

## HB0369S01 compared with HB0369

~~{deleted text}~~ shows text that was in HB0369 but was deleted in HB0369S01.

Inserted text shows text that was not in HB0369 but was inserted into HB0369S01.

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Representative Kim F. Coleman proposes the following substitute bill:

### AUTO DEALERSHIP LICENSE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kim F. Coleman**

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

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#### LONG TITLE

#### General Description:

This bill amends provisions related to the licensing of a new motor vehicle dealer.

#### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates a direct-sale manufacturer license;
- ▶ creates a direct-sale manufacturer salesperson license;
- ▶ permits a direct-sale manufacturer licensee to act as a dealer under certain conditions;
- ▶ permits a direct-sale manufacturer salesperson licensee to act as a salesperson for one direct-sale manufacturer under certain conditions;
- ▶ exempts a direct-sale manufacturer from the provisions of the New Automobile

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Franchise Act; and

- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

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

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

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

**41-3-201**, as last amended by Laws of Utah 2017, Chapter 153

**41-3-201.7**, as last amended by Laws of Utah 2017, Chapter 153

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

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

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

**41-3-206**, as last amended by Laws of Utah 2008, Chapter 388

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

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

**41-3-702**, as last amended by Laws of Utah 2017, Chapter 153

#### ENACTS:

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

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

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

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

The provisions of this chapter do not apply to a person licensed as a direct-sale manufacturer under Title 41, Chapter 3, Motor Vehicle Business Regulation Act.

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

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

As used in this chapter:

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

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

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

(4) "Authorized service center" means an entity that:

(a) is in the business of repairing exclusively the motor vehicles of the same line-make as the motor vehicles a single direct-sale manufacturer  ~~{sells, displays for sale, or offers for sale or exchange} manufactures;~~

(b) the direct-sale manufacturer described in Subsection (4)(a) authorizes to complete warranty repair work for motor vehicles that the direct-sale manufacturer sells, displays for sale, or offers for sale or exchange; and

(c) conducts business primarily from  ~~{a} an enclosed~~ commercial repair facility that is permanently located in the state.

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

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

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

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

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

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

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

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

(10) "Direct-sale manufacturer" means a person that:

(a) is **both** a manufacturer and a dealer;

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(b) in this state, sells, displays for sale, or offers for sale or exchange only motor vehicles of the person's own line-make~~;~~

~~(c) manufactures motor vehicles~~ that are:

(i) exclusively propelled through the use of electricity, a hydrogen fuel cell, or another non-fossil fuel source;

(ii) (A) passenger vehicles with a gross vehicle weight rating of 14,000 pounds or less;  
or

(B) trucks with a gross vehicle weight rating of 14,000 pounds or less; and

(iii) manufactured in the United States; and

~~(d)~~c) is not a franchise holder.

(11) "Direct-sale manufacturer salesperson" means an individual who for a salary, commission, or compensation of any kind, is employed either directly, indirectly, regularly, or occasionally by a direct-sale manufacturer to sell, purchase, or exchange or to negotiate for the sale, purchase, or exchange of a motor vehicle manufactured by the direct-sale manufacturer who employs the individual.

~~(9)~~ (12) (a) "Dismantler" means a person engaged in the business of dismantling motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, for the resale of parts or for salvage.

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

~~(10)~~ (13) "Distributor" means a person who has a franchise from a manufacturer of motor vehicles to distribute motor vehicles within this state and who in whole or in part sells or distributes new motor vehicles to dealers or who maintains distributor representatives.

~~(11)~~ (14) "Distributor branch" means a branch office similarly maintained by a distributor for the same purposes a factory branch is maintained.

~~(12)~~ (15) "Distributor representative" means a person and each officer and employee of the person engaged as a representative of a distributor or distributor branch of motor vehicles to make or promote the sale of the distributor or the distributor branch's motor vehicles, or for supervising or contacting dealers or prospective dealers of the distributor or the distributor branch.

~~(13)~~ (16) "Division" means the Motor Vehicle Enforcement Division created in

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Section 41-3-104.

~~[(14)]~~ (17) "Factory branch" means a branch office maintained by a person who manufactures or assembles motor vehicles for sale to distributors, motor vehicle dealers, or who directs or supervises the factory branch's representatives.

~~[(15)]~~ (18) "Factory representative" means a person and each officer and employee of the person engaged as a representative of a manufacturer of motor vehicles or by a factory branch to make or promote the sale of the manufacturer's or factory branch's motor vehicles, or for supervising or contacting the dealers or prospective dealers of the manufacturer or the factory branch.

~~[(16)]~~ (19) "Franchise" means a contract or agreement between a dealer and a manufacturer of new motor vehicles or ~~[its]~~ a manufacturer's distributor or factory branch by which the dealer is authorized to sell any specified make or makes of new motor vehicles.

(20) (a) "Franchise holder" means a manufacturer who:

(i) previously had a franchised dealer in the United States;

(ii) currently has a franchised dealer in the United States; ~~or~~

~~(iii) is the successor owner of, under legal or practical;~~

(iii) is a successor to another manufacturer who previously had or currently has a franchised dealer in the United States;

(iv) is a material owner of another manufacturer who previously had or currently has a franchised dealer in the United States;

(v) is under legal or common ownership, or ~~common control with, or~~ practical control, with another manufacturer who previously had or currently has a franchised dealer in the United States; or

(vi) is in a partnership, joint venture, or similar arrangement for production of a commonly owned line-make with ~~fa~~ another manufacturer who previously had or currently has a franchised dealer in the United States.

(b) "Franchise holder" does not include a manufacturer described in Subsection (20)(a) ~~(i) or (ii)~~, if at all times during the franchised dealer's existence, the manufacturer had legal or practical common ownership or common control with the franchised dealer.

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

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

(23) "Material owner" means a person who possesses, directly or indirectly, the power to direct, or cause the direction of, the management, policies, or activities of another person:

(a) through ownership of voting securities;

(b) by contract or credit arrangement; or

(c) in another way not described in Subsections (23)(a) and (b).

[(19)] ~~(23)~~(24) (a) "Motor vehicle" means a vehicle that is:

(i) self-propelled;

(ii) a trailer, travel trailer, or semitrailer; or

(iii) an off-highway vehicle or small trailer.

(b) "Motor vehicle" does not include:

(i) mobile homes as defined in Section 41-1a-102;

(ii) trailers of 750 pounds or less unladen weight;

(iii) farm tractors and other machines and tools used in the production, harvesting, and care of farm products; and

(iv) park model recreational vehicles as defined in Section 41-1a-102.

[(18)] ~~(24)~~(25) "Motorcycle" has the same meaning as defined in Section 41-1a-102.

[(20)] ~~(25)~~(26) "New motor vehicle" means a motor vehicle that:

(a) has never been titled or registered; and

(b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven less than 7,500 miles[; unless the motor vehicle is an off-highway vehicle, small trailer, trailer, travel trailer, or semitrailer, in which case the mileage limit does not apply].

[(21)] ~~(26)~~(27) "Off-highway vehicle" has the same meaning as provided in Section 41-22-2.

[(22)] ~~(27)~~(28) "Pawnbroker" means a person whose business is to lend money on security of personal property deposited with him.

[(23)] ~~(28)~~(29) (a) "Principal place of business" means, except as provided in Subsection ~~(28)~~(29)(b), a site or location in this state:

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

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

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

(b) "Principal place of business" means, with respect to a direct-sale manufacturer, the direct-sale manufacturer's showroom.

~~[(24)]~~ ~~(~~29~~30)~~ "Remanufacturer" means a person who reconstructs used motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, to change the body style and appearance of the motor vehicle or who constructs or assembles motor vehicles from used or new and used motor vehicle parts, or who reconstructs, constructs, or assembles three or more motor vehicles in any 12-month period.

~~[(25)]~~ ~~(~~30~~31)~~ "Salesperson" means an individual who for a salary, commission, or compensation of any kind, is employed either directly, indirectly, regularly, or occasionally by any new motor vehicle dealer or used motor vehicle dealer to sell, purchase, or exchange or to negotiate for the sale, purchase, or exchange of motor vehicles.

~~[(26)]~~ ~~(~~31~~32)~~ "Semitrailer" has the same meaning as defined in Section 41-1a-102.

~~(~~32~~33)~~ "Showroom" means a site or location in the state ~~{at which}that~~ a direct-sale manufacturer ~~{conducts business as a}~~uses exclusively for the display and demonstration of new motor vehicles of the same line-make that the direct-sale manufacturer ~~{in accordance with the provisions of this chapter}~~manufactures.

~~[(27)]~~ ~~(~~33~~34)~~ "Small trailer" means a trailer that has an unladen weight of more than 750 pounds, but less than 2,000 pounds.

~~[(28)]~~ ~~(~~34~~35)~~ "Special equipment" includes a truck mounted crane, cherry picker, material lift, post hole digger, and a utility or service body.

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[(29)] (~~(35)~~36) "Special equipment dealer" means a new or new and used motor vehicle dealer engaged in the business of buying new incomplete motor vehicles with a gross vehicle weight of 12,000 or more pounds and installing special equipment on the incomplete motor vehicle.

[(30)] (~~(36)~~37) "Trailer" has the same meaning as defined in Section 41-1a-102.

[(31)] (~~(37)~~38) "Transporter" means a person engaged in the business of transporting motor vehicles as described in Section 41-3-202.

[(32)] (~~(38)~~39) "Travel trailer" has the same meaning as provided in Section 41-1a-102.

[(33)] (~~(39)~~40) "Used motor vehicle" means a vehicle that:

(a) has been titled and registered to a purchaser other than a dealer; or

(b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven 7,500 or more miles~~[- unless the vehicle is a trailer, or semitrailer, in which case the mileage limit does not apply].~~

[(34)] (~~(40)~~41) "Wholesale motor vehicle auction" means a dealer primarily engaged in the business of auctioning consigned motor vehicles to dealers or dismantlers who are licensed by this or any other jurisdiction.

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

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

Under this chapter:

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

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



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

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

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

(4) Except as otherwise expressly provided:

(a) a direct-sale manufacturer is subject to the same provisions under this chapter as a new motor vehicle dealer; and

(b) a direct-sale manufacturer salesperson is subject to the same provisions under this chapter as a salesperson.

(5) Notwithstanding any provision of this chapter to the contrary, a direct-sale manufacturer ~~may sell motor vehicles of:~~

(a) may sell, display for sell, or offer for sale or exchange a motor vehicle described in Subsection 41-3-102(10)(b) without a franchise; and

(b) may not sell, display for sale, or offer for sale or exchange a new motor vehicle that is not of the same line-make the direct-sale ~~manufacturer's own line-make without a franchise~~ manufacturer manufactures.

Section 4. Section **41-3-105** is amended to read:

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

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

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

(b) The administrator, assistant administrator, and all investigators shall be law

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enforcement officers certified by peace officer standards and training as required by Section 53-13-103.

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

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

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

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

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

(c) Each application for a license shall contain:

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

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

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

(iv) a complete description of the principal place of business, including:

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

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

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

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

~~salespersons~~ a salesperson under authority of the license;

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(vi) at least five years of business history;

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

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

(ix) if the application is for a direct-sale manufacturer's license:

(A) the name of each ~~motor vehicle~~ line-make the applicant will sell, display for sale, or offer for sale or exchange;

(B) the name and address of each individual who will act as a direct-sale manufacturer salesperson under authority of the license;

(C) a complete description of the direct-sale manufacturer's authorized service center, including the address and any other place of business the applicant operates and maintains in conjunction with the authorized service center;

(D) a sworn statement that the applicant complies with each qualification for a direct-sale manufacturer under this chapter;

(E) a sworn statement that if at any time the applicant fails to comply with a qualification for a direct-sale manufacturer under this chapter, the applicant will inform the division in writing within 10 business days after the day on which the noncompliance occurs;  
and

(F) an acknowledgment that if the applicant fails to comply with a qualification for a direct-sale manufacturer under this chapter, the administrator will deny, suspend, or revoke the applicant's direct-sale manufacturer license in accordance with ~~Subsection~~ Section 41-3-209~~-(4)(b)~~.

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

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

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

(c) The administrator may make rules in accordance with Title 63G, Chapter 3, Utah

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Administrative Rulemaking Act, determining allowable size and shape of signs or devices, [their] lettering and other details of signs or devices, and [their] location of signs or devices.

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

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

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

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

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

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

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

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

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

Section 5. Section **41-3-201** is amended to read:

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

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

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

(a) a dealer;

(b) salvage vehicle buyer;

(c) salesperson;

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- (d) manufacturer;
- (e) transporter;
- (f) dismantler;
- (g) distributor;
- (h) factory branch and representative;
- (i) distributor branch and representative;
- (j) crusher;
- (k) remanufacturer; or
- (l) body shop.

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

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

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

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

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

- (A) has a valid business license in Utah; and
- (B) has a Utah sales tax license; and
- (iii) to a crusher.

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

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

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

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

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

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

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

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

"THIS DISCLOSURE STATEMENT MUST BE GIVEN BY THE SELLER TO THE  
BUYER EVERY TIME THIS VEHICLE IS RESOLD WITH A SALVAGE CERTIFICATE  
Vehicle Identification Number (VIN)

Year:            Make:            Model:

SALVAGE VEHICLE--NOT FOR RESALE WITHOUT DISCLOSURE

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

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Signature of Purchaser

Date"; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) (a) An operator of a motor vehicle auction shall store a salvage vehicle sold at auction in a secure facility until the salvage vehicle is claimed as provided in this section.

(b) Beginning at the time of purchase and until the salvage vehicle is claimed, the motor vehicle auction operator may collect a daily storage fee for the secure storage of each salvage vehicle sold at auction.

(c) Except as provided in Subsection (5)(d), before releasing possession of a salvage

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vehicle purchased at a motor vehicle auction to a person not licensed under this part or certified as a tow truck operator under Title 72, Chapter 9, Part 6, Tow Truck Provisions, and if the person claiming the vehicle is a person other than the purchaser of the vehicle, the motor vehicle auction operator shall create a record that shall contain:

(i) the name and address, as verified by government issued identification, of the person claiming the vehicle;

(ii) the year, make, and vehicle identification number of the claimed vehicle;

(iii) a written statement from the person claiming the vehicle indicating the location where the salvage vehicle will be delivered; and

(iv) verification that the claimant has authorization from the purchaser to claim the vehicle.

(d) If the salvage vehicle is claimed by a transporter or a tow truck operator, the transporter or the tow truck operator shall submit to the motor vehicle auction operator a written record on any release forms indicating the location where the salvage vehicle will be delivered if delivered within the state.

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

(i) retain the record described in Subsection (5)(c) for five years from the date of sale; and

(ii) make the record available for inspection by the division at the location of the motor vehicle auction during normal business hours.

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

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

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

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

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



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EXPORT ONLY."

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

- (i) at least two inches wide; and
- (ii) clearly legible.

(8) A [~~supplemental license shall be secured by a~~] dealer, manufacturer, remanufacturer, transporter, dismantler, crusher, or body shop shall obtain a supplemental license, in accordance with Section 41-3-201.7 for each additional place of business maintained by the licensee.

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

(b) An operator of a motor vehicle auction, a dealer, or a consignor may not sell a vehicle with a nonrepairable or salvage certificate to a buyer described in Subsection (9)(a) if the division has informed the operator of the motor vehicle auction, the dealer, or the consignor in writing that the buyer is prohibited from purchasing a vehicle with a nonrepairable or salvage certificate under Subsection (9)(a).

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

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

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

(d) (i) The division shall approve:

- (A) providers of the orientation class; and
- (B) costs of the orientation class.

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

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

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- (A) ethics training;
- (B) motor vehicle title and registration processes;
- (C) provisions of Title 13, Chapter 5, Unfair Practices Act, relating to motor vehicles;
- (D) Department of Insurance requirements relating to motor vehicles;
- (E) Department of Public Safety requirements relating to motor vehicles;
- (F) federal requirements related to motor vehicles as determined by the division; and
- (G) any required disclosure compliance forms as determined by the division.

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

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

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

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

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

Section 6. Section **41-3-201.7** is amended to read:

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

(1) (a) Subject to the requirements of Subsection (2), the administrator may issue a supplemental license for an additional place of business [issued pursuant to] under Subsection 41-3-201(8) [~~may only be issued~~] to a dealer if the dealer is:

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

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

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

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(b) [A] The administrator may issue a supplemental license for a permanent additional place of business [~~may only be issued~~] to a used motor vehicle dealer if:

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

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

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

(2) (a) Except as provided in Subsections (2)(c) and (3), a supplemental license for an additional place of business issued pursuant to Subsection 41-3-201(8) for a new motor vehicle dealer may not be issued for an additional place of business that is beyond the geographic specifications outlined as the area of responsibility in the dealer's franchise agreement.

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

(c) The restrictions under Subsections (2)(a) and (b) do not apply to a new motor vehicle dealer if:

(i) the license for an additional place of business is being issued for the sale of used motor vehicles[~~;~~]; or

(ii) the dealer is a direct-sale manufacturer.

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

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

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

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

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

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

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

(a) offer for sale, sell, or exchange new motor vehicles if the licensee possesses a

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franchise from the manufacturer of the motor vehicle offered for sale, sold, or exchanged by the licensee;

- (b) offer for sale, sell, or exchange used motor vehicles;
- (c) operate as a body shop; and
- (d) dismantle motor vehicles.

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

- (a) offer for sale, sell, or exchange used motor vehicles;
- (b) operate as a body shop; and
- (c) dismantle motor vehicles.

(3) A direct-sale manufacturer's license permits the licensee to:

(a) offer for sale, sell, or exchange new motor vehicles of the same line-make that the direct-sale manufacturer manufactures;

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

(c) operate as a body shop; ~~and~~

(d) dismantle motor vehicles ~~{, and}~~;

~~{ (e) establish and maintain:~~

~~(i) a showroom; and~~

~~(ii) an authorized service center that performs repair work exclusively on motor vehicles of the same line-make as the direct-sale manufacturer offers for sale.~~

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

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

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

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

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

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

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

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

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

(7) (a) A direct-sale manufacturer salesperson's license permits the licensee to act as a direct-sale manufacturer salesperson for one direct-sales manufacturer.

(b) A direct-sale manufacturer salesperson licensee may not simultaneously hold a salesperson's license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) operate as a body shop; and

(d) dismantle motor vehicles.

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

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

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

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

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

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

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

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

(b) The administrator shall deliver or mail the license of each salesperson ~~shall be delivered or mailed~~ to the dealer employing the salesperson and ~~it shall be kept in the custody and control of the dealer and conspicuously displayed~~ the dealer shall keep the license in the dealer's custody and control and conspicuously display the license in the dealer's place of business.

(c) Each licensee shall display conspicuously ~~his~~ the licensee's own license in ~~his~~ the licensee's place of business.

(d) In addition to the other provisions of this section, each direct-sale manufacturer licensee shall display conspicuously the licensee's own license in each of the licensee's:

- (i) showrooms; and
- (ii) authorized service centers.

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

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

(c) Each salesperson shall on request display ~~his~~ the salesperson's pocket card.

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

**41-3-204. Licenses -- Principal place of business as prerequisite -- Change of**

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### location -- Relinquishment on loss of principal place of business.

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

- (i) dealers;
- (ii) special equipment dealers;
- (iii) manufacturers;
- (iv) transporters;
- (v) remanufacturers;
- (vi) dismantlers;
- (vii) crushers;
- (viii) body shops; and
- (ix) distributors who:
  - (A) are located within the state; or
  - (B) have a branch office within the state.

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

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

(d) In addition to the other requirements of this section, if a direct-sale manufacturer licensee changes the location of an authorized service center of the licensee, the licensee shall immediately notify the administrator and the administrator shall issue a new license for the unexpired portion of the term of the original license at no additional fee.

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

(b) The administrator shall hold the licenses, cards, plates, and permits until the licensee obtains:

- (i) a principal place of business[-]; and
- (ii) if the licensee is a direct-sale manufacturer, an authorized service center.



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Section 10. Section **41-3-206** is amended to read:

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

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

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

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

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

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

(d) The division shall approve:

(i) the class providers; and

(ii) costs of the class.

Section 11. Section **41-3-209** is amended to read:

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

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

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

~~[(b) If]~~ (2) (a) ~~{Subject to Subsection (4)(b), if}~~ If the administrator finds that there is reasonable cause to deny, suspend, or revoke a license issued under this chapter, the administrator shall deny, suspend, or revoke the license.

~~[(c)]~~ (b) Reasonable cause for denial, suspension, or revocation of a license includes, in relation to the applicant or license holder or any of [its] the applicant or license holder's

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partners, officers, or directors:

(i) lack of a principal place of business or authorized service center as required by this chapter;

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

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

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

(v) nonpayment of required fees;

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

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

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

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

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

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

(xii) having had a license issued under this chapter revoked within five years from the date of application ~~or~~;

(xiii) failure of to comply with any applicable qualification or requirement imposed under this chapter.

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

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

(4) ~~(a)~~ If the administrator finds that the license holder has been convicted by a court of competent jurisdiction of violating any of the provisions of this chapter or any rules made by

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the administrator, or finds other reasonable cause, the administrator may, by complying with the emergency procedures of Title 63G, Chapter 4, Administrative Procedures Act:

~~§§(a)(i)~~ suspend the license on terms and for a period of time the administrator finds reasonable; or

~~§§(b)(ii)~~ revoke the license.

~~{ (b) If the administrator finds reasonable cause as described in Subsection (2) to revoke a direct-sale manufacturer license, the administrator shall revoke the license 90 days after the day on which the noncompliance occurs, unless the licensee cures the noncompliance before the license is revoked.~~

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

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

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

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

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

Section 12. Section **41-3-210** is amended to read:

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

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

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

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

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

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

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state;

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

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

(g) unless the licensee is a special equipment dealer who sells a new special equipment motor vehicle with a gross vehicle weight of 12,000 or more pounds after installing special equipment on the motor vehicle:

~~[(g)]~~ (i) engage in a business respecting the selling or exchanging of new or new and used motor vehicles for which ~~[he]~~ the licensee is not licensed~~[-including selling or exchanging]; and~~

~~(ii) unless the licensee is a direct-sale manufacturer, sell or exchange a new motor vehicle for which the licensee does not have a franchise[-but this Subsection (1)(g) does not apply to a special equipment dealer who sells a new special equipment motor vehicle with a gross vehicle weight of 12,000 or more pounds after installing special equipment on the motor vehicle];~~

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

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

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

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

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

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

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

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

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

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

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

(r) alter a temporary permit in any manner;

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

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

(i) have a new motor vehicle dealer's license or a direct-sale manufacturer's license under Section 41-3-202; and

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

(u) as a new motor vehicle dealer or used motor vehicle dealer, encourage or conspire

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with any person who has not obtained a salesperson's or a direct-sale manufacturer salesperson's license to solicit for prospective purchasers[-]; or

(v) as a direct-sale manufacturer, engage in business as a direct-sale manufacturer without having:

(i) an authorized service center; or

(ii) a principal place of business.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## HB0369S01 compared with HB0369

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

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

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

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

Section 13. Section **41-3-702** is amended to read:

### **41-3-702. Civil penalty for violation.**

(1) The following are civil violations under this chapter and are in addition to criminal violations under this chapter:

(a) Level I:

(i) failing to display business license;

(ii) failing to surrender license of salesperson because of termination, suspension, or revocation;

(iii) failing to maintain a separation from nonrelated motor vehicle businesses at licensed locations;

(iv) issuing a temporary permit improperly;

(v) failing to maintain records;

(vi) selling a new motor vehicle to a nonfranchised dealer or leasing company without licensing the motor vehicle;

(vii) special plate violation;

(viii) failing to maintain a sign at a principal place of business; [~~and~~] or

(ix) failing to store a salvage vehicle purchased at a motor vehicle auction in a secure location until the purchaser or a transporter has provided the proper documentation to take possession of the salvage vehicle.

(b) Level II:

(i) failing to report sale;

(ii) dismantling without a permit;

(iii) manufacturing without meeting construction or vehicle identification number standards;

## HB0369S01 compared with HB0369

- (iv) withholding customer license plates;
- (v) selling a motor vehicle on consecutive days of Saturday and Sunday; or
- (vi) failing to record and report the sale of a salvage vehicle at a motor vehicle auction

as described in Section 41-3-201.

(c) Level III:

- (i) operating without a principal place of business;
- (ii) selling a new motor vehicle as a dealer who is not a direct-sale manufacturer

without holding the franchise;

(iii) crushing a motor vehicle without proper evidence of ownership;

(iv) selling from an unlicensed location;

(v) altering a temporary permit;

(vi) refusal to furnish copies of records;

(vii) assisting an unlicensed dealer or salesperson in sales of motor vehicles;

(viii) advertising violation;

(ix) failing to separately identify the fees required by Title 41, Chapter 1a, Motor Vehicle Act;

(x) encouraging or conspiring with unlicensed persons to solicit for prospective purchasers; [~~and~~] or

(xi) selling, offering for sale, or displaying for sale or exchange a vehicle, vessel, or outboard motor in violation of Section 41-1a-705.

(2) (a) The schedule of civil penalties for violations of Subsection (1) is:

(i) Level I: \$25 for the first offense, \$100 for the second offense, and \$250 for the third and subsequent offenses;

(ii) Level II: \$100 for the first offense, \$250 for the second offense, and \$1,000 for the third and subsequent offenses; and

(iii) Level III: \$250 for the first offense, \$1,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(b) When determining under this section if an offense is a second or subsequent offense, only prior offenses committed within the 12 months [~~prior to~~] before the commission of the current offense may be considered.

(3) The following are civil violations in addition to criminal violations under Section

## HB0369S01 compared with HB0369

41-1a-1008:

(a) knowingly selling a salvage vehicle, as defined in Section 41-1a-1001, without disclosing that the salvage vehicle has been repaired or rebuilt;

(b) knowingly making a false statement on a vehicle damage disclosure statement, as defined in Section 41-1a-1001; or

(c) fraudulently certifying that a damaged motor vehicle is entitled to an unbranded title, as defined in Section 41-1a-1001, when it is not.

(4) The civil penalty for a violation under Subsection (3) is:

(a) not less than \$1,000, or treble the actual damages caused by the person, whichever is greater; and

(b) reasonable attorney fees and costs of the action.

(5) A civil action may be maintained by a purchaser or by the administrator.

†

~~Legislative Review Note~~

~~Office of Legislative Research and General Counsel~~