

NEW CAR DEALERSHIP FRANCHISE AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike K. McKell

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions relating to new automobile franchises.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the procedure by which a franchisor may establish or relocate a dealership in the same line-make as an existing dealership in the relevant market area;
- ▶ provides that an affected municipality may participate in a hearing before the advisory board;
- ▶ clarifies who may appeal a final decision of the executive director of the Department of Commerce; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-14-102, as last amended by Laws of Utah 2010, Chapter 33

13-14-103, as last amended by Laws of Utah 2010, Chapter 286



- 28 [13-14-104](#), as last amended by Laws of Utah 2008, Chapters 362 and 382
- 29 [13-14-302](#), as last amended by Laws of Utah 2011, Chapter 203
- 30 [13-14-302.5](#), as enacted by Laws of Utah 2010, Chapter 41
- 31 [13-14-304](#), as last amended by Laws of Utah 2008, Chapter 362
- 32 [13-14-306](#), as last amended by Laws of Utah 2008, Chapter 362

33

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

35 Section 1. Section [13-14-102](#) is amended to read:

36 **13-14-102. Definitions.**

37 As used in this chapter:

38 (1) "Advisory board" or "board" means the Utah Motor Vehicle Franchise Advisory
39 Board created in Section [13-14-103](#).

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

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

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

45 (ii) within which an existing dealership is located and a franchisor is proposing a new
46 or relocated dealership within the relevant market area of the existing dealership of the same
47 line-make.

48 [~~(2)~~] (3) "Affiliate" has the meaning set forth in Section [16-10a-102](#).

49 [~~(3)~~] (4) "Aftermarket product" means any product or service not included in the
50 franchisor's suggested retail price of the new motor vehicle, as that price appears on the label
51 required by 15 U.S.C. Sec. 1232(f).

52 [~~(4)~~] (5) "Dealership" means a site or location in this state:

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

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

56 [~~(5)~~] (6) "Department" means the Department of Commerce.

57 [~~(6)~~] (7) "Executive director" means the executive director of the Department of
58 Commerce.

59 ~~[(7)]~~ (8) (a) "Franchise" or "franchise agreement" means a written agreement, or in the
60 absence of a written agreement, then a course of dealing or a practice for a definite or indefinite
61 period, in which:

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

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

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

68 ~~[(8)]~~ (9) "Franchisee" means a person with whom a franchisor has agreed or permitted,
69 in writing or in practice, to purchase, sell, or offer for sale new motor vehicles manufactured,
70 produced, represented, or distributed by the franchisor.

71 ~~[(9)]~~ (10) "Franchisor" means a person who has, in writing or in practice, agreed with
72 or permits a franchisee to purchase, sell, or offer for sale new motor vehicles manufactured,
73 produced, assembled, represented, or distributed by the franchisor, and includes:

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

75 (b) an intermediate distributor; and

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

77 ~~[(10)]~~ (11) "Lead" means the referral by a franchisor to a franchisee of a potential
78 customer whose contact information was obtained from a franchisor's program, process, or
79 system designed to generate referrals for the purchase or lease of a new motor vehicle, or for
80 service work related to the franchisor's vehicles.

81 ~~[(11)]~~ (12) "Line-make" means:

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

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

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

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

89 (iii) has a length and floor plan that distinguish the recreational vehicle from other

90 recreational vehicles with substantially the same decor, features, equipment, size, weight, and
91 price;

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

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

96 ~~[(12)]~~ (13) "Mile" means 5,280 feet.

97 ~~[(13)]~~ (14) "Motor home" means a self-propelled vehicle, primarily designed as a
98 temporary dwelling for travel, recreational, or vacation use.

99 ~~[(14)]~~ (15) (a) "Motor vehicle" means:

100 (i) a travel trailer;

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

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

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

105 (v) a recreational vehicle.

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

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

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

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

110 ~~[(15)]~~ (16) "New motor vehicle" means a motor vehicle as defined in Subsection ~~[(14)]~~
111 (15) that has never been titled or registered and has been driven less than 7,500 miles, unless
112 the motor vehicle is a trailer, travel trailer, or semitrailer, in which case the mileage limit does
113 not apply.

114 ~~[(16)]~~ (17) "New motor vehicle dealer" is a person who is licensed under Subsection
115 41-3-202(1)(a) to sell new motor vehicles.

116 ~~[(17)]~~ (18) "Notice" or "notify" includes both traditional written communications and
117 all reliable forms of electronic communication unless expressly prohibited by statute or rule.

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

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

121 (b) located within a county with a population of at least 200,000.

122 ~~[(18)]~~ (20) (a) "Recreational vehicle" means a vehicular unit other than a mobile home,
123 primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is
124 either self-propelled or pulled by another vehicle.

125 (b) "Recreational vehicle" includes:

126 (i) a travel trailer;

127 (ii) a camping trailer;

128 (iii) a motor home;

129 (iv) a fifth wheel trailer; and

130 (v) a van.

131 ~~[(19)]~~ (21) (a) "Relevant market area," except with respect to recreational vehicles,
132 means:

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

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

135 (i) as applied to an existing dealership that is located in a county with a population of
136 less than 200,000, the area within a 15-mile radius of the existing dealership; or

137 (ii) as applied to an existing dealership that is located in a county with a population of
138 200,000 or more, the area within a 10-mile radius of the existing dealership.

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

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

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

143 ~~[(20)]~~ (22) "Sale, transfer, or assignment" means any disposition of a franchise or an
144 interest in a franchise, with or without consideration, including a bequest, inheritance, gift,
145 exchange, lease, or license.

146 ~~[(21)]~~ (23) "Serve" or "served," unless expressly indicated otherwise by statute or rule,
147 includes any reliable form of communication.

148 ~~[(22)]~~ (24) "Site-control agreement" means an agreement, however denominated and
149 regardless of ~~[its]~~ the agreement's form or of the parties to ~~[it]~~ the agreement, that has the effect
150 of:

151 (a) controlling in any way the use and development of the premises upon which a

152 franchisee's business operations are located;

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

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

160 [~~(23)~~] (25) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable
161 vehicle without motive power, designed as a temporary dwelling for travel, recreational, or
162 vacation use that does not require a special highway movement permit when drawn by a
163 self-propelled motor vehicle.

164 [~~(24)~~] (26) "Written," "write," "in writing," or other variations of those terms shall
165 include all reliable forms of electronic communication.

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

167 **13-14-103. Utah Motor Vehicle Franchise Advisory Board -- Creation --**
168 **Appointment of members -- Alternate members -- Chair -- Quorum -- Conflict of interest.**

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

171 (a) the executive director or the executive director's designee; and

172 (b) seven members appointed by the executive director, with the concurrence of the
173 governor as follows:

174 (i) one recreational motor vehicle franchisee;

175 (ii) three new motor vehicle franchisees from different congressional districts in the
176 state; [~~and~~]

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

179 (B) [~~three~~] two members of the general public, none of whom shall be related to any
180 franchisee; or

181 (C) [~~three~~] two members consisting of any combination of these representatives under
182 this Subsection (1)(b)(iii)[~~;~~]; and

183 (iv) one representative of the Utah League of Cities and Towns.

184 (2) (a) The executive director shall appoint, with the concurrence of the governor, three
185 alternate members, with one alternate from each of the designations set forth in Subsections
186 (1)(b)(i), (1)(b)(ii), ~~[and]~~ (1)(b)(iii), and (1)(b)(iv), except that the new motor vehicle
187 franchisee alternate or alternates for the designation under Subsection (1)(b)(ii) may be from
188 any congressional district.

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

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

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

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

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

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

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

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

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

210 (b) The action of a majority of a quorum present is considered the action of the
211 advisory board.

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

214 (i) involving the member's licensed business or employer; or
215 (ii) when a member, a member's business or family, or employer has a pecuniary
216 interest in the outcome or other conflict of interest concerning an issue before the advisory
217 board.

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

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

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

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

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

228 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
229 63A-3-107.

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

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

232 **13-14-104. Powers and duties of the advisory board and the executive director.**

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

236 (b) The executive director shall:

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

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

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

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

244 (b) In an adjudicative proceeding under this chapter, any order issued by the executive

245 director:

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

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

251 (A) personal attendance at the hearing; or

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

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

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

256 **13-14-302. Issuance of additional franchises -- Relocation of existing franchisees.**

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

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

261 (b) relocate an existing motor vehicle franchisee.

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

266 [~~2~~] (3) (a) If a franchisor seeks to take an action listed in Subsection (1), [~~prior to~~]
267 before taking the action, the franchisor shall, in writing, notify the advisory board, each
268 affected municipality, and each franchisee in that line-make in the relevant market area.

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

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

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

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

274 [~~3~~] (4) (a) Except as provided in Subsection [~~3~~] (4)(c), the franchisor shall provide
275 to the advisory board, each affected municipality, and each franchisee in that line-make in the

276 relevant market area the following documents relating to the notice described under Subsection
277 [~~2~~] (3):

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

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

282 (I) motor vehicle registration data;

283 (II) market penetration data; and

284 (III) demographic data;

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

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

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

294 (b) The franchisor shall provide the documents described under Subsection [~~3~~] (4)(a)
295 with the notice required under Subsection [~~2~~] (3).

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

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

299 (ii) the documents contain confidential proprietary information;

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

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

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

304 (A) the privacy of another franchisee; or

305 (B) Section 13-14-201.

306 [~~4~~] (5) (a) Within [~~45~~] 30 days of receiving notice required by Subsection [~~2~~] (3),

307 any franchisee that is required to receive notice under Subsection ~~[(2)]~~ (3) may protest to the
308 advisory board the establishment or relocation of the dealership.

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

311 (i) a timely protest has been filed;

312 (ii) a hearing is required;

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

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

318 ~~[(5)]~~ (6) If multiple protests are filed under Subsection ~~[(4)]~~ (5), hearings may be
319 consolidated to expedite the disposition of the issue.

320 ~~[(6)]~~ (7) Subsections (1) and (3) through ~~[(5)]~~ (6) do not apply to a relocation of an
321 existing or successor dealer to a location that is:

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

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

325 ~~[(7)]~~ (8) For purposes of this section:

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

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

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

335 (ii) the establishment of a temporary additional place of business by a recreational
336 vehicle franchisee is not considered the establishment of an additional motor vehicle dealership
337 if the recreational vehicle franchisee is participating in a trade show where three or more

338 recreational vehicle dealers are participating.

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

340 **13-14-302.5. Application of new franchise process with respect to certain**
341 **terminated franchises.**

342 (1) As used in this section:

343 (a) "Covered franchisee":

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

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

347 (b) "Covered franchisor":

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

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

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

353 (d) "New franchisor":

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

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

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

359 (f) "Reinstated franchise" means:

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

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

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

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

368 (ii) that becomes entitled to a reinstated franchise under a reinstatement order.

369 (h) "Reinstatement order" means an arbitrator's written determination:
370 (i) in an arbitration proceeding held under the federal franchise arbitration law; and
371 (ii) (A) that a terminated franchise should be reinstated, renewed, continued, assigned,
372 or assumed; or
373 (B) that a covered franchisee should otherwise be reestablished as a franchisee in or
374 added to the dealer network of a new franchisor in the geographic area where the covered
375 franchisee was located before October 3, 2008.

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

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

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

385 **13-14-304. Hearing regarding termination, relocation, or establishment of**
386 **franchises.**

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

391 (i) enter an order designating the time and place for the hearing; and
392 (ii) send a copy of the order by certified or registered mail, with return receipt
393 requested, or by any form of reliable delivery through which receipt is verifiable to:

394 (A) the applicant;

395 (B) the franchisor; and

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

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

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

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

407 (4) (a) (i) Any hearing ordered under Subsection (1) shall be conducted no later than
408 ~~[+20]~~ 90 days after the day on which the application for hearing is filed.

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

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

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

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

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

420 (a) terminate or not continue the franchise;

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

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

423 (6) Any party to the hearing may appeal the executive director's final decision in
424 accordance with Title 63G, Chapter 4, Administrative Procedures Act, including the franchisor,
425 an existing franchisee in the relevant market area in the same line-make as the proposed
426 dealership, or an affected municipality.

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

428 **13-14-306. Evidence to be considered in determining cause to relocate or**
429 **establish a new franchised dealership.**

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

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

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

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

439 (4) whether it is injurious or beneficial to the public welfare or public interest for an
440 additional franchise to be established, including the impact on any affected municipality;

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

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

445 (b) equipment;

446 (c) supply of vehicle parts; and

447 (d) qualified service personnel; and

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

Legislative Review Note

as of 2-6-15 5:12 PM

Office of Legislative Research and General Counsel