

Part 1 General Administration

13-35-101 Title.

This chapter is known as the "Powersport Vehicle Franchise Act."

Enacted by Chapter 234, 2002 General Session

13-35-102 Definitions.

As used in this chapter:

- (1) "Advisory board" or "board" means the Utah Powersport Vehicle Franchise Advisory Board created in Section 13-35-103.
- (2) "Dealership" means a site or location in this state:
 - (a) at which a franchisee conducts the business of a new powersport vehicle dealer; and
 - (b) that is identified as a new powersport vehicle dealer's principal place of business for registration purposes under Section 13-35-105.
- (3) "Department" means the Department of Commerce.
- (4) "Executive director" means the executive director of the Department of Commerce.
- (5) "Franchise" or "franchise agreement" means a written agreement, for a definite or indefinite period, in which:
 - (a) a person grants to another person a license to use a trade name, trademark, service mark, or related characteristic; and
 - (b) a community of interest exists in the marketing of new powersport vehicles, new powersport vehicle parts, and services related to the sale or lease of new powersport vehicles at wholesale or retail.
- (6) "Franchisee" means a person with whom a franchisor has agreed or permitted, in writing or in practice, to purchase, sell, or offer for sale new powersport vehicles manufactured, produced, represented, or distributed by the franchisor.
- (7)
 - (a) "Franchisor" means a person who has, in writing or in practice, agreed with or permits a franchisee to purchase, sell, or offer for sale new powersport vehicles manufactured, produced, represented, or distributed by the franchisor, and includes:
 - (i) the manufacturer or distributor of the new powersport vehicles;
 - (ii) an intermediate distributor;
 - (iii) an agent, officer, or field or area representative of the franchisor; and
 - (iv) a person who is affiliated with a manufacturer or a representative or who directly or indirectly through an intermediary is controlled by, or is under common control with the manufacturer.
 - (b) For purposes of Subsection (7)(a)(iv), a person is controlled by a manufacturer if the manufacturer has the authority directly or indirectly by law or by an agreement of the parties, to direct or influence the management and policies of the person.
- (8) "Lead" means the referral by a franchisor to a franchisee of an actual or potential customer for the purchase or lease of a new powersport vehicle, or for service work related to the franchisor's vehicles.
- (9) "Line-make" means the powersport vehicles that are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the franchisor, or manufacturer of the powersport vehicle.

- (10) "New powersport vehicle dealer" means a person who is engaged in the business of buying, selling, offering for sale, or exchanging new powersport vehicles either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise who has established a place of business for the sale, lease, trade, or display of powersport vehicles.
- (11) "Notice" or "notify" includes both traditional written communications and all reliable forms of electronic communication unless expressly prohibited by statute or rule.
- (12)
 - (a) "Powersport vehicle" means:
 - (i) an all-terrain type I or type II vehicle "ATV" defined in Section 41-22-2;
 - (ii) a snowmobile as defined in Section 41-22-2;
 - (iii) a motorcycle as defined in Section 41-1a-102;
 - (iv) a personal watercraft as defined in Section 73-18-2;
 - (v) except as provided in Subsection (10)(b), a motor-driven cycle as defined in Section 41-6a-102; or
 - (vi) a moped as defined in Section 41-6a-102.
 - (b) "Powersport vehicle" does not include:
 - (i) an electric assisted bicycle defined in Section 41-6a-102;
 - (ii) a motor assisted scooter as defined in Section 41-6a-102; or
 - (iii) an electric personal assistive mobility device as defined in Section 41-6a-102.
- (13) "Relevant market area" means:
 - (a) for a powersport dealership in a county that has a population of less than 225,000:
 - (i) the county in which the powersport dealership exists or is to be established or relocated; and
 - (ii) in addition to the county described in Subsection (13)(a)(i), the area within a 15-mile radius from the site of the existing, new, or relocated dealership; or
 - (b) for a powersport dealership in a county that has a population of 225,000 or more, the area within a 10-mile radius from the site of the existing, new, or relocated dealership.
- (14) "Sale, transfer, or assignment" means any disposition of a franchise or an interest in a franchise, with or without consideration, including a bequest, inheritance, gift, exchange, lease, or license.
- (15) "Serve" or "served," unless expressly indicated otherwise by statute or rule, includes any reliable form of communication.
- (16) "Written," "write," "in writing," or other variations of those terms shall include all reliable forms of electronic communication.

Amended by Chapter 414, 2016 General Session

13-35-103 Utah Powersport Vehicle Franchise Advisory Board -- Creation -- Appointment of members -- Alternate members -- Chair -- Quorum -- Conflict of interest.

- (1) There is created within the department the Utah Powersport Vehicle Franchise Advisory Board that consists of:
 - (a) the executive director or the executive director's designee; and
 - (b) six members appointed by the executive director, with the concurrence of the governor, as follows:
 - (i) three new powersport vehicle franchisees, each from a different congressional district in the state; and
 - (ii)
 - (A) three members representing powersport vehicle franchisors registered by the department pursuant to Section 13-35-105;

- (B) three members of the general public, none of whom shall be related to any franchisee; or
- (C) three members consisting of any combination of these representatives under this Subsection (1)(b)(ii).

- (2)
 - (a) The executive director shall also appoint, with the concurrence of the governor, three alternate members, with at least one alternate from each of the designations set forth in Subsections (1)(b)(i) and (1)(b)(ii), except that the new powersport vehicle franchisee alternate or alternates for the designation under Subsection (1)(b)(i) may be from any congressional district.
 - (b) An alternate shall take the place of a regular advisory board member from the same designation at a meeting of the advisory board where that regular advisory board member is absent or otherwise disqualified from participating in the advisory board meeting.
- (3)
 - (a)
 - (i) Members of the advisory board appointed under Subsections (1)(b) and (2) shall be appointed for a term of four years.
 - (ii) No specific term shall apply to the executive director or the executive director's designee.
 - (b) The executive director may adjust the term of members who were appointed to the advisory board prior to July 1, 2002, by extending the unexpired term of a member for up to two additional years in order to insure that approximately half of the members are appointed every two years.
 - (c) In the event of a vacancy on the advisory board of a member appointed under Subsection (1)(b) or (2), the executive director with the concurrence of the governor, shall appoint an individual to complete the unexpired term of the member whose office is vacant.
 - (d) A member may not be appointed to more than two consecutive terms.
- (4)
 - (a) The executive director or the executive director's designee shall be the chair of the advisory board.
 - (b) The department shall keep a record of all hearings, proceedings, transactions, communications, and recommendations of the advisory board.
- (5)
 - (a) Four or more members of the advisory board constitute a quorum for the transaction of business.
 - (b) The action of a majority of a quorum present is considered the action of the advisory board.
- (6)
 - (a) A member of the advisory board may not participate as a board member in a proceeding or hearing:
 - (i) involving the member's business or employer; or
 - (ii) when a member, a member's business, family, or employer has a pecuniary interest in the outcome or other conflict of interest concerning an issue before the advisory board.
 - (b) If a member of the advisory board is disqualified under Subsection (6)(a), the executive director shall select the appropriate alternate member to act on the issue before the advisory board as provided in Subsection (2).
- (7) Except for the executive director or the executive director's designee, an individual may not be appointed or serve on the advisory board while holding any other elective or appointive state or federal office.
- (8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (9) The department shall provide necessary staff support to the advisory board.

Amended by Chapter 258, 2015 General Session

13-35-104 Powers and duties of the advisory board and the executive director.

- (1)
- (a) Except as provided in Subsection 13-35-106(3), the advisory board shall make recommendations to the executive director on the administration and enforcement of this chapter, including adjudicative and rulemaking proceedings.
 - (b) The executive director shall:
 - (i) consider the advisory board's recommendations; and
 - (ii) issue any final decision by the department.
- (2) The executive director, in consultation with the advisory board, shall make rules for the administration of this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3)
- (a) An adjudicative proceeding under this chapter shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
 - (b) In an adjudicative proceeding under this chapter, any order issued by the executive director:
 - (i) shall comply with Section 63G-4-208, whether the proceeding is a formal or an informal adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act; and
 - (ii) if the order modifies or rejects a finding of fact in a recommendation from the advisory board, shall be made on the basis of information learned from the executive director's:
 - (A) personal attendance at the hearing; or
 - (B) review of the record developed at the hearing.

Amended by Chapter 382, 2008 General Session

13-35-105 Registration -- Fees.

- (1) A franchisee or franchisor doing business in this state shall:
- (a) annually register or renew its registration with the department in a manner established by the department; and
 - (b) pay an annual registration fee in an amount determined by the department in accordance with Sections 13-1-2 and 63J-1-504.
- (2) The department shall register or renew the registration of a franchisee or franchisor if the franchisee or franchisor complies with this chapter and rules made by the department under this chapter.
- (3) A franchisee or franchisor registered under this section shall comply with this chapter and any rules made by the department under this chapter including any amendments to this chapter or the rules made after a franchisee or franchisor enter into a franchise agreement.
- (4) The fee imposed under Subsection (1)(b) shall be collected by the department and deposited into the Commerce Service Account created by Section 13-1-2.
- (5) Notwithstanding Subsection (1), an agent, officer, or field or area representative of a franchisor does not need to be registered under this section if the franchisor is registered under this section.

Amended by Chapter 278, 2010 General Session

13-35-106 Administrative proceedings commenced by the agency.

- (1) Except as provided in Subsection (3), after a hearing and after receipt of the advisory board's recommendation, if the executive director finds that a person has violated this chapter or any rule made under this chapter, the executive director may:
 - (a) issue a cease and desist order; and
 - (b) assess an administrative fine.
- (2)
 - (a) In determining the amount and appropriateness of an administrative fine under Subsection (1), the executive director shall consider:
 - (i) the gravity of the violation;
 - (ii) any history of previous violations; and
 - (iii) any attempt made by the person to retaliate against another person for seeking relief under this chapter or other federal or state law relating to the motor vehicle industry.
 - (b) In addition to any other action permitted under Subsection (1), the department may file an action with a court seeking to enforce the executive director's order and pursue the executive director's assessment of a fine in an amount not to exceed \$5,000 for each day a person violates an order of the executive director.
- (3)
 - (a) In addition to the grounds for issuing an order on an emergency basis listed in Subsection 63G-4-502(1), the executive director may issue an order on an emergency basis if the executive director determines that irreparable damage is likely to occur if immediate action is not taken.
 - (b) In issuing an emergency order under Subsection (3)(a), the executive director shall comply with the requirements of Subsections 63G-4-502(2) and (3).

Amended by Chapter 382, 2008 General Session

13-35-107 Administrative proceedings -- Request for agency action.

- (1)
 - (a) A person may commence an adjudicative proceeding in accordance with this chapter and with Title 63G, Chapter 4, Administrative Procedures Act, to:
 - (i) remedy a violation of this chapter;
 - (ii) obtain approval of an act regulated by this chapter; or
 - (iii) obtain any determination that this chapter specifically authorizes that person to request.
 - (b) A person shall commence an adjudicative proceeding by filing a request for agency action in accordance with Section 63G-4-201.
- (2) After receipt of the advisory board's recommendation, the executive director shall apportion in a fair and equitable manner between the parties any costs of the adjudicative proceeding, including reasonable attorney fees.

Amended by Chapter 382, 2008 General Session