

Representative Kevin S. Garn proposes to substitute the following bill:

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

26 nondiscriminatory manner by the franchisor;

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

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

30 and

31 (ii) complies with reasonable capital and facilities requirements of the franchisor;

32 (e) require a franchisee to prospectively agree to a release, assignment, novation, waiver,
33 or estoppel that would:

34 (i) relieve a franchisor from any liability imposed by this chapter; or

35 (ii) require any controversy between the franchisee and a franchisor to be referred to a third
36 party if the decision by the third party would be binding;

37 (f) require a franchisee to change the location of the principal place of business of the
38 franchisee's dealership or make any substantial alterations to the dealership premises, if the change
39 or alterations would be unreasonable;

40 (g) coerce or attempt to coerce a franchisee to join, contribute to, or affiliate with an
41 advertising association;

42 (h) require, coerce, or attempt to coerce a franchisee to enter into an agreement with the
43 franchisor or do any other act that is unfair or prejudicial to the franchisee, by threatening to cancel
44 a franchise agreement or other contractual agreement or understanding existing between the
45 franchisor and franchisee;

46 (i) adopt, change, establish, modify, or implement a plan or system for the allocation,
47 scheduling, or delivery of new motor vehicles, parts, or accessories to its franchisees so that the
48 plan or system is not fair, reasonable, and equitable;

49 (j) increase the price of any new motor vehicle that the franchisee has ordered from the
50 franchisor and for which there exists at the time of the order a bona fide sale to a retail purchaser
51 if the order was made prior to the franchisee's receipt of an official written price increase
52 notification;

53 (k) fail to indemnify and hold harmless its franchisee against any judgment for damages
54 or settlement approved in writing by the franchisor:

55 (i) including court costs and attorneys' fees arising out of actions, claims, or proceedings
56 including those based on:

- 57 (A) strict liability;
- 58 (B) negligence;
- 59 (C) misrepresentation;
- 60 (D) express or implied warranty;
- 61 (E) revocation as described in Section 70A-2-608; or
- 62 (F) rejection as described in Section 70A-2-602; and
- 63 (ii) to the extent the judgment or settlement relates to alleged defective or negligent actions
- 64 by the franchisor;
- 65 (l) threaten or coerce a franchisee to waive or forbear its right to protest the establishment
- 66 or relocation of a same line-make franchisee in the relevant market area of the affected franchisee;
- 67 (m) fail to ship monthly to a franchisee, if ordered by the franchisee, the number of new
- 68 motor vehicles of each make, series, and model needed by the franchisee to achieve a percentage
- 69 of total new vehicle sales of each make, series, and model equitably related to the total new vehicle
- 70 production or importation being achieved nationally at the time of the order by each make, series,
- 71 and model covered under the franchise agreement;
- 72 (n) require or otherwise coerce a franchisee to under-utilize the franchisee's existing
- 73 facilities;
- 74 (o) fail to include in any franchise agreement the following language or language to the
- 75 effect that: "If any provision in this agreement contravenes the laws or regulations of any state or
- 76 other jurisdiction where this agreement is to be performed, or provided for by such laws or
- 77 regulations, the provision is considered to be modified to conform to such laws or regulations, and
- 78 all other terms and provisions shall remain in full force.";
- 79 (p) engage in the distribution, sale, offer for sale, or lease of a new motor vehicle to
- 80 purchasers who acquire the vehicle in this state except through a franchisee with whom the
- 81 franchisor has established a written franchise agreement, if the franchisor's trade name, trademark,
- 82 service mark, or related characteristic is an integral element in the distribution, sale, offer for sale,
- 83 or lease;
- 84 (q) engage in the distribution or sale of a recreational vehicle which is manufactured,
- 85 rented, sold, or offered for sale in this state without being constructed in accordance with the
- 86 standards set by the American National Standards Institute for recreational vehicles and evidenced
- 87 by a seal or plate attached to the vehicle; [or]

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

90 (i) by a franchisee with whom the franchisor has entered into a franchise agreement for the
91 sale and service of the franchisor's motor vehicles; or

92 (ii) on owned motor vehicles by a person or government entity who has purchased new
93 motor vehicles pursuant to a franchisor's or manufacturer's fleet discount program;

94 (s) fail to provide a franchisee with a written franchise agreement; [or]

95 (t) notwithstanding any other provisions of this chapter, unreasonably fail or refuse to offer
96 to its same line make franchised dealers all models manufactured for that line make, or
97 unreasonably require a dealer to pay any extra fee, remodel, renovate, recondition the dealer's
98 existing facilities, or purchase unreasonable advertising displays or other materials as a prerequisite
99 to receiving a model or series of vehicles, except that a recreational vehicle manufacturer may split
100 a line make between motor home and travel trailer products[-];

101 (u) except as provided in Subsection (6), directly or indirectly:

102 (i) own an interest in a new motor vehicle dealer or dealership;

103 (ii) operate or control a new motor vehicle dealer or dealership;

104 (iii) act in the capacity of a new motor vehicle dealer, as defined in Section 13-14-102; or

105 (iv) operate a motor vehicle service facility;

106 (v) fail to timely pay for all reimbursements to a franchisee for incentives and other
107 payments made by the franchisor;

108 (w) directly or indirectly influence or direct potential customers to franchisees in an
109 inequitable manner, including:

110 (i) charging a franchisee a fee for a referral regarding a potential sale or lease of any of the
111 franchisee's products or services in an amount exceeding the actual cost of the referral;

112 (ii) giving a customer referral to a franchisee on the condition that the franchisee agree to
113 sell the vehicle at a price fixed by the franchisor; or

114 (iii) advising a potential customer as to the amount that the potential customer should pay
115 for a particular product;

116 (x) fail to provide comparable delivery terms to each franchisee for a product of the
117 franchisor, including the time of delivery after the placement of an order by the franchisee;

118 (y) if personnel training is provided by the franchisor to its franchisees, unreasonably fail

119 to make that training available to each franchisee on proportionally equal terms;

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

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

126 (i) monthly financial statements provided by the franchisee;

127 (ii) the profitability of a franchisee; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

173 (C) has made a significant investment in the new motor vehicle dealership which is subject
174 to loss;

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

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

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

180 (c) A franchisor who was engaged in any of the activities listed in Subsection (1)(u) in this

181 state prior to May 1, 2000, may continue to engage in that activity, but shall not expand that
182 activity to acquire an interest in any other new motor vehicle dealerships or motor vehicle service
183 facilities after May 1, 2000.