

Representative Mike Schultz proposes the following substitute bill:

POWERSPORT VEHICLE FRANCHISE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill amends provisions related to powersport vehicle franchises.

Highlighted Provisions:

This bill:

- ▶ amends definitions; and
- ▶ amends provisions related to the relocation of a powersport vehicle franchise.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-35-102, as last amended by Laws of Utah 2007, Chapter 86

13-35-302, as last amended by Laws of Utah 2005, Chapter 268

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

Section 1. Section **13-35-102** is amended to read:

13-35-102. Definitions.



As used in this chapter:

(1) "Advisory board" or "board" means the Utah Powersport Vehicle Franchise Advisory Board created in Section [13-35-103](#).

(2) "Dealership" means a site or location in this state:

(a) at which a franchisee conducts the business of a new powersport vehicle dealer; and
(b) that is identified as a new powersport vehicle dealer's principal place of business for registration purposes under Section [13-35-105](#).

(3) "Department" means the Department of Commerce.

(4) "Executive director" means the executive director of the Department of Commerce.

(5) "Franchise" or "franchise agreement" means a written agreement, for a definite or indefinite period, in which:

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

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

(6) "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 powersport vehicles manufactured, produced, represented, or distributed by the franchisor.

(7) (a) "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 powersport vehicles manufactured, produced, represented, or distributed by the franchisor, and includes:

(i) the manufacturer or distributor of the new powersport vehicles;

(ii) an intermediate distributor;

(iii) an agent, officer, or field or area representative of the franchisor; and

(iv) a person who is affiliated with a manufacturer or a representative or who directly or indirectly through an intermediary is controlled by, or is under common control with the manufacturer.

(b) For purposes of Subsection (7)(a)(iv), a person is controlled by a manufacturer if the manufacturer has the authority directly or indirectly by law or by an agreement of the parties, to direct or influence the management and policies of the person.

(8) "Lead" means the referral by a franchisor to a franchisee of an actual or potential customer for the purchase or lease of a new powersport vehicle, or for service work related to the franchisor's vehicles.

(9) "Line-make" means the powersport vehicles that are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the franchisor, or manufacturer of the powersport vehicle.

~~[(11)]~~ (10) "New powersport vehicle dealer" means a person who is engaged in the business of buying, selling, offering for sale, or exchanging new powersport vehicles either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise who has established a place of business for the sale, lease, trade, or display of powersport vehicles.

~~[(12)]~~ (11) "Notice" or "notify" includes both traditional written communications and all reliable forms of electronic communication unless expressly prohibited by statute or rule.

~~[(10)]~~ (12) (a) "Powersport vehicle" means:

(i) an all-terrain type I or type II vehicle "ATV" defined in Section 41-22-2;

(ii) a snowmobile as defined in Section 41-22-2;

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

(iv) a personal watercraft as defined in Section 73-18-2;

(v) except as provided in Subsection (10)(b), a motor-driven cycle as defined in Section 41-6a-102; or

(vi) a moped as defined in Section 41-6a-102.

(b) "Powersport vehicle" does not include:

(i) an electric assisted bicycle defined in Section 41-6a-102;

(ii) a motor assisted scooter as defined in Section 41-6a-102; or

(iii) an electric personal assistive mobility device as defined in Section 41-6a-102.

(13) "Relevant market area" means:

(a) for a powersport dealership in a county that has a population of less than 225,000:

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

~~[(b)]~~ (ii) in addition to the county described in Subsection (13)(a)(i), the area within a 15-mile radius from the site of the existing, new, or relocated dealership[-]; or

(b) for a powersport dealership in a county that has a population of 225,000 or more,

the area within a 15-mile radius from the site of the existing, new, or relocated dealership.

(14) "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.

(15) "Serve" or "served," unless expressly indicated otherwise by statute or rule, includes any reliable form of communication.

(16) "Written," "write," "in writing," or other variations of those terms shall include all reliable forms of electronic communication.

Section 2. Section **13-35-302** is amended to read:

13-35-302. Issuance of additional franchises -- Relocation of existing franchisees.

(1) (a) Except as provided in Subsection (2), a franchisor shall comply with Subsection (1)(b) if the franchisor seeks to:

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

(ii) relocate an existing powersport vehicle dealership.

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

(ii) The notice required by Subsection (1)(b)(i) shall:

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

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

(c) Within 45 days of receiving notice required by Subsection (1)(b), any franchisee that is required to receive notice under Subsection (1)(b) may protest to the advisory board the establishing or relocating of the dealership. When 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.

(d) If multiple protests are filed under Subsection (1)(c), hearings may be consolidated to expedite the disposition of the issue.

(2) Subsection (1) does not apply to ~~[a relocation that is: (a) less than one mile from the existing location of the franchisee's dealership; and (b) within the same county.]~~ the relocation of a franchisee's dealership:

(a) less than two miles from the existing location of the franchisee's dealership; or

(b) farther away from all powersports dealerships that are:

(i) of the same line-make as the franchisee's dealership; and

(ii) in the franchisee's existing dealership's relevant market area.

(3) For purposes of this section:

(a) relocation of an existing franchisee's dealership in excess of one mile from its 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 powersport vehicle dealership; and

(c) (i) except as provided in Subsection (3)(c)(ii), the establishment of a temporary additional place of business by a powersport vehicle franchisee is considered the establishment of an additional powersport vehicle dealership; and

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