

NEW AUTOMOBILE FRANCHISE ACT

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Greg J. Curtis

LONG TITLE

General Description:

This bill modifies the New Automobile Franchise Act to amend provisions relating to the issuance or relocation of a franchise.

Highlighted Provisions:

This bill:

- ▶ requires a franchisor to provide certain documents with a notice that the franchisor intends to enter into a franchise or relocate a franchise within the relevant market area to the Utah Motor Vehicle Franchise Advisory Board and existing franchisees within the relevant market area except in certain circumstances; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

13-14-304, as last amended by Chapter 86, Laws of Utah 2000

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

Section 1. Section **13-14-302** is amended to read:

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

(1) [~~(a)~~] Except as provided in Subsection [~~(2)~~] (6), a franchisor shall [~~comply with~~]

provide the notice and documentation required under Subsection ~~(1)(b)~~ (2) if the franchisor seeks to:

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

~~[(ii)]~~ (b) relocate an existing motor vehicle ~~[dealership]~~ franchisee.

~~[(b)(i)]~~ (2)(a) If a franchisor seeks to take an action listed 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)]~~ (b) The notice required by Subsection ~~[(1)(b)(i)]~~ (2)(a) shall:

(i) specify the intended action described under Subsection (1);

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

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

(3)(a) Except as provided in Subsection (3)(c), the franchisor shall provide to the board and each franchisee in that line-make in the relevant market area the following documents relating to the notice described under Subsection (2):

(i) (A) any aggregate economic data and all existing reports, analyses, or opinions based on the aggregate economic data that were relied on by the franchisor in reaching the decision to proceed with the action described in the notice; and

(B) the aggregate economic data under Subsection (3)(a)(i)(A) includes:

(I) motor vehicle registration data;

(II) market penetration data; and

(III) demographic data;

(ii) written documentation that the franchisor has in its possession that it intends to rely on in establishing good cause under Section 13-14-306 relating to the notice;

(iii) a statement that describes in reasonable detail how the establishment of a new franchisee or the relocation of an existing franchisee will affect the amount of business transacted

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

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

(b) The franchisor shall provide the documents described under Subsection (3)(a) with the notice required under Subsection (2).

(c) The franchisor is not required to disclose any documents under Subsection (3)(a) if:

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

(ii) the documents contain confidential proprietary information;

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

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

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

(A) the privacy of another franchisee; or

(B) Section 13-14-201.

~~(c)~~ (4) Within 45 days of receiving notice required by Subsection ~~[(1)(b)]~~ (2), any franchisee that is required to receive notice under Subsection ~~[(1)(b)]~~ (2) may protest to the board the ~~[establishing]~~ establishment or ~~[relocating]~~ relocation of the dealership. When a protest is filed, the board shall inform the franchisor that:

~~[(i)]~~ (a) a timely protest has been filed;

~~[(ii)]~~ (b) a hearing is required;

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

~~[(iv)]~~ (d) 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.

~~[(4)]~~ (5) If multiple protests are filed under Subsection ~~[(1)(c)]~~ (4), hearings may be

consolidated to expedite the disposition of the issue.

~~[(2)]~~ (6) ~~[Subsection]~~ Subsections (1) ~~[does]~~ through (5) do not apply to a relocation that is:

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

(b) within the same county.

~~[(3)]~~ (7) 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 motor vehicle dealership.

Section 2. Section **13-14-304** is amended to read:

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

(1) (a) Within ten days of receiving an application from a franchisee under Subsection 13-14-301(3) challenging its franchisor's right to terminate or not continue a franchise, or an application under ~~[Subsection]~~ Section 13-14-302~~[(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.