

Senator Curtis S. Bramble proposes the following substitute bill:

NON-VEHICLE FRANCHISE AGREEMENT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Francis D. Gibson

LONG TITLE

General Description:

This bill amends provisions of the New Automobile Franchise Act and the Motor Vehicle Business Regulation Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ excludes certain trailers from the New Automobile Franchise Act; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

13-14-102, as last amended by Laws of Utah 2018, Chapter 245

41-3-102, as last amended by Laws of Utah 2019, Chapter 424

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



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

27 **13-14-102. Definitions.**

28 As used in this chapter:

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

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

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

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

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

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

40 (4) "Aftermarket product" means any product or service not included in the franchisor's
41 suggested retail price of the new motor vehicle, as that price appears on the label required by
42 15 U.S.C. Sec. 1232(f).

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

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

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

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

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

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

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

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

56 (ii) a community of interest exists in the marketing of new motor vehicles, new motor

57 vehicle parts, and services related to the sale or lease of new motor vehicles at wholesale or
58 retail.

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

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

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

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

67 (b) an intermediate distributor; and

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

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

73 (13) "Line-make" means:

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

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

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

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

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

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

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

88 (14) "Mile" means 5,280 feet.

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

91 (16) (a) "Motor vehicle" means:

92 (i) except as provided in Subsection (16)(b), a trailer;

93 ~~[(i)]~~ (ii) a travel trailer;

94 ~~[(ii)]~~ (iii) except as provided in Subsection (16)(b), a motor vehicle as defined in
95 Section 41-3-102;

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

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 (iv) a trailer that:

104 (A) is not designed for human habitation; and

105 (B) has a gross vehicle weight rating of less than 26,000 pounds.

106 (v) a mobile home as defined in Section 41-1a-102;

107 (vi) a trailer of 750 pounds or less unladen weight; and

108 (vii) a farm tractor or other machine or tool used in the production, harvesting, or care
109 of a farm product.

110 (17) "New motor vehicle" means a motor vehicle that:

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

112 (b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven
113 less than 7,500 miles.

114 (18) "New motor vehicle dealer" is a person who is licensed under Subsection
115 41-3-202(1)[(a)] to sell new motor vehicles.

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

118 (20) "Notice area" means the geographic area that is:

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

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

122 (21) "Primary market area" means:

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

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

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

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

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

135 (b) "Recreational vehicle" includes:

136 (i) a travel trailer;

137 (ii) a camping trailer;

138 (iii) a motor home;

139 (iv) a fifth wheel trailer; and

140 (v) a van.

141 (25) (a) "Relevant market area," except with respect to recreational vehicles, means:

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

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

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

146 (ii) as applied to an existing dealership that is located in a county with a population of
147 225,000 or more, the area within a 10-mile radius of the existing dealership.

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

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

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

151 (26) "Sale, transfer, or assignment" means any disposition of a franchise or an interest
152 in a franchise, with or without consideration, including a bequest, inheritance, gift, exchange,
153 lease, or license.

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

156 (28) "Site-control agreement" means an agreement, however denominated and
157 regardless of the agreement's form or of the parties to the agreement, that has the effect of:

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

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

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

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

170 (30) "Trailer" means the same as that term is defined in Section [41-3-102](#).

171 [~~30~~] (31) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable
172 vehicle without motive power, designed as a temporary dwelling for travel, recreational, or
173 vacation use that does not require a special highway movement permit when drawn by a
174 self-propelled motor vehicle.

175 [~~31~~] (32) "Used motor vehicle" means a motor vehicle that:

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

177 (b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven
178 7,500 or more miles.

179 [~~32~~] (33) "Value of a used motor vehicle" means the average trade-in value for a used
180 motor vehicle of the same year, make, and model as reported in a recognized, independent

181 third-party used motor vehicle guide.

182 [~~(33)~~] (34) "Written," "write," "in writing," or other variations of those terms shall
183 include all reliable forms of electronic communication.

184 Section 2. Section **41-3-102** is amended to read:

185 **41-3-102. Definitions.**

186 As used in this chapter:

187 (1) "Administrator" means the motor vehicle enforcement administrator.

188 (2) "Agent" means a person other than a holder of any dealer's or salesperson's license
189 issued under this chapter, who for salary, commission, or compensation of any kind, negotiates
190 in any way for the sale, purchase, order, or exchange of three or more motor vehicles for any
191 other person in any 12-month period.

192 (3) "Auction" means a dealer engaged in the business of auctioning motor vehicles,
193 either owned or consigned, to the general public.

194 (4) "Authorized service center" means an entity that:

195 (a) is in the business of repairing exclusively the motor vehicles of the same line-make
196 as the motor vehicles a single direct-sale manufacturer manufactures;

197 (b) the direct-sale manufacturer described in Subsection (4)(a) authorizes to complete
198 warranty repair work for motor vehicles that the direct-sale manufacturer sells, displays for
199 sale, or offers for sale or exchange; and

200 (c) conducts business primarily from an enclosed commercial repair facility that is
201 permanently located in the state.

202 (5) "Board" means the advisory board created in Section [41-3-106](#).

203 (6) "Body shop" means a person engaged in rebuilding, restoring, repairing, or painting
204 the body of motor vehicles for compensation.

205 (7) "Commission" means the State Tax Commission.

206 (8) "Crusher" means a person who crushes or shreds motor vehicles subject to
207 registration under Title 41, Chapter 1a, Motor Vehicle Act, to reduce the useable materials and
208 metals to a more compact size for recycling.

209 (9) (a) "Dealer" means a person:

210 (i) whose business in whole or in part involves selling new, used, or new and used
211 motor vehicles or off-highway vehicles; and

212 (ii) who sells, displays for sale, or offers for sale or exchange three or more new or
213 used motor vehicles or off-highway vehicles in any 12-month period.

214 (b) "Dealer" includes a representative or consignee of any dealer.

215 (10) "Direct-sale manufacturer" means a person:

216 (a) that is both a manufacturer and a dealer;

217 (b) that, in this state, sells, displays for sale, or offers for sale or exchange only new
218 motor vehicles of the person's own line-make that are:

219 (i) exclusively propelled through the use of electricity, a hydrogen fuel cell, or another
220 non-fossil fuel source;

221 (ii) (A) passenger vehicles with a gross vehicle weight rating of 14,000 pounds or less;

222 or

223 (B) trucks with a gross vehicle weight rating of 14,000 pounds or less; and

224 (iii) manufactured by the person;

225 (c) that is not a franchise holder;

226 (d) that is domiciled in the United States; and

227 (e) whose chief officers direct, control, and coordinate the person's activities as a
228 direct-sale manufacturer from a physical location in the United States.

229 (11) "Direct-sale manufacturer salesperson" means an individual who for a salary,
230 commission, or compensation of any kind, is employed either directly, indirectly, regularly, or
231 occasionally by a direct-sale manufacturer to sell, purchase, or exchange or to negotiate for the
232 sale, purchase, or exchange of a motor vehicle manufactured by the direct-sale manufacturer
233 who employs the individual.

234 (12) (a) "Dismantler" means a person engaged in the business of dismantling motor
235 vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, for the resale of
236 parts or for salvage.

237 (b) "Dismantler" includes a person who dismantles three or more motor vehicles in any
238 12-month period.

239 (13) "Distributor" means a person who has a franchise from a manufacturer of motor
240 vehicles to distribute motor vehicles within this state and who in whole or in part sells or
241 distributes new motor vehicles to dealers or who maintains distributor representatives.

242 (14) "Distributor branch" means a branch office similarly maintained by a distributor

243 for the same purposes a factory branch is maintained.

244 (15) "Distributor representative" means a person and each officer and employee of the
245 person engaged as a representative of a distributor or distributor branch of motor vehicles to
246 make or promote the sale of the distributor or the distributor branch's motor vehicles, or for
247 supervising or contacting dealers or prospective dealers of the distributor or the distributor
248 branch.

249 (16) "Division" means the Motor Vehicle Enforcement Division created in Section
250 [41-3-104](#).

251 (17) "Factory branch" means a branch office maintained by a person who manufactures
252 or assembles motor vehicles for sale to distributors, motor vehicle dealers, or who directs or
253 supervises the factory branch's representatives.

254 (18) "Factory representative" means a person and each officer and employee of the
255 person engaged as a representative of a manufacturer of motor vehicles or by a factory branch
256 to make or promote the sale of the manufacturer's or factory branch's motor vehicles, or for
257 supervising or contacting the dealers or prospective dealers of the manufacturer or the factory
258 branch.

259 (19) (a) "Franchise" means a contract or agreement between a dealer and a
260 manufacturer of new motor vehicles or a manufacturer's distributor or factory branch by which
261 the dealer is authorized to sell any specified make or makes of new motor vehicles.

262 (b) "Franchise" includes a contract or agreement described in Subsection (19)(a)
263 regardless of whether the contract or agreement is subject to Title 13, Chapter 14, New
264 Automobile Franchise Act, Title 13, Chapter 35, Powersport Vehicle Franchise Act, or neither.

265 (20) (a) "Franchise holder" means a manufacturer who:

266 (i) previously had a franchised dealer in the United States;

267 (ii) currently has a franchised dealer in the United States;

268 (iii) is a successor to another manufacturer who previously had or currently has a
269 franchised dealer in the United States;

270 (iv) is a material owner of another manufacturer who previously had or currently has a
271 franchised dealer in the United States;

272 (v) is under legal or common ownership, or practical control, with another

273 manufacturer who previously had or currently has a franchised dealer in the United States; or

274 (vi) is in a partnership, joint venture, or similar arrangement for production of a
275 commonly owned line-make with another manufacturer who previously had or currently has a
276 franchised dealer in the United States.

277 (b) "Franchise holder" does not include a manufacturer described in Subsection (20)(a),
278 if at all times during the franchised dealer's existence, the manufacturer had legal or practical
279 common ownership or common control with the franchised dealer.

280 (21) "Line-make" means motor vehicles that are offered for sale, lease, or distribution
281 under a common name, trademark, service mark, or brand name of the manufacturer.

282 (22) "Manufacturer" means a person engaged in the business of constructing or
283 assembling new motor vehicles, ownership of which is customarily transferred by a
284 manufacturer's statement or certificate of origin, or a person who constructs three or more new
285 motor vehicles in any 12-month period.

286 (23) "Material owner" means a person who possesses, directly or indirectly, the power
287 to direct, or cause the direction of, the management, policies, or activities of another person:

288 (a) through ownership of voting securities;

289 (b) by contract or credit arrangement; or

290 (c) in another way not described in Subsections (23)(a) and (b).

291 (24) (a) "Motor vehicle" means a vehicle that is:

292 (i) self-propelled;

293 (ii) a trailer~~[-]~~;

294 (iii) a travel trailer[-, or];

295 (iv) a semitrailer; [or]

296 ~~[(iii)]~~ (v) an off-highway vehicle; or

297 (vi) a small trailer.

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

299 (i) mobile homes as defined in Section [41-1a-102](#);

300 (ii) trailers of 750 pounds or less unladen weight;

301 ~~(iii) [farm tractors and other machines and tools]~~ a farm tractor or other machine or
302 tool used in the production, harvesting, ~~[and]~~ or care of a farm [products] product; and

303 (iv) park model recreational vehicles as defined in Section [41-1a-102](#).

304 (25) "Motorcycle" ~~[has the same meaning as]~~ means the same as that term is defined in

305 Section 41-1a-102.

306 (26) "New motor vehicle" means a motor vehicle that:

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

308 (b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven

309 less than 7,500 miles.

310 (27) "Off-highway vehicle" [~~has the same meaning as provided~~] means the same as that
311 term is defined in Section 41-22-2.

312 (28) "Pawnbroker" means a person whose business is to lend money on security of
313 personal property deposited with him.

314 (29) (a) "Principal place of business" means a site or location in this state:

315 (i) devoted exclusively to the business for which the dealer, manufacturer,
316 remanufacturer, transporter, dismantler, crusher, or body shop is licensed, and businesses
317 incidental to them;

318 (ii) sufficiently bounded by fence, chain, posts, or otherwise marked to definitely
319 indicate the boundary and to admit a definite description with space adequate to permit the
320 display of three or more new, or new and used, or used motor vehicles and sufficient parking
321 for the public; and

322 (iii) that includes a permanent enclosed building or structure large enough to
323 accommodate the office of the establishment and to provide a safe place to keep the books and
324 other records of the business, at which the principal portion of the business is conducted and
325 the books and records kept and maintained.

326 (b) "Principal place of business" means, with respect to a direct-sale manufacturer, the
327 direct-sale manufacturer's showroom, which shall comply with the requirements of Subsection
328 (29)(a).

329 (30) "Remanufacturer" means a person who reconstructs used motor vehicles subject to
330 registration under Title 41, Chapter 1a, Motor Vehicle Act, to change the body style and
331 appearance of the motor vehicle or who constructs or assembles motor vehicles from used or
332 new and used motor vehicle parts, or who reconstructs, constructs, or assembles three or more
333 motor vehicles in any 12-month period.

334 (31) "Salesperson" means an individual who for a salary, commission, or compensation
335 of any kind, is employed either directly, indirectly, regularly, or occasionally by any new motor

336 vehicle dealer or used motor vehicle dealer to sell, purchase, or exchange or to negotiate for the
337 sale, purchase, or exchange of motor vehicles.

338 (32) "Semitrailer" [~~has the same meaning as~~] means the same as that term is defined in
339 Section 41-1a-102.

340 (33) "Showroom" means a site or location in the state that a direct-sale manufacturer
341 uses for the direct-sale manufacturer's business, including the display and demonstration of
342 new motor vehicles that are exclusively of the same line-make that the direct-sale manufacturer
343 manufactures.

344 (34) "Small trailer" means a trailer that has an unladen weight of:

345 (a) more than 750 pounds[~~;~~]; and

346 (b) less than 2,000 pounds.

347 (35) "Special equipment" includes a truck mounted crane, cherry picker, material lift,
348 post hole digger, and a utility or service body.

349 (36) "Special equipment dealer" means a new or new and used motor vehicle dealer
350 engaged in the business of buying new incomplete motor vehicles with a gross vehicle weight
351 of 12,000 or more pounds and installing special equipment on the incomplete motor vehicle.

352 (37) "Trailer" [~~has the same meaning as~~] means the same as that term is defined in
353 Section 41-1a-102.

354 (38) "Transporter" means a person engaged in the business of transporting motor
355 vehicles as described in Section 41-3-202.

356 (39) "Travel trailer" [~~has the same meaning as provided~~] means the same as that term is
357 defined in Section 41-1a-102.

358 (40) "Used motor vehicle" means a vehicle that:

359 (a) has been titled and registered to a purchaser other than a dealer; or

360 (b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven
361 7,500 or more miles.

362 (41) "Wholesale motor vehicle auction" means a dealer primarily engaged in the
363 business of auctioning consigned motor vehicles to dealers or dismantlers who are licensed by
364 this or any other jurisdiction.

365 Section 3. **Effective date.**

366 This bill takes effect on October 15, 2020.