

## **Part 3**

### **Restrictions on Termination, Relocation, and Establishment of Franchises**

#### **13-35-301 Termination or noncontinuance of franchise.**

- (1) Except as provided in Subsection (2), a franchisor may not terminate or refuse to continue a franchise agreement unless:
  - (a) the franchisee has received written notice from the franchisor 60 days before the effective date of termination or noncontinuance setting forth the specific grounds for termination or noncontinuance that are relied on by the franchisor as establishing good cause for the termination or noncontinuance;
  - (b) the franchisor has good cause for termination or noncontinuance; and
  - (c) the franchisor is willing and able to comply with Section 13-35-105.
- (2) A franchisor may terminate a franchise, without complying with Subsection (1):
  - (a) if for a particular line-make the franchisor or manufacturer discontinues that line-make;
  - (b) if the franchisee's registration as a new powersport vehicle dealer is revoked under Section 13-35-105; or
  - (c) upon a mutual written agreement of the franchisor and franchisee.
- (3)
  - (a) At any time before the effective date of termination or noncontinuance of the franchise, the franchisee may apply to the advisory board for a hearing on the merits, and following notice to all parties concerned, the hearing shall be promptly held as provided in Section 13-35-304.
  - (b) A termination or noncontinuance subject to a hearing under Subsection (3)(a) may not become effective until:
    - (i) final determination of the issue by the executive director; and
    - (ii) the applicable appeal period has lapsed.

Amended by Chapter 268, 2005 General Session

#### **13-35-302 Issuance of additional franchises -- Relocation of existing franchisees.**

- (1)
  - (a) Except as provided in Subsection (2), a franchisor shall comply with Subsection (1)(b) if the franchisor seeks to:
    - (i) enter into a franchise establishing a powersport vehicle dealership within a relevant market area where the same line-make is represented by another franchisee; or
    - (ii) relocate an existing powersport vehicle dealership.
  - (b)
    - (i) If a franchisor seeks to take an action listed in Subsection (1)(a), prior to taking the action, the franchisor shall in writing notify the advisory board and each franchisee in that line-make in the relevant market area that the franchisor intends to take an action described in Subsection (1)(a).
    - (ii) The notice required by Subsection (1)(b)(i) shall:
      - (A) specify the good cause on which it intends to rely for the action; and
      - (B) be delivered by registered or certified mail or by any form of reliable delivery through which receipt is verifiable.
  - (c) Within 45 days of receiving notice required by Subsection (1)(b), any franchisee that is required to receive notice under Subsection (1)(b) may protest to the advisory board the

establishing or relocating of the dealership. When a protest is filed, the department shall inform the franchisor that:

- (i) a timely protest has been filed;
  - (ii) a hearing is required;
  - (iii) the franchisor may not establish or relocate the proposed dealership until the advisory board has held a hearing; and
  - (iv) the franchisor may not establish or relocate a proposed dealership if the executive director determines that there is not good cause for permitting the establishment or relocation of the dealership.
- (d) If multiple protests are filed under Subsection (1)(c), hearings may be consolidated to expedite the disposition of the issue.
- (2) Subsection (1) does not apply to the relocation of a franchisee's dealership:
- (a) less than two miles from the existing location of the franchisee's dealership; or
  - (b) farther away from all powersport dealerships that are:
    - (i) of the same line-make as the franchisee's dealership; and
    - (ii) in the franchisee's existing dealership's relevant market area.
- (3) For purposes of this section:
- (a) relocation of an existing franchisee's dealership in excess of one mile from its existing location is considered the establishment of an additional franchise in the line-make of the relocating franchise;
  - (b) the reopening in a relevant market area of a dealership that has not been in operation for one year or more is considered the establishment of an additional powersport vehicle dealership; and
  - (c)
    - (i) except as provided in Subsection (3)(c)(ii), the establishment of a temporary additional place of business by a powersport vehicle franchisee is considered the establishment of an additional powersport vehicle dealership; and
    - (ii) the establishment of a temporary additional place of business by a powersport vehicle franchisee is not considered the establishment of an additional powersport vehicle dealership if the powersport vehicle franchisee is participating in a trade show where three or more powersport vehicle dealers are participating.

Amended by Chapter 414, 2016 General Session

### **13-35-303 Effect of terminating a franchise.**

If under Section 13-35-301 the executive director permits a franchisor to terminate or not continue a franchise and prohibits the franchisor from entering into a franchise for the sale of new powersport vehicles of a line-make in a relevant market area, the franchisor may not enter into a franchise for the sale of new powersport vehicles of that line-make in the specified relevant market area unless the executive director determines, after a recommendation by the advisory board, that there has been a change of circumstances so that the relevant market area at the time of the establishment of the new franchise agreement can reasonably be expected to support the new franchisee.

Amended by Chapter 268, 2005 General Session

### **13-35-304 Hearing regarding termination, relocation, or establishment of franchises.**

(1)

- (a) Within 10 days of receiving an application from a franchisee under Subsection 13-35-301(3) challenging its franchisor's right to terminate or not continue a franchise, or an application under Subsection 13-35-302(1) challenging the establishment or relocation of a franchise, the executive director shall:
  - (i) enter an order designating the time and place for the hearing; and
  - (ii) send a copy of the order by certified or registered mail, with return receipt requested, or by any form of reliable delivery through which receipt is verifiable to:
    - (A) the applicant;
    - (B) the franchisor; and
    - (C) if the application involves the establishment of a new franchise or the relocation of an existing dealership, to all franchisees in the relevant market area engaged in the business of offering to sell or lease the same line-make.
- (b) A copy of an order mailed under Subsection (1)(a) shall be addressed to the franchisee at the place where the franchisee's business is conducted.
- (2) Any person who can establish an interest in the application may intervene as a party to the hearing, whether or not that person receives notice.
- (3) Any person may appear and testify on the question of the public interest in the termination or noncontinuation of a franchise or in the establishment of an additional franchise.
- (4)
  - (a)
    - (i) Any hearing ordered under Subsection (1) shall be conducted no later than 120 days after the application for hearing is filed.
    - (ii) A final decision on the challenge shall be made by the executive director no later than 30 days after the hearing.
  - (b) Failure to comply with the time requirements of Subsection (4)(a) is considered a determination that the franchisor acted with good cause or, in the case of a protest of a proposed establishment or relocation of a dealer, that good cause exists for permitting the proposed additional or relocated new motor vehicle dealer, unless:
    - (i) the delay is caused by acts of the franchisor or the additional or relocating franchisee; or
    - (ii) the delay is waived by the parties.
- (5) The franchisor has the burden of proof to establish that under this chapter it should be granted permission to:
  - (a) terminate or not continue the franchise;
  - (b) enter into a franchise agreement establishing an additional franchise; or
  - (c) relocate the dealership of an existing franchisee.

Amended by Chapter 268, 2005 General Session

**13-35-305 Evidence to be considered in determining cause to terminate or discontinue.**

- (1) In determining whether a franchisor has established good cause for terminating or not continuing a franchise agreement, the advisory board and the executive director shall consider:
  - (a) the amount of business transacted by the franchisee, as compared to business available to the franchisee;
  - (b) the investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise agreement;
  - (c) the permanency of the investment;
  - (d) whether it is injurious or beneficial to the public welfare or public interest for the business of the franchisee to be disrupted;

- (e) whether the franchisee has adequate powersport vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumer for the new powersport vehicles handled by the franchisee and has been and is rendering adequate services to the public;
  - (f) whether the franchisee refuses to honor warranties of the franchisor under which the warranty service work is to be performed pursuant to the franchise agreement, if the franchisor reimburses the franchisee for the warranty service work;
  - (g) failure by the franchisee to substantially comply with those requirements of the franchise agreement that are determined by the advisory board or the executive director to be:
    - (i) reasonable;
    - (ii) material; and
    - (iii) not in violation of this chapter;
  - (h) evidence of bad faith by the franchisee in complying with those terms of the franchise agreement that are determined by the advisory board or the executive director to be:
    - (i) reasonable;
    - (ii) material; and
    - (iii) not in violation of this chapter;
  - (i) prior misrepresentation by the franchisee in applying for the franchise;
  - (j) transfer of any ownership or interest in the franchise without first obtaining approval from the franchisor or the executive director after receipt of the advisory board's recommendation; and
  - (k) any other factor the advisory board or the executive director consider relevant.
- (2) Notwithstanding any franchise agreement, the following do not constitute good cause, as used in this chapter for the termination or noncontinuation of a franchise:
- (a) the sole fact that the franchisor desires:
    - (i) greater market penetration; or
    - (ii) more sales or leases of new powersport vehicles;
  - (b) the change of ownership of the franchisee's dealership or the change of executive management of the franchisee's dealership unless the franchisor proves that the change of ownership or executive management will be substantially detrimental to the distribution of the franchisor's powersport vehicles; or
  - (c) the fact that the franchisee has justifiably refused or declined to participate in any conduct covered by Section 13-35-201.
- (3) For purposes of Subsection (2), "substantially detrimental" includes the failure of any proposed transferee to meet the objective criteria applied by the franchisor in qualifying franchisees at the time of application.

Amended by Chapter 268, 2005 General Session

**13-35-306 Evidence to be considered in determining cause to relocate existing franchisee or establish a new franchised dealership.**

In determining whether a franchisor has established good cause for relocating an existing franchisee or establishing a new franchised dealership for the same line-make in a given relevant market area, the advisory board and the executive director shall consider:

- (1) the amount of business transacted by other franchisees of the same line-make in that relevant market area, as compared to business available to the franchisees;
- (2) the investment necessarily made and obligations incurred by other franchisees of the same line-make in that relevant market area in the performance of their part of their franchisee agreements;

- (3) the permanency of the existing and proposed investment;
- (4) whether it is injurious or beneficial to the public welfare or public interest for an additional franchise to be established; and
- (5) whether the franchisees of the same line-make in that relevant market area are providing adequate service to consumers for the powersport vehicles of the line-make, which shall include the adequacy of:
  - (a) the powersport vehicle sale and service facilities;
  - (b) equipment;
  - (c) supply of vehicle parts; and
  - (d) qualified service personnel.

Amended by Chapter 268, 2005 General Session

**13-35-307 Franchisor's repurchase obligations upon termination or noncontinuation of franchise.**

- (1)
  - (a) Except as provided in Subsection (1)(b), if a franchise is terminated or not continued by the franchisor or franchisee, the franchisor shall pay the franchisee:
    - (i) the franchisee's cost of new, undamaged, unsold, and unregistered powersport vehicles in the franchisee's inventory acquired from the franchisor or another franchisee of the same line-make and invoiced during the 30-month period immediately before the franchise is terminated or not continued;
    - (ii) any charges made by the franchisor for distribution, delivery, or taxes;
    - (iii) the franchisee's cost of any accessories added on a vehicle;
    - (iv) the cost of new, undamaged, and unsold supplies, parts, and accessories as set forth in the franchisor's catalog at the time of termination or noncontinuation less all allowances paid or credited to the franchisee by the franchisor;
    - (v) except as provided in Subsection (1)(c), the fair market value, but not less than the franchisee's depreciated acquisition cost, of each undamaged sign owned by the franchisee that bears a common name, trade name, or trademark of the franchisor if acquisition of the sign was recommended or required by the franchisor;
    - (vi) the fair market value, but not less than the franchisee's depreciated acquisition cost, of all special tools, equipment, and furnishings acquired from the franchisor or sources approved by the franchisor that were recommended or required by the franchisor and are in good and usable condition; and
    - (vii) the cost of transporting, handling, packing, and loading powersport vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings.
  - (b) The franchisor may deduct the sum of all allowances paid or credited to the franchisee by the franchisor from the amount owed under Subsection (1)(a).
  - (c) If a franchisee has a sign with multiple manufacturers listed, the franchisor shall pay only for its pro rata portion of the sign described in Subsection (1)(a)(v).
- (2) The franchisor shall pay the franchisee the amounts specified in Subsection (1) within 90 days after the tender of the property to the franchisor if the franchisee has:
  - (a) clear title to the property; or
  - (b) the manufacturer's statement of origin.
- (3) If repurchased inventory and equipment are subject to a security interest, the franchisor may make payment jointly to the franchisee and to the holder of the security interest.

Amended by Chapter 262, 2012 General Session