



House of Representatives *State of Utah*

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January 25, 2005

Mr. Speaker:

The Business and Labor Committee reports a favorable recommendation on **H.B. 47**, NEW AUTOMOBILE FRANCHISE ACT AMENDMENTS, by Representative S. Urquhart, with the following amendments:

1. *Page 1, Lines 11 through 23:*

- 11 This bill:
- 12 ▶ defines terms;
- 13 ▶ ~~{ expands the prohibition on a franchisor that requires a franchisee to~~
release the
- 14 ~~franchisor from liability; }~~
- 15 ▶ ~~{ prohibits a franchisor from controlling of a franchisee's funds without~~
a description
- 16 ~~of the franchisor's claim to the funds and written approval from the franchisee;~~
- 17 ~~—▶ prohibits a franchisor from requiring written approval for the franchisor~~
to control a
- 18 ~~franchisee's funds as a condition of a franchise agreement or delivery of products~~
- 19 ~~and services; }~~
- addresses requirements for a franchisor's taking or controlling of a
franchisee's funds;
- 20 ▶ prohibits a franchisor from conditioning preferential status on the sale of ~~{ a~~
product
- 21 ~~originating from a third-party supplier } certain products if the franchisor~~
receives a financial benefit
- 22 from the franchisee's sale of that product; and
- 23 ▶ makes technical changes.

2. *Page 5, Lines 126 through 131:*

- 126 (d) require a franchisee to refrain from participating in the management of,
investment

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127 in, or acquisition of any other line of new motor vehicles or related products, if the
franchisee :
128 (i) ~~{the franchisee}~~ maintains a reasonable line of credit for each make or line
of
129 vehicles; and
130 (ii) ~~{the franchisee}~~ complies with reasonable capital and facilities
requirements of the
131 franchisor;

3. Page 5, Lines 134 through 135:

134 (i) relieve a franchisor from any liability ~~{, duty, or responsibility}~~ imposed
~~{on the~~
135 ~~franchisor}~~ by this chapter; or

4. Page 9, Line 274 through Page 10, Line 289:

274 ~~{(gg) take or assert control over funds belonging to a franchisee without:~~
275 ~~—(i) fully identifying in writing the basis for the franchisor's claim; and~~
276 ~~—(ii) obtaining the franchisee's written approval for the franchisor taking or~~
~~asserting~~
277 ~~control over the funds;~~
278 ~~—(hh) require execution of the written approval required by Subsection (1)(gg)~~
~~by a~~
279 ~~franchisee or prospective franchisee as a condition precedent to:~~
280 ~~—(i) a franchise agreement; or~~
281 ~~—(ii) delivery of a product or service by the franchisor under a franchise~~
~~agreement;~~
282 ~~—(ii) condition a franchisor's preferential status for the acquisition of a new~~
~~motor~~
283 ~~vehicle, product, or service upon the franchisee's sale of an aftermarket product if:~~
284 ~~—(i) the aftermarket product is:~~
285 ~~—(A) manufactured by the franchisor; or~~
286 ~~—(B) obtained by the franchisor for resale from a third-party supplier; and~~
287 ~~—(ii) the franchisor or its affiliate derives a financial benefit from the~~



franchisee's sale of
288 the aftermarket product; or }

(gg) (i) take control over funds owned or under the control of a franchisee based on the findings of a warranty audit or sales incentive audit unless the following conditions are satisfied:

(A) the franchisor fully identifies in writing the basis for the franchisor's claim or charge back arising from the audit, including notifying the franchisee that the franchisee has 20 days from the day on which the franchisee receives the franchisor's claim or charge back to assert a protest in writing to the franchisor identifying the basis for the protest;

(B) the franchisee's protest shall inform the franchisor that the protest shall be submitted to a mediator in the state who is identified by name and address in the franchisee's notice to the franchisor;

(C) if mediation is requested under Subsection (gg)(i)(B), mediation shall occur no later than 30 days after the day on which the franchisor receives the franchisee's protest of a claim or charge back;

(D) if mediation does not lead to a resolution of the protest, the protest shall be set for binding arbitration in the same venue in which the mediation occurred;

(E) binding arbitration under Subsection (gg)(i)(D) shall be conducted:

(I) by an arbitrator mutually agreed upon by the franchisor and the franchisee; and

(II) on a date mutually agreed upon by the franchisor and the franchisee, but shall be held no later than 90 days after the franchisor's receipt of the franchisee's notice of protest;

(F) this Subsection (1)(gg)(i) applies exclusively to warranty audits and sales incentive audits;

(G) Subsections (1)(gg)(i)(A) through (E) do not apply if the franchisor reasonably believes that the amount of the claim or charge back is related to a fraudulent act by the franchisee; and

(H) The costs of the mediator or arbitrator instituted under this Subsection (1)(gg) shall be shared equally by the franchisor and the franchisee.

(ii) A franchisor may not require a franchisee to execute a written waiver of the requirements of Subsection (gg)(i);

(hh) coerce, or attempt to coerce a franchisee to purchase or sell an aftermarket



product manufactured by the franchisor, or obtained by the franchisor for resale from a third-party supplier and the franchisor or its affiliate derives a financial benefit from the franchisee's sale or purchase of the aftermarket product as a condition to obtaining preferential status from the franchisor; or

289 ~~(i)~~ (ii) through an affiliate, take any action that would otherwise be prohibited under this

Respectfully,

Stephen D. Clark
Committee Chair

Voting: 10-0-3

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