

Senator Curtis S. Bramble proposes the following substitute bill:

**AUTOMOBILE AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill makes changes related to automobile manufacturers, franchisors, and franchisees.

**Highlighted Provisions:**

This bill:

- defines terms;
- amends provisions regarding warranty repairs made by franchisors and the calculation of labor and parts rates for those repairs;
- amends the definition of "direct-sale manufacturer" to include small-volume manufacturers; and
- makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**13-14-204**, as last amended by Laws of Utah 2018, Chapter 245



26 [41-3-102](#), as last amended by Laws of Utah 2020, Chapter 367

27 [41-3-103](#), as last amended by Laws of Utah 2018, Chapter 387

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

30 Section 1. Section **13-14-204** is amended to read:

31 **13-14-204. Franchisor's obligations related to service -- Franchisor audits -- Time**  
32 **limits.**

33 (1) As used in this section:

34 (a) "Labor" means work or service performed with respect to the repair of a motor  
35 vehicle, including diagnostic work or service.

36 (b) "Parts" means original or replacement parts, accessories, or components, with  
37 respect to a motor vehicle, including engine, transmission, and other parts assemblies.

38 (c) "Qualified repair" means a repair to a vehicle that:

39 (i) would come within a franchisor's warranty but for the vehicle exceeding the time or  
40 mileage limits of the warranty;

41 (ii) does not otherwise constitute warranty work; and

42 (iii) does not constitute any of the following:

43 (A) routine maintenance, including the replacement of fluids, filters, batteries, bulbs,  
44 belts, nuts, bolts, fasteners, brake pads, or rotors;

45 (B) replacement of or work on tires, wheels, or elements related to tires or wheels,  
46 including wheel alignments and tire or wheel rotations;

47 (C) a repair for a government agency, fleet owner, insurer, extended warranty provider,  
48 or service contract provider;

49 (D) a repair that is the subject of a franchisor special event, promotion, or service  
50 campaign, or is otherwise subject to a franchisor discount;

51 (E) a repair of a motor vehicle owned by the franchisee or an employee of the  
52 franchisee;

53 (F) an accessory or the installation of an accessory;

54 (G) a repair of a condition caused by collision, road hazard, the force of the elements,  
55 vandalism, theft, or the negligence or a deliberate act of the owner, operator, or a third party;

56 (H) a safety or vehicle emission inspection required by law;

- 57 (I) vehicle reconditioning;
- 58 (J) repairs performed or parts sold at wholesale;
- 59 (K) franchisor-approved goodwill or policy repairs or replacements;
- 60 (L) a repair performed on a vehicle of a line-make other than the line-make for which  
61 the franchisee is franchised by the franchisor; or
- 62 (M) for the purpose of calculating a retail parts rate only, a repair on or using an  
63 aftermarket part.
- 64 (d) "Qualified repair order" means a repair order that includes, in whole or in part, one  
65 or more qualified repairs.
- 66 (e) "Repair order" means an invoice that:  
67 (i) is paid by a retail customer and closed before a franchisee submits the invoice to the  
68 franchisee's franchisor under Subsection (5)(a);  
69 (ii) includes one or more repairs to or other work on a motor vehicle; and  
70 (iii) depicts:  
71 (A) in the case of a retail parts rate submission, the cost of each part and the part's sale  
72 price; or  
73 (B) in the case of a retail labor rate submission, the labor hours allocated to each job  
74 and the sale price of the labor.
- 75 (f) "Warranty" means a new vehicle warranty, maintenance plan, extended warranty,  
76 certified pre-owned warranty, service contract, or other obligation of a franchisor to repair or  
77 replace defects in a motor vehicle or part, including an obligation that is the subject of a  
78 technical service bulletin, a customer service campaign, or a recall conducted under United  
79 States Code, Title 49, Secs. 30118 through 30120.
- 80 (2) A franchisor shall:  
81 (a) fulfill a warranty agreement made by the franchisor; and  
82 (b) compensate the franchisor's franchisees for labor and parts furnished by the  
83 franchisees to satisfy the franchisor's warranty obligations, including:  
84 (i) diagnostic work;  
85 (ii) repairs;  
86 (iii) servicing;  
87 (iv) the disposal of hazardous substances; and

88 (v) other conditions of the warranty obligation.

89 ~~[(+)] (3) Each franchisor shall specify in writing to each of the franchisor's franchisees~~  
90 ~~licensed as a new motor vehicle dealer in this state[:(a)], the franchisee's obligations for new~~  
91 ~~motor vehicle preparation, delivery, and warranty service on the franchisor's products[;].~~

92 ~~[(b) the schedule of compensation to be paid to the franchisee for parts, work, and~~  
93 ~~service; and]~~

94 ~~[(c) the time allowance for the performance of work and service.]~~

95 ~~[(2) (a) The schedule of compensation described in Subsection (1) shall include~~  
96 ~~reasonable compensation for diagnostic work, as well as repair service, parts, and labor.]~~

97 ~~[(b) Time allowances described in Subsection (1) for the diagnosis and performance of~~  
98 ~~warranty work and service shall be reasonable and adequate for the work to be performed.]~~

99 ~~[(3) (a) In the determination of what constitutes reasonable compensation under this~~  
100 ~~section, the principal factor to be considered is the prevailing wage rates being paid by~~  
101 ~~franchisees in the relevant market area in which the franchisee is doing business.]~~

102 ~~[(b) (i) Compensation of the franchisee for warranty service or recall repair work may~~  
103 ~~not be less than the amount charged by the franchisee for like parts and service to retail or fleet~~  
104 ~~customers, if the amounts are reasonable.]~~

105 (4) A franchisor shall compensate the franchisor's franchisees, at the franchisee's retail  
106 rates as determined under Subsections (5) and (6), for labor and parts furnished by the  
107 franchisee in satisfaction of a warranty issued by the franchisor.

108 (5) (a) To establish or modify a franchisee's retail labor rate or retail parts rate, a  
109 franchisee shall submit, in writing to the franchisee's franchisor and no more than once per  
110 calendar year, whichever of the following comprises the fewest number of repair orders, all of  
111 which must be for repairs made no more than 180 days before the franchisee's written  
112 submission:

113 (i) 100 sequential repair orders reflecting qualified repairs; or

114 (ii) all qualified repair orders closed during any period of 90 consecutive days.

115 (b) A franchisee shall calculate the franchisee's retail labor rate by:

116 (i) determining the total charges for labor in the qualified repair orders submitted to the  
117 franchisee's franchisor under Subsection (5)(a); and

118 (ii) dividing the amount calculated under Subsection (5)(b)(i) by the total number of

119 labor hours that generated those charges.

120 (c) A franchisee shall calculate the franchisee's retail parts rate by:

121 (i) determining the total charges for parts in the qualified repair orders submitted to the  
122 franchisee's franchisor under Subsection (5)(a);

123 (ii) dividing the amount calculated under Subsection (5)(c)(i) by the franchisee's total  
124 cost to purchase the parts in those qualified repair orders;

125 (iii) subtracting one from the result of Subsection (5)(c)(ii); and

126 (iv) multiplying the result of Subsection (5)(c)(iii) by 100 to produce a percentage.

127 [(ii)] (d) In the case of a recreational vehicle franchisee, reimbursement for parts used  
128 in the performance of warranty repairs, including those parts separately warranted directly to  
129 the consumer by a recreational vehicle parts supplier, may not be less than the franchisee's cost  
130 plus 20%.

131 [(iii)] (e) For purposes of [~~Subsection (3)(b)(ii)] Subsections (5)(b) through (d), the~~  
132 term "cost" shall be that same price paid by a franchisee to a franchisor or supplier for the part  
133 when the part is purchased for a nonwarranty repair.

134 (f) For the purposes of Subsection (5)(a), a franchisee may submit either:

135 (i) a single set of qualified repair orders for the purpose of calculating the franchisee's  
136 retail labor rate and retail parts rate; or

137 (ii) a set of qualified repair orders for the purpose of calculating only the franchisee's  
138 retail labor rate or retail parts rate.

139 (g) Time allowances for diagnostic work and labor furnished by the franchisee in  
140 satisfaction of a warranty issued by the franchisee's franchisor shall be based on the franchisor's  
141 labor time guide or, at the franchisee's election, the labor time guide used by the franchisee for  
142 diagnostic work and labor furnished for non-warranty repairs.

143 (h) (i) A discount shall be allocated between parts and labor as indicated on the face of  
144 a repair order for parts and labor furnished by a franchisee in satisfaction of a warranty issued  
145 by the franchisee's franchisor.

146 (ii) If no allocation is shown on the face of a repair order described in Subsection  
147 (5)(h)(i), a discount is allocated pro rata between parts and labor.

148 (iii) For purposes of this Subsection (5)(h), a manufacturer's or distributor's  
149 promotional reward program cash-equivalent pay method is not a discount.

150 (i) (i) If a franchisor supplies a part to the franchisor's franchisee at no cost or at a  
151 reduced cost for the franchisee to use in fulfilling a warranty claim, the franchisor shall  
152 compensate the franchisee for the franchisee's cost of the part, if any, plus an amount equal to  
153 the franchisee's prevailing retail parts rate multiplied by the fair wholesale value of the part.

154 (ii) The fair wholesale value of a part is the greater of:

155 (A) the amount a franchisee paid for the part or a substantially identical part if the part  
156 is already owned by the franchisee;

157 (B) the cost of the part shown in the franchisor's current or prior established price  
158 schedule; or

159 (C) the cost of a substantially identical part shown in the franchisor's current or prior  
160 established price schedule.

161 (j) A franchisee's revision of or supplement to a submission under Subsection (5)(a),  
162 that corrects or clarifies the franchisee's submission, is not a new submission under this section.

163 (6) (a) If a franchisee seeks compensation from the franchisee's franchisor for parts or  
164 labor furnished in satisfaction of a warranty issued by the franchisor, the franchisee shall  
165 provide written notice to the franchisee's franchisor of the franchisee's retail labor rate or retail  
166 parts rate in accordance with Subsection (5)(a).

167 (b) A retail labor rate or retail parts rate provided in a written notice described in  
168 Subsection (5)(a) takes effect 30 days after the day on which the franchisee delivers the written  
169 notice to the franchisor unless the franchisor contests the franchisee's indicated rate under  
170 Subsection (6)(c).

171 (c) A franchisor may contest a franchisee's indicated retail labor rate or retail parts rate  
172 by submitting to the franchisee a notice of objection that contains, and is limited to, the  
173 following:

174 (i) a statement that the franchisor believes the contested rate is materially inaccurate or  
175 fraudulent;

176 (ii) a full explanation of the reasons the franchisor believes the contested rate is  
177 materially inaccurate or fraudulent;

178 (iii) evidence substantiating each reason described in Subsection (6)(c)(ii);

179 (iv) the calculations used by the franchisor to support the franchisor's objection; and

180 (v) as applicable, a proposed adjusted retail labor rate or retail parts rate.

181 (d) (i) A franchisor may not submit more than one notice of objection to a franchisee  
182 concerning a declared retail labor rate or retail parts rate.

183 (ii) After submitting a notice of objection, a franchisor may not add to, expand,  
184 supplement, or otherwise modify the objection.

185 (iii) In a judicial or administrative proceeding regarding one or more contested rates:

186 (A) the issue shall be limited to whether the retail labor rate or the retail parts rate  
187 submitted by the franchisee is materially inaccurate or fraudulent;

188 (B) the franchisor has the burden of proof; and

189 (C) the rate that is determined in resolution of the dispute is retroactive to the date that  
190 is 30 days after the day on which the franchisee delivered the written notice described in  
191 Subsection (5)(a) to the franchisor.

192 (7) A franchisor may not directly or indirectly:

193 (a) require a franchisee to calculate, establish, or alter the franchisee's retail labor rate  
194 or retail parts rate by any means not described in this section;

195 (b) initiate a process to calculate, establish, or alter a franchisee's retail labor rate or  
196 retail parts rate, including by:

197 (i) substituting a different purported qualified repair order for a qualified repair order  
198 that is submitted by a franchisee under Subsection (5)(a);

199 (ii) presenting to a franchisee information about, or calculations based on, another  
200 franchisee's compensation;

201 (iii) presenting to a franchisee information about, or calculations based on, the  
202 franchisee's or another franchisee's financial statements; or

203 (iv) imposing on a franchisee an unduly burdensome or time-consuming process for  
204 tracking or submitting repair orders, or requiring a franchisee to provide information that is  
205 unduly burdensome or time-consuming to provide, including part-by-part or  
206 transaction-by-transaction calculations;

207 (c) establish or implement a special part number or component number for a part used  
208 in warranty work, if the special part number or component number would result in lower  
209 compensation to the franchisee than as calculated under this section;

210 (d) require, influence, or attempt to influence a franchisee to implement or change the  
211 price for which the franchisee sells parts or labor for retail repairs;

212 (e) recover or attempt to recover all or a portion of the franchisor's costs for  
213 compensating a franchisee for warranty work, including by:  
214 (i) reducing the amount due; or  
215 (ii) a separate charge, surcharge, or imposition;  
216 (f) take or threaten to take adverse action against a franchisee who seeks to obtain  
217 compensation under this section;  
218 (g) dissuade or discourage, or attempt to dissuade or discourage a franchisee from  
219 seeking compensation under this section, including by:  
220 (i) creating or implementing an obstacle or process that is inconsistent with a  
221 franchisor's obligations to a franchisee under this section;  
222 (ii) acting or failing to act other than in good faith;  
223 (iii) hindering, delaying, or rejecting the proper and timely payment of compensation  
224 due to a franchisee under this section; or  
225 (iv) establishing, implementing, enforcing, or applying a policy, standard, rule,  
226 program, or incentive regarding compensation due to a franchisee under this section, other than  
227 in a uniform manner among the franchisor's franchisees in this state;  
228 (h) conduct or threaten to conduct a warranty, non-warranty repair, or other  
229 service-related audit of a franchisee for the purpose of dissuading or discouraging the  
230 franchisee from seeking compensation under this section; or  
231 (i) implement or continue a policy, procedure, or program for franchisee compensation  
232 that is inconsistent with this section.  
233 (8) Subsection (7) does not prohibit a franchisor from increasing the price of a vehicle  
234 in the normal course of business.  
235 ~~[(4)]~~ (9) A franchisor may not fail to:  
236 (a) perform any warranty obligation;  
237 (b) include in written notices of franchisor's recalls to new motor vehicle owners and  
238 franchisees the expected date by which necessary parts and equipment will be available to  
239 franchisees for the correction of the defects; or  
240 (c) in accordance with Subsections ~~[(2) and (3)]~~ (4) and (5), compensate a franchisee  
241 for all diagnostic work, labor, and parts the franchisor requires to perform a recall repair.  
242 ~~[(5)]~~ (10) If a franchisor disallows a franchisee's claim for a defective part, alleging that



243 the part is not defective, the franchisor at the franchisor's option shall:

244 (a) return the part to the franchisee at the franchisor's expense; or

245 (b) pay the franchisee the cost of the part.

246 ~~[(6)]~~ (11) (a) A claim made by a franchisee pursuant to this section for diagnostic  
247 work, labor, or parts shall be paid within 30 days after the claim's approval.

248 (b) The franchisor shall approve or disapprove a claim within 30 days after receipt of  
249 the claim on a form generally used by the franchisor and containing the generally required  
250 information. Any claim not specifically disapproved of in writing within 30 days after the  
251 receipt of the form is considered to be approved and payment shall be made within 30 days.

252 ~~[(7)]~~ (12) A franchisor may conduct warranty service audits and recall repair audits of  
253 the franchisor's franchisee records on a reasonable basis.

254 ~~[(8)]~~ (13) A franchisor may deny a franchisee's claim for warranty compensation or  
255 recall repair compensation only if:

256 (a) the franchisee's claim is based on a nonwarranty repair or a nonrecall repair;

257 (b) the franchisee lacks material documentation for the claim;

258 (c) the franchisee fails to comply materially with specific substantive terms and  
259 conditions of the franchisor's warranty compensation program or recall repair compensation  
260 program; or

261 (d) the franchisor has a bona fide belief based on competent evidence that the  
262 franchisee's claim is intentionally false, fraudulent, or misrepresented.

263 ~~[(9)]~~ (14) (a) Any charge back for a warranty part or service compensation, recall repair  
264 compensation, or service incentive is only enforceable for the six-month period immediately  
265 following the day on which the franchisor makes the payment compensating the franchisee for  
266 the warranty part or service, recall repair, or service incentive.

267 (b) Except as provided in Subsection ~~[(9)]~~ (14)(e), all charge backs levied by a  
268 franchisor for sales compensation or sales incentives arising out of the sale or lease of a motor  
269 vehicle sold or leased by a franchisee shall be compensable only if written notice of the charge  
270 back is received by the franchisee within six months immediately following the sooner of:

271 (i) the day on which the ~~[sales incentive program terminates]~~ franchisee reports the sale  
272 to the franchisor; or

273 (ii) the day on which the franchisor makes the payment for the sales compensation or

274 sales incentive to the franchisee.

275 (c) (i) Upon an audit, the franchisor shall provide the franchisee automated or written  
276 notice explaining the amount of and reason for a charge back.

277 (ii) A franchisee may respond in writing within 30 days after the notice under  
278 Subsection [~~(9)~~] (14)(c)(i) to:

279 (A) explain a deficiency; or

280 (B) provide materials or information to correct and cure compliance with a provision  
281 that is a basis for a charge back.

282 (d) A charge back:

283 (i) may not be based on a nonmaterial error that is clerical in nature; and

284 (ii) (A) shall be based on one or more specific instances of material noncompliance  
285 with the franchisor's warranty compensation program, sales incentive program, recall repair  
286 program, or recall compensation program; and

287 (B) may not be extrapolated from a sampling of warranty claims, recall repair claims,  
288 or sales incentive claims.

289 (e) The time limitations of this Subsection [~~(9)~~] (14) do not preclude charge backs for  
290 any fraudulent claim that was previously paid.

291 [~~(10)~~] (15) (a) If within 30 days after the day on which a franchisor issues an initial  
292 notice of recall a part or remedy is not reasonably available to perform the recall repair on a  
293 used motor vehicle, each calendar month thereafter the franchisor shall pay the franchisee an  
294 amount equal to at least 1.35% of the value of the used motor vehicle, if:

295 (i) the franchisee holding the used motor vehicle for sale is authorized to sell and  
296 service a new vehicle of the same line-make;

297 (ii) after May 7, 2018, the franchisor issues a stop-sale or do-not-drive order on the  
298 used motor vehicle; and

299 (iii) (A) the used motor vehicle is in the franchisee's inventory at the time the  
300 franchisor issued the order described in Subsection [~~(10)~~] (15)(a)(ii); or

301 (B) after the franchisor issues the order described in Subsection [~~(10)~~] (15)(a)(ii), the  
302 franchisee takes the used motor vehicle into the franchisee's inventory at the termination of the  
303 consumer lease for the vehicle, as a consumer trade-in accompanying the purchase of a new  
304 vehicle from the franchisee, or for any other reason in the ordinary course of business.

305 (b) A franchisor shall pay the compensation described in Subsection [~~(10)~~] (15)(a):

306 (i) beginning:

307 (A) 30 days after the day on which the franchisee receives the stop-sale or do-not-drive  
308 order; or

309 (B) if a franchisee obtains the used motor vehicle more than 30 days after the day on  
310 which the franchisee receives the stop-sale or do-not-drive order, the day on which the  
311 franchisee obtains the used motor vehicle; and

312 (ii) ending the earlier of the day on which:

313 (A) the franchisor makes the recall part or remedy available for order and prompt  
314 shipment to the franchisee; or

315 (B) the franchisee sells, trades, or otherwise disposes of the used motor vehicle.

316 (c) A franchisor shall prorate the first and last payment for a used motor vehicle to a  
317 franchisee under this Subsection [~~(10)~~] (15).

318 (d) A franchisor may direct the manner in which a franchisee demonstrates the  
319 inventory status of an affected used motor vehicle to determine eligibility under this Subsection  
320 [~~(10)~~] (15), if the manner is not unduly burdensome.

321 [~~(11)~~] (16) (a) A franchisee that offsets recall repair compensation received from a  
322 franchisor under this section against recall repair compensation the franchisee receives under a  
323 state or federal recall repair compensation remedy may pursue any other available remedy  
324 against the franchisor.

325 (b) As an alternative to providing recall repair compensation under this section, a  
326 franchisor may compensate a franchisee for a recall repair:

327 (i) under a national recall repair compensation program, if the compensation is equal to  
328 or greater than the compensation provided under this section; or

329 (ii) as the franchisor and franchisee otherwise agree, if the compensation is equal to or  
330 greater than the compensation provided under this section.

331 (c) Nothing in this section requires a franchisor to provide compensation to a  
332 franchisee that exceeds the value of the used motor vehicle affected by a recall.

333 (17) During an audit under this section, a franchisor may not request a document from  
334 the franchisee that:

335 (a) originated from the franchisor or a subsidiary of the franchisor; or

336 (b) is available to the franchisor from:

337 (i) another person; or

338 (ii) public records to which the franchisor has access.

339 (18) A franchisor or franchisee may submit a notice or submission under this section

340 electronically.

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

342 **41-3-102. Definitions.**

343 As used in this chapter:

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

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

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

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

352 (a) is in the business of repairing exclusively the motor vehicles of the same line-make  
353 as the motor vehicles a single direct-sale manufacturer manufactures;

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

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

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

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

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

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

366 (9) (a) "Dealer" means a person:

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

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

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

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

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

374 ~~[(b) that, in this state, sells, displays for sale, or offers for sale or exchange only new  
375 motor vehicles of the person's own line-make that are:]~~

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

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

379 ~~or]~~

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

381 ~~[(iii) manufactured by the person;]~~

382 (b) that is:

383 (i) an electric vehicle manufacturer; or

384 (ii) a low-volume manufacturer;

385 (c) that is not a franchise holder;

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

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

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

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

397 (b) "Dismantler" includes a person who dismantles three or more motor vehicles in any

398 12-month period.

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

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

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

409 (16) "Division" means the Motor Vehicle Enforcement Division created in Section  
410 [41-3-104](#).

411 (17) "Electric vehicle manufacturer" means a person that, in this state, sells, displays  
412 for sale, or offers for sale or exchange only new motor vehicles of the person's own line-make  
413 that are:

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

416 (b) (i) passenger vehicles with a gross vehicle weight rating of 14,000 pounds or less;  
417 or

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

419 (c) manufactured by the person.

420 ~~[(17)]~~ (18) "Factory branch" means a branch office maintained by a person who  
421 manufactures or assembles motor vehicles for sale to distributors, motor vehicle dealers, or  
422 who directs or supervises the factory branch's representatives.

423 ~~[(18)]~~ (19) "Factory representative" means a person and each officer and employee of  
424 the person engaged as a representative of a manufacturer of motor vehicles or by a factory  
425 branch to make or promote the sale of the manufacturer's or factory branch's motor vehicles, or  
426 for supervising or contacting the dealers or prospective dealers of the manufacturer or the  
427 factory branch.

428 ~~[(19)]~~ (20) (a) "Franchise" means a contract or agreement between a dealer and a

429 manufacturer of new motor vehicles or a manufacturer's distributor or factory branch by which  
430 the dealer is authorized to sell any specified make or makes of new motor vehicles.

431 (b) "Franchise" includes a contract or agreement described in Subsection [~~(19)~~] (20)(a)  
432 regardless of whether the contract or agreement is subject to Title 13, Chapter 14, New  
433 Automobile Franchise Act, Title 13, Chapter 35, Powersport Vehicle Franchise Act, or neither.

434 [~~(20)~~] (21) (a) "Franchise holder" means a manufacturer who:

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

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

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

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

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

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

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

449 (22) "Low-volume manufacturer" means a manufacturer who:

450 (a) in this state, sells, displays for sale, or offers for sale or exchange only new motor  
451 vehicles of the person's own line make that are:

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

453 or

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

455 (ii) manufactured by the person; and

456 (b) constructs no more than 325 new motor vehicles in any 12-month period.

457 [~~(21)~~] (23) "Line-make" means motor vehicles that are offered for sale, lease, or  
458 distribution under a common name, trademark, service mark, or brand name of the  
459 manufacturer.

460           ~~[(22)]~~ (24) "Manufacturer" means a person engaged in the business of constructing or  
461 assembling new motor vehicles, ownership of which is customarily transferred by a  
462 manufacturer's statement or certificate of origin, or a person who constructs three or more new  
463 motor vehicles in any 12-month period.

464           ~~[(23)]~~ (25) "Material owner" means a person who possesses, directly or indirectly, the  
465 power to direct, or cause the direction of, the management, policies, or activities of another  
466 person:

- 467           (a) through ownership of voting securities;
- 468           (b) by contract or credit arrangement; or
- 469           (c) in another way not described in Subsections ~~[(23)]~~ (25)(a) and (b).

470           ~~[(24)]~~ (26) (a) "Motor vehicle" means a vehicle that is:

- 471           (i) self-propelled;
- 472           (ii) a trailer;
- 473           (iii) a travel trailer;
- 474           (iv) a semitrailer;
- 475           (v) an off-highway vehicle; or
- 476           (vi) a small trailer.
- 477           (b) "Motor vehicle" does not include:
  - 478           (i) mobile homes as defined in Section [41-1a-102](#);
  - 479           (ii) trailers of 750 pounds or less unladen weight;
  - 480           (iii) a farm tractor or other machine or tool used in the production, harvesting, or care of  
481 a farm product; and
  - 482           (iv) park model recreational vehicles as defined in Section [41-1a-102](#).

483           ~~[(25)]~~ (27) "Motorcycle" means the same as that term is defined in Section [41-1a-102](#).

484           ~~[(26)]~~ (28) "New motor vehicle" means a motor vehicle that:

- 485           (a) has never been titled or registered; and
- 486           (b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven  
487 less than 7,500 miles.

488           ~~[(27)]~~ (29) "Off-highway vehicle" means the same as that term is defined in Section  
489 [41-22-2](#).

490           ~~[(28)]~~ (30) "Pawnbroker" means a person whose business is to lend money on security



491 of personal property deposited with him.

492 ~~[(29)]~~ (31) (a) "Principal place of business" means a site or location in this state:

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

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

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

504 (b) "Principal place of business" means, with respect to a direct-sale manufacturer, the  
505 direct-sale manufacturer's showroom, which shall comply with the requirements of Subsection  
506 ~~[(29)]~~ (31)(a).

507 ~~[(30)]~~ (32) "Remanufacturer" means a person who reconstructs used motor vehicles  
508 subject to registration under ~~[Title 41,]~~ Chapter 1a, Motor Vehicle Act, to change the body  
509 style and appearance of the motor vehicle or who constructs or assembles motor vehicles from  
510 used or new and used motor vehicle parts, or who reconstructs, constructs, or assembles three  
511 or more motor vehicles in any 12-month period.

512 ~~[(31)]~~ (33) "Salesperson" means an individual who for a salary, commission, or  
513 compensation of any kind, is employed either directly, indirectly, regularly, or occasionally by  
514 any new motor vehicle dealer or used motor vehicle dealer to sell, purchase, or exchange or to  
515 negotiate for the sale, purchase, or exchange of motor vehicles.

516 ~~[(32)]~~ (34) "Semitrailer" means the same as that term is defined in Section [41-1a-102](#).

517 ~~[(33)]~~ (35) "Showroom" means a site or location in the state that a direct-sale  
518 manufacturer uses for the direct-sale manufacturer's business, including the display and  
519 demonstration of new motor vehicles that are exclusively of the same line-make that the  
520 direct-sale manufacturer manufactures.

521 ~~[(34)]~~ (36) "Small trailer" means a trailer that has an unladen weight of:

522 (a) more than 750 pounds; and

523 (b) less than 2,000 pounds.

524 ~~[(35)]~~ (37) "Special equipment" includes a truck mounted crane, cherry picker, material  
525 lift, post hole digger, and a utility or service body.

526 ~~[(36)]~~ (38) "Special equipment dealer" means a new or new and used motor vehicle  
527 dealer engaged in the business of buying new incomplete motor vehicles with a gross vehicle  
528 weight of 12,000 or more pounds and installing special equipment on the incomplete motor  
529 vehicle.

530 ~~[(37)]~~ (39) "Trailer" means the same as that term is defined in Section 41-1a-102.

531 ~~[(38)]~~ (40) "Transporter" means a person engaged in the business of transporting motor  
532 vehicles as described in Section 41-3-202.

533 ~~[(39)]~~ (41) "Travel trailer" means the same as that term is defined in Section  
534 41-1a-102.

535 ~~[(40)]~~ (42) "Used motor vehicle" means a vehicle that:

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

537 (b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven  
538 7,500 or more miles.

539 ~~[(41)]~~ (43) "Wholesale motor vehicle auction" means a dealer primarily engaged in the  
540 business of auctioning consigned motor vehicles to dealers or dismantlers who are licensed by  
541 this or any other jurisdiction.

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

543 **41-3-103. Exceptions to "dealer" definition -- Dealer licensed in other state --**  
544 **Direct-sale manufacturer -- Direct-sale manufacturer salesperson.**

545 Under this chapter:

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

553 dealer.

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

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

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

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

565 (4) Except as otherwise expressly provided:

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

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

570 (5) Notwithstanding any provision of this chapter to the contrary, a direct-sale  
571 manufacturer:

572 (a) may, without a franchise, sell, display for sale, or offer for sale or exchange a motor  
573 vehicle;

574 (i) described in Subsection [41-3-102(10)(b) without a franchise; and] 41-3-102(17) if  
575 the direct-sale manufacturer is an electric vehicle manufacturer; or

576 (ii) described in Subsection 41-3-102(22) if the direct-sale manufacturer is a  
577 low-volume manufacturer; and

578 (b) may not sell, display for sale, or offer for sale or exchange a new motor vehicle that  
579 is not of the same line-make the direct-sale manufacturer manufactures.