

13-35-202 Sale or transfer of ownership.

- (1)
 - (a) The franchisor shall give effect to the change in a franchise agreement as a result of an event listed in Subsection (1)(b):
 - (i) subject to Subsection 13-35-305(2)(b); and
 - (ii) unless exempted under Subsection (2).
 - (b) The franchisor shall give effect to the change in a franchise agreement pursuant to Subsection (1)(a) for the:
 - (i) sale of a dealership;
 - (ii) contract for sale of a dealership;
 - (iii) transfer of ownership of a franchisee's dealership by sale, transfer of the business, or by stock transfer; or
 - (iv) change in the executive management of the franchisee's dealership.
- (2) A franchisor is exempted from the requirements of Subsection (1) if:
 - (a) the transferee is denied, or would be denied, a new powersport vehicle franchisee's registration pursuant to Section 13-35-105; or
 - (b) the proposed sale or transfer of the business or change of executive management will be substantially detrimental to the distribution of the franchisor's new powersport vehicles or to competition in the relevant market area, provided that the franchisor has given written notice to the franchisee within 60 days following receipt by the franchisor of the following:
 - (i) a copy of the proposed contract of sale or transfer executed by the franchisee and the proposed transferee;
 - (ii) a completed copy of the franchisor's written application for approval of the change in ownership or executive management, if any, including the information customarily required by the franchisor; and
 - (iii)
 - (A) a written description of the business experience of the executive management of the transferee in the case of a proposed sale or transfer of the franchisee's business; or
 - (B) a written description of the business experience of the person involved in the proposed change of the franchisee's executive management in the case of a proposed change of executive management.
- (3) For purposes of this section, the refusal by the franchisor to accept a proposed transferee is presumed to be unreasonable and undertaken without good cause if the proposed franchisee:
 - (a) is of good moral character; and
 - (b) otherwise meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the franchisor relating to the business experience of executive management and financial capacity to operate and maintain the dealership required by the franchisor of its franchisees.
- (4)
 - (a) If after receipt of the written notice from the franchisor described in Subsection (1) the franchisee objects to the franchisor's refusal to accept the proposed sale or transfer of the business or change of executive management, the franchisee may file an application for a hearing before the board up to 60 days from the date of receipt of the notice.
 - (b) After a hearing, and the executive director's receipt of the advisory board's recommendation, the executive director shall determine, and enter an order providing that:
 - (i) the proposed transferee or change in executive management:
 - (A) shall be approved; or
 - (B) may not be approved for specified reasons; or

- (ii) a proposed transferee or change in executive management is approved if specific conditions are timely satisfied.
- (c)
 - (i) The franchisee shall have the burden of proof with respect to all issues raised by the franchisee's application for a hearing as provided in this section.
 - (ii) During the pendency of the hearing, the franchise agreement shall continue in effect in accordance with its terms.
- (d) The advisory board and the executive director shall expedite, upon written request, any determination sought under this section.

Amended by Chapter 268, 2005 General Session