

Senator Daniel R. Liljenquist proposes the following substitute bill:

NEW MOTOR VEHICLE FRANCHISE

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel R. Liljenquist

House Sponsor: Douglas C. Aagard

LONG TITLE

General Description:

This bill modifies and enacts provisions under the New Automobile Franchise Act.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ enacts a definition of "site-control agreement";
- ▶ modifies provisions relating to prohibited actions by a new motor vehicle franchisor;
- ▶ prohibits a new motor vehicle franchisor from taking certain actions;
- ▶ modifies the basis for denial of a franchisee's claim for warranty compensation;
- ▶ enacts a provision relating to site-control agreements;
- ▶ modifies a provision relating to the relocation of a franchisee; and
- ▶ modifies a provision relating to a franchisor's obligation to pay a franchisee upon

the termination or noncontinuation of a franchise.

Monies Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **13-14-102**, as last amended by Laws of Utah 2009, Chapter 318

30 **13-14-201**, as last amended by Laws of Utah 2009, Chapter 318

31 **13-14-204**, as last amended by Laws of Utah 2009, Chapter 318

32 **13-14-302**, as last amended by Laws of Utah 2005, Chapter 249

33 **13-14-307**, as last amended by Laws of Utah 2009, Chapter 318

34 ENACTS:

35 **13-14-206**, Utah Code Annotated 1953



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

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

39 **13-14-102. Definitions.**

40 As used in this chapter:

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

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

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

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

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

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

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

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

53 (7) (a) "Franchise" or "franchise agreement" means a written agreement, or in the
54 absence of a written agreement, then a course of dealing or a practice for a definite or indefinite
55 period, in which:

56 (i) a person grants to another person a license to use a trade name, trademark, service

57 mark, or related characteristic; and

58 (ii) a community of interest exists in the marketing of new motor vehicles, new motor
59 vehicle parts, and services related to the sale or lease of new motor vehicles at wholesale or
60 retail.

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

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

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

68 (a) the manufacturer, producer, assembler, or distributor of the new motor vehicles;

69 (b) an intermediate distributor; and

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

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

75 (11) "Line-make" means:

76 (a) for other than a recreational vehicle, the motor vehicles that are offered for sale,
77 lease, or distribution under a common name, trademark, service mark, or brand name of the
78 franchisor~~[-or manufacturer of the motor vehicle]~~; or

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

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

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

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

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

88 and

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

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

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

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

94 (i) a travel trailer;

95 (ii) except as provided in Subsection (14)(b), a motor vehicle as defined in Section

96 41-3-102;

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

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

99 (v) a recreational vehicle.

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

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

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

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

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

107 (16) "New motor vehicle dealer" is a person who is licensed under Subsection
108 41-3-202(1)(a) to sell new motor vehicles.

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

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

114 (b) "Recreational vehicle" includes:

115 (i) a travel trailer;

116 (ii) a camping trailer;

117 (iii) a motor home;

118 (iv) a fifth wheel trailer; and

119 (v) a van.

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

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

122 (ii) the area within a [~~ten-mile~~] 15-mile radius from the site of the new or relocated
123 dealership.

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

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

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

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

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

132 (22) "Site-control agreement" means an agreement, however denominated and
133 regardless of its form or of the parties to it, that has the effect of:

134 (a) controlling in any way the use and development of the premises upon which a
135 franchisee's business operations are located;

136 (b) requiring a franchisee to establish or maintain an exclusive dealership facility on
137 the premises upon which the franchisee's business operations are located; or

138 (c) restricting the ability of the franchisee or, if the franchisee leases the dealership
139 premises, the franchisee's lessor to transfer, sell, lease, develop, redevelop, or change the use of
140 some or all of the dealership premises, whether by sublease, lease, collateral pledge of lease,
141 right of first refusal to purchase or lease, option to purchase or lease, or any similar
142 arrangement.

143 [~~(22)~~] (23) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable
144 vehicle without motive power, designed as a temporary dwelling for travel, recreational, or
145 vacation use that does not require a special highway movement permit when drawn by a
146 self-propelled motor vehicle.

147 [~~(23)~~] (24) "Written," "write," "in writing," or other variations of those terms shall
148 include all reliable forms of electronic communication.

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

150 **13-14-201. Prohibited acts by franchisors -- Affiliates -- Disclosures.**
151 (1) A franchisor may not in this state:
152 (a) except as provided in Subsection (3), require a franchisee to order or accept
153 delivery of any new motor vehicle, part, accessory, equipment, or other item not otherwise
154 required by law that is not voluntarily ordered by the franchisee;
155 (b) require a franchisee to:
156 (i) participate monetarily in any advertising campaign; or
157 (ii) contest, or purchase any promotional materials, display devices, or display
158 decorations or materials;
159 (c) require a franchisee to change the capital structure of the franchisee's dealership or
160 the means by or through which the franchisee finances the operation of the franchisee's
161 dealership, if the dealership at all times meets reasonable capital standards determined by and
162 applied in a nondiscriminatory manner by the franchisor;
163 (d) require a franchisee to refrain from participating in the management of, investment
164 in, or acquisition of any other line of new motor vehicles or related products, if the franchisee:
165 (i) maintains a reasonable line of credit for each make or line of vehicles; and
166 (ii) complies with reasonable capital and facilities requirements of the franchisor;
167 (e) require a franchisee to prospectively agree to a release, assignment, novation,
168 waiver, or estoppel that would:
169 (i) relieve a franchisor from any liability, including notice and hearing rights imposed
170 on the franchisor by this chapter; or
171 (ii) require any controversy between the franchisee and a franchisor to be referred to a
172 third party if the decision by the third party would be binding;
173 (f) require a franchisee to change the location of the principal place of business of the
174 franchisee's dealership or make any substantial alterations to the dealership premises, if the
175 change or alterations would be unreasonable or cause the franchisee to lose control of the
176 premises or impose any other unreasonable requirement related to the facilities or premises;
177 (g) coerce or attempt to coerce a franchisee to join, contribute to, or affiliate with an
178 advertising association;
179 (h) require, coerce, or attempt to coerce a franchisee to enter into an agreement with the
180 franchisor or do any other act that is unfair or prejudicial to the franchisee, by threatening to

181 cancel a franchise agreement or other contractual agreement or understanding existing between
182 the franchisor and franchisee;

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

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

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

192 (i) including court costs and attorney fees arising out of actions, claims, or proceedings
193 including those based on:

194 (A) strict liability;

195 (B) negligence;

196 (C) misrepresentation;

197 (D) express or implied warranty;

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

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

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

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

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

210 (n) require or otherwise coerce a franchisee to under-utilize the franchisee's existing
211 dealer facility or facilities, including by:

212 (i) requiring or otherwise coercing a franchisee to exclude or remove from the
213 franchisee's facility operations the selling or servicing of a line-make of vehicles for which the
214 franchisee has a franchise agreement to utilize the facilities; or

215 (ii) prohibiting the franchisee from locating, relocating, or occupying a franchise or
216 line-make in an existing facility owned or occupied by the franchisee that includes the selling
217 or servicing of another franchise or line-make at the facility provided that the franchisee gives
218 the franchisor written notice of the franchise co-location;

219 (o) fail to include in any franchise agreement or other agreement governing a
220 franchisee's ownership of a dealership or a franchisee's conduct of business under a franchise
221 the following language or language to the effect that: "If any provision in this agreement
222 contravenes the laws or regulations of any state or other jurisdiction where this agreement is to
223 be performed, or provided for by such laws or regulations, the provision is considered to be
224 modified to conform to such laws or regulations, and all other terms and provisions shall
225 remain in full force.";

226 (p) engage in the distribution, sale, offer for sale, or lease of a new motor vehicle to
227 purchasers who acquire the vehicle in this state except through a franchisee with whom the
228 franchisor has established a written franchise agreement, if the franchisor's trade name,
229 trademark, service mark, or related characteristic is an integral element in the distribution, sale,
230 offer for sale, or lease;

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

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

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

239 (ii) on owned motor vehicles by a person or government entity who has purchased new
240 motor vehicles pursuant to a franchisor's [~~or manufacturer's~~] fleet discount program;

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

242 (t) (i) except as provided in Subsection (1)(t)(ii) and notwithstanding any other

243 provisions of this chapter:

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

246 (B) unreasonably require a dealer to:

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

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

250 (ii) notwithstanding Subsection (1)(t)(i), a recreational vehicle [~~manufacturer~~]

251 franchisor may split a line-make between motor home and travel trailer products;

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

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

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

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

256 or

257 (iv) operate a motor vehicle service facility;

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

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

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

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

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

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

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

272 (z) condition a franchisee's eligibility to participate in a sales incentive program on the
273 requirement that a franchisee use the financing services of the franchisor or a subsidiary or

274 affiliate of the franchisor for inventory financing;

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

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

279 (ii) the profitability of a franchisee; or

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

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

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

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

285 and

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

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

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

290 (C) the types of data that will be collected and used in the application of the standard or
291 program;

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

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

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

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

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

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

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

317 (iv) if the franchisee complies with any reasonable requirement concerning the sale of
318 new motor vehicles, by using or considering the performance of any of its franchisees located
319 in this state relating to the sale of the ~~[manufacturer's]~~ franchisor's new motor vehicles in
320 determining the:

321 (A) dealer's eligibility to purchase program, certified, or other used motor vehicles
322 from the ~~[manufacturer]~~ franchisor;

323 (B) volume, type, or model of program, certified, or other used motor vehicles the
324 dealer is eligible to purchase from the ~~[manufacturer]~~ franchisor;

325 (C) price of any program, certified, or other used motor vehicles that the dealer is
326 eligible to purchase from the ~~[manufacturer]~~ franchisor; or

327 (D) availability or amount of any discount, credit, rebate, or sales incentive the dealer
328 is eligible to receive from the manufacturer for the purchase of any program, certified, or other
329 motor vehicle offered for sale by the ~~[manufacturer]~~ franchisor;

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

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

336 assert a protest in writing to the franchisor identifying the basis for the protest;

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

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

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

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

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

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

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

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

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

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

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

363 (ii) through an affiliate, take any action that would otherwise be prohibited under this
364 chapter; [~~or~~]

365 (jj) impose any fee, surcharge, or other charge on a franchisee designed to recover the
366 cost of a warranty repair for which the franchisee is paid by the franchisor[-];

367 (kk) directly or indirectly condition any of the following actions on the willingness of a
368 franchisee, prospective new franchisee, or owner of an interest in a dealership facility to enter
369 into a site control agreement:

370 (i) the awarding of a franchise to a prospective new franchisee;

371 (ii) the addition of a line-make or franchise to an existing franchisee;

372 (iii) the renewal of an existing franchisee's franchise;

373 (iv) the approval of the relocation of an existing franchisee's dealership facility, unless
374 the franchisor pays, and the franchisee voluntarily accepts, additional specified cash
375 consideration to facilitate the relocation; or

376 (v) the approval of the sale or transfer of a franchise's ownership, unless the franchisor
377 pays, and the buyer voluntarily accepts, additional specified cash consideration to facilitate the
378 sale or transfer;

379 (ll) subject to Subsection (11), deny a franchisee the right to return any or all parts or
380 accessories that:

381 (i) were specified for and sold to the franchisee under an automated ordering system
382 required by the franchisor; and

383 (ii) (A) are in good, resalable condition; and

384 (B) (I) the franchisee received within the previous 12 months; or

385 (II) are listed in the current parts catalog; or

386 (mm) subject to Subsection (12), obtain from a franchisee a waiver of a franchisee's
387 right, by threatening:

388 (i) to impose a detriment upon the franchisee's business; or

389 (ii) to withhold any entitlement, benefit, or service:

390 (A) to which the franchisee is entitled under a franchise agreement, contract, statute,
391 rule, regulation, or law; or

392 (B) that has been granted to more than one other franchisee of the franchisor in the
393 state.

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

397 (3) Subsection (1)(a) does not prevent the franchisor from requiring that a franchisee

398 carry a reasonable inventory of:

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

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

401 (4) Subsection (1)(d) does not prevent a franchisor from requiring that a franchisee

402 maintain separate sales personnel or display space.

403 (5) Upon the written request of any franchisee, a franchisor shall disclose in writing to

404 the franchisee the basis on which new motor vehicles, parts, and accessories are allocated,

405 scheduled, and delivered among the franchisor's dealers of the same line-make.

406 (6) (a) A franchisor may engage in any of the activities listed in Subsection (1)(u), for a

407 period not to exceed 12 months if:

408 (i) (A) the person from whom the franchisor acquired the interest in or control of the

409 new motor vehicle dealership was a franchised new motor vehicle dealer; and

410 (B) the franchisor's interest in the new motor vehicle dealership is for sale at a

411 reasonable price and on reasonable terms and conditions; or

412 (ii) the franchisor is engaging in the activity listed in Subsection (1)(u) for the purpose

413 of broadening the diversity of its dealer body and facilitating the ownership of a new motor

414 vehicle dealership by a person who:

415 (A) is part of a group that has been historically underrepresented in the franchisor's

416 dealer body;

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

418 (C) has made a significant investment in the new motor vehicle dealership which is

419 subject to loss;

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

421 (E) operates the new motor vehicle dealership under a plan to acquire full ownership of

422 the dealership within a reasonable period of time and under reasonable terms and conditions.

423 (b) After receipt of the advisory board's recommendation, the executive director may,

424 for good cause shown, extend the time limit set forth in Subsection (6)(a) for an additional

425 period not to exceed 12 months.

426 (c) A franchisor who was engaged in any of the activities listed in Subsection (1)(u) in

427 this state prior to May 1, 2000, may continue to engage in that activity, but may not expand that

428 activity to acquire an interest in any other new motor vehicle dealerships or motor vehicle

429 service facilities after May 1, 2000.

430 (d) Notwithstanding Subsection (1)(u), a franchisor may own, operate, or control a new
431 motor vehicle dealership trading in a line-make of motor vehicle if:

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

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

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

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

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

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

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

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

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

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

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

457 (11) (a) Subsection (1)(ll) does not apply to parts or accessories that the franchisee
458 ordered and purchased outside of an automated parts ordering system required by the
459 franchisor.

460 (b) In determining whether parts or accessories in a franchisee's inventory were
461 specified and sold under an automated ordering system required by the franchisor, the parts and
462 accessories in the franchisee's inventory are presumed to be the most recent parts and
463 accessories that the franchisor sold to the franchisee.

464 (12) (a) Subsection (1)(mm) does not apply to a good faith settlement of a dispute,
465 including a dispute relating to contract negotiations, in which the franchisee gives a waiver in
466 exchange for fair consideration in the form of a benefit conferred on the franchisee.

467 (b) Subsection (12)(a) may not be construed to defeat a franchisee's claim that a waiver
468 has been obtained in violation of Subsection (1)(mm).

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

470 **13-14-204. Franchisor's obligations related to service -- Franchisor audits -- Time**
471 **limits.**

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

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

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

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

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

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

483 (3) (a) In the determination of what constitutes reasonable compensation under this
484 section, the principal factor to be considered is the prevailing wage rates being paid by
485 franchisees in the relevant market area in which the franchisee is doing business.

486 (b) Compensation of the franchisee for warranty service work may not be less than the
487 amount charged by the franchisee for like parts and service to retail or fleet customers, if the
488 amounts are reasonable. In the case of a recreational vehicle franchisee, reimbursement for
489 parts used in the performance of warranty repairs, including those parts separately warranted
490 directly to the consumer by a recreational vehicle parts supplier, may not be less than the

491 franchisee's cost plus 20%. For purposes of this Subsection (3)(b), the term "cost" shall be that
 492 same price paid by a franchisee to a franchisor or supplier for the part when the part is
 493 purchased for a nonwarranty repair.

494 (4) A franchisor may not fail to:

495 (a) perform any warranty obligation;

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

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

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

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

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

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

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

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

513 (8) A franchisee's claim for warranty compensation may ~~[not]~~ be denied ~~[except for~~
 514 ~~good cause such as performance of nonwarranty repairs, lack of material documentation, fraud,~~
 515 ~~or misrepresentation.]~~ only if:

516 (a) the franchisee's claim is based on a nonwarranty repair;

517 (b) the franchisee lacks material documentation for the claim;

518 (c) the franchisee fails to comply materially with specific substantive terms and
 519 conditions of the franchisor's warranty compensation program; ~~§~~ or ~~§~~

520 (d) the franchisor has a bona fide belief based on competent evidence that the
 521 franchisee's claim is intentionally false, fraudulent, or misrepresented.

522 (9) (a) Any charge backs for warranty parts or service compensation and service
 523 incentives shall only be enforceable for the [~~12-month~~] six-month period immediately
 524 following the date the payment for warranty reimbursement was made by the franchisor.

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

529 (i) the date when the sales incentive program terminates; or

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

532 (c) (i) Upon an audit, the franchisor shall provide the franchisee automated or written
 533 notice explaining the amount of and reason for a charge back.

534 (ii) A franchisee may respond in writing within 30 days after the notice under
 535 Subsection (9)(c)(i) to:

536 (A) explain a deficiency; or

537 (B) provide materials or information to correct ~~§~~ and cure ~~§~~ compliance with a
 537a provision that is a
 538 basis for a charge back.

539 (d) A charge back:

540 (i) may not be based on a nonmaterial error that is clerical in nature; and

541 (ii) (A) shall be based on one or more specific instances of material noncompliance
 542 with the franchisor's warranty compensation program or sales incentive program; and

543 (B) may not be extrapolated from a sampling of warranty claims or sales incentive
 544 claims.

545 [~~(e)~~] (e) The time limitations of this Subsection (9) do not preclude charge backs for
 546 any fraudulent claim that was previously paid.

547 Section 4. Section **13-14-206** is enacted to read:

548 **13-14-206. Site-control agreements.**

549 (1) A site-control agreement entered into on or after May 11, 2010:

550 (a) may be voluntarily terminated by a franchisee, subject to Subsection (2)(a); and

551 (b) terminates immediately upon:

552 (i) a franchisor's sale, assignment, or other transfer of the right to manufacture or

553 distribute the line-make of vehicles covered by the franchisee's franchise;

554 (ii) a franchisor's ceasing to manufacture or distribute the line-make of vehicles

555 covered by the franchisee's franchise;

556 (iii) a franchisor's termination of a franchisee's franchise without cause and against the

557 franchisee's will; or

558 (iv) the failure of the franchisor or its affiliate to exercise a right of first refusal to

559 purchase the assets or ownership of the franchisee's business when given the opportunity to do

560 so under the franchise or other agreement, subject to the repayment requirements of Subsection

561 (2) if the right of first refusal arises because of the voluntary action of the franchisee.

562 (2) (a) If a franchisee voluntarily terminates a site-control agreement after the

563 franchisor has paid and the franchisee or other recipient has accepted additional specified cash

564 consideration, the site-control agreement remains valid only until the franchisee or other

565 recipient satisfies the repayment terms specified in Subsection (2)(b).

566 (b) (i) If the franchisor's additional specified cash consideration was used for the

567 construction of a building or improvement on the property that is the subject of the site-control

568 agreement, the amount of the repayment under Subsection (2)(a):

569 (A) is based on any repayment terms specified in the site-control agreement, if the

570 parties to the site-control agreement have willingly agreed to the terms; and

571 (B) may not exceed the market value of the portion of the building or improvement

572 constructed with the additional specified cash consideration paid by the franchisor, after

573 allowing for depreciation based on a market-based depreciation schedule, as determined by an

574 independent appraiser at the request of the franchisee or other recipient.

575 (ii) If the franchisor's additional specified cash consideration was not used for

576 construction of a building or improvement on the property that is the subject of the site-control

577 agreement, the amount of the repayment under Subsection (2)(a) is an equitable portion of the

578 cash consideration, as determined under any terms specified in the site-control agreement for

579 the equitable repayment following a franchisee's voluntary termination of the agreement.

580 (c) Immediately upon the repayment under Subsection (2)(b):

581 (i) the site-control agreement is terminated; and

582 (ii) the franchisor or other party that is the beneficiary under the site-control agreement

583 shall prepare and deliver to the franchisee a recordable notice of termination of:

584 (A) the site-control agreement; and
585 (B) any lien or encumbrance arising because of the site-control agreement and
586 previously recorded against the property that is the subject of the site-control agreement.

587 Section 5. Section **13-14-302** is amended to read:

588 **13-14-302. Issuance of additional franchises -- Relocation of existing franchisees.**

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

- 591 (a) enter into a franchise agreement establishing a motor vehicle dealership within a
592 relevant market area where the same line-make is represented by another franchisee; or
593 (b) relocate an existing motor vehicle franchisee.

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

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

- 598 (i) specify the intended action described under Subsection (1);
599 (ii) specify the good cause on which it intends to rely for the action; and
600 (iii) be delivered by registered or certified mail or by any form of reliable delivery
601 through which receipt is verifiable.

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

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

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

- 609 (I) motor vehicle registration data;
610 (II) market penetration data; and
611 (III) demographic data;

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

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

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

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

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

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

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

625 (ii) the documents contain confidential proprietary information;

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

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

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

630 (A) the privacy of another franchisee; or

631 (B) Section 13-14-201.

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

635 (b) When a protest is filed, the department shall inform the franchisor that:

636 (i) a timely protest has been filed;

637 (ii) a hearing is required;

638 (iii) the franchisor may not establish or relocate the proposed dealership until the
639 advisory board has held a hearing; and

640 (iv) the franchisor may not establish or relocate a proposed dealership if the executive
641 director determines that there is not good cause for permitting the establishment or relocation
642 of the dealership.

643 (5) If multiple protests are filed under Subsection (4), hearings may be consolidated to
644 expedite the disposition of the issue.

645 (6) Subsections (1) through (5) do not apply to a relocation of an existing or successor

646 dealer to a location that is:

647 (a) within the same county and less than [one] two aeronautical [mile] miles from the
648 existing location of the existing or successor franchisee's dealership; ~~[and]~~ or

649 ~~[(b) within the same county.]~~

650 (b) further away from a dealership of a franchisee of the same line-make.

651 (7) For purposes of this section:

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

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

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

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

665 Section 6. Section **13-14-307** is amended to read:

666 **13-14-307. Franchisor's obligations upon termination or noncontinuation of**
667 **franchise or line-make.**

668 (1) Upon the termination or noncontinuation of a franchise or a line-make ~~[by the~~
669 ~~franchisor]~~, the franchisor shall pay the franchisee:

670 (a) an amount calculated by:

671 ~~[(a)]~~ (i) including the franchisee's cost of ~~[new, undamaged, and]~~ unsold motor
672 vehicles that:

673 (A) are in the franchisee's inventory;

674 (B) were acquired;

675 (I) from the franchisor; or

676 (II) in the ordinary course of business from another franchisee of the same line-make

677 ~~[representing both];~~
678 (C) are new, undamaged, and, except for franchisor accessories, unaltered;
679 (D) represent the current model year at the time of termination or noncontinuation [~~and~~
680 ~~the immediately prior model year vehicles:]; or the two model years immediately before the~~
681 time of termination or noncontinuation;
682 (ii) reducing the amount in Subsection (1)(a)(i) by a prorated 1% for each 1,000 miles
683 over 500 miles registered on a new vehicle's odometer;
684 ~~[(i) plus]~~ (iii) adding any charges made by the franchisor, for distribution, delivery, or
685 taxes;
686 ~~[(ii) plus]~~ (iv) adding the franchisee's cost of any franchisor accessories added on the
687 vehicle, except only those recreational vehicle accessories that are listed in the franchisor's
688 wholesale product literature as options for that vehicle shall be repurchased; and
689 ~~[(iii) less]~~ (v) subtracting all allowances paid or credited to the franchisee by the
690 franchisor;
691 (b) the franchisee's cost of new and undamaged motor vehicles in the franchisee's
692 inventory of demonstrator vehicles, reduced by a prorated 1% for each 1000 miles over 500
693 miles registered on the demonstrator vehicle's odometer, except recreational vehicles whose
694 cost shall be reduced by 2% for each 1,000 miles registered on the odometer of demonstrator
695 self-propelled recreational vehicles, exclusive of miles incurred in delivery of the vehicle, and
696 the cost of demonstrator nonself-propelled recreational vehicles shall be reduced by 10% of the
697 franchisee's vehicle cost:
698 (i) plus any charges made by the franchisor for distribution, delivery, or taxes;
699 (ii) plus the franchisee's cost of any accessories added on the vehicles, except only
700 those recreational vehicle accessories that are listed in the franchisor's wholesale product
701 literature as options for that vehicle shall be repurchased; and
702 (iii) less all allowances paid or credited to the franchisee by the franchisor;
703 (c) the cost of all new, undamaged, and unsold supplies, parts, and accessories as set
704 forth in the franchisor's catalog at the time of termination or noncontinuation for the supplies,
705 parts, and accessories, less all allowances paid or credited to the franchisee by the franchisor;
706 (d) the fair market value, but not less than the franchisee's depreciated acquisition cost
707 of each undamaged sign owned by the franchisee that bears a common name, trade name, or

708 trademark of the franchisor if acquisition of the sign was recommended or required by the
709 franchisor. If a recreational vehicle franchisee has a sign with multiple manufacturers listed,
710 the franchisor is only responsible for its pro rata portion of the sign;

711 (e) the fair market value, but not less than the franchisee's depreciated acquisition cost,
712 of all special tools, equipment, and furnishings acquired from the franchisor or sources
713 approved by the franchisor that were [~~recommended or~~] required by the franchisor and are in
714 good and usable condition;

715 (f) the cost of transporting, handling, packing, and loading motor vehicles, supplies,
716 parts, accessories, signs, special tools, equipment, and furnishings;

717 (g) subject to Subsection (5), reasonable compensation to the franchisee for any cost
718 incurred pertaining to the unexpired term of a lease agreement for the dealership's existing
719 location;

720 (h) the negotiated fair market value of the dealership premises, based on the fair market
721 value of the real property, if the dealer opts to sell the dealership premises; and

722 (i) compensate the franchisee for the blue sky or goodwill of the dealership, as
723 determined in accordance with the applicable industry standards taking into consideration the
724 effect that the timing of the manufacturer's announcement of discontinuance of a line make has
725 or will have on future profitability of the dealership.

726 (2) Subsections (1)(g), (h), and (i) do not apply if a franchise is terminated:

727 (a) by the franchisor for cause as defined in Subsections 13-14-301(1)(b) and (2)(a);

728 (b) upon mutual written agreement of the franchisor and franchisee as provided in
729 Subsection 13-14-301(2)(b); or

730 (c) upon voluntary termination by the franchisee as provided in Subsection
731 13-14-301(4).

732 (3) The franchisor shall pay the franchisee the amounts specified in Subsection (1)
733 within 90 days after the tender of the property to the franchisor if the franchisee:

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

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

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

739 (5) Subsection (1)(g) does not relieve the franchisee or its lessor from an obligation
740 under their lease agreement to mitigate damages.

741 (6) (a) This section does not apply to a franchisee's voluntary termination or
742 noncontinuation of its franchise that occurs as a result of the franchisee's sale of its dealership
743 business entity or substantially all of the assets of that entity to a third party if the franchisor
744 contemporaneously grants a franchise to the third party on terms and conditions that are
745 comparable to those of the terminating or noncontinuing franchise.

746 (b) Subsection (6)(a) may not be construed to impair a contractual right of a
747 terminating or noncontinuing franchisee under a franchise or related agreement with a
748 franchisor or its affiliate, including a right to return unsold parts.

S.B. 129 1st Sub. (Green) - New Motor Vehicle Franchise Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or local governments. Businesses could be affected by this legislation, but the amount cannot be quantified.
