

1 **NEW MOTOR VEHICLE FRANCHISE**

2 **AMENDMENTS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Sheldon L. Killpack**

6 House Sponsor: _____

7
8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the New Automobile Franchise Act by amending provisions relating
11 to new motor vehicle franchisor and franchisee requirements.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends definitions;
- 15 ▶ provides that a franchisor may not require or otherwise coerce a franchisee to
16 underutilize the franchisee's facilities by requiring or otherwise coercing a
17 franchisee to exclude or remove from the franchisee's facility operations the selling
18 or servicing of a line-make of vehicles for which the franchisee has a franchise
19 agreement to utilize the facilities;
- 20 ▶ amends the time frame for which written notice must be received by the franchisee
21 for a charge back for sales compensation or sales incentives arising out of the sale
22 or lease of a motor vehicle sold or leased by a franchisee to be compensable;
- 23 ▶ provides that a franchisor may not terminate or refuse to continue the rights to sell
24 and service a line-make unless the franchisor has complied with certain
25 requirements;
- 26 ▶ provides that a franchisor shall pay the franchisee certain costs for the
27 noncontinuation of a line-make except in certain circumstances; and



28 ▶ makes technical changes.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill provides an immediate effective date.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **13-14-102**, as last amended by Laws of Utah 2008, Chapters 362 and 388

36 **13-14-201**, as last amended by Laws of Utah 2008, Chapter 362

37 **13-14-204**, as last amended by Laws of Utah 2004, Chapter 123

38 **13-14-301**, as last amended by Laws of Utah 2005, Chapter 249

39 **13-14-307**, as last amended by Laws of Utah 2008, Chapter 362



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

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

43 **13-14-102. Definitions.**

44 As used in this chapter:

45 (1) "Advisory board" or "board" means the Utah Motor Vehicle Franchise Advisory
46 Board created in Section 13-14-103.

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

48 (3) "Aftermarket product" means any product or service not included in the
49 manufacturer's suggested retail price of the new motor vehicle, as that price appears on the
50 label required by 15 U.S.C. Sec. 1232(f).

51 (4) "Dealership" means a site or location in this state:

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

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

55 (5) "Department" means the Department of Commerce.

56 (6) "Executive director" means the executive director of the Department of Commerce.

57 (7) (a) "Franchise" or "franchise agreement" means a written agreement, or in the
58 absence of a written agreement, then a course of dealing or a practice for a definite or indefinite

59 period, in which:

60 ~~[(a)]~~ (i) a person grants to another person a license to use a trade name, trademark,
61 service mark, or related characteristic; and

62 ~~[(b)]~~ (ii) a community of interest exists in the marketing of new motor vehicles, new
63 motor vehicle parts, and services related to the sale or lease of new motor vehicles at wholesale
64 or retail.

65 (b) "Franchise" or "franchise agreement" includes a sales and service agreement.

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

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

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

73 (b) an intermediate distributor; and

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

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

79 (11) "Line-make" means:

80 (a) for other than a recreational vehicle, the motor vehicles that are offered for sale,
81 lease, or distribution under a common name, trademark, service mark, or brand name of the
82 franchisor, or manufacturer of the motor vehicle; or

83 (b) for a recreational vehicle, a specific series of recreational vehicle product that:

84 (i) is identified by a common series trade name or trademark;

85 (ii) is targeted to a particular market segment, as determined by decor, features,
86 equipment, size, weight, and price range;

87 (iii) has a length and floor plan that distinguish the recreational vehicle from other
88 recreational vehicles with substantially the same decor, features, equipment, size, weight, and
89 price;

90 (iv) belongs to a single, distinct classification of recreational vehicle product type
91 having a substantial degree of commonality in the construction of the chassis, frame, and body;
92 and

93 (v) a franchise agreement authorizes a dealer to sell.

94 (12) "Mile" means 5,280 feet.

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

97 (14) (a) "Motor vehicle" means:

98 (i) a travel trailer;

99 (ii) except as provided in Subsection (14)(b), a motor vehicle as defined in Section
100 41-3-102;

101 (iii) a semitrailer as defined in Section 41-1a-102;

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

103 (v) a recreational vehicle.

104 (b) "Motor vehicle" does not include:

105 (i) a motorcycle as defined in Section 41-1a-102;

106 (ii) an off-highway vehicle as defined in Section 41-3-102; and

107 (iii) a small trailer as defined in Section 41-3-102.

108 (15) "New motor vehicle" means a motor vehicle as defined in Subsection (14) that has
109 never been titled or registered and has been driven less than 7,500 miles, unless the motor
110 vehicle is a trailer, travel trailer, or semitrailer, in which case the mileage limit does not apply.

111 (16) "New motor vehicle dealer" is a person who is licensed under Subsection
112 41-3-202(1)(a) to sell new motor vehicles.

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

115 (18) (a) "Recreational vehicle" means a vehicular unit other than a mobile home,
116 primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is
117 either self-propelled or pulled by another vehicle.

118 (b) "Recreational vehicle" includes:

119 (i) a travel trailer;

120 (ii) a camping trailer;

121 (iii) a motor home;

122 (iv) a fifth wheel trailer; and

123 (v) a van.

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

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

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

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

128 (i) the county in which the dealership is to be established or relocated; and

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

130 (20) "Sale, transfer, or assignment" means any disposition of a franchise or an interest
131 in a franchise, with or without consideration, including a bequest, inheritance, gift, exchange,
132 lease, or license.

133 (21) "Serve" or "served," unless expressly indicated otherwise by statute or rule,
134 includes any reliable form of communication.

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

139 (23) "Written," "write," "in writing," or other variations of those terms shall include all
140 reliable forms of electronic communication.

141 Section 2. Section **13-14-201** is amended to read:

142 **13-14-201. Prohibited acts by franchisors -- Affiliates -- Disclosures.**

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

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

147 (b) require a franchisee to:

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

149 (ii) contest, or purchase any promotional materials, display devices, or display
150 decorations or materials;

151 (c) require a franchisee to change the capital structure of the franchisee's dealership or

152 the means by or through which the franchisee finances the operation of the franchisee's
153 dealership, if the dealership at all times meets reasonable capital standards determined by and
154 applied in a nondiscriminatory manner by the franchisor;

155 (d) require a franchisee to refrain from participating in the management of, investment
156 in, or acquisition of any other line of new motor vehicles or related products, if the franchisee:

157 (i) maintains a reasonable line of credit for each make or line of vehicles; and

158 (ii) complies with reasonable capital and facilities requirements of the franchisor;

159 (e) require a franchisee to prospectively agree to a release, assignment, novation,
160 waiver, or estoppel that would:

161 (i) relieve a franchisor from any liability, including notice and hearing rights imposed
162 on the franchisor by this chapter; or

163 (ii) require any controversy between the franchisee and a franchisor to be referred to a
164 third party if the decision by the third party would be binding;

165 (f) require a franchisee to change the location of the principal place of business of the
166 franchisee's dealership or make any substantial alterations to the dealership premises, if the
167 change or alterations would be unreasonable or cause the franchisee to lose control of the
168 premises or impose any other unreasonable requirement related to the facilities or premises;

169 (g) coerce or attempt to coerce a franchisee to join, contribute to, or affiliate with an
170 advertising association;

171 (h) require, coerce, or attempt to coerce a franchisee to enter into an agreement with the
172 franchisor or do any other act that is unfair or prejudicial to the franchisee, by threatening to
173 cancel a franchise agreement or other contractual agreement or understanding existing between
174 the franchisor and franchisee;

175 (i) adopt, change, establish, modify, or implement a plan or system for the allocation,
176 scheduling, or delivery of new motor vehicles, parts, or accessories to its franchisees so that the
177 plan or system is not fair, reasonable, and equitable;

178 (j) increase the price of any new motor vehicle that the franchisee has ordered from the
179 franchisor and for which there exists at the time of the order a bona fide sale to a retail
180 purchaser if the order was made prior to the franchisee's receipt of an official written price
181 increase notification;

182 (k) fail to indemnify and hold harmless its franchisee against any judgment for

183 damages or settlement approved in writing by the franchisor:

184 (i) including court costs and [~~attorneys'~~] attorney fees arising out of actions, claims, or
185 proceedings including those based on:

186 (A) strict liability;

187 (B) negligence;

188 (C) misrepresentation;

189 (D) express or implied warranty;

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

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

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

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

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

202 (n) require or otherwise coerce a franchisee to under-utilize the franchisee's existing
203 facilities, including by requiring or otherwise coercing a franchisee to exclude or remove from
204 the franchisee's facility operations the selling or servicing of a line-make of vehicles for which
205 the franchisee has a franchise agreement to utilize the facilities;

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

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

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

216 (q) engage in the distribution or sale of a recreational vehicle that is manufactured,
217 rented, sold, or offered for sale in this state without being constructed in accordance with the
218 standards set by the American National Standards Institute for recreational vehicles and
219 evidenced by a seal or plate attached to the vehicle;

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

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

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

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

227 (t) (i) except as provided in Subsection (1)(t)(ii) and notwithstanding any other
228 provisions of this chapter:

229 (A) unreasonably fail or refuse to offer to its same line-make franchised dealers all
230 models manufactured for that line-make;

231 (B) unreasonably require a dealer to:

232 (I) pay any extra fee, remodel, renovate, recondition the dealer's existing facilities; or

233 (II) purchase unreasonable advertising displays or other materials as a prerequisite to
234 receiving a model or series of vehicles;

235 (ii) notwithstanding Subsection (1)(t)(i), a recreational vehicle manufacturer may split
236 a line-make between motor home and travel trailer products;

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

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

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

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

241 or

242 (iv) operate a motor vehicle service facility;

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

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

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

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

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

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

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

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

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

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

264 (ii) the profitability of a franchisee; or

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

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

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

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

270 and

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

273 (A) how the standard or program is designed;

274 (B) how the standard or program will be administered; and

275 (C) the types of data that will be collected and used in the application of the standard or

276 program;

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

280 (dd) compel a franchisee, through a finance subsidiary, to agree to unreasonable
281 operating requirements, except that this Subsection (1)(dd) may not be construed to limit the
282 right of a financing subsidiary to engage in business practices in accordance with the usage of
283 trade in retail and wholesale motor vehicle financing;

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

288 (ff) except as provided in Subsections (7) through (9), discriminate against a franchisee
289 in the state in favor of another franchisee of the same line-make in the state:

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

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

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

302 (iv) if the franchisee complies with any reasonable requirement concerning the sale of
303 new motor vehicles, by using or considering the performance of any of its franchisees located
304 in this state relating to the sale of the manufacturer's new motor vehicles in determining the:

305 (A) dealer's eligibility to purchase program, certified, or other used motor vehicles
306 from the manufacturer;

307 (B) volume, type, or model of program, certified, or other used motor vehicles the
308 dealer is eligible to purchase from the manufacturer;

309 (C) price of any program, certified, or other used motor vehicles that the dealer is
310 eligible to purchase from the manufacturer; or

311 (D) availability or amount of any discount, credit, rebate, or sales incentive the dealer
312 is eligible to receive from the manufacturer for the purchase of any program, certified, or other
313 motor vehicle offered for sale by the manufacturer;

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

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

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

324 (C) if mediation is requested under Subsection (1)(gg)(i)(B), mediation shall occur no
325 later than 30 days after the day on which the franchisor receives the franchisee's protest of a
326 claim or charge back;

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

329 (E) binding arbitration under Subsection (1)(gg)(i)(D) shall be conducted:

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

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

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

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

338 (H) [~~The~~] the costs of the mediator or arbitrator instituted under this Subsection (1)(gg)
339 shall be shared equally by the franchisor and the franchisee[-]; and

340 (ii) [~~A franchisor may not~~] require a franchisee to execute a written waiver of the
341 requirements of Subsection (1)(gg)(i);

342 (hh) coerce, or attempt to coerce a franchisee to purchase or sell an aftermarket product
343 manufactured by the franchisor, or obtained by the franchisor for resale from a third-party
344 supplier and the franchisor or its affiliate derives a financial benefit from the franchisee's sale
345 or purchase of the aftermarket product as a condition to obtaining preferential status from the
346 franchisor;

347 (ii) through an affiliate, take any action that would otherwise be prohibited under this
348 chapter; or

349 (jj) impose any fee, surcharge, or other charge on a franchisee designed to recover the
350 cost of a warranty repair for which the franchisee is paid by the franchisor.

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

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

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

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

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

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

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

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

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

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

369 (B) the franchisor's interest in the new motor vehicle dealership is for sale at a
370 reasonable price and on reasonable terms and conditions; or
371 (ii) the franchisor is engaging in the activity listed in Subsection (1)(u) for the purpose
372 of broadening the diversity of its dealer body and facilitating the ownership of a new motor
373 vehicle dealership by a person who:
374 (A) is part of a group that has been historically underrepresented in the franchisor's
375 dealer body;
376 (B) would not otherwise be able to purchase a new motor vehicle dealership;
377 (C) has made a significant investment in the new motor vehicle dealership which is
378 subject to loss;
379 (D) has an ownership interest in the new motor vehicle dealership; and
380 (E) operates the new motor vehicle dealership under a plan to acquire full ownership of
381 the dealership within a reasonable period of time and under reasonable terms and conditions.
382 (b) After receipt of the advisory board's recommendation, the executive director may,
383 for good cause shown, extend the time limit set forth in Subsection (6)(a) for an additional
384 period not to exceed 12 months.
385 (c) A franchisor who was engaged in any of the activities listed in Subsection (1)(u) in
386 this state prior to May 1, 2000, may continue to engage in that activity, but may not expand that
387 activity to acquire an interest in any other new motor vehicle dealerships or motor vehicle
388 service facilities after May 1, 2000.
389 (d) Notwithstanding Subsection (1)(u), a franchisor may own, operate, or control a new
390 motor vehicle dealership trading in a line-make of motor vehicle if:
391 (i) as to that line-make of motor vehicle, there are no more than four franchised new
392 motor vehicle dealerships licensed and in operation within the state as of January 1, 2000;
393 (ii) the franchisor does not own directly or indirectly, more than a 45% interest in the
394 dealership;
395 (iii) at the time the franchisor first acquires ownership or assumes operation or control
396 of the dealership, the distance between the dealership thus owned, operated, or controlled and
397 the nearest unaffiliated new motor vehicle dealership trading in the same line-make is not less
398 than 150 miles;
399 (iv) all the franchisor's franchise agreements confer rights on the franchisee to develop

400 and operate as many dealership facilities as the franchisee and franchisor shall agree are
401 appropriate within a defined geographic territory or area; and

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

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

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

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

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

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

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

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

417 **13-14-204. Franchisor's obligations related to service -- Franchisor audits -- Time**
418 **limits.**

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

421 (a) the franchisee's obligations for new motor vehicle preparation, delivery, and
422 warranty service on its products;

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

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

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

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

430 (3) (a) In the determination of what constitutes reasonable compensation under this

431 section, the principal factor to be considered is the prevailing wage rates being paid by
432 franchisees in the relevant market area in which the franchisee is doing business.

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

441 (4) A franchisor may not fail to:

442 (a) perform any warranty obligation;

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

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

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

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

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

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

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

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

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

462 misrepresentation.

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

466 (b) Except as provided in Subsection (9)(c), all charge backs levied by a franchisor for
467 sales compensation or sales incentives arising out of the sale or lease of a motor vehicle sold or
468 leased by a franchisee shall be compensable only if written notice of the charge back is
469 received by the franchisee within 12 months immediately following the sooner of:

470 (i) the date when the sales incentive program terminates~~[, but no later than 24 months~~
471 ~~following]; or~~

472 (ii) the date when payment for the sales compensation or sales incentive was made by
473 the franchisor to the franchisee.

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

476 Section 4. Section **13-14-301** is amended to read:

477 **13-14-301. Termination or noncontinuance of franchise.**

478 (1) Except as provided in Subsection (2), a franchisor may not terminate or refuse to
479 continue a franchise agreement or the rights to sell and service a line-make pursuant to a
480 franchise agreement, whether through termination or noncontinuance of the franchise,
481 termination or noncontinuance of a line-make, or otherwise, unless:

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

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

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

488 (2) A franchisor may terminate a franchise, without complying with Subsection (1):

489 ~~[(a) if for a particular line-make the franchisor or manufacturer discontinues that~~
490 ~~line-make;]~~

491 ~~[(b)]~~ (a) if the franchisee's license as a new motor vehicle dealer is revoked under Title
492 41, Chapter 3, Motor Vehicle Business Regulation Act; or

493 ~~(c)~~ (b) upon a mutual written agreement of the franchisor and franchisee.

494 (3) (a) At any time before the effective date of termination or noncontinuance of the
495 franchise, the franchisee may apply to the advisory board for a hearing on the merits, and
496 following notice to all parties concerned, the hearing shall be promptly held as provided in
497 Section 13-14-304.

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

500 (i) final determination of the issue by the executive director; and

501 (ii) the applicable appeal period has lapsed.

502 Section 5. Section **13-14-307** is amended to read:

503 **13-14-307. Franchisor's obligations upon termination or noncontinuation of**
504 **franchise or line-make.**

505 (1) Upon the termination or noncontinuation of a franchise or a line-make by the
506 franchisor, the franchisor shall pay the franchisee:

507 (a) the franchisee's cost of new, undamaged, and unsold motor vehicles in the
508 franchisee's inventory acquired from the franchisor or another franchisee of the same line-make
509 representing both the current model year at the time of termination or noncontinuation and the
510 immediately prior model year vehicles, except only those recreational vehicles purchased
511 within the 12 months immediately preceding the date of termination or noncontinuation shall
512 be repurchased:

513 (i) plus any charges made by the franchisor, for distribution, delivery, or taxes;

514 (ii) plus the franchisee's cost of any accessories added on the vehicle, except only those
515 recreational vehicle accessories that are listed in the franchisor's wholesale product literature as
516 options for that vehicle shall be repurchased; and

517 (iii) less all allowances paid or credited to the franchisee by the franchisor;

518 (b) the franchisee's cost of new and undamaged motor vehicles in the franchisee's
519 inventory of demonstrator vehicles, reduced by 1% for each 1000 miles registered on the
520 demonstrator vehicle's odometer, except recreational vehicles whose cost shall be reduced by
521 2% for each 1,000 miles registered on the odometer of demonstrator self-propelled recreational
522 vehicles, exclusive of miles incurred in delivery of the vehicle, and the cost of demonstrator
523 nonself-propelled recreational vehicles shall be reduced by 10% of the franchisee's vehicle

524 cost:

- 525 (i) plus any charges made by the franchisor for distribution, delivery, or taxes;
- 526 (ii) plus the franchisee's cost of any accessories added on the vehicles, except only
527 those recreational vehicle accessories that are listed in the franchisor's wholesale product
528 literature as options for that vehicle shall be repurchased; and
- 529 (iii) less all allowances paid or credited to the franchisee by the franchisor;
- 530 (c) the cost of all new, undamaged, and unsold supplies, parts, and accessories as set
531 forth in the franchisor's catalog at the time of termination or noncontinuation for the supplies,
532 parts, and accessories, less all allowances paid or credited to the franchisee by the franchisor;
- 533 (d) the fair market value, but not less than the franchisee's depreciated acquisition cost
534 of each undamaged sign owned by the franchisee that bears a common name, trade name, or
535 trademark of the franchisor if acquisition of the sign was recommended or required by the
536 franchisor. If a recreational vehicle franchisee has a sign with multiple manufacturers listed,
537 the franchisor is only responsible for its pro rata portion of the sign;
- 538 (e) the fair market value, but not less than the franchisee's depreciated acquisition cost
539 of all special tools, equipment, and furnishings acquired from the franchisor or sources
540 approved by the franchisor that were recommended or required by the franchisor and are in
541 good and usable condition;
- 542 (f) the cost of transporting, handling, packing, and loading motor vehicles, supplies,
543 parts, accessories, signs, special tools, equipment, and furnishings;
- 544 (g) reasonable compensation to the franchisee for any cost incurred pertaining to the
545 unexpired term of a lease agreement for the dealership's existing location;
- 546 (h) the negotiated fair market value of the dealership premises, based on the fair market
547 value of the real property, if the dealer opts to sell the dealership premises; and
- 548 (i) compensate the franchisee for the blue sky or goodwill of the dealership, as
549 determined in accordance with the applicable industry standards taking into consideration the
550 effect that the timing of the manufacturer's announcement of discontinuance of a line make has
551 or will have on future profitability of the dealership.
- 552 (2) If a franchise is terminated by the franchisor for cause as defined in Subsections
553 13-14-301(1)(b) and (2)~~(b)~~(a), Subsections (1)(g), (h), and (i) do not apply.
- 554 (3) The franchisor shall pay the franchisee the amounts specified in Subsection (1)

555 within 90 days after the tender of the property to the franchisor if the franchisee:

556 (a) has clear title to the property; and

557 (b) is in a position to convey title to the franchisor.

558 (4) If repurchased inventory, equipment, or demonstrator vehicles are subject to a
559 security interest, the franchisor may make payment jointly to the franchisee and to the holder of
560 the security interest.

561 Section 6. **Effective date.**

562 If approved by two-thirds of all the members elected to each house, this bill takes effect
563 upon approval by the governor, or the day following the constitutional time limit of Utah
564 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
565 the date of veto override.

Legislative Review Note

as of 1-26-09 2:29 PM

Office of Legislative Research and General Counsel

S.B. 52 - New Motor Vehicle Franchise Amendments

Fiscal Note

2009 General Session
State of Utah

State Impact

Enactment of this bill will require an additional appropriation from the Commerce Service Fund of \$2,200 in FY 2010 and FY 2010. Commerce Service Fund spending affects the annual transfer to the General Fund.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	(\$2,200)	(\$2,200)
Commerce Service Fund	\$0	\$2,200	\$2,200	\$0	\$0	\$0
Total	\$0	\$2,200	\$2,200	\$0	(\$2,200)	(\$2,200)

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.