

MOTOR VEHICLE FRANCHISE ACT

AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Kevin S. Garn

This act modifies the New Automobile Franchise Act. The act provides for the appointment of alternate members to the Utah Motor Vehicle Franchise Advisory Board and changes the term of board members. The act provides for emergency orders in cases where irreparable injury would otherwise result. The act makes other technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

13-14-103, as last amended by Chapter 162, Laws of Utah 1997

13-14-106, as last amended by Chapter 162, Laws of Utah 1997

13-14-107, as last amended by Chapter 162, Laws of Utah 1997

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

Section 1. Section **13-14-103** is amended to read:

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

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

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

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

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

(i) one motorcycle or recreational motor vehicle franchisee;

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

(iii) three members representing motor vehicle franchisors registered by the department pursuant to Section 13-14-105, or three members of the general public, none of whom shall be

related to any franchisee, or any combination of these representatives under this ~~[subsection.]~~
Subsection (1)(b)(iii); and

~~[(2) (a) In accordance with Subsection (1), the executive director shall appoint three of the initial members of the advisory board to one-year terms and three of the initial members of the advisory board to two-year terms. No more than two of the members appointed to two-year terms shall be franchisees.]~~

~~[(b) At the expiration of the initial terms under Subsection (2)(a), the executive director shall appoint a member to a term of two years.]~~

(iv) three alternate members, with one alternate from each of the designations set forth in Subsections (1)(b)(i), (1)(b)(ii), and (1)(b)(iii), who shall take the place of a regular advisory board member from the same designation at a meeting of the advisory board where that regular advisory board member is absent or otherwise disqualified from participating in the advisory board meeting.

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

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

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

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

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

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

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

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

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

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

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

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

(7) The members of the advisory board shall serve without compensation.

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

Section 2. Section **13-14-106** is amended to read:

13-14-106. Administrative enforcement.

(1) ~~[After]~~ Except as provided in Subsection (5), 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) ~~[The]~~ Except as provided in Subsection (5), the executive director shall comply with Title 63, Chapter 46b, Administrative Procedures Act, and shall consult with the advisory board prior to any order or assessment of fine.

(3) (a) In determining the amount and appropriateness of an administrative fine, 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.

(4) Any person aggrieved by an adverse determination by the executive director may either seek reconsideration of the order pursuant to Section 63-46b-13 of the Administrative Procedures Act or seek judicial review of the order.

(5) (a) In addition to the grounds for issuing an order on an emergency basis listed in Subsection 63-46b-20(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 (5)(a) the executive director shall comply with the requirements of Subsections 63-46b-20(2) and (3).

Section 3. Section **13-14-107** is amended to read:

13-14-107. Administrative hearings.

(1) (a) A person may commence an adjudicative proceeding [~~before the executive director and the advisory board,~~] in accordance with this chapter and with Title 63, Chapter 46b, Administrative Procedures Act to:

- (i) remedy a violation of this chapter; or
- (ii) obtain approval of an act regulated by this chapter.

(b) A person shall commence an adjudicative proceeding [~~before the executive director and the advisory board~~] by filing a request for agency action in accordance with Section 63-46b-3.

(2) (a) The advisory board shall conduct all adjudicative proceedings in accordance with Title 63, Chapter 46b, Administrative Procedures Act, with a quorum of the advisory board members in attendance.

(b) An order or decision issued by the executive director shall comply with Section 63-46b-10.

(c) Any hearing under this chapter shall be conducted as an informal proceeding unless otherwise designated as a formal proceeding pursuant to the provisions of Title 63, Chapter 46b, Administrative Procedures Act.

(3) The advisory board shall apportion in a fair and equitable manner between the parties any costs of the adjudicative proceeding, including reasonable attorney's fees subject to final approval by a court.