

SB0204S02 compared with SB0204

~~deleted text~~ shows text that was in SB0204 but was deleted in SB0204S02.

inserted text shows text that was not in SB0204 but was inserted into SB0204S02.

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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;
- ▶ provides that certain aspects of the advertisement and transaction for the sale of a motor vehicle may occur online, including:

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- 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
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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 repair" means a repair to a vehicle that:

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

(b) does not otherwise constitute warranty work; and

(c) does not constitute any of the following:

(i) 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;

(ii) replacement of or work on tires ~~{, wheels, or elements related to tires}~~ or wheels,

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including vehicle alignments, tire rotations, or wheel rotations;

(iii) a repair for a government agency ~~{ or service contract provider };~~

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

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

(vi) ~~{ an accessory or the installation of an accessory;~~

~~(vii) a~~ a body shop 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;

~~{ viii }~~ vii) a safety or vehicle emission inspection required by law;

~~{ ix }~~ viii) vehicle reconditioning;

~~{ x }~~ repairs performed or parts sold at wholesale;

~~{ xi }~~ ix) franchisor-approved goodwill or policy repairs or replacements;

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

~~{ xiii }~~ x) for the purpose of calculating a retail parts rate only, a repair on ~~{ or using }~~ an aftermarket part.

(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 necessary;

(i) diagnostic work;

(ii) repairs;

~~(iii) servicing;~~ and

~~{ iv }~~ iii) 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]~~

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~~[(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)]~~ (4) (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)]~~ (5) A franchisor shall, at the franchisee's election, compensate the franchisor's franchisees, at the franchisee's retail rates as determined under Subsections ~~[(5)]~~ (6) and ~~[(6)]~~ (7), for labor and parts furnished by the franchisee in satisfaction of a warranty issued by the franchisor.

~~[(5)]~~ (6) (a) To establish or modify a franchisee's retail labor rate or retail parts rate, a 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)]~~ (6)(a); and

(ii) dividing the amount calculated under Subsection ~~[(5)]~~ (6)(b)(i) by the total number of labor hours identified in the qualified repair orders 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)]~~ (6)(a);

(ii) dividing the amount calculated under Subsection ~~[(5)]~~ (6)(c)(i) by the franchisee's

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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 shall 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) (i) Time allocations for diagnostic work and labor furnished by the 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~~.

(ii) A franchisor shall provide a franchisee with a reasonable method by which the franchisee for diagnostic work and labor furnished for non-warranty repairs may request additional repair time if additional time is needed to complete a repair on a specific motor vehicle.

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

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

(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.

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~~{ (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.~~

‡ ~~(6)7~~ (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)6~~(a).

(b) A retail labor rate or retail parts rate provided in a written notice described in Subsection ~~(5)6~~(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)7~~(c).

(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 franchisee's submission is incomplete under the requirements of this section, or the contested rate is materially inaccurate, unreasonable, or fraudulent;

(ii) ~~a full~~an explanation of the reasons the franchisor believes the franchisee's submission is incomplete under the requirements of this section, or the contested rate is materially inaccurate, unreasonable, or fraudulent;

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

~~(iv) as applicable,~~ the calculations used by the franchisor to support the franchisor's objection; and

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~~(fv)iv~~ as applicable, a proposed adjusted retail labor rate or retail parts rate~~f~~.

~~(d) (i) A~~, if the franchisor alleges that a submitted rate is inaccurate or unreasonable.

(d) (i) If a franchisor determines from a franchisee's set of repair orders submitted under Subsection (6) that the franchisee's submission for a retail labor rate or a retail parts rate is substantially higher than the franchisee's current warranty rate, the franchisor may ~~f~~not submit more than one notice of objection to a franchisee concerning a declared request, in writing within 30 days after the day on which the franchisor receives the franchisee's notice under Subsection (7)(a), all of the franchisee's qualified repair orders closed within the period of 30 days immediately preceding or 30 days immediately following the set of qualified repair orders submitted by the franchisee.

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

(iii) If a franchisor makes a request for supplemental repair orders under this Subsection (7)(d), the franchisor may calculate a proposed adjusted retail labor rate or proposed adjusted retail parts rate ~~f~~except in the context of litigation regarding the contested rate.

~~(ii)~~ based on any set of qualified repair orders submitted by the franchisee, if:

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

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

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

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

(ii) in response to:

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

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

(C) new arguments made or evidence provided by the franchisee after the franchisor

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submits the objection.

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

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

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

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

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

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

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

(~~fA~~i) the issue shall be limited to whether the ~~fretail labor rate or the retail parts rate submitted by the franchisee~~ franchisee's submission is incomplete under the requirements of this section, or the contested rate is materially inaccurate, unreasonable, or fraudulent;

(~~fB~~ii) the franchisor has the burden of proof; and

(~~fC~~iii) 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 (~~f5~~6)(a) to the franchisor.

(~~f4~~) (~~f7~~8) 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 [~~f2~~ and ~~f3~~] (~~f4~~5) and (~~f5~~6), compensate a franchisee for all diagnostic work, labor, and parts the franchisor requires to perform a recall repair.

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~~[(5)]~~ ~~(8;9)~~ 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;10)~~ (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;11)~~ A franchisor may conduct warranty service audits and recall repair audits of the franchisor's franchisee records on a reasonable basis.

~~[(8)]~~ ~~(11;12)~~ 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 franchisee's claim is intentionally false, fraudulent, or misrepresented.

~~[(9)]~~ ~~(12;13)~~ (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;13)~~(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 audit 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~~

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~~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)~~13)(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)~~13) do not preclude charge backs for any fraudulent claim that was previously paid.

[~~(10)~~] (~~(13)~~14) (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 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)~~14)(a)(ii); or

(B) after the franchisor issues the order described in Subsection [~~(10)~~] (~~(13)~~14)(a)(ii), the franchisee takes the used motor vehicle into the franchisee's inventory at the termination of

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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)~~ 14(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)~~ 14.

(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)~~ 14, if the manner is not unduly burdensome.

~~(11)~~ ~~(14)~~ 15 (a) A franchisee that offsets recall repair compensation received from a franchisor under this section against recall repair compensation the franchisee receives under a 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.

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~~(15)~~16 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;~~ instructional or informational only; and

(c) requires no action, information, or signature to be provided or collected by the franchisee.

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

41-3-102. Definitions.

As used in this chapter:

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

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

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

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

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

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

(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.

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(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;

(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.

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(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;

(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

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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)]~~ (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

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(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:

- (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

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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 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

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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 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

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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 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(23) 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) advertise or otherwise represent, or knowingly allow to be advertised or represented

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on the licensee's behalf or at the licensee's place of business, that no down payment is required in connection with the sale of a motor vehicle when a down payment is required and the buyer is advised or induced to finance a down payment by a loan in addition to any other loan financing the remainder of the purchase price of the motor vehicle;

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

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

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

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

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

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

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

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

(r) alter a temporary permit in any manner;

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

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

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

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

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

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

(i) an authorized service center; or

(ii) a principal place of business; or

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

(i) is not designed for human habitation;

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

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

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

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

(ii) arranging for motor vehicle test drives;

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

(iv) negotiating final vehicle purchase or lease price;

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

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

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

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

(C) the motor vehicle is prepared for final delivery at the dealer's principal place of business prior to delivery of the motor vehicle to the customer at the agreed upon location.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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area of the established dealer.

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

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

(A) is not designed for human habitation;

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

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

(ii) "Relevant market area" means:

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

or

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

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

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

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

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

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

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

[(9)] (10) A body shop licensed under this chapter may not assist an unlicensed body

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shop in unlawful activity through active or passive means or by allowing use of its facilities, name, body shop number, or by any other means.

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

~~[(11)]~~ (12) (a) Except as provided in Subsection ~~[(11)]~~ (12)(c), or in cases of undue hardship or emergency as provided by rule by the division, a dealer or salesperson licensed under this chapter may not, on consecutive days of Saturday and Sunday, sell, offer for sale, lease, or offer for lease a motor vehicle.

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

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

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

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

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

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

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

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

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