

MOTOR VEHICLE DEALER FRANCHISE AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Kevin S. Garn

Cosponsor: John L. Valentine

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ enacts a provision authorizing a reinstated franchisee to resume operating as a franchisee under certain circumstances; and
- ▶ provides a private cause of action for a reinstated franchisee for an act of a specified franchisor that causes a substantial diminution in value of the reinstated franchisee's reinstated franchise.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

13-14-308, as enacted by Laws of Utah 2008, Chapter 362

ENACTS:

13-14-302.5, Utah Code Annotated 1953



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

29 Section 1. Section **13-14-302.5** is enacted to read:

30 **13-14-302.5. Reinstatement of certain terminated franchises.**

31 (1) As used in this section:

32 (a) "Covered franchisee":

33 (i) means a person who was a franchisee under a pre-bankruptcy franchise; and

34 (ii) is a "covered dealership," as that term is defined in the federal franchise arbitration
35 law.

36 (b) "Covered franchisor":

37 (i) means a person who was a franchisor under a pre-bankruptcy franchise; and

38 (ii) is a "covered manufacturer," as that term is defined in the federal franchise
39 arbitration law.

40 (c) "Federal franchise arbitration law" means Section 747 of the Consolidated
41 Appropriations Act of 2010, Pub. L. No. 111-117.

42 (d) "New franchisor":

43 (i) means a person who is a franchisor of the same line-make as the franchisor under a
44 pre-bankruptcy franchise that has become a terminated franchise; and

45 (ii) is a "covered manufacturer," as that term is defined in the federal franchise
46 arbitration law.

47 (e) "Pre-bankruptcy franchise" means a franchise in effect as of October 3, 2008.

48 (f) "Reinstated franchise" means:

49 (i) a terminated franchise that a reinstatement order determines should be reinstated,
50 renewed, continued, assigned, or assumed; or

51 (ii) a franchise that a reinstatement order otherwise determines should be reestablished
52 in or added to the dealer network of a new franchisor in the geographic area where the covered
53 franchisee was located before October 3, 2008.

54 (g) "Reinstated franchisee" means a covered franchisee ~~§~~→ :

54a (i) whose franchise became a terminated franchise with less than 90 days notice prior to
54b termination; and

54c (ii) ←~~§~~ that becomes entitled to a
55 reinstated franchise under a reinstatement order.

56 (h) "Reinstatement order" means an arbitrator's written determination:

57 (i) in an arbitration proceeding held under the federal franchise arbitration law; and

58 (ii) (A) that a terminated franchise should be reinstated, renewed, continued, assigned,

59 or assumed; or

60 (B) that a covered franchisee should otherwise be reestablished as a franchisee in or
 61 added to the dealer network of a new franchisor in the geographic area where the covered
 62 franchisee was located before October 3, 2008.

63 (i) "Terminated franchise" means a covered franchisee's pre-bankruptcy franchise that
 64 was terminated or not continued or renewed as a result of a bankruptcy proceeding involving a
 65 covered franchisor as the bankruptcy debtor.

66 (2) The process under Sections 13-14-302, 13-14-304, and 13-14-306 for the issuance
 67 of a franchise, including Subsections 13-14-302(4) and (5) and Section 13-14-304 relating to a
 68 protest by another franchisee in the line-make in the relevant market area against the
 69 establishment or relocation of a franchise, does not apply to a reinstated franchise or reinstated
 70 franchisee.

71 ~~§→ [(3) A reinstated franchisee may resume operating as a franchisee under a reinstated~~
 72 ~~franchise upon the issuance of a reinstatement order.] ←§~~

73 Section 2. Section **13-14-308** is amended to read:

74 **13-14-308. Private right of action.**

75 (1) A franchisee has a private right of action for actual damages and ~~§→ [an] reasonable ←§~~
 76a ~~attorney §→ [fee] fees ←§~~

76 against a franchisor for a violation of this chapter that results in damage to the franchisee.

77 (2) (a) As used in this Subsection (2):

78 (i) "New franchisor" has the same meaning as defined in Section 13-14-302.5.

79 (ii) "Reinstated franchise" has the same meaning as defined in Section 13-14-302.5.

80 (iii) "Reinstated franchisee" has the same meaning as defined in Section 13-14-302.5.

81 (b) A reinstated franchisee has a private right of action for actual damages and §→ [an]
 81a reasonable ←§

82 attorney §→ [fee] fees ←§ against a new franchisor §→ [for any action of the new franchisor that]
 82a if:

82b (i) the new franchisor:

82c (A) establishes a new franchisee of the same line-make as a line-make of the reinstated
 82d franchisee within the relevant market area of the reinstated franchisee; or

82e (B) adds a line-make to another franchisor's existing franchisee within the relevant
 82f market area of the reinstated franchisee that is the same line-make as a line-make of the
 82g reinstated franchisee; and

82h (ii) the franchisor's action under Subsection (2)(b)(i) ←§ causes a

83 substantial diminution in value of the reinstated franchisee's reinstated franchise.

83a **Ŝ→ (c) A new franchisor may not be held liable under Subsection (2)(b) based on a franchisee's**
83b **purchase of another existing franchise, both of which are within the relevant market area of a**
83c **reinstated franchisee, for the purpose of combining the purchased franchise with the franchise**
83d **of the purchasing franchisee. ←Ŝ**

84 Section 3. **Effective date.**

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

Legislative Review Note
as of 2-19-10 1:14 PM

Office of Legislative Research and General Counsel

S.B. 157 - Motor Vehicle Dealer 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, businesses, or local governments.
