269 ~~[(b) three business days after the business day on which the funds are received when~~
270 ~~the funds are in the form of a check drawn on a local originating depository institution; or]~~

271 ~~[(c) six business days after the business day on which the funds are received when the~~
272 ~~funds are in the form of a check drawn on a nonlocal originating depository institution.]~~

273 (5) The notice to the lienholder required by Subsection (4) may be combined with an

274 authorization for payoff or a notice to the person trading in the motor vehicle subject to the lien
275 and shall contain the following:

276 (a) notice that a motor vehicle subject to the lienholder's lien has been traded in;

277 (b) notice that the person trading in the motor vehicle subject to the lien has been

278 provided with a notice as required by Subsection (3);

279 (c) the date the motor vehicle was traded in; and

280 (d) (i) a statement that payment for the lien accompanies the notice; or

281 (ii) a statement that payment will be made within the time frame required under

282 Subsection (1).

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

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

286 (b) has been paid in full.

287 (7) (a) A lienholder who does not have possession of the title but has its account paid

288 in full by a dealer shall provide the dealer with a written statement that the lienholder no longer
289 claims a lien against the motor vehicle.

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

292 [~~3~~] (8) If the final day for performing an act under this section falls on a Saturday,
293 Sunday, or a legal holiday, then the time for performance is extended to the immediately
294 following business day.

295 [~~4~~] (9) A dealer's failure to comply with the provisions of this section subjects the
296 dealer to the sanctions set forth in Section 41-3-701.

297 [~~5~~] (10) A person who trades in a motor vehicle to a dealer and who thereafter
298 sustains loss or damage as a result of a dealer's failure to pay off a properly recorded lien on the
299 traded in motor vehicle within the time specified by Subsection (1)[~~b~~], may bring an action
300 against the offending dealer to recover damages proximately caused by the dealer's failure to
301 comply with the provisions of this section, together with costs and reasonable [~~attorneys'~~
302 attorney fees.

H.B. 404 1st Sub. (Buff) - Motor Vehicle Business Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Individuals and businesses not complying with lawful motor vehicle business practices could experience an increase in fines. Local governments may experience an increase in fine revenue.
