

HB0194S02 compared with HB0194

~~text~~ shows text that was in HB0194 but was deleted in HB0194S02.

text shows text that was not in HB0194 but was inserted into HB0194S02.

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Representative Colin W. Jack proposes the following substitute bill:

MOTOR VEHICLE DEALER REQUIREMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Colin W. Jack

Senate Sponsor: _____

LONG TITLE

General Description:

This bill prohibits a motor vehicle dealer from charging a fee or charge in addition to the negotiated purchase price as a condition of the sale.

Highlighted Provisions:

This bill:

- ▶ prohibits a motor vehicle dealer from requiring a purchaser to pay, as a condition of the sale, a fee or charge in addition to the negotiated purchase, other than ~~sales and use taxes, temporary permit fees, required title fees, and required registration fees~~;
 - certain fees required by state or federal law;
 - a dealer documentary service fee; and
 - certain increases in price imposed by a manufacturer for semi-tractors with a gross vehicle weight rating over 14,000 pounds;

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- ▶ specifies the civil penalties for a violation;
- ▶ requires a motor vehicle dealer to provide and execute a transaction disclosure form;
- ▶ requires the State Tax Commission to create the transaction disclosure form; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

41-3-102, as last amended by Laws of Utah 2022, Chapter 455

41-3-103, as last amended by Laws of Utah 2022, Chapter 455

41-3-211, as enacted by Laws of Utah 2010, Chapter 342

41-3-702, as last amended by Laws of Utah 2019, Chapter 424

ENACTS:

41-3-401.6, Utah Code Annotated 1953

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

Section 1. 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

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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.

(8) "Crusher" means a person who crushes or shreds motor vehicles subject to registration under 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 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

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sale, purchase, or exchange of a motor vehicle manufactured by the direct-sale manufacturer who employs the individual.

(12) (a) "Dismantler" means a person engaged in the business of dismantling motor vehicles subject to registration under 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.

(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.

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

(20) "Fleet transaction" means a licensee's sale of one or more motor vehicles to a manufacturer-approved current fleet customer under the manufacturer's fleet program.

~~[(20)]~~ (21) (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 ~~[(20)(a)]~~ (21)(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.

~~[(21)]~~ (22) (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 ~~[(21)(a)]~~ (22)(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)]~~ (23) "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:

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

or

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

(ii) manufactured by the person; and

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

~~[(23)]~~ [(24)] "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.

~~[(24)]~~ [(25)] "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.

~~[(25)]~~ [(26)] "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 ~~[(25)(a)]~~ [(26)(a)] and (b).

~~[(26)]~~ [(27)] (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.

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~~[(27)]~~ [(28)] "Motorcycle" means the same as that term is defined in Section 41-1a-102.

~~[(28)]~~ [(29)] "New motor vehicle" means a motor vehicle that:

(a) has never been titled or registered; and

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

~~[(29)]~~ [(30)] "Off-highway vehicle" means the same as that term is defined in Section 41-22-2.

~~[(30)]~~ [(31)] "Pawnbroker" means a person whose business is to lend money on security of personal property deposited with him.

~~[(31)]~~ [(32)] (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 ~~[(31)(a)]~~ [(32)(a)].

~~[(32)]~~ [(33)] "Remanufacturer" means a person who reconstructs used motor vehicles subject to registration under 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.

~~[(33)]~~ [(34)] "Salesperson" means an individual who for a salary, commission, or compensation of any kind, is employed either directly, indirectly, regularly, or occasionally by

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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.

~~[(34)]~~ (35) "Semitrailer" means the same as that term is defined in Section 41-1a-102.

~~[(35)]~~ (36) "Showroom" means a site or location in the state that a direct-sale manufacturer uses for the direct-sale manufacturer's business, including the display and demonstration of new motor vehicles that are exclusively of the same line-make that the direct-sale manufacturer manufactures.

~~[(36)]~~ (37) "Small trailer" means a trailer that has an unladen weight of:

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

~~[(37)]~~ (38) "Special equipment" includes a truck mounted crane, cherry picker, material lift, post hole digger, and a utility or service body.

~~[(38)]~~ (39) "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.

~~[(39)]~~ (40) "Trailer" means the same as that term is defined in Section 41-1a-102.

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

~~[(41)]~~ (42) "Travel trailer" means the same as that term is defined in Section 41-1a-102.

~~[(42)]~~ (43) "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.

~~[(43)]~~ (44) "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 2. 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.**

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Under this chapter:

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

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

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

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

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

(4) Except as otherwise expressly provided:

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

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

(5) Notwithstanding any provision of this chapter to the contrary, a direct-sale 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(17)~~ if the direct-sale manufacturer is an electric vehicle manufacturer; or

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(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.

Section ~~41-3~~3. Section **41-3-211** is amended to read:

41-3-211. Unlawful acts or practices.

(1) A licensee may not knowingly or intentionally engage in any of the following unlawful acts or practices:

(a) provide a financial institution or person being contacted to provide financing for the purchase of a motor vehicle, a motor vehicle contract of sale, document of sale, contract, request for proposal, or other document that does not accurately state:

- (i) the terms of the motor vehicle purchase; or
- (ii) if the vehicle is a rebuilt vehicle;

(b) sell a motor vehicle to a purchaser that is subject to financing that is not the motor vehicle described in a motor vehicle contract of sale, document of sale, contract, request for proposal, or other document as of the time the contract of sale, document of sale, contract, request for proposal, or other document provided to the financial institution or person providing financing; ~~or~~

(c) make payments on any loan or lease on a motor vehicle subject to a loan or lease that is subject to the payoff requirements of Subsection 41-3-402(1)~~[-]; or~~

(d) except as provided in Subsection (3), require a purchaser to pay as a condition of the sale:

- (i) an amount higher than the negotiated purchase price; or
- (ii) any fee or charge in addition to the negotiated purchase price.

(2) The provisions of Subsection (1)(c) do not prohibit a dealer from making one or more loan or lease payments for a motor vehicle if making the payments is:

(a) stated in writing in a motor vehicle contract of sale, document of sale, contract, request for proposal, or other document; or

(b) stated in the notice to the lienholder of the trade-in of the vehicle as required by Subsection 41-3-402(5).

(3) Subsection (1)(d) does not prohibit a licensee from charging any of the following in

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addition to the negotiated purchase price

- ~~(a) sales and use taxes as required by Title 59, Chapter 12, Sales and Use Tax Act;~~
- ~~(b) detailed on the transaction disclosure form required pursuant to Section 41-3-401.6:~~
 - ~~(a) a temporary permit fee pursuant to Section 41-1a-211;~~
 - ~~(c) a fee required in Chapter 1a, Part 5, Titling Requirement;~~
 - ~~(d) motor vehicle registration fees required under this title~~

~~;~~

(d) a dealer documentary service fee as described in rules made in accordance with Sections 41-3-301 and 41-3-302;

(e) sales and use taxes as required by Title 59, Chapter 12, Sales and Use Tax Act;

(f) for the purchase of a semi-tractor with a gross vehicle weight rating of over 14,000 pounds, an increase to the negotiated purchase price paid by the licensee that is imposed by the manufacturer after the negotiated purchase price is determined by the licensee and the purchaser; or

(g) any other tax or fee required by federal or state law to be paid by the purchaser of a motor vehicle.

~~(3)~~ (4) (a) ~~[A]~~ Except as provided in Subsection (4)(b), a person who violates the provisions of this section is subject to the penalties provided in Section 41-3-701 and Subsection 41-3-702(1)(a).

(b) A person who violates Subsection (1)(d) is subject to the penalties provided in ~~Section 41-3-701 and~~ Subsection 41-3-702(1)~~(d)~~
~~Section 2(c).~~

(5) (a) Subsection (1)(d) does not apply to a sale at auction and does not prohibit a licensee who conducts an auction from charging the winning bidder fees related to the auction or other vehicle-related services.

(b) Subsection (1)(d) does not apply to the sale of motor vehicles in a fleet transaction.

Section 4. Section 41-3-401.6 is enacted to read:

41-3-401.6. Transaction disclosure form.

(1) (a) Before a sale is finalized, a licensee shall provide the transaction disclosure form described in Subsection (3).

(b) The licensee and the purchaser shall each execute the transaction disclosure form to

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memorialize the negotiated terms and prices of the sale.

(c) The licensee shall provide the purchaser a copy of the transaction disclosure form.

(2) The commission shall create the transaction disclosure form as described in

Subsection (3).

(3) The transaction disclosure form shall include:

(a) the negotiated sale price of the vehicle;

(b) the negotiated value of the trade-in vehicle, if applicable;

(c) an itemized list of the following legally required taxes and fees:

(i) a temporary permit fee pursuant to Section 41-1a-211;

(ii) a fee required in Chapter 1a, Part 5, Titling Requirement;

(iii) motor vehicle registration fees required under this title;

(iv) a dealer documentary service fee as described in rules made in accordance with

Sections 41-3-301 and 41-3-302;

(v) sales and use taxes required by Title 59, Chapter 12, Sales and Use Tax Act; and

(vi) any other taxes or fees required by federal or state law to be paid by the purchaser

of a motor vehicle.

(d) the subtotal of the amounts described in Subsections (3)(a) through (c);

(e) any other optional charges as negotiated by the licensee and purchaser; and

(f) the total amount for which the licensee agrees to seek arrangements for financing, if

applicable.

(4) A transaction disclosure form described in this section is not required for a sale at

auction or a fleet transaction.

Section 5. Section **41-3-702** is amended to read:

41-3-702. Civil penalty for violation.

(1) The following are civil violations under this chapter and are in addition to criminal violations under this chapter:

(a) Level I:

(i) failing to display business license;

(ii) failing to surrender license of salesperson because of termination, suspension, or revocation;

(iii) failing to maintain a separation from nonrelated motor vehicle businesses at

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licensed locations;

(iv) issuing a temporary permit improperly;

(v) failing to maintain records;

(vi) selling a new motor vehicle to a nonfranchised dealer or leasing company without licensing the motor vehicle;

(vii) special plate violation;

(viii) failing to maintain a sign at a principal place of business; or

(ix) failing to store a salvage vehicle purchased at a motor vehicle auction in a secure location until the purchaser or a transporter has provided the proper documentation to take possession of the salvage vehicle.

(b) Level II:

(i) failing to report sale;

(ii) dismantling without a permit;

(iii) manufacturing without meeting construction or vehicle identification number standards;

(iv) withholding customer license plates;

(v) selling a motor vehicle on consecutive days of Saturday and Sunday; or

(vi) failing to record and report the sale of a salvage vehicle at a motor vehicle auction as described in Section 41-3-201.

(c) Level III:

(i) operating without a principal place of business;

(ii) selling a new motor vehicle as a dealer who is not a direct-sale manufacturer without holding the franchise;

(iii) crushing a motor vehicle without proper evidence of ownership;

(iv) selling from an unlicensed location;

(v) altering a temporary permit;

(vi) refusal to furnish copies of records;

(vii) assisting an unlicensed dealer or salesperson in sales of motor vehicles;

(viii) advertising violation;

(ix) failing to separately identify the fees required by Title 41, Chapter 1a, Motor Vehicle Act;

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(x) encouraging or conspiring with unlicensed persons to solicit for prospective purchasers; ~~[or]~~

(xi) selling, offering for sale, or displaying for sale or exchange a vehicle, vessel, or outboard motor in violation of Section 41-1a-705~~[-]; or~~

~~(~~fd~~)xii) ~~{A}~~a violation of Subsection 41-3-211(1)(d)~~{ is a Level IV civil violation}~~.~~

(2) (a) The schedule of civil penalties for violations of Subsection (1) is:

(i) Level I: \$25 for the first offense, \$100 for the second offense, and \$250 for the third and subsequent offenses;

(ii) Level II: \$100 for the first offense, \$250 for the second offense, and \$1,000 for the third and subsequent offenses; ~~{}~~and~~{}~~

(iii) Level III: \$250 for the first offense, \$1,000 for the second offense, and \$5,000 for the third and subsequent offenses~~{}, { }, and }~~

~~{ — (iv) Level IV: \$1,000 for the first offense, \$5,000 for the second offense, and \$10,000 for the third and subsequent offenses.~~

~~{~~ (b) When determining under this section if an offense is a second or subsequent offense, only prior offenses committed within the 12 months before the commission of the current offense may be considered.

(3) Knowingly selling a salvage vehicle, as defined in Section 41-1a-1001, without disclosing that the salvage vehicle has been repaired or rebuilt is a civil violation in addition to a criminal violation under Section 41-1a-1008.

(4) The civil penalty for a violation under Subsection (3) is:

(a) not less than \$1,000, or treble the actual damages caused by the person, whichever is greater; and

(b) reasonable attorney fees and costs of the action.

(5) A civil action may be maintained by a purchaser or by the administrator.

Section 6. Effective date.

This bill takes effect on July 1, 2023.