

1 **NEW MOTOR VEHICLE FRANCHISE ACT**

2 **AMENDMENTS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Dan R. Eastman**

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the New Automobile Franchise Act.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ amends provisions relating to the Utah Motor Vehicle Franchise Advisory Board,
13 including:

- 14 • membership of the board;
- 15 • requirements for the transaction of business by the board; and
- 16 • powers and duties of the board;
- 17 ▶ clarifies the powers and duties of the executive director of the Department of
18 Commerce and the advisory board;
- 19 ▶ shifts numerous duties from the board to the executive director including:
 - 20 • allowing the executive director to issue certain decisions after a
21 recommendation is received from the board; and
 - 22 • allowing the executive director to make administrative rules in consultation with
23 the board;
- 24 ▶ adds provisions regarding administrative hearings to Section 13-14-106;
- 25 ▶ shifts the responsibility for notifying a franchisor of a protest to the establishment or
26 relocation of a franchise from the board to the department;
- 27 ▶ clarifies that the executive director is to comply with procedures for the issuance of



28 formal orders mandated by Section 63-46b-10 in both formal and informal adjudicative
29 proceedings;

- 30 ▶ clarifies acceptable methods of communicating certain required notices; and
- 31 ▶ makes technical changes.

32 **Monies Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

- 38 **13-14-102**, as last amended by Chapter 123, Laws of Utah 2004
- 39 **13-14-103**, as last amended by Chapter 123, Laws of Utah 2004
- 40 **13-14-104**, as last amended by Chapter 162, Laws of Utah 1997
- 41 **13-14-105**, as last amended by Chapter 162, Laws of Utah 1997
- 42 **13-14-106**, as last amended by Chapter 158, Laws of Utah 2001
- 43 **13-14-107**, as last amended by Chapter 158, Laws of Utah 2001
- 44 **13-14-201**, as last amended by Chapter 68, Laws of Utah 2002
- 45 **13-14-202**, as enacted by Chapter 277, Laws of Utah 1996
- 46 **13-14-203**, as last amended by Chapter 68, Laws of Utah 2002
- 47 **13-14-301**, as enacted by Chapter 277, Laws of Utah 1996
- 48 **13-14-302**, as last amended by Chapters 123 and 187, Laws of Utah 2004
- 49 **13-14-303**, as enacted by Chapter 277, Laws of Utah 1996
- 50 **13-14-304**, as last amended by Chapter 187, Laws of Utah 2004
- 51 **13-14-305**, as enacted by Chapter 277, Laws of Utah 1996
- 52 **13-14-306**, as enacted by Chapter 277, Laws of Utah 1996



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

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

56 **13-14-102. Definitions.**

57 As used in this chapter:

58 ~~[(2) "Board"]~~ (1) "Advisory board" or "board" means the Utah Motor Vehicle

59 Franchise Advisory Board created in Section 13-14-103.

60 [(+)] (2) "Affiliate" has the meaning set forth in Section 16-10a-102.

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

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

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

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

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

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

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

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

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

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

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

81 (b) an intermediate distributor; and

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

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

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

- 90 (11) "Mile" means 5,280 feet.
- 91 (12) "Motor home" means a self-propelled vehicle, primarily designed as a temporary
- 92 dwelling for travel, recreational, or vacation use.
- 93 (13) (a) "Motor vehicle" means:
- 94 (i) a travel trailer;
- 95 (ii) a motor vehicle as defined in Section 41-3-102;
- 96 (iii) a semitrailer as defined in Section 41-1a-102;
- 97 (iv) a trailer as defined in Section 41-1a-102; and
- 98 (v) a recreational vehicle.
- 99 (b) "Motor vehicle" does not include a motorcycle as defined in Section 41-1a-102.
- 100 (14) "New motor vehicle" means a motor vehicle as defined in Subsection (13) that has
- 101 never been titled or registered and has been driven less than 7,500 miles, unless the motor
- 102 vehicle is a trailer, travel trailer, or semitrailer, in which case the mileage limit does not apply.
- 103 (15) "New motor vehicle dealer" is a person who is licensed under Subsection
- 104 41-3-202(1)(a) to sell new motor vehicles.
- 105 (16) "Notice" or "notify" includes both traditional written communications and all
- 106 reliable forms of electronic communication unless expressly prohibited by statute or rule.
- 107 (17) (a) "Recreational vehicle" means a vehicular unit other than a mobile home,
- 108 primarily designed as a temporary dwelling for travel, recreational, or vacation use, [~~which~~
- 109 that is either self-propelled or pulled by another vehicle.
- 110 (b) "Recreational vehicle" includes:
- 111 (i) a travel trailer[;];
- 112 (ii) a camping trailer[;];
- 113 (iii) a motor home[;];
- 114 (iv) a fifth wheel trailer[;]; and
- 115 (v) a van.
- 116 (18) (a) "Relevant market area," except with respect to recreational vehicles, means:
- 117 (i) the county in which a dealership is to be established or relocated; and
- 118 (ii) the area within a ten-mile radius from the site of the new or relocated dealership.
- 119 (b) "Relevant market area," with respect to recreational vehicles, means:
- 120 (i) the county in which the dealership is to be established or relocated; and

121 (ii) the area within a 35-mile radius from the site of the new or relocated dealership.

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

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

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

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

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

134 **13-14-103. Utah Motor Vehicle Franchise Advisory Board -- Creation --**
135 **Appointment of members -- Alternate members -- Chair -- Quorum -- Conflict of interest.**

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

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

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

141 (i) one recreational motor vehicle franchisee;

142 (ii) two new motor vehicle franchisees from different congressional districts in the
143 state; and

144 (iii) (A) three members representing motor vehicle franchisors registered by the
145 department pursuant to Section 13-14-105~~[, or]~~;

146 (B) three members of the general public, none of whom shall be related to any
147 franchisee~~[,]~~; or

148 (C) three members consisting of any combination of these representatives under this
149 Subsection (1)(b)(iii)~~[, and]~~.

150 ~~[(c) (i)]~~ (2) (a) The executive director shall appoint, with the concurrence of the
151 governor, three alternate members, with one alternate from each of the designations set forth in

152 Subsections (1)(b)(i), (1)(b)(ii), and (1)(b)(iii), except that the new motor vehicle franchisee
153 alternate or alternates for the designation under Subsection (1)(b)(ii) may be from any
154 congressional district~~[-and]~~.

155 ~~[(ii) an]~~ (b) An alternate ~~[who]~~ shall take the place of a regular advisory board member
156 from the same designation at a meeting of the advisory board where that regular advisory board
157 member is absent or otherwise disqualified from participating in the advisory board meeting.

158 ~~[(2)]~~ (3) (a) (i) Members of the advisory board appointed under Subsections (1)(b) and
159 (2) shall be appointed for a term of four years.

160 (ii) No specific term shall apply to the executive director or the executive director's
161 designee.

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

166 (c) In the event of a vacancy on the advisory board of a member appointed under
167 Subsection (1)(b) or (2), the executive director with the concurrence of the governor, shall
168 appoint an individual to complete the unexpired term of the member whose office is vacant.

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

170 ~~[(3)]~~ (4) (a) The executive director or the executive director's designee shall be the
171 chair of the advisory board.

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

174 ~~[(4)]~~ (5) (a) Four or more members of the advisory board constitute a quorum for the
175 transaction of business.

176 (b) The action of a majority of ~~[the members of the advisory board]~~ a quorum present
177 is considered the action of the advisory board.

178 ~~[(5)]~~ (6) (a) A member of the advisory board may not participate as a board member in
179 a proceeding or hearing:

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

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

183 board.

184 (b) If a member of the advisory board is disqualified under Subsection [~~(5)~~] (6)(a), the
 185 executive director shall select the appropriate alternate member to act on the issue before the
 186 advisory board as provided in Subsection [~~(1)~~](c)] (2).

187 [~~(6)~~] (7) Except for the executive director or the executive director's designee, an
 188 individual may not be appointed or serve on the advisory board while holding any other
 189 elective or appointive state or federal office.

190 [~~(7)~~] (8) (a) (i) A member of the advisory board who is not a government employee
 191 shall receive no compensation or benefits for the member's services, but may receive per diem
 192 and expenses incurred in the performance of the member's official duties at the rates
 193 established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

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

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

201 [~~(8)~~] (9) The department shall provide necessary staff support to the advisory board.
 202 Section 3. Section **13-14-104** is amended to read:

203 **13-14-104. Powers and duties of the advisory board and the executive director.**

204 [~~The advisory board has the jurisdiction to]~~

205 (1) (a) Except as provided in Subsection 13-14-106(3), the advisory board shall make
 206 recommendations to the executive director on the administration and enforcement of this
 207 chapter [and shall: (1) conduct rulemaking proceedings], including adjudicative and
 208 rulemaking proceedings.

209 (b) The executive director shall:

210 (i) consider the advisory board's recommendations; and

211 (ii) issue any final decision by the department.

212 (2) The executive director, in consultation with the advisory board, shall make rules for
 213 the administration of this chapter in accordance with Title 63, Chapter 46a, Utah

214 Administrative Rulemaking Act[, concerning administrative proceedings before the advisory
215 board; and (2) conduct adjudicative proceedings required by].

216 (3) (a) An adjudicative proceeding under this chapter shall be conducted in accordance
217 with Title 63, Chapter 46b, Administrative Procedures Act[; for the purpose of making
218 recommendations to the executive director].

219 (b) In an adjudicative proceeding under this chapter, any order issued by the executive
220 director:

221 (i) shall comply with Section 63-46b-10, whether the proceeding is a formal or an
222 informal adjudicative proceeding under Title 63, Chapter 46b, Administrative Procedures Act;
223 and

224 (ii) if the order modifies or rejects a finding of fact in a recommendation from the
225 advisory board, shall be made on the basis of information learned from the executive director's:

226 (A) personal attendance at the hearing;

227 (B) review of the record developed at the hearing; or

228 (C) consultation with the executive director's designee under Subsection
229 13-14-103(1)(a), who attended the adjudicative proceeding.

230 Section 4. Section **13-14-105** is amended to read:

231 **13-14-105. Registration -- Fees.**

232 (1) A franchisee or franchisor doing business in this state shall:

233 (a) annually register or renew its registration with the department in a manner
234 established by the department [~~in collaboration with the advisory board~~]; and

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

237 (2) The department[~~; in collaboration with the advisory board;~~] shall register or renew
238 the registration of a franchisee or franchisor if the franchisee or franchisor complies with this
239 chapter and rules made by the department under this chapter.

240 (3) A franchisee or franchisor registered under this section shall comply with this
241 chapter and any rules made by the department under this chapter including any amendments to
242 this chapter or the rules made after a franchisee or franchisor enter into a franchise agreement.

243 (4) The fee imposed under Subsection (1)(b) shall be collected by the department and
244 deposited into the Commerce Service Fund.

245 (5) Notwithstanding Subsection (1), an agent, officer, or field or area representative of
246 a franchisor does not need to be registered under this section if the franchisor is registered
247 under this section.

248 Section 5. Section **13-14-106** is amended to read:

249 **13-14-106. Administrative proceedings commenced by the agency.**

250 (1) Except as provided in Subsection ~~[(5)]~~ (3), after a hearing and after receipt of the
251 advisory board's recommendation, if the executive director finds that a person has violated this
252 chapter or any rule made under this chapter, the executive director may:

- 253 (a) issue a cease and desist order; and
254 (b) assess an administrative fine.

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

258 ~~[(3)]~~ (2) (a) In determining the amount and appropriateness of an administrative fine
259 under Subsection (1), the executive director shall consider:

- 260 (i) the gravity of the violation;
261 (ii) any history of previous violations; and
262 (iii) any attempt made by the person to retaliate against another person for seeking
263 relief under this chapter or other federal or state law relating to the motor vehicle industry.

264 (b) In addition to any other action permitted under Subsection (1), the department may
265 file an action with a court seeking to enforce the executive director's order and pursue the
266 executive director's assessment of a fine in an amount not to exceed \$5,000 for each day a
267 person violates an order of the executive director.

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

271 ~~[(5)]~~ (3) (a) In addition to the grounds for issuing an order on an emergency basis listed
272 in Subsection 63-46b-20(1), the executive director may issue an order on an emergency basis if
273 the executive director determines that irreparable damage is likely to occur if immediate action
274 is not taken.

275 (b) In issuing an emergency order under Subsection ~~[(5)]~~ (3)(a) the executive director

276 shall comply with the requirements of Subsections 63-46b-20(2) and (3).

277 Section 6. Section **13-14-107** is amended to read:

278 **13-14-107. Administrative proceedings -- Request for agency action.**

279 (1) (a) A person may commence an adjudicative proceeding in accordance with this
280 chapter and with Title 63, Chapter 46b, Administrative Procedures Act to:

281 (i) remedy a violation of this chapter; ~~[or]~~

282 (ii) obtain approval of an act regulated by this chapter~~[-]; or~~

283 (iii) obtain a determination that this chapter specifically authorizes that person to

284 request.

285 (b) A person shall commence an adjudicative proceeding by filing a request for agency
286 action in accordance with Section 63-46b-3.

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

290 ~~[(b) An order or decision issued by the executive director shall comply with Section~~
291 ~~63-46b-10.]~~

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

295 ~~[(3) The advisory board]~~

296 (2) After receipt of the advisory board's recommendation, the executive director shall
297 apportion in a fair and equitable manner between the parties any costs of the adjudicative
298 proceeding, including reasonable attorney's fees subject to final approval by a court.

299 Section 7. Section **13-14-201** is amended to read:

300 **13-14-201. Prohibited acts by franchisors -- Affiliates -- Disclosures.**

301 (1) A franchisor may not in this state:

302 (a) except as provided in Subsection (3), require a franchisee to order or accept
303 delivery of any new motor vehicle, part, accessory, equipment, or other item not otherwise
304 required by law that is not voluntarily ordered by the franchisee;

305 (b) require a franchisee to:

306 (i) participate monetarily in any advertising campaign; or

- 307 (ii) contest, or purchase any promotional materials, display devices, or display
308 decorations or materials;
- 309 (c) require a franchisee to change the capital structure of the franchisee's dealership or
310 the means by or through which the franchisee finances the operation of the franchisee's
311 dealership, if the dealership at all times meets reasonable capital standards determined by and
312 applied in a nondiscriminatory manner by the franchisor;
- 313 (d) require a franchisee to refrain from participating in the management of, investment
314 in, or acquisition of any other line of new motor vehicles or related products, if the franchisee:
- 315 (i) [~~the franchisee~~] maintains a reasonable line of credit for each make or line of
316 vehicles; and
- 317 (ii) complies with reasonable capital and facilities requirements of the franchisor;
- 318 (e) require a franchisee to prospectively agree to a release, assignment, novation,
319 waiver, or estoppel that would:
- 320 (i) relieve a franchisor from any liability imposed by this chapter; or
- 321 (ii) require any controversy between the franchisee and a franchisor to be referred to a
322 third party if the decision by the third party would be binding;
- 323 (f) require a franchisee to change the location of the principal place of business of the
324 franchisee's dealership or make any substantial alterations to the dealership premises, if the
325 change or alterations would be unreasonable;
- 326 (g) coerce or attempt to coerce a franchisee to join, contribute to, or affiliate with an
327 advertising association;
- 328 (h) require, coerce, or attempt to coerce a franchisee to enter into an agreement with the
329 franchisor or do any other act that is unfair or prejudicial to the franchisee, by threatening to
330 cancel a franchise agreement or other contractual agreement or understanding existing between
331 the franchisor and franchisee;
- 332 (i) adopt, change, establish, modify, or implement a plan or system for the allocation,
333 scheduling, or delivery of new motor vehicles, parts, or accessories to its franchisees so that the
334 plan or system is not fair, reasonable, and equitable;
- 335 (j) increase the price of any new motor vehicle that the franchisee has ordered from the
336 franchisor and for which there exists at the time of the order a bona fide sale to a retail
337 purchaser if the order was made prior to the franchisee's receipt of an official written price

338 increase notification;

339 (k) fail to indemnify and hold harmless its franchisee against any judgment for
340 damages or settlement approved in writing by the franchisor:

341 (i) including court costs and attorneys' fees arising out of actions, claims, or
342 proceedings including those based on:

343 (A) strict liability;

344 (B) negligence;

345 (C) misrepresentation;

346 (D) express or implied warranty;

347 (E) revocation as described in Section 70A-2-608; or

348 (F) rejection as described in Section 70A-2-602; and

349 (ii) to the extent the judgment or settlement relates to alleged defective or negligent
350 actions by the franchisor;

351 (l) threaten or coerce a franchisee to waive or forbear its right to protest the
352 establishment or relocation of a same line-make franchisee in the relevant market area of the
353 affected franchisee;

354 (m) fail to ship monthly to a franchisee, if ordered by the franchisee, the number of
355 new motor vehicles of each make, series, and model needed by the franchisee to achieve a
356 percentage of total new vehicle sales of each make, series, and model equitably related to the
357 total new vehicle production or importation being achieved nationally at the time of the order
358 by each make, series, and model covered under the franchise agreement;

359 (n) require or otherwise coerce a franchisee to under-utilize the franchisee's existing
360 facilities;

361 (o) fail to include in any franchise agreement the following language or language to the
362 effect that: "If any provision in this agreement contravenes the laws or regulations of any state
363 or other jurisdiction where this agreement is to be performed, or provided for by such laws or
364 regulations, the provision is considered to be modified to conform to such laws or regulations,
365 and all other terms and provisions shall remain in full force.";

366 (p) engage in the distribution, sale, offer for sale, or lease of a new motor vehicle to
367 purchasers who acquire the vehicle in this state except through a franchisee with whom the
368 franchisor has established a written franchise agreement, if the franchisor's trade name,

369 trademark, service mark, or related characteristic is an integral element in the distribution, sale,
370 offer for sale, or lease;

371 (q) engage in the distribution or sale of a recreational vehicle [~~which~~] that is
372 manufactured, rented, sold, or offered for sale in this state without being constructed in
373 accordance with the standards set by the American National Standards Institute for recreational
374 vehicles and evidenced by a seal or plate attached to the vehicle;

375 (r) except as provided in Subsection (2), authorize or permit a person to perform
376 warranty service repairs on motor vehicles, except warranty service repairs:

377 (i) by a franchisee with whom the franchisor has entered into a franchise agreement for
378 the sale and service of the franchisor's motor vehicles; or

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

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

382 (t) notwithstanding any other provisions of this chapter, unreasonably fail or refuse to
383 offer to its same line-make franchised dealers all models manufactured for that line-make, or
384 unreasonably require a dealer to pay any extra fee, remodel, renovate, recondition the dealer's
385 existing facilities, or purchase unreasonable advertising displays or other materials as a
386 prerequisite to receiving a model or series of vehicles, except that a recreational vehicle
387 manufacturer may split a line-make between motor home and travel trailer products;

388 (u) except as provided in Subsection (6), directly or indirectly:

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

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

391 (iii) act in the capacity of a new motor vehicle dealer, as defined in Section 13-14-102;

392 or

393 (iv) operate a motor vehicle service facility;

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

396 (w) directly or indirectly influence or direct potential customers to franchisees in an
397 inequitable manner, including:

398 (i) charging a franchisee a fee for a referral regarding a potential sale or lease of any of
399 the franchisee's products or services in an amount exceeding the actual cost of the referral;

400 (ii) giving a customer referral to a franchisee on the condition that the franchisee agree
401 to sell the vehicle at a price fixed by the franchisor; or

402 (iii) advising a potential customer as to the amount that the potential customer should
403 pay for a particular product;

404 (x) fail to provide comparable delivery terms to each franchisee for a product of the
405 franchisor, including the time of delivery after the placement of an order by the franchisee;

406 (y) if personnel training is provided by the franchisor to its franchisees, unreasonably
407 fail to make that training available to each franchisee on proportionally equal terms;

408 (z) condition a franchisee's eligibility to participate in a sales incentive program on the
409 requirement that a franchisee use the financing services of the franchisor or a subsidiary or
410 affiliate of the franchisor for inventory financing;

411 (aa) make available for public disclosure, except with the franchisee's permission or
412 under subpoena or in any administrative or judicial proceeding in which the franchisee or the
413 franchisor is a party, any confidential financial information regarding a franchisee, including:

414 (i) monthly financial statements provided by the franchisee;

415 (ii) the profitability of a franchisee; or

416 (iii) the status of a franchisee's inventory of products;

417 (bb) use any performance standard, incentive program, or similar method to measure
418 the performance of franchisees unless the standard or program:

419 (i) is designed and administered in a fair, reasonable, and equitable manner;

420 (ii) if based upon a survey, utilizes an actuarially generally acceptable, valid sample;

421 and

422 (iii) is, upon request by a franchisee, disclosed and explained in writing to the
423 franchisee, including:

424 (A) how the standard or program is designed[;];

425 (B) how [it] the standard or program will be administered[;]; and

426 (C) the types of data that will be collected and used in [its] the application of the
427 standard or program;

428 (cc) other than sales to the federal government, directly or indirectly, sell, lease, offer
429 to sell, or offer to lease, a new motor vehicle or any motor vehicle owned by the franchisor,
430 except through a franchised new motor vehicle dealer;

431 (dd) compel a franchisee, through a finance subsidiary, to agree to unreasonable
432 operating requirements, except that this Subsection (1)(dd) [~~shall~~] may not be construed to
433 limit the right of a financing subsidiary to engage in business practices in accordance with the
434 usage of trade in retail and wholesale motor vehicle financing;

435 (ee) condition the franchisor's participation in co-op advertising for a product category
436 on the franchisee's participation in any program related to another product category or on the
437 franchisee's achievement of any level of sales in a product category other than that which is the
438 subject of the co-op advertising;

439 (ff) subject to Subsection (7), discriminate against a franchisee in the state in favor of
440 another franchisee of the same line-make in the state by:

441 (i) selling or offering to sell a new motor vehicle to one franchisee at a higher actual
442 price, including the price for vehicle transportation, than the actual price at which the same
443 model similarly equipped is offered to or is made available by the franchisor to another
444 franchisee in the state during a similar time period;

445 (ii) except as provided in Subsection (8), using a promotional program or device or an
446 incentive, payment, or other benefit, whether paid at the time of the sale of the new motor
447 vehicle to the franchisee or later, that results in the sale of or offer to sell a new motor vehicle
448 to one franchisee in the state at a higher price, including the price for vehicle transportation,
449 than the price at which the same model similarly equipped is offered or is made available by
450 the franchisor to another franchisee in the state during a similar time period; or

451 (iii) except as provided in Subsection (9), failing to provide or direct a lead in a fair,
452 equitable, and timely manner; or

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

455 (2) Notwithstanding Subsection (1)(r), a franchisor may authorize or permit a person to
456 perform warranty service repairs on motor vehicles if the warranty services is for a franchisor
457 of recreational vehicles.

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

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

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

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

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

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

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

469 (6) (a) A franchisor may engage in any of the activities listed in Subsection (1)(u), for a
470 period not to exceed 12 months if:

471 (i) (A) the person from whom the franchisor acquired the interest in or control of the
472 new motor vehicle dealership was a franchised new motor vehicle dealer; and

473 (B) the franchisor's interest in the new motor vehicle dealership is for sale at a
474 reasonable price and on reasonable terms and conditions; or

475 (ii) the franchisor is engaging in the activity listed in Subsection (1)(u) for the purpose
476 of broadening the diversity of its dealer body and facilitating the ownership of a new motor
477 vehicle dealership by a person who:

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

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

481 (C) has made a significant investment in the new motor vehicle dealership [~~which~~ that
482 is subject to loss;

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

484 (E) operates the new motor vehicle dealership under a plan to acquire full ownership of
485 the dealership within a reasonable period of time and under reasonable terms and conditions.

486 (b) [~~The board~~] After receipt of the advisory board's recommendation, the executive
487 director may, for good cause shown, extend the time limit set forth in Subsection (6)(a) for an
488 additional period not to exceed 12 months.

489 (c) A franchisor who was engaged in any of the activities listed in Subsection (1)(u) in
490 this state prior to May 1, 2000, may continue to engage in that activity, but [~~staff~~] may not
491 expand that activity to acquire an interest in any other new motor vehicle dealerships or motor
492 vehicle service facilities after May 1, 2000.

493 (d) Notwithstanding [~~the provisions of~~] Subsection (1)(u), a franchisor may own,
494 operate, or control a new motor vehicle dealership trading in a line-make of motor vehicle if:

495 (i) as to that line-make of motor vehicle, there are no more than four franchised new
496 motor vehicle dealerships licensed and in operation within the state as of January 1, 2000;

497 (ii) the franchisor does not own directly or indirectly, more than a 45% interest in the
498 dealership;

499 (iii) at the time the franchisor first acquires ownership or assumes operation or control
500 of the dealership, the distance between the dealership thus owned, operated, or controlled and
501 the nearest unaffiliated new motor vehicle dealership trading in the same line-make is not less
502 than 150 miles;

503 (iv) all the franchisor's franchise agreements confer rights on the franchisee to develop
504 and operate as many dealership facilities as the franchisee and franchisor shall agree are
505 appropriate within a defined geographic territory or area; and

506 (v) as of January 1, 2000, no fewer than half of the franchisees of the line-make within
507 the state own and operate two or more dealership facilities in the geographic area covered by
508 the franchise agreement.

509 (7) Subsection (1)(ff) does not apply to recreational vehicles.

510 (8) Subsection (1)(ff)(ii) does not prohibit a promotional or incentive program that is
511 functionally available to all competing franchisees of the same line-make in the state on
512 substantially comparable terms.

513 (9) Subsection (1)(ff)(iii) may not be construed to:

514 (a) permit provision of or access to customer information that is otherwise protected
515 from disclosure by law or by contract between a franchisor and a franchisee; or

516 (b) require a franchisor to disregard the preference volunteered by a potential customer
517 in providing or directing a lead.

518 (10) Subsection (1)(gg) does not limit the right of an affiliate to engage in business
519 practices in accordance with the usage of trade in which the affiliate is engaged.

520 Section 8. Section **13-14-202** is amended to read:

521 **13-14-202. Sale or transfer of ownership.**

522 (1) (a) The franchisor shall give effect to the change in a franchise agreement as a
523 result of an event listed in Subsection (1)(b):

524 (i) subject to Subsection 13-14-305(2)(b); and
525 (ii) unless exempted under Subsection (2).
526 (b) The franchisor shall give effect to the change in a franchise agreement pursuant to
527 Subsection (1)(a) for the:
528 (i) sale of a dealership;
529 (ii) contract for sale of a dealership;
530 (iii) transfer of ownership of a franchisee's dealership by:
531 (A) sale[;];
532 (B) transfer of the business[;]; or [by]
533 (C) stock transfer; or
534 (iv) change in the executive management of the franchisee's dealership.
535 (2) A franchisor is exempted from the requirements of Subsection (1) if:
536 (a) the transferee is denied, or would be denied, a new motor vehicle franchisee's
537 license pursuant to Title 41, Chapter 3, Motor Vehicle Business Regulation Act; or
538 (b) the proposed sale or transfer of the business or change of executive management
539 will be substantially detrimental to the distribution of franchisor's new motor vehicles or to
540 competition in the relevant market area, provided that the franchisor has given written notice to
541 the franchisee within 60 days following receipt by the franchisor of the following:
542 (i) a copy of the proposed contract of sale or transfer executed by the franchisee and the
543 proposed transferee;
544 (ii) a completed copy of the franchisor's written application for approval of the change
545 in ownership or executive management, if any, including the information customarily required
546 by the franchisor; and
547 (iii) (A) a written description of the business experience of the executive management
548 of the transferee in the case of a proposed sale or transfer of the franchisee's business; or
549 (B) a written description of the business experience of the person involved in the
550 proposed change of the franchisee's executive management in the case of a proposed change of
551 executive management.
552 (3) For purposes of this section, the refusal by the franchisor to accept a proposed
553 transferee ~~[who]~~ is presumed to be unreasonable and undertaken without good cause if the
554 proposed franchisee:

555 (a) is of good moral character; and ~~[who]~~

556 (b) otherwise meets the written, reasonable, and uniformly applied standards or
557 qualifications, if any, of the franchisor relating to the business experience of executive
558 management and financial capacity to operate and maintain the dealership required by the
559 franchisor of its franchisees ~~[is presumed to be unreasonable and undertaken without good~~
560 ~~cause]~~.

561 (4) (a) If after receipt of the written notice from the franchisor described in Subsection
562 (1) the franchisee objects to the franchisor's refusal to accept the proposed sale or transfer of
563 the business or change of executive management, the franchisee may file an application for a
564 hearing before the advisory board up to 60 days from the date of receipt of the notice.

565 (b) After a hearing~~[-, the board]~~ and the executive director's receipt of the advisory
566 board's recommendation, the executive director shall determine, and enter an order providing
567 that:

568 (i) the proposed transferee or change in executive management;

569 (A) shall be approved; or

570 (B) may not be approved for specified reasons; or

571 (ii) a proposed transferee or change in executive management is approved if specific
572 conditions are timely satisfied.

573 (c) (i) The franchisee shall have the burden of proof with respect to all issues raised by
574 the franchisee's application for a hearing as provided in this section.

575 (ii) During the pendency of the hearing, the franchise agreement shall continue in effect
576 in accordance with its terms.

577 (d) The advisory board and the executive director shall expedite, upon written request,
578 any determination sought under this section.

579 Section 9. Section **13-14-203** is amended to read:

580 **13-14-203. Succession to franchise.**

581 (1) (a) A successor, including a family member of a deceased or incapacitated
582 franchisee, who is designated by the franchisee may succeed the franchisee in the ownership
583 and operation of the dealership under the existing franchise agreement if:

584 (i) the designated successor gives the franchisor written notice of an intent to succeed
585 to the rights of the deceased or incapacitated franchisee in the franchise agreement within 180

586 days after the franchisee's death or incapacity;

587 (ii) the designated successor agrees to be bound by all of the terms and conditions of
588 the franchise agreement; and

589 (iii) the designated successor meets the criteria generally applied by the franchisor in
590 qualifying franchisees.

591 (b) A franchisor may refuse to honor the existing franchise agreement with the
592 designated successor only for good cause.

593 (2) The franchisor may request in writing from a designated successor the personal and
594 financial data that is reasonably necessary to determine whether the existing franchise
595 agreement should be honored. The designated successor shall supply the personal and financial
596 data promptly upon the request.

597 (3) (a) If a franchisor believes that good cause exists for refusing to honor the requested
598 succession, the franchisor shall serve upon the designated successor notice of its refusal to
599 approve the succession, within 60 days after the later of:

600 (i) receipt of the notice of the designated successor's intent to succeed the franchisee in
601 the ownership and operation of the dealership; or

602 (ii) ~~the~~ receipt of the requested personal and financial data.

603 (b) Failure to serve the notice pursuant to Subsection (3)(a) is considered approval of
604 the designated successor and the franchise agreement is considered amended to reflect the
605 approval of the succession the day following the last day the franchisor can serve notice under
606 Subsection (3)(a).

607 (4) The notice of the franchisor provided in Subsection (3) shall:

608 (a) state the specific grounds for the refusal to approve the succession; and

609 (b) that discontinuance of the franchise agreement shall take effect not less than 180
610 days after the date the notice of refusal is served unless the proposed successor files an
611 application for hearing under Subsection (6).

612 (5) (a) This section does not prevent a franchisee from designating a person as the
613 successor by written instrument filed with the franchisor.

614 (b) If a franchisee files an instrument under Subsection (5)(a), the instrument governs
615 the succession rights to the management and operation of the dealership subject to the
616 designated successor satisfying the franchisor's qualification requirements as described in this

617 section.

618 (6) (a) If a franchisor serves a notice of refusal to a designated successor pursuant to
619 Subsection (3), the designated successor may, within the 180-day period provided in
620 Subsection (4), file with the advisory board an application for a hearing [~~to determine~~] and a
621 determination by the executive director regarding whether [~~or not~~] good cause exists for the
622 refusal.

623 (b) If application for a hearing is timely filed, the franchisor shall continue to honor the
624 franchise agreement until after:

625 (i) the requested hearing has been concluded;

626 (ii) a decision is rendered by the [~~board~~] executive director; and

627 (iii) the applicable appeal period has expired following a decision by the [~~board~~]
628 executive director.

629 Section 10. Section **13-14-301** is amended to read:

630 **13-14-301. Termination or noncontinuance of franchise.**

631 (1) Except as provided in Subsection (2), a franchisor may not terminate or refuse to
632 continue a franchise agreement unless:

633 (a) the franchisee has received written notice from the franchisor 60 days before the
634 effective date of termination or noncontinuance setting forth the specific grounds for
635 termination or noncontinuance that are relied on by the franchisor as establishing good cause
636 for the termination or noncontinuance;

637 (b) the franchisor has good cause for termination or noncontinuance; and

638 (c) the franchisor is willing and able to comply with Section 13-14-307.

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

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

642 (b) if the franchisee's license as a new motor vehicle dealer is revoked under Title 41,
643 Chapter 3, Motor Vehicle Business Regulation Act; or

644 (c) upon a mutual written agreement of the franchisor and franchisee.

645 (3) (a) At any time before the effective date of termination or noncontinuance of the
646 franchise, the franchisee may apply to the advisory board for a hearing on the merits, and
647 following notice to all parties concerned, the hearing shall be promptly held as provided in

648 Section 13-14-304.

649 (b) A termination or noncontinuance subject to a hearing under Subsection (3)(a) may
650 not become effective until:

651 (i) final determination of the issue by the [~~board~~] executive director; and

652 (ii) the applicable appeal period has lapsed.

653 Section 11. Section **13-14-302** is amended to read:

654 **13-14-302. Issuance of additional franchises -- Relocation of existing franchisees.**

655 (1) Except as provided in Subsection (6), a franchisor shall provide the notice and
656 documentation required under Subsection (2) if the franchisor seeks to:

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

659 (b) relocate an existing motor vehicle franchisee.

660 (2) (a) If a franchisor seeks to take an action listed Subsection (1), prior to taking the
661 action, the franchisor shall, in writing, notify the advisory board and each franchisee in that
662 line-make in the relevant market area.

663 (b) The notice required by Subsection (2)(a) shall:

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

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

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

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

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

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

675 (I) motor vehicle registration data;

676 (II) market penetration data; and

677 (III) demographic data;

678 (ii) written documentation that the franchisor has in its possession that it intends to rely

679 on in establishing good cause under Section 13-14-306 relating to the notice;

680 (iii) a statement that describes in reasonable detail how the establishment of a new
681 franchisee or the relocation of an existing franchisee will affect the amount of business
682 transacted by other franchisees of the same line-make in the relevant market area, as compared
683 to business available to the franchisees; and

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

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

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

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

691 (ii) the documents contain confidential proprietary information;

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

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

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

696 (A) the privacy of another franchisee; or

697 (B) Section 13-14-201.

698 (4) (a) Within 45 days of receiving notice required by Subsection (2), any franchisee
699 that is required to receive notice under Subsection (2) may protest to the advisory board the
700 establishment or relocation of the dealership.

701 (b) When a protest is filed, the ~~[board]~~ department shall inform the franchisor that:

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

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

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

706 ~~[(d)]~~ (iv) the franchisor may not establish or relocate a proposed dealership if the
707 ~~[board]~~ executive director determines that there is not good cause for permitting the
708 establishment or relocation of the dealership.

709 (5) If multiple protests are filed under Subsection (4), hearings may be consolidated to

710 expedite the disposition of the issue.

711 (6) Subsections (1) through (5) do not apply to a relocation that is:

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

714 (b) within the same county.

715 (7) For purposes of this section:

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

719 (b) the reopening in a relevant market area of a dealership that has not been in
720 operation for one year or more is considered the establishment of an additional motor vehicle
721 dealership; and

722 (c) (i) except as provided in Subsection (7)(c)(ii), the establishment of a temporary
723 additional place of business by a recreational vehicle franchisee is considered the establishment
724 of an additional motor vehicle dealership; and

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

729 Section 12. Section **13-14-303** is amended to read:

730 **13-14-303. Effect of terminating a franchise.**

731 If under Section 13-14-301 the ~~[board]~~ executive director permits a franchisor to
732 terminate or not continue a franchise and prohibits the franchisor from entering into a franchise
733 for the sale of new motor vehicles of a line-make in a relevant market area, the franchisor may
734 not enter into a franchise for the sale of new motor vehicles of that line-make in the specified
735 relevant market area unless the ~~[franchisor first establishes in a hearing before the board]~~
736 executive director determines, after a recommendation by the advisory board, that there has
737 been a change of circumstances so that the relevant market area at the time of the establishment
738 of the new franchise agreement can reasonably be expected to support the new franchisee.

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

740 **13-14-304. Hearing regarding termination, relocation, or establishment of**

741 **franchises.**

742 (1) (a) Within ten days of receiving an application from a franchisee under Subsection
743 13-14-301(3) challenging its franchisor's right to terminate or not continue a franchise, or an
744 application under Section 13-14-302 challenging the establishment or relocation of a franchise,
745 the [~~board~~] executive director shall:

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

747 (ii) send a copy of the order by certified or registered mail, with return receipt
748 requested, or by any form of reliable [~~electronic communication~~] delivery through which
749 receipt is verifiable to:

750 (A) the applicant;

751 (B) the franchisor; and

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

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

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

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

761 (4) (a) (i) Any hearing ordered under Subsection (1) shall be conducted no later than
762 120 days after the application for hearing is filed.

763 (ii) A final decision on the challenge shall be made by the [~~board~~] executive director no
764 later than 30 days after the hearing.

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

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

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

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

- 774 (a) terminate or not continue the franchise;
- 775 (b) enter into a franchise agreement establishing an additional franchise; or
- 776 (c) relocate the dealership of an existing franchisee.

777 Section 14. Section **13-14-305** is amended to read:

778 **13-14-305. Evidence to be considered in determining cause to terminate or**
779 **discontinue.**

780 (1) In determining whether a franchisor has established good cause for terminating or
781 not continuing a franchise agreement, the advisory board and the executive director shall
782 consider:

- 783 (a) the amount of business transacted by the franchisee, as compared to business
784 available to the franchisee;
- 785 (b) the investment necessarily made and obligations incurred by the franchisee in the
786 performance of the franchisee's part of the franchise agreement;
- 787 (c) the permanency of the investment;
- 788 (d) whether it is injurious or beneficial to the public welfare or public interest for the
789 business of the franchisee to be disrupted;
- 790 (e) whether the franchisee has adequate motor vehicle sales and service facilities,
791 equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of
792 the consumer for the new motor vehicles handled by the franchisee and has been and is
793 rendering adequate services to the public;
- 794 (f) whether the franchisee refuses to honor warranties of the franchisor under which the
795 warranty service work is to be performed pursuant to the franchise agreement, if the franchisor
796 reimburses the franchisee for the warranty service work;
- 797 (g) failure by the franchisee to substantially comply with those requirements of the
798 franchise agreement that are determined by the advisory board or the executive director to be:
 - 799 (i) reasonable [~~and~~];
 - 800 (ii) material; and
 - 801 (iii) not in violation of this chapter;
- 802 (h) evidence of bad faith by the franchisee in complying with those terms of the

803 franchise agreement that are determined by the advisory board or the executive director to be:

804 (i) reasonable ~~[and]~~;

805 (ii) material; and

806 (iii) not in violation of this chapter;

807 (i) prior misrepresentation by the franchisee in applying for the franchise;

808 (j) transfer of any ownership or interest in the franchise without first obtaining

809 approval from the franchisor or the ~~[board]~~ executive director after receipt of the advisory
810 board's recommendation; and

811 (k) any other factor the advisory board [considers] or the executive director consider
812 relevant.

813 (2) Notwithstanding any franchise agreement, the following do not constitute good
814 cause, as used in this chapter for the termination or noncontinuation of a franchise:

815 (a) the sole fact that the franchisor desires greater market penetration or more sales or
816 leases of new motor vehicles;

817 (b) the change of ownership of the franchisee's dealership or the change of executive
818 management of the franchisee's dealership unless the franchisor proves that the change of
819 ownership or executive management will be substantially detrimental to the distribution of the
820 franchisor's motor vehicles; or

821 (c) the fact that the franchisee has justifiably refused or declined to participate in any
822 conduct covered by Section 13-14-201.

823 (3) For purposes of Subsection (2), "substantially detrimental" includes the failure of
824 any proposed transferee to meet the objective criteria applied by the franchisor in qualifying
825 franchisees at the time of application.

826 Section 15. Section **13-14-306** is amended to read:

827 **13-14-306. Evidence to be considered in determining cause to relocate or**
828 **establish a new franchised dealership.**

829 In determining whether a franchisor has established good cause for relocating an
830 existing franchisee or establishing a new franchised dealership for the same line-make in a
831 given relevant market area, the advisory board and the executive director shall consider:

832 (1) the amount of business transacted by other franchisees of the same line-make in
833 that relevant market area, as compared to business available to the franchisees;

834 (2) the investment necessarily made and obligations incurred by other franchisees of
835 the same line-make in that relevant market area in the performance of their part of their
836 franchisee agreements;

837 (3) the permanency of the existing and proposed investment;

838 (4) whether it is injurious or beneficial to the public welfare or public interest for an
839 additional franchise to be established; and

840 (5) whether the franchisees of the same line-make in that relevant market area are
841 providing adequate service to consumers for the motor vehicles of the line-make, which shall
842 include the adequacy of:

843 (a) the motor vehicle sale and service facilities[;];

844 (b) equipment[;];

845 (c) supply of vehicle parts[;]; and

846 (d) qualified service personnel.

Legislative Review Note
as of 1-20-05 4:38 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0051

New Motor Vehicle Franchise Act Amendments

27-Jan-05

2:15 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst