

VEHICLE FRANCHISE AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Bradley G. Last

LONG TITLE

General Description:

This bill modifies the New Automobile Franchise Act and the Powersport Vehicle Franchise Act to amend vehicle franchise provisions.

Highlighted Provisions:

This bill:

- ▶ provides that motorcycles, motor-driven cycles, and mopeds are covered under the Powersport Vehicle Franchise Act;
- ▶ provides that alternates for the Utah Motor Vehicle Franchise Advisory Board may be from any congressional district;

- ▶ ~~It~~ **CHANGES THE DATE** that a franchisee must receive written notice ~~within 12 months, instead of 24 months,~~ of a chargeback levied by a franchisor for sales compensation or a sales incentive for the chargeback to be compensable;

- ▶ changes the number of alternates on the Powersport Vehicle Franchise Advisory Board and provides that they may be from any congressional district;
- ▶ provides that the establishment of a temporary additional place of business by a recreational vehicle franchisee or a powersport vehicle franchisee is considered the establishment of an additional dealership except in certain circumstances; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **13-14-102**, as last amended by Chapter 68, Laws of Utah 2002

32 **13-14-103**, as last amended by Chapter 68, Laws of Utah 2002

33 **13-14-204**, as last amended by Chapter 162, Laws of Utah 1997

34 **13-14-302**, as last amended by Chapter 86, Laws of Utah 2000

35 **13-35-102**, as enacted by Chapter 234, Laws of Utah 2002

36 **13-35-103**, as last amended by Chapter 131, Laws of Utah 2003

37 **13-35-302**, as enacted by Chapter 234, Laws of Utah 2002



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

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

41 **13-14-102. Definitions.**

42 As used in this chapter:

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

44 (2) "Board" means the Utah Motor Vehicle Franchise Advisory Board created in
45 Section 13-14-103.

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

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

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

50 (4) "Department" means the Department of Commerce.

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

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

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

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

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

62 (8) "Franchisor" means a person who has, in writing or in practice, agreed with or
63 permits a franchisee to purchase, sell, or offer for sale new motor vehicles manufactured,
64 produced, represented, or distributed by the franchisor, and includes:

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

66 (b) an intermediate distributor; and

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

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

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

75 (11) "Mile" means 5,280 feet.

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

78 (13) (a) "Motor vehicle" means:

79 ~~(a)~~ (i) a travel trailer;

80 ~~(b)~~ (ii) a motor vehicle as defined in Section 41-3-102;

81 ~~(c)~~ (iii) a semitrailer as defined in Section 41-1a-102;

82 ~~(d)~~ (iv) a trailer as defined in Section 41-1a-102; and

83 ~~(e)~~ (v) a recreational vehicle.

84 (b) "Motor vehicle" does not include a motorcycle as defined in Section 41-1a-102.

85 (14) "New motor vehicle" ~~[has the same meaning as defined in Section 41-3-102]~~

86 means a motor vehicle as defined in Subsection (13) that has never been titled or registered and
87 has been driven less than 7,500 miles, unless the motor vehicle is a trailer, travel trailer, or
88 semitrailer, in which case the mileage limit does not apply.

89 (15) "New motor vehicle dealer" is a person who is licensed under Subsection

90 41-3-202(1)(a) to sell new motor vehicles.

91 (16) "Notice" or "notify" includes both traditional written communications and all
92 reliable forms of electronic communication unless expressly prohibited by statute or rule.

93 (17) "Recreational vehicle" means a vehicular unit other than a mobile home, primarily
94 designed as a temporary dwelling for travel, recreational, or vacation use, which is either
95 self-propelled or pulled by another vehicle. "Recreational vehicle" includes a travel trailer, a
96 camping trailer, a motor home, a fifth wheel trailer, and a van.

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

- 98 (i) the county in which a dealership is to be established or relocated; and
- 99 (ii) the area within a ten-mile radius from the site of the new or relocated dealership.

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

- 101 (i) the county in which the dealership is to be established or relocated; and
- 102 (ii) the area within a 35-mile radius from the site of the new or relocated dealership.

103 (19) "Sale, transfer, or assignment" means any disposition of a franchise or an interest
104 in a franchise, with or without consideration, including a bequest, inheritance, gift, exchange,
105 lease, or license.

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

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

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

114 Section 2. Section **13-14-103** is amended to read:

115 **13-14-103. Utah Motor Vehicle Franchise Advisory Board -- Creation --**
116 **Appointment of members -- Alternate members -- Chair -- Quorum -- Conflict of interest.**

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

- 119 (a) the executive director or the executive director's designee;
- 120 (b) six members appointed by the executive director, with the concurrence of the

121 governor as follows:

122 (i) one ~~[motorcycle or]~~ recreational motor vehicle franchisee;

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

126 (iii) three members representing motor vehicle franchisors registered by the department
127 pursuant to Section 13-14-105, or three members of the general public, none of whom shall be
128 related to any franchisee, or any combination of these representatives under this Subsection
129 (1)(b)(iii); and

130 ~~[(iv)] (c) (i)~~ three alternate members, with one alternate from each of the designations
131 set forth in Subsections (1)(b)(i), (1)(b)(ii), and (1)(b)(iii), ~~[who]~~ except that the new motor
132 vehicle franchisee alternate or alternates for the designation under Subsection (1)(b)(ii) may be
133 from any congressional district; and

134 (ii) an alternate who shall take the place of a regular advisory board member from the
135 same designation at a meeting of the advisory board where that regular advisory board member
136 is absent or otherwise disqualified from participating in the advisory board meeting.

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

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

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

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

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

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

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

152 action of the advisory board.

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

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

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

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

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

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

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

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

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

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

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

178 **13-14-204. Franchisor's obligations related to service -- Franchisor audits -- Time**
179 **limits.**

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

182 (a) the franchisee's obligations for new motor vehicle preparation, delivery, and

183 warranty service on its products;

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

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

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

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

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

194 (b) Compensation of the franchisee for warranty service work may not be less than the
195 amount charged by the franchisee for like parts and service to retail or fleet customers, if the
196 amounts are reasonable. In the case of a recreational vehicle franchisee, reimbursement for
197 parts used in the performance of warranty repairs, including those parts separately warranted
198 directly to the consumer by a recreational vehicle parts supplier, may not be less than the
199 franchisee's cost plus 20%. For purposes of this Subsection (3)(b), the term "cost" shall be that
200 same price paid by a franchisee to a franchisor or supplier for the part when the part is
201 purchased for a nonwarranty repair.

202 (4) A franchisor may not fail to:

203 (a) perform any warranty obligation;

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

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

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

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

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

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

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

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

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

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

227 (b) Except as provided in Subsection (9)(c), all charge backs levied by a franchisor for
 228 sales compensation or sales incentives arising out of the sale or lease of a motor vehicle sold ~~H~~ OR
 228a LEASED h by
 229 a franchisee shall be compensable only if written notice of the charge back is received by the
 230 franchisee within [~~24~~] 12 months immediately following ~~H~~ THE DATE WHEN THE SALES
 230a INCENTIVE PROGRAM TERMINATES, BUT NO LATER THAN 24 MONTHS FOLLOWING h the date
 230b when payment for the sales

231 compensation ~~H~~ OR SALES INCENTIVE h was made by the franchisor ~~H~~ TO THE FRANCHISEE h .

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

234 Section 4. Section **13-14-302** is amended to read:

235 **13-14-302. Issuance of additional franchises -- Relocation of existing franchisees.**

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

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

240 (ii) relocate an existing motor vehicle dealership.

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

- 245 (ii) The notice required by Subsection (1)(b)(i) shall:
- 246 (A) specify the good cause on which it intends to rely for the action; and
- 247 (B) be delivered by registered or certified mail or by any form of reliable electronic
- 248 communication through which receipt is verifiable.
- 249 (c) Within 45 days of receiving notice required by Subsection (1)(b), any franchisee
- 250 that is required to receive notice under Subsection (1)(b) may protest to the board the
- 251 establishing or relocating of the dealership. When a protest is filed, the board shall inform the
- 252 franchisor that:
- 253 (i) a timely protest has been filed;
- 254 (ii) a hearing is required;
- 255 (iii) the franchisor may not establish or relocate the proposed dealership until the board
- 256 has held a hearing; and
- 257 (iv) the franchisor may not establish or relocate a proposed dealership if the board
- 258 determines that there is not good cause for permitting the establishment or relocation of the
- 259 dealership.
- 260 (d) If multiple protests are filed under Subsection (1)(c), hearings may be consolidated
- 261 to expedite the disposition of the issue.
- 262 (2) Subsection (1) does not apply to a relocation that is:
- 263 (a) less than one aeronautical mile from the existing location of the franchisee's
- 264 dealership; and
- 265 (b) within the same county.
- 266 (3) For purposes of this section:
- 267 (a) relocation of an existing franchisee's dealership in excess of one mile from its
- 268 existing location is considered the establishment of an additional franchise in the line-make of
- 269 the relocating franchise; ~~and~~
- 270 (b) the reopening in a relevant market area of a dealership that has not been in
- 271 operation for one year or more is considered the establishment of an additional motor vehicle
- 272 dealership[-]; and
- 273 (c) (i) except as provided in Subsection (3)(c)(ii), the establishment of a temporary
- 274 additional place of business by a recreational vehicle franchisee is considered the establishment
- 275 of an additional motor vehicle dealership; and

276 (ii) the establishment of a temporary additional place of business by a recreational
277 vehicle franchisee is not considered the establishment of an additional motor vehicle dealership
278 if the recreational vehicle franchisee is participating in a trade show where three or more
279 recreational vehicle dealers are participating.

280 Section 5. Section **13-35-102** is amended to read:

281 **13-35-102. Definitions.**

282 As used in this chapter:

283 (1) "Board" means the Utah Powersport Vehicle Franchise Advisory Board created in
284 Section 13-35-103.

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

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

287 (b) that is identified as a new powersport vehicle dealer's principal place of business

288 for registration purposes under Section 13-35-105.

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

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

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

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

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

298 (6) "Franchisee" means a person with whom a franchisor has agreed or permitted, in
299 writing or in practice, to purchase, sell, or offer for sale new powersport vehicles manufactured,
300 produced, represented, or distributed by the franchisor.

301 (7) (a) "Franchisor" means a person who has, in writing or in practice, agreed with or
302 permits a franchisee to purchase, sell, or offer for sale new powersport vehicles manufactured,
303 produced, represented, or distributed by the franchisor, and includes:

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

305 (ii) an intermediate distributor;

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

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

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

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

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

319 (10) (a) "Powersport vehicle" means:

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

321 ~~[(b)]~~ (ii) a snowmobile as defined in Section 41-22-2;

322 ~~[(c)]~~ (iii) ~~[an off-highway]~~ a motorcycle as defined in Section 41-1a-102; ~~[and]~~

323 ~~[(d)]~~ (iv) a personal watercraft as defined in Section 73-18-2[-];

324 (v) except as provided in Subsection (10)(b), a motor-driven cycle as defined in
325 Section 41-6-1; or

326 (vi) a moped as defined in Section 41-6-1.

327 (b) "Powersport vehicle" does not include:

328 (i) an electric assisted bicycle defined in Section 41-6-1;

329 (ii) a motor assisted scooter as defined in Section 41-6-1; or

330 (iii) a personal motorized mobility device as defined in Section 41-6-1.

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

336 (12) "Notice" or "notify" includes both traditional written communications and all
337 reliable forms of electronic communication unless expressly prohibited by statute or rule.

338 (13) "Relevant market area" means:

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

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

341 (14) "Sale, transfer, or assignment" means any disposition of a franchise or an interest
342 in a franchise, with or without consideration, including a bequest, inheritance, gift, exchange,
343 lease, or license.

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

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

348 Section 6. Section **13-35-103** is amended to read:

349 **13-35-103. Utah Powersport Vehicle Franchise Advisory Board -- Creation --**
350 **Appointment of members -- Alternate members -- Chair -- Quorum -- Conflict of interest.**

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

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

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

356 (i) three new powersport vehicle franchisees [~~from among~~], one from each of the three
357 congressional districts [of] in the state [as the districts were constituted on January 1, 1996, no
358 more than one of whom shall be located in the same congressional district]; and

359 (ii) three members representing powersport vehicle franchisors registered by the
360 department pursuant to Section 13-35-105, or three members of the general public, none of
361 whom shall be related to any franchisee, or any combination of these representatives under this
362 Subsection (1)(b)(ii).

363 (2) (a) The executive director shall also appoint, with the concurrence of the governor,
364 [~~six~~] three alternate members, with at least one alternate from each of the designations set forth
365 in Subsections (1)(b)(i) and (1)(b)(ii), [~~who~~] except that the new powersport vehicle franchisee
366 alternate or alternates for the designation under Subsection (1)(b)(i) may be from any
367 congressional district.

368 (b) An alternate shall take the place of a regular advisory board member from the same

369 designation at a meeting of the advisory board where that regular advisory board member is
370 absent or otherwise disqualified from participating in the advisory board meeting.

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

372 (b) The executive director may adjust the term of members who were appointed to the
373 advisory board prior to July 1, 2002, by extending the unexpired term of a member for up to
374 two additional years in order to insure that approximately half of the members are appointed
375 every two years.

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

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

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

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

384 (5) (a) Four or more members of the advisory board constitute a quorum for the
385 transaction of business.

386 (b) The action of a majority of the members of the advisory board is considered the
387 action of the advisory board.

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

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

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

393 (b) If a member of the advisory board is disqualified under Subsection (6)(a), the
394 executive director shall select the appropriate alternate member to act on the issue before the
395 advisory board as provided in Subsection (2).

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

399 (8) (a) (i) A member of the advisory board who is not a government employee shall

400 receive no compensation or benefits for the member's services, but may receive per diem and
401 expenses incurred in the performance of the member's official duties at the rates established by
402 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

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

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

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

411 Section 7. Section **13-35-302** is amended to read:

412 **13-35-302. Issuance of additional franchises -- Relocation of existing franchisees.**

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

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

417 (ii) relocate an existing powersport vehicle dealership.

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

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

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

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

426 (c) Within 45 days of receiving notice required by Subsection (1)(b), any franchisee
427 that is required to receive notice under Subsection (1)(b) may protest to the board the
428 establishing or relocating of the dealership. When a protest is filed, the board shall inform the
429 franchisor that:

430 (i) a timely protest has been filed;

- 431 (ii) a hearing is required;
- 432 (iii) the franchisor may not establish or relocate the proposed dealership until the board
433 has held a hearing; and
- 434 (iv) the franchisor may not establish or relocate a proposed dealership if the board
435 determines that there is not good cause for permitting the establishment or relocation of the
436 dealership.
- 437 (d) If multiple protests are filed under Subsection (1)(c), hearings may be consolidated
438 to expedite the disposition of the issue.
- 439 (2) Subsection (1) does not apply to a relocation that is:
- 440 (a) less than one mile from the existing location of the franchisee's dealership; and
441 (b) within the same county.
- 442 (3) For purposes of this section:
- 443 (a) relocation of an existing franchisee's dealership in excess of one mile from its
444 existing location is considered the establishment of an additional franchise in the line-make of
445 the relocating franchise; ~~and~~
- 446 (b) the reopening in a relevant market area of a dealership that has not been in
447 operation for one year or more is considered the establishment of an additional powersport
448 vehicle dealership[-]; and
- 449 (c) (i) except as provided in Subsection (3)(c)(ii), the establishment of a temporary
450 additional place of business by a powersport vehicle franchisee is considered the establishment
451 of an additional powersport vehicle dealership; and
- 452 (ii) the establishment of a temporary additional place of business by a powersport
453 vehicle franchisee is not considered the establishment of an additional powersport vehicle
454 dealership if the powersport vehicle franchisee is participating in a trade show where three or
455 more powersport vehicle dealers are participating.

Legislative Review Note

as of 2-3-04 11:29 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel