

Senator Curtis S. Bramble proposes the following substitute bill:

AUTOMOBILE AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Carl R. Albrecht

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;
- ▶ provides that certain aspects of the advertisement and transaction for the sale of a motor vehicle may occur online, including:
 - advertising vehicles that can be promptly shipped to the dealer from a distributor;
 - arranging a test drive or an appraisal of a used vehicle for trade-in;
 - negotiating a sale price;
 - facilitating delivery; and
 - executing sale or lease transaction documents; and



26 ▶ makes technical and conforming changes.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **13-14-204**, as last amended by Laws of Utah 2018, Chapter 245

34 **41-3-102**, as last amended by Laws of Utah 2020, Chapter 367

35 **41-3-103**, as last amended by Laws of Utah 2018, Chapter 387

36 **41-3-210**, as last amended by Laws of Utah 2020, Chapter 367



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

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

40 **13-14-204. Franchisor's obligations related to service -- Franchisor audits -- Time**
41 **limits.**

42 (1) As used in this section, "qualified repair" means a repair to a vehicle that:

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

45 (b) does not otherwise constitute warranty work; and

46 (c) does not constitute any of the following:

47 (i) routine maintenance, including the replacement of fluids, filters, batteries, bulbs,
48 belts, nuts, bolts, or fasteners, unless the routine maintenance is performed in the course of and
49 related to a qualified repair;

50 (ii) replacement of or work on tires or wheels, including vehicle alignments, tire
51 rotations, or wheel rotations;

52 (iii) a repair for a government agency;

53 (iv) a repair that is the subject of a franchisor special event, promotion, or service
54 campaign, or is otherwise subject to a franchisor discount;

55 (v) a repair of a motor vehicle owned by the franchisee or an employee of the
56 franchisee;

57 (vi) a body shop repair of a condition caused by collision, road hazard, the force of the
 58 elements, vandalism, theft, or the negligence or a deliberate act of the owner, operator, or a
 59 third party;

60 (vii) a safety or vehicle emission inspection required by law;

61 (viii) vehicle reconditioning;

62 (ix) franchisor-approved goodwill or policy repairs or replacements; or

63 (x) for the purpose of calculating a retail parts rate only, a repair on an aftermarket part.

64 (2) A franchisor shall:

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

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

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

68 (i) diagnostic work;

69 (ii) repairs; and

70 (iii) the disposal of hazardous substances.

71 ~~[(+)]~~ (3) Each franchisor shall specify in writing to each of the franchisor's franchisees

72 licensed as a new motor vehicle dealer in this state~~[-(a)]~~, the franchisee's obligations for new

73 motor vehicle preparation, delivery, and warranty service on the franchisor's products~~[-]~~.

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

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

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

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

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

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

87 (5) A franchisor shall, at the franchisee's election, compensate the franchisor's

88 franchisees, at the franchisee's retail rates as determined under Subsections (6) and (7), for
89 labor and parts furnished by the franchisee in satisfaction of a warranty issued by the
90 franchisor.

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

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

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

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

99 (i) determining the total charges for labor in the qualified repair orders submitted to the
100 franchisee's franchisor under Subsection (6)(a); and

101 (ii) dividing the amount calculated under Subsection (6)(b)(i) by the total number of
102 labor hours identified in the qualified repair orders that generated those charges.

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

104 (i) determining the total charges for parts in the qualified repair orders submitted to the
105 franchisee's franchisor under Subsection (6)(a);

106 (ii) dividing the amount calculated under Subsection (6)(c)(i) by the franchisee's total
107 cost to purchase the parts in those qualified repair orders;

108 (iii) subtracting one from the result of Subsection (6)(c)(ii); and

109 (iv) multiplying the result of Subsection (6)(c)(iii) by 100 to produce a percentage.

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

114 [(iii)] (e) For purposes of ~~Subsection (3)(b)(ii)~~ Subsections (6)(b) through (d), the
115 term "cost" shall be that same price paid by a franchisee to a franchisor or supplier for the part
116 when the part is purchased for a nonwarranty repair.

117 (f) For the purposes of Subsection (6)(a), a franchisee shall submit a single set of
118 qualified repair orders for the purpose of calculating the franchisee's retail labor rate and retail

119 parts rate.

120 (g) (i) Time allocations for diagnostic work and labor furnished by the franchisee in
121 satisfaction of a warranty issued by the franchisee's franchisor shall be based on the franchisor's
122 labor time guide.

123 (ii) A franchisor shall provide a franchisee with a reasonable method by which the
124 franchisee may request additional repair time if additional time is needed to complete a repair
125 on a specific motor vehicle.

126 (iii) A franchisor may require a franchisee to provide reasonable substantiation to
127 support a request for additional time under this Subsection (6)(g).

128 (iv) A franchisor may not unreasonably deny a franchisee's reasonably substantiated
129 request for additional time under this Subsection (6)(g).

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

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

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

139 (b) A retail labor rate or retail parts rate provided in a written notice described in
140 Subsection (6)(a) takes effect 30 days after the day on which the franchisee delivers the written
141 notice to the franchisor unless the franchisor contests the franchisee's indicated rate under
142 Subsection (7)(c).

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

146 (i) a statement that the franchisor believes the franchisee's submission is incomplete
147 under the requirements of this section, or the contested rate is materially inaccurate,
148 unreasonable, or fraudulent;

149 (ii) an explanation of the reasons the franchisor believes the franchisee's submission is

150 incomplete under the requirements of this section, or the contested rate is materially inaccurate,
151 unreasonable, or fraudulent;

152 (iii) as applicable, the calculations used by the franchisor to support the franchisor's
153 objection; and

154 (iv) as applicable, a proposed adjusted retail labor rate or retail parts rate, if the
155 franchisor alleges that a submitted rate is inaccurate or unreasonable.

156 (d) (i) If a franchisor determines from a franchisee's set of repair orders submitted
157 under Subsection (6) that the franchisee's submission for a retail labor rate or a retail parts rate
158 is substantially higher than the franchisee's current warranty rate, the franchisor may request, in
159 writing within 30 days after the day on which the franchisor receives the franchisee's notice
160 under Subsection (7)(a), all of the franchisee's qualified repair orders closed within the period
161 of 30 days immediately preceding or 30 days immediately following the set of qualified repair
162 orders submitted by the franchisee.

163 (ii) If a franchisor makes a request for supplemental repair orders under this Subsection
164 (7)(d), all time periods under this section are suspended from the day on which the franchisor's
165 request is made until the day on which the franchisee provides the requested supplemental
166 repair orders to the franchisor.

167 (iii) If a franchisor makes a request for supplemental repair orders under this
168 Subsection (7)(d), the franchisor may calculate a proposed adjusted retail labor rate or proposed
169 adjusted retail parts rate based on any set of qualified repair orders submitted by the franchisee,
170 if:

171 (A) the franchisor complies with the requirements that are applicable to a franchisee
172 under Subsection (6)(a); and

173 (B) the franchisor uses the applicable formula described in Subsection (6)(b) or (c) to
174 calculate the proposed adjusted rate.

175 (e) After submitting a notice of objection, a franchisor may not add to, expand,
176 supplement, or otherwise modify the franchisor's objection except:

177 (i) in the context of litigation regarding the contested rate; or

178 (ii) in response to:

179 (A) information not reasonably available to the franchisor at the time of the franchisor's
180 objection;

181 (B) supplemental information provided by the franchisee after the franchisor submits
182 the objection; or

183 (C) new arguments made or evidence provided by the franchisee after the franchisor
184 submits the objection.

185 (f) (i) If a franchisee disagrees with a franchisor's objection, the franchisee and
186 franchisor shall attempt to resolve the dispute through the franchisor's internal dispute
187 resolution procedure, if:

188 (A) the franchisor has an internal dispute resolution procedure; and

189 (B) the franchisor's internal dispute resolution procedure is undertaken within a
190 reasonable time not to exceed 30 days after the day on which the franchisor receives notice of
191 the franchisee's disagreement with the objection.

192 (ii) If the internal dispute resolution procedure is unsuccessful or cannot be undertaken
193 in a timely manner, or if the franchisor does not have an internal dispute resolution procedure,
194 the franchisee may file a request for agency action under Section [13-14-107](#) within the later of:

195 (A) 60 days after the day on which the franchisor receives the franchisor's notice of
196 objection; or

197 (B) 30 days after conclusion of the franchisor's internal dispute resolution procedure.

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

199 (i) the issue shall be limited to whether the franchisee's submission is incomplete under
200 the requirements of this section, or the contested rate is materially inaccurate, unreasonable, or
201 fraudulent;

202 (ii) the franchisor has the burden of proof; and

203 (iii) the rate that is determined in resolution of the dispute is retroactive to the date that
204 is 30 days after the day on which the franchisee delivered the written notice described in
205 Subsection (6)(a) to the franchisor.

206 ~~[(4)]~~ (8) A franchisor may not fail to:

207 (a) perform any warranty obligation;

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

211 (c) in accordance with Subsections ~~[(2) and (3)]~~ (5) and (6), compensate a franchisee

212 for all diagnostic work, labor, and parts the franchisor requires to perform a recall repair.

213 ~~[(5)]~~ (9) If a franchisor disallows a franchisee's claim for a defective part, alleging that
214 the part is not defective, the franchisor at the franchisor's option shall:

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

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

217 ~~[(6)]~~ (10) (a) A claim made by a franchisee pursuant to this section for diagnostic
218 work, labor, or parts shall be paid within 30 days after the claim's approval.

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

223 ~~[(7)]~~ (11) A franchisor may conduct warranty service audits and recall repair audits of
224 the franchisor's franchisee records on a reasonable basis.

225 ~~[(8)]~~ (12) A franchisor may deny a franchisee's claim for warranty compensation or
226 recall repair compensation only if:

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

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

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

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

234 ~~[(9)]~~ (13) (a) Any charge back for a warranty part or service compensation, recall repair
235 compensation, or service incentive is only enforceable for the six-month period immediately
236 following the day on which the franchisor makes the payment compensating the franchisee for
237 the warranty part or service, recall repair, or service incentive.

238 (b) Except as provided in Subsection ~~[(9)]~~ (13)(e), all charge backs levied by a
239 franchisor for sales compensation or sales incentives arising out of the sale or lease of a motor
240 vehicle sold or leased by a franchisee shall be compensable only if written notice of the ~~[charge~~
241 ~~back]~~ audit is received by the franchisee within six months immediately following ~~[the sooner~~
242 ~~of: (i) the day on which the sales incentive program terminates; or (ii)]~~ the day on which the

243 franchisor makes the payment for the sales compensation or sales incentive to the franchisee.

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

246 (ii) A franchisee may respond in writing within 30 days after the notice under

247 Subsection [~~(9)~~] (13)(c)(i) to:

248 (A) explain a deficiency; or

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

251 (d) A charge back:

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

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

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

258 (e) The time limitations of this Subsection [~~(9)~~] (13) do not preclude charge backs for
259 any fraudulent claim that was previously paid.

260 [~~(10)~~] (14) (a) If within 30 days after the day on which a franchisor issues an initial
261 notice of recall a part or remedy is not reasonably available to perform the recall repair on a
262 used motor vehicle, each calendar month thereafter the franchisor shall pay the franchisee an
263 amount equal to at least 1.35% of the value of the used motor vehicle, if:

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

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

268 (iii) (A) the used motor vehicle is in the franchisee's inventory at the time the
269 franchisor issued the order described in Subsection [~~(10)~~] (14)(a)(ii); or

270 (B) after the franchisor issues the order described in Subsection [~~(10)~~] (14)(a)(ii), the
271 franchisee takes the used motor vehicle into the franchisee's inventory at the termination of the
272 consumer lease for the vehicle, as a consumer trade-in accompanying the purchase of a new
273 vehicle from the franchisee, or for any other reason in the ordinary course of business.

274 (b) A franchisor shall pay the compensation described in Subsection [~~(10)~~] (14)(a):
275 (i) beginning:
276 (A) 30 days after the day on which the franchisee receives the stop-sale or do-not-drive
277 order; or
278 (B) if a franchisee obtains the used motor vehicle more than 30 days after the day on
279 which the franchisee receives the stop-sale or do-not-drive order, the day on which the
280 franchisee obtains the used motor vehicle; and
281 (ii) ending the earlier of the day on which:
282 (A) the franchisor makes the recall part or remedy available for order and prompt
283 shipment to the franchisee; or
284 (B) the franchisee sells, trades, or otherwise disposes of the used motor vehicle.
285 (c) A franchisor shall prorate the first and last payment for a used motor vehicle to a
286 franchisee under this Subsection [~~(10)~~] (14).
287 (d) A franchisor may direct the manner in which a franchisee demonstrates the
288 inventory status of an affected used motor vehicle to determine eligibility under this Subsection
289 [~~(10)~~] (14), if the manner is not unduly burdensome.
290 [~~(11)~~] (15) (a) A franchisee that offsets recall repair compensation received from a
291 franchisor under this section against recall repair compensation the franchisee receives under a
292 state or federal recall repair compensation remedy may pursue any other available remedy
293 against the franchisor.
294 (b) As an alternative to providing recall repair compensation under this section, a
295 franchisor may compensate a franchisee for a recall repair:
296 (i) under a national recall repair compensation program, if the compensation is equal to
297 or greater than the compensation provided under this section; or
298 (ii) as the franchisor and franchisee otherwise agree, if the compensation is equal to or
299 greater than the compensation provided under this section.
300 (c) Nothing in this section requires a franchisor to provide compensation to a
301 franchisee that exceeds the value of the used motor vehicle affected by a recall.
302 (16) During an audit under this section, a franchisor may not request a document from
303 the franchisee that:
304 (a) originated from the franchisor or a subsidiary of the franchisor;

305 (b) is instructional or informational only; and
306 (c) requires no action, information, or signature to be provided or collected by the
307 franchisee.

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

309 **41-3-102. Definitions.**

310 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

349 (b) that is:

350 (i) an electric vehicle manufacturer; or

351 (ii) a low-volume manufacturer;

352 (c) that is not a franchise holder;

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

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

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

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

364 (b) "Dismantler" includes a person who dismantles three or more motor vehicles in any
365 12-month period.

366 (13) "Distributor" means a person who has a franchise from a manufacturer of motor

367 vehicles to distribute motor vehicles within this state and who in whole or in part sells or
368 distributes new motor vehicles to dealers or who maintains distributor representatives.

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

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

376 (16) "Division" means the Motor Vehicle Enforcement Division created in Section
377 [41-3-104](#).

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

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

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

384 or

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

386 (c) manufactured by the person.

387 [~~17~~] (18) "Factory branch" means a branch office maintained by a person who
388 manufactures or assembles motor vehicles for sale to distributors, motor vehicle dealers, or
389 who directs or supervises the factory branch's representatives.

390 [~~18~~] (19) "Factory representative" means a person and each officer and employee of
391 the person engaged as a representative of a manufacturer of motor vehicles or by a factory
392 branch to make or promote the sale of the manufacturer's or factory branch's motor vehicles, or
393 for supervising or contacting the dealers or prospective dealers of the manufacturer or the
394 factory branch.

395 [~~19~~] (20) (a) "Franchise" means a contract or agreement between a dealer and a
396 manufacturer of new motor vehicles or a manufacturer's distributor or factory branch by which
397 the dealer is authorized to sell any specified make or makes of new motor vehicles.

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

401 [~~(20)~~] (21) (a) "Franchise holder" means a manufacturer who:

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

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

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

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

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

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

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

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

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

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

420 or

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

422 (ii) manufactured by the person; and

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

424 [~~(21)~~] (23) "Line-make" means motor vehicles that are offered for sale, lease, or
425 distribution under a common name, trademark, service mark, or brand name of the
426 manufacturer.

427 [~~(22)~~] (24) "Manufacturer" means a person engaged in the business of constructing or
428 assembling new motor vehicles, ownership of which is customarily transferred by a

429 manufacturer's statement or certificate of origin, or a person who constructs three or more new
430 motor vehicles in any 12-month period.

431 ~~[(23)]~~ (25) "Material owner" means a person who possesses, directly or indirectly, the
432 power to direct, or cause the direction of, the management, policies, or activities of another
433 person:

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

437 ~~[(24)]~~ (26) (a) "Motor vehicle" means a vehicle that is:

- 438 (i) self-propelled;
- 439 (ii) a trailer;
- 440 (iii) a travel trailer;
- 441 (iv) a semitrailer;
- 442 (v) an off-highway vehicle; or
- 443 (vi) a small trailer.

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

- 445 (i) mobile homes as defined in Section [41-1a-102](#);
- 446 (ii) trailers of 750 pounds or less unladen weight;
- 447 (iii) a farm tractor or other machine or tool used in the production, harvesting, or care of
448 a farm product; and
- 449 (iv) park model recreational vehicles as defined in Section [41-1a-102](#).

450 ~~[(25)]~~ (27) "Motorcycle" means the same as that term is defined in Section [41-1a-102](#).

451 ~~[(26)]~~ (28) "New motor vehicle" means a motor vehicle that:

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

455 ~~[(27)]~~ (29) "Off-highway vehicle" means the same as that term is defined in Section
456 [41-22-2](#).

457 ~~[(28)]~~ (30) "Pawnbroker" means a person whose business is to lend money on security
458 of personal property deposited with him.

459 ~~[(29)]~~ (31) (a) "Principal place of business" means a site or location in this state:

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

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

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

471 (b) "Principal place of business" means, with respect to a direct-sale manufacturer, the
472 direct-sale manufacturer's showroom, which shall comply with the requirements of Subsection
473 ~~[(29)]~~ (31)(a).

474 ~~[(30)]~~ (32) "Remanufacturer" means a person who reconstructs used motor vehicles
475 subject to registration under ~~[Title 41,]~~ Chapter 1a, Motor Vehicle Act, to change the body
476 style and appearance of the motor vehicle or who constructs or assembles motor vehicles from
477 used or new and used motor vehicle parts, or who reconstructs, constructs, or assembles three
478 or more motor vehicles in any 12-month period.

479 ~~[(31)]~~ (33) "Salesperson" means an individual who for a salary, commission, or
480 compensation of any kind, is employed either directly, indirectly, regularly, or occasionally by
481 any new motor vehicle dealer or used motor vehicle dealer to sell, purchase, or exchange or to
482 negotiate for the sale, purchase, or exchange of motor vehicles.

483 ~~[(32)]~~ (34) "Semitrailer" means the same as that term is defined in Section [41-1a-102](#).

484 ~~[(33)]~~ (35) "Showroom" means a site or location in the state that a direct-sale
485 manufacturer uses for the direct-sale manufacturer's business, including the display and
486 demonstration of new motor vehicles that are exclusively of the same line-make that the
487 direct-sale manufacturer manufactures.

488 ~~[(34)]~~ (36) "Small trailer" means a trailer that has an unladen weight of:

489 (a) more than 750 pounds; and

490 (b) less than 2,000 pounds.

491 [~~(35)~~] (37) "Special equipment" includes a truck mounted crane, cherry picker, material
492 lift, post hole digger, and a utility or service body.

493 [~~(36)~~] (38) "Special equipment dealer" means a new or new and used motor vehicle
494 dealer engaged in the business of buying new incomplete motor vehicles with a gross vehicle
495 weight of 12,000 or more pounds and installing special equipment on the incomplete motor
496 vehicle.

497 [~~(37)~~] (39) "Trailer" means the same as that term is defined in Section 41-1a-102.

498 [~~(38)~~] (40) "Transporter" means a person engaged in the business of transporting motor
499 vehicles as described in Section 41-3-202.

500 [~~(39)~~] (41) "Travel trailer" means the same as that term is defined in Section
501 41-1a-102.

502 [~~(40)~~] (42) "Used motor vehicle" means a vehicle that:

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

504 (b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven
505 7,500 or more miles.

506 [~~(41)~~] (43) "Wholesale motor vehicle auction" means a dealer primarily engaged in the
507 business of auctioning consigned motor vehicles to dealers or dismantlers who are licensed by
508 this or any other jurisdiction.

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

510 **41-3-103. Exceptions to "dealer" definition -- Dealer licensed in other state --**

511 **Direct-sale manufacturer -- Direct-sale manufacturer salesperson.**

512 Under this chapter:

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

521 (b) A person who sells or exchanges only those motor vehicles that the person has

522 owned for over 12 months is not considered a dealer.

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

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

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

532 (4) Except as otherwise expressly provided:

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

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

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

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

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

543 (ii) described in Subsection 41-3-102(23) if the direct-sale manufacturer is a
544 low-volume manufacturer; and

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

547 Section 4. Section **41-3-210** is amended to read:

548 **41-3-210. License holders -- Prohibitions and requirements.**

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

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

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

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

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

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

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

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

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

570 (ii) unless the licensee is a direct-sale manufacturer, sell or exchange a new motor
571 vehicle for which the licensee does not have a franchise;

572 (h) dismantle or transport to a crusher for crushing or other disposition any motor
573 vehicle without first obtaining a dismantling or junk permit under Section [41-1a-1009](#),
574 [41-1a-1010](#), or [41-1a-1011](#);

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

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

582 (k) as a crusher, crush or shred a motor vehicle brought to the crusher without
583 obtaining proper evidence of ownership of the motor vehicle; proper evidence of ownership is

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

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

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

592 (n) except as provided in Subsection (2), sell, display for sale, or offer for sale motor
593 vehicles at any location other than the principal place of business or additional places of
594 business licensed under this chapter; this provision is construed to prevent dealers,
595 salespersons, or any other representative of a dealership from selling, displaying, or offering
596 motor vehicles for sale from their homes or other unlicensed locations;

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

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

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

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

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

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

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

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

613 (ii) unless the licensee is a direct-sale manufacturer, possess a franchise from the
614 manufacturer of the new motor vehicle sold, displayed for sale, offered for sale, or exchanged

615 by the licensee;

616 (u) as a new motor vehicle dealer or used motor vehicle dealer, encourage or conspire
617 with any person who has not obtained a salesperson's or a direct-sale manufacturer
618 salesperson's license to solicit for prospective purchasers;

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

621 (i) an authorized service center; or

622 (ii) a principal place of business; or

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

625 (i) is not designed for human habitation;

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

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

628 (2) (a) Subsection (1)(n) shall not be construed to prohibit a licensed dealer that
629 maintains a principal place of business in this state from conducting the following sales
630 activities via the Internet:

631 (i) advertising the inventory and prices of motor vehicles at the dealer's principal place
632 of business or which are available to be shipped to the dealer from the manufacturer or
633 distributor within a reasonable period of time;

634 (ii) arranging for motor vehicle test drives;

635 (iii) arranging for appraisals of potential used motor vehicle trade-ins;

636 (iv) negotiating final vehicle purchase or lease price;

637 (v) facilitating the delivery of a motor vehicle that has been sold or leased by the dealer
638 to a customer; or

639 (vi) the electronic execution of retail sale or lease transaction documents, if:

640 (A) all terms of the sales or lease transaction are agreed upon, and the transaction
641 documents are generated at the dealer's principal place of business;

642 (B) prior to the delivery of the motor vehicle to the customer, the dealer executes the
643 transaction documents at the dealer's principal place of business after receiving signed
644 transaction documents from the customer; and

645 (C) the motor vehicle is prepared for final delivery at the dealer's principal place of

646 business prior to delivery of the motor vehicle to the customer at the agreed upon location.

647 (b) A manufacturer or distributor of motor vehicles may not control or seek to control
648 any actions of a dealer, salesperson, or other representative of a motor vehicle dealer under
649 Subsection (2)(a) through coercion, rewards, or payments under any program offered to more
650 than one dealer in this state.

651 ~~[(2)]~~ (3) (a) If a new motor vehicle is constructed in more than one stage, such as a
652 motor home, ambulance, or van conversion, the licensee shall advertise, represent, sell, and
653 exchange the vehicle as the make designated by the final stage manufacturer, except in those
654 specific situations where the licensee:

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

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

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

661 ~~[(3)]~~ (4) Each licensee, except salespersons, shall maintain and make available for
662 inspection by peace officers and employees of the division:

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

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

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

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

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

674 ~~[(4)]~~ (5) Each licensee required by this chapter to keep records shall:

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

676 (b) furnish copies of those records upon request to any peace officer or employee of the

677 division during reasonable business hours.

678 ~~[(5)]~~ (6) (a) A manufacturer, distributor, distributor representative, or factory
679 representative may not induce or attempt to induce by means of coercion, intimidation, or
680 discrimination any dealer to:

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

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

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

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

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

696 (vi) unfairly, without regard to the equities of the dealer, cancel the franchise of any
697 motor vehicle dealer; the nonrenewal of a franchise or selling agreement without cause and
698 written notice is a violation of this subsection and is an unfair cancellation; or

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

703 (b) For the purpose of Subsection ~~[(5)]~~ (6)(a)(vii):

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

705 (A) is not designed for human habitation;

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

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

708 (ii) "Relevant market area" means:

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

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

714 ~~[(6)]~~ (7) A dealer may not assist an unlicensed dealer or salesperson in unlawful
715 activity through active or passive participation in sales, or by allowing use of his facilities or
716 dealer license number, or by any other means.

717 ~~[(7)]~~ (8) (a) The holder of any new motor vehicle dealer or direct-sale manufacturer
718 license issued under this chapter may not sell any new motor vehicle to:

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

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

725 (b) Subsection ~~[(7)]~~ (8)(a)(i) does not apply to the sale of a new incomplete motor
726 vehicle with a gross vehicle weight of 12,000 or more pounds to a special equipment dealer
727 licensed under this chapter.

728 ~~[(8)]~~ (9) A dealer licensed under this chapter may not take on consignment any new
729 motor vehicle from anyone other than a new motor vehicle dealer, factory, or distributor who is
730 licensed and, if required, franchised to distribute or sell that make of motor vehicle in this or
731 any other state.

732 ~~[(9)]~~ (10) A body shop licensed under this chapter may not assist an unlicensed body
733 shop in unlawful activity through active or passive means or by allowing use of its facilities,
734 name, body shop number, or by any other means.

735 ~~[(10)]~~ (11) A used motor vehicle dealer licensed under this chapter may not advertise,
736 offer for sale, or sell a new motor vehicle that has been driven less than 7,500 miles by
737 obtaining a title only to the vehicle and representing it as a used motor vehicle.

738 ~~[(11)]~~ (12) (a) Except as provided in Subsection ~~[(11)]~~ (12)(c), or in cases of undue

739 hardship or emergency as provided by rule by the division, a dealer or salesperson licensed
740 under this chapter may not, on consecutive days of Saturday and Sunday, sell, offer for sale,
741 lease, or offer for lease a motor vehicle.

742 (b) Each day a motor vehicle is sold, offered for sale, leased, or offered for lease in
743 violation of Subsection [~~(11)~~] (12)(a) and each motor vehicle sold, offered for sale, leased, or
744 offered for lease in violation of Subsection [~~(11)~~] (12)(a) shall constitute a separate offense.

745 (c) The provisions of Subsection [~~(11)~~] (12)(a) shall not apply to a dealer participating
746 in a trade show or exhibition if:

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

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

750 [~~(12)~~] (13) For purposes of imposing the sales and use tax under Title 59, Chapter 12,
751 Sales and Use Tax Act, a licensee issuing a temporary permit under Section 41-3-302 shall
752 separately identify the fees required by Title 41, Chapter 1a, Motor Vehicle Act.

753 [~~(13)~~] (14) (a) A dismantler or dealer engaged in the business of dismantling motor
754 vehicles for the sale of parts or salvage shall identify any vehicles or equipment used by the
755 dismantler or dealer for transporting parts or salvage on the highways.

756 (b) The identification required under Subsection [~~(13)~~] (14)(a) shall:

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

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