

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 the timing of charge backs for an incentive program;
- clarifies the types of documents that a franchisor may request from a franchisee during an audit;
- amends the definition of "direct-sale manufacturer" to include small-volume manufacturers; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 13-14-204, as last amended by Laws of Utah 2018, Chapter 245
27 41-3-102, as last amended by Laws of Utah 2020, Chapter 367
28 41-3-103, as last amended by Laws of Utah 2018, Chapter 387

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

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

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

34 (1) Each franchisor shall specify in writing to each of the franchisor's franchisees
35 licensed as a new motor vehicle dealer in this state:

36 (a) the franchisee's obligations for new motor vehicle preparation, delivery, and
37 warranty service on the franchisor's products;

38 (b) the schedule of compensation to be paid to the franchisee for parts, work, and
39 service; and

40 (c) the time allowance for the performance of work and service.

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

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

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

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

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

55 (iii) For purposes of Subsection (3)(b)(ii), the term "cost" shall be that same price paid
56 by a franchisee to a franchisor or supplier for the part when the part is purchased for a

57 nonwarranty repair.

58 (4) A franchisor may not fail to:

59 (a) perform any warranty obligation;

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

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

65 (5) If a franchisor disallows a franchisee's claim for a defective part, alleging that the
66 part is not defective, the franchisor at the franchisor's option shall:

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

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

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

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

75 (7) A franchisor may conduct warranty service audits and recall repair audits of the
76 franchisor's franchisee records on a reasonable basis.

77 (8) A franchisor may deny a franchisee's claim for warranty compensation or recall
78 repair compensation only if:

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

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

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

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

86 (9) (a) Any charge back for a warranty part or service compensation, recall repair
87 compensation, or service incentive is only enforceable for the six-month period immediately

88 following the day on which the franchisor makes the payment compensating the franchisee for
89 the warranty part or service, recall repair, or service incentive.

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

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

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

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

100 (ii) A franchisee may respond in writing within 30 days after the notice under
101 Subsection (9)(c)(i) to:

102 (A) explain a deficiency; or

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

105 (d) A charge back:

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

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

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

112 (e) The time limitations of this Subsection (9) do not preclude charge backs for any
113 fraudulent claim that was previously paid.

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

118 (i) the franchisee holding the used motor vehicle for sale is authorized to sell and

119 service a new vehicle of the same line-make;

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

122 (iii) (A) the used motor vehicle is in the franchisee's inventory at the time the
123 franchisor issued the order described in Subsection (10)(a)(ii); or

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

128 (b) A franchisor shall pay the compensation described in Subsection (10)(a):

129 (i) beginning:

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

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

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

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

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

139 (c) A franchisor shall prorate the first and last payment for a used motor vehicle to a
140 franchisee under this Subsection (10).

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

144 (11) (a) A franchisee that offsets recall repair compensation received from a franchisor
145 under this section against recall repair compensation the franchisee receives under a state or
146 federal recall repair compensation remedy may pursue any other available remedy against the
147 franchisor.

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

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

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

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

156 (12) During an audit under this section, a franchisor may not request a document from
157 the franchisee that originated from the franchisor or a subsidiary of the franchisor, unless the
158 document required additional information from the customer.

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

160 **41-3-102. Definitions.**

161 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

197 ~~or]~~

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

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

200 (b) that is:

201 (i) an electric vehicle manufacturer; or

202 (ii) a low-volume manufacturer;

203 (c) that is not a franchise holder;

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

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

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

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

215 (b) "Dismantler" includes a person who dismantles three or more motor vehicles in any
216 12-month period.

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

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

222 (15) "Distributor representative" means a person and each officer and employee of the
223 person engaged as a representative of a distributor or distributor branch of motor vehicles to
224 make or promote the sale of the distributor or the distributor branch's motor vehicles, or for
225 supervising or contacting dealers or prospective dealers of the distributor or the distributor
226 branch.

227 (16) "Division" means the Motor Vehicle Enforcement Division created in Section
228 [41-3-104](#).

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

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

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

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

237 (c) manufactured by the person.

238 [~~(17)] (18) "Factory branch" means a branch office maintained by a person who
239 manufactures or assembles motor vehicles for sale to distributors, motor vehicle dealers, or
240 who directs or supervises the factory branch's representatives.~~

241 [~~(18)] (19) "Factory representative" means a person and each officer and employee of
242 the person engaged as a representative of a manufacturer of motor vehicles or by a factory~~

243 branch to make or promote the sale of the manufacturer's or factory branch's motor vehicles, or
244 for supervising or contacting the dealers or prospective dealers of the manufacturer or the
245 factory branch.

246 ~~[(19)]~~ (20) (a) "Franchise" means a contract or agreement between a dealer and a
247 manufacturer of new motor vehicles or a manufacturer's distributor or factory branch by which
248 the dealer is authorized to sell any specified make or makes of new motor vehicles.

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

252 ~~[(20)]~~ (21) (a) "Franchise holder" means a manufacturer who:

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

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

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

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

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

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

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

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

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

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

271 or

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

273 (ii) manufactured by the person; and

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

275 [~~(21)~~] (23) "Line-make" means motor vehicles that are offered for sale, lease, or
276 distribution under a common name, trademark, service mark, or brand name of the
277 manufacturer.

278 [~~(22)~~] (24) "Manufacturer" means a person engaged in the business of constructing or
279 assembling new motor vehicles, ownership of which is customarily transferred by a
280 manufacturer's statement or certificate of origin, or a person who constructs three or more new
281 motor vehicles in any 12-month period.

282 [~~(23)~~] (25) "Material owner" means a person who possesses, directly or indirectly, the
283 power to direct, or cause the direction of, the management, policies, or activities of another
284 person:

285 (a) through ownership of voting securities;

286 (b) by contract or credit arrangement; or

287 (c) in another way not described in Subsections [~~(23)~~] (25)(a) and (b).

288 [~~(24)~~] (26) (a) "Motor vehicle" means a vehicle that is:

289 (i) self-propelled;

290 (ii) a trailer;

291 (iii) a travel trailer;

292 (iv) a semitrailer;

293 (v) an off-highway vehicle; or

294 (vi) a small trailer.

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

296 (i) mobile homes as defined in Section 41-1a-102;

297 (ii) trailers of 750 pounds or less unladen weight;

298 (iii) a farm tractor or other machine or tool used in the production, harvesting, or care of
299 a farm product; and

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

301 [~~(25)~~] (27) "Motorcycle" means the same as that term is defined in Section 41-1a-102.

302 [~~(26)~~] (28) "New motor vehicle" means a motor vehicle that:

303 (a) has never been titled or registered; and

304 (b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven

305 less than 7,500 miles.

306 ~~[(27)]~~ (29) "Off-highway vehicle" means the same as that term is defined in Section
307 41-22-2.

308 ~~[(28)]~~ (30) "Pawnbroker" means a person whose business is to lend money on security
309 of personal property deposited with him.

310 ~~[(29)]~~ (31) (a) "Principal place of business" means a site or location in this state:

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

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

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

322 (b) "Principal place of business" means, with respect to a direct-sale manufacturer, the
323 direct-sale manufacturer's showroom, which shall comply with the requirements of Subsection
324 ~~[(29)]~~ (31)(a).

325 ~~[(30)]~~ (32) "Remanufacturer" means a person who reconstructs used motor vehicles
326 subject to registration under ~~[Title 41,]~~ Chapter 1a, Motor Vehicle Act, to change the body
327 style and appearance of the motor vehicle or who constructs or assembles motor vehicles from
328 used or new and used motor vehicle parts, or who reconstructs, constructs, or assembles three
329 or more motor vehicles in any 12-month period.

330 ~~[(31)]~~ (33) "Salesperson" means an individual who for a salary, commission, or
331 compensation of any kind, is employed either directly, indirectly, regularly, or occasionally by
332 any new motor vehicle dealer or used motor vehicle dealer to sell, purchase, or exchange or to
333 negotiate for the sale, purchase, or exchange of motor vehicles.

334 ~~[(32)]~~ (34) "Semitrailer" means the same as that term is defined in Section 41-1a-102.

335 ~~[(33)]~~ (35) "Showroom" means a site or location in the state that a direct-sale

336 manufacturer uses for the direct-sale manufacturer's business, including the display and
337 demonstration of new motor vehicles that are exclusively of the same line-make that the
338 direct-sale manufacturer manufactures.

339 ~~[(34)]~~ (36) "Small trailer" means a trailer that has an unladen weight of:

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

342 ~~[(35)]~~ (37) "Special equipment" includes a truck mounted crane, cherry picker, material
343 lift, post hole digger, and a utility or service body.

344 ~~[(36)]~~ (38) "Special equipment dealer" means a new or new and used motor vehicle
345 dealer engaged in the business of buying new incomplete motor vehicles with a gross vehicle
346 weight of 12,000 or more pounds and installing special equipment on the incomplete motor
347 vehicle.

348 ~~[(37)]~~ (39) "Trailer" means the same as that term is defined in Section [41-1a-102](#).

349 ~~[(38)]~~ (40) "Transporter" means a person engaged in the business of transporting motor
350 vehicles as described in Section [41-3-202](#).

351 ~~[(39)]~~ (41) "Travel trailer" means the same as that term is defined in Section
352 [41-1a-102](#).

353 ~~[(40)]~~ (42) "Used motor vehicle" means a vehicle that:

- 354 (a) has been titled and registered to a purchaser other than a dealer; or
- 355 (b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven
356 7,500 or more miles.

357 ~~[(41)]~~ (43) "Wholesale motor vehicle auction" means a dealer primarily engaged in the
358 business of auctioning consigned motor vehicles to dealers or dismantlers who are licensed by
359 this or any other jurisdiction.

360 Section 3. Section **41-3-103** is amended to read:

361 **41-3-103. Exceptions to "dealer" definition -- Dealer licensed in other state --**
362 **Direct-sale manufacturer -- Direct-sale manufacturer salesperson.**

363 Under this chapter:

- 364 (1) (a) An insurance company, bank, finance company, company registered as a title
365 lender under Title 7, Chapter 24, Title Lending Registration Act, company registered as a check
366 cashier or deferred deposit lender under Title 7, Chapter 23, Check Cashing and Deferred

367 Deposit Lending Registration Act, public utility company, commission impound yard, federal
368 or state governmental agency, or any political subdivision of any of them or any other person
369 coming into possession of a motor vehicle as an incident to its regular business, that sells the
370 motor vehicle under contractual rights that it may have in the motor vehicle is not considered a
371 dealer.

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

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

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

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

383 (4) Except as otherwise expressly provided:

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

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

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

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

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

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

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