

SB0204S01 compared with SB0204

~~text~~ shows text that was in SB0204 but was deleted in SB0204S01.

text shows text that was not in SB0204 but was inserted into SB0204S01.

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Senator Curtis S. Bramble proposes the following substitute bill:

AUTOMOBILE AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

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:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

41-3-102, as last amended by Laws of Utah 2020, Chapter 367

41-3-103, as last amended by Laws of Utah 2018, Chapter 387

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

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

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

(1) As used in this section ~~{, "qualified"}:~~

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

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

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

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

(~~f~~b~~i~~) does not otherwise constitute warranty work; and

(~~f~~c~~i~~) does not constitute any of the following:

(~~f~~i~~i~~A) routine maintenance, including the replacement of fluids, filters, batteries, bulbs, belts, nuts, bolts, ~~{or }~~fasteners, ~~{unless the routine maintenance is performed in the course of and related to a qualified repair;~~

— (~~f~~i~~i~~) brake pads, or rotors;

(~~B~~) replacement of or work on tires, wheels, or elements related to tires or wheels, including ~~{vehicle;}wheel~~ alignments~~{,} and~~ tire~~{rotations.}~~ or wheel rotations;

(~~f~~i~~i~~i~~C~~) a repair for a government agency, fleet owner, insurer, extended warranty provider, or service contract provider;

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

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

~~(fvi)F~~ an accessory or the installation of an accessory;

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

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

~~(fix)I~~ vehicle reconditioning;

~~(fx)J~~ repairs performed or parts sold at wholesale;

~~(fxi)K~~ franchisor-approved goodwill or policy repairs or replacements;

~~(fxii) parts sold or repairs performed for insurance carriers; or~~

~~(xiii)L~~ a repair performed on a vehicle of a line-make other than the line-make for which the franchisee is franchised by the franchisor; or

~~(M)~~ for the purpose of calculating a retail parts rate only, a repair on or using an aftermarket part.

~~(d) "Qualified repair order" means a repair order that includes, in whole or in part, one or more qualified repairs.~~

~~(e) "Repair order" means an invoice that:~~

~~(i) is paid by a retail customer and closed before a franchisee submits the invoice to the franchisee's franchisor under Subsection (5)(a);~~

~~(ii) includes one or more repairs to or other work on a motor vehicle; and~~

~~(iii) depicts:~~

~~(A) in the case of a retail parts rate submission, the cost of each part and the part's sale price; or~~

~~(B) in the case of a retail labor rate submission, the labor hours allocated to each job and the sale price of the labor.~~

~~(f) "Warranty" means a new vehicle warranty, maintenance plan, extended warranty, certified pre-owned warranty, service contract, or other obligation of a franchisor to repair or replace defects in a motor vehicle or part, including an obligation that is the subject of a~~

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technical service bulletin, a customer service campaign, or a recall conducted under United States Code, Title 49, Secs. 30118 through 30120.

(2) A franchisor shall:

(a) fulfill a warranty agreement made by the franchisor; and

(b) compensate the franchisor's franchisees for labor and parts furnished by the

franchisees to satisfy the franchisor's warranty obligations, including:

(i) diagnostic work;

(ii) repairs;

(iii) servicing;

(iv) the disposal of hazardous substances; and

(v) other conditions of the warranty obligation.

~~[(1)] (3) Each franchisor shall specify in writing to each of the franchisor's franchisees licensed as a new motor vehicle dealer in this state[:(a)], the franchisee's obligations for new motor vehicle preparation, delivery, and warranty service on the franchisor's products[;].~~

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

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

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

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

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

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

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

(5) (a) To establish or modify a franchisee's retail labor rate or retail parts rate, a

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franchisee shall submit, in writing to the franchisee's franchisor and no more than once per calendar year, whichever of the following comprises the fewest number of repair orders, all of which must be for repairs made no more than 180 days before the franchisee's written submission:

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

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

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

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

(ii) dividing the amount calculated under Subsection (5)(b)(i) by the total number of labor hours that generated those charges.

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

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

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

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

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

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

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

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

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

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

(g) Time ~~allocations~~ allowances for diagnostic work and labor furnished by the

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franchisee in satisfaction of a warranty issued by the franchisee's franchisor shall be based on the franchisor's labor time guide or, at the franchisee's election, the labor time guide used by the franchisee for diagnostic work and labor furnished for non-warranty repairs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) (i) A franchisor may not submit more than one notice of objection to a franchisee concerning a declared retail labor rate or retail parts rate ~~{ except in the context of litigation regarding the contested rate }.~~

(ii) After submitting a notice of objection, a franchisor may not add to, expand, supplement, or otherwise modify the objection ~~{ except in the context of litigation regarding the contested rate }.~~

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

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

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

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

(7) A franchisor may not directly or indirectly:

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

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

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

(ii) presenting to a franchisee information about, or calculations based on, another

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franchisee's compensation;

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

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

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

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

(e) recover or attempt to recover all or a portion of the franchisor's costs for compensating a franchisee for warranty work, including by:

(i) reducing the amount due; or

(ii) a separate charge, surcharge, or imposition;

(f) take or threaten to take adverse action against a franchisee who seeks to obtain compensation under this section;

(g) dissuade or discourage, or attempt to dissuade or discourage a franchisee from seeking compensation under this section, including by:

(i) creating or implementing an obstacle or process that is inconsistent with a franchisor's obligations to a franchisee under this section;

(ii) acting or failing to act other than in good faith;

(iii) hindering, delaying, or rejecting the proper and timely payment of compensation due to a franchisee under this section; or

(iv) establishing, implementing, enforcing, or applying a policy, standard, rule, program, or incentive regarding compensation due to a franchisee under this section, other than in a uniform manner among the franchisor's franchisees in this state;

(h) conduct or threaten to conduct a warranty, non-warranty repair, or other service-related audit of a franchisee for the purpose of dissuading or discouraging the franchisee from seeking compensation under this section; or

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(i) implement or continue a policy, procedure, or program for franchisee compensation that is inconsistent with this section.

(8) Subsection (7) does not prohibit a franchisor from increasing the price of a vehicle in the normal course of business.

~~[(4)]~~ ~~(~~7~~;9)~~ A franchisor may not fail to:

(a) perform any warranty obligation;

(b) include in written notices of franchisor's recalls to new motor vehicle owners and franchisees the expected date by which necessary parts and equipment will be available to franchisees for the correction of the defects; or

(c) in accordance with Subsections ~~[(2) and (3)]~~ (4) and (5), compensate a franchisee for all diagnostic work, labor, and parts the franchisor requires to perform a recall repair.

~~[(5)]~~ ~~(~~8~~;10)~~ If a franchisor disallows a franchisee's claim for a defective part, alleging that the part is not defective, the franchisor at the franchisor's option shall:

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

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

~~[(6)]~~ ~~(~~9~~;11)~~ (a) A claim made by a franchisee pursuant to this section for diagnostic work, labor, or parts shall be paid within 30 days after the claim's approval.

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

~~[(7)]~~ ~~(~~10~~;12)~~ A franchisor may conduct warranty service audits and recall repair audits of the franchisor's franchisee records on a reasonable basis.

~~[(8)]~~ ~~(~~11~~;13)~~ A franchisor may deny a franchisee's claim for warranty compensation or recall repair compensation only if:

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

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

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

(d) the franchisor has a bona fide belief based on competent evidence that the

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franchisee's claim is intentionally false, fraudulent, or misrepresented.

~~[(9)]~~ ~~(~~12~~14)~~ (a) Any charge back for a warranty part or service compensation, recall repair compensation, or service incentive is only enforceable for the six-month period immediately following the day on which the franchisor makes the payment compensating the franchisee for the warranty part or service, recall repair, or service incentive.

(b) Except as provided in Subsection ~~[(9)]~~ ~~(~~12~~14)~~(e), all charge backs levied by a franchisor for sales compensation or sales incentives arising out of the sale or lease of a motor vehicle sold or leased by a franchisee shall be compensable only if written notice of the charge back is received by the franchisee within six months immediately following the sooner of:

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

(ii) the day on which the franchisor makes the payment for the sales compensation or sales incentive to the franchisee.

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

(ii) A franchisee may respond in writing within 30 days after the notice under Subsection ~~[(9)]~~ ~~(~~12~~14)~~(c)(i) to:

(A) explain a deficiency; or

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

(d) A charge back:

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

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

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

(e) The time limitations of this Subsection ~~[(9)]~~ ~~(~~12~~14)~~ do not preclude charge backs for any fraudulent claim that was previously paid.

~~[(10)]~~ ~~(~~13~~15)~~ (a) If within 30 days after the day on which a franchisor issues an initial notice of recall a part or remedy is not reasonably available to perform the recall repair

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on a used motor vehicle, each calendar month thereafter the franchisor shall pay the franchisee an amount equal to at least 1.35% of the value of the used motor vehicle, if:

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

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

(iii) (A) the used motor vehicle is in the franchisee's inventory at the time the franchisor issued the order described in Subsection [(10)] (~~(13)~~15)(a)(ii); or

(B) after the franchisor issues the order described in Subsection [(10)] (~~(13)~~15)(a)(ii), the franchisee takes the used motor vehicle into the franchisee's inventory at the termination of the consumer lease for the vehicle, as a consumer trade-in accompanying the purchase of a new vehicle from the franchisee, or for any other reason in the ordinary course of business.

(b) A franchisor shall pay the compensation described in Subsection [(10)] (~~(13)~~15)(a):

(i) beginning:

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

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

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

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

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

(c) A franchisor shall prorate the first and last payment for a used motor vehicle to a franchisee under this Subsection [(10)] (~~(13)~~15).

(d) A franchisor may direct the manner in which a franchisee demonstrates the inventory status of an affected used motor vehicle to determine eligibility under this Subsection [(10)] (~~(13)~~15), if the manner is not unduly burdensome.

[(11)] (~~(14)~~16) (a) A franchisee that offsets recall repair compensation received from a franchisor under this section against recall repair compensation the franchisee receives under a

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state or federal recall repair compensation remedy may pursue any other available remedy against the franchisor.

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

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

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

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

(~~15~~17) During an audit under this section, a franchisor may not request a document from the franchisee that:

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

(b) is available to the franchisor from:

(i) another person; or

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

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

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;

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(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 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;]~~

(b) that is:

(i) an electric vehicle manufacturer; or

(ii) a low-volume manufacturer;

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- (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 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) "Electric vehicle manufacturer" means a person 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:

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

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

or

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

(c) manufactured by the person.

~~[(17)]~~ (18) "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)]~~ (19) "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)]~~ (20) (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.

(b) "Franchise" includes a contract or agreement described in Subsection ~~[(19)]~~ (20)(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)]~~ (21) (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)]~~

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(21)(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.

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

(a) 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) (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

(ii) manufactured by the person; and

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

~~(21)~~ (23) "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)~~ (24) "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)~~ (25) "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)~~ (25)(a) and (b).

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

(i) self-propelled;

(ii) a trailer;

(iii) a travel trailer;

(iv) a semitrailer;

(v) an off-highway vehicle; or

(vi) a small trailer.

(b) "Motor vehicle" does not include:

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(i) mobile homes as defined in Section 41-1a-102;
(ii) trailers of 750 pounds or less unladen weight;
(iii) a farm tractor or other machine or tool used in the production, harvesting, or care of a farm product; and

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

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

~~[(26)]~~ (28) "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)]~~ (29) "Off-highway vehicle" means the same as that term is defined in Section 41-22-2.

~~[(28)]~~ (30) "Pawnbroker" means a person whose business is to lend money on security of personal property deposited with him.

~~[(29)]~~ (31) (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 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)]~~ (31)(a).

~~[(30)]~~ (32) "Remanufacturer" means a person who reconstructs used motor vehicles subject to registration under ~~[Title 41,]~~ Chapter 1a, Motor Vehicle Act, to change the body

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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)]~~ (33) "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)]~~ (34) "Semitrailer" means the same as that term is defined in Section 41-1a-102.

~~[(33)]~~ (35) "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)]~~ (36) "Small trailer" means a trailer that has an unladen weight of:

- (a) more than 750 pounds; and
- (b) less than 2,000 pounds.

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

~~[(36)]~~ (38) "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)]~~ (39) "Trailer" means the same as that term is defined in Section 41-1a-102.

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

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

~~[(40)]~~ (42) "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)]~~ (43) "Wholesale motor vehicle auction" means a dealer primarily engaged in the

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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.

(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

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manufacturer:

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

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

(ii) described in Subsection 41-3-102(~~123~~22) if the direct-sale manufacturer is a low-volume manufacturer; 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 manufactures.