

1 **NEW AUTOMOBILE FRANCHISE ACT**

2 **AMENDMENTS**

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Dan R. Eastman**

6 **This act amends the New Automobile Franchise Act. The act prohibits a franchisor from**
7 **discriminating against a franchisee by direct and indirect pricing differences, conditioning**
8 **franchisee benefits on loan acceptance from the franchisor, or providing lead information**
9 **to one franchisee of a prospective customer located in the market area of another franchisee.**
10 **The act amends certain definitions. The act clarifies the compensation structure for advisory**
11 **board members. This act makes technical changes.**

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

13 AMENDS:

14 **13-14-102**, as last amended by Chapter 86, Laws of Utah 2000

15 **13-14-103**, as last amended by Chapter 158, Laws of Utah 2001

16 **13-14-201**, as last amended by Chapter 330, Laws of Utah 2000

17 **13-14-203**, as enacted by Chapter 277, Laws of Utah 1996

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

19 Section 1. Section **13-14-102** is amended to read:

20 **13-14-102. Definitions.**

21 As used in this chapter:

22 (1) "Board" means the Utah Motor Vehicle Franchise Advisory Board created in Section
23 13-14-103.

24 (2) "Dealership" means a site or location in this state:

25 (a) at which a franchisee conducts the business of a new motor vehicle dealer; and

26 (b) that is identified as a new motor vehicle dealer's principal place of business for
27 licensing purposes under Section 41-3-204.



28 (3) "Department" means the Department of Commerce.

29 (4) "Executive director" means the executive director of the Department of Commerce.

30 (5) "Franchise" or "franchise agreement" means a written agreement, for a definite or
31 indefinite period, in which:

32 (a) a person grants to another person a license to use a trade name, trademark, service
33 mark, or related characteristic; and

34 (b) a community of interest exists in the marketing of new motor vehicles, new motor
35 vehicle parts, and services related to the sale or lease of new motor vehicles at wholesale or retail.

36 (6) "Franchisee" means a person with whom a franchisor has agreed or permitted, in
37 writing or in practice, to purchase, sell, or offer for sale new motor vehicles manufactured,
38 produced, represented, or distributed by the franchisor.

39 (7) "Franchisor" means a person who has, in writing or in practice, agreed with or permits
40 a franchisee to purchase, sell, or offer for sale new motor vehicles manufactured, produced,
41 represented, or distributed by the franchisor, and includes:

42 (a) the manufacturer or distributor of the new motor vehicles;

43 (b) an intermediate distributor; ~~and~~

44 (c) an agent, officer, or field or area representative of the franchisor~~[-]; and~~

45 (d) a person who is affiliated with a manufacturer or a representative or who, directly or
46 indirectly through an intermediary, is controlled by, or is under common control with the
47 manufacturer. For purposes of this Subsection (7)(d) a person is controlled by a manufacturer if
48 the manufacturer has the authority, directly or indirectly, by law or by an agreement of the parties,
49 to direct or influence the management and policies of the person.

50 (8) "Lead information" means information concerning a prospective customer who
51 contacts the franchisor concerning the franchisor's products.

52 ~~(8)~~ (9) "Line-make" means the motor vehicles that are offered for sale, lease, or
53 distribution under a common name, trademark, service mark, or brand name of the franchisor, or
54 manufacturer of the motor vehicle.

55 (10) "Mile" means 5,280 feet.

56 ~~(9)~~ (11) "Motor home" means a self-propelled vehicle, primarily designed as a temporary
57 dwelling for travel, recreational, or vacation use.

58 ~~(10)~~ (12) "Motor vehicle" means:

- 59 (a) a travel trailer;
- 60 (b) a motor vehicle as defined in Section 41-3-102;
- 61 (c) a semitrailer as defined in Section 41-1a-102;
- 62 (d) a trailer as defined in Section 41-1a-102; and
- 63 (e) a recreational vehicle.

64 ~~[(11)]~~ (13) "New motor vehicle" has the same meaning as defined in Section 41-3-102.

65 ~~[(12)]~~ (14) "New motor vehicle dealer" is a person who is licensed under Subsection
66 41-3-202(1)(a).

67 ~~[(13)]~~ (15) "Notice" or "notify" includes both traditional written communications and all
68 reliable forms of electronic communication unless expressly prohibited by statute or rule.

69 ~~[(14)]~~ (16) "Recreational vehicle" means a vehicular unit other than a mobile home,
70 primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either
71 self-propelled or pulled by another vehicle. "Recreational vehicle" includes a travel trailer, a
72 camping trailer, a motor home, a fifth wheel trailer, and a van.

73 ~~[(15)]~~ (17) (a) "Relevant market area," except with respect to recreational vehicles, means:

74 (i) the county in which a dealership is to be established or relocated; and

75 (ii) the area within a ~~[ten aeronautical miles]~~ ten-mile radius from the site of the new or
76 relocated dealership.

77 (b) "Relevant market area," with respect to recreational vehicles, means:

78 (i) the county in which the dealership is to be established or relocated; and

79 (ii) the area within a ~~[35 aeronautical miles]~~ 35-mile radius from the site of the new or
80 relocated dealership.

81 ~~[(16)]~~ (18) "Sale, transfer, or assignment" means any disposition of a franchise or an
82 interest in a franchise, with or without consideration, including a bequest, inheritance, gift,
83 exchange, lease, or license.

84 ~~[(17)]~~ (19) "Serve" or "served," unless expressly indicated otherwise by statute or rule,
85 includes any reliable form of communication.

86 ~~[(18)]~~ (20) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable
87 vehicle without motive power, designed as a temporary dwelling for travel, recreational, or
88 vacation use that does not require a special highway movement permit when drawn by a
89 self-propelled motor vehicle.

90 [~~(19)~~] (21) "Written," "write," "in writing," or other variations of those terms shall include
91 all reliable forms of electronic communication.

92 Section 2. Section **13-14-103** is amended to read:

93 **13-14-103. Utah Motor Vehicle Franchise Advisory Board -- Creation --**
94 **Appointment of members -- Alternate members -- Chair -- Quorum -- Conflict of interest.**

95 (1) There is created within the department the Utah Motor Vehicle Franchise Advisory
96 Board that consists of:

97 (a) the executive director or the executive director's designee;

98 (b) six members appointed by the executive director, with the concurrence of the governor
99 as follows:

100 (i) one motorcycle or recreational motor vehicle franchisee;

101 (ii) two new motor vehicle franchisees from among the three congressional districts of the
102 state as the districts were constituted on January 1, 1996, no more than one of which shall be
103 located in the same congressional district;

104 (iii) three members representing motor vehicle franchisors registered by the department
105 pursuant to Section 13-14-105, or three members of the general public, none of whom shall be
106 related to any franchisee, or any combination of these representatives under this Subsection
107 (1)(b)(iii); and

108 (iv) three alternate members, with one alternate from each of the designations set forth in
109 Subsections (1)(b)(i), (1)(b)(ii), and (1)(b)(iii), who shall take the place of a regular advisory board
110 member from the same designation at a meeting of the advisory board where that regular advisory
111 board member is absent or otherwise disqualified from participating in the advisory board meeting.

112 (2) (a) Members of the advisory board shall be appointed for a term of four years.

113 (b) The executive director may adjust the term of members who were appointed to the
114 advisory board prior to July 1, 2001, by extending the unexpired term of a member for up to two
115 additional years in order to insure that approximately half of the members are appointed every two
116 years.

117 (c) In the event of a vacancy on the advisory board, the executive director with the
118 concurrence of the governor, shall appoint an individual to complete the unexpired term of the
119 member whose office is vacant.

120 (d) A member may not be appointed to more than two consecutive terms.

121 (3) (a) The executive director or the executive director's designee shall be the chair of the
122 advisory board.

123 (b) The department shall keep a record of all hearings, proceedings, transactions,
124 communications, and recommendations of the advisory board.

125 (4) Four or more members of the advisory board constitute a quorum for the transaction
126 of business. The action of a majority of the members of the advisory board is considered the action
127 of the advisory board.

128 (5) (a) A member of the advisory board may not participate as a board member in a
129 proceeding or hearing:

130 (i) involving the member's licensed business or employer; or

131 (ii) when a member, a member's business or family, or employer has a pecuniary interest
132 in the outcome or other conflict of interest concerning an issue before the advisory board.

133 (b) If a member of the advisory board is disqualified under Subsection (5)(a), the executive
134 director shall select the appropriate alternate member to act on the issue before the advisory board
135 as provided in Subsection (1)(b)(iv).

136 (6) Except for the executive director or the executive director's designee, an individual may
137 not be appointed or serve on the advisory board while holding any other elective or appointive state
138 or federal office.

139 [~~(7) The members of the advisory board shall serve without compensation.~~]

140 (7) (a) (i) A member of the advisory board who is not a government employee shall receive
141 no compensation or benefits for the member's services, but may receive per diem and expenses
142 incurred in the performance of the member's official duties at the rates established by the Division
143 of Finance under Sections 63A-3-106 and 63A-3-107.

144 (ii) A member may decline to receive per diem and expenses for the member's services.

145 (b) (i) A state government officer and employee member who does not receive salary, per
146 diem, or expense from the member's agency for the member's service may receive per diem and
147 expenses incurred in the performance of the member's official duties at the rates established by the
148 Division of Finance under Sections 63A-3-106 and 63A-3-107.

149 (ii) A state government officer and employee member may decline to receive per diem and
150 expenses for the member's service.

151 (8) The department shall provide necessary staff support to the advisory board.

152 Section 3. Section **13-14-201** is amended to read:

153 **13-14-201. Prohibited acts by franchisors -- Disclosures.**

154 (1) A franchisor may not in this state:

155 (a) except as provided in Subsection (3), require a franchisee to order or accept delivery
156 of any new motor vehicle, part, accessory, equipment, or other item not otherwise required by law
157 that is not voluntarily ordered by the franchisee;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

194 (A) strict liability;

195 (B) negligence;

196 (C) misrepresentation;

197 (D) express or implied warranty;

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

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

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

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

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

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

211 (o) fail to include in any franchise agreement the following language or language to the
212 effect that: "If any provision in this agreement contravenes the laws or regulations of any state or
213 other jurisdiction where this agreement is to be performed, or provided for by such laws or

214 regulations, the provision is considered to be modified to conform to such laws or regulations, and
215 all other terms and provisions shall remain in full force.";

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

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

225 (r) except as provided in Subsection (2), authorize or permit a person to perform warranty
226 service repairs on motor vehicles, except warranty service repairs:

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

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

231 (s) fail to provide a franchisee with a written franchise agreement;

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

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

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

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

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

242 (iv) operate a motor vehicle service facility;

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

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

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

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

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

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

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

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

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

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

264 (ii) the profitability of a franchisee; or

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

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

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

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

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

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

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

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

284 (ff) discriminate against a franchisee in the state in favor of another franchisee of the same
285 line-make in the state or in the nearest contiguous state by:

286 (i) selling or offering to sell a new motor vehicle to one franchisee at a higher actual price,
287 including the price for vehicle transportation, than the actual price at which the same model
288 similarly equipped is offered to or is made available by the franchisor to another franchisee in the
289 state or in the nearest contiguous state during a similar time period;

290 (ii) except as provided in Subsection (8), using a promotional program or device or an
291 incentive, payment, or other benefit, whether paid at the time of the sale of the new motor vehicle
292 to the franchisee or later, that results in the sale of or offer to sell a new motor vehicle to one
293 franchisee in the state at a higher price, including the price for vehicle transportation, than the price
294 at which the same model similarly equipped is offered or is made available by the franchisor to
295 another franchisee in the state or in the nearest contiguous state during a similar time period;

296 (iii) conditioning a franchisee's participation in any sales incentive program, or otherwise
297 providing more favorable terms to a franchisee's customers, based upon the franchisee's placement
298 or acceptance of loans or other forms of financing on such franchisee's inventory from either the
299 franchisor or from a business entity owned or controlled by or affiliated with the franchisor; or

300 (iv) except as provided in Subsection (9), providing lead information to one franchisee
301 when the address provided by the prospective customer, or the preferred contact address if more
302 than one address is provided, is in the relevant market area of another franchisee or other
303 franchisees of the same line-make in whose relevant market area the prospective customer's
304 address, or preferred contact address if more than one address is provided, is located.

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

307 recreational vehicles.

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

310 (a) new motor vehicle models offered for sale by the franchisor; and

311 (b) parts to service the repair of the new motor vehicles.

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

313 (a) requiring that a franchisee maintain separate sales personnel or display space; or

314 (b) refusing to permit a combination of new motor vehicle lines, if justified by reasonable
315 business considerations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

348 (iii) at the time the franchisor first acquires ownership or assumes operation or control of
349 the dealership, the distance between the dealership thus owned, operated, or controlled and the
350 nearest unaffiliated new motor vehicle dealership trading in the same line-make is not less than
351 150 miles;

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

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

358 (7) Subsection (1)(ff) does not apply to recreational vehicles.

359 (8) Subsection (1)(ff)(ii) does not prohibit a promotional or incentive program that is
360 functionally available to all franchisees of the same line-make in the state on substantially
361 comparable terms.

362 (9) Subsection (1)(ff)(iv) may not be construed to permit provision of or access to
363 customer information that is otherwise protected from disclosure by law or by contract between
364 a franchisor and a franchisee.

365 Section 4. Section **13-14-203** is amended to read:

366 **13-14-203. Succession to franchise.**

367 (1) (a) A successor, including a family member of a deceased or incapacitated franchisee,
368 who is designated by the franchisee may succeed the franchisee in the ownership and operation of

369 the dealership under the existing franchise agreement if:

370 (i) the designated successor gives the franchisor written notice of an intent to succeed to
371 the rights of the deceased or incapacitated franchisee in the franchise agreement within 180 days
372 after the franchisee's death or incapacity;

373 (ii) the designated successor agrees to be bound by all of the terms and conditions of the
374 franchise agreement; and

375 (iii) the designated successor meets the criteria generally applied by the franchisor in
376 qualifying franchisees.

377 (b) A franchisor may refuse to honor the existing franchise agreement with the designated
378 successor only for good cause.

379 (2) The franchisor may request in writing from a designated successor the personal and
380 financial data that is reasonably necessary to determine whether the existing franchise agreement
381 should be honored. The designated successor shall supply the personal and financial data promptly
382 upon the request.

383 (3) (a) If a franchisor believes that good cause exists for refusing to honor the requested
384 succession, the franchisor shall serve upon the designated successor notice of its refusal to approve
385 the succession, within 60 days after the later of:

386 (i) receipt of the notice of the designated successor's intent to succeed the franchisee in the
387 ownership and operation of the dealership; or

388 (ii) the receipt of the requested personal and financial data.

389 (b) Failure to serve the notice pursuant to Subsection (3)(a) is considered approval of the
390 designated successor and the franchise agreement is considered amended to reflect the approval
391 of the succession the day following the last day the franchisor can serve notice under Subsection
392 (3)(a).

393 (4) The notice of the franchisor provided in Subsection (3) shall state the specific grounds
394 for the refusal to approve the succession and that discontinuance of the franchise agreement shall
395 take effect not less than 180 days after the date the notice of refusal is served unless the proposed
396 successor files an application for hearing under Subsection (6).

397 (5) (a) This section does not prevent a franchisee from designating a person as the
398 successor by written instrument filed with the franchisor.

399 (b) If a franchisee files an instrument under Subsection (5)~~(b)~~(a), the instrument governs

400 the succession rights to the management and operation of the dealership subject to the designated
401 successor satisfying the franchisor's qualification requirements as described in this section.

402 (6) (a) If a franchisor serves a notice of refusal to a designated successor pursuant to
403 Subsection (3), the designated successor may, within the 180-day period provided in Subsection
404 (4), file with the board an application for a hearing to determine whether or not good cause exists
405 for the refusal.

406 (b) If application for a hearing is timely filed, the franchisor shall continue to honor the
407 franchise agreement until after:

408 (i) the requested hearing has been concluded;

409 (ii) a decision is rendered by the board; and

410 (iii) the applicable appeal period has expired following a decision by the board.

Legislative Review Note**as of 11-27-01 1:42 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel