

## HB0290S02 compared with HB0290S01

~~text~~ shows text that was in HB0290S01 but was deleted in HB0290S02.

text shows text that was not in HB0290S01 but was inserted into HB0290S02.

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**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

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#### **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;

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- ▶ 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:

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

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

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

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

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

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

#### ENACTS:

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

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

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

#### **13-14-102. Definitions.**

As used in this chapter:

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

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

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

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

(ii) within which an existing dealership is located and a franchisor is proposing a new

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or relocated dealership within the relevant market area of that existing dealership of the same line-make.

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

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

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

(a) at which a franchisee conducts the business of a new motor vehicle dealer; and  
(b) that is identified as a new motor vehicle dealer's principal place of business for licensing purposes under Section 41-3-204.

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

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

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

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

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

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

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

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

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

(b) an intermediate distributor; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) a travel trailer;

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

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

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

(v) a recreational vehicle.

(b) "Motor vehicle" does not include:

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

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- (ii) an off-highway vehicle as defined in Section 41-3-102; and
- (iii) a small trailer as defined in Section 41-3-102.

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

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

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

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

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

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

(20) "Primary market area" means:

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

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

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

(b) "Recreational vehicle" includes:

- (i) a travel trailer;
- (ii) a camping trailer;
- (iii) a motor home;
- (iv) a fifth wheel trailer; and
- (v) a van.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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self-propelled motor vehicle.

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

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

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

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

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

(b) ~~[seven]~~ ~~eight~~ 11 members appointed by the executive director, with the concurrence of the governor as follows:

(i) one recreational motor vehicle franchisee;

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

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

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

~~[(C)]~~ ~~three members consisting of any combination of these representatives under this Subsection (1)(b)(iii) ~~{[.]} ~~;~~ and~~~~

~~{iv}~~ v) one representative of the Utah League of Cities and Towns.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) A member may not receive compensation or benefits for the member's service, but

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may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

63A-3-107.

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

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

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

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

(b) The executive director shall:

- (i) consider the advisory board's recommendations; and
- (ii) issue any rules or final [decision] decisions by the department.

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

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

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

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

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

- (A) personal attendance at the hearing; or
- (B) review of the record developed at the hearing.

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

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

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

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

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

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

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

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

- (i) specify the intended action described under Subsection (1);
- (ii) specify the good cause on which it intends to rely for the action; and
- (iii) be delivered by registered or certified mail or by any form of reliable delivery

through which receipt is verifiable.

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

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

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

- (I) motor vehicle registration data;
- (II) market penetration data; and
- (III) demographic data;

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

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

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

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

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

- (i) the documents would be privileged under the Utah Rules of Evidence;
- (ii) the documents contain confidential proprietary information;
- (iii) the documents are subject to federal or state privacy laws;
- (iv) the documents are correspondence between the franchisor and existing franchisees in that line-make in the relevant market area; or
- (v) the franchisor reasonably believes that disclosure of the documents would violate:
  - (A) the privacy of another franchisee; or
  - (B) Section 13-14-201.

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

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

- (i) a timely protest has been filed;
- (ii) a hearing is required;
- (iii) the franchisor may not establish or relocate the proposed dealership until the advisory board has held a hearing; and

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

(a) "Covered franchisee":

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

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

(b) "Covered franchisor":

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

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

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

(d) "New franchisor":

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

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

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

(f) "Reinstated franchise" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) the applicant;

(B) the franchisor; and

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

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

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

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

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

(ii) A final decision on the challenge shall be made by the executive director no later

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than ~~[30]~~ 20 days after the day on which the hearing ends.

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

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

(ii) the delay is waived by the parties.

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

(a) terminate or not continue the franchise;

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

(c) relocate the dealership of an existing franchisee.

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

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

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

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

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

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

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

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

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(a) the impact on any affected municipality;

(b) population growth trends in any affected municipality;

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

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

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

(a) the motor vehicle sale and service facilities;

(b) equipment;

(c) supply of vehicle parts; and

(d) qualified service personnel; and

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

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

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

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

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

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

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

(b) whether the advisory board conducted a hearing;

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

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