

MOTOR VEHICLE FRANCHISE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends provisions of the New Automobile Franchise Act related to recall repairs.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits a franchisor from offsetting the cost of a recall repair;
- ▶ requires a franchisor to give reasonable compensation to a franchisee for a recall repair;
- ▶ requires a franchisor to compensate a franchisee for a used motor vehicle that is subject to a stop-sale or do-not-drive order under certain circumstances;
- ▶ provides alternative recall repair compensation;
- ▶ makes a recall repair subject to a franchisor audit;
- ▶ establishes deadlines for recall repair compensation; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **13-14-102**, as last amended by Laws of Utah 2015, Chapter 268

30 **13-14-201**, as last amended by Laws of Utah 2012, Chapter 186

31 **13-14-204**, as last amended by Laws of Utah 2016, Chapter 348



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

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

35 **13-14-102. Definitions.**

36 As used in this chapter:

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

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

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

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

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

47 (3) "Affiliate" has the meaning set forth in Section **16-10a-102**.

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

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

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

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

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

56 (7) "Do-not-drive order" means an order issued by a franchisor that instructs an
57 individual not to operate a motor vehicle of the franchisor's line-make due to a recall.

58 [~~7~~] (8) "Executive director" means the executive director of the Department of

59 Commerce.

60 ~~[(8)]~~ (9) (a) "Franchise" or "franchise agreement" means a written agreement, or in the
61 absence of a written agreement, then a course of dealing or a practice for a definite or indefinite
62 period, in which:

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

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

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

69 ~~[(9)]~~ (10) "Franchisee" means a person with whom a franchisor has agreed or
70 permitted, in writing or in practice, to purchase, sell, or offer for sale new motor vehicles
71 manufactured, produced, represented, or distributed by the franchisor.

72 ~~[(10)]~~ (11) "Franchisor" means a person who has, in writing or in practice, agreed with
73 or permits a franchisee to purchase, sell, or offer for sale new motor vehicles manufactured,
74 produced, assembled, represented, or distributed by the franchisor, and includes:

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

76 (b) an intermediate distributor; and

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

78 ~~[(11)]~~ (12) "Lead" means the referral by a franchisor to a franchisee of a potential
79 customer whose contact information was obtained from a franchisor's program, process, or
80 system designed to generate referrals for the purchase or lease of a new motor vehicle, or for
81 service work related to the franchisor's vehicles.

82 ~~[(12)]~~ (13) "Line-make" means:

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

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

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

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

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

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

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

97 [(13)] (14) "Mile" means 5,280 feet.

98 [(14)] (15) "Motor home" means a self-propelled vehicle, primarily designed as a
99 temporary dwelling for travel, recreational, or vacation use.

100 [(15)] (16) (a) "Motor vehicle" means:

101 (i) a travel trailer;

102 (ii) except as provided in Subsection [(15)] (16)(b), a motor vehicle as defined in
103 Section 41-3-102;

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

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

106 (v) a recreational vehicle.

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

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

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

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

111 [(16)] (17) "New motor vehicle" means a motor vehicle [as defined in Subsection (15)]

112 that:

113 (a) has never been titled or registered; and

114 (b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven
115 less than 7,500 miles[, unless the motor vehicle is a trailer, travel trailer, or semitrailer, in
116 which case the mileage limit does not apply].

117 [(17)] (18) "New motor vehicle dealer" is a person who is licensed under Subsection
118 41-3-202(1)(a) to sell new motor vehicles.

119 [(18)] (19) "Notice" or "notify" includes both traditional written communications and
120 all reliable forms of electronic communication unless expressly prohibited by statute or rule.

121 [~~(19)~~] (20) "Notice area" means the geographic area that is:

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

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

125 [~~(20)~~] (21) "Primary market area" means:

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

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

130 (22) "Recall" means a determination by a franchisor or the National Highway Traffic
131 Safety Administration that a motor vehicle has a safety-related defect or fails to meet a federal
132 safety or emissions standard.

133 (23) "Recall repair" means any diagnostic work, labor, or part necessary to resolve an
134 issue that is the basis of a recall.

135 [~~(21)~~] (24) (a) "Recreational vehicle" means a vehicular unit other than a mobile home,
136 primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is
137 either self-propelled or pulled by another vehicle.

138 (b) "Recreational vehicle" includes:

139 (i) a travel trailer;

140 (ii) a camping trailer;

141 (iii) a motor home;

142 (iv) a fifth wheel trailer; and

143 (v) a van.

144 [~~(22)~~] (25) (a) "Relevant market area," except with respect to recreational vehicles,
145 means:

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

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

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

150 (ii) as applied to an existing dealership that is located in a county with a population of
151 225,000 or more, the area within a 10-mile radius of the existing dealership.

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

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

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

155 [~~(23)~~] (26) "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 [~~(24)~~] (27) "Serve" or "served," unless expressly indicated otherwise by statute or rule,
159 includes any reliable form of communication.

160 [~~(25)~~] (28) "Site-control agreement" means an agreement, however denominated and
161 regardless of the agreement's form or of the parties to the agreement, that has the effect of:

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

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

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

171 (29) "Stop-sale order" means an order issued by a franchisor that prohibits a franchisee
172 from selling or leasing a certain used motor vehicle of the franchisor's line-make, which then or
173 thereafter is in the franchisee's inventory, due to a recall.

174 [~~(26)~~] (30) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable
175 vehicle without motive power, designed as a temporary dwelling for travel, recreational, or
176 vacation use that does not require a special highway movement permit when drawn by a
177 self-propelled motor vehicle.

178 (31) "Used motor vehicle" means a motor vehicle that:

179 (a) has been titled and registered to a purchaser other than a franchisee; or

180 (b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven
181 7,500 or more miles.

182 (32) "Value of a used motor vehicle" means the average trade-in value for a used motor

183 vehicle of the same year, make, and model as reported in a recognized, independent third-party
184 used motor vehicle guide.

185 [(27)] (33) "Written," "write," "in writing," or other variations of those terms shall
186 include all reliable forms of electronic communication.

187 Section 2. Section **13-14-201** is amended to read:

188 **13-14-201. Prohibited acts by franchisors -- Affiliates -- Disclosures.**

189 (1) A franchisor may not in this state:

190 (a) except as provided in Subsection (3), require a franchisee to order or accept
191 delivery of any new motor vehicle, part, accessory, equipment, or other item not otherwise
192 required by law that is not voluntarily ordered by the franchisee;

193 (b) require a franchisee to:

194 (i) participate monetarily in any advertising campaign; or

195 (ii) contest, or purchase any promotional materials, display devices, or display
196 decorations or materials;

197 (c) require a franchisee to change the capital structure of the franchisee's dealership or
198 the means by or through which the franchisee finances the operation of the franchisee's
199 dealership, if the dealership at all times meets reasonable capital standards determined by and
200 applied in a nondiscriminatory manner by the franchisor;

201 (d) require a franchisee to refrain from participating in the management of, investment
202 in, or acquisition of any other line of new motor vehicles or related products, if the franchisee:

203 (i) maintains a reasonable line of credit for each make or line of vehicles; and

204 (ii) complies with reasonable capital and facilities requirements of the franchisor;

205 (e) require a franchisee to prospectively agree to a release, assignment, novation,
206 waiver, or estoppel that would:

207 (i) relieve a franchisor from any liability, including notice and hearing rights imposed
208 on the franchisor by this chapter; or

209 (ii) require any controversy between the franchisee and a franchisor to be referred to a
210 third party if the decision by the third party would be binding;

211 (f) require a franchisee to change the location of the principal place of business of the
212 franchisee's dealership or make any substantial alterations to the dealership premises, if the
213 change or alterations would be unreasonable or cause the franchisee to lose control of the

214 premises or impose any other unreasonable requirement related to the facilities or premises;

215 (g) coerce or attempt to coerce a franchisee to join, contribute to, or affiliate with an
216 advertising association;

217 (h) require, coerce, or attempt to coerce a franchisee to enter into an agreement with the
218 franchisor or do any other act that is unfair or prejudicial to the franchisee, by threatening to
219 cancel a franchise agreement or other contractual agreement or understanding existing between
220 the franchisor and franchisee;

221 (i) adopt, change, establish, enforce, modify, or implement a plan or system for the
222 allocation, scheduling, or delivery of new motor vehicles, parts, or accessories to [its] the
223 franchisor's franchisees so that the plan or system is not fair, reasonable, and equitable,
224 including a plan or system that imposes a vehicle sales objective, goal, or quota on a
225 franchisee, or that evaluates a franchisee's sales effectiveness or overall sales performance,
226 without providing a reasonable opportunity for the franchisee to acquire the necessary vehicles
227 in a timely manner from the franchisor on commercially reasonable terms;

228 (j) increase the price of any new motor vehicle that the franchisee has ordered from the
229 franchisor and for which there exists at the time of the order a bona fide sale to a retail
230 purchaser if the order was made prior to the franchisee's receipt of an official written price
231 increase notification;

232 (k) fail to indemnify and hold harmless [its] the franchisor's franchisee against any
233 judgment for damages or settlement approved in writing by the franchisor:

234 (i) including court costs and attorney fees arising out of actions, claims, or proceedings
235 including those based on:

236 (A) strict liability;

237 (B) negligence;

238 (C) misrepresentation;

239 (D) express or implied warranty;

240 (E) revocation as described in Section 70A-2-608; or

241 (F) rejection as described in Section 70A-2-602; and

242 (ii) to the extent the judgment or settlement relates to alleged defective or negligent
243 actions by the franchisor;

244 (l) threaten or coerce a franchisee to waive or forbear [its] the franchisee's right to

245 protest the establishment or relocation of a same line-make franchisee in the relevant market
246 area of the affected franchisee;

247 (m) fail to ship monthly to a franchisee, if ordered by the franchisee, the number of
248 new motor vehicles of each make, series, and model needed by the franchisee to achieve a
249 percentage of total new vehicle sales of each make, series, and model equitably related to the
250 total new vehicle production or importation being achieved nationally at the time of the order
251 by each make, series, and model covered under the franchise agreement;

252 (n) require or otherwise coerce a franchisee to under-utilize the franchisee's existing
253 dealer facility or facilities, including by:

254 (i) requiring or otherwise coercing a franchisee to exclude or remove from the
255 franchisee's facility operations the selling or servicing of a line-make of vehicles for which the
256 franchisee has a franchise agreement to utilize the facilities; or

257 (ii) prohibiting the franchisee from locating, relocating, or occupying a franchise or
258 line-make in an existing facility owned or occupied by the franchisee that includes the selling
259 or servicing of another franchise or line-make at the facility provided that the franchisee gives
260 the franchisor written notice of the franchise co-location;

261 (o) fail to include in any franchise agreement or other agreement governing a
262 franchisee's ownership of a dealership or a franchisee's conduct of business under a franchise
263 the following language or language to the effect that: "If any provision in this agreement
264 contravenes the laws or regulations of any state or other jurisdiction where this agreement is to
265 be performed, or provided for by such laws or regulations, the provision is considered to be
266 modified to conform to such laws or regulations, and all other terms and provisions shall
267 remain in full force.";

268 (p) engage in the distribution, sale, offer for sale, or lease of a new motor vehicle to
269 purchasers who acquire the vehicle in this state except through a franchisee with whom the
270 franchisor has established a written franchise agreement, if the franchisor's trade name,
271 trademark, service mark, or related characteristic is an integral element in the distribution, sale,
272 offer for sale, or lease;

273 (q) engage in the distribution or sale of a recreational vehicle that is manufactured,
274 rented, sold, or offered for sale in this state without being constructed in accordance with the
275 standards set by the American National Standards Institute for recreational vehicles and

276 evidenced by a seal or plate attached to the vehicle;

277 (r) except as provided in Subsection (2), authorize or permit a person to perform
278 warranty service repairs on motor vehicles, except warranty service repairs:

279 (i) by a franchisee with whom the franchisor has entered into a franchise agreement for
280 the sale and service of the franchisor's motor vehicles; or

281 (ii) on owned motor vehicles by a person or government entity who has purchased new
282 motor vehicles pursuant to a franchisor's fleet discount program;

283 (s) fail to provide a franchisee with a written franchise agreement;

284 (t) (i) except as provided in Subsection (1)(t)(ii) and notwithstanding any other
285 provisions of this chapter:

286 (A) unreasonably fail or refuse to offer to its same line-make franchised dealers all
287 models manufactured for that line-make;

288 (B) unreasonably require a dealer to:

289 (I) pay any extra fee, remodel, renovate, recondition the dealer's existing facilities; or

290 (II) purchase unreasonable advertising displays or other materials as a prerequisite to
291 receiving a model or series of vehicles;

292 (ii) notwithstanding Subsection (1)(t)(i), a recreational vehicle franchisor may split a
293 line-make between motor home and travel trailer products;

294 (u) except as provided in Subsection (6), directly or indirectly:

295 (i) own an interest in a new motor vehicle dealer or dealership;

296 (ii) operate or control a new motor vehicle dealer or dealership;

297 (iii) act in the capacity of a new motor vehicle dealer, as defined in Section [13-14-102](#);

298 or

299 (iv) operate a motor vehicle service facility;

300 (v) fail to timely pay for all reimbursements to a franchisee for incentives and other
301 payments made by the franchisor;

302 (w) directly or indirectly influence or direct potential customers to franchisees in an
303 inequitable manner, including:

304 (i) charging a franchisee a fee for a referral regarding a potential sale or lease of any of
305 the franchisee's products or services in an amount exceeding the actual cost of the referral;

306 (ii) giving a customer referral to a franchisee on the condition that the franchisee agree

307 to sell the vehicle at a price fixed by the franchisor; or

308 (iii) advising a potential customer as to the amount that the potential customer should

309 pay for a particular product;

310 (x) fail to provide comparable delivery terms to each franchisee for a product of the

311 franchisor, including the time of delivery after the placement of an order by the franchisee;

312 (y) if a franchisor provides personnel training [~~is provided by the franchisor to its~~] to

313 the franchisor's franchisees, unreasonably fail to make that training available to each franchisee

314 on proportionally equal terms;

315 (z) condition a franchisee's eligibility to participate in a sales incentive program on the

316 requirement that a franchisee use the financing services of the franchisor or a subsidiary or

317 affiliate of the franchisor for inventory financing;

318 (aa) make available for public disclosure, except with the franchisee's permission or

319 under subpoena or in any administrative or judicial proceeding in which the franchisee or the

320 franchisor is a party, any confidential financial information regarding a franchisee, including:

321 (i) monthly financial statements provided by the franchisee;

322 (ii) the profitability of a franchisee; or

323 (iii) the status of a franchisee's inventory of products;

324 (bb) use any performance standard, incentive program, or similar method to measure

325 the performance of franchisees unless the standard or program:

326 (i) is designed and administered in a fair, reasonable, and equitable manner;

327 (ii) if based upon a survey, utilizes an actuarially generally acceptable, valid sample;

328 and

329 (iii) is, upon request by a franchisee, disclosed and explained in writing to the

330 franchisee, including:

331 (A) how the standard or program is designed;

332 (B) how the standard or program will be administered; and

333 (C) the types of data that will be collected and used in the application of the standard or

334 program;

335 (cc) other than sales to the federal government, directly or indirectly, sell, lease, offer

336 to sell, or offer to lease, a new motor vehicle or any motor vehicle owned by the franchisor,

337 except through a franchised new motor vehicle dealer;

338 (dd) compel a franchisee, through a finance subsidiary, to agree to unreasonable
339 operating requirements, except that this Subsection (1)(dd) may not be construed to limit the
340 right of a financing subsidiary to engage in business practices in accordance with the usage of
341 trade in retail and wholesale motor vehicle financing;

342 (ee) condition the franchisor's participation in co-op advertising for a product category
343 on the franchisee's participation in any program related to another product category or on the
344 franchisee's achievement of any level of sales in a product category other than that which is the
345 subject of the co-op advertising;

346 (ff) except as provided in Subsections (7) through (9), discriminate against a franchisee
347 in the state in favor of another franchisee of the same line-make in the state:

348 (i) by selling or offering to sell a new motor vehicle to one franchisee at a higher actual
349 price, including the price for vehicle transportation, than the actual price at which the same
350 model similarly equipped is offered to or is made available by the franchisor to another
351 franchisee in the state during a similar time period;

352 (ii) except as provided in Subsection (8), by using a promotional program or device or
353 an incentive, payment, or other benefit, whether paid at the time of the sale of the new motor
354 vehicle to the franchisee or later, that results in the sale of or offer to sell a new motor vehicle
355 to one franchisee in the state at a higher price, including the price for vehicle transportation,
356 than the price at which the same model similarly equipped is offered or is made available by
357 the franchisor to another franchisee in the state during a similar time period;

358 (iii) except as provided in Subsection (9), by failing to provide or direct a lead in a fair,
359 equitable, and timely manner; or

360 (iv) if the franchisee complies with any reasonable requirement concerning the sale of
361 new motor vehicles, by using or considering the performance of any of its franchisees located
362 in this state relating to the sale of the franchisor's new motor vehicles in determining the:

363 (A) dealer's eligibility to purchase program, certified, or other used motor vehicles
364 from the franchisor;

365 (B) volume, type, or model of program, certified, or other used motor vehicles the
366 dealer is eligible to purchase from the franchisor;

367 (C) price of any program, certified, or other used motor vehicles that the dealer is
368 eligible to purchase from the franchisor; or

369 (D) availability or amount of any discount, credit, rebate, or sales incentive the dealer
370 is eligible to receive from the manufacturer for the purchase of any program, certified, or other
371 motor vehicle offered for sale by the franchisor;

372 (gg) (i) take control over funds owned or under the control of a franchisee based on the
373 findings of a warranty audit ~~[or]~~, sales incentive audit, or recall repair audit, unless the
374 following conditions are satisfied:

375 (A) the franchisor fully identifies in writing the basis for the franchisor's claim or
376 charge back arising from the audit, including notifying the franchisee that the franchisee has 20
377 days from the day on which the franchisee receives the franchisor's claim or charge back to
378 assert a protest in writing to the franchisor identifying the basis for the protest;

379 (B) the franchisee's protest shall inform the franchisor that the protest shall be
380 submitted to a mediator in the state who is identified by name and address in the franchisee's
381 notice to the franchisor;

382 (C) if mediation is requested under Subsection (1)(gg)(i)(B), mediation shall occur no
383 later than 30 days after the day on which the franchisor receives the franchisee's protest of a
384 claim or charge back;

385 (D) if mediation does not lead to a resolution of the protest, the protest shall be set for
386 binding arbitration in the same venue in which the mediation occurred;

387 (E) binding arbitration under Subsection (1)(gg)(i)(D) shall be conducted:

388 (I) by an arbitrator mutually agreed upon by the franchisor and the franchisee; and

389 (II) on a date mutually agreed upon by the franchisor and the franchisee, but shall be
390 held no later than 90 days after the franchisor's receipt of the franchisee's notice of protest;

391 (F) this Subsection (1)(gg)(i) applies exclusively to warranty audits, recall repair
392 audits, and sales incentive audits;

393 (G) Subsections (1)(gg)(i)(A) through (E) do not apply if the franchisor reasonably
394 believes that the amount of the claim or charge back is related to a fraudulent act by the
395 franchisee; and

396 (H) the costs of the mediator or arbitrator instituted under this Subsection (1)(gg) shall
397 be shared equally by the franchisor and the franchisee; or

398 (ii) require a franchisee to execute a written waiver of the requirements of Subsection
399 (1)(gg)(i);

400 (hh) coerce, or attempt to coerce a franchisee to purchase or sell an aftermarket product
401 manufactured by the franchisor, or obtained by the franchisor for resale from a third-party
402 supplier and the franchisor or its affiliate derives a financial benefit from the franchisee's sale
403 or purchase of the aftermarket product as a condition to obtaining preferential status from the
404 franchisor;

405 (ii) through an affiliate, take any action that would otherwise be prohibited under this
406 chapter;

407 (jj) impose any fee, surcharge, or other charge on a franchisee designed to recover the
408 cost of a warranty repair for which the [~~franchisee is paid by the~~] franchisor pays the
409 franchisee;

410 (kk) except as provided by the audit provisions of this chapter, take an action designed
411 to recover a cost related to a recall, including:

412 (i) imposing a fee, surcharge, or other charge on a franchisee;

413 (ii) reducing the compensation the franchisor owes to a franchisee;

414 (iii) removing the franchisee from an incentive program; or

415 (iv) reducing the amount the franchisor owes to a franchisee under an incentive
416 program;

417 [~~(kk)~~] (ll) directly or indirectly condition any of the following actions on the
418 willingness of a franchisee, prospective new franchisee, or owner of an interest in a dealership
419 facility to enter into a site-control agreement:

420 (i) the awarding of a franchise to a prospective new franchisee;

421 (ii) the addition of a line-make or franchise to an existing franchisee;

422 (iii) the renewal of an existing franchisee's franchise;

423 (iv) the approval of the relocation of an existing franchisee's dealership facility, unless
424 the franchisor pays, and the franchisee voluntarily accepts, additional specified cash
425 consideration to facilitate the relocation; or

426 (v) the approval of the sale or transfer of a franchise's ownership, unless the franchisor
427 pays, and the buyer voluntarily accepts, additional specified cash consideration to facilitate the
428 sale or transfer;

429 [~~(H)~~] (mm) subject to Subsection (11), deny a franchisee the right to return any or all
430 parts or accessories that:

431 (i) were specified for and sold to the franchisee under an automated ordering system
432 required by the franchisor; and

433 (ii) (A) are in good, resalable condition; and

434 (B) (I) the franchisee received within the previous 12 months; or

435 (II) are listed in the current parts catalog;

436 [~~(mm)~~] (nn) subject to Subsection (12), obtain from a franchisee a waiver of a
437 franchisee's right, by threatening:

438 (i) to impose a detriment upon the franchisee's business; or

439 (ii) to withhold any entitlement, benefit, or service:

440 (A) to which the franchisee is entitled under a franchise agreement, contract, statute,
441 rule, regulation, or law; or

442 (B) that has been granted to more than one other franchisee of the franchisor in the
443 state;

444 [~~(mm)~~] (oo) coerce a franchisee to establish, or provide by agreement, program, or
445 incentive provision that a franchisee must establish, a price at which the franchisee is required
446 to sell a product or service that is:

447 (i) sold in connection with the franchisee's sale of a motor vehicle; and

448 (ii) (A) in the case of a product, not manufactured, provided, or distributed by the
449 franchisor or an affiliate; or

450 (B) in the case of a service, not provided by the franchisor or an affiliate;

451 [~~(oo)~~] (pp) except as necessary to comply with a health or safety law, or to comply with
452 a technology requirement compliance with which is necessary to sell or service a motor vehicle
453 that the franchisee is authorized or licensed by the franchisor to sell or service, coerce or
454 require a franchisee, through a penalty or other detriment to the franchisee's business, to:

455 (i) construct a new dealer facility or materially alter or remodel an existing dealer
456 facility before the date that is 10 years after the date the construction of the new dealer facility
457 at that location was completed, if the construction substantially complied with the franchisor's
458 brand image standards or plans that the franchisor provided or approved; or

459 (ii) materially alter or remodel an existing dealer facility before the date that is 10 years
460 after the date the previous alteration or remodeling at that location was completed, if the
461 previous alteration or remodeling substantially complied with the franchisor's brand image

462 standards or plans that the franchisor provided or approved; or

463 ~~[(pp)]~~ (qq) notwithstanding the terms of a franchise agreement providing otherwise and
464 subject to Subsection (14):

465 (i) coerce or require a franchisee, including by agreement, program, or incentive
466 provision, to purchase a good or service, relating to a facility construction, alteration, or
467 remodel, from a vendor that a franchisor or its affiliate selects, identifies, or designates, without
468 allowing the franchisee, after consultation with the franchisor, to obtain a like good or service
469 of substantially similar quality from a vendor that the franchisee chooses; or

470 (ii) coerce or require a franchisee, including by agreement, program, or incentive
471 provision, to lease a sign or other franchisor image element from the franchisor or an affiliate
472 without providing the franchisee the right to purchase a sign or other franchisor image element
473 of like kind and quality from a vendor that the franchisee chooses.

474 (2) Notwithstanding Subsection (1)(r), a franchisor may authorize or permit a person to
475 perform warranty service repairs on motor vehicles if the warranty services is for a franchisor
476 of recreational vehicles.

477 (3) Subsection (1)(a) does not prevent the franchisor from requiring that a franchisee
478 carry a reasonable inventory of:

479 (a) new motor vehicle models offered for sale by the franchisor; and

480 (b) parts to service the repair of the new motor vehicles.

481 (4) Subsection (1)(d) does not prevent a franchisor from requiring that a franchisee
482 maintain separate sales personnel or display space.

483 (5) Upon the written request of any franchisee, a franchisor shall disclose in writing to
484 the franchisee the basis on which new motor vehicles, parts, and accessories are allocated,
485 scheduled, and delivered among the franchisor's dealers of the same line-make.

486 (6) (a) A franchisor may engage in any of the activities listed in Subsection (1)(u), for a
487 period not to exceed 12 months if:

488 (i) (A) the person from whom the franchisor acquired the interest in or control of the
489 new motor vehicle dealership was a franchised new motor vehicle dealer; and

490 (B) the franchisor's interest in the new motor vehicle dealership is for sale at a
491 reasonable price and on reasonable terms and conditions; or

492 (ii) the franchisor is engaging in the activity listed in Subsection (1)(u) for the purpose

493 of broadening the diversity of its dealer body and facilitating the ownership of a new motor
494 vehicle dealership by a person who:

495 (A) is part of a group that has been historically underrepresented in the franchisor's
496 dealer body;

497 (B) would not otherwise be able to purchase a new motor vehicle dealership;

498 (C) has made a significant investment in the new motor vehicle dealership which is
499 subject to loss;

500 (D) has an ownership interest in the new motor vehicle dealership; and

501 (E) operates the new motor vehicle dealership under a plan to acquire full ownership of
502 the dealership within a reasonable period of time and under reasonable terms and conditions.

503 (b) After receipt of the advisory board's recommendation, the executive director may,
504 for good cause shown, extend the time limit set forth in Subsection (6)(a) for an additional
505 period not to exceed 12 months.

506 (c) A franchisor who was engaged in any of the activities listed in Subsection (1)(u) in
507 this state prior to May 1, 2000, may continue to engage in that activity, but may not expand that
508 activity to acquire an interest in any other new motor vehicle dealerships or motor vehicle
509 service facilities after May 1, 2000.

510 (d) Notwithstanding Subsection (1)(u), a franchisor may own, operate, or control a new
511 motor vehicle dealership trading in a line-make of motor vehicle if:

512 (i) as to that line-make of motor vehicle, there are no more than four franchised new
513 motor vehicle dealerships licensed and in operation within the state as of January 1, 2000;

514 (ii) the franchisor does not own directly or indirectly, more than a 45% interest in the
515 dealership;

516 (iii) at the time the franchisor first acquires ownership or assumes operation or control
517 of the dealership, the distance between the dealership thus owned, operated, or controlled and
518 the nearest unaffiliated new motor vehicle dealership trading in the same line-make is not less
519 than 150 miles;

520 (iv) all the franchisor's franchise agreements confer rights on the franchisee to develop
521 and operate as many dealership facilities as the franchisee and franchisor shall agree are
522 appropriate within a defined geographic territory or area; and

523 (v) as of January 1, 2000, no fewer than half of the franchisees of the line-make within

524 the state own and operate two or more dealership facilities in the geographic area covered by
525 the franchise agreement.

526 (7) Subsection (1)(ff) does not apply to recreational vehicles.

527 (8) Subsection (1)(ff)(ii) does not prohibit a promotional or incentive program that is
528 functionally available to all competing franchisees of the same line-make in the state on
529 substantially comparable terms.

530 (9) Subsection (1)(ff)(iii) may not be construed to:

531 (a) permit provision of or access to customer information that is otherwise protected
532 from disclosure by law or by contract between a franchisor and a franchisee; or

533 (b) require a franchisor to disregard the preference volunteered by a potential customer
534 in providing or directing a lead.

535 (10) Subsection (1)(ii) does not limit the right of an affiliate to engage in business
536 practices in accordance with the usage of trade in which the affiliate is engaged.

537 (11) (a) Subsection (1)(~~ff~~)(mm) does not apply to parts or accessories that the
538 franchisee ordered and purchased outside of an automated parts ordering system required by
539 the franchisor.

540 (b) In determining whether parts or accessories in a franchisee's inventory were
541 specified and sold under an automated ordering system required by the franchisor, the parts and
542 accessories in the franchisee's inventory are presumed to be the most recent parts and
543 accessories that the franchisor sold to the franchisee.

544 (12) (a) Subsection (1)(~~mm~~)(nn) does not apply to a good faith settlement of a
545 dispute, including a dispute relating to contract negotiations, in which the franchisee gives a
546 waiver in exchange for fair consideration in the form of a benefit conferred on the franchisee.

547 (b) Subsection (12)(a) may not be construed to defeat a franchisee's claim that a waiver
548 has been obtained in violation of Subsection (1)(~~mm~~)(nn).

549 (13) (a) As used in Subsection (1)(~~oo~~)(pp):

550 (i) "Materially alter":

551 (A) means to make a material architectural, structural, or aesthetic alteration; and

552 (B) does not include routine maintenance, such as interior painting, reasonably
553 necessary to keep a dealership facility in attractive condition.

554 (ii) "Penalty or other detriment" does not include a payment under an agreement,

555 incentive, or program that is offered to but declined or not accepted by a franchisee, even if a
556 similar payment is made to another franchisee in the state that chooses to participate in the
557 agreement, incentive, or program.

558 (b) Subsection (1)[~~(oo)~~](pp) does not apply to:

559 (i) a program that provides a lump sum payment to assist a franchisee to make a facility
560 improvement or to pay for a sign or a franchisor image element, if the payment is not
561 dependent on the franchisee selling or purchasing a specific number of new vehicles;

562 (ii) a program that is in effect on May 8, 2012, with more than one franchisee in the
563 state or to a renewal or modification of the program;

564 (iii) a program that provides reimbursement to a franchisee on reasonable, written
565 terms for a substantial portion of the franchisee's cost of making a facility improvement or
566 installing signage or a franchisor image element; or

567 (iv) a written agreement between a franchisor and franchisee, in effect before May 8,
568 2012, under which a franchisee agrees to construct a new dealer facility.

569 (14) (a) Subsection (1)[~~(pp)~~](qq)(i) does not apply to:

570 (i) signage purchased by a franchisee in which the franchisor has an intellectual
571 property right; or

572 (ii) a good used in a facility construction, alteration, or remodel that is:

573 (A) a moveable interior display that contains material subject to a franchisor's
574 intellectual property right; or

575 (B) specifically eligible for reimbursement of over one-half its cost pursuant to a
576 franchisor or distributor program or incentive granted to the franchisee on reasonable, written
577 terms.

578 (b) Subsection (1)[~~(pp)~~](qq)(ii) may not be construed to allow a franchisee to:

579 (i) impair or eliminate a franchisor's intellectual property right; or

580 (ii) erect or maintain a sign that does not conform to the franchisor's reasonable
581 fabrication specifications and intellectual property usage guidelines.

582 Section 3. Section **13-14-204** is amended to read:

583 **13-14-204. Franchisor's obligations related to service -- Franchisor audits -- Time**
584 **limits.**

585 (1) Each franchisor shall specify in writing to each of [its] the franchisor's franchisees

586 licensed as a new motor vehicle dealer in this state:

587 (a) the franchisee's obligations for new motor vehicle preparation, delivery, and
588 warranty service on ~~[its]~~ the franchisor's products;

589 (b) the schedule of compensation to be paid to the franchisee for parts, work, and
590 service; and

591 (c) the time allowance for the performance of work and service.

592 (2) (a) The schedule of compensation described in Subsection (1) shall include
593 reasonable compensation for diagnostic work, as well as repair service, parts, and labor.

594 (b) Time allowances described in Subsection (1) for the diagnosis and performance of
595 warranty work and service shall be reasonable and adequate for the work to be performed.

596 (3) (a) In the determination of what constitutes reasonable compensation under this
597 section, the principal factor to be considered is the prevailing wage rates being paid by
598 franchisees in the relevant market area in which the franchisee is doing business.

599 (b) (i) Compensation of the franchisee for warranty service or recall repair work may
600 not be less than the amount charged by the franchisee for like parts and service to retail or fleet
601 customers, if the amounts are reasonable.

602 (ii) In the case of a recreational vehicle franchisee, reimbursement for parts used in the
603 performance of warranty repairs, including those parts separately warranted directly to the
604 consumer by a recreational vehicle parts supplier, may not be less than the franchisee's cost
605 plus 20%.

606 (iii) For purposes of ~~[this]~~ Subsection (3)(b)(ii), the term "cost" shall be that same price
607 paid by a franchisee to a franchisor or supplier for the part when the part is purchased for a
608 nonwarranty repair.

609 (4) A franchisor may not fail to:

610 (a) perform any warranty obligation;

611 (b) include in written notices of franchisor's recalls to new motor vehicle owners and
612 franchisees the expected date by which necessary parts and equipment will be available to
613 franchisees for the correction of the defects; or

614 ~~[(c) compensate any of the franchisees for repairs effected by the recall.]~~

615 (c) in accordance with Subsections (2) and (3), compensate a franchisee for all
616 diagnostic work, labor, and parts the franchisor requires to perform a recall repair.

617 (5) If a franchisor disallows a franchisee's claim for a defective part, alleging that the
618 part is not defective, the franchisor at ~~[its]~~ the franchisor's option shall:

619 (a) return the part to the franchisee at the franchisor's expense; or

620 (b) pay the franchisee the cost of the part.

621 (6) (a) A claim made by a franchisee pursuant to this section for diagnostic work, labor
622 ~~[and]~~, or parts shall be paid within 30 days after ~~[its]~~ the claim's approval.

623 (b) ~~[A claim shall be either approved or disapproved by the franchisor]~~ The franchisor
624 shall approve or disapprove a claim within 30 days after receipt of the claim on a form
625 generally used by the franchisor and containing the generally required information. Any claim
626 not specifically disapproved of in writing within 30 days after the receipt of the form is
627 considered to be approved and payment shall be made within 30 days.

628 (7) ~~[Warranty]~~ A franchisor may conduct warranty service audits and recall repair
629 audits of the franchisor's franchisee records ~~[may be conducted by the franchisor]~~ on a
630 reasonable basis.

631 (8) A franchisor may deny a franchisee's claim for warranty compensation ~~[may be~~
632 ~~denied]~~ or recall repair compensation only if:

633 (a) the franchisee's claim is based on a nonwarranty repair or a nonrecall repair;

634 (b) the franchisee lacks material documentation for the claim;

635 (c) the franchisee fails to comply materially with specific substantive terms and
636 conditions of the franchisor's warranty compensation program or recall repair compensation
637 program; or

638 (d) the franchisor has a bona fide belief based on competent evidence that the
639 franchisee's claim is intentionally false, fraudulent, or misrepresented.

640 (9) (a) Any charge ~~[backs for warranty parts]~~ back for a warranty part or service
641 compensation ~~[and service incentives shall only be]~~, recall repair compensation, or service
642 incentive is only enforceable for the six-month period immediately following the ~~[date the~~
643 ~~payment for warranty reimbursement was made by the franchisor]~~ day on which the franchisor
644 makes the payment compensating the franchisee for the warranty part or service, recall repair,
645 or service incentive.

646 (b) Except as provided in Subsection (9)(e), all charge backs levied by a franchisor for
647 sales compensation or sales incentives arising out of the sale or lease of a motor vehicle sold or

648 leased by a franchisee shall be compensable only if written notice of the charge back is
649 received by the franchisee within six months immediately following the sooner of:
650 (i) the ~~[date when]~~ day on which the sales incentive program terminates; or
651 (ii) the ~~[date when]~~ day on which the franchisor makes the payment for the sales
652 compensation or sales incentive ~~[was made by the franchisor]~~ to the franchisee.
653 (c) (i) Upon an audit, the franchisor shall provide the franchisee automated or written
654 notice explaining the amount of and reason for a charge back.

655 (ii) A franchisee may respond in writing within 30 days after the notice under
656 Subsection (9)(c)(i) to:

657 (A) explain a deficiency; or

658 (B) provide materials or information to correct and cure compliance with a provision
659 that is a basis for a charge back.

660 (d) A charge back:

661 (i) may not be based on a nonmaterial error that is clerical in nature; and

662 (ii) (A) shall be based on one or more specific instances of material noncompliance
663 with the franchisor's warranty compensation program ~~[or]~~, sales incentive program, recall
664 repair program, or recall compensation program; and

665 (B) may not be extrapolated from a sampling of warranty claims, recall repair claims,
666 or sales incentive claims.

667 (e) The time limitations of this Subsection (9) do not preclude charge backs for any
668 fraudulent claim that was previously paid.

669 (10) (a) If within 30 days after the day on which a franchisor issues an initial notice of
670 recall a part or remedy is not reasonably available to perform the recall repair on a used motor
671 vehicle, each calendar month thereafter the franchisor shall pay the franchisee an amount equal
672 to at least 1.35% of the value of the used motor vehicle, if:

673 (i) the franchisee holding the used motor vehicle for sale is authorized to sell and
674 service a new vehicle of the same line-make;

675 (ii) after May 7, 2018, the franchisor issues a stop-sale or do-not-drive order on the
676 used motor vehicle; and

677 (iii) (A) the used motor vehicle is in the franchisee's inventory at the time the
678 franchisor issued the order described in Subsection (10)(a)(ii); or

679 (B) after the franchisor issues the order described in Subsection (10)(a)(ii), the
680 franchisee takes the used motor vehicle into the franchisee's inventory at the termination of the
681 consumer lease for the vehicle, as a consumer trade-in accompanying the purchase of a new
682 vehicle from the franchisee, or for any other reason in the ordinary course of business.

683 (b) A franchisor shall pay the compensation described in Subsection (10)(a):

684 (i) beginning:

685 (A) 30 days after the day on which the franchisee receives the stop-sale or do-not-drive
686 order; or

687 (B) if a franchisee obtains the used motor vehicle more than 30 days after the day on
688 which the franchisee receives the stop-sale or do-not-drive order, the day on which the
689 franchisee obtains the used motor vehicle; and

690 (ii) ending the earlier of the day on which:

691 (A) the franchisor makes the recall part or remedy available for order and prompt
692 shipment to the franchisee; or

693 (B) the franchisee sells, trades, or otherwise disposes of the used motor vehicle.

694 (c) A franchisor shall prorate the first and last payment for a used motor vehicle to a
695 franchisee under this Subsection (10).

696 (d) A franchisor may direct the manner in which a franchisee demonstrates the
697 inventory status of an affected used motor vehicle to determine eligibility under this Subsection
698 (10), if the manner is not unduly burdensome.

699 (11) (a) A franchisee that offsets recall repair compensation received from a franchisor
700 under this section against recall repair compensation the franchisee receives under a state or
701 federal recall repair compensation remedy may pursue any other available remedy against the
702 franchisor.

703 (b) As an alternative to providing recall repair compensation under this section, a
704 franchisor may compensate a franchisee for a recall repair:

705 (i) under a national recall repair compensation program, if the compensation is equal to
706 or greater than the compensation provided under this section; or

707 (ii) as the franchisor and franchisee otherwise agree, if the compensation is equal to or
708 greater than the compensation provided under this section.

709 (c) Nothing in this section requires a franchisor to provide compensation to a

710 franchisee that exceeds the value of the used motor vehicle affected by a recall.

Legislative Review Note
Office of Legislative Research and General Counsel