

Representative Kim Coleman proposes the following substitute bill:

NEW AUTO DEALER FRANCHISE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kim Coleman

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates a license for a person to act as an online manufacturer dealer;
- ▶ allows a licensed online manufacturer dealer to:
 - sell or offer to sell a motor vehicle online; and
 - offer to sell and display a motor vehicle in person;
- ▶ creates a license for an online manufacturer salesperson;
- ▶ creates a license for a person to act as a small manufacturer dealer;
- ▶ allows a licensed small manufacturer dealer to sell, offer to sell, and display a motor vehicle; and
- ▶ exempts an online manufacturer dealer and a small manufacturer dealer from the provisions of the New Automobile Franchise Act.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 This bill provides a special effective date.

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **41-1a-802**, as last amended by Laws of Utah 2005, Chapter 32

30 **41-3-102**, as last amended by Laws of Utah 2014, Chapter 237

31 **41-3-103**, as last amended by Laws of Utah 2010, Chapter 393

32 **41-3-105**, as last amended by Laws of Utah 2010, Chapter 393

33 **41-3-201**, as last amended by Laws of Utah 2013, Chapter 463

34 **41-3-201.5**, as last amended by Laws of Utah 2010, Chapter 393

35 **41-3-201.7**, as last amended by Laws of Utah 2012, Chapter 390

36 **41-3-202**, as last amended by Laws of Utah 2009, Chapter 78

37 **41-3-204**, as last amended by Laws of Utah 2008, Chapter 388

38 **41-3-205**, as last amended by Laws of Utah 2010, Chapter 342

39 **41-3-209**, as last amended by Laws of Utah 2012, Chapter 145

40 **41-3-210**, as last amended by Laws of Utah 2007, Chapter 322

41 **41-3-601**, as last amended by Laws of Utah 2015, Chapter 93

42 **41-3-802**, as last amended by Laws of Utah 1995, Chapter 7

43 **59-12-107**, as last amended by Laws of Utah 2012, Chapters 178, 312, and 399

44 ENACTS:

45 **13-14-108**, Utah Code Annotated 1953

46 **41-3-202.1**, Utah Code Annotated 1953

47 **41-3-202.2**, Utah Code Annotated 1953



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

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

51 **13-14-108. Applicability.**

52 This chapter does not apply to:

53 (1) an online manufacturer dealer licensed under Section **41-3-202**; or

54 (2) a small manufacturer dealer licensed under Section **41-3-202**.

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

56 **41-1a-802. Identification number inspectors -- Duties.**

- 57 (1) The following are qualified identification number inspectors:
- 58 (a) the commission;
- 59 (b) designated officers and employees of the division;
- 60 (c) a person operating a safety inspection station under Title 53, Chapter 8, Part 2,
- 61 Motor Vehicle Safety Inspection Act;
- 62 (d) an official inspection station certified inspector;
- 63 (e) a ~~dealer~~ person licensed under Subsection 41-3-202(1), (2), (3), ~~or~~ (4), (5) or
- 64 (6); and
- 65 (f) all peace officers of the state.
- 66 (2) The qualified identification number inspectors shall, upon the application for the
- 67 first registration in this state of any vehicle:
- 68 (a) inspect the identification number of the vehicle;
- 69 (b) make a record of the identification number inspection upon an application form
- 70 provided by the division; and
- 71 (c) verify the facts in the application.
- 72 Section 3. Section 41-3-102 is amended to read:
- 73 **41-3-102. Definitions.**
- 74 As used in this chapter:
- 75 (1) "Administrator" means the motor vehicle enforcement administrator.
- 76 (2) "Agent" means a person other than a holder of any dealer's or salesperson's license
- 77 issued under this chapter, who for salary, commission, or compensation of any kind, negotiates
- 78 in any way for the sale, purchase, order, or exchange of three or more motor vehicles for any
- 79 other person in any 12-month period.
- 80 (3) "Auction" means a dealer engaged in the business of auctioning motor vehicles,
- 81 either owned or consigned, to the general public.
- 82 (4) "Board" means the advisory board created in Section 41-3-106.
- 83 (5) "Body shop" means a business engaged in rebuilding, restoring, repairing, or
- 84 painting primarily the body of motor vehicles damaged by collision or natural disaster.
- 85 (6) "Commission" means the State Tax Commission.
- 86 (7) "Crusher" means a person who crushes or shreds motor vehicles subject to
- 87 registration under Title 41, Chapter 1a, Motor Vehicle Act, to reduce the useable materials and

88 metals to a more compact size for recycling.

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

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

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

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

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

98 (b) "Dismantler" includes a person who dismantles three or more motor vehicles in any
99 12-month period.

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

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

105 (12) "Distributor representative" means a person and each officer and employee of the
106 person engaged as a representative of a distributor or distributor branch of motor vehicles to
107 make or promote the sale of the distributor or the distributor branch's motor vehicles, or for
108 supervising or contacting dealers or prospective dealers of the distributor or the distributor
109 branch.

110 (13) "Division" means the Motor Vehicle Enforcement Division created in Section
111 [41-3-104](#).

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

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

119 branch.

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

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

127 (18) "Motorcycle" [~~has the same meaning as~~] means the same as that term is defined in
128 Section [41-1a-102](#).

129 (19) (a) "Motor vehicle" means a vehicle that is:

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

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

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

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

143 (21) "Off-highway vehicle" [~~has the same meaning as provided~~] means the same as that
144 term is defined in Section [41-22-2](#).

145 (22) "Online manufacturer dealer" means a person that:

- 146 (a) is a manufacturer or a wholly owned subsidiary of a manufacturer;
- 147 (b) sells, displays for sale, or offers for sale or exchange:
 - 148 (i) three or more new or used motor vehicles in any 12-month period; and
 - 149 (ii) only motor vehicles that:

- 150 (A) the person manufactured; or
- 151 (B) the person obtained in an exchange for a motor vehicle that the person
- 152 manufactured;
- 153 (c) sells a motor vehicle through an Internet site that the person operates;
- 154 (d) offers, in person, to sell or exchange a motor vehicle online; and
- 155 (e) displays a motor vehicle for sale online or at a physical location.
- 156 (23) "Online manufacturer salesperson" means an individual who, for compensation, is
- 157 employed directly, indirectly, regularly, or occasionally by an online manufacturer dealer to
- 158 sell, purchase, or exchange a motor vehicle online, or to negotiate for the sale, purchase, or
- 159 exchange of, a motor vehicle.
- 160 ~~[(22)]~~ (24) "Pawnbroker" means a person whose business is to lend money on security
- 161 of personal property deposited with him.
- 162 ~~[(23)]~~ (25) "Principal place of business" means a site or location in this state:
- 163 (a) devoted exclusively to the business for which the dealer, online manufacturer
- 164 dealer, small manufacturer dealer, manufacturer, remanufacturer, transporter, dismantler,
- 165 crusher, or body shop is licensed, and businesses incidental to them;
- 166 (b) sufficiently bounded by fence, chain, posts, or otherwise marked to definitely
- 167 indicate the boundary and to admit a definite description with space adequate to permit the
- 168 display of three or more new, or new and used, or used motor vehicles and sufficient parking
- 169 for the public; and
- 170 (c) that includes a permanent enclosed building or structure large enough to
- 171 accommodate the office of the establishment and to provide a safe place to keep the books and
- 172 other records of the business, at which the principal portion of the business is conducted and
- 173 the books and records kept and maintained.
- 174 ~~[(24)]~~ (26) "Remanufacturer" means a person who reconstructs used motor vehicles
- 175 subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, to change the body style
- 176 and appearance of the motor vehicle or who constructs or assembles motor vehicles from used
- 177 or new and used motor vehicle parts, or who reconstructs, constructs, or assembles three or
- 178 more motor vehicles in any 12-month period.
- 179 ~~[(25)]~~ (27) "Salesperson" means an individual who for a salary, commission, or
- 180 compensation of any kind, is employed either directly, indirectly, regularly, or occasionally by

181 any new motor vehicle dealer or used motor vehicle dealer to sell, purchase, or exchange or to
182 negotiate for the sale, purchase, or exchange of motor vehicles.

183 (28) "Small manufacturer dealer" means a person that:

184 (a) is a manufacturer; and

185 (b) sells, displays for sale, or offers for sale or exchange:

186 (i) three or more new motor vehicles in any 12-month period;

187 (ii) fewer than 300 motor vehicles in any 12-month period; and

188 (iii) only motor vehicles that the person manufactured.

189 (29) "Small manufacturer salesperson" means an individual who, for compensation, is
190 employed directly, indirectly, regularly, or occasionally by a small manufacturer dealer to sell,
191 purchase, or exchange, or to negotiate for the sale, purchase, or exchange of, a motor vehicle.

192 ~~[(26)]~~ (30) "Semitrailer" has the same meaning as defined in Section 41-1a-102.

193 ~~[(27)]~~ (31) "Small trailer" means a trailer that has an unladen weight of more than 750
194 pounds, but less than 2,000 pounds.

195 ~~[(28)]~~ (32) "Special equipment" includes a truck mounted crane, cherry picker, material
196 lift, post hole digger, and a utility or service body.

197 ~~[(29)]~~ (33) "Special equipment dealer" means a new or new and used motor vehicle
198 dealer engaged in the business of buying new incomplete motor vehicles with a gross vehicle
199 weight of 12,000 or more pounds and installing special equipment on the incomplete motor
200 vehicle.

201 ~~[(30)]~~ (34) "Trailer" has the same meaning as defined in Section 41-1a-102.

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

204 ~~[(32)]~~ (36) "Travel trailer" has the same meaning as provided in Section 41-1a-102.

205 ~~[(33)]~~ (37) "Used motor vehicle" means a vehicle that has been titled and registered to
206 a purchaser other than a dealer or has been driven 7,500 or more miles, unless the vehicle is a
207 trailer, or semitrailer, in which case the mileage limit does not apply.

208 ~~[(34)]~~ (38) "Wholesale motor vehicle auction" means a dealer primarily engaged in the
209 business of auctioning consigned motor vehicles to dealers or dismantlers who are licensed by
210 this or any other jurisdiction.

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

212 **41-3-103. Exceptions to "dealer" definition -- Dealer licensed in other state.**

213 [~~Under this chapter:~~]

214 (1) A person is not considered a dealer under this chapter if the person is:

215 [~~(1)~~] (a) [~~An~~] an insurance company, bank, finance company, company registered as a
216 title lender under Title 7, Chapter 24, Title Lending Registration Act, or a company registered
217 as a check casher or deferred deposit lender under Title 7, Chapter 23, Check Cashing and
218 Deferred Deposit Lending Registration Act~~;~~];

219 (b) a public utility company~~;~~];

220 (c) a commission impound yard~~;~~];

221 (d) a federal or state [~~governmental agency, or any~~] government entity;

222 (e) a political subdivision of [~~any of them or any other person coming~~] the state; or

223 (f) a person that:

224 (i) comes into possession of a motor vehicle as an incident to [~~its~~] the person's regular
225 business~~[, that]; and~~

226 (ii) sells the motor vehicle under a contractual [~~rights that it may have~~] right that the
227 person has in the motor vehicle [~~is not considered a dealer~~].

228 [~~(b)~~] (2) A person who sells or exchanges only those motor vehicles that the person has
229 owned for over 12 months is not considered a dealer under this chapter.

230 [~~(2)~~] (3) (a) A person engaged in leasing motor vehicles is not considered as coming
231 into possession of the motor vehicles incident to the person's regular business.

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

235 [~~(3)~~] (4) A person currently licensed as a dealer or salesperson by another state or
236 country and not currently under license suspension or revocation by the administrator may only
237 sell motor vehicles in this state to licensed dealers, dismantlers, or manufacturers, and only at
238 their places of business.

239 (5) An online manufacturer dealer is not considered a dealer under this chapter except
240 as provided in Section [41-3-202.2](#) or as expressly provided in this chapter.

241 (6) A small manufacturer dealer is not considered a dealer under this chapter except as
242 provided in Section [41-3-202.2](#) or as expressly provided in this chapter.

243 (7) Except as otherwise expressly provided in this chapter, an online manufacturer
244 salesperson or a small manufacturer salesperson is subject to the same requirements under this
245 chapter as a salesperson.

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

247 **41-3-105. Administrator's powers and duties -- Administrator and investigators**
248 **to be law enforcement officers.**

249 (1) The administrator may make rules to carry out the purposes of this chapter and
250 Sections **41-1a-1001** through **41-1a-1007** according to the procedures and requirements of Title
251 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

255 (b) The administrator, assistant administrator, and all investigators shall be law
256 enforcement officers certified by peace officer standards and training as required by Section
257 **53-13-103**.

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

- 259 (i) this chapter;
- 260 (ii) Title 41, Chapter 1a, Motor Vehicle Act;
- 261 (iii) any law concerning motor vehicle fraud; or
- 262 (iv) any rule made by the administrator.

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

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

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

268 (c) Each application for a license shall contain:

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

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

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

276 (iv) a complete description of the principal place of business, including:
277 (A) the municipality, with the street and number, if any;
278 (B) if located outside of any municipality, a general description so that the location can
279 be determined; and

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

282 (v) (A) if the application is for a new motor vehicle dealer's license, the name of each
283 motor vehicle the applicant has been enfranchised to sell or exchange, and the name and
284 address of the manufacturer or distributor who has enfranchised the applicant[;]; and
285 (B) if the application is for a new motor vehicle dealer's license, an online
286 manufacturer dealer license, or a small manufacturer dealer license, the names and addresses of
287 the individuals who will act as salespersons under authority of the license;

288 (vi) at least five years of business history;

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

290 (viii) the sales and use tax license number issued to the dealer under Title 59, Chapter
291 12, Sales and Use Tax Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

324 **41-3-201. Licenses required -- Restitution -- Education.**

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

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

329 (a) a dealer;

330 (b) salvage vehicle buyer;

331 (c) salesperson;

332 (d) manufacturer;

333 (e) transporter;

334 (f) dismantler;

335 (g) distributor;

- 336 (h) factory branch and representative;
- 337 (i) distributor branch and representative;
- 338 (j) crusher;
- 339 (k) remanufacturer; [or]
- 340 (l) body shop[-];
- 341 (m) online manufacturer dealer;
- 342 (n) online manufacturer salesperson;
- 343 (o) small manufacturer dealer; or
- 344 (p) small manufacturer salesperson.

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

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

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

353 (i) to an out-of-state or out-of-country purchaser not licensed under this section, but
354 that is authorized to do business in the domestic or foreign jurisdiction in which the person is
355 domiciled or registered to do business;

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

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

359 (B) has a Utah sales tax license; and

360 (iii) to a crusher.

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

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

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

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

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

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

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

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

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

385 Vehicle Identification Number (VIN)

386 Year: Make: Model:

387 SALVAGE VEHICLE--NOT FOR RESALE WITHOUT DISCLOSURE

388 WARNING: THIS SALVAGE VEHICLE MAY NOT BE SAFE FOR OPERATION

389 UNLESS PROPERLY REPAIRED. SOME STATES MAY REQUIRE AN INSPECTION

390 BEFORE THIS VEHICLE MAY BE REGISTERED. THE STATE OF UTAH MAY

391 REQUIRE THIS VEHICLE TO BE PERMANENTLY BRANDED AS A REBUILT

392 SALVAGE VEHICLE. OTHER STATES MAY ALSO PERMANENTLY BRAND THE

393 CERTIFICATE OF TITLE.

394

395 _____
Signature of Purchaser Date"; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

436 (i) at least two inches wide; and

437 (ii) clearly legible.

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

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

445 (b) An operator of a motor vehicle auction, a dealer, or a consignor may not sell a
446 vehicle with a nonrepairable or salvage certificate to a buyer described in Subsection (8)(a) if
447 the division has informed the operator of the motor vehicle auction, the dealer, or the consignor
448 in writing that the buyer is prohibited from purchasing a vehicle with a nonrepairable or
449 salvage certificate under Subsection (8)(a).

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

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

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

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

458 (A) providers of the orientation class; and

459 (B) costs of the orientation class.

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

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

463 (A) ethics training;

464 (B) motor vehicle title and registration processes;

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

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

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

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

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

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

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

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

476 (c) may not, without first complying with Section 41-1a-705, offer for sale, sell, or
477 exchange a vehicle with a nonrepairable certificate as defined in Section 41-1a-1001 to a
478 person not licensed under this section.

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

484 Section 7. Section 41-3-201.5 is amended to read:

485 **41-3-201.5. Brokering of a new motor vehicle without a license prohibited.**

486 (1) (a) A person may not, for a fee, commission, or other form of compensation,
487 arrange, offer to arrange, or broker a transaction involving the sale or lease of more than two:

488 (i) new or used motor vehicles in any 12 consecutive month period, unless the person
489 is licensed under Subsection 41-3-202(1), (3), or (4); or

490 (ii) used motor vehicles in any 12 consecutive month period, unless the person is

491 licensed under Subsection 41-3-202(2).

492 (b) Each transaction a person arranges, offers to arrange, or brokers involving the sale
493 or lease of a motor vehicle for a fee, commission, or other form of compensation is a separate
494 violation under this section if:

495 (i) the person has for a fee, commission, or other form of compensation, arranged,
496 offered to arrange, or brokered the sale or lease of more than two new or used motor vehicles
497 within the previous 12 consecutive month period; and

498 (ii) the person is not licensed under Subsection 41-3-202(1).

499 (2) A person who violates this section is guilty of a class B misdemeanor.

500 Section 8. Section 41-3-201.7 is amended to read:

501 **41-3-201.7. Supplemental license for additional place of business restrictions --**

502 **Exception.**

503 (1) (a) Subject to the requirements of Subsection (2), a supplemental license for an
504 additional place of business issued pursuant to Subsection 41-3-201(7) may only be issued to a
505 dealer if the dealer is:

506 (i) licensed in accordance with Section 41-3-202;

507 (ii) bonded in accordance with Section 41-3-205; and

508 (iii) in compliance with existing rules promulgated by the administrator of the division
509 under Section 41-3-105.

510 (b) A supplemental license for a permanent additional place of business may only be
511 issued to a used motor vehicle dealer if:

512 (i) the dealer independently satisfies the bond requirements under Section 41-3-205 for
513 the permanent additional place of business;

514 (ii) the dealer is in compliance with existing rules promulgated by the administrator of
515 the division under Section 41-3-105; and

516 (iii) the permanent additional place of business meets all the requirements for a
517 principal place of business.

518 (2) (a) Except as provided in Subsections (2)(c) and (3), a supplemental license for an
519 additional place of business issued pursuant to Subsection 41-3-201(7) for a new motor vehicle
520 dealer may not be issued for an additional place of business that is beyond the geographic
521 specifications outlined as the area of responsibility in the dealer's franchise agreement.

522 (b) A new motor vehicle dealer shall provide the administrator with a copy of the
523 portion of the new motor vehicle dealer's franchise agreement identifying the dealer's area of
524 responsibility before being issued a supplemental license for an additional place of business.

525 (c) The restrictions under Subsections (2)(a) and (b) do not apply to a new motor
526 vehicle dealer if the license for an additional place of business is being issued for the sale of
527 used motor vehicles.

528 (d) This Subsection (2) does not apply to an online manufacturer dealer or a small
529 manufacturer dealer.

530 (3) The provisions of Subsection (2) do not apply if the additional place of business is
531 a trade show or exhibition if:

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

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

535 (4) A supplemental license for a temporary additional place of business issued to a
536 used motor vehicle dealer may not be for longer than 10 consecutive days.

537 Section 9. Section **41-3-202** is amended to read:

538 **41-3-202. Licenses -- Classes and scope.**

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

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

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

544 (c) operate as a body shop; and

545 (d) dismantle motor vehicles.

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

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

548 (b) operate as a body shop; and

549 (c) dismantle motor vehicles.

550 (3) An online manufacturer dealer's license permits the licensee, subject to Section
551 41-3-202.1, to:

552 (a) operate as an online manufacturer dealer;

553 (b) sell or offer to sell, exchange, or offer to exchange a motor vehicle online via an
554 Internet site operated by the licensee and accessed by a final purchaser to complete a sale;

555 (c) offer to sell, offer to exchange, and display a new motor vehicle in person;

556 (d) sell, offer to sell, exchange, or offer to exchange a used motor vehicle that:

557 (i) the licensee obtained in an exchange for a vehicle that the licensee or a
558 wholly-owned subsidiary of the licensee manufactured; or

559 (ii) is a demonstration vehicle with at least 7,500 miles;

560 (e) operate as a body shop; and

561 (f) dismantle a motor vehicle.

562 (4) A small manufacturer dealer's license permits the licensee, subject to Section
563 [41-3-202.2](#), to:

564 (a) operate as a small manufacturer dealer;

565 (b) sell or offer to sell, exchange, or offer to exchange a motor vehicle;

566 (c) operate as a body shop; and

567 (d) dismantle a motor vehicle.

568 [~~3~~] (5) A new motorcycle, off-highway vehicle, and small trailer dealer's license
569 permits the licensee to:

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

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

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

576 [~~4~~] (6) A used motorcycle, off-highway vehicle, and small trailer dealer's license
577 permits the licensee to:

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

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

581 [~~5~~] (7) (a) Except as provided in Subsection [~~5~~] (7)(b), a salesperson's license
582 permits the licensee to act as a motor vehicle salesperson and is valid for employment with
583 only one dealer at a time.

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

587 (c) An individual may only hold one of the following licenses at any given time:

588 (i) salesperson;

589 (ii) online manufacturer salesperson; or

590 (iii) small manufacturer salesperson.

591 (8) An online manufacturer salesperson's license permits the licensee to sell, purchase,
592 or exchange, or to negotiate for the sale, purchase, or exchange of, a new motor vehicle for one
593 online manufacturer dealer.

594 (9) A small manufacturer salesperson's license permits the licensee to sell, purchase, or
595 exchange, or to negotiate for the sale, purchase, or exchange of, a new motor vehicle for one
596 small manufacturer dealer.

597 [~~6~~] (10) (a) A manufacturer's license permits the licensee to construct or assemble
598 motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, at an
599 established place of business and to remanufacture motor vehicles.

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

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

604 [~~7~~] (11) A transporter's license permits the licensee to transport or deliver motor
605 vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, from a
606 manufacturing, assembling, or distributing point or from a dealer, to dealers, distributors, or
607 sales agents of a manufacturer or remanufacturer, to or from detail or repair shops, and to
608 financial institutions or places of storage from points of repossession.

609 [~~8~~] (12) A dismantler's license permits the licensee to dismantle motor vehicles
610 subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, for the purpose of
611 reselling parts or for salvage, or selling dismantled or salvage vehicles to a crusher or other
612 dismantler.

613 [~~9~~] (13) A distributor or factory branch and distributor branch's license permits the
614 licensee to sell and distribute new motor vehicles, parts, and accessories to their franchised

615 dealers.

616 ~~[(10)]~~ (14) A representative's license, for factory representatives or distributor
617 representatives permits the licensee to contact the licensee's authorized dealers for the purpose
618 of making or promoting the sale of motor vehicles, parts, and accessories.

619 ~~[(11)]~~ (15) (a) (i) A remanufacturer's license permits the licensee to construct,
620 reconstruct, assemble, or reassemble motor vehicles subject to registration under Title 41,
621 Chapter 1a, Motor Vehicle Act, from used or new motor vehicles or parts.

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

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

626 ~~[(12)]~~ (16) A crusher's license permits the licensee to engage in the business of
627 crushing or shredding motor vehicles subject to registration under Title 41, Chapter 1a, Motor
628 Vehicle Act, for the purpose of reducing the useable materials and metals to a more compact
629 size for recycling.

630 ~~[(13)]~~ (17) A body shop's license permits the licensee to rebuild, restore, repair, or
631 paint primarily the body of motor vehicles damaged by collision or natural disaster, and to
632 dismantle motor vehicles.

633 ~~[(14)]~~ (18) A special equipment dealer's license permits the licensee to:

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

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

638 (c) operate as a body shop; and

639 (d) dismantle motor vehicles.

640 ~~[(15)]~~ (19) (a) A salvage vehicle buyer license permits the licensee to bid on or
641 purchase a vehicle with a salvage certificate as defined in Section [41-1a-1001](#) at any motor
642 vehicle auction.

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

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

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

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

656 Section 10. Section **41-3-202.1** is enacted to read:

657 **41-3-202.1. Online manufacturer dealer license.**

658 (1) As used in this section:

659 (a) "Affiliated franchisor" means a person that is owned or controlled, wholly or in
660 part, by a manufacturer with an unaffiliated franchisee anywhere in the United States.

661 (b) "Franchisee" means the same as that term is defined in Section [13-14-102](#).

662 (c) "Unaffiliated franchisee" means a franchisee or dealer that is owned or controlled,
663 wholly or in part, by a person that is not:

664 (i) an online manufacturer dealer or a small manufacturer dealer; or

665 (ii) the parent entity of an online manufacturer dealer or small manufacturer dealer that
666 owns the franchisee or dealer as a wholly-owned subsidiary of the parent entity.

667 (2) An online manufacturer dealer may apply to the administrator under Section
668 [41-3-105](#) for an online manufacturer dealer license via the same procedure described in Section
669 [41-3-201](#) for a dealer license.

670 (3) Except as expressly provided, an online manufacturer dealer is subject to the
671 requirements of this chapter for a dealer under:

672 (a) Section [41-3-203](#);

673 (b) Section [41-3-205.5](#)

674 (c) Section [41-3-206](#);

675 (d) Section [41-3-211](#);

676 (e) Part 3, Temporary Permits;

- 677 (f) Part 4, Disclosure Requirements;
678 (g) Part 5, Special Dealer License Plates; and
679 (h) Part 7, Penalties.
680 (4) An online manufacturer dealer may not:
681 (a) sell or exchange a new motor vehicle in person;
682 (b) sell from the online manufacturer dealer's inventory;
683 (c) sell a demonstration vehicle that has less than 7,500 miles;
684 (d) have or have had:
685 (i) an affiliated franchisor; or
686 (ii) an unaffiliated franchisee; or
687 (e) sell a recreational vehicle.
688 (5) An online manufacturer dealer shall designate, at minimum, one person in the state
689 to act as the online manufacturer dealer's authorized service center for the purpose of warranty
690 service repairs.

691 Section 11. Section **41-3-202.2** is enacted to read:

692 **41-3-202.2. Small manufacturer dealer license.**

693 (1) As used in this section:

694 (a) "Affiliated franchisor" means a person that is owned or controlled, wholly or in
695 part, by a manufacturer with an unaffiliated franchisee anywhere in the United States.

696 (b) "Franchisee" means the same as that term is defined in Section [13-14-102](#).

697 (c) "Unaffiliated franchisee" means a franchisee or dealer that is owned or controlled,
698 wholly or in part, by a person that is not:

699 (i) an online manufacturer dealer or a small manufacturer dealer; or

700 (ii) the parent entity of an online manufacturer dealer or small manufacturer dealer that
701 owns the franchisee or dealer as a wholly-owned subsidiary of the parent entity.

702 (2) A small manufacturer dealer may apply to the administrator under Section [41-3-105](#)
703 for a small manufacturer dealer license via the same procedure described in Section [41-3-201](#)
704 for a dealer license.

705 (3) Except as expressly provided, a small manufacturer dealer is subject to the
706 requirements of this chapter for a dealer under:

707 (a) Section [41-3-203](#);

- 708 (b) Section 41-3-205.5
- 709 (c) Section 41-3-206;
- 710 (d) Section 41-3-211;
- 711 (e) Part 3, Temporary Permits;
- 712 (f) Part 4, Disclosure Requirements;
- 713 (g) Part 5, Special Dealer License Plates; and
- 714 (h) Part 7, Penalties.
- 715 (4) A small manufacturer dealer may display a motor vehicle that the small
- 716 manufacturer dealer manufactured for the purpose of a test drive.
- 717 (5) A small manufacturer dealer may sell a vehicle the small manufacturer dealer
- 718 manufactured via a consignment sale under Part 8, Consignment Sales Act.
- 719 (6) A small manufacturer dealer may not:
- 720 (a) have or have had:
- 721 (i) an affiliated franchisor; or
- 722 (ii) an unaffiliated franchisee; or
- 723 (b) sell a recreational vehicle.
- 724 (7) A small manufacturer dealer shall designate, at minimum, one person in the state to
- 725 act as the small manufacturer dealer's authorized service center for the purpose of warranty
- 726 service repairs.
- 727 Section 12. Section **41-3-204** is amended to read:
- 728 **41-3-204. Licenses -- Principal place of business as prerequisite -- Change of**
- 729 **location -- Relinquishment on loss of principal place of business.**
- 730 (1) (a) The following licensees must maintain a principal place of business:
- 731 (i) dealers;
- 732 (ii) an online manufacturer dealer as provided in Subsection (3);
- 733 (iii) a small manufacturer dealer;
- 734 ~~(ii)~~ (iv) special equipment dealers;
- 735 ~~(iii)~~ (v) manufacturers;
- 736 ~~(iv)~~ (vi) transporters;
- 737 ~~(v)~~ (vii) remanufacturers;
- 738 ~~(vi)~~ (viii) dismantlers;

739 [~~(vii)~~] (ix) crushers;

740 [~~(viii)~~] (x) body shops; and

741 [~~(ix)~~] (xi) distributors who:

742 (A) are located within the state; or

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

744 (b) [~~The~~] Except as provided in Subsection (4), the administrator may not issue a
745 license under Subsection (1)(a) to an applicant who does not have a principal place of business.

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

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

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

755 (3) The physical location in the state where an online manufacturer dealer displays a
756 vehicle for sale is the online manufacturer dealer's principal place of business for the purpose
757 of this chapter.

758 Section 13. Section **41-3-205** is amended to read:

759 **41-3-205. Licenses -- Bonds required -- Maximum liability -- Action against**
760 **surety -- Loss of bond.**

761 (1) (a) Before a dealer's, online manufacturer dealer's, small manufacturer dealer's,
762 special equipment dealer's, crusher's, or body shop's license is issued, the applicant shall file
763 with the administrator a corporate surety bond in the amount of:

764 [~~(i) \$50,000 until June 30, 2006, and \$75,000 on or after July 1, 2006,]~~

765 (i) \$75,000 for a motor vehicle dealer's license, online manufacturer dealer's license, or
766 small manufacturer dealer's license;

767 [~~(ii) \$20,000 until June 30, 2006, and \$75,000 on or after July 1, 2006,]~~

768 (ii) \$75,000 for a special equipment dealer's license;

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

770 license; or

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

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

774 (c) The form of the bond:

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

776 (ii) shall be conditioned upon the applicant's conducting business as a dealer, online
777 manufacturer dealer, or small manufacturer dealer without:

778 (A) fraud;

779 (B) fraudulent representation;

780 (C) violating Subsection 41-3-301(1) which requires a dealer to submit or deliver a
781 certificate of title or manufacturer's certificate of origin; or

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

784 (iii) may be continuous in form.

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

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

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

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

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

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

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

- 801 (i) assess the validity of all claims on the bond; and
802 (ii) submit a distribution assessment determined in accordance with Subsection (3)(c)
803 regarding the bond proceeds to the claimants of valid claims for approval.
- 804 (c) (i) If the total verifiable claims on the bond are less than the bond amount, then
805 each bond claimant shall be entitled to the full amount of a valid claim.
- 806 (ii) If the total verifiable claims exceed the bond amount, then the proceeds shall be
807 distributed pro rata to the bond claimants of valid claims.
- 808 (d) If the distribution assessment under Subsection (3)(b) is not unanimously approved
809 by the claimants of all valid claims on the bond, the principal or surety shall file an interpleader
810 action in the state district court where the defaulting [~~dealer was~~] person subject to the bond is
811 licensed.
- 812 (4) (a) A person making a claim on the bond shall be awarded attorney fees in cases
813 successfully prosecuted or settled against the surety or principal if the bond has not been
814 depleted.
- 815 (b) A surety or principal may not be awarded attorney fees that exceed \$2,500 for an
816 interpleader action filed under Subsection (3)(d).
- 817 (5) (a) (i) If a person who is a dealer, online manufacturer dealer, small manufacturer
818 dealer, body shop, or crusher loses possession of the bond required by this chapter, the [~~dealer,~~
819 ~~body shop, or crusher~~] person's license is automatically suspended.
- 820 (ii) All licenses, pocket cards, temporary permits, and special plates issued to the
821 licensee shall be immediately returned to the administrator.
- 822 (b) A dealer, online manufacturer dealer, small manufacturer dealer, body shop, or
823 crusher may not continue to use or permit to be used licenses, pocket cards, temporary permits,
824 or special plates until the required bond is on file with the administrator and the license has
825 been reinstated.
- 826 (6) A representative or consignee of a [~~dealer~~] person who is a dealer, online
827 manufacturer dealer, or small manufacturer dealer is not required to file a bond if the [~~dealer~~
828 ~~for whom the representative or consignee acts~~] person fully complies with the provisions of
829 this chapter.
- 830 Section 14. Section **41-3-209** is amended to read:
831 **41-3-209. Administrator's findings -- Suspension and revocation of license.**

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

834 ~~[(2) (a) On December 1, 2010, the administrator shall suspend the license of a~~
835 ~~salesperson who fails to submit to the division fingerprints as required under Subsection~~
836 ~~41-3-205.5(1)(b) on or before November 30, 2010.]~~

837 [(b)] (2) (a) If the administrator finds that there is reasonable cause to deny, suspend, or
838 revoke a license issued under this chapter, the administrator shall deny, suspend, or revoke the
839 license.

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

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

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

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

846 (iv) current revocation or suspension of a dealer, online manufacturer dealer, small
847 manufacturer dealer, dismantler, auction, [or] salesperson, online manufacturer dealer
848 salesperson, or small manufacturer salesperson license issued in another state;

849 (v) nonpayment of required fees;

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

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

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

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

857 (x) a violation of any state or federal law involving fraud;

858 (xi) a violation of any state or federal law involving a registerable sex offense under
859 Section 77-41-106; [or]

860 (xii) having had a license issued under this chapter revoked within five years from the
861 date of application[-];

862 (xiii) a violation by an online manufacturer dealer of a requirement of this chapter; or

863 (xiv) a violation by a small manufacturer dealer of a requirement of this chapter.

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

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

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

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

875 (b) revoke the license.

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

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

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

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

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

886 Section 15. Section **41-3-210** is amended to read:

887 **41-3-210. License holders -- Prohibitions and requirements.**

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

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

892 (b) intentionally publish, display, or circulate any advertising without identifying the
893 seller as the licensee by including in the advertisement the full name under which the licensee

- 894 is licensed or the licensee's number assigned by the division;
- 895 (c) violate this chapter or the rules made by the administrator;
- 896 (d) violate any law of the state respecting commerce in motor vehicles or any rule
897 respecting commerce in motor vehicles made by any licensing or regulating authority of the
898 state;
- 899 (e) engage in business as a new motor vehicle dealer, online manufacturer dealer, small
900 manufacturer dealer, special equipment dealer, used motor vehicle dealer, motor vehicle
901 crusher, or body shop without having in effect a bond as required in this chapter;
- 902 (f) act as a dealer, online manufacturer dealer, small manufacturer dealer, dismantler,
903 crusher, manufacturer, transporter, remanufacturer, or body shop without maintaining a
904 principal place of business;
- 905 (g) engage in a business respecting the selling or exchanging of new or new and used
906 motor vehicles for which [~~he~~] the holder of a license is not licensed, including, except for an
907 online manufacturer dealer or a small manufacturer dealer, selling or exchanging a new motor
908 vehicle for which the licensee does not have a franchise, but this Subsection (1)(g) does not
909 apply to a special equipment dealer who sells a new special equipment motor vehicle with a
910 gross vehicle weight of 12,000 or more pounds after installing special equipment on the motor
911 vehicle;
- 912 (h) dismantle or transport to a crusher for crushing or other disposition any motor
913 vehicle without first obtaining a dismantling or junk permit under Section [41-1a-1009](#),
914 [41-1a-1010](#), or [41-1a-1011](#);
- 915 (i) as a new motor vehicle dealer, online manufacturer dealer, small manufacturer
916 dealer, special equipment dealer, or used motor vehicle dealer fail to give notice of sales or
917 transfers as required in Section [41-3-301](#);
- 918 (j) advertise or otherwise represent, or knowingly allow to be advertised or represented
919 on his behalf or at his place of business, that no down payment is required in connection with
920 the sale of a motor vehicle when a down payment is required and the buyer is advised or
921 induced to finance a down payment by a loan in addition to any other loan financing the
922 remainder of the purchase price of the motor vehicle;
- 923 (k) as a crusher, crush or shred a motor vehicle brought to the crusher without
924 obtaining proper evidence of ownership of the motor vehicle; proper evidence of ownership is

925 a certificate of title endorsed according to law or a dismantling or junk permit issued under
926 Section [41-1a-1009](#), [41-1a-1010](#), or [41-1a-1011](#);

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

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

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

938 (o) ~~[(t)]~~ maintain, as a dealer, online manufacturer dealer, small manufacturer dealer,
939 dismantler, body shop, or manufacturer~~[-maintain]~~;

940 (i) a principal place of business or additional place of business that shares any common
941 area with a business or activity not directly related to motor vehicle commerce; or

942 (ii) ~~[maintain any places]~~ a place of business that ~~[share any]~~ shares a common area
943 with ~~[another dealer]~~ a different dealer, online manufacturer dealer, small manufacturer dealer,
944 dismantler, body shop, or manufacturer;

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

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

949 (r) alter a temporary permit in any manner;

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

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

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

955 ~~[(t)]~~ (B) possess a franchise from the manufacturer of the new motor vehicle sold,

956 displayed for sale, offered for sale, or exchanged by the licensee; or

957 (ii) have an online manufacturer dealer or a small manufacturer dealer license under
958 Section 41-3-202; or

959 (u) as a new motor vehicle dealer [or], online manufacturer dealer, small manufacturer
960 dealer, or used motor vehicle dealer, encourage or conspire with any person who has not
961 obtained a salesperson's license to solicit for prospective purchasers.

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

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

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

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

972 (3) Each licensee, except salespersons, shall maintain and make available for
973 inspection by peace officers and employees of the division:

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

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

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

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

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

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

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

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

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

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

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

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

999 (d) enter into an agreement with the manufacturer, distributor, distributor
1000 representative, or factory representative of any of them, or to do any other act unfair to the
1001 dealer by threatening to cancel any franchise or contractual agreement between the
1002 manufacturer, distributor, distributor branch, or factory branch and the dealer;

1003 (e) refuse to deliver to any dealer having a franchise or contractual arrangement for the
1004 retail sale of new and unused motor vehicles sold or distributed by the manufacturer,
1005 distributor, distributor branch or factory branch, any motor vehicle, publicly advertised for
1006 immediate delivery within 60 days after the dealer's order is received; or

1007 (f) unfairly, without regard to the equities of the dealer, cancel the franchise of any
1008 motor vehicle dealer; the nonrenewal of a franchise or selling agreement without cause is a
1009 violation of this subsection and is an unfair cancellation.

1010 (6) A dealer, online manufacturer dealer, or small manufacturer dealer may not assist
1011 an unlicensed dealer or salesperson in unlawful activity through active or passive participation
1012 in sales, or by allowing use of his facilities or dealer license number, or by any other means.

1013 (7) (a) The holder of any new motor vehicle dealer license issued under this chapter
1014 may not sell any new motor vehicle to:

1015 (i) another dealer licensed under this chapter who does not hold a valid franchise for
1016 the ~~[make]~~ line-make of new motor vehicles sold, unless the selling dealer licenses and titles
1017 the new motor vehicle to the purchasing dealer; or

1018 (ii) any motor vehicle leasing or rental company located within this state, or who has
1019 any branch office within this state, unless the dealer licenses and titles the new motor vehicle to
1020 the purchasing, leasing, or rental company.

1021 (b) Subsection (7)(a)(i) does not apply to the sale of a new incomplete motor vehicle
1022 with a gross vehicle weight of 12,000 or more pounds to a special equipment dealer licensed
1023 under this chapter.

1024 (8) A dealer licensed under this chapter may not take on consignment any new motor
1025 vehicle from anyone other than a new motor vehicle dealer, factory, or distributor who is
1026 licensed and franchised, or otherwise authorized, to distribute or sell that make of motor
1027 vehicle in this or any other state.

1028 (9) A body shop licensed under this chapter may not assist an unlicensed body shop in
1029 unlawful activity through active or passive means or by allowing use of its facilities, name,
1030 body shop number, or by any other means.

1031 (10) A used motor vehicle dealer licensed under this chapter may not advertise, offer
1032 for sale, or sell a new motor vehicle that has been driven less than 7,500 miles by obtaining a
1033 title only to the vehicle and representing it as a used motor vehicle.

1034 (11) (a) Except as provided in Subsection (11)(c), or in cases of undue hardship or
1035 emergency as provided by rule by the division, a dealer or salesperson licensed under this
1036 chapter may not, on consecutive days of Saturday and Sunday, sell, offer for sale, lease, or offer
1037 for lease a motor vehicle.

1038 (b) Each day a motor vehicle is sold, offered for sale, leased, or offered for lease in
1039 violation of Subsection (11)(a) and each motor vehicle sold, offered for sale, leased, or offered
1040 for lease in violation of Subsection (11)(a) shall constitute a separate offense.

1041 (c) The provisions of Subsection (11)(a) shall not apply to a dealer participating in a
1042 trade show or exhibition if:

1043 (i) there are five or more dealers participating in the trade show or exhibition; and

1044 (ii) the trade show or exhibition takes place at a location other than the principal place
1045 of business of one of the dealers participating in the trade show or exhibition.

1046 (12) For purposes of imposing the sales and use tax under Title 59, Chapter 12, Sales
1047 and Use Tax Act, a licensee issuing a temporary permit under Section [41-3-302](#) shall separately
1048 identify the fees required by Title 41, Chapter 1a, Motor Vehicle Act.

1049 (13) (a) A dismantler or dealer engaged in the business of dismantling motor vehicles
 1050 for the sale of parts or salvage shall identify any vehicles or equipment used by the dismantler
 1051 or dealer for transporting parts or salvage on the highways.

1052 (b) The identification required under Subsection (13)(a) shall:

1053 (i) include the name, address, and license number of the dismantler or dealer; and

1054 (ii) be conspicuously displayed on both sides of the vehicle or equipment in clearly
 1055 legible letters and numerals not less than two inches in height.

1056 Section 16. Section **41-3-601** is amended to read:

1057 **41-3-601. Fees.**

1058 (1) The administrator shall collect fees determined by the commission under Section
 1059 [63J-1-504](#) for each of the following:

1060 (a) new motor vehicle dealer's license;

1061 (b) used motor vehicle dealer's license;

1062 (c) online manufacturer dealer's license;

1063 (d) small manufacturer dealer's license;

1064 [~~(e)~~] (e) new motorcycle, off-highway vehicle, and small trailer dealer;

1065 [~~(f)~~] (f) used motorcycle, off-highway vehicle, and small trailer dealer;

1066 [~~(g)~~] (g) motor vehicle salesperson's license;

1067 [~~(h)~~] (h) motor vehicle salesperson's transfer or reissue fee;

1068 (i) online manufacturer salesperson's license;

1069 (j) small manufacturer salesperson's license;

1070 [~~(k)~~] (k) motor vehicle manufacturer's license;

1071 [~~(l)~~] (l) motor vehicle transporter's license;

1072 [~~(m)~~] (m) motor vehicle dismantler's license;

1073 [~~(n)~~] (n) motor vehicle crusher's license;

1074 [~~(o)~~] (o) motor vehicle remanufacturer's license;

1075 [~~(p)~~] (p) body shop's license;

1076 [~~(q)~~] (q) distributor or factory branch and distributor branch's license;

1077 [~~(r)~~] (r) representative's license;

1078 [~~(s)~~] (s) dealer plates;

1079 [~~(t)~~] (t) dismantler plates;

- 1080 ~~[(q)]~~ (u) manufacturer plates;
- 1081 ~~[(r)]~~ (v) transporter plates;
- 1082 ~~[(s)]~~ (w) damaged plate replacement;
- 1083 ~~[(t)]~~ (x) in-transit permits;
- 1084 ~~[(u)]~~ (y) loaded demonstration permits;
- 1085 ~~[(v)]~~ (z) additional place of business;
- 1086 ~~[(w)]~~ (aa) special equipment dealer's license;
- 1087 ~~[(x)]~~ (bb) temporary permits; and
- 1088 ~~[(y)]~~ (cc) temporary sports event registration certificates.

1089 (2) (a) To pay for training certified vehicle inspectors and enforcement under Sections
1090 [41-1a-1001](#) through [41-1a-1008](#), the State Tax Commission shall establish and the
1091 administrator shall collect inspection fees determined by the commission under Section
1092 [63J-1-504](#).

1093 (b) The division shall use fees collected under Subsection (2)(a) as dedicated credits to
1094 be used toward the costs of the division.

1095 (3) (a) At the time of application, the administrator shall collect a fee of \$200 for each
1096 salvage vehicle buyer license.

1097 (b) The administrator may retain a portion of the fee under Subsection (3)(a) to offset
1098 the administrator's actual costs of administering and enforcing salvage vehicle buyer licenses.

1099 (4) A fee imposed under Subsection (1)(x) or (y):

1100 (a) shall be deposited into the Motor Vehicle Enforcement Division Temporary Permit
1101 Restricted Account created by Section [41-3-110](#); and

1102 (b) is not subject to Subsection [63J-2-202](#)(2).

1103 Section 17. Section **41-3-802** is amended to read:

1104 **41-3-802. Definitions.**

1105 As used in this part:

1106 (1) (a) "Consignee" means a dealer who accepts vehicles for sale under an agreement
1107 that the dealer will pay the consignor for any sold vehicle and will return any unsold vehicles.

1108 **(b) "Consignee" includes a person authorized by a small manufacturer dealer to act as a**
1109 **cosignee for a vehicle manufactured by the small manufacturer dealer.**

1110 ~~[(b)]~~ (c) "Consignee" does not include a wholesale motor vehicle auction.

1111 (2) "Consignor" means a person who places a vehicle with a consignee for
1112 consignment sale.

1113 Section 18. Section **59-12-107** is amended to read:

1114 **59-12-107. Definitions -- Collection, remittance, and payment of tax by sellers or**
1115 **other persons -- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other**
1116 **liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt --**
1117 **Penalties and interest.**

1118 (1) As used in this section:

1119 (a) "Ownership" means direct ownership or indirect ownership through a parent,
1120 subsidiary, or affiliate.

1121 (b) "Related seller" means a seller that:

1122 (i) meets one or more of the criteria described in Subsection (2)(a)(i); and

1123 (ii) delivers tangible personal property, a service, or a product transferred electronically
1124 that is sold:

1125 (A) by a seller that does not meet one or more of the criteria described in Subsection
1126 (2)(a)(i); and

1127 (B) to a purchaser in the state.

1128 (c) "Substantial ownership interest" means an ownership interest in a business entity if
1129 that ownership interest is greater than the degree of ownership of equity interest specified in 15
1130 U.S.C. Sec. 78p, with respect to a person other than a director or an officer.

1131 (2) (a) Except as provided in Subsection (2)(e), Section [59-12-107.1](#), or Section
1132 [59-12-123](#), and subject to Subsection (2)(f), each seller shall pay or collect and remit the sales
1133 and use taxes imposed by this chapter if within this state the seller:

1134 (i) has or utilizes:

1135 (A) an office;

1136 (B) a distribution house;

1137 (C) a sales house;

1138 (D) a warehouse;

1139 (E) a service enterprise; or

1140 (F) a place of business similar to Subsections (2)(a)(i)(A) through (E);

1141 (ii) maintains a stock of goods;

1142 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the
1143 state, unless the seller's only activity in the state is:

1144 (A) advertising; or

1145 (B) solicitation by:

1146 (I) direct mail;

1147 (II) electronic mail;

1148 (III) the Internet;

1149 (IV) telecommunications service; or

1150 (V) a means similar to Subsection (2)(a)(iii)(A) or (B);

1151 (iv) regularly engages in the delivery of property in the state other than by:

1152 (A) common carrier; or

1153 (B) United States mail; or

1154 (v) regularly engages in an activity directly related to the leasing or servicing of
1155 property located within the state.

1156 (b) A seller is considered to be engaged in the business of selling tangible personal
1157 property, a service, or a product transferred electronically for use in the state, and shall pay or
1158 collect and remit the sales and use taxes imposed by this chapter if:

1159 (i) the seller holds a substantial ownership interest in, or is owned in whole or in
1160 substantial part by, a related seller; and

1161 (ii) (A) the seller sells the same or a substantially similar line of products as the related
1162 seller and does so under the same or a substantially similar business name; or

1163 (B) the place of business described in Subsection (2)(a)(i) of the related seller or an in
1164 state employee of the related seller is used to advertise, promote, or facilitate sales by the seller
1165 to a purchaser.

1166 (c) A seller that does not meet one or more of the criteria provided for in Subsection
1167 (2)(a) or is not a seller required to pay or collect and remit sales and use taxes under Subsection
1168 (2)(b):

1169 (i) except as provided in Subsection (2)(c)(ii), may voluntarily:

1170 (A) collect a tax on a transaction described in Subsection 59-12-103(1); and

1171 (B) remit the tax to the commission as provided in this part; or

1172 (ii) notwithstanding Subsection (2)(c)(i), shall collect a tax on a transaction described

1173 in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.

1174 (d) The collection and remittance of a tax under this chapter by a seller that is
1175 registered under the agreement may not be used as a factor in determining whether that seller is
1176 required by Subsection (2) to:

1177 (i) pay a tax, fee, or charge under:

1178 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

1179 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

1180 (C) Section 19-6-714;

1181 (D) Section 19-6-805;

1182 (E) Section 69-2-5;

1183 (F) Section 69-2-5.5;

1184 (G) Section 69-2-5.6; or

1185 (H) this title; or

1186 (ii) collect and remit a tax, fee, or charge under:

1187 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

1188 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

1189 (C) Section 19-6-714;

1190 (D) Section 19-6-805;

1191 (E) Section 69-2-5;

1192 (F) Section 69-2-5.5;

1193 (G) Section 69-2-5.6; or

1194 (H) this title.

1195 (e) A person shall pay a use tax imposed by this chapter on a transaction described in
1196 Subsection 59-12-103(1) if:

1197 (i) the seller did not collect a tax imposed by this chapter on the transaction; and

1198 (ii) the person:

1199 (A) stores the tangible personal property or product transferred electronically in the
1200 state;

1201 (B) uses the tangible personal property or product transferred electronically in the state;

1202 or

1203 (C) consumes the tangible personal property or product transferred electronically in the

1204 state.

1205 (f) The ownership of property that is located at the premises of a printer's facility with
1206 which the retailer has contracted for printing and that consists of the final printed product,
1207 property that becomes a part of the final printed product, or copy from which the printed
1208 product is produced, shall not result in the retailer being considered to have or maintain an
1209 office, distribution house, sales house, warehouse, service enterprise, or other place of
1210 business, or to maintain a stock of goods, within this state.

1211 (3) (a) Except as provided in Section [59-12-107.1](#), a tax under this chapter shall be
1212 collected from a purchaser.

1213 (b) A seller may not collect as tax an amount, without regard to fractional parts of one
1214 cent, in excess of the tax computed at the rates prescribed by this chapter.

1215 (c) (i) Each seller shall:

1216 (A) give the purchaser a receipt for the tax collected; or

1217 (B) bill the tax as a separate item and declare the name of this state and the seller's
1218 sales and use tax license number on the invoice for the sale.

1219 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax
1220 and relieves the purchaser of the liability for reporting the tax to the commission as a
1221 consumer.

1222 (d) A seller is not required to maintain a separate account for the tax collected, but is
1223 considered to be a person charged with receipt, safekeeping, and transfer of public money.

1224 (e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the
1225 benefit of the state and for payment to the commission in the manner and at the time provided
1226 for in this chapter.

1227 (f) If any seller, during any reporting period, collects as a tax an amount in excess of
1228 the lawful state and local percentage of total taxable sales allowed under this chapter, the seller
1229 shall remit to the commission the full amount of the tax imposed under this chapter, plus any
1230 excess.

1231 (g) If the accounting methods regularly employed by the seller in the transaction of the
1232 seller's business are such that reports of sales made during a calendar month or quarterly period
1233 will impose unnecessary hardships, the commission may accept reports at intervals that will, in
1234 the commission's opinion, better suit the convenience of the taxpayer or seller and will not

1235 jeopardize collection of the tax.

1236 (h) (i) For a purchase paid with specie legal tender as defined in Section 59-1-1501.1,
1237 and until such time as the commission accepts specie legal tender for the payment of a tax
1238 under this chapter, if the commission requires a seller to remit a tax under this chapter in legal
1239 tender other than specie legal tender, the seller shall state on the seller's books and records and
1240 on an invoice, bill of sale, or similar document provided to the purchaser:

1241 (A) the purchase price in specie legal tender and in the legal tender the seller is
1242 required to remit to the commission;

1243 (B) subject to Subsection (3)(h)(ii), the amount of tax due under this chapter in specie
1244 legal tender and in the legal tender the seller is required to remit to the commission;

1245 (C) the tax rate under this chapter applicable to the purchase; and

1246 (D) the date of the purchase.

1247 (ii) (A) Subject to Subsection (3)(h)(ii)(B), for purposes of determining the amount of
1248 tax due under Subsection (3)(h)(i), a seller shall use the most recent London fixing price for the
1249 specie legal tender the purchaser paid.

1250 (B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1251 commission may make rules for determining the amount of tax due under Subsection (3)(h)(i)
1252 if the London fixing price is not available for a particular day.

1253 (4) (a) Except as provided in Subsections (5) through (7) and Section 59-12-108, the
1254 sales or use tax imposed by this chapter is due and payable to the commission quarterly on or
1255 before the last day of the month next succeeding each calendar quarterly period.

1256 (b) (i) Each seller shall, on or before the last day of the month next succeeding each
1257 calendar quarterly period, file with the commission a return for the preceding quarterly period.

1258 (ii) The seller shall remit with the return under Subsection (4)(b)(i) the amount of the
1259 tax required under this chapter to be collected or paid for the period covered by the return.

1260 (c) Except as provided in Subsection (5)(c), a return shall contain information and be in
1261 a form the commission prescribes by rule.

1262 (d) (i) Subject to Subsection (4)(d)(ii), the sales tax as computed in the return shall be
1263 based on the total nonexempt sales made during the period for which the return is filed,
1264 including both cash and charge sales.

1265 (ii) For a sale that includes the delivery or installation of tangible personal property at a

1266 location other than a seller's place of business described in Subsection (2)(a)(i), if the delivery
1267 or installation is separately stated on an invoice or receipt, a seller may compute the tax due on
1268 the sale for purposes of Subsection (4)(d)(i) based on the amount the seller receives for that
1269 sale during each period for which the seller receives payment for the sale.

1270 (e) (i) The use tax as computed in the return shall be based on the total amount of
1271 purchases for storage, use, or other consumption in this state made during the period for which
1272 the return is filed, including both cash and charge purchases.

1273 (ii) (A) As used in this Subsection (4)(e)(ii), "qualifying purchaser" means a purchaser
1274 who is required to remit taxes under this chapter, but is not required to remit taxes monthly in
1275 accordance with Section [59-12-108](#), and who converts tangible personal property into real
1276 property.

1277 (B) Subject to Subsections (4)(e)(ii)(C) and (D), a qualifying purchaser may remit the
1278 taxes due under this chapter on tangible personal property for which the qualifying purchaser
1279 claims an exemption as allowed under Subsection [59-12-104](#)(23) or (25) based on the period in
1280 which the qualifying purchaser receives payment, in accordance with Subsection (4)(e)(ii)(C),
1281 for the conversion of the tangible personal property into real property.

1282 (C) A qualifying purchaser remitting taxes due under this chapter in accordance with
1283 Subsection (4)(e)(ii)(B) shall remit an amount equal to the total amount of tax due on the
1284 qualifying purchaser's purchase of the tangible personal property that was converted into real
1285 property multiplied by a fraction, the numerator of which is the payment received in the period
1286 for the qualifying purchaser's sale of the tangible personal property that was converted into real
1287 property and the denominator of which is the entire sales price for the qualifying purchaser's
1288 sale of the tangible personal property that was converted into real property.

1289 (D) A qualifying purchaser may remit taxes due under this chapter in accordance with
1290 this Subsection (4)(e)(ii) only if the books and records that the qualifying purchaser keeps in
1291 the qualifying purchaser's regular course of business identify by reasonable and verifiable
1292 standards that the tangible personal property was converted into real property.

1293 (f) (i) Subject to Subsection (4)(f)(ii) and in accordance with Title 63G, Chapter 3,
1294 Utah Administrative Rulemaking Act, the commission may by rule extend the time for making
1295 returns and paying the taxes.

1296 (ii) An extension under Subsection (4)(f)(i) may not be for more than 90 days.

1297 (g) The commission may require returns and payment of the tax to be made for other
1298 than quarterly periods if the commission considers it necessary in order to ensure the payment
1299 of the tax imposed by this chapter.

1300 (h) (i) The commission may require a seller that files a simplified electronic return with
1301 the commission to file an additional electronic report with the commission.

1302 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1303 commission may make rules providing:

1304 (A) the information required to be included in the additional electronic report described
1305 in Subsection (4)(h)(i); and

1306 (B) one or more due dates for filing the additional electronic report described in
1307 Subsection (4)(h)(i).

1308 (5) (a) As used in this Subsection (5) and Subsection (6)(b), "remote seller" means a
1309 seller that is:

1310 (i) registered under the agreement;

1311 (ii) described in Subsection (2)(c); and

1312 (iii) not a:

1313 (A) model 1 seller;

1314 (B) model 2 seller; or

1315 (C) model 3 seller.

1316 (b) (i) Except as provided in Subsection (5)(b)(ii), a tax a remote seller collects in
1317 accordance with Subsection (2)(c) is due and payable:

1318 (A) to the commission;

1319 (B) annually; and

1320 (C) on or before the last day of the month immediately following the last day of each
1321 calendar year.

1322 (ii) The commission may require that a tax a remote seller collects in accordance with
1323 Subsection (2)(c) be due and payable:

1324 (A) to the commission; and

1325 (B) on the last day of the month immediately following any month in which the seller
1326 accumulates a total of at least \$1,000 in agreement sales and use tax.

1327 (c) (i) If a remote seller remits a tax to the commission in accordance with Subsection

1328 (5)(b), the remote seller shall file a return:

1329 (A) with the commission;

1330 (B) with respect to the tax;

1331 (C) containing information prescribed by the commission; and

1332 (D) on a form prescribed by the commission.

1333 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1334 commission shall make rules prescribing:

1335 (A) the information required to be contained in a return described in Subsection

1336 (5)(c)(i); and

1337 (B) the form described in Subsection (5)(c)(i)(D).

1338 (d) A tax a remote seller collects in accordance with this Subsection (5) shall be

1339 calculated on the basis of the total amount of taxable transactions under Subsection

1340 [59-12-103](#)(1) the remote seller completes, including:

1341 (i) a cash transaction; and

1342 (ii) a charge transaction.

1343 (6) (a) Except as provided in Subsection (6)(b), a tax a seller that files a simplified
1344 electronic return collects in accordance with this chapter is due and payable:

1345 (i) monthly on or before the last day of the month immediately following the month for
1346 which the seller collects a tax under this chapter; and

1347 (ii) for the month for which the seller collects a tax under this chapter.

1348 (b) A tax a remote seller that files a simplified electronic return collects in accordance
1349 with this chapter is due and payable as provided in Subsection (5).

1350 (7) (a) On each vehicle sale made by ~~[other than]~~ a person who is not a regular licensed
1351 vehicle dealer, or licensed online manufacturer dealer or small manufacturer dealer as defined
1352 in Section [41-3-102](#), the purchaser shall pay the sales or use tax directly to the commission if
1353 the vehicle is subject to titling or registration under the laws of this state.

1354 (b) The commission shall collect the tax described in Subsection (7)(a) when the
1355 vehicle is titled or registered.

1356 (8) If any sale of tangible personal property or any other taxable transaction under
1357 Subsection [59-12-103](#)(1), is made by a wholesaler to a retailer, the wholesaler is not
1358 responsible for the collection or payment of the tax imposed on the sale and the retailer is

1359 responsible for the collection or payment of the tax imposed on the sale if:

1360 (a) the retailer represents that the personal property is purchased by the retailer for
1361 resale; and

1362 (b) the personal property is not subsequently resold.

1363 (9) If any sale of property or service subject to the tax is made to a person prepaying
1364 sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a
1365 contractor or subcontractor of that person, the person to whom such payment or consideration
1366 is payable is not responsible for the collection or payment of the sales or use tax and the person
1367 prepaying the sales or use tax is responsible for the collection or payment of the sales or use tax
1368 if the person prepaying the sales or use tax represents that the amount prepaid as sales or use
1369 tax has not been fully credited against sales or use tax due and payable under the rules
1370 promulgated by the commission.

1371 (10) (a) For purposes of this Subsection (10):

1372 (i) Except as provided in Subsection (10)(a)(ii), "bad debt" is as defined in Section
1373 166, Internal Revenue Code.

1374 (ii) Notwithstanding Subsection (10)(a)(i), "bad debt" does not include:

1375 (A) an amount included in the purchase price of tangible personal property, a product
1376 transferred electronically, or a service that is:

1377 (I) not a transaction described in Subsection 59-12-103(1); or

1378 (II) exempt under Section 59-12-104;

1379 (B) a financing charge;

1380 (C) interest;

1381 (D) a tax imposed under this chapter on the purchase price of tangible personal
1382 property, a product transferred electronically, or a service;

1383 (E) an uncollectible amount on tangible personal property or a product transferred
1384 electronically that:

1385 (I) is subject to a tax under this chapter; and

1386 (II) remains in the possession of a seller until the full purchase price is paid;

1387 (F) an expense incurred in attempting to collect any debt; or

1388 (G) an amount that a seller does not collect on repossessed property.

1389 (b) (i) To the extent an amount remitted in accordance with Subsection (4)(d) later

1390 becomes bad debt, a seller may deduct the bad debt from the total amount from which a tax
1391 under this chapter is calculated on a return.

1392 (ii) A qualifying purchaser, as defined in Subsection (4)(e)(ii)(A), may deduct from the
1393 total amount of taxes due under this chapter the amount of tax the qualifying purchaser paid on
1394 the qualifying purchaser's purchase of tangible personal property converted into real property to
1395 the extent that:

1396 (A) tax was remitted in accordance with Subsection (4)(e) on that tangible personal
1397 property converted into real property;

1398 (B) the qualifying purchaser's sale of that tangible personal property converted into real
1399 property later becomes bad debt; and

1400 (C) the books and records that the qualifying purchaser keeps in the qualifying
1401 purchaser's regular course of business identify by reasonable and verifiable standards that the
1402 tangible personal property was converted into real property.

1403 (c) A seller may file a refund claim with the commission if:

1404 (i) the amount of bad debt for the time period described in Subsection (10)(e) exceeds
1405 the amount of the seller's sales that are subject to a tax under this chapter for that same time
1406 period; and

1407 (ii) as provided in Section [59-1-1410](#).

1408 (d) A bad debt deduction under this section may not include interest.

1409 (e) A bad debt may be deducted under this Subsection (10) on a return for the time
1410 period during which the bad debt:

1411 (i) is written off as uncollectible in the seller's books and records; and

1412 (ii) would be eligible for a bad debt deduction:

1413 (A) for federal income tax purposes; and

1414 (B) if the seller were required to file a federal income tax return.

1415 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
1416 claims a refund under this Subsection (10), the seller shall report and remit a tax under this
1417 chapter:

1418 (i) on the portion of the bad debt the seller recovers; and

1419 (ii) on a return filed for the time period for which the portion of the bad debt is
1420 recovered.

- 1421 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
1422 (10)(f), a seller shall apply amounts received on the bad debt in the following order:
- 1423 (i) in a proportional amount:
- 1424 (A) to the purchase price of the tangible personal property, product transferred
1425 electronically, or service; and
- 1426 (B) to the tax due under this chapter on the tangible personal property, product
1427 transferred electronically, or service; and
- 1428 (ii) to:
- 1429 (A) interest charges;
- 1430 (B) service charges; and
- 1431 (C) other charges.
- 1432 (h) A seller's certified service provider may make a deduction or claim a refund for bad
1433 debt on behalf of the seller:
- 1434 (i) in accordance with this Subsection (10); and
- 1435 (ii) if the certified service provider credits or refunds the entire amount of the bad debt
1436 deduction or refund to the seller.
- 1437 (i) A seller may allocate bad debt among the states that are members of the agreement
1438 if the seller's books and records support that allocation.
- 1439 (11) (a) A seller may not, with intent to evade any tax, fail to timely remit the full
1440 amount of tax required by this chapter.
- 1441 (b) A violation of this section is punishable as provided in Section 59-1-401.
- 1442 (c) Each person who fails to pay any tax to the state or any amount of tax required to be
1443 paid to the state, except amounts determined to be due by the commission under Chapter 1,
1444 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time
1445 required by this chapter, or who fails to file any return as required by this chapter, shall pay, in
1446 addition to the tax, penalties and interest as provided in Sections 59-1-401 and 59-1-402.
- 1447 (d) For purposes of prosecution under this section, each quarterly tax period in which a
1448 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the
1449 tax required to be remitted, constitutes a separate offense.
- 1450 Section 19. **Effective date.**
- 1451 This bill takes effect on October 1, 2016.