

Senator Sheldon L. Killpack proposes the following substitute bill:

NEW MOTOR VEHICLE FRANCHISE

AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheldon L. Killpack

House Sponsor: Rebecca D. Lockhart

LONG TITLE

General Description:

This bill modifies the New Automobile Franchise Act by amending provisions relating to new motor vehicle franchisor and franchisee requirements.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ provides that a franchisor may not require or otherwise coerce a franchisee to underutilize the franchisee's facilities by:
 - requiring or otherwise coercing a franchisee to exclude or remove from the franchisee's facility operations the selling or servicing of a line-make of vehicles for which the franchisee has a franchise agreement to utilize the facilities; or
 - prohibiting the franchisee from locating, relocating, or occupying a franchise or line-make in an existing facility owned or occupied by the franchisee that includes the selling or servicing of another franchise or line-make at the facility provided that the franchisee gives the franchisor written notice of the franchise co-location;
- ▶ amends the time frame for which written notice must be received by the franchisee



26 for a charge back for sales compensation or sales incentives arising out of the sale or lease of a
27 motor vehicle sold or leased by a franchisee to be compensable;

28 ▶ repeals the provisions that provides that a franchisor may refuse to permit a
29 combination of new motor vehicle lines, if justified by reasonable business
30 considerations;

31 ▶ provides that a franchisor may not terminate or refuse to continue the rights to sell
32 and service a line-make unless the franchisor has complied with certain
33 requirements;

34 ▶ provides that upon the termination or noncontinuation of a franchise or a line-make
35 by the franchise, the franchisor shall pay the franchisee for the franchisee's cost of
36 new, undamaged, and unsold recreational vehicles in the franchisee's inventory
37 acquired from the franchisor or another franchisee at the time of termination or
38 noncontinuation and the immediately prior model year vehicles, instead of only
39 those recreational vehicles purchased within the 12 months immediately preceding
40 the date of termination or noncontinuation;

41 ▶ provides that a franchisee may voluntarily terminate its franchise if the franchisee
42 provides written notice to the franchisor at least 30 days prior to the termination;

43 ▶ provides that a franchisor shall pay the franchisee certain costs for the termination
44 or noncontinuation of a franchise or line-make except in certain circumstances; and

45 ▶ makes technical changes.

46 **Monies Appropriated in this Bill:**

47 None

48 **Other Special Clauses:**

49 This bill provides an immediate effective date.

50 **Utah Code Sections Affected:**

51 AMENDS:

52 **13-14-102**, as last amended by Laws of Utah 2008, Chapters 362 and 388

53 **13-14-201**, as last amended by Laws of Utah 2008, Chapter 362

54 **13-14-204**, as last amended by Laws of Utah 2004, Chapter 123

55 **13-14-301**, as last amended by Laws of Utah 2005, Chapter 249

56 **13-14-307**, as last amended by Laws of Utah 2008, Chapter 362

57

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

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

60 **13-14-102. Definitions.**

61 As used in this chapter:

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

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

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

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

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

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

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

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

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

77 [~~(a)~~] (i) a person grants to another person a license to use a trade name, trademark,
78 service mark, or related characteristic; and

79 [~~(b)~~] (ii) a community of interest exists in the marketing of new motor vehicles, new
80 motor vehicle parts, and services related to the sale or lease of new motor vehicles at wholesale
81 or retail.

82 (b) "Franchise" or "franchise agreement" includes a sales and service agreement.

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

86 (9) "Franchisor" means a person who has, in writing or in practice, agreed with or
87 permits a franchisee to purchase, sell, or offer for sale new motor vehicles manufactured,

88 produced, represented, or distributed by the franchisor, and includes:

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

90 (b) an intermediate distributor; and

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

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

96 (11) "Line-make" means:

97 (a) for other than a recreational vehicle, the motor vehicles that are offered for sale,
98 lease, or distribution under a common name, trademark, service mark, or brand name of the
99 franchisor, or manufacturer of the motor vehicle; or

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

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

102 (ii) is targeted to a particular market segment, as determined by decor, features,
103 equipment, size, weight, and price range;

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

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

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

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

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

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

115 (i) a travel trailer;

116 (ii) except as provided in Subsection (14)(b), a motor vehicle as defined in Section
117 41-3-102;

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

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

120 (v) a recreational vehicle.

121 (b) "Motor vehicle" does not include:

122 (i) a motorcycle as defined in Section 41-1a-102;

123 (ii) an off-highway vehicle as defined in Section 41-3-102; and

124 (iii) a small trailer as defined in Section 41-3-102.

125 (15) "New motor vehicle" means a motor vehicle as defined in Subsection (14) that has

126 never been titled or registered and has been driven less than 7,500 miles, unless the motor

127 vehicle is a trailer, travel trailer, or semitrailer, in which case the mileage limit does not apply.

128 (16) "New motor vehicle dealer" is a person who is licensed under Subsection

129 41-3-202(1)(a) to sell new motor vehicles.

130 (17) "Notice" or "notify" includes both traditional written communications and all

131 reliable forms of electronic communication unless expressly prohibited by statute or rule.

132 (18) (a) "Recreational vehicle" means a vehicular unit other than a mobile home,

133 primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is

134 either self-propelled or pulled by another vehicle.

135 (b) "Recreational vehicle" includes:

136 (i) a travel trailer;

137 (ii) a camping trailer;

138 (iii) a motor home;

139 (iv) a fifth wheel trailer; and

140 (v) a van.

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

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

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

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

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

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

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

148 in a franchise, with or without consideration, including a bequest, inheritance, gift, exchange,

149 lease, or license.

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

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

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

158 Section 2. Section **13-14-201** is amended to read:

159 **13-14-201. Prohibited acts by franchisors -- Affiliates -- Disclosures.**

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

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

164 (b) require a franchisee to:

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

166 (ii) contest, or purchase any promotional materials, display devices, or display
167 decorations or materials;

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

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

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

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

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

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

180 (ii) require any controversy between the franchisee and a franchisor to be referred to a

181 third party if the decision by the third party would be binding;

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

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

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

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

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

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

201 (i) including court costs and [~~attorneys'~~ attorney fees arising out of actions, claims, or
202 proceedings including those based on:

203 (A) strict liability;

204 (B) negligence;

205 (C) misrepresentation;

206 (D) express or implied warranty;

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

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

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

211 (l) threaten or coerce a franchisee to waive or forbear its right to protest the

212 establishment or relocation of a same line-make franchisee in the relevant market area of the
213 affected franchisee;

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

219 (n) require or otherwise coerce a franchisee to under-utilize the franchisee's existing
220 dealer facility or facilities[?], including by:

221 (i) requiring or otherwise coercing a franchisee to exclude or remove from the
222 franchisee's facility operations the selling or servicing of a line-make of vehicles for which the
223 franchisee has a franchise agreement to utilize the facilities; or

224 (ii) prohibiting the franchisee from locating, relocating, or occupying a franchise or
225 line-make in an existing facility owned or occupied by the franchisee that includes the selling
226 or servicing of another franchise or line-make at the facility provided that the franchisee gives
227 the franchisor written notice of the franchise co-location;

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

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

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

242 (r) except as provided in Subsection (2), authorize or permit a person to perform

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

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

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

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

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

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

253 (B) unreasonably require a dealer to:

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

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

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

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

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

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

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

263 or

264 (iv) operate a motor vehicle service facility;

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

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

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

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

273 (iii) advising a potential customer as to the amount that the potential customer should

274 pay for a particular product;

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

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

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

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

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

286 (ii) the profitability of a franchisee; or

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

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

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

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

292 and

293 (iii) is, upon request by a franchisee, disclosed and explained in writing to the
294 franchisee, including:

295 (A) how the standard or program is designed;

296 (B) how the standard or program will be administered; and

297 (C) the types of data that will be collected and used in the application of the standard or
298 program;

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

302 (dd) compel a franchisee, through a finance subsidiary, to agree to unreasonable
303 operating requirements, except that this Subsection (1)(dd) may not be construed to limit the
304 right of a financing subsidiary to engage in business practices in accordance with the usage of

305 trade in retail and wholesale motor vehicle financing;

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

310 (ff) except as provided in Subsections (7) through (9), discriminate against a franchisee
311 in the state in favor of another franchisee of the same line-make in the state:

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

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

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

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

327 (A) dealer's eligibility to purchase program, certified, or other used motor vehicles
328 from the manufacturer;

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

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

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

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

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

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

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

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

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

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

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

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

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

360 (H) [~~The~~] the costs of the mediator or arbitrator instituted under this Subsection (1)(gg)
361 shall be shared equally by the franchisor and the franchisee.

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

364 (hh) coerce, or attempt to coerce a franchisee to purchase or sell an aftermarket product
365 manufactured by the franchisor, or obtained by the franchisor for resale from a third-party
366 supplier and the franchisor or its affiliate derives a financial benefit from the franchisee's sale

367 or purchase of the aftermarket product as a condition to obtaining preferential status from the
368 franchisor;

369 (ii) through an affiliate, take any action that would otherwise be prohibited under this
370 chapter; or

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

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

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

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

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

380 (4) Subsection (1)(d) does not prevent a franchisor from~~[(a)]~~ requiring that a
381 franchisee maintain separate sales personnel or display space~~[-or]~~.

382 ~~[(b) refusing to permit a combination of new motor vehicle lines, if justified by~~
383 ~~reasonable business considerations.]~~

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

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

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

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

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

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

- 398 (B) would not otherwise be able to purchase a new motor vehicle dealership;
- 399 (C) has made a significant investment in the new motor vehicle dealership which is
400 subject to loss;
- 401 (D) has an ownership interest in the new motor vehicle dealership; and
- 402 (E) operates the new motor vehicle dealership under a plan to acquire full ownership of
403 the dealership within a reasonable period of time and under reasonable terms and conditions.
- 404 (b) After receipt of the advisory board's recommendation, the executive director may,
405 for good cause shown, extend the time limit set forth in Subsection (6)(a) for an additional
406 period not to exceed 12 months.
- 407 (c) A franchisor who was engaged in any of the activities listed in Subsection (1)(u) in
408 this state prior to May 1, 2000, may continue to engage in that activity, but may not expand that
409 activity to acquire an interest in any other new motor vehicle dealerships or motor vehicle
410 service facilities after May 1, 2000.
- 411 (d) Notwithstanding Subsection (1)(u), a franchisor may own, operate, or control a new
412 motor vehicle dealership trading in a line-make of motor vehicle if:
- 413 (i) as to that line-make of motor vehicle, there are no more than four franchised new
414 motor vehicle dealerships licensed and in operation within the state as of January 1, 2000;
- 415 (ii) the franchisor does not own directly or indirectly, more than a 45% interest in the
416 dealership;
- 417 (iii) at the time the franchisor first acquires ownership or assumes operation or control
418 of the dealership, the distance between the dealership thus owned, operated, or controlled and
419 the nearest unaffiliated new motor vehicle dealership trading in the same line-make is not less
420 than 150 miles;
- 421 (iv) all the franchisor's franchise agreements confer rights on the franchisee to develop
422 and operate as many dealership facilities as the franchisee and franchisor shall agree are
423 appropriate within a defined geographic territory or area; and
- 424 (v) as of January 1, 2000, no fewer than half of the franchisees of the line-make within
425 the state own and operate two or more dealership facilities in the geographic area covered by
426 the franchise agreement.
- 427 (7) Subsection (1)(ff) does not apply to recreational vehicles.
- 428 (8) Subsection (1)(ff)(ii) does not prohibit a promotional or incentive program that is

429 functionally available to all competing franchisees of the same line-make in the state on
430 substantially comparable terms.

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

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

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

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

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

439 **13-14-204. Franchisor's obligations related to service -- Franchisor audits -- Time**
440 **limits.**

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

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

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

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

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

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

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

455 (b) Compensation of the franchisee for warranty service work may not be less than the
456 amount charged by the franchisee for like parts and service to retail or fleet customers, if the
457 amounts are reasonable. In the case of a recreational vehicle franchisee, reimbursement for
458 parts used in the performance of warranty repairs, including those parts separately warranted
459 directly to the consumer by a recreational vehicle parts supplier, may not be less than the

460 franchisee's cost plus 20%. For purposes of this Subsection (3)(b), the term "cost" shall be that
461 same price paid by a franchisee to a franchisor or supplier for the part when the part is
462 purchased for a nonwarranty repair.

463 (4) A franchisor may not fail to:

464 (a) perform any warranty obligation;

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

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

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

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

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

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

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

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

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

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

488 (b) Except as provided in Subsection (9)(c), all charge backs levied by a franchisor for
489 sales compensation or sales incentives arising out of the sale or lease of a motor vehicle sold or
490 leased by a franchisee shall be compensable only if written notice of the charge back is

491 received by the franchisee within 12 months immediately following the sooner of:

492 (i) the date when the sales incentive program terminates~~[, but no later than 24 months~~
493 ~~following]; or~~

494 (ii) the date when payment for the sales compensation or sales incentive was made by
495 the franchisor to the franchisee.

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

498 Section 4. Section **13-14-301** is amended to read:

499 **13-14-301. Termination or noncontinuance of franchise.**

500 (1) Except as provided in Subsection (2), a franchisor may not terminate or refuse to
501 continue a franchise agreement or the rights to sell and service a line-make pursuant to a
502 franchise agreement, whether through termination or noncontinuance of the franchise,
503 termination or noncontinuance of a line-make, or otherwise, unless:

504 (a) the franchisee has received written notice from the franchisor 60 days before the
505 effective date of termination or noncontinuance setting forth the specific grounds for
506 termination or noncontinuance that are relied on by the franchisor as establishing good cause
507 for the termination or noncontinuance;

508 (b) the franchisor has good cause for termination or noncontinuance; and

509 (c) the franchisor is willing and able to comply with Section 13-14-307.

510 (2) A franchisor may terminate a franchise, without complying with Subsection (1):

511 ~~[(a) if for a particular line-make the franchisor or manufacturer discontinues that~~
512 ~~line-make;]~~

513 ~~[(b)]~~ (a) if the franchisee's license as a new motor vehicle dealer is revoked under Title
514 41, Chapter 3, Motor Vehicle Business Regulation Act; or

515 ~~[(c)]~~ (b) upon a mutual written agreement of the franchisor and franchisee.

516 (3) (a) At any time before the effective date of termination or noncontinuance of the
517 franchise, the franchisee may apply to the advisory board for a hearing on the merits, and
518 following notice to all parties concerned, the hearing shall be promptly held as provided in
519 Section 13-14-304.

520 (b) A termination or noncontinuance subject to a hearing under Subsection (3)(a) may
521 not become effective until:

- 522 (i) final determination of the issue by the executive director; and
- 523 (ii) the applicable appeal period has lapsed.

524 (4) A franchisee may voluntarily terminate its franchise if the franchisee provides
525 written notice to the franchisor at least 30 days prior to the termination.

526 Section 5. Section **13-14-307** is amended to read:

527 **13-14-307. Franchisor's obligations upon termination or noncontinuation of**
528 **franchise or line-make.**

529 (1) Upon the termination or noncontinuation of a franchise or a line-make by the
530 franchisor, the franchisor shall pay the franchisee:

531 (a) the franchisee's cost of new, undamaged, and unsold motor vehicles in the
532 franchisee's inventory acquired from the franchisor or another franchisee of the same line-make
533 representing both the current model year at the time of termination or noncontinuation and the
534 immediately prior model year vehicles[~~except only those recreational vehicles purchased~~
535 ~~within the 12 months immediately preceding the date of termination or noncontinuation shall~~
536 ~~be repurchased]:~~

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

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

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

542 (b) the franchisee's cost of new and undamaged motor vehicles in the franchisee's
543 inventory of demonstrator vehicles, reduced by 1% for each 1000 miles registered on the
544 demonstrator vehicle's odometer, except recreational vehicles whose cost shall be reduced by
545 2% for each 1,000 miles registered on the odometer of demonstrator self-propelled recreational
546 vehicles, exclusive of miles incurred in delivery of the vehicle, and the cost of demonstrator
547 nonself-propelled recreational vehicles shall be reduced by 10% of the franchisee's vehicle
548 cost:

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

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

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

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

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

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

566 (f) the cost of transporting, handling, packing, and loading motor vehicles, supplies,
567 parts, accessories, signs, special tools, equipment, and furnishings;

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

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

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

576 (2) ~~[If a franchise is terminated by the franchisor for cause as defined in Subsections~~
577 ~~13-14-301(1)(b) and (2)(b),]~~ Subsections (1)(g), (h), and (i) do not apply[-] if a franchise is
578 terminated:

579 (a) by the franchisor for cause as defined in Subsections 13-14-301(1)(b) and (2)(a);
580 (b) upon mutual written agreement of the franchisor and franchisee as provided in
581 Subsection 13-14-301(2)(b); or

582 (c) upon voluntary termination by the franchisee as provided in Subsection
583 13-14-301(4).

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

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

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

588 (4) If repurchased inventory, equipment, or demonstrator vehicles are subject to a
589 security interest, the franchisor may make payment jointly to the franchisee and to the holder of
590 the security interest.

591 **Section 6. Effective date.**

592 If approved by two-thirds of all the members elected to each house, this bill takes effect
593 upon approval by the governor, or the day following the constitutional time limit of Utah
594 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
595 the date of veto override.

S.B. 52 2nd Sub. (Salmon) - New Motor Vehicle Franchise Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will require an additional appropriation from the Commerce Service Fund of \$2,200 in FY 2010 and FY 2011. Commerce Service Fund spending affects the annual transfer to the General Fund.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	(\$2,200)	(\$2,200)
Commerce Service Fund	\$0	\$2,200	\$2,200	\$0	\$0	\$0
Total	\$0	\$2,200	\$2,200	\$0	(\$2,200)	(\$2,200)

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.