

Representative Francis D. Gibson proposes the following substitute bill:

POWERSPORT AND AUTOMOBILE FRANCHISE

AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Francis D. Gibson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the New Automobile Franchise Act and the Powersport Vehicle Franchise Act.

Highlighted Provisions:

This bill:

- ▶ amends definitions in the New Automobile Franchise Act;
- ▶ amends the definition of a "powersport vehicle" to include a motorboat and a motorboat trailer; 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 2020, Chapter 367

13-35-102, as last amended by Laws of Utah 2018, Chapter 166



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

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

13-14-102. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) a person grants to another person a license to use a trade name, trademark, service

57 mark, or related characteristic; and

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

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

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

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

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

69 (b) an intermediate distributor; and

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

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

75 (13) "Line-make" means:

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

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

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

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

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

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

88 and

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

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

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

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

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

95 (ii) a travel trailer;

96 (iii) except as provided in Subsection (16)(b), a motor vehicle as defined in Section
97 [41-3-102](#);

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

99 (v) a recreational vehicle.

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

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

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

103 (iii) a small trailer;

104 (iv) a trailer that:

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

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

107 (v) a mobile home as defined in Section [41-1a-102](#);

108 (vi) a trailer of 750 pounds or less unladen weight; [~~and~~]

109 (vii) a farm tractor or other machine or tool used in the production, harvesting, or care
110 of a farm product[-]; and

111 (viii) a motorboat trailer as defined in Section [13-35-102](#).

112 (17) "New motor vehicle" means a motor vehicle 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.

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

118 (19) "Notice" or "notify" includes both traditional written communications and all

119 reliable forms of electronic communication unless expressly prohibited by statute or rule.

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

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

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

124 (21) "Primary market area" means:

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

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

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

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

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

137 (b) "Recreational vehicle" includes:

138 (i) a travel trailer;

139 (ii) a camping trailer;

140 (iii) a motor home;

141 (iv) a fifth wheel trailer; and

142 (v) a van.

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

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

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

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

148 (ii) as applied to an existing dealership that is located in a county with a population of
149 225,000 or more, the area within a 10-mile radius of the existing dealership.

- 150 (b) "Relevant market area," with respect to recreational vehicles, means:
- 151 (i) the county in which the dealership is to be established or relocated; and
- 152 (ii) the area within a 35-mile radius from the site of the existing dealership.
- 153 (26) "Sale, transfer, or assignment" means any disposition of a franchise or an interest
- 154 in a franchise, with or without consideration, including a bequest, inheritance, gift, exchange,
- 155 lease, or license.
- 156 (27) "Serve" or "served," unless expressly indicated otherwise by statute or rule,
- 157 includes any reliable form of communication.
- 158 (28) "Site-control agreement" means an agreement, however denominated and
- 159 regardless of the agreement's form or of the parties to the agreement, that has the effect of:
- 160 (a) controlling in any way the use and development of the premises upon which a
- 161 franchisee's business operations are located;
- 162 (b) requiring a franchisee to establish or maintain an exclusive dealership facility on
- 163 the premises upon which the franchisee's business operations are located; or
- 164 (c) restricting the ability of the franchisee or, if the franchisee leases the dealership
- 165 premises, the franchisee's lessor to transfer, sell, lease, develop, redevelop, or change the use of
- 166 some or all of the dealership premises, whether by sublease, lease, collateral pledge of lease,
- 167 right of first refusal to purchase or lease, option to purchase or lease, or any similar
- 168 arrangement.
- 169 (29) "Small trailer" means the same as that term is defined in Section [41-3-102](#).
- 170 (30) "Stop-sale order" means an order issued by a franchisor that prohibits a franchisee
- 171 from selling or leasing a certain used motor vehicle of the franchisor's line-make, which then or
- 172 thereafter is in the franchisee's inventory, due to a recall.
- 173 (31) "Trailer" means the same as that term is defined in Section [41-3-102](#).
- 174 (32) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle
- 175 without motive power, designed as a temporary dwelling for travel, recreational, or vacation
- 176 use that does not require a special highway movement permit when drawn by a self-propelled
- 177 motor vehicle.
- 178 (33) "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 (34) "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 (35) "Written," "write," "in writing," or other variations of those terms shall include all
186 reliable forms of electronic communication.

187 Section 2. Section **13-35-102** is amended to read:

188 **13-35-102. Definitions.**

189 As used in this chapter:

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

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

193 (a) at which a franchisee conducts the business of a new powersport vehicle dealer; and

194 (b) that is identified as a new powersport vehicle dealer's principal place of business

195 for registration purposes under Section [13-35-105](#).

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

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

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

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

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

205 (6) "Franchisee" means a person with whom a franchisor has agreed or permitted, in
206 writing or in practice, to purchase, sell, or offer for sale new powersport vehicles manufactured,
207 produced, represented, or distributed by the franchisor.

208 (7) (a) "Franchisor" means a person who has, in writing or in practice, agreed with or
209 permits a franchisee to purchase, sell, or offer for sale new powersport vehicles manufactured,
210 produced, represented, or distributed by the franchisor, and includes:

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

212 (ii) an intermediate distributor;
213 (iii) an agent, officer, or field or area representative of the franchisor; and
214 (iv) a person who is affiliated with a manufacturer or a representative or who directly
215 or indirectly through an intermediary is controlled by, or is under common control with the
216 manufacturer.

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

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

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

226 (10) "Motorboat" means the same as that term is defined in Section [73-18-2](#).

227 (11) "Motorboat trailer" means a trailer, as defined in Section [41-1a-102](#), that is
228 designed to carry a motorboat.

229 ~~[(10)]~~ (12) "New powersport vehicle dealer" means a person who is engaged in the
230 business of buying, selling, offering for sale, or exchanging new powersport vehicles either
231 outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise who has
232 established a place of business for the sale, lease, trade, or display of powersport vehicles.

233 ~~[(11)]~~ (13) "Notice" or "notify" includes both traditional written communications and
234 all reliable forms of electronic communication unless expressly prohibited by statute or rule.

235 ~~[(12)]~~ (14) (a) "Powersport vehicle" means:

236 (i) an all-terrain type I, type II, or type III vehicle "ATV" defined in Section [41-22-2](#);

237 (ii) a snowmobile as defined in Section [41-22-2](#);

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

239 (iv) a personal watercraft as defined in Section [73-18-2](#);

240 (v) except as provided in Subsection ~~[(12)]~~ (14)(b), a motor-driven cycle as defined in
241 Section [41-6a-102](#); ~~[or]~~

242 (vi) a moped as defined in Section [41-6a-102](#)~~[-]~~;

243 (vii) a motorboat; or

244 (viii) a motorboat trailer.

245 (b) "Powersport vehicle" does not include:

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

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

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

249 ~~[(13)]~~ (15) "Relevant market area" means:

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

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

253 (ii) in addition to the county described in Subsection ~~[(13)]~~(15)(a)(i), the area within a
254 15-mile radius from the site of the existing, new, or relocated dealership; or

255 (b) for a powersport dealership in a county that has a population of 225,000 or more,
256 the area within a 10-mile radius from the site of the existing, new, or relocated dealership.

257 ~~[(14)]~~ (16) "Sale, transfer, or assignment" means any disposition of a franchise or an
258 interest in a franchise, with or without consideration, including a bequest, inheritance, gift,
259 exchange, lease, or license.

260 ~~[(15)]~~ (17) "Serve" or "served," unless expressly indicated otherwise by statute or rule,
261 includes any reliable form of communication.

262 ~~[(16)]~~ (18) "Written," "write," "in writing," or other variations of those terms shall
263 include all reliable forms of electronic communication.

264 Section 3. **Effective date.**

265 If approved by two-thirds of all the members elected to each house, this bill takes effect
266 upon approval by the governor, or the day following the constitutional time limit of Utah
267 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
268 the date of veto override.