

1 **NEW AUTOMOBILE FRANCHISE ACT AMENDMENTS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Daniel R. Liljenquist**

5 House Sponsor: Holly J. Richardson

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the New Automobile Franchise Act.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ specifies a plan or system that a franchisor may not adopt, change, establish,
13 enforce, modify, or implement for the allocation, scheduling, or delivery of new
14 motor vehicles, parts, or accessories to its franchisees; and

15 ▶ modifies the distance within which a relocation of an existing franchisee's
16 dealership is considered to be the establishment of an additional franchise in the
17 line-make of the relocating franchise.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **13-14-201**, as last amended by Laws of Utah 2010, Chapter 33

25 **13-14-302**, as last amended by Laws of Utah 2010, Chapter 33

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

28 Section 1. Section **13-14-201** is amended to read:

29 **13-14-201. Prohibited acts by franchisors -- Affiliates -- Disclosures.**

- 30 (1) A franchisor may not in this state:
- 31 (a) except as provided in Subsection (3), require a franchisee to order or accept
- 32 delivery of any new motor vehicle, part, accessory, equipment, or other item not otherwise
- 33 required by law that is not voluntarily ordered by the franchisee;
- 34 (b) require a franchisee to:
- 35 (i) participate monetarily in any advertising campaign; or
- 36 (ii) contest, or purchase any promotional materials, display devices, or display
- 37 decorations or materials;
- 38 (c) require a franchisee to change the capital structure of the franchisee's dealership or
- 39 the means by or through which the franchisee finances the operation of the franchisee's
- 40 dealership, if the dealership at all times meets reasonable capital standards determined by and
- 41 applied in a nondiscriminatory manner by the franchisor;
- 42 (d) require a franchisee to refrain from participating in the management of, investment
- 43 in, or acquisition of any other line of new motor vehicles or related products, if the franchisee:
- 44 (i) maintains a reasonable line of credit for each make or line of vehicles; and
- 45 (ii) complies with reasonable capital and facilities requirements of the franchisor;
- 46 (e) require a franchisee to prospectively agree to a release, assignment, novation,
- 47 waiver, or estoppel that would:
- 48 (i) relieve a franchisor from any liability, including notice and hearing rights imposed
- 49 on the franchisor by this chapter; or
- 50 (ii) require any controversy between the franchisee and a franchisor to be referred to a
- 51 third party if the decision by the third party would be binding;
- 52 (f) require a franchisee to change the location of the principal place of business of the
- 53 franchisee's dealership or make any substantial alterations to the dealership premises, if the
- 54 change or alterations would be unreasonable or cause the franchisee to lose control of the
- 55 premises or impose any other unreasonable requirement related to the facilities or premises;
- 56 (g) coerce or attempt to coerce a franchisee to join, contribute to, or affiliate with an
- 57 advertising association;

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

62 (i) adopt, change, establish, enforce, modify, or implement a plan or system for the
63 allocation, scheduling, or delivery of new motor vehicles, parts, or accessories to its franchisees
64 so that the plan or system is not fair, reasonable, and equitable, including a plan or system that
65 imposes a vehicle sales objective, goal, or quota on a franchisee, or that evaluates a franchisee's
66 sales effectiveness or overall sales performance, without providing a reasonable opportunity for
67 the franchisee to acquire the necessary vehicles in a timely manner from the franchisor on
68 commercially reasonable terms;

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

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

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

77 (A) strict liability;

78 (B) negligence;

79 (C) misrepresentation;

80 (D) express or implied warranty;

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

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

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

85 (l) threaten or coerce a franchisee to waive or forbear its right to protest the

86 establishment or relocation of a same line-make franchisee in the relevant market area of the
87 affected franchisee;

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

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

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

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

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

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

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

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

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

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

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

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

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

129 (B) unreasonably require a dealer to:

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

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

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

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

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

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

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

139 or

140 (iv) operate a motor vehicle service facility;

141 (v) fail to timely pay for all reimbursements to a franchisee for incentives and other

142 payments made by the franchisor;

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

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

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

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

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

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

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

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

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

162 (ii) the profitability of a franchisee; or

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

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

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

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

168 and

169 (iii) is, upon request by a franchisee, disclosed and explained in writing to the

170 franchisee, including:

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

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

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

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

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

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

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

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

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

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

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

203 (A) dealer's eligibility to purchase program, certified, or other used motor vehicles
204 from the franchisor;

205 (B) volume, type, or model of program, certified, or other used motor vehicles the
206 dealer is eligible to purchase from the franchisor;

207 (C) price of any program, certified, or other used motor vehicles that the dealer is
208 eligible to purchase from the franchisor; or

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

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

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

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

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

225 (D) if mediation does not lead to a resolution of the protest, the protest shall be set for

226 binding arbitration in the same venue in which the mediation occurred;

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

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

229 (II) on a date mutually agreed upon by the franchisor and the franchisee, but shall be

230 held no later than 90 days after the franchisor's receipt of the franchisee's notice of protest;

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

232 audits;

233 (G) Subsections (1)(gg)(i)(A) through (E) do not apply if the franchisor reasonably

234 believes that the amount of the claim or charge back is related to a fraudulent act by the

235 franchisee; and

236 (H) the costs of the mediator or arbitrator instituted under this Subsection (1)(gg) shall

237 be shared equally by the franchisor and the franchisee; or

238 (ii) require a franchisee to execute a written waiver of the requirements of Subsection

239 (1)(gg)(i);

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

241 manufactured by the franchisor, or obtained by the franchisor for resale from a third-party

242 supplier and the franchisor or its affiliate derives a financial benefit from the franchisee's sale

243 or purchase of the aftermarket product as a condition to obtaining preferential status from the

244 franchisor;

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

246 chapter;

247 (jj) impose any fee, surcharge, or other charge on a franchisee designed to recover the

248 cost of a warranty repair for which the franchisee is paid by the franchisor;

249 (kk) directly or indirectly condition any of the following actions on the willingness of a

250 franchisee, prospective new franchisee, or owner of an interest in a dealership facility to enter

251 into a site-control agreement:

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

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

- 254 (iii) the renewal of an existing franchisee's franchise;
- 255 (iv) the approval of the relocation of an existing franchisee's dealership facility, unless
- 256 the franchisor pays, and the franchisee voluntarily accepts, additional specified cash
- 257 consideration to facilitate the relocation; or
- 258 (v) the approval of the sale or transfer of a franchise's ownership, unless the franchisor
- 259 pays, and the buyer voluntarily accepts, additional specified cash consideration to facilitate the
- 260 sale or transfer;
- 261 (II) subject to Subsection (11), deny a franchisee the right to return any or all parts or
- 262 accessories that:
- 263 (i) were specified for and sold to the franchisee under an automated ordering system
- 264 required by the franchisor; and
- 265 (ii) (A) are in good, resalable condition; and
- 266 (B) (I) the franchisee received within the previous 12 months; or
- 267 (II) are listed in the current parts catalog; or
- 268 (mm) subject to Subsection (12), obtain from a franchisee a waiver of a franchisee's
- 269 right, by threatening:
- 270 (i) to impose a detriment upon the franchisee's business; or
- 271 (ii) to withhold any entitlement, benefit, or service:
- 272 (A) to which the franchisee is entitled under a franchise agreement, contract, statute,
- 273 rule, regulation, or law; or
- 274 (B) that has been granted to more than one other franchisee of the franchisor in the
- 275 state.
- 276 (2) Notwithstanding Subsection (1)(r), a franchisor may authorize or permit a person to
- 277 perform warranty service repairs on motor vehicles if the warranty services is for a franchisor
- 278 of recreational vehicles.
- 279 (3) Subsection (1)(a) does not prevent the franchisor from requiring that a franchisee
- 280 carry a reasonable inventory of:
- 281 (a) new motor vehicle models offered for sale by the franchisor; and

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

283 (4) Subsection (1)(d) does not prevent a franchisor from requiring that a franchisee
284 maintain separate sales personnel or display space.

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

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

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

292 (B) the franchisor's interest in the new motor vehicle dealership is for sale at a
293 reasonable price and on reasonable terms and conditions; or

294 (ii) the franchisor is engaging in the activity listed in Subsection (1)(u) for the purpose
295 of broadening the diversity of its dealer body and facilitating the ownership of a new motor
296 vehicle dealership by a person who:

297 (A) is part of a group that has been historically underrepresented in the franchisor's
298 dealer body;

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

300 (C) has made a significant investment in the new motor vehicle dealership which is
301 subject to loss;

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

303 (E) operates the new motor vehicle dealership under a plan to acquire full ownership of
304 the dealership within a reasonable period of time and under reasonable terms and conditions.

305 (b) After receipt of the advisory board's recommendation, the executive director may,
306 for good cause shown, extend the time limit set forth in Subsection (6)(a) for an additional
307 period not to exceed 12 months.

308 (c) A franchisor who was engaged in any of the activities listed in Subsection (1)(u) in
309 this state prior to May 1, 2000, may continue to engage in that activity, but may not expand that

310 activity to acquire an interest in any other new motor vehicle dealerships or motor vehicle
311 service facilities after May 1, 2000.

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

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

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

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

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

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

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

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

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

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

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

337 (10) Subsection (1)(ii) does not limit the right of an affiliate to engage in business

338 practices in accordance with the usage of trade in which the affiliate is engaged.

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

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

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

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

351 Section 2. Section **13-14-302** is amended to read:

352 **13-14-302. Issuance of additional franchises -- Relocation of existing franchisees.**

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

355 (a) enter into a franchise agreement establishing a motor vehicle dealership within a
356 relevant market area where the same line-make is represented by another franchisee; or

357 (b) relocate an existing motor vehicle franchisee.

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

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

362 (i) specify the intended action described under Subsection (1);

363 (ii) specify the good cause on which it intends to rely for the action; and

364 (iii) be delivered by registered or certified mail or by any form of reliable delivery
365 through which receipt is verifiable.

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

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

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

373 (I) motor vehicle registration data;

374 (II) market penetration data; and

375 (III) demographic data;

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

378 (iii) a statement that describes in reasonable detail how the establishment of a new
379 franchisee or the relocation of an existing franchisee will affect the amount of business
380 transacted by other franchisees of the same line-make in the relevant market area, as compared
381 to business available to the franchisees; and

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

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

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

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

389 (ii) the documents contain confidential proprietary information;

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

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

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

394 (A) the privacy of another franchisee; or
395 (B) Section 13-14-201.

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

399 (b) When a protest is filed, the department shall inform the franchisor that:
400 (i) a timely protest has been filed;
401 (ii) a hearing is required;
402 (iii) the franchisor may not establish or relocate the proposed dealership until the
403 advisory board has held a hearing; and
404 (iv) the franchisor may not establish or relocate a proposed dealership if the executive
405 director determines that there is not good cause for permitting the establishment or relocation
406 of the dealership.

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

409 (6) Subsections (1) through (5) do not apply to a relocation of an existing or successor
410 dealer to a location that is:
411 (a) within the same county and less than two aeronautical miles from the existing
412 location of the existing or successor franchisee's dealership; or
413 (b) further away from a dealership of a franchisee of the same line-make.

414 (7) For purposes of this section:
415 (a) relocation of an existing franchisee's dealership in excess of [~~one mile~~] two
416 aeronautical miles from its existing location is considered the establishment of an additional
417 franchise in the line-make of the relocating franchise;
418 (b) the reopening in a relevant market area of a dealership that has not been in
419 operation for one year or more is considered the establishment of an additional motor vehicle
420 dealership; and
421 (c) (i) except as provided in Subsection (7)(c)(ii), the establishment of a temporary

422 additional place of business by a recreational vehicle franchisee is considered the establishment
423 of an additional motor vehicle dealership; and

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