Chapter 14
New Automobile Franchise Act

Part 1
General Administration

13-14-101 Title -- Legislative purpose.

(1) This chapter shall be cited as the "New Automobile Franchise Act."

(2) The Legislature finds that:

(a) The distribution and sales of new motor vehicles through franchise arrangements in the state vitally affects the general economy of the state, the public interest, and the public welfare. A substantial inequality of bargaining power between motor vehicle franchisors and motor vehicle franchisees enables a franchisor:

(i) to compel a franchisee to execute agreements that contain terms and conditions that a franchisee generally would not be agreed to absent the compulsion and duress that arise out of the inequality of bargaining power; and

(ii) in some cases to terminate a franchise without good cause, or to force a franchisee out of business by the use of unfair practices.

(b) Termination of franchises, without good cause or by unfair means:

(i) diminishes competition and, as a result, leads to higher retail prices and fewer purchase options;

(ii) adversely affects communities that depend on a franchisee to make available motor vehicles for sale or lease and to provide warranty work and other services related to vehicles; and

(iii) undercuts expectations of consumers concerning the availability of future services including warranty work from the franchisee.

(c) To promote the public welfare and in the exercise of the state's police powers, it is necessary to establish statutory guidelines regulating the relationship between franchisors and franchisees in the motor vehicle industry.

Enacted by Chapter 277, 1996 General Session

13-14-102 Definitions.

As used in this chapter:

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

(2) "Affected municipality" means an incorporated city or town:

(a) that is located in the notice area; and

(b)

(i) within which a franchisor is proposing a new or relocated dealership that is within the relevant market area of an existing dealership of the same line-make owned by another franchisee; or

(ii) within which an existing dealership is located and a franchisor is proposing a new or relocated dealership within the relevant market area of that existing dealership of the same line-make.

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

(4) "Aftermarket product" means any product or service not included in the franchisor's suggested retail price of the new motor vehicle, as that price appears on the label required by 15 U.S.C. Sec. 1232(f).
(5) "Dealership" means a site or location in this state:
(a) at which a franchisee conducts the business of a new motor vehicle dealer; and
(b) that is identified as a new motor vehicle dealer's principal place of business for licensing purposes under Section 41-3-204.
(6) "Department" means the Department of Commerce.
(7) "Executive director" means the executive director of the Department of Commerce.
(8)
(a) "Franchise" or "franchise agreement" means a written agreement, or in the absence of a written agreement, then a course of dealing or a practice for a definite or indefinite period, in which:
(i) a person grants to another person a license to use a trade name, trademark, service mark, or related characteristic; and
(ii) a community of interest exists in the marketing of new motor vehicles, new motor vehicle parts, and services related to the sale or lease of new motor vehicles at wholesale or retail.
(b) "Franchise" or "franchise agreement" includes a sales and service agreement.
(9) "Franchisee" means a person with whom a franchisor has agreed or permitted, in writing or in practice, to purchase, sell, or offer for sale new motor vehicles manufactured, produced, represented, or distributed by the franchisor.
(10) "Franchisor" means a person who has, in writing or in practice, agreed with or permits a franchisee to purchase, sell, or offer for sale new motor vehicles manufactured, produced, assembled, represented, or distributed by the franchisor, and includes:
(a) the manufacturer, producer, assembler, or distributor of the new motor vehicles;
(b) an intermediate distributor; and
(c) an agent, officer, or field or area representative of the franchisor.
(11) "Lead" means the referral by a franchisor to a franchisee of a potential customer whose contact information was obtained from a franchisor's program, process, or system designed to generate referrals for the purchase or lease of a new motor vehicle, or for service work related to the franchisor's vehicles.
(12) "Line-make" means:
(a) for other than a recreational vehicle, the motor vehicles that are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the franchisor; or
(b) for a recreational vehicle, a specific series of recreational vehicle product that:
(i) is identified by a common series trade name or trademark;
(ii) is targeted to a particular market segment, as determined by decor, features, equipment, size, weight, and price range;
(iii) has a length and floor plan that distinguish the recreational vehicle from other recreational vehicles with substantially the same decor, features, equipment, size, weight, and price;
(iv) belongs to a single, distinct classification of recreational vehicle product type having a substantial degree of commonality in the construction of the chassis, frame, and body; and
(v) a franchise agreement authorizes a dealer to sell.
(13) "Mile" means 5,280 feet.
(14) "Motor home" means a self-propelled vehicle, primarily designed as a temporary dwelling for travel, recreational, or vacation use.
(15)

(a) "Motor vehicle" means:
(i) a travel trailer;
(ii) except as provided in Subsection (15)(b), a motor vehicle as defined in Section 41-3-102;
(iii) a semitrailer as defined in Section 41-1a-102;
(iv) a trailer as defined in Section 41-1a-102; and
(v) a recreational vehicle.
(b) "Motor vehicle" does not include:
(i) a motorcycle as defined in Section 41-1a-102;
(ii) an off-highway vehicle as defined in Section 41-3-102; and
(iii) a small trailer as defined in Section 41-3-102.
(16) "New motor vehicle" means a motor vehicle as defined in Subsection (15) that has never been titled or registered and has been driven less than 7,500 miles, unless the motor vehicle is a trailer, travel trailer, or semitrailer, in which case the mileage limit does not apply.
(17) "New motor vehicle dealer" is a person who is licensed under Subsection 41-3-202(1)(a) to sell new motor vehicles.
(18) "Notice" or "notify" includes both traditional written communications and all reliable forms of electronic communication unless expressly prohibited by statute or rule.
(19) "Notice area" means the geographic area that is:
(a) within a radius of at least six miles and no more than 10 miles from the site of an existing dealership; and
(b) located within a county with a population of at least 225,000.
(20) "Primary market area" means:
(a) for an existing dealership, the geographic area established by the franchisor that the existing dealership is intended to serve; or
(b) for a new or relocated dealership, the geographic area proposed by the franchisor that the new or relocated dealership is intended to serve.
(21)
(a) "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either self-propelled or pulled by another vehicle.
(b) "Recreational vehicle" includes:
(i) a travel trailer;
(ii) a camping trailer;
(iii) a motor home;
(iv) a fifth wheel trailer; and
(v) a van.
(22)
(a) "Relevant market area," except with respect to recreational vehicles, means:
(i) as applied to an existing dealership that is located in a county with a population of less than 225,000:
(A) the county in which the existing dealership is located; and
(B) the area within a 15-mile radius of the existing dealership; or
(ii) as applied to an existing dealership that is located in a county with a population of 225,000 or more, the area within a 10-mile radius of the existing dealership.
(b) "Relevant market area," with respect to recreational vehicles, means:
(i) the county in which the dealership is to be established or relocated; and
(ii) the area within a 35-mile radius from the site of the existing dealership.

(23) "Sale, transfer, or assignment" means any disposition of a franchise or an interest in a franchise, with or without consideration, including a bequest, inheritance, gift, exchange, lease, or license.
(24) "Serve" or "served," unless expressly indicated otherwise by statute or rule, includes any reliable form of communication.
(25) "Site-control agreement" means an agreement, however denominated and regardless of the agreement's form or of the parties to the agreement, that has the effect of:
(a) controlling in any way the use and development of the premises upon which a franchisee's business operations are located;
(b) requiring a franchisee to establish or maintain an exclusive dealership facility on the premises upon which the franchisee's business operations are located; or
(c) restricting the ability of the franchisee or, if the franchisee leases the dealership premises, the franchisee's lessor to transfer, sell, lease, develop, redevelop, or change the use of some or all of the dealership premises, whether by sublease, lease, collateral pledge of lease, right of first refusal to purchase or lease, option to purchase or lease, or any similar arrangement.
(26) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle without motive power, designed as a temporary dwelling for travel, recreational, or vacation use that does not require a special highway movement permit when drawn by a self-propelled motor vehicle.
(27) "Written," "write," "in writing," or other variations of those terms shall include all reliable forms of electronic communication.

Amended by Chapter 268, 2015 General Session

13-14-103 Utah Motor Vehicle Franchise Advisory Board -- Creation -- Appointment of members -- Alternate members -- Chair -- Quorum -- Conflict of interest.
(1) There is created within the department the Utah Motor Vehicle Franchise Advisory Board that consists of:
(a) the executive director or the executive director's designee; and
(b) 11 members appointed by the executive director, with the concurrence of the governor as follows:
(i) one recreational motor vehicle franchisee;
(ii) three new motor vehicle franchisees from different congressional districts in the state;
(iii) three members representing motor vehicle franchisors registered by the department pursuant to Section 13-14-105;
(iv) three members of the general public, none of whom shall be related to any franchisee; and
(v) one representative of the Utah League of Cities and Towns.
(2)
(a) The executive director shall appoint, with the concurrence of the governor, five alternate members, with one alternate from each of the designations described in Subsections (1)(b)(i) through (v), except that the new motor vehicle franchisee alternate for the designation under Subsection (1)(b)(ii) may be from any congressional district.
(b) An alternate shall take the place of a regular advisory board member from the same designation at a meeting of the advisory board where that regular advisory board member is absent or otherwise disqualified from participating in the advisory board meeting.
(3)
(a)

(i) Members of the advisory board appointed under Subsections (1)(b) and (2) are appointed for a term of four years.
(ii) No specific term applies to the executive director or the executive director's designee.
(b) The executive director may adjust the term of members who were appointed to the advisory board prior to July 1, 2001, by extending the unexpired term of a member for up to two additional years in order to insure that approximately half of the members are appointed every two years.
(c) In the event of a vacancy on the advisory board of a member appointed under Subsection (1)(b) or (2), the executive director with the concurrence of the governor, shall appoint an individual to complete the unexpired term of the member whose office is vacant.
(d) A member may not be appointed to more than two consecutive terms.
(4)
(a) The executive director or the executive director's designee is the chair of the advisory board.
(b) The department shall keep a record of all hearings, proceedings, transactions, communications, and recommendations of the advisory board.
(5)
(a) Four or more members of the advisory board constitute a quorum for the transaction of business.
(b) The action of a majority of a quorum present is considered the action of the advisory board.
(6)
(a) A member of the advisory board may not participate as a board member in a proceeding or hearing:
(i) involving the member's licensed business or employer; or
(ii) when a member, a member's business or family, or employer has a pecuniary interest in the outcome or other conflict of interest concerning an issue before the advisory board.
(b) If a member of the advisory board is disqualified under Subsection (6)(a), the executive director shall select the appropriate alternate member to act on the issue before the advisory board as provided in Subsection (2).
(7) Except for the executive director or the executive director's designee, an individual may not be appointed or serve on the advisory board while holding any other elective or appointive state or federal office.
(8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
(9) The department shall provide necessary staff support to the advisory board.

Amended by Chapter 268, 2015 General Session

13-14-104 Powers and duties of the advisory board and the executive director.
(1)
(a) Except as provided in Subsection 13-14-106(3), the advisory board shall make recommendations to the executive director on the administration and enforcement of this chapter, including adjudicative and rulemaking proceedings.
(b) The executive director shall:
(i) consider the advisory board's recommendations; and
(ii) issue any rules or final decisions by the department.

(2) The executive director, in consultation with the advisory board, shall make rules for the administration of this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(3)
(a) An adjudicative proceeding under this chapter shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
(b) In an adjudicative proceeding under this chapter, any order issued by the executive director:
(i) shall comply with Section 63G-4-208, whether the proceeding is a formal or an informal adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act; and
(ii) if the order modifies or rejects a finding of fact in a recommendation from the advisory board, shall be made on the basis of information learned from the executive director's:
(A) personal attendance at the hearing; or
(B) review of the record developed at the hearing.
(4) The executive director's decision under this section shall be made available to the public.

Amended by Chapter 268, 2015 General Session

13-14-105 Registration -- Fees.
(1) A franchisee or franchisor doing business in this state shall:
(a) annually register or renew its registration with the department in a manner established by the department; and
(b) pay an annual registration fee in an amount determined by the department in accordance with Sections 13-1-2 and 63J-1-504.
(2) The department shall register or renew the registration of a franchisee or franchisor if the franchisee or franchisor complies with this chapter and rules made by the department under this chapter.
(3) A franchisee or franchisor registered under this section shall comply with this chapter and any rules made by the department under this chapter including any amendments to this chapter or the rules made after a franchisee or franchisor enter into a franchise agreement.
(4) The fee imposed under Subsection (1)(b) shall be collected by the department and deposited into the Commerce Service Account created by Section 13-1-2.
(5) Notwithstanding Subsection (1), an agent, officer, or field or area representative of a franchisor does not need to be registered under this section if the franchisor is registered under this section.

Amended by Chapter 278, 2010 General Session

13-14-106 Administrative proceedings commenced by the agency.
(1) Except as provided in Subsection (3), after a hearing and after receipt of the advisory board's recommendation, if the executive director finds that a person has violated this chapter or any rule made under this chapter, the executive director may:
(a) issue a cease and desist order; and
(b) assess an administrative fine.
(2)
(a) In determining the amount and appropriateness of an administrative fine under Subsection (1), the executive director shall consider:
(i) the gravity of the violation;
(ii) any history of previous violations; and

(iii) any attempt made by the person to retaliate against another person for seeking relief under this chapter or other federal or state law relating to the motor vehicle industry.

(b) In addition to any other action permitted under Subsection (1), the department may file an action with a court seeking to enforce the executive director's order and pursue the executive director's assessment of a fine in an amount not to exceed $5,000 for each day a person violates an order of the executive director.

(3)

(a) In addition to the grounds for issuing an order on an emergency basis listed in Subsection 63G-4-502(1), the executive director may issue an order on an emergency basis if the executive director determines that irreparable damage is likely to occur if immediate action is not taken.

(b) In issuing an emergency order under Subsection (3)(a) the executive director shall comply with the requirements of Subsections 63G-4-502(2) and (3).

Amended by Chapter 382, 2008 General Session

13-14-107 Administrative proceedings -- Request for agency action.

(1)

(a) A person may commence an adjudicative proceeding in accordance with this chapter and Title 63G, Chapter 4, Administrative Procedures Act to:

(i) remedy a violation of this chapter;

(ii) obtain approval of an act regulated by this chapter; or

(iii) obtain any determination that this chapter specifically authorizes that person to request.

(b) A person shall commence an adjudicative proceeding by filing a request for agency action in accordance with Section 63G-4-201.

(2) After receipt of the advisory board's recommendation, the executive director shall apportion in a fair and equitable manner between the parties any costs of the adjudicative proceeding, including reasonable attorney fees.

Amended by Chapter 382, 2008 General Session

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

Part 3
Restrictions on Termination, Relocation, and Establishment of Franchises

13-14-301 Termination or noncontinuance of franchise.

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

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

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

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

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

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

(b) upon a mutual written agreement of the franchisor and franchisee.

(3)

(a) At any time before the effective date of termination or noncontinuance of the franchise, the franchisee may apply to the advisory board for a hearing on the merits, and following notice to all parties concerned, the hearing shall be promptly held as provided in Section 13-14-304.
(b) A termination or noncontinuance subject to a hearing under Subsection (3)(a) may not become effective until:
(i) final determination of the issue by the executive director; and
(ii) the applicable appeal period has lapsed.
(4) A franchisee may voluntarily terminate its franchise if the franchisee provides written notice to the franchisor at least 30 days prior to the termination.

Amended by Chapter 318, 2009 General Session

13-14-302 Issuance of additional franchises -- Relocation of existing franchisees.
(1) Except as provided in Subsection (6), a franchisor shall provide the notice and documentation required under Subsection (2) if the franchisor seeks to:
(a) enter into a franchise agreement establishing a motor vehicle dealership within a relevant market area where the same line-make is represented by another franchisee; or
(b) relocate an existing motor vehicle franchisee.
(2) In determining whether a new or relocated dealership is within a relevant market area where the same line-make is represented by an existing dealership, the relevant market area is measured from the closest property boundary line of the existing dealership to the closest property boundary line of the new or relocated dealership.
(3)
(a) If a franchisor seeks to take an action listed in Subsection (1), before taking the action, the franchisor shall, in writing, notify the advisory board, the clerk of each affected municipality, and each franchisee in that line-make in the relevant market area.
(b) The notice required by Subsection (3)(a) shall:
(i) specify the intended action described under Subsection (1);
(ii) specify the good cause on which it intends to rely for the action; and
(iii) be delivered by registered or certified mail or by any form of reliable delivery through which receipt is verifiable.
(4)
(a) Except as provided in Subsection (4)(c), the franchisor shall provide to the advisory board, each affected municipality, and each franchisee in that line-make in the relevant market area the following documents relating to the notice described under Subsection (3):
(i)
(A) any aggregate economic data and all existing reports, analyses, or opinions based on the aggregate economic data that were relied on by the franchisor in reaching the decision to proceed with the action described in the notice; and
(B) the aggregate economic data under Subsection (4)(a)(i)(A) includes:
(I) motor vehicle registration data;
(II) market penetration data; and
(III) demographic data;
(ii) written documentation that the franchisor has in the francisor's possession that it intends to rely on in establishing good cause under Section 13-14-306 relating to the notice;
(iii) a statement that describes in reasonable detail how the establishment of a new franchisee or the relocation of an existing franchisee will affect the amount of business transacted

by other franchisees of the same line-make in the relevant market area, as compared to business available to the franchisees; and

(iv) a statement that describes in reasonable detail how the establishment of a new franchisee or the relocation of an existing franchisee will be beneficial or injurious to the public welfare or public interest.

(b) The franchisor shall provide the documents described under Subsection (4)(a) with the notice required under Subsection (3).

(c) The franchisor is not required to disclose any documents under Subsection (4)(a) if:

(i) the documents would be privileged under the Utah Rules of Evidence;

(ii) the documents contain confidential proprietary information;

(iii) the documents are subject to federal or state privacy laws;

(iv) the documents are correspondence between the franchisor and existing franchisees in that line-make in the relevant market area; or

(v) the franchisor reasonably believes that disclosure of the documents would violate:

(A) the privacy of another franchisee; or

(B) Section 13-14-201.

(5)

(a) Within 30 days of receiving notice required by Subsection (3), any franchisee that is required to receive notice under Subsection (3) may protest to the advisory board the establishment or relocation of the dealership.

(b) No later than 10 days after the day on which a protest is filed, the department shall inform the franchisor that:

(i) a timely protest has been filed;

(ii) a hearing is required;

(iii) the franchisor may not establish or relocate the proposed dealership until the advisory board has held a hearing; and

(iv) the franchisor may not establish or relocate a proposed dealership if the executive director determines that there is not good cause for permitting the establishment or relocation of the dealership.

(6) If multiple protests are filed under Subsection (5), hearings may be consolidated to expedite the disposition of the issue.

(7) Subsections (1) through (6) do not apply to a relocation of an existing or successor dealer to a location that is:

(a) within the same county and less than two miles from the existing location of the existing or successor franchisee's dealership; or

(b) further away from a dealership of a franchisee of the same line-make.

(8) For purposes of this section:

(a) relocation of an existing franchisee's dealership in excess of two miles from the dealership's existing location is considered the establishment of an additional franchise in the line-make of the relocating franchise;

(b) the reopening in a relevant market area of a dealership that has not been in operation for one year or more is considered the establishment of an additional motor vehicle dealership; and

(c)

(i) except as provided in Subsection (8)(c)(ii), the establishment of a temporary additional place of business by a recreational vehicle franchisee is considered the establishment of an additional motor vehicle dealership; and

(ii) the establishment of a temporary additional place of business by a recreational vehicle franchisee is not considered the establishment of an additional motor vehicle dealership

if the recreational vehicle franchisee is participating in a trade show where three or more recreational vehicle dealers are participating.

Amended by Chapter 268, 2015 General Session

13-14-302.5 Application of new franchise process with respect to certain terminated franchises.

(1) As used in this section:
(a) "Covered franchisee":
(i) means a person who was a franchisee under a pre-bankruptcy franchise; and
(ii) is a "covered dealership," as that term is defined in the federal franchise arbitration law.
(b) "Covered franchisor":
(i) means a person who was a franchisor under a pre-bankruptcy franchise; and
(ii) is a "covered manufacturer," as that term is defined in the federal franchise arbitration law.
(c) "Federal franchise arbitration law" means Section 747 of the Consolidated Appropriations Act of 2010, Pub. L. No. 111-117.
(d) "New franchisor":
(i) means a person who is a franchisor of the same line-make as the franchisor under a pre-bankruptcy franchise that has become a terminated franchise; and
(ii) is a "covered manufacturer," as that term is defined in the federal franchise arbitration law.
(e) "Pre-bankruptcy franchise" means a franchise in effect as of October 3, 2008.
(f) "Reinstated franchise" means:
(i) a terminated franchise that a reinstatement order determines should be reinstated, renewed, continued, assigned, or assumed; or
(ii) a franchise that a reinstatement order otherwise determines should be reestablished in or added to the dealer network of a new franchisor in the geographic area where the covered franchisee was located before October 3, 2008.
(g) "Reinstated franchisee" means a covered franchisee:
(i) whose franchise became a terminated franchise with less than 90 days' notice prior to termination; and
(ii) that becomes entitled to a reinstated franchise under a reinstatement order.
(h) "Reinstatement order" means an arbitrator's written determination:
(i) in an arbitration proceeding held under the federal franchise arbitration law; and
(ii)
(A) that a terminated franchise should be reinstated, renewed, continued, assigned, or assumed; or
(B) that a covered franchisee should otherwise be reestablished as a franchisee in or added to the dealer network of a new franchisor in the geographic area where the covered franchisee was located before October 3, 2008.
(i) "Terminated franchise" means a covered franchisee's pre-bankruptcy franchise that was terminated or not continued or renewed as a result of a bankruptcy proceeding involving a covered franchisor as the bankruptcy debtor.
(2) The process under Sections 13-14-302, 13-14-304, and 13-14-306 for the issuance of a franchise, including Subsections 13-14-302(5) and (6) and Section 13-14-304 relating to a protest by another franchisee in the line-make in the relevant market area against the establishment or relocation of a franchise, does not apply to a reinstated franchise or reinstated franchisee.

Amended by Chapter 268, 2015 General Session

13-14-303 Effect of terminating a franchise.

If under Section 13-14-301 the executive director permits a franchisor to terminate or not continue a franchise and prohibits the franchisor from entering into a franchise for the sale of new motor vehicles of a line-make in a relevant market area, the franchisor may not enter into a franchise for the sale of new motor vehicles of that line-make in the specified relevant market area unless the executive director determines, after a recommendation by the advisory board, that there has been a change of circumstances so that the relevant market area at the time of the establishment of the new franchise agreement can reasonably be expected to support the new franchisee.

Amended by Chapter 249, 2005 General Session

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

(1)
- (a) Within 10 days after the day on which the advisory board receives an application from a franchisee under Subsection 13-14-301(3) challenging a franchisor's right to terminate or not continue a franchise, or an application under Section 13-14-302 challenging the establishment or relocation of a franchise, the executive director shall:
  - (i) enter an order designating the time and place for the hearing; and
  - (ii) send a copy of the order by certified or registered mail, with return receipt requested, or by any form of reliable delivery through which receipt is verifiable to:
    - (A) the applicant;
    - (B) the franchisor; and
    - (C) if the application involves the establishment of a new franchise or the relocation of an existing dealership, each affected municipality and to each franchisee in the relevant market area engaged in the business of offering to sell or lease the same line-make.
- (b) A copy of an order mailed under Subsection (1)(a) shall be addressed to the franchisee at the place where the franchisee's business is conducted.

(2) An affected municipality and any other person who can establish an interest in the application may intervene as a party to the hearing, whether or not that person receives notice.

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

(4)
- (a)
  - (i) Any hearing ordered under Subsection (1) shall be conducted no later than 90 days after the day on which the application for hearing is filed.
  - (ii) A final decision on the challenge shall be made by the executive director no later than 20 days after the day on which the hearing ends.
- (b) Failure to comply with the time requirements of Subsection (4)(a) is considered a determination that the franchisor acted with good cause or, in the case of a protest of a proposed establishment or relocation of a dealer, that good cause exists for permitting the proposed additional or relocated new motor vehicle dealer, unless:
  - (i) the delay is caused by acts of the franchisor or the additional or relocating franchisee; or
  - (ii) the delay is waived by the parties.

(5) The franchisor has the burden of proof to establish by a preponderance of the evidence that under the provisions of this chapter it should be granted permission to:
(a) terminate or not continue the franchise;
(b) enter into a franchise agreement establishing an additional franchise; or
(c) relocate the dealership of an existing franchisee.
(6) Any party to the hearing may appeal the executive director's final decision in accordance with Title 63G, Chapter 4, Administrative Procedures Act, including the franchisor, an existing franchisee of the same line-make whose relevant market area includes the site of the proposed dealership, or an affected municipality.

Amended by Chapter 268, 2015 General Session

13-14-305 Evidence to be considered in determining cause to terminate or discontinue.
(1) In determining whether a franchisor has established good cause for terminating or not continuing a franchise agreement, the advisory board and the executive director shall consider:
(a) the amount of business transacted by the franchisee, as compared to business available to the franchisee;
(b) the investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise agreement;
(c) the permanency of the investment;
(d) whether it is injurious or beneficial to the public welfare or public interest for the business of the franchisee to be disrupted;
(e) whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumer for the new motor vehicles handled by the franchisee and has been and is rendering adequate services to the public;
(f) whether the franchisee refuses to honor warranties of the franchisor under which the warranty service work is to be performed pursuant to the franchise agreement, if the franchisor reimburses the franchisee for the warranty service work;
(g) failure by the franchisee to substantially comply with those requirements of the franchise agreement that are determined by the advisory board or the executive director to be:
(i) reasonable;
(ii) material; and
(iii) not in violation of this chapter;
(h) evidence of bad faith by the franchisee in complying with those terms of the franchise agreement that are determined by the advisory board or the executive director to be:
(i) reasonable;
(ii) material; and
(iii) not in violation of this chapter;
(i) prior misrepresentation by the franchisee in applying for the franchise;
(j) transfer of any ownership or interest in the franchise without first obtaining approval from the franchisor or the executive director after receipt of the advisory board's recommendation; and
(k) any other factor the advisory board or the executive director consider relevant.
(2) Notwithstanding any franchise agreement, the following do not constitute good cause, as used in this chapter for the termination or noncontinuation of a franchise:
(a) the sole fact that the franchisor desires greater market penetration or more sales or leases of new motor vehicles;

(b) the change of ownership of the franchisee's dealership or the change of executive management of the franchisee's dealership unless the franchisor proves that the change of ownership or executive management will be substantially detrimental to the distribution of the franchisor's motor vehicles; or
(c) the fact that the franchisee has justifiably refused or declined to participate in any conduct covered by Section 13-14-201.
(3) For purposes of Subsection (2), "substantially detrimental" includes the failure of any proposed transferee to meet the objective criteria applied by the franchisor in qualifying franchisees at the time of application.

Amended by Chapter 249, 2005 General Session

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

In determining whether a franchisor has established good cause for relocating an existing franchisee or establishing a new franchised dealership for the same line-make in a given relevant market area, the advisory board and the executive director shall consider:
(1) the amount of business transacted by other franchisees of the same line-make in that relevant market area, as compared to business available to the franchisees;
(2) the investment necessarily made and obligations incurred by other franchisees of the same line-make in that relevant market area in the performance of their part of their franchisee agreements;
(3) the permanency of the existing and proposed investment;
(4) whether it is injurious or beneficial to the public welfare or public interest for an additional franchise to be established, including:
(a) the impact on any affected municipality;
(b) population growth trends in any affected municipality;
(c) the number of dealerships in the primary market area of the new or relocated dealership compared to the number of dealerships in each primary market area adjacent to the new or relocated dealership's primary market area; and
(d) how the new or relocated dealership would impact the distance and time that an individual in the new or relocated dealership's primary market area would have to travel to access a dealership in the same line-make as the new or relocated dealership.
(5) whether the franchisees of the same line-make in that relevant market area are providing adequate service to consumers for the motor vehicles of the line-make, which shall include the adequacy of:
(a) the motor vehicle sale and service facilities;
(b) equipment;
(c) supply of vehicle parts; and
(d) qualified service personnel; and
(6) whether the relocation or establishment would cause any material negative economic effect on a dealer of the same line-make in the relevant market area.

Amended by Chapter 268, 2015 General Session

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

(1) Upon the termination or noncontinuation of a franchise or a line-make, the franchisor shall pay the franchisee:
(a) an amount calculated by:
(i) including the franchisee's cost of unsold motor vehicles that:
(A) are in the franchisee's inventory;
(B) were acquired:
(I) from the franchisor; or
(II) in the ordinary course of business from another franchisee of the same line-make;
(C) are new, undamaged, and, except for franchisor accessories, unaltered; or
(D) represent the current model year at the time of termination or noncontinuation, or the two model years immediately before the time of termination or noncontinuation;
(ii) reducing the amount in Subsection (1)(a)(i) by a prorated 1% for each 1,000 miles over 500 miles registered on a new vehicle's odometer;
(iii) adding any charges made by the franchisor, for distribution, delivery, or taxes;
(iv) adding the franchisee's cost of any franchisor accessories added on the vehicle, except only those recreational vehicle accessories that are listed in the franchisor's wholesale product literature as options for that vehicle shall be repurchased; and
(v) subtracting all allowances paid or credited to the franchisee by the franchisor;
(b) the franchisee's cost of new and undamaged motor vehicles in the franchisee's inventory of demonstrator vehicles, reduced by a prorated 1% for each 1000 miles over 500 miles registered on the demonstrator vehicle's odometer, except recreational vehicles whose cost shall be reduced by 2% for each 1,000 miles registered on the odometer of demonstrator self-propelled recreational vehicles, exclusive of miles incurred in delivery of the vehicle, and the cost of demonstrator nonself-propelled recreational vehicles shall be reduced by 10% of the franchisee's vehicle cost:
(i) plus any charges made by the franchisor for distribution, delivery, or taxes;
(ii) plus the franchisee's cost of any accessories added on the vehicles, except only those recreational vehicle accessories that are listed in the franchisor's wholesale product literature as options for that vehicle shall be repurchased; and
(iii) less all allowances paid or credited to the franchisee by the franchisor;
(c) the cost of all new, undamaged, and unsold supplies, parts, and accessories as set forth in the franchisor's catalog at the time of termination or noncontinuation for the supplies, parts, and accessories, less all allowances paid or credited to the franchisee by the franchisor;
(d) the fair market value, but not less than the franchisee's depreciated acquisition cost of each undamaged sign owned by the franchisee that bears a common name, trade name, or trademark of the franchisor if acquisition of the sign was recommended or required by the franchisor. If a recreational vehicle franchisee has a sign with multiple manufacturers listed, the franchisor is only responsible for its pro rata portion of the sign;
(e) the fair market value, but not less than the franchisee's depreciated acquisition cost, of all special tools, equipment, and furnishings acquired from the franchisor or sources approved by the franchisor that were required by the franchisor and are in good and usable condition;
(f) the cost of transporting, handling, packing, and loading motor vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings;
(g) subject to Subsection (5), reasonable compensation to the franchisee for any cost incurred pertaining to the unexpired term of a lease agreement for the dealership's existing location;
(h) the negotiated fair market value of the dealership premises, based on the fair market value of the real property, if the dealer opts to sell the dealership premises; and

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

(2) Subsections (1)(g), (h), and (i) do not apply if a franchise is terminated:

(a) by the franchisor for cause as defined in Subsections 13-14-301(1)(b) and (2)(a);

(b) upon mutual written agreement of the franchisor and franchisee as provided in Subsection 13-14-301(2)(b); or

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

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

(a) has clear title to the property; and

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

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

(5) Subsection (1)(g) does not relieve the franchisee or its lessor from an obligation under their lease agreement to mitigate damages.

(6)

(a) This section does not apply to a franchisee's voluntary termination or noncontinuation of its franchise that occurs as a result of the franchisee's sale of its dealership business entity or substantially all of the assets of that entity to a third party if the franchisor contemporaneously grants a franchise to the third party on terms and conditions that are comparable to those of the terminating or noncontinuing franchise.

(b) Subsection (6)(a) may not be construed to impair a contractual right of a terminating or noncontinuing franchisee under a franchise or related agreement with a franchisor or its affiliate, including a right to return unsold parts.

(7) This section does not apply to a termination, cancellation, or nonrenewal of:

(a) a recreational vehicle franchise; or

(b) a line-make by a recreational vehicle franchisor.

Amended by Chapter 33, 2010 General Session

13-14-307.5 Termination, cancellation, or nonrenewal of a recreational vehicle franchise agreement.

(1) This section applies only to a recreational vehicle franchisee's termination, cancellation, or nonrenewal of:

(a) a recreational vehicle franchise; or

(b) a recreational vehicle line-make.

(2)

(a) A recreational vehicle franchisee may, at any time and with or without good cause, terminate, cancel, or not renew its recreational vehicle franchise agreement or a recreational vehicle line-make by giving 30 days' prior written notice to the recreational vehicle franchisor.

(b) A franchisee has the burden of showing that a termination, cancellation, or nonrenewal is for good cause.

(c) Good cause for a franchisee's termination, cancellation, or nonrenewal is considered to exist if:

(i) the franchisor is convicted of or enters a plea of nolo contendere to a felony;

(ii) the business operations of the franchisor are:
(A) abandoned; or
(B) closed for 10 consecutive business days, unless the closing is due to an act of God, a strike, a labor difficulty, or another cause over which the franchisor has no control;
(iii) the franchisor makes a misrepresentation that materially and adversely affects the business relationship with the recreational vehicle franchisee;
(iv) a material violation of this chapter is not cured within 30 days after the franchisee gives 30 days' written notice of the violation to the recreational vehicle franchisor; or
(v) the recreational vehicle franchisor:
(A) becomes insolvent;
(B) declares bankruptcy; or
(C) makes an assignment for the benefit of creditors.
(3) If the franchisee terminates, cancels, or does not renew the recreational vehicle franchise agreement or line-make for cause, the franchisor shall, at the franchisee's election and within 45 days after termination, cancellation, or nonrenewal, repurchase:
(a)
(i) all new, unaltered recreational vehicles, including demonstrators, that the franchisee acquired from the franchisor within 18 months before the date of the termination, cancellation, or nonrenewal; and
(ii) for a repurchase price equal to 100% of the original net invoice cost, including transportation, reduced by:
(A) any applicable rebates and discounts to the franchisee; and
(B) the cost to repair any damage to a repurchased recreational vehicle, if the vehicle is damaged after delivery to the franchisee but before repurchase occurs;
(b)
(i) all undamaged accessories and proprietary parts sold by the recreational vehicle franchisor to the franchisee within one year before termination, cancellation, or nonrenewal, if accompanied by the original invoice; and
(ii) for a repurchase price equal to 100% of the original net invoice cost, plus an additional 5% of the original net invoice cost to compensate the franchisee for packing and shipping the returned accessories and parts to the franchisor; and
(c)
(i) any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery that:
(A) the franchisee purchased:
(I) from the franchisor within five years before termination, cancellation, or nonrenewal; and
(II) at the franchisor's request or because of the franchisor's requirement; and
(B) are no longer usable in the normal course of the franchisee's ongoing business, as the franchisee reasonably determines; and
(ii) for a repurchase price equal to 100% of the original net cost that the franchisee paid, plus any applicable shipping charges and sales taxes.
(4) A recreational vehicle franchisor shall pay the franchisee all money due under Subsection (3) within 30 days after the franchisor's receipt of the repurchased items.

Enacted by Chapter 33, 2010 General Session

13-14-308 Private right of action.

(1) A franchisee has a private right of action for actual damages and reasonable attorney fees against a franchisor for a violation of this chapter that results in damage to the franchisee.
(2)
(a) As used in this Subsection (2):
(i) "New franchisor" has the same meaning as defined in Section 13-14-302.5.
(ii) "Reinstated franchise" has the same meaning as defined in Section 13-14-302.5.
(iii) "Reinstated franchisee" has the same meaning as defined in Section 13-14-302.5.
(b) A reinstated franchisee has a private right of action for actual damages and reasonable attorney fees against a new franchisor if:
(i) the new franchisor:
(A) establishes a new franchisee of the same line-make as a line-make of the reinstated franchisee within the relevant market area of the reinstated franchisee; or
(B) adds a line-make to another franchisor's existing franchisee within the relevant market area of the reinstated franchisee that is the same line-make as a line-make of the reinstated franchisee; and
(ii) the franchisor's action under Subsection (2)(b)(i) causes a substantial diminution in value of the reinstated franchisee's reinstated franchise.
(c) A new franchisor may not be held liable under Subsection (2)(b) based on a franchisee's purchase of another existing franchise, both of which are within the relevant market area of a reinstated franchisee, for the purpose of combining the purchased franchise with the franchise of the purchasing franchisee.

Amended by Chapter 41, 2010 General Session

13-14-309 Change in distribution plan.

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

Enacted by Chapter 362, 2008 General Session

13-14-310 Reporting requirement.

By September 1 of each year, the advisory board shall submit an annual written report to the Business and Labor Interim Committee that, for the fiscal year immediately preceding the day on which the report is submitted, describes:
(1) the number of applications for a new or relocated dealership that the advisory board received; and
(2) for each application described in Subsection (1):
(a) the number of protests that the advisory board received;
(b) whether the advisory board conducted a hearing;
(c) if the advisory board conducted a hearing, the disposition of the hearing; and
(d) the basis for any disposition described in Subsection (2)(c).

Amended by Chapter 187, 2016 General Session