

# HB0394S01 compared with HB0394

~~text~~ shows text that was in HB0394 but was deleted in HB0394S01.

text shows text that was not in HB0394 but was inserted into HB0394S01.

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Representative Kim Coleman proposes the following substitute bill:

## NEW CAR SALES AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kim Coleman**

Senate Sponsor: \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill modifies provisions relating to the sale of new motor vehicles.

#### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows and creates a license for a new car dealer to conduct business exclusively online;
- ▶ creates a license for an online salesperson;
- ▶ exempts ~~a franchisee who operates exclusively~~ an online dealer from the provisions of the New Automobile Franchise Act; and
- ▶ makes technical and conforming changes.

#### Money Appropriated in this Bill:

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None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**41-1a-802**, as last amended by Laws of Utah 2005, Chapter 32

**41-3-102**, as last amended by Laws of Utah 2014, Chapter 237

**41-3-103**, as last amended by Laws of Utah 2010, Chapter 393

**41-3-105**, as last amended by Laws of Utah 2010, Chapter 393

**41-3-201**, as last amended by Laws of Utah 2013, Chapter 463

**41-3-202**, as last amended by Laws of Utah 2009, Chapter 78

**41-3-203**, as renumbered and amended by Laws of Utah 1992, Chapter 234

**41-3-204**, as last amended by Laws of Utah 2008, Chapter 388

**41-3-209**, as last amended by Laws of Utah 2012, Chapter 145

**41-3-210**, as last amended by Laws of Utah 2007, Chapter 322

~~{ **59-12-107**, as last amended by Laws of Utah 2012, Chapters 178, 312, and 399~~

#### ENACTS:

**13-14-108**, Utah Code Annotated 1953

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

Section 1. Section **13-14-108** is enacted to read:

**13-14-108. Applicability.**

The provisions of this chapter do not apply to ~~{the parties to a franchise agreement under which the franchisee agrees to transact business exclusively}~~ an online dealer as defined in Section 41-3-102.

Section 2. Section **41-1a-802** is amended to read:

**41-1a-802. Identification number inspectors -- Duties.**

(1) The following are qualified identification number inspectors:

- (a) the commission;
- (b) designated officers and employees of the division;
- (c) a person operating a safety inspection station under Title 53, Chapter 8, Part 2,

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Motor Vehicle Safety Inspection Act;

- (d) an official inspection station certified inspector;
- (e) a dealer licensed under Subsection 41-3-202(1), (2), [~~(3)~~, or] (4), or (5); and
- (f) all peace officers of the state.

(2) The qualified identification number inspectors shall, upon the application for the first registration in this state of any vehicle:

- (a) inspect the identification number of the vehicle;
- (b) make a record of the identification number inspection upon an application form

provided by the division; and

- (c) verify the facts in the application.

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

### **41-3-102. Definitions.**

As used in this chapter:

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

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

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

(4) "Authorized service center" means a person who:

(a) is authorized by an online dealer to complete warranty repair work for motor vehicles in the same line-make as the online dealer; and

(b) is permanently located in the state.

~~[(4)]~~ (5) "Board" means the advisory board created in Section 41-3-106.

~~[(5)]~~ (6) "Body shop" means a business engaged in rebuilding, restoring, repairing, or painting primarily the body of motor vehicles damaged by collision or natural disaster.

~~[(6)]~~ (7) "Commission" means the State Tax Commission.

~~[(7)]~~ (8) "Crusher" means a person who crushes or shreds motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, to reduce the useable materials and metals to a more compact size for recycling.

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~~[(8)]~~[(9)] (a) "Dealer" means a person:

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

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

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

~~[(9)]~~[(10)] (a) "Dismantler" means a person engaged in the business of dismantling motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, for the resale of parts or for salvage.

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

~~[(10)]~~[(11)] "Distributor" means a person who has a franchise from a manufacturer of motor vehicles to distribute motor vehicles within this state and who in whole or in part sells or distributes new motor vehicles to dealers or who maintains distributor representatives.

~~[(11)]~~[(12)] "Distributor branch" means a branch office similarly maintained by a distributor for the same purposes a factory branch is maintained.

~~[(12)]~~[(13)] "Distributor representative" means a person and each officer and employee of the person engaged as a representative of a distributor or distributor branch of motor vehicles to make or promote the sale of the distributor or the distributor branch's motor vehicles, or for supervising or contacting dealers or prospective dealers of the distributor or the distributor branch.

~~[(13)]~~[(14)] "Division" means the Motor Vehicle Enforcement Division created in Section 41-3-104.

~~[(14)]~~[(15)] "Factory branch" means a branch office maintained by a person who manufactures or assembles motor vehicles for sale to distributors, motor vehicle dealers, or who directs or supervises the factory branch's representatives.

~~[(15)]~~[(16)] "Factory representative" means a person and each officer and employee of the person engaged as a representative of a manufacturer of motor vehicles or by a factory branch to make or promote the sale of the manufacturer's or factory branch's motor vehicles, or for supervising or contacting the dealers or prospective dealers of the manufacturer or the factory branch.

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~~[(16)]~~ (17) "Franchise" means a contract or agreement between a dealer and a manufacturer of new motor vehicles or its distributor or factory branch by which the dealer is authorized to sell any specified make or makes of new motor vehicles.

(18) "Line-make" has the same meaning as that term is defined in Section 13-14-102.

~~[(17)]~~ (19) "Manufacturer" means a person engaged in the business of constructing or assembling new motor vehicles, ownership of which is customarily transferred by a manufacturer's statement or certificate of origin, or a person who constructs three or more new motor vehicles in any 12-month period.

~~[(18)]~~ (20) "Motorcycle" has the same meaning as defined in Section 41-1a-102.

~~[(19)]~~ (21) (a) "Motor vehicle" means a vehicle that is:

- (i) self-propelled;
- (ii) a trailer, travel trailer, or semitrailer; or
- (iii) an off-highway vehicle or small trailer.

(b) "Motor vehicle" does not include:

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

~~[(20)]~~ (22) "New motor vehicle" means a motor vehicle that has never been titled or registered and has been driven less than 7,500 miles, unless the motor vehicle is an off-highway vehicle, small trailer, trailer, travel trailer, or semitrailer, in which case the mileage limit does not apply.

~~[(21)]~~ (23) "Off-highway vehicle" has the same meaning as provided in Section 41-22-2.

~~[(22);~~ 24) "Online dealer" means a ~~{person}~~ manufacturer who:

(a) sells, displays for sale, or offers for sale or exchange;

~~(a) ;~~ three or more new motor vehicles in any 12-month period; ~~{and}~~

(b) performs the acts described in Subsection (24)(a) exclusively online; and

(c) has not executed a franchise with any dealer in the state.

~~[(23);~~ 25) "Online salesperson" means an individual who for a salary, commission, or

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compensation of any kind, is employed either directly, indirectly, regularly, or occasionally by an online dealer to sell, purchase, or exchange, or to negotiate for the sale, purchase, or exchange of new motor vehicles.

~~[(22)]~~ ~~(~~24~~;26)~~ "Pawnbroker" means a person whose business is to lend money on security of personal property deposited with him.

~~[(23)]~~ ~~(~~25~~;27)~~ "Principal place of business" means a site or location in this state:

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

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

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

~~[(24)]~~ ~~(~~26~~;28)~~ "Remanufacturer" means a person who reconstructs used motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, to change the body style and appearance of the motor vehicle or who constructs or assembles motor vehicles from used or new and used motor vehicle parts, or who reconstructs, constructs, or assembles three or more motor vehicles in any 12-month period.

~~[(25)]~~ ~~(~~27~~;29)~~ "Salesperson" means an individual who for a salary, commission, or compensation of any kind, is employed either directly, indirectly, regularly, or occasionally by any new motor vehicle dealer or used motor vehicle dealer to sell, purchase, or exchange or to negotiate for the sale, purchase, or exchange of motor vehicles.

~~[(26)]~~ ~~(~~28~~;30)~~ "Semitrailer" has the same meaning as defined in Section 41-1a-102.

~~[(27)]~~ ~~(~~29~~;31)~~ "Small trailer" means a trailer that has an unladen weight of more than 750 pounds, but less than 2,000 pounds.

~~[(28)]~~ ~~(~~30~~;32)~~ "Special equipment" includes a truck mounted crane, cherry picker, material lift, post hole digger, and a utility or service body.

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[(29)] (~~(31)~~33) "Special equipment dealer" means a new or new and used motor vehicle dealer engaged in the business of buying new incomplete motor vehicles with a gross vehicle weight of 12,000 or more pounds and installing special equipment on the incomplete motor vehicle.

[(30)] (~~(32)~~34) "Trailer" has the same meaning as defined in Section 41-1a-102.

[(31)] (~~(33)~~35) "Transporter" means a person engaged in the business of transporting motor vehicles as described in Section 41-3-202.

[(32)] (~~(34)~~36) "Travel trailer" has the same meaning as provided in Section 41-1a-102.

[(33)] (~~(35)~~37) "Used motor vehicle" means a vehicle that has been titled and registered to a purchaser other than a dealer or has been driven 7,500 or more miles, unless the vehicle is a trailer, or semitrailer, in which case the mileage limit does not apply.

[(34)] (~~(36)~~38) "Wholesale motor vehicle auction" means a dealer primarily engaged in the business of auctioning consigned motor vehicles to dealers or dismantlers who are licensed by this or any other jurisdiction.

Section 4. Section **41-3-103** is amended to read:

**41-3-103. Exceptions to "dealer" definition -- Dealer licensed in other state --**

### **Online dealer or salesperson.**

Under this chapter:

(1) (a) An insurance company, bank, finance company, company registered as a title lender under Title 7, Chapter 24, Title [~~Lender~~] Lending Registration Act, company registered as a check casher or deferred deposit lender under Title 7, Chapter 23, Check Cashing and Deferred Deposit Lending Registration Act, public utility company, commission impound yard, federal or state governmental agency, or any political subdivision of any of them or any other person coming into possession of a motor vehicle as an incident to its regular business, that sells the motor vehicle under contractual rights that it may have in the motor vehicle is not considered a dealer.

(b) A person who sells or exchanges only those motor vehicles that the person has owned for over 12 months is not considered a dealer.

(2) (a) A person engaged in leasing motor vehicles is not considered as coming into possession of the motor vehicles incident to the person's regular business.

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(b) A pawnbroker engaged in selling, exchanging, or pawning motor vehicles is considered as coming into possession of the motor vehicles incident to the person's regular business and must be licensed as a used motor vehicle dealer.

(3) A person currently licensed as a dealer or salesperson by another state or country and not currently under license suspension or revocation by the administrator may only sell motor vehicles in this state to licensed dealers, dismantlers, or manufacturers, and only at their places of business.

(4) Except as otherwise expressly provided:

(a) an online dealer is subject to the same provisions under this chapter as a new motor vehicle dealer; and

(b) an online salesperson is subject to the same provisions under this chapter as a salesperson.

(5) Notwithstanding any provision of this section to the contrary, an online dealer may:

(a) operate without a principal place of business; and

(b) sell new motor vehicles without a franchise ~~{, if the online dealer also manufactures the new motor vehicles}~~.

Section 5. Section **41-3-105** is amended to read:

**41-3-105. Administrator's powers and duties -- Administrator and investigators to be law enforcement officers.**

(1) The administrator may make rules to carry out the purposes of this chapter and Sections 41-1a-1001 through 41-1a-1007 according to the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) (a) The administrator may employ clerks, deputies, and assistants necessary to discharge the duties under this chapter and may designate the duties of those clerks, deputies, and assistants.

(b) The administrator, assistant administrator, and all investigators shall be law enforcement officers certified by peace officer standards and training as required by Section 53-13-103.

(3) (a) The administrator may investigate any suspected or alleged violation of:

(i) this chapter;

(ii) Title 41, Chapter 1a, Motor Vehicle Act;

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(iii) any law concerning motor vehicle fraud; or

(iv) any rule made by the administrator.

(b) The administrator may bring an action in the name of the state against any person to enjoin a violation found under Subsection (3)(a).

(4) (a) The administrator may prescribe forms to be used for applications for licenses.

(b) The administrator may require information from the applicant concerning the applicant's fitness to be licensed.

(c) Each application for a license shall contain:

(i) if the applicant is an individual, the name and residence address of the applicant and the trade name, if any, under which the applicant intends to conduct business;

(ii) if the applicant is a partnership, the name and residence address of each partner, whether limited or general, and the name under which the partnership business will be conducted;

(iii) if the applicant is a corporation, the name of the corporation, and the name and residence address of each of its principal officers and directors;

(iv) unless the applicant is applying for an online dealer license or an online salesperson license, a complete description of the principal place of business, including:

(A) the municipality, with the street and number, if any;

(B) if located outside of any municipality, a general description so that the location can be determined; and

(C) any other places of business operated and maintained by the applicant in conjunction with the principal place of business;

(v) if the application is for a new motor vehicle dealer's license, the name of each motor vehicle the applicant has been enfranchised to sell or exchange, the name and address of the manufacturer or distributor who has enfranchised the applicant, and the names and addresses of the individuals who will act as salespersons under authority of the license;

(vi) at least five years of business history;

(vii) the federal tax identification number issued to the dealer; ~~and~~

(viii) the sales and use tax license number issued to the dealer under Title 59, Chapter 12, Sales and Use Tax Act~~[-]~~, if applicable; ~~and~~ ~~{-}~~

(ix) if the application is for an online dealer, evidence that the online dealer has an

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### authorized service center.

(5) The administrator may adopt a seal with the words "Motor Vehicle Enforcement Administrator, State of Utah," to authenticate the acts of the administrator's office.

(6) (a) The administrator may require that ~~the~~ a licensee, other than an online dealer or online salesperson, erect or post signs or devices on the licensee's principal place of business and any other sites, equipment, or locations operated and maintained by the licensee in conjunction with the licensee's business.

(b) The signs or devices shall state the licensee's name, principal place of business, type and number of licenses, and any other information that the administrator considers necessary to identify the licensee.

(c) The administrator may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, determining allowable size and shape of signs or devices, their lettering and other details, and their location.

(7) (a) The administrator shall provide for quarterly meetings of the advisory board and may call special meetings.

(b) Notices of all meetings shall be sent to each member not fewer than five days prior to the meeting.

(8) The administrator, the officers and inspectors of the division designated by the commission, and peace officers shall:

(a) make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of this chapter, or Title 41, Chapter 1a, Motor Vehicle Act;

(b) when on duty, upon reasonable belief that a motor vehicle, trailer, or semitrailer is being operated in violation of any provision of Title 41, Chapter 1a, Motor Vehicle Act, require the driver of the vehicle to stop, exhibit the person's driver license and the registration card issued for the vehicle and submit to an inspection of the vehicle, the license plates, and registration card;

(c) serve all warrants relating to the enforcement of the laws regulating the operation of motor vehicles, trailers, and semitrailers;

(d) investigate traffic accidents and secure testimony of witnesses or persons involved;  
and

(e) investigate reported thefts of motor vehicles, trailers, and semitrailers.

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(9) The administrator may contract with a public prosecutor to provide additional prosecution of this chapter.

Section 6. Section **41-3-201** is amended to read:

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

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

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

- (a) a dealer;
- (b) salvage vehicle buyer;
- (c) salesperson;
- (d) manufacturer;
- (e) transporter;
- (f) dismantler;
- (g) distributor;
- (h) factory branch and representative;
- (i) distributor branch and representative;
- (j) crusher;
- (k) remanufacturer; [~~or~~]
- (l) body shop[-];
- (m) online dealer; or
- (n) online salesperson.

(3) (a) Except as provided in Subsection (3)(c), a person may not bid on or purchase a vehicle with a nonrepairable or salvage certificate as defined in Section 41-1a-1001 at or through a motor vehicle auction unless the person is a licensed salvage vehicle buyer.

(b) Except as provided in Subsection (3)(c), a person may not offer for sale, sell, or exchange a vehicle with a nonrepairable or salvage certificate as defined in Section 41-1a-1001 at or through a motor vehicle auction except to a licensed salvage vehicle buyer.

(c) A person may offer for sale, sell, or exchange a vehicle with a nonrepairable or salvage certificate as defined in Section 41-1a-1001 at or through a motor vehicle auction:

- (i) to an out-of-state or out-of-country purchaser not licensed under this section, but

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that is authorized to do business in the domestic or foreign jurisdiction in which the person is domiciled or registered to do business;

(ii) subject to the restrictions in Subsection (3)(d), to an in-state purchaser not licensed under this section that:

(A) has a valid business license in Utah; and

(B) has a Utah sales tax license; and

(iii) to a crusher.

(d) (i) An operator of a motor vehicle auction shall verify that an in-state purchaser not licensed under this section has the licenses required in Subsection (3)(c)(ii).

(ii) An operator of a motor vehicle auction may only offer for sale, sell, or exchange five vehicles with a salvage certificate as defined in Section 41-1a-1001 at or through a motor vehicle auction in any 12 month period to an in-state purchaser that does not have a salvage vehicle buyer license issued in accordance with Subsection 41-3-202[(15)](17).

(iii) The five vehicle limitation under this Subsection (3)(d) applies to each Utah sales tax license and not to each person with the authority to use a sales tax license.

(iv) An operator of a motor vehicle auction may not sell a vehicle with a nonrepairable certificate as defined in Section 41-1a-1001 to a purchaser otherwise allowed to purchase a vehicle under Subsection (3)(c)(ii).

(e) For a vehicle with a salvage certificate purchased under Subsection (3)(c)(ii), an operator of a motor vehicle auction shall:

(i) (A) until Subsection (3)(e)(i)(B) applies, make application for a salvage certificate of title on behalf of the Utah purchaser within seven days of the purchase if the purchaser does not have a salvage vehicle buyer license, dealer license, body shop license, or dismantler license issued in accordance with Section 41-3-202; or

(B) beginning on or after the date that the Motor Vehicle Division has implemented the Motor Vehicle Division's GenTax system, make application electronically, in a form and time period approved by the Motor Vehicle Division, for a salvage certificate of title to be issued in the name of the purchaser;

(ii) give to the purchaser a disclosure printed on a separate piece of paper that states:

"THIS DISCLOSURE STATEMENT MUST BE GIVEN BY THE SELLER TO THE BUYER EVERY TIME THIS VEHICLE IS RESOLD WITH A SALVAGE CERTIFICATE

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Vehicle Identification Number (VIN)

Year:            Make:            Model:

SALVAGE VEHICLE--NOT FOR RESALE WITHOUT DISCLOSURE

WARNING: THIS SALVAGE VEHICLE MAY NOT BE SAFE FOR OPERATION UNLESS PROPERLY REPAIRED. SOME STATES MAY REQUIRE AN INSPECTION BEFORE THIS VEHICLE MAY BE REGISTERED. THE STATE OF UTAH MAY REQUIRE THIS VEHICLE TO BE PERMANENTLY BRANDED AS A REBUILT SALVAGE VEHICLE. OTHER STATES MAY ALSO PERMANENTLY BRAND THE CERTIFICATE OF TITLE.

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Signature of Purchaser

Date"; and

(iii) if applicable, provide evidence to the Motor Vehicle Division of:

(A) payment of sales taxes on taxable sales in accordance with Section 41-1a-510;

(B) the identification number inspection required under Section 41-1a-511; and

(C) the odometer disclosure statement required under Section 41-1a-902.

(f) The Motor Vehicle Division shall include a link to the disclosure statement described in Subsection (3)(e)(ii) on its website.

(g) The commission may impose an administrative entrance fee established in accordance with the procedures and requirements of Section 63J-1-504 not to exceed \$10 on a person not holding a license described in Subsection (3)(e)(i) that enters the physical premises of a motor vehicle auction for the purpose of viewing available salvage vehicles prior to an auction.

(h) A vehicle sold at or through a motor vehicle auction to an out-of-state purchaser with a nonrepairable or salvage certificate may not be certificated in Utah until the vehicle has been certificated out-of-state.

(4) (a) An operator of a motor vehicle auction shall keep a record of the sale of each salvage vehicle.

(b) A record described under Subsection (4)(a) shall contain:

(i) the purchaser's name and address; and

(ii) the year, make, and vehicle identification number for each salvage vehicle sold.

(c) An operator of a motor vehicle auction shall:

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(i) provide the record described in Subsection (4)(a) electronically in a method approved by the division to the division within two business days of the completion of the motor vehicle auction;

(ii) retain the record described in this Subsection (4) for five years from the date of sale; and

(iii) make a record described in this Subsection (4) available for inspection by the division at the location of the motor vehicle auction during normal business hours.

(5) (a) If applicable, an operator of a motor vehicle auction shall comply with the reporting requirements of the National Motor Vehicle Title Information System overseen by the United States Department of Justice if the person sells a vehicle with a salvage certificate to an in-state purchaser under Subsection (3)(c)(ii).

(b) The Motor Vehicle Division shall include a link to the National Motor Vehicle Title Information System on its website.

(6) (a) An operator of a motor vehicle auction that sells a salvage vehicle to a person that is an out-of-country buyer shall:

(i) stamp on the face of the title so as not to obscure the name, date, or mileage statement the words "FOR EXPORT ONLY" in all capital, black letters; and

(ii) stamp in each unused reassignment space on the back of the title the words "FOR EXPORT ONLY."

(b) The words "FOR EXPORT ONLY" shall be:

(i) at least two inches wide; and

(ii) clearly legible.

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

(8) (a) A person who has been convicted of any law relating to motor vehicle commerce or motor vehicle fraud may not be issued a license or purchase a vehicle with a salvage or nonrepairable certificate unless full restitution regarding those convictions has been made.

(b) An operator of a motor vehicle auction, a dealer, or a consignor may not sell a vehicle with a nonrepairable or salvage certificate to a buyer described in Subsection (8)(a) if

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the division has informed the operator of the motor vehicle auction, the dealer, or the consignor in writing that the buyer is prohibited from purchasing a vehicle with a nonrepairable or salvage certificate under Subsection (8)(a).

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

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

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

(d) (i) The division shall approve:

(A) providers of the orientation class; and

(B) costs of the orientation class.

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

(iii) A provider of an orientation class shall include in the orientation materials:

(A) ethics training;

(B) motor vehicle title and registration processes;

(C) provisions of Title 13, Chapter 5, Unfair Practices Act, relating to motor vehicles;

(D) Department of Insurance requirements relating to motor vehicles;

(E) Department of Public Safety requirements relating to motor vehicles;

(F) federal requirements related to motor vehicles as determined by the division; and

(G) any required disclosure compliance forms as determined by the division.

(10) A person or purchaser described in Subsection (3)(c)(ii):

(a) may not purchase more than five salvage vehicles with a nonrepairable or salvage certificate as defined in Section 41-1a-1001 in any 12-month period;

(b) may not, without first complying with Section 41-1a-705, offer for sale, sell, or exchange more than two vehicles with a salvage certificate as defined in Section 41-1a-1001 in any 12-month period to a person not licensed under this section; and

(c) may not, without first complying with Section 41-1a-705, offer for sale, sell, or exchange a vehicle with a nonrepairable certificate as defined in Section 41-1a-1001 to a

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person not licensed under this section.

(11) An operator of a motor vehicle auction, a dealer, or a consignor may not sell a vehicle with a nonrepairable or salvage certificate to a buyer described in Subsection (10)(a) if the division has informed the operator of the motor vehicle auction, the dealer, or the consignor in writing that the buyer is prohibited from purchasing a vehicle with a nonrepairable or salvage certificate under Subsection (10)(a).

Section 7. Section **41-3-202** is amended to read:

### **41-3-202. Licenses -- Classes and scope.**

(1) A new motor vehicle dealer's license permits the licensee to:

(a) offer for sale, sell, or exchange new motor vehicles if the licensee possesses a franchise from the manufacturer of the motor vehicle offered for sale, sold, or exchanged by the licensee;

(b) offer for sale, sell, or exchange used motor vehicles;

(c) operate as a body shop; and

(d) dismantle motor vehicles.

(2) A used motor vehicle dealer's license permits the licensee to:

(a) offer for sale, sell, or exchange used motor vehicles;

(b) operate as a body shop; and

(c) dismantle motor vehicles.

(3) An online dealer's license permits the licensee to offer new motor vehicles for sale, sell, or exchange exclusively online, [in accordance with the provisions of this chapter](#).

~~[(3)]~~ (4) A new motorcycle, off-highway vehicle, and small trailer dealer's license permits the licensee to:

(a) offer for sale, sell, or exchange new motorcycles, off-highway vehicles, or small trailers if the licensee possesses a franchise from the manufacturer of the motorcycle, off-highway vehicle, or small trailer offered for sale, sold, or exchanged by the licensee;

(b) offer for sale, sell, or exchange used motorcycles, off-highway vehicles, or small trailers; and

(c) dismantle motorcycles, off-highway vehicles, or small trailers.

~~[(4)]~~ (5) A used motorcycle, off-highway vehicle, and small trailer dealer's license permits the licensee to:

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(a) offer for sale, sell, or exchange used motorcycles, off-highway vehicles, and small trailers; and

(b) dismantle motorcycles, off-highway vehicles, or small trailers.

~~[(5)]~~ (6) (a) Except as provided in Subsection ~~[(5)]~~ (6)(b), a salesperson's license permits the licensee to act as a motor vehicle salesperson and is valid for employment with only one dealer at a time.

(b) A licensee that has been issued a salesperson's license and that is employed by a dealer that operates as a wholesale motor vehicle auction may be employed by more than one dealer that operates as a wholesale motor vehicle auction at a time.

(7) An online salesperson's license permits the licensee to sell, purchase, or exchange, or to negotiate for the sale, purchase, or exchange of new motor vehicles for one online dealer.

~~[(6)]~~ (8) (a) A manufacturer's license permits the licensee to construct or assemble motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, at an established place of business and to remanufacture motor vehicles.

(b) Under rules made by the administrator, the licensee may issue and install vehicle identification numbers on manufactured motor vehicles.

(c) The licensee may franchise and appoint dealers to sell manufactured motor vehicles by notifying the division of the franchise or appointment.

~~[(7)]~~ (9) A transporter's license permits the licensee to transport or deliver motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, from a manufacturing, assembling, or distributing point or from a dealer, to dealers, distributors, or sales agents of a manufacturer or remanufacturer, to or from detail or repair shops, and to financial institutions or places of storage from points of repossession.

~~[(8)]~~ (10) A dismantler's license permits the licensee to dismantle motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, for the purpose of reselling parts or for salvage, or selling dismantled or salvage vehicles to a crusher or other dismantler.

~~[(9)]~~ (11) A distributor or factory branch and distributor branch's license permits the licensee to sell and distribute new motor vehicles, parts, and accessories to their franchised dealers.

~~[(10)]~~ (12) A representative's license, for factory representatives or distributor

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representatives permits the licensee to contact the licensee's authorized dealers for the purpose of making or promoting the sale of motor vehicles, parts, and accessories.

~~[(11)]~~ (13) (a) (i) A remanufacturer's license permits the licensee to construct, reconstruct, assemble, or reassemble motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, from used or new motor vehicles or parts.

(ii) Evidence of ownership of parts and motor vehicles used in remanufacture shall be available to the division upon demand.

(b) Under rules made by the administrator, the licensee may issue and install vehicle identification numbers on remanufactured motor vehicles.

~~[(12)]~~ (14) A crusher's license permits the licensee to engage in the business of crushing or shredding motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, for the purpose of reducing the useable materials and metals to a more compact size for recycling.

~~[(13)]~~ (15) A body shop's license permits the licensee to rebuild, restore, repair, or paint primarily the body of motor vehicles damaged by collision or natural disaster, and to dismantle motor vehicles.

~~[(14)]~~ (16) A special equipment dealer's license permits the licensee to:

(a) buy incomplete new motor vehicles with a gross vehicle weight of 12,000 or more pounds from a new motor vehicle dealer and sell the new vehicle with the special equipment installed without a franchise from the manufacturer;

(b) offer for sale, sell, or exchange used motor vehicles;

(c) operate as a body shop; and

(d) dismantle motor vehicles.

~~[(15)]~~ (17) (a) A salvage vehicle buyer license permits the licensee to bid on or purchase a vehicle with a salvage certificate as defined in Section 41-1a-1001 at any motor vehicle auction.

(b) A salvage vehicle buyer license may only be issued to a motor vehicle dealer, dismantler, or body shop who qualifies under rules made by the division and is licensed in any state as a motor vehicle dealer, dismantler, or body shop.

(c) The division may not issue more than two salvage vehicle buyer licenses to any one dealer, dismantler, or body shop.

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(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the administrator shall make rules establishing qualifications of an applicant for a salvage vehicle buyer license. The criteria shall include:

- (i) business history;
- (ii) salvage vehicle qualifications;
- (iii) ability to properly handle and dispose of environmental hazardous materials associated with salvage vehicles; and
- (iv) record in demonstrating compliance with the provisions of this chapter.

Section 8. Section **41-3-203** is amended to read:

**41-3-203. Licenses -- Form -- Seal -- Custody of salesperson's license -- Display of salesperson and dealer licenses -- Licensee's pocket card.**

(1) (a) The administrator shall prescribe the form of each license and the seal of his office shall be imprinted on each license.

(b) The license of each salesperson shall be delivered or mailed to the dealer employing the salesperson and it shall be kept in the custody and control of the dealer and, except in the case of an online dealer, conspicuously displayed in the dealer's place of business.

(c) Each licensee shall display conspicuously [his] the licensee's own license in [his] the licensee's place of business, unless the licensee is an online dealer or an online salesperson.

(2) (a) The administrator shall prepare and deliver a pocket card, certifying that the person whose name is on the card is licensed under this chapter.

(b) Each salesperson's card shall also contain the name and address of the dealer employing him.

(c) Each salesperson shall on request display his pocket card.

Section 9. Section **41-3-204** is amended to read:

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

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

- (i) dealers;
- (ii) special equipment dealers;
- (iii) manufacturers;
- (iv) transporters;

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- (v) remanufacturers;
- (vi) dismantlers;
- (vii) crushers;
- (viii) body shops; and
- (ix) distributors who:
  - (A) are located within the state; or
  - (B) have a branch office within the state.

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

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

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

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

(3) This section does not apply to an online dealer.

Section 10. Section **41-3-209** is amended to read:

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

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

(2) (a) On December 1, 2010, the administrator shall suspend the license of a salesperson who fails to submit to the division fingerprints as required under Subsection 41-3-205.5(1)(b) on or before November 30, 2010.

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

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

- (i) lack of a principal place of business, if applicable;

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- (ii) except as an online dealer, lack of a sales tax license required under Title 59, Chapter 12, Sales and Use Tax Act;
- (iii) lack of a bond in effect as required by this chapter;
- (iv) current revocation or suspension of a dealer, online dealer, dismantler, auction, ~~[or]~~ salesperson, or online salesperson license issued in another state;
- (v) nonpayment of required fees;
- (vi) making a false statement on any application for a license under this chapter or for special license plates;
- (vii) a violation of any state or federal law involving motor vehicles;
- (viii) a violation of any state or federal law involving controlled substances;
- (ix) charges filed with any county attorney, district attorney, or U.S. attorney in any court of competent jurisdiction for a violation of any state or federal law involving motor vehicles;
- (x) a violation of any state or federal law involving fraud;
- (xi) a violation of any state or federal law involving a registerable sex offense under Section 77-41-106; ~~[or]~~
- (xii) having had a license issued under this chapter revoked within five years from the date of application~~[-]; or~~

(xiii) as an online dealer, failure to have an authorized service center.

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

(3) If the administrator finds that an applicant is not qualified to receive a license under this section, the administrator shall provide the applicant written notice of the reason for the denial.

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

- (a) suspend the license on terms and for a period of time the administrator finds reasonable; or
- (b) revoke the license.

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

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

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

(b) Action under Subsection (5)(a) may include signs, banners, barriers, locks, bulletins, and notices.

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

Section 11. Section **41-3-210** is amended to read:

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

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

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

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

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

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

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

(f) unless licensed as an online dealer, act as a dealer, dismantler, crusher, manufacturer, transporter, remanufacturer, or body shop without maintaining a principal place of business;

(g) engage in a business respecting the selling or exchanging of new or new and used motor vehicles for which he is not licensed, including selling or exchanging a new motor

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vehicle for which the licensee does not have a franchise, but this Subsection (1)(g) does not apply to:

(i) a special equipment dealer who sells a new special equipment motor vehicle with a gross vehicle weight of 12,000 or more pounds after installing special equipment on the motor vehicle; or

(ii) an online dealer; ~~who manufactures the motor vehicles that the online dealer sells~~;

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

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

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

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

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

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

(n) unless licensed as an online dealer or an online sales person, sell, display for sale, or offer for sale motor vehicles at any location other than the principal place of business or additional places of business licensed under this chapter; this provision is construed to prevent dealers, salespersons, or any other representative of a dealership from selling, displaying, or

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offering motor vehicles for sale from their homes or other unlicensed locations;

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

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

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

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

(r) alter a temporary permit in any manner;

(s) operate any principal place of business or additional place of business in a location that does not comply with local ordinances, including zoning ordinances;

(t) sell, display for sale, offer for sale, or exchange any new motor vehicle if the licensee does not:

(i) ~~(A)~~ have a new motor vehicle dealer's license under Section 41-3-202; and

~~[(ii)]~~ ~~(B)~~ possess a franchise from the manufacturer of the new motor vehicle sold, displayed for sale, offered for sale, or exchanged by the licensee; or

~~(ii) have an online dealer license under Section 41-3-202; ~~or~~~~

(u) ~~(i)~~ as a new motor vehicle dealer or used motor vehicle dealer, encourage or conspire with any person who has not obtained a salesperson's license to solicit for prospective purchasers~~[-]; or~~

~~(ii) as an online dealer, encourage or conspire with any person who has not obtained an online salesperson license to solicit for prospective purchasers~~[-]; or~~~~

~~(v) engage in business as an online dealer without having an authorized service center.~~

(2) (a) If a new motor vehicle is constructed in more than one stage, such as a motor home, ambulance, or van conversion, the licensee shall advertise, represent, sell, and exchange the vehicle as the make designated by the final stage manufacturer, except in those specific situations where:

~~(i) the licensee possesses a franchise from the initial or first stage manufacturer, presumably the manufacturer of the motor vehicle's chassis~~[-]; or~~~~

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(ii) the licensee manufactured the initial or first stage of the motor vehicle.

(b) Sales of multiple stage manufactured motor vehicles shall include the transfer to the purchaser of a valid manufacturer's statement or certificate of origin from each manufacturer under Section 41-3-301.

(3) Each licensee, except [~~salespersons~~] a salesperson or an online salesperson, shall maintain and make available for inspection by peace officers and employees of the division:

(a) a record of every motor vehicle bought, or exchanged by the licensee or received or accepted by the licensee for sale or exchange;

(b) a record of every used part or used accessory bought or otherwise acquired;

(c) a record of every motor vehicle bought or otherwise acquired and wrecked or dismantled by the licensee;

(d) all buyers' orders, contracts, odometer statements, temporary permit records, financing records, and all other documents related to the purchase, sale, or consignment of motor vehicles; and

(e) a record of the name and address of the person to whom any motor vehicle or motor vehicle body, chassis, or motor vehicle engine is sold or otherwise disposed of and a description of the motor vehicle by year, make, and vehicle identification number.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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body shop number, or by any other means.

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

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

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

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

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

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

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

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

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

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

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

~~{ Section 12. Section 59-12-107 is amended to read:~~

~~59-12-107. Definitions -- Collection, remittance, and payment of tax by sellers or other persons -- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt -- Penalties and interest.~~

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- ~~—— (1) As used in this section:~~
- ~~—— (a) "Ownership" means direct ownership or indirect ownership through a parent, subsidiary, or affiliate.~~
- ~~—— (b) "Related seller" means a seller that:~~
  - ~~—— (i) meets one or more of the criteria described in Subsection (2)(a)(i); and~~
  - ~~—— (ii) delivers tangible personal property, a service, or a product transferred electronically that is sold:~~
    - ~~—— (A) by a seller that does not meet one or more of the criteria described in Subsection (2)(a)(i); and~~
    - ~~—— (B) to a purchaser in the state.~~
- ~~—— (c) "Substantial ownership interest" means an ownership interest in a business entity if that ownership interest is greater than the degree of ownership of equity interest specified in 15 U.S.C. Sec. 78p, with respect to a person other than a director or an officer.~~
- ~~—— (2) (a) Except as provided in Subsection (2)(e), Section 59-12-107.1, or Section 59-12-123, and subject to Subsection (2)(f), each seller shall pay or collect and remit the sales and use taxes imposed by this chapter if within this state the seller:~~
  - ~~—— (i) has or utilizes:~~
    - ~~—— (A) an office;~~
    - ~~—— (B) a distribution house;~~
    - ~~—— (C) a sales house;~~
    - ~~—— (D) a warehouse;~~
    - ~~—— (E) a service enterprise; or~~
    - ~~—— (F) a place of business similar to Subsections (2)(a)(i)(A) through (E);~~
  - ~~—— (ii) maintains a stock of goods;~~
  - ~~—— (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the state, unless the seller's only activity in the state is:~~
    - ~~—— (A) advertising; or~~
    - ~~—— (B) solicitation by:~~
      - ~~—— (I) direct mail;~~
      - ~~—— (II) electronic mail;~~
      - ~~—— (III) the Internet;~~

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- ~~—— (IV) telecommunications service; or~~
- ~~—— (V) a means similar to Subsection (2)(a)(iii)(A) or (B);~~
- ~~—— (iv) regularly engages in the delivery of property in the state other than by:~~
  - ~~—— (A) common carrier; or~~
  - ~~—— (B) United States mail; or~~
- ~~—— (v) regularly engages in an activity directly related to the leasing or servicing of property located within the state:~~
  - ~~—— (b) A seller is considered to be engaged in the business of selling tangible personal property, a service, or a product transferred electronically for use in the state, and shall pay or collect and remit the sales and use taxes imposed by this chapter if:
    - ~~—— (i) the seller holds a substantial ownership interest in, or is owned in whole or in substantial part by, a related seller; and~~
    - ~~—— (ii) (A) the seller sells the same or a substantially similar line of products as the related seller and does so under the same or a substantially similar business name; or~~
      - ~~—— (B) the place of business described in Subsection (2)(a)(i) of the related seller or an in state employee of the related seller is used to advertise, promote, or facilitate sales by the seller to a purchaser.~~~~
  - ~~—— (c) A seller that does not meet one or more of the criteria provided for in Subsection (2)(a) or is not a seller required to pay or collect and remit sales and use taxes under Subsection (2)(b):
    - ~~—— (i) except as provided in Subsection (2)(c)(ii), may voluntarily:
      - ~~—— (A) collect a tax on a transaction described in Subsection 59-12-103(1); and~~
      - ~~—— (B) remit the tax to the commission as provided in this part; or~~~~
    - ~~—— (ii) notwithstanding Subsection (2)(c)(i), shall collect a tax on a transaction described in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.~~~~
  - ~~—— (d) The collection and remittance of a tax under this chapter by a seller that is registered under the agreement may not be used as a factor in determining whether that seller is required by Subsection (2) to:
    - ~~—— (i) pay a tax, fee, or charge under:
      - ~~—— (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;~~
      - ~~—— (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;~~~~~~

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- ~~—— (C) Section 19-6-714;~~
- ~~—— (D) Section 19-6-805;~~
- ~~—— (E) Section 69-2-5;~~
- ~~—— (F) Section 69-2-5.5;~~
- ~~—— (G) Section 69-2-5.6; or~~
- ~~—— (H) this title; or~~
- ~~—— (ii) collect and remit a tax, fee, or charge under:~~
  - ~~—— (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;~~
  - ~~—— (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;~~
  - ~~—— (C) Section 19-6-714;~~
  - ~~—— (D) Section 19-6-805;~~
  - ~~—— (E) Section 69-2-5;~~
  - ~~—— (F) Section 69-2-5.5;~~
  - ~~—— (G) Section 69-2-5.6; or~~
  - ~~—— (H) this title.~~
- ~~—— (c) A person shall pay a use tax imposed by this chapter on a transaction described in Subsection 59-12-103(1) if:~~
  - ~~—— (i) the seller did not collect a tax imposed by this chapter on the transaction; and~~
  - ~~—— (ii) the person:~~
    - ~~—— (A) stores the tangible personal property or product transferred electronically in the state;~~
    - ~~—— (B) uses the tangible personal property or product transferred electronically in the state;~~
- ~~or~~
- ~~—— (C) consumes the tangible personal property or product transferred electronically in the state.~~
- ~~—— (f) The ownership of property that is located at the premises of a printer's facility with which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced, shall not result in the retailer being considered to have or maintain an office, distribution house, sales house, warehouse, service enterprise, or other place of business, or to maintain a stock of goods, within this state.~~

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~~———— (3) (a) Except as provided in Section 59-12-107.1, a tax under this chapter shall be collected from a purchaser.~~

~~———— (b) A seller may not collect as tax an amount, without regard to fractional parts of one cent, in excess of the tax computed at the rates prescribed by this chapter.~~

~~———— (c) (i) Each seller shall:~~

~~———— (A) give the purchaser a receipt for the tax collected; or~~

~~———— (B) bill the tax as a separate item and declare the name of this state and the seller's sales and use tax license number on the invoice for the sale.~~

~~———— (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax and relieves the purchaser of the liability for reporting the tax to the commission as a consumer.~~

~~———— (d) A seller is not required to maintain a separate account for the tax collected, but is considered to be a person charged with receipt, safekeeping, and transfer of public money.~~

~~———— (e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the benefit of the state and for payment to the commission in the manner and at the time provided for in this chapter.~~

~~———— (f) If any seller, during any reporting period, collects as a tax an amount in excess of the lawful state and local percentage of total taxable sales allowed under this chapter, the seller shall remit to the commission the full amount of the tax imposed under this chapter, plus any excess.~~

~~———— (g) If the accounting methods regularly employed by the seller in the transaction of the seller's business are such that reports of sales made during a calendar month or quarterly period will impose unnecessary hardships, the commission may accept reports at intervals that will, in the commission's opinion, better suit the convenience of the taxpayer or seller and will not jeopardize collection of the tax.~~

~~———— (h) (i) For a purchase paid with specie legal tender as defined in Section 59-1-1501.1, and until such time as the commission accepts specie legal tender for the payment of a tax under this chapter, if the commission requires a seller to remit a tax under this chapter in legal tender other than specie legal tender, the seller shall state on the seller's books and records and on an invoice, bill of sale, or similar document provided to the purchaser:~~

~~———— (A) the purchase price in specie legal tender and in the legal tender the seller is~~

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~~required to remit to the commission;~~

~~—— (B) subject to Subsection (3)(h)(ii), the amount of tax due under this chapter in specie legal tender and in the legal tender the seller is required to remit to the commission;~~

~~—— (C) the tax rate under this chapter applicable to the purchase; and~~

~~—— (D) the date of the purchase.~~

~~—— (ii) (A) Subject to Subsection (3)(h)(ii)(B), for purposes of determining the amount of tax due under Subsection (3)(h)(i), a seller shall use the most recent London fixing price for the specie legal tender the purchaser paid.~~

~~—— (B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules for determining the amount of tax due under Subsection (3)(h)(i) if the London fixing price is not available for a particular day.~~

~~—— (4) (a) Except as provided in Subsections (5) through (7) and Section 59-12-108, the sales or use tax imposed by this chapter is due and payable to the commission quarterly on or before the last day of the month next succeeding each calendar quarterly period.~~

~~—— (b) (i) Each seller shall, on or before the last day of the month next succeeding each calendar quarterly period, file with the commission a return for the preceding quarterly period.~~

~~—— (ii) The seller shall remit with the return under Subsection (4)(b)(i) the amount of the tax required under this chapter to be collected or paid for the period covered by the return.~~

~~—— (c) Except as provided in Subsection (5)(c), a return shall contain information and be in a form the commission prescribes by rule.~~

~~—— (d) (i) Subject to Subsection (4)(d)(ii), the sales tax as computed in the return shall be based on the total nonexempt sales made during the period for which the return is filed, including both cash and charge sales.~~

~~—— (ii) For a sale that includes the delivery or installation of tangible personal property at a location other than a seller's place of business described in Subsection (2)(a)(i), if the delivery or installation is separately stated on an invoice or receipt, a seller may compute the tax due on the sale for purposes of Subsection (4)(d)(i) based on the amount the seller receives for that sale during each period for which the seller receives payment for the sale.~~

~~—— (e) (i) The use tax as computed in the return shall be based on the total amount of purchases for storage, use, or other consumption in this state made during the period for which the return is filed, including both cash and charge purchases.~~

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~~—— (ii) (A) As used in this Subsection (4)(e)(ii), "qualifying purchaser" means a purchaser who is required to remit taxes under this chapter, but is not required to remit taxes monthly in accordance with Section 59-12-108, and who converts tangible personal property into real property.~~

~~—— (B) Subject to Subsections (4)(e)(ii)(C) and (D), a qualifying purchaser may remit the taxes due under this chapter on tangible personal property for which the qualifying purchaser claims an exemption as allowed under Subsection 59-12-104(23) or (25) based on the period in which the qualifying purchaser receives payment, in accordance with Subsection (4)(e)(ii)(C), for the conversion of the tangible personal property into real property.~~

~~—— (C) A qualifying purchaser remitting taxes due under this chapter in accordance with Subsection (4)(e)(ii)(B) shall remit an amount equal to the total amount of tax due on the qualifying purchaser's purchase of the tangible personal property that was converted into real property multiplied by a fraction, the numerator of which is the payment received in the period for the qualifying purchaser's sale of the tangible personal property that was converted into real property and the denominator of which is the entire sales price for the qualifying purchaser's sale of the tangible personal property that was converted into real property.~~

~~—— (D) A qualifying purchaser may remit taxes due under this chapter in accordance with this Subsection (4)(e)(ii) only if the books and records that the qualifying purchaser keeps in the qualifying purchaser's regular course of business identify by reasonable and verifiable standards that the tangible personal property was converted into real property.~~

~~—— (f) (i) Subject to Subsection (4)(f)(ii) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule extend the time for making returns and paying the taxes:~~

~~—— (ii) An extension under Subsection (4)(f)(i) may not be for more than 90 days:~~

~~—— (g) The commission may require returns and payment of the tax to be made for other than quarterly periods if the commission considers it necessary in order to ensure the payment of the tax imposed by this chapter.~~

~~—— (h) (i) The commission may require a seller that files a simplified electronic return with the commission to file an additional electronic report with the commission.~~

~~—— (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing:~~

## HB0394S01 compared with HB0394

~~—— (A) the information required to be included in the additional electronic report described in Subsection (4)(h)(i); and~~

~~—— (B) one or more due dates for filing the additional electronic report described in Subsection (4)(h)(i).~~

~~—— (5) (a) As used in this Subsection (5) and Subsection (6)(b), "remote seller" means a seller that is:~~

~~—— (i) registered under the agreement;~~

~~—— (ii) described in Subsection (2)(c); and~~

~~—— (iii) not a:~~

~~—— (A) model 1 seller;~~

~~—— (B) model 2 seller; or~~

~~—— (C) model 3 seller.~~

~~—— (b) (i) Except as provided in Subsection (5)(b)(ii), a tax a remote seller collects in accordance with Subsection (2)(c) is due and payable:~~

~~—— (A) to the commission;~~

~~—— (B) annually; and~~

~~—— (C) on or before the last day of the month immediately following the last day of each calendar year:~~

~~—— (ii) The commission may require that a tax a remote seller collects in accordance with Subsection (2)(c) be due and payable:~~

~~—— (A) to the commission; and~~

~~—— (B) on the last day of the month immediately following any month in which the seller accumulates a total of at least \$1,000 in agreement sales and use tax.~~

~~—— (c) (i) If a remote seller remits a tax to the commission in accordance with Subsection (5)(b), the remote seller shall file a return:~~

~~—— (A) with the commission;~~

~~—— (B) with respect to the tax;~~

~~—— (C) containing information prescribed by the commission; and~~

~~—— (D) on a form prescribed by the commission.~~

~~—— (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules prescribing:~~

## HB0394S01 compared with HB0394

~~—— (A) the information required to be contained in a return described in Subsection (5)(c)(i); and~~

~~—— (B) the form described in Subsection (5)(c)(i)(D);~~

~~—— (d) A tax a remote seller collects in accordance with this Subsection (5) shall be calculated on the basis of the total amount of taxable transactions under Subsection 59-12-103(1) the remote seller completes, including:~~

~~—— (i) a cash transaction; and~~

~~—— (ii) a charge transaction;~~

~~—— (6) (a) Except as provided in Subsection (6)(b), a tax a seller that files a simplified electronic return collects in accordance with this chapter is due and payable:~~

~~—— (i) monthly on or before the last day of the month immediately following the month for which the seller collects a tax under this chapter; and~~

~~—— (ii) for the month for which the seller collects a tax under this chapter;~~

~~—— (b) A tax a remote seller that files a simplified electronic return collects in accordance with this chapter is due and payable as provided in Subsection (5);~~

~~—— (7) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, including an online dealer as defined in Section 41-3-102, the purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to titling or registration under the laws of this state;~~

~~—— (b) The commission shall collect the tax described in Subsection (7)(a) when the vehicle is titled or registered;~~

~~—— (8) If any sale of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), is made by a wholesaler to a retailer, the wholesaler is not responsible for the collection or payment of the tax imposed on the sale and the retailer is responsible for the collection or payment of the tax imposed on the sale if:~~

~~—— (a) the retailer represents that the personal property is purchased by the retailer for resale; and~~

~~—— (b) the personal property is not subsequently resold;~~

~~—— (9) If any sale of property or service subject to the tax is made to a person prepaying sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a contractor or subcontractor of that person, the person to whom such payment or consideration~~

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~~is payable is not responsible for the collection or payment of the sales or use tax and the person prepaying the sales or use tax is responsible for the collection or payment of the sales or use tax if the person prepaying the sales or use tax represents that the amount prepaid as sales or use tax has not been fully credited against sales or use tax due and payable under the rules promulgated by the commission:~~

~~—— (10) (a) For purposes of this Subsection (10):~~

~~—— (i) Except as provided in Subsection (10)(a)(ii), "bad debt" is as defined in Section 166, Internal Revenue Code:~~

~~—— (ii) Notwithstanding Subsection (10)(a)(i), "bad debt" does not include:~~

~~—— (A) an amount included in the purchase price of tangible personal property, a product transferred electronically, or a service that is:~~

~~—— (I) not a transaction described in Subsection 59-12-103(1); or~~

~~—— (II) exempt under Section 59-12-104;~~

~~—— (B) a financing charge;~~

~~—— (C) interest;~~

~~—— (D) a tax imposed under this chapter on the purchase price of tangible personal property, a product transferred electronically, or a service;~~

~~—— (E) an uncollectible amount on tangible personal property or a product transferred electronically that:~~

~~—— (I) is subject to a tax under this chapter; and~~

~~—— (II) remains in the possession of a seller until the full purchase price is paid;~~

~~—— (F) an expense incurred in attempting to collect any debt; or~~

~~—— (G) an amount that a seller does not collect on repossessed property:~~

~~—— (b) (i) To the extent an amount remitted in accordance with Subsection (4)(d) later becomes bad debt, a seller may deduct the bad debt from the total amount from which a tax under this chapter is calculated on a return.~~

~~—— (ii) A qualifying purchaser, as defined in Subsection (4)(e)(ii)(A), may deduct from the total amount of taxes due under this chapter the amount of tax the qualifying purchaser paid on the qualifying purchaser's purchase of tangible personal property converted into real property to the extent that:~~

~~—— (A) tax was remitted in accordance with Subsection (4)(e) on that tangible personal~~

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~~property converted into real property;~~

~~—— (B) the qualifying purchaser's sale of that tangible personal property converted into real property later becomes bad debt; and~~

~~—— (C) the books and records that the qualifying purchaser keeps in the qualifying purchaser's regular course of business identify by reasonable and verifiable standards that the tangible personal property was converted into real property.~~

~~—— (c) A seller may file a refund claim with the commission if:~~

~~—— (i) the amount of bad debt for the time period described in Subsection (10)(c) exceeds the amount of the seller's sales that are subject to a tax under this chapter for that same time period; and~~

~~—— (ii) as provided in Section 59-1-1410.~~

~~—— (d) A bad debt deduction under this section may not include interest.~~

~~—— (e) A bad debt may be deducted under this Subsection (10) on a return for the time period during which the bad debt:~~

~~—— (i) is written off as uncollectible in the seller's books and records; and~~

~~—— (ii) would be eligible for a bad debt deduction:~~

~~—— (A) for federal income tax purposes; and~~

~~—— (B) if the seller were required to file a federal income tax return.~~

~~—— (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or claims a refund under this Subsection (10), the seller shall report and remit a tax under this chapter:~~

~~—— (i) on the portion of the bad debt the seller recovers; and~~

~~—— (ii) on a return filed for the time period for which the portion of the bad debt is recovered.~~

~~—— (g) For purposes of reporting a recovery of a portion of bad debt under Subsection (10)(f), a seller shall apply amounts received on the bad debt in the following order:~~

~~—— (i) in a proportional amount:~~

~~—— (A) to the purchase price of the tangible personal property, product transferred electronically, or service; and~~

~~—— (B) to the tax due under this chapter on the tangible personal property, product transferred electronically, or service; and~~

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~~—— (ii) to:~~

~~—— (A) interest charges;~~

~~—— (B) service charges; and~~

~~—— (C) other charges.~~

~~—— (h) A seller's certified service provider may make a deduction or claim a refund for bad debt on behalf of the seller:~~

~~—— (i) in accordance with this Subsection (10); and~~

~~—— (ii) if the certified service provider credits or refunds the entire amount of the bad debt deduction or refund to the seller.~~

~~—— (i) A seller may allocate bad debt among the states that are members of the agreement if the seller's books and records support that allocation:~~

~~—— (11) (a) A seller may not, with intent to evade any tax, fail to timely remit the full amount of tax required by this chapter:~~

~~—— (b) A violation of this section is punishable as provided in Section 59-1-401.~~

~~—— (c) Each person who fails to pay any tax to the state or any amount of tax required to be paid to the state, except amounts determined to be due by the commission under Chapter 1, Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time required by this chapter, or who fails to file any return as required by this chapter, shall pay, in addition to the tax, penalties and interest as provided in Sections 59-1-401 and 59-1-402.~~

~~—— (d) For purposes of prosecution under this section, each quarterly tax period in which a seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the tax required to be remitted, constitutes a separate offense.~~

### **Legislative Review Note**

~~—— as of 2-23-15 5:38 PM~~

~~—— Office of Legislative Research and General Counsel}~~