

## SB0128S03 compared with SB0128S02

~~text~~ shows text that was in SB0128S02 but was deleted in SB0128S03.

text shows text that was not in SB0128S02 but was inserted into SB0128S03.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Curtis S. Bramble proposes the following substitute bill:

### NON-VEHICLE FRANCHISE AGREEMENT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: ~~text~~ Francis D. Gibson

---

#### LONG TITLE

##### General Description:

This bill amends provisions of the New Automobile Franchise Act and the Motor Vehicle Business Regulation Act.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ excludes certain trailers from the New Automobile Franchise Act;
- ▶ amends provisions related to prohibitions and requirements of license holders; and
- ▶ makes technical and conforming changes.

##### Money Appropriated in this Bill:

None

##### Other Special Clauses:

## SB0128S03 compared with SB0128S02

This bill provides a special effective date.

[This bill provides a coordination clause.](#)

### Utah Code Sections Affected:

AMENDS:

**13-14-102**, as last amended by Laws of Utah 2018, Chapter 245

**41-3-102**, as last amended by Laws of Utah 2019, Chapter 424

[41-3-210](#), as last amended by Laws of Utah 2018, Chapter 387

### Utah Code Sections Affected by Coordination Clause:

[13-14-102](#), as last amended by Laws of Utah 2018, Chapter 245

---

---

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

Section 1. Section **13-14-102** is amended to read:

#### **13-14-102. Definitions.**

As used in this chapter:

- (1) "Advisory board" or "board" means the Utah Motor Vehicle Franchise Advisory Board created in Section 13-14-103.
- (2) "Affected municipality" means an incorporated city or town:
  - (a) that is located in the notice area; and
  - (b) (i) within which a franchisor is proposing a new or relocated dealership that is within the relevant market area of an existing dealership of the same line-make owned by another franchisee; or
  - (ii) within which an existing dealership is located and a franchisor is proposing a new or relocated dealership within the relevant market area of that existing dealership of the same line-make.
- (3) "Affiliate" has the meaning set forth in Section 16-10a-102.
- (4) "Aftermarket product" means any product or service not included in the franchisor's suggested retail price of the new motor vehicle, as that price appears on the label required by 15 U.S.C. Sec. 1232(f).
- (5) "Dealership" means a site or location in this state:
  - (a) at which a franchisee conducts the business of a new motor vehicle dealer; and
  - (b) that is identified as a new motor vehicle dealer's principal place of business for

## **SB0128S03 compared with SB0128S02**

licensing purposes under Section 41-3-204.

(6) "Department" means the Department of Commerce.

(7) "Do-not-drive order" means an order issued by a franchisor that instructs an individual not to operate a motor vehicle of the franchisor's line-make due to a recall.

(8) "Executive director" means the executive director of the Department of Commerce.

(9) (a) "Franchise" or "franchise agreement" means a written agreement, or in the absence of a written agreement, then a course of dealing or a practice for a definite or indefinite period, in which:

(i) a person grants to another person a license to use a trade name, trademark, service mark, or related characteristic; and

(ii) a community of interest exists in the marketing of new motor vehicles, new motor vehicle parts, and services related to the sale or lease of new motor vehicles at wholesale or retail.

(b) "Franchise" or "franchise agreement" includes a sales and service agreement.

(10) "Franchisee" means a person with whom a franchisor has agreed or permitted, in writing or in practice, to purchase, sell, or offer for sale new motor vehicles manufactured, produced, represented, or distributed by the franchisor.

(11) "Franchisor" means a person who has, in writing or in practice, agreed with or permits a franchisee to purchase, sell, or offer for sale new motor vehicles manufactured, produced, assembled, represented, or distributed by the franchisor, and includes:

(a) the manufacturer, producer, assembler, or distributor of the new motor vehicles;

(b) an intermediate distributor; and

(c) an agent, officer, or field or area representative of the franchisor.

(12) "Lead" means the referral by a franchisor to a franchisee of a potential customer whose contact information was obtained from a franchisor's program, process, or system designed to generate referrals for the purchase or lease of a new motor vehicle, or for service work related to the franchisor's vehicles.

(13) "Line-make" means:

(a) for other than a recreational vehicle, the motor vehicles that are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the franchisor; or

## SB0128S03 compared with SB0128S02

(b) for a recreational vehicle, a specific series of recreational vehicle product that:

(i) is identified by a common series trade name or trademark;

(ii) is targeted to a particular market segment, as determined by decor, features, equipment, size, weight, and price range;

(iii) has a length and floor plan that distinguish the recreational vehicle from other recreational vehicles with substantially the same decor, features, equipment, size, weight, and price;

(iv) belongs to a single, distinct classification of recreational vehicle product type having a substantial degree of commonality in the construction of the chassis, frame, and body; and

(v) a franchise agreement authorizes a dealer to sell.

(14) "Mile" means 5,280 feet.

(15) "Motor home" means a self-propelled vehicle, primarily designed as a temporary dwelling for travel, recreational, or vacation use.

(16) (a) "Motor vehicle" means:

(i) except as provided in Subsection (16)(b), a trailer;

~~(i)~~ (ii) a travel trailer;

~~(ii)~~ (iii) except as provided in Subsection (16)(b), a motor vehicle as defined in Section 41-3-102;

~~(iii)~~ (iv) a semitrailer as defined in Section 41-1a-102; and

~~(iv) a trailer as defined in Section 41-1a-102; and]~~

(v) a recreational vehicle.

(b) "Motor vehicle" does not include:

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

(ii) an off-highway vehicle as defined in Section 41-3-102; ~~and]~~

(iii) a small trailer ~~as defined in Section 41-3-102 (f);~~];

(iv) a trailer that:

(A) is not designed for human habitation; and

(B) has a gross vehicle weight rating of less than 26,000 pounds ~~(f);~~

(v) a mobile home as defined in Section 41-1a-102;

(vi) a trailer of 750 pounds or less unladen weight; and

## SB0128S03 compared with SB0128S02

(vii) a farm tractor or other machine or tool used in the production, harvesting, or care of a farm product.

(17) "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.

(18) "New motor vehicle dealer" is a person who is licensed under Subsection 41-3-202(1)[~~(a)~~] to sell new motor vehicles.

(19) "Notice" or "notify" includes both traditional written communications and all reliable forms of electronic communication unless expressly prohibited by statute or rule.

(20) "Notice area" means the geographic area that is:

(a) within a radius of at least six miles and no more than 10 miles from the site of an existing dealership; and

(b) located within a county with a population of at least 225,000.

(21) "Primary market area" means:

(a) for an existing dealership, the geographic area established by the franchisor that the existing dealership is intended to serve; or

(b) for a new or relocated dealership, the geographic area proposed by the franchisor that the new or relocated dealership is intended to serve.

(22) "Recall" means a determination by a franchisor or the National Highway Traffic Safety Administration that a motor vehicle has a safety-related defect or fails to meet a federal safety or emissions standard.

(23) "Recall repair" means any diagnostic work, labor, or part necessary to resolve an issue that is the basis of a recall.

(24) (a) "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either self-propelled or pulled by another vehicle.

(b) "Recreational vehicle" includes:

(i) a travel trailer;

(ii) a camping trailer;

(iii) a motor home;

## SB0128S03 compared with SB0128S02

(iv) a fifth wheel trailer; and

(v) a van.

(25) (a) "Relevant market area," except with respect to recreational vehicles, means:

(i) as applied to an existing dealership that is located in a county with a population of less than 225,000:

(A) the county in which the existing dealership is located; and

(B) the area within a 15-mile radius of the existing dealership; or

(ii) as applied to an existing dealership that is located in a county with a population of 225,000 or more, the area within a 10-mile radius of the existing dealership.

(b) "Relevant market area," with respect to recreational vehicles, means:

(i) the county in which the dealership is to be established or relocated; and

(ii) the area within a 35-mile radius from the site of the existing dealership.

(26) "Sale, transfer, or assignment" means any disposition of a franchise or an interest in a franchise, with or without consideration, including a bequest, inheritance, gift, exchange, lease, or license.

(27) "Serve" or "served," unless expressly indicated otherwise by statute or rule, includes any reliable form of communication.

(28) "Site-control agreement" means an agreement, however denominated and regardless of the agreement's form or of the parties to the agreement, that has the effect of:

(a) controlling in any way the use and development of the premises upon which a franchisee's business operations are located;

(b) requiring a franchisee to establish or maintain an exclusive dealership facility on the premises upon which the franchisee's business operations are located; or

(c) restricting the ability of the franchisee or, if the franchisee leases the dealership premises, the franchisee's lessor to transfer, sell, lease, develop, redevelop, or change the use of some or all of the dealership premises, whether by sublease, lease, collateral pledge of lease, right of first refusal to purchase or lease, option to purchase or lease, or any similar arrangement.

(29) "Small trailer" means the same as that term is defined in Section 41-3-102.

~~[(29)]~~ (30) "Stop-sale order" means an order issued by a franchisor that prohibits a franchisee from selling or leasing a certain used motor vehicle of the franchisor's line-make,

## SB0128S03 compared with SB0128S02

which then or thereafter is in the franchisee's inventory, due to a recall.

~~(30)~~ (31) "Trailer" means the same as that term is defined in Section 41-3-102.

~~(30)~~ ~~(31)~~ (32) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle without motive power, designed as a temporary dwelling for travel, recreational, or vacation use that does not require a special highway movement permit when drawn by a self-propelled motor vehicle.

~~(31)~~ ~~(32)~~ (33) "Used motor vehicle" means a motor vehicle that:

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

(b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven 7,500 or more miles.

~~(32)~~ ~~(33)~~ (34) "Value of a used motor vehicle" means the average trade-in value for a used motor vehicle of the same year, make, and model as reported in a recognized, independent third-party used motor vehicle guide.

~~(33)~~ ~~(34)~~ (35) "Written," "write," "in writing," or other variations of those terms shall include all reliable forms of electronic communication.

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

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

As used in this chapter:

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

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

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

(4) "Authorized service center" means 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 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

## **SB0128S03 compared with SB0128S02**

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

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

(6) "Body shop" means a person engaged in rebuilding, restoring, repairing, or painting the body of motor vehicles for compensation.

(7) "Commission" means the State Tax Commission.

(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.

(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:

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

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

(c) that is not a franchise holder;

(d) that is domiciled in the United States; and

(e) whose chief officers direct, control, and coordinate the person's activities as a direct-sale manufacturer from a physical location in the United States.

(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



## **SB0128S03 compared with SB0128S02**

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.

(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.

(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.

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

(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.

(16) "Division" means the Motor Vehicle Enforcement Division created in Section 41-3-104.

(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.

(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.

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

## **SB0128S03 compared with SB0128S02**

(b) "Franchise" includes a contract or agreement described in Subsection (19)(a) regardless of whether the contract or agreement is subject to Title 13, Chapter 14, New Automobile Franchise Act, Title 13, Chapter 35, Powersport Vehicle Franchise Act, or neither.

(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;

(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 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 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), 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.

(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).

(24) (a) "Motor vehicle" means a vehicle that is:

(i) self-propelled;

## SB0128S03 compared with SB0128S02

(ii) a trailer<sup>[5]</sup>;

~~(iii) a travel trailer<sup>[5-OR]</sup>;~~

~~(iv) a semitrailer; [OR]~~

~~(iii)]~~ (v) an off-highway vehicle; or

~~(vi) a 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]~~ a farm tractor or other machine or tool used in the production, harvesting, ~~[and]~~ or care of a farm [products] product; and

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

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

(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.

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

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

(29) (a) "Principal place of business" means a site or location in this state:

(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;

(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

(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

## SB0128S03 compared with SB0128S02

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, which shall comply with the requirements of Subsection (29)(a).

(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.

(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.

(32) "Semitrailer" [~~has the same meaning as~~] means the same as that term is defined in Section 41-1a-102.

(33) "Showroom" means a site or location in the state that a direct-sale manufacturer uses for the direct-sale manufacturer's business, including the display and demonstration of new motor vehicles that are exclusively of the same line-make that the direct-sale manufacturer manufactures.

(34) "Small trailer" means a trailer that has an unladen weight of:

(a) more than 750 pounds~~[-but]; and~~

(b) less than 2,000 pounds.

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

(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.

(37) "Trailer" [~~has the same meaning as~~] means the same as that term is defined in Section 41-1a-102.

(38) "Transporter" means a person engaged in the business of transporting motor

## SB0128S03 compared with SB0128S02

vehicles as described in Section 41-3-202.

(39) "Travel trailer" [~~has the same meaning as provided~~] means the same as that term is defined in Section 41-1a-102.

(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.

(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 41-3-210 is amended to read:

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

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

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

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

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

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

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

(f) 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;

## SB0128S03 compared with SB0128S02

(i) engage in a business respecting the selling or exchanging of new or new and used motor vehicles for which the licensee is not licensed; 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;

(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 the licensee's behalf or at 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;

(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

## SB0128S03 compared with SB0128S02

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;

(u) as a new motor vehicle dealer or used motor vehicle dealer, encourage or conspire 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[-]; or

(w) possess a franchise that is not expressed in writing, if the franchise allows the sale or exchange of a new trailer that:

(i) is not designed for human habitation;

(ii) has a gross vehicle weight rating of less than 26,000 pounds; and

(iii) is not designed to carry a motorboat as defined in Section 73-18-2.

(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

## SB0128S03 compared with SB0128S02

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

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

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

[(b)] (ii) order or accept delivery of any motor vehicle with special features, appliances,



## SB0128S03 compared with SB0128S02

accessories, or equipment not included in the list price of the motor vehicle as publicly advertised by the manufacturer;

[(e)] (iii) order from any person any parts, accessories, equipment, machinery, tools, appliances, or any other commodity;

[(d)] (iv) 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)] (v) 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)] (vi) 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 and written notice is a violation of this subsection and is an unfair cancellation[-]; or

(vii) waive or forbear the right of the dealer, if the dealer offers for sale, sells, or exchanges cargo/utility trailers, to protest the establishment or relocation of a dealer who offers for sale, sells, or exchanges cargo/utility trailers of the same line-make in the relevant market area of the established dealer.

(b) For the purpose of Subsection (5)(a)(vii):

(i) "Cargo/utility trailer" means a trailer that:

(A) is not designed for human habitation;

(B) has a gross vehicle weight rating of less than 26,000 pounds; and

(C) is not designed to carry a motorboat as defined in Section 73-18-2.

(ii) "Relevant market area" means:

(A) for a dealership located in a county that has a population of less than 225,000, the county in which the dealership is located and the area within a 15-mile radius of the dealership;  
or

(B) for a dealership located in a county that has a population of 225,000 or more, the area within a 10-mile radius of the dealership.

(6) A dealer may not assist an unlicensed dealer or salesperson in unlawful activity

## **SB0128S03 compared with SB0128S02**

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

(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

## **SB0128S03 compared with SB0128S02**

trade show or exhibition if:

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

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

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

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

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

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

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

Section 4. Effective date.

This bill takes effect on October 15, 2020.

Section 5. Coordinating S.B. 128 with H.B. 329 -- Technical amendments.

If this S.B. 128 and H.B. 329, Powersport and Automobile Franchise Amendments, both pass and become law, it is the intent of the Legislature that the amendments to Section 13-14-102 in this bill supersede the amendments to Section 13-14-102 in H.B. 329 when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication.