

Representative Mike K. McKell proposes the following substitute bill:

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;
- ▶ modifies the membership of the Utah Motor Vehicle Franchise Advisory Board;
- ▶ provides that an affected municipality may participate in a hearing before the Utah Motor Vehicle Franchise Advisory Board;
- ▶ clarifies who may appeal a final decision of the executive director of the Department of Commerce;
- ▶ requires the Utah Motor Vehicle Franchise Advisory Board to submit an annual report to the Business and Labor Interim Committee; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **13-14-102**, as last amended by Laws of Utah 2010, Chapter 33

30 **13-14-103**, as last amended by Laws of Utah 2010, Chapter 286

31 **13-14-104**, as last amended by Laws of Utah 2008, Chapters 362 and 382

32 **13-14-302**, as last amended by Laws of Utah 2011, Chapter 203

33 **13-14-302.5**, as enacted by Laws of Utah 2010, Chapter 41

34 **13-14-304**, as last amended by Laws of Utah 2008, Chapter 362

35 **13-14-306**, as last amended by Laws of Utah 2008, Chapter 362

36 ENACTS:

37 **13-14-310**, Utah Code Annotated 1953



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

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

41 **13-14-102. Definitions.**

42 As used in this chapter:

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

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

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

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

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

53 ~~[(2)]~~ (3) "Affiliate" has the meaning set forth in Section **16-10a-102**.

54 ~~[(3)]~~ (4) "Aftermarket product" means any product or service not included in the
55 franchisor's suggested retail price of the new motor vehicle, as that price appears on the label
56 required by 15 U.S.C. Sec. 1232(f).

57 ~~[(4)]~~ (5) "Dealership" means a site or location in this state:

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

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

61 ~~[(5)]~~ (6) "Department" means the Department of Commerce.

62 ~~[(6)]~~ (7) "Executive director" means the executive director of the Department of
63 Commerce.

64 ~~[(7)]~~ (8) (a) "Franchise" or "franchise agreement" means a written agreement, or in the
65 absence of a written agreement, then a course of dealing or a practice for a definite or indefinite
66 period, in which:

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

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

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

73 ~~[(8)]~~ (9) "Franchisee" means a person with whom a franchisor has agreed or permitted,
74 in writing or in practice, to purchase, sell, or offer for sale new motor vehicles manufactured,
75 produced, represented, or distributed by the franchisor.

76 ~~[(9)]~~ (10) "Franchisor" means a person who has, in writing or in practice, agreed with
77 or permits a franchisee to purchase, sell, or offer for sale new motor vehicles manufactured,
78 produced, assembled, represented, or distributed by the franchisor, and includes:

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

80 (b) an intermediate distributor; and

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

82 ~~[(10)]~~ (11) "Lead" means the referral by a franchisor to a franchisee of a potential
83 customer whose contact information was obtained from a franchisor's program, process, or
84 system designed to generate referrals for the purchase or lease of a new motor vehicle, or for
85 service work related to the franchisor's vehicles.

86 ~~[(11)]~~ (12) "Line-make" means:

87 (a) for other than a recreational vehicle, the motor vehicles that are offered for sale,

88 lease, or distribution under a common name, trademark, service mark, or brand name of the
89 franchisor; or

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

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

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

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

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

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

101 [~~(12)~~] (13) "Mile" means 5,280 feet.

102 [~~(13)~~] (14) "Motor home" means a self-propelled vehicle, primarily designed as a
103 temporary dwelling for travel, recreational, or vacation use.

104 [~~(14)~~] (15) (a) "Motor vehicle" means:

105 (i) a travel trailer;

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

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

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

110 (v) a recreational vehicle.

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

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

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

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

115 [~~(15)~~] (16) "New motor vehicle" means a motor vehicle as defined in Subsection [~~(14)~~]
116 (15) that has never been titled or registered and has been driven less than 7,500 miles, unless
117 the motor vehicle is a trailer, travel trailer, or semitrailer, in which case the mileage limit does
118 not apply.

119 ~~[(16)]~~ (17) "New motor vehicle dealer" is a person who is licensed under Subsection
120 41-3-202(1)(a) to sell new motor vehicles.

121 ~~[(17)]~~ (18) "Notice" or "notify" includes both traditional written communications and
122 all reliable forms of electronic communication unless expressly prohibited by statute or rule.

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

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

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

127 (20) "Primary market area" means:

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

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

132 ~~[(18)]~~ (21) (a) "Recreational vehicle" means a vehicular unit other than a mobile home,
133 primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is
134 either self-propelled or pulled by another vehicle.

135 (b) "Recreational vehicle" includes:

136 (i) a travel trailer;

137 (ii) a camping trailer;

138 (iii) a motor home;

139 (iv) a fifth wheel trailer; and

140 (v) a van.

141 ~~[(19)]~~ (22) (a) "Relevant market area," except with respect to recreational vehicles,
142 means:

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

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

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

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

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

149 (ii) as applied to an existing dealership that is located in a county with a population of

150 225,000 or more, the area within a 10-mile radius of the existing dealership.

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

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

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

155 [~~(20)~~] (23) "Sale, transfer, or assignment" means any disposition of a franchise or an
156 interest in a franchise, with or without consideration, including a bequest, inheritance, gift,
157 exchange, lease, or license.

158 [~~(21)~~] (24) "Serve" or "served," unless expressly indicated otherwise by statute or rule,
159 includes any reliable form of communication.

160 [~~(22)~~] (25) "Site-control agreement" means an agreement, however denominated and
161 regardless of [~~its~~] the agreement's form or of the parties to [~~it~~] the agreement, that has the effect
162 of:

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

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

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

172 [~~(23)~~] (26) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable
173 vehicle without motive power, designed as a temporary dwelling for travel, recreational, or
174 vacation use that does not require a special highway movement permit when drawn by a
175 self-propelled motor vehicle.

176 [~~(24)~~] (27) "Written," "write," "in writing," or other variations of those terms shall
177 include all reliable forms of electronic communication.

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

179 **13-14-103. Utah Motor Vehicle Franchise Advisory Board -- Creation --**

180 **Appointment of members -- Alternate members -- Chair -- Quorum -- Conflict of interest.**

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

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

184 (b) ~~seven~~ eight members appointed by the executive director, with the concurrence of
185 the governor as follows:

186 (i) one recreational motor vehicle franchisee;

187 (ii) three new motor vehicle franchisees from different congressional districts in the
188 state; ~~and~~

189 (iii) (A) three members representing motor vehicle franchisors registered by the
190 department pursuant to Section 13-14-105;

191 (B) three members of the general public, none of whom shall be related to any
192 franchisee; or

193 (C) three members consisting of any combination of these representatives under this
194 Subsection (1)(b)(iii)~~[-]; and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

238 (a) Section [63A-3-106](#);

239 (b) Section [63A-3-107](#); and

240 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
241 [63A-3-107](#).

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

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

244 **13-14-104. Powers and duties of the advisory board and the executive director.**

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

248 (b) The executive director shall:

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

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

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

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

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

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

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

263 (A) personal attendance at the hearing; or

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

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

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

268 **13-14-302. Issuance of additional franchises -- Relocation of existing franchisees.**

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

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

273 (b) relocate an existing motor vehicle franchisee.

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

278 [~~(2)~~] (3) (a) If a franchisor seeks to take an action listed in Subsection (1), [~~prior to~~]
279 before taking the action, the franchisor shall, in writing, notify the advisory board, each
280 affected municipality, and each franchisee in that line-make in the relevant market area.

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

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

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

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

286 [~~(3)~~] (4) (a) Except as provided in Subsection [~~(3)~~] (4)(c), the franchisor shall provide
287 to the advisory board, each affected municipality, and each franchisee in that line-make in the
288 relevant market area the following documents relating to the notice described under Subsection
289 [~~(2)~~] (3):

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

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

294 (I) motor vehicle registration data;

295 (II) market penetration data; and

296 (III) demographic data;

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

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

303 (iv) a statement that describes in reasonable detail how the establishment of a new
304 franchisee or the relocation of an existing franchisee will be beneficial or injurious to the

305 public welfare or public interest.

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

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

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

311 (ii) the documents contain confidential proprietary information;

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

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

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

316 (A) the privacy of another franchisee; or

317 (B) Section 13-14-201.

318 ~~[(4)]~~ (5) (a) Within ~~[45]~~ 30 days of receiving notice required by Subsection ~~[(2)]~~ (3),
319 any franchisee that is required to receive notice under Subsection ~~[(2)]~~ (3) may protest to the
320 advisory board the establishment or relocation of the dealership.

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

323 (i) a timely protest has been filed;

324 (ii) a hearing is required;

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

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

330 ~~[(5)]~~ (6) If multiple protests are filed under Subsection ~~[(4)]~~ (5), hearings may be
331 consolidated to expedite the disposition of the issue.

332 ~~[(6)]~~ (7) Subsections (1) through ~~[(5)]~~ (6) do not apply to a relocation of an existing or
333 successor dealer to a location that is:

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

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

337 [~~7~~] (8) For purposes of this section:

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

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

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

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

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

352 **13-14-302.5. Application of new franchise process with respect to certain**
353 **terminated franchises.**

354 (1) As used in this section:

355 (a) "Covered franchisee":

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

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

359 (b) "Covered franchisor":

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

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

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

365 (d) "New franchisor":

366 (i) means a person who is a franchisor of the same line-make as the franchisor under a

367 pre-bankruptcy franchise that has become a terminated franchise; and

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

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

371 (f) "Reinstated franchise" means:

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

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

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

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

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

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

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

383 (ii) (A) that a terminated franchise should be reinstated, renewed, continued, assigned,
384 or assumed; or

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

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

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

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

397 **13-14-304. Hearing regarding termination, relocation, or establishment of**
398 **franchises.**

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

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

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

406 (A) the applicant;

407 (B) the franchisor; and

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

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

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

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

419 (4) (a) (i) Any hearing ordered under Subsection (1) shall be conducted no later than
420 ~~[120]~~ 90 days after the day on which the application for hearing is filed.

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

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

427 (i) the delay is caused by acts of the franchisor or the additional or relocating

428 franchisee; or

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

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

432 (a) terminate or not continue the franchise;

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

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

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

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

440 **13-14-306. Evidence to be considered in determining cause to relocate or**
441 **establish a new franchised dealership.**

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

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

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

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

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

453 (a) the impact on any affected municipality;

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

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

458 (d) how the new or relocated dealership would impact the distance and time that an

459 individual in the new or relocated dealership's primary market area would have to travel to
460 access a dealership in the same line-make as the new or relocated dealership.

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

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

465 (b) equipment;

466 (c) supply of vehicle parts; and

467 (d) qualified service personnel; and

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

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

471 **13-14-310. Reporting requirement.**

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

475 (1) the number of applications for a new or relocated dealership that the advisory board
476 received; and

477 (2) for each application described in Subsection (1):

478 (a) the number of protests that the advisory board received;

479 (b) whether the advisory board conducted a hearing;

480 (c) if the advisory board conducted a hearing, the disposition of the hearing; and

481 (d) the basis for any disposition described in Subsection (2)(c).