

MOTOR VEHICLE FRANCHISE AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Kevin S. Garn

AN ACT RELATING TO THE NEW AUTOMOBILE FRANCHISE ACT; PROHIBITING THE OWNERSHIP OF A NEW MOTOR VEHICLE DEALERSHIP BY A MANUFACTURER OR FRANCHISOR; PROVIDING FOR EXCEPTIONS; PROHIBITING DISCRIMINATION BETWEEN FRANCHISEES BY A FRANCHISOR; PROHIBITING THE DISCLOSURE OF PROPRIETARY INFORMATION REGARDING A FRANCHISEE BY A FRANCHISOR; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

13-14-201, as last amended by Chapter 339, Laws of Utah 1998

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

Section 1. Section **13-14-201** is amended to read:

13-14-201. Prohibited acts by franchisors -- Disclosures.

(1) A franchisor may not in this state:

(a) require a franchisee to order or accept delivery of any new motor vehicle, part, accessory, equipment, or other item not otherwise required by law that is not voluntarily ordered by the franchisee;

(b) require a franchisee to participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices, or display decorations or materials;

(c) require a franchisee to change the capital structure of the franchisee's dealership or the means by or through which the franchisee finances the operation of the franchisee's dealership, if the dealership at all times meets reasonable capital standards determined by and applied in a nondiscriminatory manner by the franchisor;

(d) require a franchisee to refrain from participating in the management of, investment in, or acquisition of any other line of new motor vehicles or related products, if:

(i) the franchisee maintains a reasonable line of credit for each make or line of vehicles; and

- (ii) complies with reasonable capital and facilities requirements of the franchisor;
- (e) require a franchisee to prospectively agree to a release, assignment, novation, waiver, or estoppel that would:
 - (i) relieve a franchisor from any liability imposed by this chapter; or
 - (ii) require any controversy between the franchisee and a franchisor to be referred to a third party if the decision by the third party would be binding;
- (f) require a franchisee to change the location of the principal place of business of the franchisee's dealership or make any substantial alterations to the dealership premises, if the change or alterations would be unreasonable;
- (g) coerce or attempt to coerce a franchisee to join, contribute to, or affiliate with an advertising association;
- (h) require, coerce, or attempt to coerce a franchisee to enter into an agreement with the franchisor or do any other act that is unfair or prejudicial to the franchisee, by threatening to cancel a franchise agreement or other contractual agreement or understanding existing between the franchisor and franchisee;
 - (i) adopt, change, establish, modify, or implement a plan or system for the allocation, scheduling, or delivery of new motor vehicles, parts, or accessories to its franchisees so that the plan or system is not fair, reasonable, and equitable;
 - (j) increase the price of any new motor vehicle that the franchisee has ordered from the franchisor and for which there exists at the time of the order a bona fide sale to a retail purchaser if the order was made prior to the franchisee's receipt of an official written price increase notification;
 - (k) fail to indemnify and hold harmless its franchisee against any judgment for damages or settlement approved in writing by the franchisor:
 - (i) including court costs and attorneys' fees arising out of actions, claims, or proceedings including those based on:
 - (A) strict liability;
 - (B) negligence;
 - (C) misrepresentation;

(D) express or implied warranty;

(E) revocation as described in Section 70A-2-608; or

(F) rejection as described in Section 70A-2-602; and

(ii) to the extent the judgment or settlement relates to alleged defective or negligent actions by the franchisor;

(l) threaten or coerce a franchisee to waive or forbear its right to protest the establishment or relocation of a same line-make franchisee in the relevant market area of the affected franchisee;

(m) fail to ship monthly to a franchisee, if ordered by the franchisee, the number of new motor vehicles of each make, series, and model needed by the franchisee to achieve a percentage of total new vehicle sales of each make, series, and model equitably related to the total new vehicle production or importation being achieved nationally at the time of the order by each make, series, and model covered under the franchise agreement;

(n) require or otherwise coerce a franchisee to under-utilize the franchisee's existing facilities;

(o) fail to include in any franchise agreement the following language or language to the effect that: "If any provision in this agreement contravenes the laws or regulations of any state or other jurisdiction where this agreement is to be performed, or provided for by such laws or regulations, the provision is considered to be modified to conform to such laws or regulations, and all other terms and provisions shall remain in full force.";

(p) engage in the distribution, sale, offer for sale, or lease of a new motor vehicle to purchasers who acquire the vehicle in this state except through a franchisee with whom the franchisor has established a written franchise agreement, if the franchisor's trade name, trademark, service mark, or related characteristic is an integral element in the distribution, sale, offer for sale, or lease;

(q) engage in the distribution or sale of a recreational vehicle which is manufactured, rented, sold, or offered for sale in this state without being constructed in accordance with the standards set by the American National Standards Institute for recreational vehicles and evidenced by a seal or plate attached to the vehicle; [or]

(r) authorize or permit a person to perform warranty service repairs on motor vehicles, except
warranty service repairs:

- (i) by a franchisee with whom the franchisor has entered into a franchise agreement for the sale and service of the franchisor's motor vehicles; or
- (ii) on owned motor vehicles by a person or government entity who has purchased new motor vehicles pursuant to a franchisor's or manufacturer's fleet discount program;
- (s) fail to provide a franchisee with a written franchise agreement; ~~or~~
- (t) notwithstanding any other provisions of this chapter, unreasonably fail or refuse to offer to its same line make franchised dealers all models manufactured for that line make, or unreasonably require a dealer to pay any extra fee, remodel, renovate, recondition the dealer's existing facilities, or purchase unreasonable advertising displays or other materials as a prerequisite to receiving a model or series of vehicles, except that a recreational vehicle manufacturer may split a line make between motor home and travel trailer products[-];
 - (u) except as provided in Subsection (6), directly or indirectly:
 - (i) own an interest in a new motor vehicle dealer or dealership;
 - (ii) operate or control a new motor vehicle dealer or dealership;
 - (iii) act in the capacity of a new motor vehicle dealer, as defined in Section 13-14-102; or
 - (iv) operate a motor vehicle service facility;
 - (v) fail to timely pay for all reimbursements to a franchisee for incentives and other payments made by the franchisor;
 - (w) directly or indirectly influence or direct potential customers to franchisees in an inequitable manner, including:
 - (i) charging a franchisee a fee for a referral regarding a potential sale or lease of any of the franchisee's products or services in an amount exceeding the actual cost of the referral;
 - (ii) giving a customer referral to a franchisee on the condition that the franchisee agree to sell the vehicle at a price fixed by the franchisor; or
 - (iii) advising a potential customer as to the amount that the potential customer should pay for a particular product;
 - (x) fail to provide comparable delivery terms to each franchisee for a product of the franchisor, including the time of delivery after the placement of an order by the franchisee;

(y) if personnel training is provided by the franchisor to its franchisees, unreasonably fail to make that training available to each franchisee on proportionally equal terms;

(z) condition a franchisee's eligibility to participate in a sales incentive program on the requirement that a franchisee use the financing services of the franchisor or a subsidiary or affiliate of the franchisor for inventory financing;

(aa) make available for public disclosure, except with the franchisee's permission or under subpoena or in any administrative or judicial proceeding in which the franchisee or the franchisor is a party, any confidential financial information regarding a franchisee, including:

(i) monthly financial statements provided by the franchisee;

(ii) the profitability of a franchisee; or

(iii) the status of a franchisee's inventory of products;

(bb) use any performance standard, incentive program, or similar method to measure the performance of franchisees unless the standard or program:

(i) is designed and administered in a fair, reasonable, and equitable manner;

(ii) if based upon a survey, utilizes an actuarially generally acceptable, valid sample; and

(iii) is, upon request by a franchisee, disclosed and explained in writing to the franchisee, including how the standard or program is designed, how it will be administered, and the types of data that will be collected and used in its application;

(cc) other than sales to the federal government, directly or indirectly, sell, lease, offer to sell, or offer to lease, a new motor vehicle or any motor vehicle owned by the franchisor, except through a franchised new motor vehicle dealer;

(dd) compel a franchisee, through a finance subsidiary, to agree to unreasonable operating requirements, except that this Subsection (1)(dd) shall not be construed to limit the right of a financing subsidiary to engage in business practices in accordance with the usage of trade in retail and wholesale motor vehicle financing; or

(ee) condition the franchisor's participation in co-op advertising for a product category on the franchisee's participation in any program related to another product category or on the franchisee's achievement of any level of sales in a product category other than that which is the subject of the

co-op advertising.

(2) Notwithstanding Subsection (1)(r), a franchisor may authorize or permit a person to perform warranty service repairs on motor vehicles if the warranty services is for a franchisor of recreational vehicles.

(3) Subsection (1)(a) does not prevent the franchisor from requiring that a franchisee carry a reasonable inventory of:

- (a) new motor vehicle models offered for sale by the franchisor; and
- (b) parts to service the repair of the new motor vehicles.

(4) Subsection (1)(d) does not prevent a franchisor from:

- (a) requiring that a franchisee maintain separate sales personnel or display space; or
- (b) refusing to permit a combination of new motor vehicle lines, if justified by reasonable business considerations.

(5) Upon the written request of any franchisee, a franchisor shall disclose in writing to the franchisee the basis on which new motor vehicles, parts, and accessories are allocated, scheduled, and delivered among the franchisor's dealers of the same line-make.

(6) (a) A franchisor may engage in any of the activities listed in Subsection (1)(u), for a period not to exceed 12 months if:

(i) (A) the person from whom the franchisor acquired the interest in or control of the new motor vehicle dealership was a franchised new motor vehicle dealer; and

(B) the franchisor's interest in the new motor vehicle dealership is for sale at a reasonable price and on reasonable terms and conditions; or

(ii) the franchisor is engaging in the activity listed in Subsection (1)(u) for the purpose of broadening the diversity of its dealer body and facilitating the ownership of a new motor vehicle dealership by a person who:

(A) is part of a group that has been historically underrepresented in the franchisor's dealer body;

(B) would not otherwise be able to purchase a new motor vehicle dealership;

(C) has made a significant investment in the new motor vehicle dealership which is subject

to loss;

(D) has an ownership interest in the new motor vehicle dealership; and

(E) operates the new motor vehicle dealership under a plan to acquire full ownership of the dealership within a reasonable period of time and under reasonable terms and conditions.

(b) The board may, for good cause shown, extend the time limit set forth in Subsection (6)(a) for an additional period not to exceed 12 months.

(c) A franchisor who was engaged in any of the activities listed in Subsection (1)(u) in this state prior to May 1, 2000, may continue to engage in that activity, but shall not expand that activity to acquire an interest in any other new motor vehicle dealerships or motor vehicle service facilities after May 1, 2000.

(d) Notwithstanding the provisions of Subsection (1)(u), a franchisor may own, operate, or control a new motor vehicle dealership trading in a line make of motor vehicle if:

(i) as to that line make of motor vehicle, there are no more than four franchised new motor vehicle dealerships licensed and in operation within the state as of January 1, 2000;

(ii) the franchisor does not own directly or indirectly, more than a 45% interest in the dealership;

(iii) at the time the franchisor first acquires ownership or assumes operation or control of the dealership, the distance between the dealership thus owned, operated, or controlled and the nearest unaffiliated new motor vehicle dealership trading in the same line make is not less than 150 miles;

(iv) all the franchisor's franchise agreements confer rights on the franchisee to develop and operate as many dealership facilities as the franchisee and franchisor shall agree are appropriate within a defined geographic territory or area; and

(v) as of January 1, 2000, no fewer than half of the franchisees of the line make within the state own and operate two or more dealership facilities in the geographic area covered by the franchise agreement.