

VEHICLE FRANCHISE AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Bradley G. Last

LONG TITLE

General Description:

This bill modifies the New Automobile Franchise Act and the Powersport Vehicle Franchise Act to amend vehicle franchise provisions.

Highlighted Provisions:

This bill:

- ▶ provides that motorcycles, motor-driven cycles, and mopeds are covered under the Powersport Vehicle Franchise Act;
- ▶ provides that alternates for the Utah Motor Vehicle Franchise Advisory Board may be from any congressional district;
- ▶ changes the date that a franchisee must receive written notice of a chargeback levied by a franchisor for sales compensation or a sales incentive for the chargeback to be compensable;
- ▶ changes the number of alternates on the Powersport Vehicle Franchise Advisory Board and provides that they may be from any congressional district;
- ▶ provides that the establishment of a temporary additional place of business by a recreational vehicle franchisee or a powersport vehicle franchisee is considered the establishment of an additional dealership except in certain circumstances; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 13-14-102**, as last amended by Chapter 68, Laws of Utah 2002
- 13-14-103**, as last amended by Chapter 68, Laws of Utah 2002
- 13-14-204**, as last amended by Chapter 162, Laws of Utah 1997
- 13-14-302**, as last amended by Chapter 86, Laws of Utah 2000
- 13-35-102**, as enacted by Chapter 234, Laws of Utah 2002
- 13-35-103**, as last amended by Chapter 131, Laws of Utah 2003
- 13-35-302**, as enacted by Chapter 234, Laws of Utah 2002

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

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

13-14-102. Definitions.

As used in this chapter:

- (1) "Affiliate" has the meaning set forth in Section 16-10a-102.
- (2) "Board" means the Utah Motor Vehicle Franchise Advisory Board created in Section 13-14-103.
- (3) "Dealership" means a site or location in this state:
 - (a) at which a franchisee conducts the business of a new motor vehicle dealer; and
 - (b) that is identified as a new motor vehicle dealer's principal place of business for licensing purposes under Section 41-3-204.
- (4) "Department" means the Department of Commerce.
- (5) "Executive director" means the executive director of the Department of Commerce.
- (6) "Franchise" or "franchise agreement" means a written agreement, for a definite or indefinite period, in which:
 - (a) a person grants to another person a license to use a trade name, trademark, service mark, or related characteristic; and
 - (b) a community of interest exists in the marketing of new motor vehicles, new motor vehicle parts, and services related to the sale or lease of new motor vehicles at wholesale or retail.

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

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

- (a) the manufacturer or distributor of the new motor vehicles;
- (b) an intermediate distributor; and
- (c) an agent, officer, or field or area representative of the franchisor.

(9) "Lead" means the referral by a franchisor to a franchisee of a potential customer whose contact information was obtained from a franchisor's program, process, or system designed to generate referrals for the purchase or lease of a new motor vehicle, or for service work related to the franchisor's vehicles.

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

(11) "Mile" means 5,280 feet.

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

(13) (a) "Motor vehicle" means:

- ~~[(a)]~~ (i) a travel trailer;
- ~~[(b)]~~ (ii) a motor vehicle as defined in Section 41-3-102;
- ~~[(c)]~~ (iii) a semitrailer as defined in Section 41-1a-102;
- ~~[(d)]~~ (iv) a trailer as defined in Section 41-1a-102; and
- ~~[(e)]~~ (v) a recreational vehicle.

(b) "Motor vehicle" does not include a motorcycle as defined in Section 41-1a-102.

(14) "New motor vehicle" ~~[has the same meaning as defined in Section 41-3-102]~~ means a motor vehicle as defined in Subsection (13) that has never been titled or registered and has been

driven less than 7,500 miles, unless the motor vehicle is a trailer, travel trailer, or semitrailer, in which case the mileage limit does not apply.

(15) "New motor vehicle dealer" is a person who is licensed under Subsection 41-3-202(1)(a) to sell new motor vehicles.

(16) "Notice" or "notify" includes both traditional written communications and all reliable forms of electronic communication unless expressly prohibited by statute or rule.

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

(18) (a) "Relevant market area," except with respect to recreational vehicles, means:

- (i) the county in which a dealership is to be established or relocated; and
- (ii) the area within a ten-mile radius from the site of the new or relocated dealership.

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

- (i) the county in which the dealership is to be established or relocated; and
- (ii) the area within a 35-mile radius from the site of the new or relocated dealership.

(19) "Sale, transfer, or assignment" means any disposition of a franchise or an interest in a franchise, with or without consideration, including a bequest, inheritance, gift, exchange, lease, or license.

(20) "Serve" or "served," unless expressly indicated otherwise by statute or rule, includes any reliable form of communication.

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

(22) "Written," "write," "in writing," or other variations of those terms shall include all reliable forms of electronic communication.

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

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

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

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

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

(i) one ~~[motorcycle or]~~ recreational motor vehicle franchisee;

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

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

~~[(iv)]~~ (c) (i) three alternate members, with one alternate from each of the designations set forth in Subsections (1)(b)(i), (1)(b)(ii), and (1)(b)(iii), ~~[who]~~ except that the new motor vehicle franchisee alternate or alternates for the designation under Subsection (1)(b)(ii) may be from any congressional district; and

(ii) an alternate who shall take the place of a regular advisory board member from the same designation at a meeting of the advisory board where that regular advisory board member is absent or otherwise disqualified from participating in the advisory board meeting.

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

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

(c) In the event of a vacancy on the advisory board, the executive director with the

concurrence of the governor, shall appoint an individual to complete the unexpired term of the member whose office is vacant.

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

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

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

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

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

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

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

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

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

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

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

(b) (i) A state government officer and employee member who does not receive salary, per diem, or expenses from the member's agency for the member's service may receive per diem and

expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

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

Section 3. Section **13-14-204** is amended to read:

13-14-204. Franchisor's obligations related to service -- Franchisor audits -- Time limits.

(1) Each franchisor shall specify in writing to each of its franchisees licensed as a new motor vehicle dealer in this state:

(a) the franchisee's obligations for new motor vehicle preparation, delivery, and warranty service on its products;

(b) the schedule of compensation to be paid to the franchisee for parts, work, and service; and

(c) the time allowance for the performance of work and service.

(2) (a) The schedule of compensation described in Subsection (1) shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor.

(b) Time allowances described in Subsection (1) for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed.

(3) (a) In the determination of what constitutes reasonable compensation under this section, the principal factor to be considered is the prevailing wage rates being paid by franchisees in the relevant market area in which the franchisee is doing business.

(b) Compensation of the franchisee for warranty service work may not be less than the amount charged by the franchisee for like parts and service to retail or fleet customers, if the amounts are reasonable. In the case of a recreational vehicle franchisee, reimbursement for parts used in the performance of warranty repairs, including those parts separately warranted directly to the consumer by a recreational vehicle parts supplier, may not be less than the franchisee's cost plus 20%. For purposes of this Subsection (3)(b), the term "cost" shall be that same price paid by

a franchisee to a franchisor or supplier for the part when the part is purchased for a nonwarranty repair.

(4) A franchisor may not fail to:

(a) perform any warranty obligation;

(b) include in written notices of franchisor's recalls to new motor vehicle owners and franchisees the expected date by which necessary parts and equipment will be available to franchisees for the correction of the defects; or

(c) compensate any of the franchisees for repairs effected by the recall.

(5) If a franchisor disallows a franchisee's claim for a defective part, alleging that the part is not defective, the franchisor at its option shall:

(a) return the part to the franchisee at the franchisor's expense; or

(b) pay the franchisee the cost of the part.

(6) (a) A claim made by a franchisee pursuant to this section for labor and parts shall be paid within 30 days after its approval.

(b) A claim shall be either approved or disapproved by the franchisor within 30 days after receipt of the claim on a form generally used by the franchisor and containing the generally required information. Any claim not specifically disapproved of in writing within 30 days after the receipt of the form is considered to be approved and payment shall be made within 30 days.

(7) Warranty service audits of franchisee records may be conducted by the franchisor on a reasonable basis.

(8) A franchisee's claim for warranty compensation may not be denied except for good cause such as performance of nonwarranty repairs, lack of material documentation, fraud, or misrepresentation.

(9) (a) Any charge backs for warranty parts or service compensation and service incentives shall only be enforceable for the 12-month period immediately following the date the payment for warranty reimbursement was made by the franchisor.

(b) Except as provided in Subsection (9)(c), all charge backs levied by a franchisor for sales compensation or sales incentives arising out of the sale or lease of a motor vehicle sold or

leased by a franchisee shall be compensable only if written notice of the charge back is received by the franchisee within [~~24~~] 12 months immediately following the date when the sales incentive program terminates, but no later than 24 months following the date when payment for the sales compensation or sales incentive was made by the franchisor to the franchisee.

(c) The time limitations of this Subsection (9) do not preclude charge backs for any fraudulent claim that was previously paid.

Section 4. Section **13-14-302** is amended to read:

13-14-302. 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 motor vehicle dealership within a relevant market area where the same line-make is represented by another franchisee; or

(ii) relocate an existing motor vehicle dealership.

(b) (i) If a franchisor seeks to take an action listed Subsection (1)(a), prior to taking the action, the franchisor shall in writing notify the 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 electronic communication 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 board the establishing or relocating of the dealership. When a protest is filed, the board 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 board has held a hearing; and

(iv) the franchisor may not establish or relocate a proposed dealership if the board

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 a relocation that is:

(a) less than one aeronautical mile from the existing location of the franchisee's dealership; and

(b) within the same county.

(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; ~~and~~

(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 motor vehicle dealership~~[-]~~; and

(c) (i) except as provided in Subsection (3)(c)(ii), the establishment of a temporary additional place of business by a recreational vehicle franchisee is considered the establishment of an additional motor vehicle dealership; and

(ii) the establishment of a temporary additional place of business by a recreational vehicle franchisee is not considered the establishment of an additional motor vehicle dealership if the recreational vehicle franchisee is participating in a trade show where three or more recreational vehicle dealers are participating.

Section 5. Section **13-35-102** is amended to read:

13-35-102. Definitions.

As used in this chapter:

(1) "Board" means the Utah Powersport Vehicle Franchise Advisory Board created in Section 13-35-103.

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

(a) at which a franchisee conducts the business of a new powersport vehicle dealer; and
(b) that is identified as a new powersport vehicle dealer's principal place of business for registration purposes under Section 13-35-105.

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

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

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

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

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

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

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

(i) the manufacturer or distributor of the new powersport vehicles;

(ii) an intermediate distributor;

(iii) an agent, officer, or field or area representative of the franchisor; and

(iv) a person who is affiliated with a manufacturer or a representative or who directly or indirectly through an intermediary is controlled by, or is under common control with the manufacturer.

(b) For purposes of Subsection (7)(a)(iv), a person is controlled by a manufacturer if the manufacturer has the authority directly or indirectly by law or by an agreement of the parties, to direct or influence the management and policies of the person.

(8) "Lead" means the referral by a franchisor to a franchisee of an actual or potential

customer for the purchase or lease of a new powersport vehicle, or for service work related to the franchisor's vehicles.

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

(10) (a) "Powersport vehicle" means:

~~[(a)]~~ (i) an all-terrain type I or type II vehicle "ATV" defined in Section 41-22-2;

~~[(b)]~~ (ii) a snowmobile as defined in Section 41-22-2;

~~[(c)]~~ (iii) ~~[an off-highway]~~ a motorcycle as defined in Section 41-1a-102; ~~[and]~~

~~[(d)]~~ (iv) a personal watercraft as defined in Section 73-18-2[-];

(v) except as provided in Subsection (10)(b), a motor-driven cycle as defined in Section 41-6-1; or

(vi) a moped as defined in Section 41-6-1.

(b) "Powersport vehicle" does not include:

(i) an electric assisted bicycle defined in Section 41-6-1;

(ii) a motor assisted scooter as defined in Section 41-6-1; or

(iii) a personal motorized mobility device as defined in Section 41-6-1.

(11) "New powersport vehicle dealer" means a person who is engaged in the business of buying, selling, offering for sale, or exchanging new ~~[all-terrain vehicles, snowmobiles, off-highway motorcycles, and personal watercraft]~~ powersport vehicles either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise who has established a place of business for the sale, lease, trade, or display of powersport vehicles.

(12) "Notice" or "notify" includes both traditional written communications and all reliable forms of electronic communication unless expressly prohibited by statute or rule.

(13) "Relevant market area" means:

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

(b) the area within a 15-mile radius from the site of the new or relocated dealership.

(14) "Sale, transfer, or assignment" means any disposition of a franchise or an interest in a

franchise, with or without consideration, including a bequest, inheritance, gift, exchange, lease, or license.

(15) "Serve" or "served," unless expressly indicated otherwise by statute or rule, includes any reliable form of communication.

(16) "Written," "write," "in writing," or other variations of those terms shall include all reliable forms of electronic communication.

Section 6. Section **13-35-103** is amended to read:

13-35-103. Utah Powersport Vehicle Franchise Advisory Board -- Creation -- Appointment of members -- Alternate members -- Chair -- Quorum -- Conflict of interest.

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

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

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

(i) three new powersport vehicle franchisees [~~from among~~], one from each of the three congressional districts [of] in the state [as the districts were constituted on January 1, 1996, no more than one of whom shall be located in the same congressional district]; and

(ii) three members representing powersport vehicle franchisors registered by the department pursuant to Section 13-35-105, or three members of the general public, none of whom shall be related to any franchisee, or any combination of these representatives under this Subsection (1)(b)(ii).

(2) (a) The executive director shall also appoint, with the concurrence of the governor, [~~six~~] three alternate members, with at least one alternate from each of the designations set forth in Subsections (1)(b)(i) and (1)(b)(ii), [~~who~~] except that the new powersport vehicle franchisee alternate or alternates for the designation under Subsection (1)(b)(i) may be from any congressional district.

(b) An alternate shall take the place of a regular advisory board member from the same designation at a meeting of the advisory board where that regular advisory board member is

absent or otherwise disqualified from participating in the advisory board meeting.

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

(b) The executive director may adjust the term of members who were appointed to the advisory board prior to July 1, 2002, by extending the unexpired term of a member for up to two additional years in order to insure that approximately half of the members are appointed every two years.

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

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

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

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

(5) (a) Four or more members of the advisory board constitute a quorum for the transaction of business.

(b) The action of a majority of the members of the advisory board is considered the action of the advisory board.

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

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

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

(b) If a member of the advisory board is disqualified under Subsection (6)(a), the executive director shall select the appropriate alternate member to act on the issue before the advisory board as provided in Subsection (2).

(7) Except for the executive director or the executive director's designee, an individual may not be appointed or serve on the advisory board while holding any other elective or

appointive state or federal office.

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

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

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

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

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

Section 7. Section **13-35-302** is amended to read:

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 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 electronic communication 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 board the establishing or relocating of the dealership. When a protest is filed, the board 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 board

has held a hearing; and

(iv) the franchisor may not establish or relocate a proposed dealership if the board 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 a relocation that is:

- (a) less than one mile from the existing location of the franchisee's dealership; and
- (b) within the same county.

(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; ~~and~~

(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.

