

**Representative Greg J. Curtis** proposes the following substitute bill:

**NEW AUTOMOBILE FRANCHISE ACT**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Greg J. Curtis**

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**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

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

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

28 **13-14-302. Issuance of additional franchises -- Relocation of existing franchisees.**

29 (1) ~~[(a)]~~ Except as provided in Subsection ~~[(2)]~~ (6), a franchisor shall ~~[comply with]~~  
30 provide the notice and documentation required under Subsection ~~[(1)(b)]~~ (2) if the franchisor  
31 seeks to:

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

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

35 ~~[(b)(i)]~~ (2)(a) If a franchisor seeks to take an action listed Subsection (1)~~[(a)]~~, prior to  
36 taking the action, the franchisor shall, in writing, notify the board and each franchisee in that  
37 line-make in the relevant market area ~~[that the franchisor intends to take an action described in~~  
38 Subsection ~~(1)(a)~~].

39 ~~[(i)]~~ (b) The notice required by Subsection ~~[(1)(b)(i)]~~ (2)(a) shall:

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

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

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

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

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

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

51 (I) motor vehicle registration data;

52 (II) market penetration data; and

53 (III) demographic data;

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

56 (iii) a statement that describes in reasonable detail how the establishment of a new

57 franchisee or the relocation of an existing franchisee will affect the amount of business  
 58 transacted by other franchisees of the same line-make in the relevant market area, as compared  
 59 to business available to the franchisees; and

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

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

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

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

67 (ii) the documents contain confidential proprietary information;

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

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

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

72 (A) the privacy of another franchisee; or

73 (B) Section 13-14-201.

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

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

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

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

82 ~~[(iv)]~~ (d) the franchisor may not establish or relocate a proposed dealership if the board  
 83 determines that there is not good cause for permitting the establishment or relocation of the  
 84 dealership.

85 ~~[(d)]~~ (5) If multiple protests are filed under Subsection ~~[(1)(c)]~~ (4), hearings may be  
 86 consolidated to expedite the disposition of the issue.

87 ~~[(2)]~~ (6) ~~[Subsection]~~ Subsections (1) [does] through (5) do not apply to a relocation

88 that is:

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

91 (b) within the same county.

92 [~~(3)~~] (7) For purposes of this section:

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

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

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

100 **13-14-304. Hearing regarding termination, relocation, or establishment of**  
101 **franchises.**

102 (1) (a) Within ten days of receiving an application from a franchisee under Subsection  
103 13-14-301(3) challenging its franchisor's right to terminate or not continue a franchise, or an  
104 application under [~~Subsection~~] Section 13-14-302[~~(1)~~] challenging the establishment or  
105 relocation of a franchise, the board shall:

106 (i) enter an order designating the time and place for the hearing; and

107 (ii) send a copy of the order by certified or registered mail, with return receipt  
108 requested, or by any form of reliable electronic communication through which receipt is  
109 verifiable to:

110 (A) the applicant;

111 (B) the franchisor; and

112 (C) if the application involves the establishment of a new franchise or the relocation of  
113 an existing dealership, to all franchisees in the relevant market area engaged in the business of  
114 offering to sell or lease the same line-make.

115 (b) A copy of an order mailed under Subsection (1)(a) shall be addressed to the  
116 franchisee at the place where the franchisee's business is conducted.

117 (2) Any person who can establish to the board an interest in the application may  
118 intervene as a party to the hearing, whether or not that person receives notice.

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

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

124 (b) Failure to comply with the time requirements of Subsection (4)(a) is considered a  
125 determination that the franchisor acted with good cause or, in the case of a protest of a  
126 proposed establishment or relocation of a dealer, that good cause exists for permitting the  
127 proposed additional or relocated new motor vehicle dealer, unless:

128 (i) the delay is caused by acts of the franchisor or the additional or relocating  
129 franchisee; or

130 (ii) the delay is waived by the parties.

131 (5) The franchisor has the burden of proof to establish that under the provisions of this  
132 chapter it should be granted permission to:

133 (a) terminate or not continue the franchise;

134 (b) enter into a franchise agreement establishing an additional franchise; or

135 (c) relocate the dealership of an existing franchisee.