

**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

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ enacts a provision relating to a reinstated franchisee resuming operations 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

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

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

30 **13-14-302.5. Application of new franchise process with respect to certain**  
31 **terminated franchises.**

32 (1) As used in this section:

33 (a) "Covered franchisee":

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

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

37 (b) "Covered franchisor":

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

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

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

43 (d) "New franchisor":

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

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

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

49 (f) "Reinstated franchise" means:

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

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

55 (g) "Reinstated franchisee" means a covered franchisee:

56 (i) whose franchise became a terminated franchise with less than 90 days' notice prior  
57 to termination; and

58 (ii) that becomes entitled to a reinstated franchise under a reinstatement order.  
59 (h) "Reinstatement order" means an arbitrator's written determination:  
60 (i) in an arbitration proceeding held under the federal franchise arbitration law; and  
61 (ii) (A) that a terminated franchise should be reinstated, renewed, continued, assigned,  
62 or assumed; or  
63 (B) that a covered franchisee should otherwise be reestablished as a franchisee in or  
64 added to the dealer network of a new franchisor in the geographic area where the covered  
65 franchisee was located before October 3, 2008.

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

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

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

75 **13-14-308. Private right of action.**

76 (1) A franchisee has a private right of action for actual damages and reasonable  
77 attorney fees against a franchisor for a violation of this chapter that results in damage to the  
78 franchisee.

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

- 80 (i) "New franchisor" has the same meaning as defined in Section 13-14-302.5.
- 81 (ii) "Reinstated franchise" has the same meaning as defined in Section 13-14-302.5.
- 82 (iii) "Reinstated franchisee" has the same meaning as defined in Section 13-14-302.5.

83 (b) A reinstated franchisee has a private right of action for actual damages and  
84 reasonable attorney fees against a new franchisor if:

- 85 (i) the new franchisor:

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

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

91 (ii) the franchisor's action under Subsection (2)(b)(i) causes a substantial diminution  
92 in value of the reinstated franchisee's reinstated franchise.

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

97 **Section 3. Effective date.**

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