

## Part 2 Franchises in General

### 13-14-201 Prohibited acts by franchisors -- Affiliates -- Disclosures.

- (1) A franchisor may not in this state:
- (a) except as provided in Subsection (3), require a franchisee to order or accept delivery of any new motor vehicle, part, accessory, equipment, or other item not otherwise required by law that is not voluntarily ordered by the franchisee;
  - (b) require a franchisee to:
    - (i) participate monetarily in any advertising campaign; or
    - (ii) contest, or purchase any promotional materials, display devices, or display decorations or materials;
  - (c) require a franchisee to change the capital structure of the franchisee's dealership or the means by or through which the franchisee finances the operation of the franchisee's dealership, if the dealership at all times meets reasonable capital standards determined by and applied in a nondiscriminatory manner by the franchisor;
  - (d) require a franchisee to refrain from participating in the management of, investment in, or acquisition of any other line of new motor vehicles or related products, if the franchisee:
    - (i) maintains a reasonable line of credit for each make or line of vehicles; and
    - (ii) complies with reasonable capital and facilities requirements of the franchisor;
  - (e) require a franchisee to prospectively agree to a release, assignment, novation, waiver, or estoppel that would:
    - (i) relieve a franchisor from any liability, including notice and hearing rights imposed on the franchisor by this chapter; or
    - (ii) require any controversy between the franchisee and a franchisor to be referred to a third party if the decision by the third party would be binding;
  - (f) require a franchisee to change the location of the principal place of business of the franchisee's dealership or make any substantial alterations to the dealership premises, if the change or alterations would be unreasonable or cause the franchisee to lose control of the premises or impose any other unreasonable requirement related to the facilities or premises;
  - (g) coerce or attempt to coerce a franchisee to join, contribute to, or affiliate with an advertising association;
  - (h) require, coerce, or attempt to coerce a franchisee to enter into an agreement with the franchisor or do any other act that is unfair or prejudicial to the franchisee, by threatening to cancel a franchise agreement or other contractual agreement or understanding existing between the franchisor and franchisee;
  - (i) adopt, change, establish, enforce, modify, or implement a plan or system for the allocation, scheduling, or delivery of new motor vehicles, parts, or accessories to its franchisees so that the plan or system is not fair, reasonable, and equitable, including a plan or system that imposes a vehicle sales objective, goal, or quota on a franchisee, or that evaluates a franchisee's sales effectiveness or overall sales performance, without providing a reasonable opportunity for the franchisee to acquire the necessary vehicles in a timely manner from the franchisor on commercially reasonable terms;
  - (j) increase the price of any new motor vehicle that the franchisee has ordered from the franchisor and for which there exists at the time of the order a bona fide sale to a retail purchaser if the order was made prior to the franchisee's receipt of an official written price increase notification;

- (k) fail to indemnify and hold harmless its franchisee against any judgment for damages or settlement approved in writing by the franchisor:
  - (i) including court costs and attorney fees arising out of actions, claims, or proceedings including those based on:
    - (A) strict liability;
    - (B) negligence;
    - (C) misrepresentation;
    - (D) express or implied warranty;
    - (E) revocation as described in Section 70A-2-608; or
    - (F) rejection as described in Section 70A-2-602; and
  - (ii) to the extent the judgment or settlement relates to alleged defective or negligent actions by the franchisor;
- (l) threaten or coerce a franchisee to waive or forbear its right to protest the establishment or relocation of a same line-make franchisee in the relevant market area of the affected franchisee;
- (m) fail to ship monthly to a franchisee, if ordered by the franchisee, the number of new motor vehicles of each make, series, and model needed by the franchisee to achieve a percentage of total new vehicle sales of each make, series, and model equitably related to the total new vehicle production or importation being achieved nationally at the time of the order by each make, series, and model covered under the franchise agreement;
- (n) require or otherwise coerce a franchisee to under-utilize the franchisee's existing dealer facility or facilities, including by:
  - (i) 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
  - (ii) 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;
- (o) fail to include in any franchise agreement or other agreement governing a franchisee's ownership of a dealership or a franchisee's conduct of business under a franchise the following language or language to the effect that: "If any provision in this agreement contravenes the laws or regulations of any state or other jurisdiction where this agreement is to be performed, or provided for by such laws or regulations, the provision is considered to be modified to conform to such laws or regulations, and all other terms and provisions shall remain in full force.";
- (p) engage in the distribution, sale, offer for sale, or lease of a new motor vehicle to purchasers who acquire the vehicle in this state except through a franchisee with whom the franchisor has established a written franchise agreement, if the franchisor's trade name, trademark, service mark, or related characteristic is an integral element in the distribution, sale, offer for sale, or lease;
- (q) engage in the distribution or sale of a recreational vehicle that is manufactured, rented, sold, or offered for sale in this state without being constructed in accordance with the standards set by the American National Standards Institute for recreational vehicles and evidenced by a seal or plate attached to the vehicle;
- (r) except as provided in Subsection (2), authorize or permit a person to perform warranty service repairs on motor vehicles, except warranty service repairs:

- (i) by a franchisee with whom the franchisor has entered into a franchise agreement for the sale and service of the franchisor's motor vehicles; or
- (ii) on owned motor vehicles by a person or government entity who has purchased new motor vehicles pursuant to a franchisor's fleet discount program;
- (s) fail to provide a franchisee with a written franchise agreement;
- (t)
  - (i) except as provided in Subsection (1)(t)(ii) and notwithstanding any other provisions of this chapter:
    - (A) unreasonably fail or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make;
    - (B) unreasonably require a dealer to:
      - (I) pay any extra fee, remodel, renovate, recondition the dealer's existing facilities; or
      - (II) purchase unreasonable advertising displays or other materials as a prerequisite to receiving a model or series of vehicles;
  - (ii) notwithstanding Subsection (1)(t)(i), a recreational vehicle franchisor may split a line-make between motor home and travel trailer products;
- (u) except as provided in Subsection (6), directly or indirectly:
  - (i) own an interest in a new motor vehicle dealer or dealership;
  - (ii) operate or control a new motor vehicle dealer or dealership;
  - (iii) act in the capacity of a new motor vehicle dealer, as defined in Section 13-14-102; or
  - (iv) operate a motor vehicle service facility;
- (v) fail to timely pay for all reimbursements to a franchisee for incentives and other payments made by the franchisor;
- (w) directly or indirectly influence or direct potential customers to franchisees in an inequitable manner, including:
  - (i) charging a franchisee a fee for a referral regarding a potential sale or lease of any of the franchisee's products or services in an amount exceeding the actual cost of the referral;
  - (ii) giving a customer referral to a franchisee on the condition that the franchisee agree to sell the vehicle at a price fixed by the franchisor; or
  - (iii) advising a potential customer as to the amount that the potential customer should pay for a particular product;
- (x) fail to provide comparable delivery terms to each franchisee for a product of the franchisor, including the time of delivery after the placement of an order by the franchisee;
- (y) if personnel training is provided by the franchisor to its franchisees, unreasonably fail to make that training available to each franchisee on proportionally equal terms;
- (z) condition a franchisee's eligibility to participate in a sales incentive program on the requirement that a franchisee use the financing services of the franchisor or a subsidiary or affiliate of the franchisor for inventory financing;
- (aa) make available for public disclosure, except with the franchisee's permission or under subpoena or in any administrative or judicial proceeding in which the franchisee or the franchisor is a party, any confidential financial information regarding a franchisee, including:
  - (i) monthly financial statements provided by the franchisee;
  - (ii) the profitability of a franchisee; or
  - (iii) the status of a franchisee's inventory of products;
- (bb) use any performance standard, incentive program, or similar method to measure the performance of franchisees unless the standard or program:
  - (i) is designed and administered in a fair, reasonable, and equitable manner;
  - (ii) if based upon a survey, utilizes an actuarially generally acceptable, valid sample; and

- (iii) is, upon request by a franchisee, disclosed and explained in writing to the franchisee, including:
  - (A) how the standard or program is designed;
  - (B) how the standard or program will be administered; and
  - (C) the types of data that will be collected and used in the application of the standard or program;
- (cc) other than sales to the federal government, directly or indirectly, sell, lease, offer to sell, or offer to lease, a new motor vehicle or any motor vehicle owned by the franchisor, except through a franchised new motor vehicle dealer;
- (dd) compel a franchisee, through a finance subsidiary, to agree to unreasonable operating requirements, except that this Subsection (1)(dd) may not be construed to limit the right of a financing subsidiary to engage in business practices in accordance with the usage of trade in retail and wholesale motor vehicle financing;
- (ee) condition the franchisor's participation in co-op advertising for a product category on the franchisee's participation in any program related to another product category or on the franchisee's achievement of any level of sales in a product category other than that which is the subject of the co-op advertising;
- (ff) except as provided in Subsections (7) through (9), discriminate against a franchisee in the state in favor of another franchisee of the same line-make in the state:
  - (i) by selling or offering to sell a new motor vehicle to one franchisee at a higher actual price, including the price for vehicle transportation, than the actual price at which the same model similarly equipped is offered to or is made available by the franchisor to another franchisee in the state during a similar time period;
  - (ii) except as provided in Subsection (8), by using a promotional program or device or an incentive, payment, or other benefit, whether paid at the time of the sale of the new motor vehicle to the franchisee or later, that results in the sale of or offer to sell a new motor vehicle to one franchisee in the state at a higher price, including the price for vehicle transportation, than the price at which the same model similarly equipped is offered or is made available by the franchisor to another franchisee in the state during a similar time period;
  - (iii) except as provided in Subsection (9), by failing to provide or direct a lead in a fair, equitable, and timely manner; or
  - (iv) if the franchisee complies with any reasonable requirement concerning the sale of new motor vehicles, by using or considering the performance of any of its franchisees located in this state relating to the sale of the franchisor's new motor vehicles in determining the:
    - (A) dealer's eligibility to purchase program, certified, or other used motor vehicles from the franchisor;
    - (B) volume, type, or model of program, certified, or other used motor vehicles the dealer is eligible to purchase from the franchisor;
    - (C) price of any program, certified, or other used motor vehicles that the dealer is eligible to purchase from the franchisor; or
    - (D) availability or amount of any discount, credit, rebate, or sales incentive the dealer is eligible to receive from the manufacturer for the purchase of any program, certified, or other motor vehicle offered for sale by the franchisor;
- (gg)
  - (i) take control over funds owned or under the control of a franchisee based on the findings of a warranty audit or sales incentive audit unless the following conditions are satisfied:

- (A) the franchisor fully identifies in writing the basis for the franchisor's claim or charge back arising from the audit, including notifying the franchisee that the franchisee has 20 days from the day on which the franchisee receives the franchisor's claim or charge back to assert a protest in writing to the franchisor identifying the basis for the protest;
- (B) the franchisee's protest shall inform the franchisor that the protest shall be submitted to a mediator in the state who is identified by name and address in the franchisee's notice to the franchisor;
- (C) if mediation is requested under Subsection (1)(gg)(i)(B), mediation shall occur no later than 30 days after the day on which the franchisor receives the franchisee's protest of a claim or charge back;
- (D) if mediation does not lead to a resolution of the protest, the protest shall be set for binding arbitration in the same venue in which the mediation occurred;
- (E) binding arbitration under Subsection (1)(gg)(i)(D) shall be conducted:
  - (I) by an arbitrator mutually agreed upon by the franchisor and the franchisee; and
  - (II) on a date mutually agreed upon by the franchisor and the franchisee, but shall be held no later than 90 days after the franchisor's receipt of the franchisee's notice of protest;
- (F) this Subsection (1)(gg)(i) applies exclusively to warranty audits and sales incentive audits;
- (G) Subsections (1)(gg)(i)(A) through (E) do not apply if the franchisor reasonably believes that the amount of the claim or charge back is related to a fraudulent act by the franchisee; and
- (H) the costs of the mediator or arbitrator instituted under this Subsection (1)(gg) shall be shared equally by the franchisor and the franchisee; or
- (ii) require a franchisee to execute a written waiver of the requirements of Subsection (1)(gg)(i);
- (hh) coerce, or attempt to coerce a franchisee to purchase or sell an aftermarket product manufactured by the franchisor, or obtained by the franchisor for resale from a third-party supplier and the franchisor or its affiliate derives a financial benefit from the franchisee's sale or purchase of the aftermarket product as a condition to obtaining preferential status from the franchisor;
- (ii) through an affiliate, take any action that would otherwise be prohibited under this chapter;
- (jj) impose any fee, surcharge, or other charge on a franchisee designed to recover the cost of a warranty repair for which the franchisee is paid by the franchisor;
- (kk) directly or indirectly condition any of the following actions on the willingness of a franchisee, prospective new franchisee, or owner of an interest in a dealership facility to enter into a site-control agreement:
  - (i) the awarding of a franchise to a prospective new franchisee;
  - (ii) the addition of a line-make or franchise to an existing franchisee;
  - (iii) the renewal of an existing franchisee's franchise;
  - (iv) the approval of the relocation of an existing franchisee's dealership facility, unless the franchisor pays, and the franchisee voluntarily accepts, additional specified cash consideration to facilitate the relocation; or
  - (v) the approval of the sale or transfer of a franchise's ownership, unless the franchisor pays, and the buyer voluntarily accepts, additional specified cash consideration to facilitate the sale or transfer;
- (ll) subject to Subsection (11), deny a franchisee the right to return any or all parts or accessories that:
  - (i) were specified for and sold to the franchisee under an automated ordering system required by the franchisor; and
  - (ii)

- (A) are in good, resalable condition; and
- (B)
  - (I) the franchisee received within the previous 12 months; or
  - (II) are listed in the current parts catalog;
- (mm) subject to Subsection (12), obtain from a franchisee a waiver of a franchisee's right, by threatening:
  - (i) to impose a detriment upon the franchisee's business; or
  - (ii) to withhold any entitlement, benefit, or service:
    - (A) to which the franchisee is entitled under a franchise agreement, contract, statute, rule, regulation, or law; or
    - (B) that has been granted to more than one other franchisee of the franchisor in the state;
- (nn) coerce a franchisee to establish, or provide by agreement, program, or incentive provision that a franchisee must establish, a price at which the franchisee is required to sell a product or service that is:
  - (i) sold in connection with the franchisee's sale of a motor vehicle; and
  - (ii)
    - (A) in the case of a product, not manufactured, provided, or distributed by the franchisor or an affiliate; or
    - (B) in the case of a service, not provided by the franchisor or an affiliate;
- (oo) except as necessary to comply with a health or safety law, or to comply with a technology requirement compliance with which is necessary to sell or service a motor vehicle that the franchisee is authorized or licensed by the franchisor to sell or service, coerce or require a franchisee, through a penalty or other detriment to the franchisee's business, to:
  - (i) construct a new dealer facility or materially alter or remodel an existing dealer facility before the date that is 10 years after the date the construction of the new dealer facility at that location was completed, if the construction substantially complied with the franchisor's brand image standards or plans that the franchisor provided or approved; or
  - (ii) materially alter or remodel an existing dealer facility before the date that is 10 years after the date the previous alteration or remodeling at that location was completed, if the previous alteration or remodeling substantially complied with the franchisor's brand image standards or plans that the franchisor provided or approved; or
- (pp) notwithstanding the terms of a franchise agreement providing otherwise and subject to Subsection (14):
  - (i) coerce or require a franchisee, including by agreement, program, or incentive provision, to purchase a good or service, relating to a facility construction, alteration, or remodel, from a vendor that a franchisor or its affiliate selects, identifies, or designates, without allowing the franchisee, after consultation with the franchisor, to obtain a like good or service of substantially similar quality from a vendor that the franchisee chooses; or
  - (ii) coerce or require a franchisee, including by agreement, program, or incentive provision, to lease a sign or other franchisor image element from the franchisor or an affiliate without providing the franchisee the right to purchase a sign or other franchisor image element of like kind and quality from a vendor that the franchisee chooses.
- (2) Notwithstanding Subsection (1)(r), a franchisor may authorize or permit a person to perform warranty service repairs on motor vehicles if the warranty services is for a franchisor of recreational vehicles.
- (3) Subsection (1)(a) does not prevent the franchisor from requiring that a franchisee carry a reasonable inventory of:
  - (a) new motor vehicle models offered for sale by the franchisor; and

- (b) parts to service the repair of the new motor vehicles.
- (4) Subsection (1)(d) does not prevent a franchisor from requiring that a franchisee maintain separate sales personnel or display space.
- (5) Upon the written request of any franchisee, a franchisor shall disclose in writing to the franchisee the basis on which new motor vehicles, parts, and accessories are allocated, scheduled, and delivered among the franchisor's dealers of the same line-make.
- (6)
  - (a) A franchisor may engage in any of the activities listed in Subsection (1)(u), for a period not to exceed 12 months if:
    - (i)
      - (A) the person from whom the franchisor acquired the interest in or control of the new motor vehicle dealership was a franchised new motor vehicle dealer; and
      - (B) the franchisor's interest in the new motor vehicle dealership is for sale at a reasonable price and on reasonable terms and conditions; or
    - (ii) the franchisor is engaging in the activity listed in Subsection (1)(u) for the purpose of broadening the diversity of its dealer body and facilitating the ownership of a new motor vehicle dealership by a person who:
      - (A) is part of a group that has been historically underrepresented in the franchisor's dealer body;
      - (B) would not otherwise be able to purchase a new motor vehicle dealership;
      - (C) has made a significant investment in the new motor vehicle dealership which is subject to loss;
      - (D) has an ownership interest in the new motor vehicle dealership; and
      - (E) operates the new motor vehicle dealership under a plan to acquire full ownership of the dealership within a reasonable period of time and under reasonable terms and conditions.
  - (b) After receipt of the advisory board's recommendation, the executive director may, for good cause shown, extend the time limit set forth in Subsection (6)(a) for an additional period not to exceed 12 months.
  - (c) A franchisor who was engaged in any of the activities listed in Subsection (1)(u) in this state prior to May 1, 2000, may continue to engage in that activity, but may not expand that activity to acquire an interest in any other new motor vehicle dealerships or motor vehicle service facilities after May 1, 2000.
  - (d) Notwithstanding Subsection (1)(u), a franchisor may own, operate, or control a new motor vehicle dealership trading in a line-make of motor vehicle if:
    - (i) as to that line-make of motor vehicle, there are no more than four franchised new motor vehicle dealerships licensed and in operation within the state as of January 1, 2000;
    - (ii) the franchisor does not own directly or indirectly, more than a 45% interest in the dealership;
    - (iii) at the time the franchisor first acquires ownership or assumes operation or control of the dealership, the distance between the dealership thus owned, operated, or controlled and the nearest unaffiliated new motor vehicle dealership trading in the same line-make is not less than 150 miles;
    - (iv) all the franchisor's franchise agreements confer rights on the franchisee to develop and operate as many dealership facilities as the franchisee and franchisor shall agree are appropriate within a defined geographic territory or area; and
    - (v) as of January 1, 2000, no fewer than half of the franchisees of the line-make within the state own and operate two or more dealership facilities in the geographic area covered by the franchise agreement.
- (7) Subsection (1)(ff) does not apply to recreational vehicles.

- (8) Subsection (1)(ff)(ii) does not prohibit a promotional or incentive program that is functionally available to all competing franchisees of the same line-make in the state on substantially comparable terms.
- (9) Subsection (1)(ff)(iii) may not be construed to:
  - (a) permit provision of or access to customer information that is otherwise protected from disclosure by law or by contract between a franchisor and a franchisee; or
  - (b) require a franchisor to disregard the preference volunteered by a potential customer in providing or directing a lead.
- (10) Subsection (1)(ii) does not limit the right of an affiliate to engage in business practices in accordance with the usage of trade in which the affiliate is engaged.
- (11)
  - (a) Subsection (1)(ll) does not apply to parts or accessories that the franchisee ordered and purchased outside of an automated parts ordering system required by the franchisor.
  - (b) In determining whether parts or accessories in a franchisee's inventory were specified and sold under an automated ordering system required by the franchisor, the parts and accessories in the franchisee's inventory are presumed to be the most recent parts and accessories that the franchisor sold to the franchisee.
- (12)
  - (a) Subsection (1)(mm) does not apply to a good faith settlement of a dispute, including a dispute relating to contract negotiations, in which the franchisee gives a waiver in exchange for fair consideration in the form of a benefit conferred on the franchisee.
  - (b) Subsection (12)(a) may not be construed to defeat a franchisee's claim that a waiver has been obtained in violation of Subsection (1)(mm).
- (13)
  - (a) As used in Subsection (1)(oo):
    - (i) "Materially alter":
      - (A) means to make a material architectural, structural, or aesthetic alteration; and
      - (B) does not include routine maintenance, such as interior painting, reasonably necessary to keep a dealership facility in attractive condition.
    - (ii) "Penalty or other detriment" does not include a payment under an agreement, incentive, or program that is offered to but declined or not accepted by a franchisee, even if a similar payment is made to another franchisee in the state that chooses to participate in the agreement, incentive, or program.
  - (b) Subsection (1)(oo) does not apply to:
    - (i) a program that provides a lump sum payment to assist a franchisee to make a facility improvement or to pay for a sign or a franchisor image element, if the payment is not dependent on the franchisee selling or purchasing a specific number of new vehicles;
    - (ii) a program that is in effect on May 8, 2012, with more than one franchisee in the state or to a renewal or modification of the program;
    - (iii) a program that provides reimbursement to a franchisee on reasonable, written terms for a substantial portion of the franchisee's cost of making a facility improvement or installing signage or a franchisor image element; or
    - (iv) a written agreement between a franchisor and franchisee, in effect before May 8, 2012, under which a franchisee agrees to construct a new dealer facility.
- (14)
  - (a) Subsection (1)(pp)(i) does not apply to:
    - (i) signage purchased by a franchisee in which the franchisor has an intellectual property right;or

- (ii) a good used in a facility construction, alteration, or remodel that is:
  - (A) a moveable interior display that contains material subject to a franchisor's intellectual property right; or
  - (B) specifically eligible for reimbursement of over one-half its cost pursuant to a franchisor or distributor program or incentive granted to the franchisee on reasonable, written terms.
- (b) Subsection (1)(pp)(ii) may not be construed to allow a franchisee to:
  - (i) impair or eliminate a franchisor's intellectual property right; or
  - (ii) erect or maintain a sign that does not conform to the franchisor's reasonable fabrication specifications and intellectual property usage guidelines.

Amended by Chapter 186, 2012 General Session

**13-14-202 Sale or transfer of ownership.**

- (1)
  - (a) The franchisor shall give effect to the change in a franchise agreement as a result of an event listed in Subsection (1)(b):
    - (i) subject to Subsection 13-14-305(2)(b); and
    - (ii) unless exempted under Subsection (2).
  - (b) The franchisor shall give effect to the change in a franchise agreement pursuant to Subsection (1)(a) for the:
    - (i) sale of a dealership;
    - (ii) contract for sale of a dealership;
    - (iii) transfer of ownership of a franchisee's dealership by:
      - (A) sale;
      - (B) transfer of the business; or
      - (C) stock transfer; or
    - (iv) change in the executive management of the franchisee's dealership.
- (2) A franchisor is exempted from the requirements of Subsection (1) if:
  - (a) the transferee is denied, or would be denied, a new motor vehicle franchisee's license pursuant to Title 41, Chapter 3, Motor Vehicle Business Regulation Act; or
  - (b) the proposed sale or transfer of the business or change of executive management will be substantially detrimental to the distribution of franchisor's new motor vehicles or to competition in the relevant market area, provided that the franchisor has given written notice to the franchisee within 60 days following receipt by the franchisor of the following:
    - (i) a copy of the proposed contract of sale or transfer executed by the franchisee and the proposed transferee;
    - (ii) a completed copy of the franchisor's written application for approval of the change in ownership or executive management, if any, including the information customarily required by the franchisor; and
    - (iii)
      - (A) a written description of the business experience of the executive management of the transferee in the case of a proposed sale or transfer of the franchisee's business; or
      - (B) a written description of the business experience of the person involved in the proposed change of the franchisee's executive management in the case of a proposed change of executive management.
- (3) For purposes of this section, the refusal by the franchisor to accept a proposed transferee is presumed to be unreasonable and undertaken without good cause if the proposed franchisee:
  - (a) is of good moral character; and

- (b) otherwise meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the franchisor relating to the business experience of executive management and financial capacity to operate and maintain the dealership required by the franchisor of its franchisees.
- (4)
- (a) If after receipt of the written notice from the franchisor described in Subsection (1) the franchisee objects to the franchisor's refusal to accept the proposed sale or transfer of the business or change of executive management, the franchisee may file an application for a hearing before the advisory board up to 60 days from the date of receipt of the notice.
  - (b) After a hearing and the executive director's receipt of the advisory board's recommendation, the executive director shall determine, and enter an order providing that:
    - (i) the proposed transferee or change in executive management:
      - (A) shall be approved; or
      - (B) may not be approved for specified reasons; or
    - (ii) a proposed transferee or change in executive management is approved if specific conditions are timely satisfied.
  - (c)
    - (i) The franchisee shall have the burden of proof with respect to all issues raised by the franchisee's application for a hearing as provided in this section.
    - (ii) During the pendency of the hearing, the franchise agreement shall continue in effect in accordance with its terms.
  - (d) The advisory board and the executive director shall expedite, upon written request, any determination sought under this section.

Amended by Chapter 249, 2005 General Session

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

- (1)
- (a) A successor, including a family member of a deceased or incapacitated franchisee, who is designated by the franchisee may succeed the franchisee in the ownership and operation of the dealership under the existing franchise agreement if:
    - (i) the designated successor gives the franchisor written notice of an intent to succeed to the rights of the deceased or incapacitated franchisee in the franchise agreement within 180 days after the franchisee's death or incapacity;
    - (ii) the designated successor agrees to be bound by all of the terms and conditions of the franchise agreement; and
    - (iii) the designated successor meets the criteria generally applied by the franchisor in qualifying franchisees.
  - (b) A franchisor may refuse to honor the existing franchise agreement with the designated successor only for good cause.
- (2) The franchisor may request in writing from a designated successor the personal and financial data that is reasonably necessary to determine whether the existing franchise agreement should be honored. The designated successor shall supply the personal and financial data promptly upon the request.
- (3)
- (a) If a franchisor believes that good cause exists for refusing to honor the requested succession, the franchisor shall serve upon the designated successor notice of its refusal to approve the succession, within 60 days after the later of:

- (i) receipt of the notice of the designated successor's intent to succeed the franchisee in the ownership and operation of the dealership; or
- (ii) receipt of the requested personal and financial data.
- (b) Failure to serve the notice pursuant to Subsection (3)(a) is considered approval of the designated successor and the franchise agreement is considered amended to reflect the approval of the succession the day following the last day the franchisor can serve notice under Subsection (3)(a).
- (4) The notice of the franchisor provided in Subsection (3) shall:
  - (a) state the specific grounds for the refusal to approve the succession; and
  - (b) that discontinuance of the franchise agreement shall take effect not less than 180 days after the date the notice of refusal is served unless the proposed successor files an application for hearing under Subsection (6).
- (5)
  - (a) This section does not prevent a franchisee from designating a person as the successor by written instrument filed with the franchisor.
  - (b) If a franchisee files an instrument under Subsection (5)(a), the instrument governs the succession rights to the management and operation of the dealership subject to the designated successor satisfying the franchisor's qualification requirements as described in this section.
- (6)
  - (a) If a franchisor serves a notice of refusal to a designated successor pursuant to Subsection (3), the designated successor may, within the 180-day period provided in Subsection (4), file with the advisory board an application for a hearing and a determination by the executive director regarding whether good cause exists for the refusal.
  - (b) If application for a hearing is timely filed, the franchisor shall continue to honor the franchise agreement until after:
    - (i) the requested hearing has been concluded;
    - (ii) a decision is rendered by the executive director; and
    - (iii) the applicable appeal period has expired following a decision by the executive director.

Amended by Chapter 249, 2005 General Session

**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 be denied only if:
  - (a) the franchisee's claim is based on a nonwarranty repair;
  - (b) the franchisee lacks material documentation for the claim;
  - (c) the franchisee fails to comply materially with specific substantive terms and conditions of the franchisor's warranty compensation program; or
  - (d) the franchisor has a bona fide belief based on competent evidence that the franchisee's claim is intentionally false, fraudulent, or misrepresented.
- (9)
  - (a) Any charge backs for warranty parts or service compensation and service incentives shall only be enforceable for the six-month period immediately following the date the payment for warranty reimbursement was made by the franchisor.
  - (b) Except as provided in Subsection (9)(e), 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 six months immediately following the sooner of:
    - (i) the date when the sales incentive program terminates; or
    - (ii) the date when payment for the sales compensation or sales incentive was made by the franchisor to the franchisee.
  - (c)
    - (i) Upon an audit, the franchisor shall provide the franchisee automated or written notice explaining the amount of and reason for a charge back.

- (ii) A franchisee may respond in writing within 30 days after the notice under Subsection (9)(c)
  - (i) to:
    - (A) explain a deficiency; or
    - (B) provide materials or information to correct and cure compliance with a provision that is a basis for a charge back.
  - (d) A charge back:
    - (i) may not be based on a nonmaterial error that is clerical in nature; and
    - (ii)
      - (A) shall be based on one or more specific instances of material noncompliance with the franchisor's warranty compensation program or sales incentive program; and
      - (B) may not be extrapolated from a sampling of warranty claims or sales incentive claims.
  - (e) The time limitations of this Subsection (9) do not preclude charge backs for any fraudulent claim that was previously paid.

Amended by Chapter 348, 2016 General Session

**13-14-205 Liability for damages to motor vehicles in transit -- Disclosure required.**

- (1)
  - (a) A franchisee is solely liable for damage to a new motor vehicle after delivery by and acceptance from the carrier.
  - (b) A delivery receipt or bill of lading, or similar document, signed by a franchisee is evidence of a franchisee's acceptance of a new motor vehicle.
- (2) A franchisor is liable for all damage to a motor vehicle before delivery to and acceptance by the franchisee, including that time in which the vehicle is in the control of a carrier or transporter.
- (3)
  - (a) A franchisor shall disclose to the franchisee any repairs made prior to delivery, except a recreational vehicle franchisor shall disclose to a recreational vehicle franchisee any repair made to the vehicle prior to delivery only if:
    - (i) the cost of the repair exceeds 3% of the manufacturer's wholesale price, as measured by retail repair costs; or
    - (ii) the repair is to the exterior sidewalls or roof of the vehicle, and repairs total over \$500.
  - (b) Replacement of a recreational vehicle's glass, tires, wheels, audio equipment, in-dash components, instrument panels, appliances, furniture, and components other than built-in cabinetry contained in the vehicle's living quarters, is not considered a repair under this subsection if the component replaced has been replaced with original manufacturers parts and materials.
- (4) Notwithstanding Subsections (1), (2), and (3), the franchisee is liable for damage to a new motor vehicle after delivery to the carrier or transporter if the franchisee selected:
  - (a) the method and mode of transportation; and
  - (b) the carrier or transporter.

Amended by Chapter 162, 1997 General Session

**13-14-206 Site-control agreements.**

- (1) A site-control agreement entered into on or after May 11, 2010:
  - (a) may be voluntarily terminated by a franchisee, subject to Subsection (2)(a); and
  - (b) terminates immediately upon:

- (i) a franchisor's sale, assignment, or other transfer of the right to manufacture or distribute the line-make of vehicles covered by the franchisee's franchise;
  - (ii) a franchisor's ceasing to manufacture or distribute the line-make of vehicles covered by the franchisee's franchise;
  - (iii) a franchisor's termination of a franchisee's franchise without cause and against the franchisee's will; or
  - (iv) the failure of the franchisor or its affiliate to exercise a right of first refusal to purchase the assets or ownership of the franchisee's business when given the opportunity to do so under the franchise or other agreement, subject to the repayment requirements of Subsection (2) if the right of first refusal arises because of the voluntary action of the franchisee.
- (2)
- (a) If a franchisee voluntarily terminates a site-control agreement after the franchisor has paid and the franchisee or other recipient has accepted additional specified cash consideration, the site-control agreement remains valid only until the franchisee or other recipient satisfies the repayment terms specified in Subsection (2)(b).
  - (b)
    - (i) If the franchisor's additional specified cash consideration was used for the construction of a building or improvement on the property that is the subject of the site-control agreement, the amount of the repayment under Subsection (2)(a):
      - (A) is based on any repayment terms specified in the site-control agreement, if the parties to the site-control agreement have willingly agreed to the terms; and
      - (B) may not exceed the market value of the portion of the building or improvement constructed with the additional specified cash consideration paid by the franchisor, after allowing for depreciation based on a market-based depreciation schedule, as determined by an independent appraiser at the request of the franchisee or other recipient.
    - (ii) If the franchisor's additional specified cash consideration was not used for construction of a building or improvement on the property that is the subject of the site-control agreement, the amount of the repayment under Subsection (2)(a) is an equitable portion of the cash consideration, as determined under any terms specified in the site-control agreement for the equitable repayment following a franchisee's voluntary termination of the agreement.
  - (c) Immediately upon the repayment under Subsection (2)(b):
    - (i) the site-control agreement is terminated; and
    - (ii) the franchisor or other party that is the beneficiary under the site-control agreement shall prepare and deliver to the franchisee a recordable notice of termination of:
      - (A) the site-control agreement; and
      - (B) any lien or encumbrance arising because of the site-control agreement and previously recorded against the property that is the subject of the site-control agreement.

Enacted by Chapter 33, 2010 General Session