

1 **MOTOR VEHICLE FRANCHISE AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ralph Okerlund**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to motor vehicle franchises.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ requires a franchisor to compensate a franchisee for performing a recall repair on a
13 used motor vehicle under certain circumstances;

14 ▶ requires a franchisor to compensate a franchisee for a used motor vehicle that is
15 subject to a stop-sale or do-not-drive order under certain circumstances; and

16 ▶ provides procedures for a franchisee owed compensation by a franchisor to make a
17 claim for reimbursement.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **13-14-102**, as last amended by Laws of Utah 2015, Chapter 268

25 ENACTS:

26 **13-14-207**, Utah Code Annotated 1953



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

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

30 **13-14-102. Definitions.**

31 As used in this chapter:

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

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

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

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

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

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

43 (4) "Aftermarket product" means any product or service not included in the franchisor's
44 suggested retail price of the new motor vehicle, as that price appears on the label required by
45 15 U.S.C. Sec. 1232(f).

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

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

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

50 (6) "Department" means the Department of Commerce.

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

52 (8) (a) "Franchise" or "franchise agreement" means a written agreement, or in the
53 absence of a written agreement, then a course of dealing or a practice for a definite or indefinite
54 period, in which:

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

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

59 retail.

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

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

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

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

68 (b) an intermediate distributor; and

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

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

74 (12) "Line-make" means:

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

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

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

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

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

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

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

89 (13) "Mile" means 5,280 feet.

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

92 (15) (a) "Motor vehicle" means:

93 (i) a travel trailer;

94 (ii) except as provided in Subsection (15)(b), a motor vehicle as defined in Section
95 [41-3-102](#);

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

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

98 (v) a recreational vehicle.

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

100 (i) a motorcycle as defined in Section [41-1a-102](#);

101 (ii) an off-highway vehicle as defined in Section [41-3-102](#); and

102 (iii) a small trailer as defined in Section [41-3-102](#).

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

106 (17) "New motor vehicle dealer" is a person who is licensed under Subsection
107 [41-3-202\(1\)\(a\)](#) to sell new motor vehicles.

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

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

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

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

114 (20) "Primary market area" means:

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

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

119 (21) "Recall" means a determination, made by a franchisor or by the National Highway
120 Traffic Safety Administration, that a motor vehicle has a safety-related defect or fails to meet a

121 federal or state safety or emissions standard.

122 (22) "Recall repair" means any diagnostic, labor, or part necessary to resolve a motor
123 vehicle defect or to make a motor vehicle compliant with a standard that is the basis of a recall.

124 [~~21~~] (23) (a) "Recreational vehicle" means a vehicular unit other than a mobile home,
125 primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is
126 either self-propelled or pulled by another vehicle.

127 (b) "Recreational vehicle" includes:

128 (i) a travel trailer;

129 (ii) a camping trailer;

130 (iii) a motor home;

131 (iv) a fifth wheel trailer; and

132 (v) a van.

133 [~~22~~] (24) (a) "Relevant market area," except with respect to recreational vehicles,
134 means:

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

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

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

139 (ii) as applied to an existing dealership that is located in a county with a population of
140 225,000 or more, the area within a 10-mile radius of the existing dealership.

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

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

143 (ii) the area within a 35-mile radius from the site of the existing dealership.

144 [~~23~~] (25) "Sale, transfer, or assignment" means any disposition of a franchise or an
145 interest in a franchise, with or without consideration, including a bequest, inheritance, gift,
146 exchange, lease, or license.

147 [~~24~~] (26) "Serve" or "served," unless expressly indicated otherwise by statute or rule,
148 includes any reliable form of communication.

149 [~~25~~] (27) "Site-control agreement" means an agreement, however denominated and
150 regardless of the agreement's form or of the parties to the agreement, that has the effect 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 ~~[(26)]~~ (28) "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 (29) "Used motor vehicle" means a motor vehicle that is not a new motor vehicle.

165 ~~[(27)]~~ (30) "Written," "write," "in writing," or other variations of those terms shall
166 include all reliable forms of electronic communication.

167 Section 2. Section 13-14-207 is enacted to read:

168 **13-14-207. Motor vehicle recalls -- Franchisee compensation.**

169 (1) As used in this section:

170 (a) "Do-not-drive order" means an order issued by a franchisor that advises an
171 individual not to drive a motor vehicle of the franchisor's line-make due to a recall.

172 (b) "Stop-sale order" means an order issued by a franchisor that prohibits a franchisee
173 from selling a motor vehicle of the franchisor's line-make due to a recall.

174 (2) A franchisor shall cover the reasonable cost to a franchisee of performing a recall
175 repair to a used motor vehicle of the franchisor's line-make using the time allowance and
176 compensation standards specified by the franchisor in accordance with Section [13-14-204](#).

177 (3) If a franchisor issues a stop-sale or a do-not-drive order for a used motor vehicle
178 subject to a recall and held by a franchisee, the franchisor shall compensate the franchisee for
179 the used motor vehicle, during the time period described in Subsection (4), in an amount that is
180 equal to the greater of:

181 (a) 1.75% of the value of the used motor vehicle each month; or

182 (b) an amount available under a national recall compensation program.

183 (4) A franchisor shall compensate a franchisee under Subsection (3) beginning on a day
184 15 days after the day on which the franchisor issues a stop-sale or do-not-drive order and
185 ending on the earlier of:

186 (a) the day the franchisee has all necessary parts to complete a recall repair for the used
187 motor vehicle; or

188 (b) the day the stop-sale or do-not-drive order is lifted.

189 (5) The value of a used motor vehicle subject to a recall for the purposes of Subsection
190 (3) is the average trade-in value for a used motor vehicle of the same year, line-make, model,
191 and mileage of the used motor vehicle subject to the recall, as reported in a recognized,
192 independent, third-party used motor vehicle value guide.

193 (6) A franchisor may not reduce the amount of compensation due a franchisee under
194 Subsection (2) or (3) by any means, including by:

195 (a) a chargeback;

196 (b) removing the franchisee from an incentive program; or

197 (c) reducing an amount owed to the franchisee under an incentive program.

198 (7) A franchisee that is owed compensation by a franchisor under Subsection (2) or (3)
199 shall submit a claim to a franchisor for reimbursement.

200 (8) For a claim submitted by a franchisee under Subsection (7), a franchisor shall:

201 (a) approve or deny the claim 30 days or fewer after the day on which the franchisee
202 submits the claim; and

203 (b) reimburse the franchisee for any approved claim 30 days or fewer after the day on
204 which the franchisor approved the claim.

205 (9) If a franchisor does not expressly deny a claim submitted by a franchisee within the
206 time period described in Subsection (8), the claim is considered approved.

Legislative Review Note
Office of Legislative Research and General Counsel