

1                   **NEW CAR DEALERSHIP FRANCHISE AMENDMENTS**

2                                   2015 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Mike K. McKell**

5                                   Senate Sponsor: Curtis S. Bramble

6   Cosponsors:                   Rich Cunningham

7   Kim Coleman                    John Knotwell

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9   **LONG TITLE**

10 **General Description:**

11       This bill modifies provisions relating to new automobile franchises.

12 **Highlighted Provisions:**

13       This bill:

- 14       ▶ defines terms;
- 15       ▶ addresses the procedure by which a franchisor may establish or relocate a dealership  
16 in the same line-make as an existing dealership in the relevant market area;
- 17       ▶ modifies the membership of the Utah Motor Vehicle Franchise Advisory Board;
- 18       ▶ provides that an affected municipality may participate in a hearing before the Utah  
19 Motor Vehicle Franchise Advisory Board;
- 20       ▶ clarifies who may appeal a final decision of the executive director of the  
21 Department of Commerce;
- 22       ▶ requires the Utah Motor Vehicle Franchise Advisory Board to submit an annual  
23 report to the Business and Labor Interim Committee; and
- 24       ▶ makes technical and conforming changes.

25 **Money Appropriated in this Bill:**

26       None

27 **Other Special Clauses:**

28       None

29 **Utah Code Sections Affected:**

30 AMENDS:

- 31 **13-14-102**, as last amended by Laws of Utah 2010, Chapter 33
- 32 **13-14-103**, as last amended by Laws of Utah 2010, Chapter 286
- 33 **13-14-104**, as last amended by Laws of Utah 2008, Chapters 362 and 382
- 34 **13-14-302**, as last amended by Laws of Utah 2011, Chapter 203
- 35 **13-14-302.5**, as enacted by Laws of Utah 2010, Chapter 41
- 36 **13-14-304**, as last amended by Laws of Utah 2008, Chapter 362
- 37 **13-14-306**, as last amended by Laws of Utah 2008, Chapter 362

38 ENACTS:

- 39 **13-14-310**, Utah Code Annotated 1953



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

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

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

44 As used in this chapter:

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

47 (2) "Affected municipality" means an incorporated city or town:

48 (a) that is located in the notice area; and

49 (b) (i) within which a franchisor is proposing a new or relocated dealership that is  
50 within the relevant market area of an existing dealership of the same line-make owned by  
51 another franchisee; or

52 (ii) within which an existing dealership is located and a franchisor is proposing a new  
53 or relocated dealership within the relevant market area of that existing dealership of the same  
54 line-make.

55 [~~2~~] (3) "Affiliate" has the meaning set forth in Section **16-10a-102**.

56 [~~3~~] (4) "Aftermarket product" means any product or service not included in the

57 franchisor's suggested retail price of the new motor vehicle, as that price appears on the label  
58 required by 15 U.S.C. Sec. 1232(f).

59 [~~4~~] (5) "Dealership" means a site or location in this state:

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

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

63 [~~5~~] (6) "Department" means the Department of Commerce.

64 [~~6~~] (7) "Executive director" means the executive director of the Department of  
65 Commerce.

66 [~~7~~] (8) (a) "Franchise" or "franchise agreement" means a written agreement, or in the  
67 absence of a written agreement, then a course of dealing or a practice for a definite or indefinite  
68 period, in which:

69 (i) a person grants to another person a license to use a trade name, trademark, service  
70 mark, or related characteristic; and

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

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

75 [~~8~~] (9) "Franchisee" means a person with whom a franchisor has agreed or permitted,  
76 in writing or in practice, to purchase, sell, or offer for sale new motor vehicles manufactured,  
77 produced, represented, or distributed by the franchisor.

78 [~~9~~] (10) "Franchisor" means a person who has, in writing or in practice, agreed with  
79 or permits a franchisee to purchase, sell, or offer for sale new motor vehicles manufactured,  
80 produced, assembled, represented, or distributed by the franchisor, and includes:

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

82 (b) an intermediate distributor; and

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

84 [~~10~~] (11) "Lead" means the referral by a franchisor to a franchisee of a potential

85 customer whose contact information was obtained from a franchisor's program, process, or  
86 system designed to generate referrals for the purchase or lease of a new motor vehicle, or for  
87 service work related to the franchisor's vehicles.

88 ~~[(11)]~~ (12) "Line-make" means:

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

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

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

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

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

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

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

103 ~~[(12)]~~ (13) "Mile" means 5,280 feet.

104 ~~[(13)]~~ (14) "Motor home" means a self-propelled vehicle, primarily designed as a  
105 temporary dwelling for travel, recreational, or vacation use.

106 ~~[(14)]~~ (15) (a) "Motor vehicle" means:

107 (i) a travel trailer;

108 (ii) except as provided in Subsection ~~[(14)]~~ (15)(b), a motor vehicle as defined in  
109 Section [41-3-102](#);

110 (iii) a semitrailer as defined in Section [41-1a-102](#);

111 (iv) a trailer as defined in Section [41-1a-102](#); and

112 (v) a recreational vehicle.

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

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

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

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

117 ~~[(15)]~~ (16) "New motor vehicle" means a motor vehicle as defined in Subsection ~~[(14)]~~  
118 (15) that has never been titled or registered and has been driven less than 7,500 miles, unless  
119 the motor vehicle is a trailer, travel trailer, or semitrailer, in which case the mileage limit does  
120 not apply.

121 ~~[(16)]~~ (17) "New motor vehicle dealer" is a person who is licensed under Subsection  
122 41-3-202(1)(a) to sell new motor vehicles.

123 ~~[(17)]~~ (18) "Notice" or "notify" includes both traditional written communications and  
124 all reliable forms of electronic communication unless expressly prohibited by statute or rule.

125 (19) "Notice area" means the geographic area that is:

126 (a) within a radius of at least six miles and no more than 10 miles from the site of an  
127 existing dealership; and

128 (b) located within a county with a population of at least 225,000.

129 (20) "Primary market area" means:

130 (a) for an existing dealership, the geographic area established by the franchisor that the  
131 existing dealership is intended to serve; or

132 (b) for a new or relocated dealership, the geographic area proposed by the franchisor  
133 that the new or relocated dealership is intended to serve.

134 ~~[(18)]~~ (21) (a) "Recreational vehicle" means a vehicular unit other than a mobile home,  
135 primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is  
136 either self-propelled or pulled by another vehicle.

137 (b) "Recreational vehicle" includes:

138 (i) a travel trailer;

139 (ii) a camping trailer;

140 (iii) a motor home;

141 (iv) a fifth wheel trailer; and

142 (v) a van.

143 ~~[(19)]~~ (22) (a) "Relevant market area," except with respect to recreational vehicles,

144 means:

145 ~~[(i) the county in which a dealership is to be established or relocated; and]~~

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

147 (i) as applied to an existing dealership that is located in a county with a population of  
148 less than 225,000:

149 (A) the county in which the existing dealership is located; and

150 (B) the area within a 15-mile radius of the existing dealership; or

151 (ii) as applied to an existing dealership that is located in a county with a population of  
152 225,000 or more, the area within a 10-mile radius of the existing dealership.

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

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

155 (ii) the area within a 35-mile radius from the site of the ~~[new or relocated]~~ existing  
156 dealership.

157 ~~[(20)]~~ (23) "Sale, transfer, or assignment" means any disposition of a franchise or an  
158 interest in a franchise, with or without consideration, including a bequest, inheritance, gift,  
159 exchange, lease, or license.

160 ~~[(21)]~~ (24) "Serve" or "served," unless expressly indicated otherwise by statute or rule,  
161 includes any reliable form of communication.

162 ~~[(22)]~~ (25) "Site-control agreement" means an agreement, however denominated and  
163 regardless of ~~[its]~~ the agreement's form or of the parties to ~~[it]~~ the agreement, that has the effect  
164 of:

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

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

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

174 ~~[(23)]~~ (26) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable  
 175 vehicle without motive power, designed as a temporary dwelling for travel, recreational, or  
 176 vacation use that does not require a special highway movement permit when drawn by a  
 177 self-propelled motor vehicle.

178 ~~[(24)]~~ (27) "Written," "write," "in writing," or other variations of those terms shall  
 179 include all reliable forms of electronic communication.

180 Section 2. Section **13-14-103** is amended to read:

181 **13-14-103. Utah Motor Vehicle Franchise Advisory Board -- Creation --**  
 182 **Appointment of members -- Alternate members -- Chair -- Quorum -- Conflict of interest.**

183 (1) There is created within the department the Utah Motor Vehicle Franchise Advisory  
 184 Board that consists of:

- 185 (a) the executive director or the executive director's designee; and
- 186 (b) ~~[seven]~~ 11 members appointed by the executive director, with the concurrence of  
 187 the governor as follows:

- 188 (i) one recreational motor vehicle franchisee;
- 189 (ii) three new motor vehicle franchisees from different congressional districts in the  
 190 state; ~~[and]~~

191 (iii) ~~[(A)]~~ three members representing motor vehicle franchisors registered by the  
 192 department pursuant to Section [13-14-105](#);

193 ~~[(B)]~~ (iv) three members of the general public, none of whom shall be related to any  
 194 franchisee; ~~[or]~~ and

195 ~~[(C)] three members consisting of any combination of these representatives under this~~  
 196 ~~Subsection (1)(b)(iii).]~~

197           (v) one representative of the Utah League of Cities and Towns.

198           (2) (a) The executive director shall appoint, with the concurrence of the governor,  
199 ~~[three]~~ five alternate members, with one alternate from each of the designations ~~[set forth]~~  
200 described in Subsections (1)(b)(i)~~], (1)(b)(ii), and (1)(b)(iii)]~~ through (v), except that the new  
201 motor vehicle franchisee alternate ~~[or alternates]~~ for the designation under Subsection (1)(b)(ii)  
202 may be from any congressional district.

203           (b) An alternate shall take the place of a regular advisory board member from the same  
204 designation at a meeting of the advisory board where that regular advisory board member is  
205 absent or otherwise disqualified from participating in the advisory board meeting.

206           (3) (a) (i) Members of the advisory board appointed under Subsections (1)(b) and (2)  
207 are appointed for a term of four years.

208           (ii) No specific term applies to the executive director or the executive director's  
209 designee.

210           (b) The executive director may adjust the term of members who were appointed to the  
211 advisory board prior to July 1, 2001, by extending the unexpired term of a member for up to  
212 two additional years in order to insure that approximately half of the members are appointed  
213 every two years.

214           (c) In the event of a vacancy on the advisory board of a member appointed under  
215 Subsection (1)(b) or (2), the executive director with the concurrence of the governor, shall  
216 appoint an individual to complete the unexpired term of the member whose office is vacant.

217           (d) A member may not be appointed to more than two consecutive terms.

218           (4) (a) The executive director or the executive director's designee is the chair of the  
219 advisory board.

220           (b) The department shall keep a record of all hearings, proceedings, transactions,  
221 communications, and recommendations of the advisory board.

222           (5) (a) Four or more members of the advisory board constitute a quorum for the  
223 transaction of business.

224           (b) The action of a majority of a quorum present is considered the action of the



225 advisory board.

226 (6) (a) A member of the advisory board may not participate as a board member in a  
227 proceeding or hearing:

228 (i) involving the member's licensed business or employer; or

229 (ii) when a member, a member's business or family, or employer has a pecuniary  
230 interest in the outcome or other conflict of interest concerning an issue before the advisory  
231 board.

232 (b) If a member of the advisory board is disqualified under Subsection (6)(a), the  
233 executive director shall select the appropriate alternate member to act on the issue before the  
234 advisory board as provided in Subsection (2).

235 (7) Except for the executive director or the executive director's designee, an individual  
236 may not be appointed or serve on the advisory board while holding any other elective or  
237 appointive state or federal office.

238 (8) A member may not receive compensation or benefits for the member's service, but  
239 may receive per diem and travel expenses in accordance with:

240 (a) Section 63A-3-106;

241 (b) Section 63A-3-107; and

242 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
243 63A-3-107.

244 (9) The department shall provide necessary staff support to the advisory board.

245 Section 3. Section 13-14-104 is amended to read:

246 **13-14-104. Powers and duties of the advisory board and the executive director.**

247 (1) (a) Except as provided in Subsection 13-14-106(3), the advisory board shall make  
248 recommendations to the executive director on the administration and enforcement of this  
249 chapter, including adjudicative and rulemaking proceedings.

250 (b) The executive director shall:

251 (i) consider the advisory board's recommendations; and

252 (ii) issue any rules or final [decision] decisions by the department.

253 (2) The executive director, in consultation with the advisory board, shall make rules for  
254 the administration of this chapter in accordance with Title 63G, Chapter 3, Utah Administrative  
255 Rulemaking Act.

256 (3) (a) An adjudicative proceeding under this chapter shall be conducted in accordance  
257 with Title 63G, Chapter 4, Administrative Procedures Act.

258 (b) In an adjudicative proceeding under this chapter, any order issued by the executive  
259 director:

260 (i) shall comply with Section 63G-4-208, whether the proceeding is a formal or an  
261 informal adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act;  
262 and

263 (ii) if the order modifies or rejects a finding of fact in a recommendation from the  
264 advisory board, shall be made on the basis of information learned from the executive director's:

265 (A) personal attendance at the hearing; or

266 (B) review of the record developed at the hearing.

267 (4) The executive director's decision under this section shall be made available to the  
268 public.

269 Section 4. Section 13-14-302 is amended to read:

270 **13-14-302. Issuance of additional franchises -- Relocation of existing franchisees.**

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

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

275 (b) relocate an existing motor vehicle franchisee.

276 (2) In determining whether a new or relocated dealership is within a relevant market  
277 area where the same line-make is represented by an existing dealership, the relevant market  
278 area is measured from the closest property boundary line of the existing dealership to the  
279 closest property boundary line of the new or relocated dealership.

280 [~~2~~] (3) (a) If a franchisor seeks to take an action listed in Subsection (1), [~~prior to~~]

281 before taking the action, the franchisor shall, in writing, notify the advisory board, the clerk of  
 282 each affected municipality, and each franchisee in that line-make in the relevant market area.

283 (b) The notice required by Subsection [~~(2)~~] (3)(a) shall:

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

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

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

288 [~~(3)~~] (4) (a) Except as provided in Subsection [~~(3)~~] (4)(c), the franchisor shall provide  
 289 to the advisory board, each affected municipality, and each franchisee in that line-make in the  
 290 relevant market area the following documents relating to the notice described under Subsection  
 291 [~~(2)~~] (3):

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

295 (B) the aggregate economic data under Subsection [~~(3)~~] (4)(a)(i)(A) includes:

296 (I) motor vehicle registration data;

297 (II) market penetration data; and

298 (III) demographic data;

299 (ii) written documentation that the franchisor has in [~~its~~] the franchisor's possession that  
 300 it intends to rely on in establishing good cause under Section 13-14-306 relating to the notice;

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

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

308 (b) The franchisor shall provide the documents described under Subsection [~~(3)~~] (4)(a)

309 with the notice required under Subsection [~~(2)~~] (3).

310 (c) The franchisor is not required to disclose any documents under Subsection [~~(3)~~]  
311 (4)(a) if:

- 312 (i) the documents would be privileged under the Utah Rules of Evidence;
- 313 (ii) the documents contain confidential proprietary information;
- 314 (iii) the documents are subject to federal or state privacy laws;
- 315 (iv) the documents are correspondence between the franchisor and existing franchisees

316 in that line-make in the relevant market area; or

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

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

320 [~~(4)~~] (5) (a) Within [~~45~~] 30 days of receiving notice required by Subsection [~~(2)~~] (3),  
321 any franchisee that is required to receive notice under Subsection [~~(2)~~] (3) may protest to the  
322 advisory board the establishment or relocation of the dealership.

323 (b) [~~When~~] No later than 10 days after the day on which a protest is filed, the  
324 department shall inform the franchisor that:

- 325 (i) a timely protest has been filed;
- 326 (ii) a hearing is required;
- 327 (iii) the franchisor may not establish or relocate the proposed dealership until the  
328 advisory board has held a hearing; and
- 329 (iv) the franchisor may not establish or relocate a proposed dealership if the executive  
330 director determines that there is not good cause for permitting the establishment or relocation  
331 of the dealership.

332 [~~(5)~~] (6) If multiple protests are filed under Subsection [~~(4)~~] (5), hearings may be  
333 consolidated to expedite the disposition of the issue.

334 [~~(6)~~] (7) Subsections (1) through [~~(5)~~] (6) do not apply to a relocation of an existing or  
335 successor dealer to a location that is:

336 (a) within the same county and less than two [~~aeronautical~~] miles from the existing

337 location of the existing or successor franchisee's dealership; or

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

339 [~~(7)~~] (8) For purposes of this section:

340 (a) relocation of an existing franchisee's dealership in excess of two [~~aeronautical~~]  
341 miles from [~~its~~] the dealership's existing location is considered the establishment of an  
342 additional franchise in the line-make of the relocating franchise;

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

346 (c) (i) except as provided in Subsection [~~(7)~~] (8)(c)(ii), the establishment of a  
347 temporary additional place of business by a recreational vehicle franchisee is considered the  
348 establishment of an additional motor vehicle dealership; and

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

353 Section 5. Section **13-14-302.5** is amended to read:

354 **13-14-302.5. Application of new franchise process with respect to certain**  
355 **terminated franchises.**

356 (1) As used in this section:

357 (a) "Covered franchisee":

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

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

361 (b) "Covered franchisor":

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

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

- 365 (c) "Federal franchise arbitration law" means Section 747 of the Consolidated  
366 Appropriations Act of 2010, Pub. L. No. 111-117.
- 367 (d) "New franchisor":  
368 (i) means a person who is a franchisor of the same line-make as the franchisor under a  
369 pre-bankruptcy franchise that has become a terminated franchise; and  
370 (ii) is a "covered manufacturer," as that term is defined in the federal franchise  
371 arbitration law.
- 372 (e) "Pre-bankruptcy franchise" means a franchise in effect as of October 3, 2008.
- 373 (f) "Reinstated franchise" means:  
374 (i) a terminated franchise that a reinstatement order determines should be reinstated,  
375 renewed, continued, assigned, or assumed; or  
376 (ii) a franchise that a reinstatement order otherwise determines should be reestablished  
377 in or added to the dealer network of a new franchisor in the geographic area where the covered  
378 franchisee was located before October 3, 2008.
- 379 (g) "Reinstated franchisee" means a covered franchisee:  
380 (i) whose franchise became a terminated franchise with less than 90 days' notice prior  
381 to termination; and  
382 (ii) that becomes entitled to a reinstated franchise under a reinstatement order.
- 383 (h) "Reinstatement order" means an arbitrator's written determination:  
384 (i) in an arbitration proceeding held under the federal franchise arbitration law; and  
385 (ii) (A) that a terminated franchise should be reinstated, renewed, continued, assigned,  
386 or assumed; or  
387 (B) that a covered franchisee should otherwise be reestablished as a franchisee in or  
388 added to the dealer network of a new franchisor in the geographic area where the covered  
389 franchisee was located before October 3, 2008.
- 390 (i) "Terminated franchise" means a covered franchisee's pre-bankruptcy franchise that  
391 was terminated or not continued or renewed as a result of a bankruptcy proceeding involving a  
392 covered franchisor as the bankruptcy debtor.

393 (2) The process under Sections 13-14-302, 13-14-304, and 13-14-306 for the issuance  
394 of a franchise, including Subsections 13-14-302[(4)](5) and [(5)] (6) and Section 13-14-304  
395 relating to a protest by another franchisee in the line-make in the relevant market area against  
396 the establishment or relocation of a franchise, does not apply to a reinstated franchise or  
397 reinstated franchisee.

398 Section 6. Section 13-14-304 is amended to read:

399 **13-14-304. Hearing regarding termination, relocation, or establishment of**  
400 **franchises.**

401 (1) (a) Within 10 days ~~[of receiving]~~ after the day on which the advisory board receives  
402 an application from a franchisee under Subsection 13-14-301(3) challenging ~~[its]~~ a franchisor's  
403 right to terminate or not continue a franchise, or an application under Section 13-14-302  
404 challenging the establishment or relocation of a franchise, the executive director shall:

405 (i) enter an order designating the time and place for the hearing; and

406 (ii) send a copy of the order by certified or registered mail, with return receipt  
407 requested, or by any form of reliable delivery through which receipt is verifiable to:

408 (A) the applicant;

409 (B) the franchisor; and

410 (C) if the application involves the establishment of a new franchise or the relocation of  
411 an existing dealership, ~~[to all franchisees]~~ each affected municipality and to each franchisee in  
412 the relevant market area engaged in the business of offering to sell or lease the same line-make.

413 (b) A copy of an order mailed under Subsection (1)(a) shall be addressed to the  
414 franchisee at the place where the franchisee's business is conducted.

415 (2) ~~[Any]~~ An affected municipality and any other person who can establish an interest  
416 in the application may intervene as a party to the hearing, whether or not that person receives  
417 notice.

418 (3) Any person, including an affected municipality, may appear and testify on the  
419 question of the public interest in the termination or noncontinuation of a franchise or in the  
420 establishment of an additional franchise.

421 (4) (a) (i) Any hearing ordered under Subsection (1) shall be conducted no later than  
422 [~~120~~] 90 days after the day on which the application for hearing is filed.

423 (ii) A final decision on the challenge shall be made by the executive director no later  
424 than [~~30~~] 20 days after the day on which the hearing ends.

425 (b) Failure to comply with the time requirements of Subsection (4)(a) is considered a  
426 determination that the franchisor acted with good cause or, in the case of a protest of a  
427 proposed establishment or relocation of a dealer, that good cause exists for permitting the  
428 proposed additional or relocated new motor vehicle dealer, unless:

429 (i) the delay is caused by acts of the franchisor or the additional or relocating  
430 franchisee; or

431 (ii) the delay is waived by the parties.

432 (5) The franchisor has the burden of proof to establish by a preponderance of the  
433 evidence that under the provisions of this chapter it should be granted permission to:

434 (a) terminate or not continue the franchise;

435 (b) enter into a franchise agreement establishing an additional franchise; or

436 (c) relocate the dealership of an existing franchisee.

437 (6) Any party to the hearing may appeal the executive director's final decision in  
438 accordance with Title 63G, Chapter 4, Administrative Procedures Act, including the franchisor,  
439 an existing franchisee of the same line-make whose relevant market area includes the site of the  
440 proposed dealership, or an affected municipality.

441 Section 7. Section **13-14-306** is amended to read:

442 **13-14-306. Evidence to be considered in determining cause to relocate or**  
443 **establish a new franchised dealership.**

444 In determining whether a franchisor has established good cause for relocating an  
445 existing franchisee or establishing a new franchised dealership for the same line-make in a  
446 given relevant market area, the advisory board and the executive director shall consider:

447 (1) the amount of business transacted by other franchisees of the same line-make in  
448 that relevant market area, as compared to business available to the franchisees;



449 (2) the investment necessarily made and obligations incurred by other franchisees of  
450 the same line-make in that relevant market area in the performance of their part of their  
451 franchisee agreements;

452 (3) the permanency of the existing and proposed investment;

453 (4) whether it is injurious or beneficial to the public welfare or public interest for an  
454 additional franchise to be established[;], including:

455 (a) the impact on any affected municipality;

456 (b) population growth trends in any affected municipality;

457 (c) the number of dealerships in the primary market area of the new or relocated  
458 dealership compared to the number of dealerships in each primary market area adjacent to the  
459 new or relocated dealership's primary market area; and

460 (d) how the new or relocated dealership would impact the distance and time that an  
461 individual in the new or relocated dealership's primary market area would have to travel to  
462 access a dealership in the same line-make as the new or relocated dealership.

463 (5) whether the franchisees of the same line-make in that relevant market area are  
464 providing adequate service to consumers for the motor vehicles of the line-make, which shall  
465 include the adequacy of:

466 (a) the motor vehicle sale and service facilities;

467 (b) equipment;

468 (c) supply of vehicle parts; and

469 (d) qualified service personnel; and

470 (6) whether the relocation or establishment would cause any material negative  
471 economic effect on a dealer of the same line-make in the relevant market area.

472 Section 8. Section **13-14-310** is enacted to read:

473 **13-14-310. Reporting requirement.**

474 By November 30 of each year, the advisory board shall submit an annual report to the  
475 Business and Labor Interim Committee that, for the 12 months before the day on which the  
476 report is submitted, describes:

- 477           (1) the number of applications for a new or relocated dealership that the advisory board  
478 received; and
- 479           (2) for each application described in Subsection (1):
- 480           (a) the number of protests that the advisory board received;
- 481           (b) whether the advisory board conducted a hearing;
- 482           (c) if the advisory board conducted a hearing, the disposition of the hearing; and
- 483           (d) the basis for any disposition described in Subsection (2)(c).