

1 **FRANCHISE LAW AMENDMENTS**

2 2008 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Dan R. Eastman**

5 House Sponsor: Stephen H. Urquhart

7 **LONG TITLE**

8 **General Description:**

9 This bill makes changes to Title 13, Chapter 14, New Automobile Franchise Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ adds a member to the Utah Motor Vehicle Franchise Advisory Board;
- 14 ▶ makes the executive director's decision in an adjudication under the chapter publicly
15 available;
- 16 ▶ addresses a franchisor's control over a franchisee's place of business;
- 17 ▶ prohibits discrimination by a franchisor against a franchisee under certain
18 circumstances;
- 19 ▶ prohibits a franchisor from recovering the cost of a warranty repair through a fee or
20 other charge to the franchisee;
- 21 ▶ requires a franchisor to meet a higher burden of proof to terminate or relocate a
22 franchise or to establish an additional franchise;
- 23 ▶ requires the advisory board to consider any negative economic effect on an existing
24 franchisee when evaluating a new or relocated franchise;
- 25 ▶ addresses a franchisor's obligations when a franchise is terminated or not continued;
- 26 ▶ allows a private right of action for a violation of the chapter; and
- 27 ▶ makes technical changes.

28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **13-14-102**, as last amended by Laws of Utah 2005, Chapters 167 and 249

35 **13-14-103**, as last amended by Laws of Utah 2005, Chapter 249

36 **13-14-104**, as last amended by Laws of Utah 2005, Chapter 249

37 **13-14-201**, as last amended by Laws of Utah 2005, Chapters 167 and 249

38 **13-14-304**, as last amended by Laws of Utah 2005, Chapter 249

39 **13-14-306**, as last amended by Laws of Utah 2005, Chapter 249

40 **13-14-307**, as last amended by Laws of Utah 1997, Chapter 162

41 ENACTS:

42 **13-14-308**, Utah Code Annotated 1953

43 **13-14-309**, Utah Code Annotated 1953



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

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

47 **13-14-102. Definitions.**

48 As used in this chapter:

49 (1) "Advisory board" or "board" means the Utah Motor Vehicle Franchise Advisory
50 Board created in Section 13-14-103.

51 (2) "Affiliate" has the meaning set forth in Section 16-10a-102.

52 (3) "Aftermarket product" means any product or service not included in the
53 manufacturer's suggested retail price of the new motor vehicle, as that price appears on the label
54 required by 15 U.S.C. Sec. 1232(f).

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

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

57 (b) that is identified as a new motor vehicle dealer's principal place of business for

58 licensing purposes under Section 41-3-204.

59 (5) "Department" means the Department of Commerce.

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

61 (7) "Franchise" or "franchise agreement" means a written agreement, or in the absence
62 of a written agreement, then a course of dealing or a practice for a definite or indefinite period,
63 in which:

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

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

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

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

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

76 (b) an intermediate distributor; and

77 (c) an agent, officer, or field or area representative of the franchisor.

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

82 (11) "Line-make" means:

83 (a) for other than a recreational vehicle, the motor vehicles that are offered for sale,
84 lease, or distribution under a common name, trademark, service mark, or brand name of the
85 franchisor, or manufacturer of the motor vehicle[-]; or

86 (b) for a recreational vehicle, a specific series of recreational vehicle product that:

87 (i) is identified by a common series trade name or trademark;

88 (ii) is targeted to a particular market segment, as determined by decor, features,

89 equipment, size, weight, and price range;

90 (iii) has a length and floor plan that distinguish the recreational vehicle from other
91 recreational vehicles with substantially the same decor, features, equipment, size, weight, and
92 price;

93 (iv) belongs to a single, distinct classification of recreational vehicle product type
94 having a substantial degree of commonality in the construction of the chassis, frame, and body;

95 and

96 (v) a franchise agreement authorizes a dealer to sell.

97 (12) "Mile" means 5,280 feet.

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

100 (14) (a) "Motor vehicle" means:

101 (i) a travel trailer;

102 (ii) a motor vehicle as defined in Section 41-3-102;

103 (iii) a semitrailer as defined in Section 41-1a-102;

104 (iv) a trailer as defined in Section 41-1a-102; and

105 (v) a recreational vehicle.

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

107 (15) "New motor vehicle" means a motor vehicle as defined in Subsection (14) that has
108 never been titled or registered and has been driven less than 7,500 miles, unless the motor
109 vehicle is a trailer, travel trailer, or semitrailer, in which case the mileage limit does not apply.

110 (16) "New motor vehicle dealer" is a person who is licensed under Subsection
111 41-3-202(1)(a) to sell new motor vehicles.

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

114 (18) (a) "Recreational vehicle" means a vehicular unit other than a mobile home,
115 primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either
116 self-propelled or pulled by another vehicle.

117 (b) "Recreational vehicle" includes:

118 (i) a travel trailer;

119 (ii) a camping trailer;

120 (iii) a motor home;

121 (iv) a fifth wheel trailer; and

122 (v) a van.

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

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

125 (ii) the area within a ten-mile radius from the site of the new or relocated dealership.

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

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

128 (ii) the area within a 35-mile radius from the site of the new or relocated dealership.

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

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

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

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

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

141 **13-14-103. Utah Motor Vehicle Franchise Advisory Board -- Creation --**

142 **Appointment of members -- Alternate members -- Chair -- Quorum -- Conflict of interest.**

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

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

146 (b) [~~six~~] seven members appointed by the executive director, with the concurrence of
147 the governor as follows:

148 (i) one recreational motor vehicle franchisee;

149 (ii) [~~two~~] three new motor vehicle franchisees from different congressional districts in
150 the state; and

151 (iii) (A) three members representing motor vehicle franchisors registered by the
152 department pursuant to Section 13-14-105;

153 (B) three members of the general public, none of whom shall be related to any
154 franchisee; or

155 (C) three members consisting of any combination of these representatives under this
156 Subsection (1)(b)(iii).

157 (2) (a) The executive director shall appoint, with the concurrence of the governor, three
158 alternate members, with one alternate from each of the designations set forth in Subsections
159 (1)(b)(i), (1)(b)(ii), and (1)(b)(iii), except that the new motor vehicle franchisee alternate or
160 alternates for the designation under Subsection (1)(b)(ii) may be from any congressional district.

161 (b) An alternate shall take the place of a regular advisory board member from the same
162 designation at a meeting of the advisory board where that regular advisory board member is
163 absent or otherwise disqualified from participating in the advisory board meeting.

164 (3) (a) (i) Members of the advisory board appointed under Subsections (1)(b) and (2)
165 [~~shall be~~] are appointed for a term of four years.

166 (ii) No specific term [~~shall apply~~] applies to the executive director or the executive
167 director's designee.

168 (b) The executive director may adjust the term of members who were appointed to the
169 advisory board prior to July 1, 2001, by extending the unexpired term of a member for up to

170 two additional years in order to insure that approximately half of the members are appointed
171 every two years.

172 (c) In the event of a vacancy on the advisory board of a member appointed under
173 Subsection (1)(b) or (2), the executive director with the concurrence of the governor, shall
174 appoint an individual to complete the unexpired term of the member whose office is vacant.

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

176 (4) (a) The executive director or the executive director's designee [~~shall be~~] is the chair
177 of the advisory board.

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

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

182 (b) The action of a majority of a quorum present is considered the action of the
183 advisory board.

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

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

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

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

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

196 (8) (a) (i) A member of the advisory board who is not a government employee shall
197 receive no compensation or benefits for the member's services, but may receive per diem and

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

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

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

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

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

208 Section 3. Section **13-14-104** is amended to read:

209 **13-14-104. Powers and duties of the advisory board and the executive director.**

210 (1) (a) Except as provided in Subsection 13-14-106(3), the advisory board shall make
211 recommendations to the executive director on the administration and enforcement of this
212 chapter, including adjudicative and rulemaking proceedings.

213 (b) The executive director shall:

214 (i) consider the advisory board's recommendations; and

215 (ii) issue any final decision by the department.

216 (2) The executive director, in consultation with the advisory board, shall make rules for
217 the administration of this chapter in accordance with Title 63, Chapter 46a, Utah Administrative
218 Rulemaking Act.

219 (3) (a) An adjudicative proceeding under this chapter shall be conducted in accordance
220 with Title 63, Chapter 46b, Administrative Procedures Act.

221 (b) In an adjudicative proceeding under this chapter, any order issued by the executive
222 director:

223 (i) shall comply with Section 63-46b-10, whether the proceeding is a formal or an
224 informal adjudicative proceeding under Title 63, Chapter 46b, Administrative Procedures Act;
225 and

226 (ii) if the order modifies or rejects a finding of fact in a recommendation from the
227 advisory board, shall be made on the basis of information learned from the executive director's:

- 228 (A) personal attendance at the hearing; or
- 229 (B) review of the record developed at the hearing.

230 (4) The executive director's decision under this section shall be made available to the
231 public.

232 Section 4. Section **13-14-201** is amended to read:

233 **13-14-201. Prohibited acts by franchisors -- Affiliates -- Disclosures.**

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

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

238 (b) require a franchisee to:

239 (i) participate monetarily in any advertising campaign; or

240 (ii) contest, or purchase any promotional materials, display devices, or display
241 decorations or materials;

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

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

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

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

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

252 (i) relieve a franchisor from any liability, including notice and hearing rights imposed on
253 the franchisor by this chapter; or

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

256 (f) require a franchisee to change the location of the principal place of business of the
257 franchisee's dealership or make any substantial alterations to the dealership premises, if the
258 change or alterations would be unreasonable or cause the franchisee to lose control of the
259 premises or impose any other unreasonable requirement related to the facilities or premises;

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

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

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

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

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

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

277 (A) strict liability;

278 (B) negligence;

279 (C) misrepresentation;

280 (D) express or implied warranty;

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

- 282 (F) rejection as described in Section 70A-2-602; and
- 283 (ii) to the extent the judgment or settlement relates to alleged defective or negligent
- 284 actions by the franchisor;
- 285 (l) threaten or coerce a franchisee to waive or forbear its right to protest the
- 286 establishment or relocation of a same line-make franchisee in the relevant market area of the
- 287 affected franchisee;
- 288 (m) fail to ship monthly to a franchisee, if ordered by the franchisee, the number of new
- 289 motor vehicles of each make, series, and model needed by the franchisee to achieve a
- 290 percentage of total new vehicle sales of each make, series, and model equitably related to the
- 291 total new vehicle production or importation being achieved nationally at the time of the order by
- 292 each make, series, and model covered under the franchise agreement;
- 293 (n) require or otherwise coerce a franchisee to under-utilize the franchisee's existing
- 294 facilities;
- 295 (o) fail to include in any franchise agreement the following language or language to the
- 296 effect that: "If any provision in this agreement contravenes the laws or regulations of any state
- 297 or other jurisdiction where this agreement is to be performed, or provided for by such laws or
- 298 regulations, the provision is considered to be modified to conform to such laws or regulations,
- 299 and all other terms and provisions shall remain in full force.";
- 300 (p) engage in the distribution, sale, offer for sale, or lease of a new motor vehicle to
- 301 purchasers who acquire the vehicle in this state except through a franchisee with whom the
- 302 franchisor has established a written franchise agreement, if the franchisor's trade name,
- 303 trademark, service mark, or related characteristic is an integral element in the distribution, sale,
- 304 offer for sale, or lease;
- 305 (q) engage in the distribution or sale of a recreational vehicle that is manufactured,
- 306 rented, sold, or offered for sale in this state without being constructed in accordance with the
- 307 standards set by the American National Standards Institute for recreational vehicles and
- 308 evidenced by a seal or plate attached to the vehicle;
- 309 (r) except as provided in Subsection (2), authorize or permit a person to perform

310 warranty service repairs on motor vehicles, except warranty service repairs:

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

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

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

316 (t) (i) except as provided in Subsection (1)(t)(ii) and notwithstanding any other
317 provisions of this chapter:

318 (A) unreasonably fail or refuse to offer to its same line-make franchised dealers all
319 models manufactured for that line-make;

320 (B) unreasonably require a dealer to:

321 (I) pay any extra fee, remodel, renovate, recondition the dealer's existing facilities; or

322 (II) purchase unreasonable advertising displays or other materials as a prerequisite to
323 receiving a model or series of vehicles;

324 (ii) notwithstanding Subsection (1)(t)(i), a recreational vehicle manufacturer may split a
325 line-make between motor home and travel trailer products;

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

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

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

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

330 or

331 (iv) operate a motor vehicle service facility;

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

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

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

- 338 (ii) giving a customer referral to a franchisee on the condition that the franchisee agree
339 to sell the vehicle at a price fixed by the franchisor; or
- 340 (iii) advising a potential customer as to the amount that the potential customer should
341 pay for a particular product;
- 342 (x) fail to provide comparable delivery terms to each franchisee for a product of the
343 franchisor, including the time of delivery after the placement of an order by the franchisee;
- 344 (y) if personnel training is provided by the franchisor to its franchisees, unreasonably fail
345 to make that training available to each franchisee on proportionally equal terms;
- 346 (z) condition a franchisee's eligibility to participate in a sales incentive program on the
347 requirement that a franchisee use the financing services of the franchisor or a subsidiary or
348 affiliate of the franchisor for inventory financing;
- 349 (aa) make available for public disclosure, except with the franchisee's permission or
350 under subpoena or in any administrative or judicial proceeding in which the franchisee or the
351 franchisor is a party, any confidential financial information regarding a franchisee, including:
- 352 (i) monthly financial statements provided by the franchisee;
- 353 (ii) the profitability of a franchisee; or
- 354 (iii) the status of a franchisee's inventory of products;
- 355 (bb) use any performance standard, incentive program, or similar method to measure
356 the performance of franchisees unless the standard or program:
- 357 (i) is designed and administered in a fair, reasonable, and equitable manner;
- 358 (ii) if based upon a survey, utilizes an actuarially generally acceptable, valid sample; and
- 359 (iii) is, upon request by a franchisee, disclosed and explained in writing to the
360 franchisee, including:
- 361 (A) how the standard or program is designed;
- 362 (B) how the standard or program will be administered; and
- 363 (C) the types of data that will be collected and used in the application of the standard or
364 program;
- 365 (cc) other than sales to the federal government, directly or indirectly, sell, lease, offer to

366 sell, or offer to lease, a new motor vehicle or any motor vehicle owned by the franchisor, except
367 through a franchised new motor vehicle dealer;

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

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

376 (ff) except as provided in Subsections (7) through (9), discriminate against a franchisee
377 in the state in favor of another franchisee of the same line-make in the state [~~by~~]:

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

382 (ii) except as provided in Subsection (8), by using a promotional program or device or
383 an incentive, payment, or other benefit, whether paid at the time of the sale of the new motor
384 vehicle to the franchisee or later, that results in the sale of or offer to sell a new motor vehicle to
385 one franchisee in the state at a higher price, including the price for vehicle transportation, than
386 the price at which the same model similarly equipped is offered or is made available by the
387 franchisor to another franchisee in the state during a similar time period; [~~or~~]

388 (iii) except as provided in Subsection (9), by failing to provide or direct a lead in a fair,
389 equitable, and timely manner; or

390 (iv) if the franchisee complies with any reasonable requirement concerning the sale of
391 new motor vehicles, by using or considering the performance of any of its franchisees located in
392 this state relating to the sale of the manufacturer's new motor vehicles in determining the:

393 (A) dealer's eligibility to purchase program, certified, or other used motor vehicles from

394 the manufacturer;

395 (B) volume, type, or model of program, certified, or other used motor vehicles the
396 dealer is eligible to purchase from the manufacturer;

397 (C) price of any program, certified, or other used motor vehicles that the dealer is
398 eligible to purchase from the manufacturer; or

399 (D) availability or amount of any discount, credit, rebate, or sales incentive the dealer is
400 eligible to receive from the manufacturer for the purchase of any program, certified, or other
401 motor vehicle offered for sale by the manufacturer;

402 (gg) (i) take control over funds owned or under the control of a franchisee based on the
403 findings of a warranty audit or sales incentive audit unless the following conditions are satisfied:

404 (A) the franchisor fully identifies in writing the basis for the franchisor's claim or charge
405 back arising from the audit, including notifying the franchisee that the franchisee has 20 days
406 from the day on which the franchisee receives the franchisor's claim or charge back to assert a
407 protest in writing to the franchisor identifying the basis for the protest;

408 (B) the franchisee's protest shall inform the franchisor that the protest shall be submitted
409 to a mediator in the state who is identified by name and address in the franchisee's notice to the
410 franchisor;

411 (C) if mediation is requested under Subsection (1)(gg)(i)(B), mediation shall occur no
412 later than 30 days after the day on which the franchisor receives the franchisee's protest of a
413 claim or charge back;

414 (D) if mediation does not lead to a resolution of the protest, the protest shall be set for
415 binding arbitration in the same venue in which the mediation occurred;

416 (E) binding arbitration under Subsection (1)(gg)(i)(D) shall be conducted:

417 (I) by an arbitrator mutually agreed upon by the franchisor and the franchisee; and

418 (II) on a date mutually agreed upon by the franchisor and the franchisee, but shall be
419 held no later than 90 days after the franchisor's receipt of the franchisee's notice of protest;

420 (F) this Subsection (1)(gg)(i) applies exclusively to warranty audits and sales incentive
421 audits;

422 (G) Subsections (1)(gg)(i)(A) through (E) do not apply if the franchisor reasonably
423 believes that the amount of the claim or charge back is related to a fraudulent act by the
424 franchisee; and

425 (H) The costs of the mediator or arbitrator instituted under this Subsection (1)(gg) shall
426 be shared equally by the franchisor and the franchisee.

427 (ii) A franchisor may not require a franchisee to execute a written waiver of the
428 requirements of Subsection (1)(gg)(i);

429 (hh) coerce, or attempt to coerce a franchisee to purchase or sell an aftermarket
430 product manufactured by the franchisor, or obtained by the franchisor for resale from a
431 third-party supplier and the franchisor or its affiliate derives a financial benefit from the
432 franchisee's sale or purchase of the aftermarket product as a condition to obtaining preferential
433 status from the franchisor; ~~or~~

434 (ii) through an affiliate, take any action that would otherwise be prohibited under this
435 chapter[-]; or

436 (jj) impose any fee, surcharge, or other charge on a franchisee designed to recover the
437 cost of a warranty repair for which the franchisee is paid by the franchisor.

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

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

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

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

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

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

447 (b) refusing to permit a combination of new motor vehicle lines, if justified by

448 reasonable business considerations.

449 (5) Upon the written request of any franchisee, a franchisor shall disclose in writing to

450 the franchisee the basis on which new motor vehicles, parts, and accessories are allocated,
451 scheduled, and delivered among the franchisor's dealers of the same line-make.

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

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

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

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

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

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

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

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

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

469 (b) After receipt of the advisory board's recommendation, the executive director may,
470 for good cause shown, extend the time limit set forth in Subsection (6)(a) for an additional
471 period not to exceed 12 months.

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

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

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

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

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

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

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

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

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

496 (9) Subsection (1)(ff)(iii) may not be construed to:

497 (a) permit provision of or access to customer information that is otherwise protected
498 from disclosure by law or by contract between a franchisor and a franchisee; or

499 (b) require a franchisor to disregard the preference volunteered by a potential customer
500 in providing or directing a lead.

501 (10) Subsection (1)(ii) does not limit the right of an affiliate to engage in business
502 practices in accordance with the usage of trade in which the affiliate is engaged.

503 Section 5. Section **13-14-304** is amended to read:

504 **13-14-304. Hearing regarding termination, relocation, or establishment of**
505 **franchises.**

506 (1) (a) Within ten days of receiving an application from a franchisee under Subsection
507 13-14-301(3) challenging its franchisor's right to terminate or not continue a franchise, or an
508 application under Section 13-14-302 challenging the establishment or relocation of a franchise,
509 the executive director shall:

510 (i) enter an order designating the time and place for the hearing; and

511 (ii) send a copy of the order by certified or registered mail, with return receipt
512 requested, or by any form of reliable delivery through which receipt is verifiable to:

513 (A) the applicant;

514 (B) the franchisor; and

515 (C) if the application involves the establishment of a new franchise or the relocation of
516 an existing dealership, to all franchisees in the relevant market area engaged in the business of
517 offering to sell or lease the same line-make.

518 (b) A copy of an order mailed under Subsection (1)(a) shall be addressed to the
519 franchisee at the place where the franchisee's business is conducted.

520 (2) Any person who can establish an interest in the application may intervene as a party
521 to the hearing, whether or not that person receives notice.

522 (3) Any person may appear and testify on the question of the public interest in the
523 termination or noncontinuation of a franchise or in the establishment of an additional franchise.

524 (4) (a) (i) Any hearing ordered under Subsection (1) shall be conducted no later than
525 120 days after the application for hearing is filed.

526 (ii) A final decision on the challenge shall be made by the executive director no later
527 than 30 days after the hearing.

528 (b) Failure to comply with the time requirements of Subsection (4)(a) is considered a
529 determination that the franchisor acted with good cause or, in the case of a protest of a
530 proposed establishment or relocation of a dealer, that good cause exists for permitting the
531 proposed additional or relocated new motor vehicle dealer, unless:

532 (i) the delay is caused by acts of the franchisor or the additional or relocating franchisee;

533 or

534 (ii) the delay is waived by the parties.

535 (5) The franchisor has the burden of proof to establish by a preponderance of the
536 evidence that under the provisions of this chapter it should be granted permission to:

537 (a) terminate or not continue the franchise;

538 (b) enter into a franchise agreement establishing an additional franchise; or

539 (c) relocate the dealership of an existing franchisee.

540 Section 6. Section **13-14-306** is amended to read:

541 **13-14-306. Evidence to be considered in determining cause to relocate or**
542 **establish a new franchised dealership.**

543 In determining whether a franchisor has established good cause for relocating an existing
544 franchisee or establishing a new franchised dealership for the same line-make in a given relevant
545 market area, the advisory board and the executive director shall consider:

546 (1) the amount of business transacted by other franchisees of the same line-make in that
547 relevant market area, as compared to business available to the franchisees;

548 (2) the investment necessarily made and obligations incurred by other franchisees of the
549 same line-make in that relevant market area in the performance of their part of their franchisee
550 agreements;

551 (3) the permanency of the existing and proposed investment;

552 (4) whether it is injurious or beneficial to the public welfare or public interest for an
553 additional franchise to be established; [~~and~~]

554 (5) whether the franchisees of the same line-make in that relevant market area are
555 providing adequate service to consumers for the motor vehicles of the line-make, which shall
556 include the adequacy of:

557 (a) the motor vehicle sale and service facilities;

558 (b) equipment;

559 (c) supply of vehicle parts; and

560 (d) qualified service personnel[-]; and

561 (6) whether the relocation or establishment would cause any material negative

562 economic effect on a dealer of the same line-make in the relevant market area.

563 Section 7. Section **13-14-307** is amended to read:

564 **13-14-307. Franchisors' obligations upon termination or noncontinuation of**
565 **franchise.**

566 (1) Upon the termination or noncontinuation of a franchise by the franchisor, the
567 franchisor shall pay the franchisee:

568 (a) the franchisee's cost of new, undamaged, and unsold motor vehicles in the
569 franchisee's inventory acquired from the franchisor or another franchisee of the same line-make
570 representing both the current model year at the time of termination or noncontinuation and the
571 immediately prior model year vehicles, except only those recreational vehicles purchased within
572 the 12 months immediately preceding the date of termination or noncontinuation shall be
573 repurchased:

574 (i) plus any charges made by the franchisor, for distribution, delivery, or taxes;

575 (ii) plus the franchisee's cost of any accessories added on the vehicle, except only those
576 recreational vehicle accessories that are listed in the franchisor's wholesale product literature as
577 options for that vehicle shall be repurchased; and

578 (iii) less all allowances paid or credited to the franchisee by the franchisor;

579 (b) the franchisee's cost of new and undamaged motor vehicles in the franchisee's
580 inventory of demonstrator vehicles, reduced by 1% for each 1000 miles registered on the
581 demonstrator vehicle's odometer, except recreational vehicles whose cost shall be reduced by
582 2% for each 1,000 miles registered on the odometer of demonstrator self-propelled recreational
583 vehicles, exclusive of miles incurred in delivery of the vehicle, and the cost of demonstrator
584 nonself-propelled recreational vehicles shall be reduced by 10% of the franchisee's vehicle cost:

585 (i) plus any charges made by the franchisor for distribution, delivery, or taxes;

586 (ii) plus the franchisee's cost of any accessories added on the vehicles, except only those
587 recreational vehicle accessories that are listed in the franchisor's wholesale product literature as
588 options for that vehicle shall be repurchased; and

589 (iii) less all allowances paid or credited to the franchisee by the franchisor;

590 (c) the cost of all new, undamaged, and unsold supplies, parts, and accessories as set
591 forth in the franchisor's catalog at the time of termination or noncontinuation for the supplies,
592 parts, and accessories, less all allowances paid or credited to the franchisee by the franchisor;

593 (d) the fair market value, but not less than the franchisee's depreciated acquisition cost
594 of each undamaged sign owned by the franchisee that bears a common name, trade name, or
595 trademark of the franchisor if acquisition of the sign was recommended or required by the
596 franchisor. If a recreational vehicle franchisee has a sign with multiple manufacturers listed, the
597 franchisor is only responsible for its pro rata portion of the sign;

598 (e) the fair market value, but not less than the franchisee's depreciated acquisition cost
599 of all special tools, equipment, and furnishings acquired from the franchisor or sources approved
600 by the franchisor that were recommended or required by the franchisor and are in good and
601 usable condition; ~~and~~

602 (f) the cost of transporting, handling, packing, and loading motor vehicles, supplies,
603 parts, accessories, signs, special tools, equipment, and furnishings[-];

604 (g) reasonable compensation to the franchisee for any cost incurred pertaining to the
605 unexpired term of a lease agreement for the dealership's existing location;

606 (h) the negotiated fair market value of the dealership premises, based on the fair market
607 value of the real property, if the dealer opts to sell the dealership premises; and

608 (i) compensate the franchisee for the blue sky or goodwill of the dealership, as
609 determined in accordance with the applicable industry standards taking into consideration the
610 effect that the timing of the manufacturer's announcement of discontinuance of a line make has
611 or will have on future profitability of the dealership.

612 (2) If a franchise is terminated by the franchisor for cause as defined in Subsections
613 13-14-301(1)(b) and (2)(b), Subsections (1)(g), (h), and (i) do not apply.

614 ~~(2)~~ (3) The franchisor shall pay the franchisee the amounts specified in Subsection (1)
615 within 90 days after the tender of the property to the franchisor if the franchisee:

616 (a) has clear title to the property; and

617 (b) is in a position to convey title to the franchisor.

618 [~~(3)~~] (4) If repurchased inventory, equipment, or demonstrator vehicles are subject to a
619 security interest, the franchisor may make payment jointly to the franchisee and to the holder of
620 the security interest.

621 Section 8. Section **13-14-308** is enacted to read:

622 **13-14-308. Private right of action.**

623 A franchisee has a private right of action for actual damages against a franchisor for a
624 violation of this chapter that results in damage to the franchisee.

625 Section 9. Section **13-14-309** is enacted to read:

626 **13-14-309. Change in distribution plan.**

627 If there is a change in the plan of distribution of a line make that contemplates a
628 continuation of that line make in the state, a manufacturer or distributor may not directly or
629 indirectly, through the action of any parent of the manufacturer or distributor, subsidiary of the
630 manufacturer or distributor, or common entity cause a termination, cancellation, or nonrenewal
631 of a dealer franchise agreement by a present or previous manufacturer or distributor unless, by
632 the effective date of the action the manufacturer or distributor offers the new motor vehicle
633 dealer whose dealer franchise agreement is terminated, cancelled, or not renewed, a dealer
634 franchise agreement that is substantially similar to the dealer franchise agreement that existed
635 with the previous manufacturer or distributor allowing the dealer to represent the line make
636 under the new plan of distribution.