

POWERSPORT VEHICLE FRANCHISE ACT

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Greg J. Curtis

This act enacts the Powersport Vehicle Franchise Act. The act defines "powersport vehicle." The act creates the Utah Powersport Advisory Board and outlines the powers and duties of the board. The act clarifies the duties of a franchisor and a franchisee. The act creates restrictions on establishment, relocation, and termination of powersport vehicle franchises.

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

ENACTS:

13-34-101, Utah Code Annotated 1953

13-34-102, Utah Code Annotated 1953

13-34-103, Utah Code Annotated 1953

13-34-104, Utah Code Annotated 1953

13-34-105, Utah Code Annotated 1953

13-34-106, Utah Code Annotated 1953

13-34-107, Utah Code Annotated 1953

13-34-201, Utah Code Annotated 1953

13-34-202, Utah Code Annotated 1953

13-34-203, Utah Code Annotated 1953

13-34-204, Utah Code Annotated 1953

13-34-205, Utah Code Annotated 1953

13-34-301, Utah Code Annotated 1953

13-34-302, Utah Code Annotated 1953

13-34-303, Utah Code Annotated 1953

13-34-304, Utah Code Annotated 1953

13-34-305, Utah Code Annotated 1953

13-34-306, Utah Code Annotated 1953

13-34-307, Utah Code Annotated 1953

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

Section 1. Section **13-34-101** is enacted to read:

CHAPTER 34. POWERSPORT VEHICLE FRANCHISE ACT

Part 1. General Administration

13-34-101. Title.

This chapter is known as the "Powersport Vehicle Franchise Act."

Section 2. Section **13-34-102** is enacted to read:

13-34-102. Definitions.

As used in this chapter:

(1) "Board" means the Utah Powersport Vehicle Franchise Advisory Board created in Section 13-34-103.

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

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

(b) that is identified as a new powersport vehicle dealer's principal place of business for registration purposes under Section 13-34-105.

(3) "Department" means the Department of Commerce.

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

(5) "Franchise" or "franchise agreement" means a written agreement, for a definite or indefinite period, in which:

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

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

(6) "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 powersport vehicles manufactured, produced, represented, or distributed by the franchisor.

(7) (a) "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 powersport vehicles manufactured, produced, represented, or distributed by the franchisor, and includes:

(i) the manufacturer or distributor of the new powersport vehicles;

(ii) an intermediate distributor;

(iii) an agent, officer, or field or area representative of the franchisor; and

(iv) a person who is affiliated with a manufacturer or a representative or who directly or indirectly through an intermediary is controlled by, or is under common control with the manufacturer.

(b) For purposes of Subsection (7)(a)(iv), a person is controlled by a manufacturer if the manufacturer has the authority directly or indirectly by law or by an agreement of the parties, to direct or influence the management and policies of the person.

(8) "Lead" means the referral by a franchisor to a franchisee of an actual or potential customer for the purchase or lease of a new powersport vehicle, or for service work related to the franchisor's vehicles.

(9) "Line-make" means the powersport vehicles that are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the franchisor, or manufacturer of the powersport vehicle.

(10) "Powersport vehicle" means:

(a) an all-terrain type I or type II vehicle "ATV" defined in Section 41-22-2;

(b) a snowmobile as defined in Section 41-22-2;

(c) an off-highway motorcycle as defined in Section 41-1a-102; and

(d) a personal watercraft as defined in Section 73-18-2.

(11) "New powersport vehicle dealer" means a person who is engaged in the business of buying, selling, offering for sale, or exchanging new all-terrain vehicles, snowmobiles, off-highway motorcycles, and personal watercraft either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise who has established a place of business for the sale, lease, trade, or display of powersport vehicles.

(12) "Notice" or "notify" includes both traditional written communications and all reliable

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

(13) "Relevant market area" means:

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

(b) the area within a 15-mile radius from the site of the new or relocated dealership.

(14) "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.

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

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

Section 3. Section **13-34-103** is enacted to read:

13-34-103. Utah Powersport Vehicle Franchise Advisory Board -- Creation -- Appointment of members -- Alternate members -- Chair -- Quorum -- Conflict of interest.

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

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

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

(i) three new powersport 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 whom shall be located in the same congressional district; and

(ii) three members representing powersport vehicle franchisors registered by the department pursuant to Section 13-34-105, 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 (1)(b)(ii).

(2) The executive director shall also appoint, with the concurrence of the governor, six alternate members, with one alternate from each of the designations set forth in Subsections (1)(b)(i) and (1)(b)(ii), 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.

(3) (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, 2002, 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.

(4) (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.

(5) 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.

(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 business or employer; or

(ii) when a member, a member's business, 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 (1)(c).

(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) (i) A member of the advisory board who is not a government employee shall receive no compensation or benefits for the member's services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

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

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

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

Section 4. Section **13-34-104** is enacted to read:

13-34-104. Powers and duties of the advisory board.

The advisory board shall make recommendations on the administration and enforcement of this chapter and shall:

(1) conduct rulemaking proceedings in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, concerning administrative proceedings before the advisory board; and

(2) conduct adjudicative proceedings required by this chapter in accordance with Title 63, Chapter 46b, Administrative Procedures Act, for the purpose of making recommendations to the executive director.

Section 5. Section **13-34-105** is enacted to read:

13-34-105. 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 in collaboration with the advisory board; and

(b) pay an annual registration fee in an amount determined by the department in accordance with Sections 13-1-2 and 63-38-3.2.

(2) The department, in collaboration with the advisory board, 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 Fund.

(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.

Section 6. Section **13-34-106** is enacted to read:

13-34-106. Administrative enforcement.

(1) 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) 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 7. Section **13-34-107** is enacted to read:

13-34-107. Administrative hearings.

(1) (a) A person may commence an adjudicative proceeding 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 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.

Section 8. Section **13-34-201** is enacted to read:

Part 2. Franchises in General

13-34-201. Prohibited acts by franchisors -- Disclosures.

(1) A franchisor in this state may not:

(a) except as provided in Subsection (3), require a franchisee to order or accept delivery of any new powersport 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 participate monetarily in any advertising campaign or 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 powersport vehicles or related products, if:

(i) the franchisee maintains a reasonable line of credit for each make or line of powersport 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 imposed 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;

(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, modify, or implement a plan or system for the allocation, scheduling, or delivery of new powersport vehicles, parts, or accessories to its franchisees so that the plan or system is not fair, reasonable, and equitable;

(j) increase the price of any new powersport 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 attorneys' 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 powersport 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 facilities;

(o) fail to include in any franchise agreement the following language or language to the effect that: "If any provision in this agreement contravenes the laws, rules, 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, rules, 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 powersport 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) except as provided in Subsection (2), authorize or permit a person to perform warranty service repairs on powersport 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 powersport vehicles; or

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

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

(s) notwithstanding any other provisions of this chapter, unreasonably fail or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make, or unreasonably require a dealer to pay any extra fee, remodel, renovate, recondition the dealer's existing facilities,

or purchase unreasonable advertising displays or other materials as a prerequisite to receiving a model or series of vehicles;

(t) except as provided in Subsection (5), directly or indirectly:

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

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

(iii) act in the capacity of a new powersport vehicle dealer, as defined in Section 13-34-102;

or

(iv) operate a powersport vehicle service facility;

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

(v) 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;

(w) 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;

(x) 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;

(y) 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;

(z) 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;
- (aa) 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 how the standard or program is designed, how it will be administered, and the types of data that will be collected and used in its application;
- (bb) other than sales to the federal government, directly or indirectly, sell, lease, offer to sell, or offer to lease, a new powersport vehicle or any powersport vehicle owned by the franchisor, except through a franchised new powersport vehicle dealer;
- (cc) compel a franchisee, through a finance subsidiary, to agree to unreasonable operating requirements, except that this Subsection (1)(cc) shall 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 powersport vehicle financing;
- (dd) 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;
- (ee) discriminate against a franchisee in the state in favor of another franchisee of the same line-make in the state by:
 - (i) selling or offering to sell a new powersport 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 (6), using a promotional program or device or an

incentive, payment, or other benefit, whether paid at the time of the sale of the new powersport vehicle to the franchisee or later, that results in the sale of or offer to sell a new powersport 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; or

(iii) except as provided in Subsection (7), failing to provide or direct a lead in a fair, equitable, and timely manner; or

(ff) through an affiliate, take any action that would otherwise be prohibited under this chapter.

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

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

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

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

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

(b) refusing to permit a combination of new powersport vehicle lines, if justified by reasonable business considerations.

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

(5) (a) A franchisor may engage in any of the activities listed in Subsection (1)(t), 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 powersport vehicle dealership was a franchised new powersport vehicle dealer; and

(B) the franchisor's interest in the new powersport 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)(t) for the purpose of broadening the diversity of its dealer body and facilitating the ownership of a new powersport

vehicle dealership by a person who:

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

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

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

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

(E) operates the new powersport 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) The board may, for good cause shown, extend the time limit set forth in Subsection (5)(a) for an additional period not to exceed 12 months.

(c) Notwithstanding the provisions of Subsection (1)(t), a franchisor may own, operate, or control a new powersport vehicle dealership trading in a line-make of powersport vehicle if:

(i) as to that line-make of powersport vehicle, there are no more than four franchised new powersport vehicle dealerships licensed and in operation within the state as of January 1, 2002;

(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 powersport 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, 2002, 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.

(6) Subsection (1)(ee)(ii) does not prohibit a promotional or incentive program that is

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

(7) Subsection (1)(ee)(iv) 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 franchisor and a franchisee; or

(b) require a franchisor to disregard the preference of a potential customer in providing or directing a lead, provided that the franchisor does not direct the customer to such a preference.

(8) Subsection (1)(ff) 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.

Section 9. Section **13-34-202** is enacted to read:

13-34-202. 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 13-34-305 (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 sale, transfer of the business, or by 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 powersport vehicle franchisee's registration pursuant to Section 13-34-105; or

(b) the proposed sale or transfer of the business or change of executive management will be substantially detrimental to the distribution of the franchisor's new powersport 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 who is of good moral character and who 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 is presumed to be unreasonable and undertaken without good cause.

(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 board up to 60 days from the date of receipt of the notice.

(b) After a hearing, the board shall determine, and enter an order providing that:

(i) the proposed transferee or change in executive management shall be approved or 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) 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. During the pendency of the hearing, the franchise agreement shall continue in effect in accordance with its terms.

(d) The board shall expedite, upon written request, any determination sought under this section.

Section 10. Section **13-34-203** is enacted to read:

13-34-203. 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) the 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 state the specific grounds for the refusal to approve the succession and 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 board an application for a hearing to determine whether or not 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 board; and
- (iii) the applicable appeal period has expired following a decision by the board.

Section 11. Section **13-34-204** is enacted to read:

13-34-204. 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 powersport vehicle dealer in this state:

(a) the franchisee's obligations for new powersport 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. 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 powersport 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 not be denied except for good cause such as performance of nonwarranty repairs, lack of material documentation, fraud, or misrepresentation.

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

(b) Except as provided in Subsection (9)(c), all charge backs levied by a franchisor for sales compensation or sales incentives arising out of the sale or lease of a powersport vehicle sold by a franchisee shall be compensable only if written notice of the charge back is received by the franchisee within 24 months immediately following the date when payment for the sales compensation was made by the franchisor.

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

Section 12. Section **13-34-205** is enacted to read:

13-34-205. Liability for damages to motor vehicles in transit -- Disclosure required.

(1) (a) A franchisee is solely liable for damage to a new powersport 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 powersport vehicle.

(2) A franchisor is liable for all damage to a powersport 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 franchisor shall disclose to the franchisee any repairs made prior to delivery, only if the cost of the repair exceeds 3% of the manufacturer's wholesale price, as measured by retail repair costs.

(4) Notwithstanding Subsections (1), (2), and (3), the franchisee is liable for damage to a new powersport 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.

Section 13. Section **13-34-301** is enacted to read:

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

13-34-301. Termination or noncontinuance of franchise.

(1) Except as provided in Subsection (2), a franchisor may not terminate or refuse to continue a franchise agreement 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 13-34-105.

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

(a) for a particular line-make the franchisor or manufacturer discontinues that line-make;

(b) the franchisee's registration as a new powersport vehicle dealer is revoked under Section 13-34-105; or

(c) 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 board for a hearing on the merits, and following notice to all parties concerned, the hearing shall be promptly held as provided in Section 13-34-304.

(b) A termination or noncontinuance subject to a hearing under Subsection (3)(a) may not become effective until final determination of the issue by the board and the applicable appeal period has lapsed.

Section 14. Section **13-34-302** is enacted to read:

13-34-302. Issuance of additional franchises -- Relocation of existing franchisees.

(1) (a) Except as provided in Subsection (2), a franchisor shall comply with Subsection (1)(b) if the franchisor seeks to:

(i) enter into a franchise establishing a powersport vehicle dealership within a relevant market area where the same line-make is represented by another franchisee; or

(ii) relocate an existing powersport vehicle dealership.

(b) (i) If a franchisor seeks to take an action listed in Subsection (1)(a), prior to taking the action, the franchisor shall in writing notify the board and each franchisee in that line-make in the relevant market area that the franchisor intends to take an action described in Subsection (1)(a).

(ii) The notice required by Subsection (1)(b)(i) shall:

(A) specify the good cause on which it intends to rely for the action; and

(B) be delivered by registered or certified mail or by any form of reliable electronic communication through which receipt is verifiable.

(c) Within 45 days of receiving notice required by Subsection (1)(b), any franchisee that is required to receive notice under Subsection (1)(b) may protest to the board the establishing or relocating of the dealership. When a protest is filed, the board 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 board has held a hearing; and

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

(d) If multiple protests are filed under Subsection (1)(c), hearings may be consolidated to expedite the disposition of the issue.

(2) Subsection (1) does not apply to a relocation that is:

(a) less than one mile from the existing location of the franchisee's dealership; and

(b) within the same county.

(3) For purposes of this section:

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

(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 powersport vehicle dealership.

Section 15. Section **13-34-303** is enacted to read:

13-34-303. Effect of terminating a franchise.

If under Section 13-34-301 the board permits a franchisor to terminate or not continue a franchise and prohibits the franchisor from entering into a franchise for the sale of new powersport vehicles of a line-make in a relevant market area, the franchisor may not enter into a franchise for the sale of new powersport vehicles of that line-make in the specified relevant market area unless the franchisor first establishes in a hearing before the 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.

Section 16. Section **13-34-304** is enacted to read:

13-34-304. Hearing regarding termination, relocation, or establishment of franchises.

(1) (a) Within ten days of receiving an application from a franchisee under Subsection 13-34-301(3) challenging its franchisor's right to terminate or not continue a franchise, or an application under Subsection 13-34-302(1) challenging the establishment or relocation of a franchise,

the board 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 electronic communication 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, to all franchisees 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) Any person who can establish to the board an interest in the application may intervene as a party to the hearing, whether or not that person receives notice.

(3) Any person 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) Any hearing ordered under Subsection (1) shall be conducted no later than 120 days after the application for hearing is filed. A final decision on the challenge shall be made by the board no later than 30 days after the hearing.

(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 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.

Section 17. Section **13-34-305** is enacted to read:

13-34-305. 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 board 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 powersport vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumer for the new powersport 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 board to be reasonable and material and 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 board to be reasonable and material and 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 board; and

(k) any other factor the board considers 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 powersport 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 powersport vehicles; or

(c) the fact that the franchisee has justifiably refused or declined to participate in any conduct covered by Section 13-34-201.

(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.

Section 18. Section **13-34-306** is enacted to read:

13-34-306. 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 board 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; and

(5) whether the franchisees of the same line-make in that relevant market area are providing adequate service to consumers for the powersport vehicles of the line-make, which shall include the adequacy of the powersport vehicle sale and service facilities, equipment, supply of vehicle parts, and qualified service personnel.

Section 19. Section **13-34-307** is enacted to read:

13-34-307. Franchisors' repurchase obligations upon termination or noncontinuation of franchise.

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

(a) the franchisee's cost of new, undamaged, and unsold powersport vehicles in the franchisee's inventory acquired from the franchisor or another franchisee of the same line-make representing both the current model year at the time of termination or noncontinuation and the immediately prior model year vehicles:

(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 vehicle shall be repurchased;

and

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

(b) 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;

(c) 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 franchisee has a sign with multiple manufacturers listed, the franchisor is only responsible for its pro rata portion of the sign;

(d) 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 recommended or required by the franchisor and are in good and usable condition; and

(e) the cost of transporting, handling, packing, and loading powersport vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings.

(2) 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.

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

