

# HB0314S01 compared with HB0314

~~{deleted text}~~ shows text that was in HB0314 but was deleted in HB0314S01.

inserted text shows text that was not in HB0314 but was inserted into HB0314S01.

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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: \_\_\_\_\_

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#### 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 relevant market area for a powersport dealership;
- ~~}~~ ▶ amends the definition of a "powersport vehicle" to include a motorboat and a motorboat trailer;~~{~~
- amends provisions related to a franchisor's obligations upon termination or

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~~noncontinuation of a franchise;~~ 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

~~{ **13-35-307**, as last amended by Laws of Utah 2012, Chapter 262~~

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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:

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(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 mark, or related characteristic; and

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

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

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

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

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

(b) an intermediate distributor; and

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

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

(13) "Line-make" means:

(a) for other than a recreational vehicle, the motor vehicles that are offered for sale,

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lease, or distribution under a common name, trademark, service mark, or brand name of the franchisor; or

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

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

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

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

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

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

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

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

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

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

(ii) a travel trailer;

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

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

(v) a recreational vehicle.

(b) "Motor vehicle" does not include:

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

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

(iii) a small trailer;

(iv) a trailer that:

(A) is not designed for human habitation; and

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

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

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

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

(viii) a motorboat trailer as defined in Section 13-35-102.

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

(a) has never been titled or registered; and

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

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

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

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

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

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

(21) "Primary market area" means:

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

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

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

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

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

(b) "Recreational vehicle" includes:

(i) a travel trailer;

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- (ii) a camping trailer;
- (iii) a motor home;
- (iv) a fifth wheel trailer; and
- (v) a van.

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

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

- (A) the county in which the existing dealership is located; and
- (B) the area within a 15-mile radius of the existing dealership; or

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

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

- (i) the county in which the dealership is to be established or relocated; and
- (ii) the area within a 35-mile radius from the site of the existing dealership.

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

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

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

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

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

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

(29) "Small trailer" means the same as that term is defined in Section 41-3-102.

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

(31) "Trailer" means the same as that term is defined in Section 41-3-102.

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

(33) "Used motor vehicle" means a motor vehicle that:

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

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

(34) "Value of a used motor vehicle" means the average trade-in value for a used motor vehicle of the same year, make, and model as reported in a recognized, independent third-party used motor vehicle guide.

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

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

### **13-35-102. Definitions.**

As used in this chapter:

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

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

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

(b) that is identified as a new powersport vehicle dealer's principal place of business for registration purposes under Section 13-35-105.

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

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

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

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

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mark, or related characteristic; and

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

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

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

- (i) the manufacturer or distributor of the new powersport vehicles;
- (ii) an intermediate distributor;
- (iii) an agent, officer, or field or area representative of the franchisor; and
- (iv) a person who is affiliated with a manufacturer or a representative or who directly or indirectly through an intermediary is controlled by, or is under common control with the manufacturer.

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

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

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

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

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

~~(10)~~ (12) "New powersport vehicle dealer" means a person who is engaged in the business of buying, selling, offering for sale, or exchanging new powersport vehicles either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise who has



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established a place of business for the sale, lease, trade, or display of powersport vehicles.

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

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

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

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

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

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

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

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

~~(vii) a motorboat; or~~

~~(viii) a motorboat trailer.~~

(b) "Powersport vehicle" does not include:

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

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

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

~~[(13)]~~ (15) "Relevant market area" means ~~{ }: { } the area within a 10-mile radius from the site of an existing, new, or relocated powersport dealership. }~~

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

~~{ }~~(i) the county in which the powersport dealership exists or is to be established or relocated; and ~~{ }~~

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

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

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

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

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

Section 3. ~~Section 13-35-307 is amended to read:~~

~~13-35-307. Franchisor's repurchase obligations upon termination or noncontinuation of franchise:~~

~~(1) (a) Except as provided in Subsection (1)(b), if a franchise is terminated or not continued by the franchisor or franchisee, the franchisor shall pay the franchisee:~~

~~(i) the franchisee's cost of new, undamaged, unsold, and unregistered powersport vehicles in the franchisee's inventory acquired from the franchisor or another franchisee of the same line-make and invoiced during the:~~

~~(A) 30-month period immediately before the day on which the franchise is terminated or not continued; or~~

~~(B) 60-month period immediately before the day on which the franchise is terminated or not continued, if the powersport vehicle is a motorboat or a motorboat trailer;~~

~~(ii) any charges made by the franchisor for distribution, delivery, or taxes;~~

~~(iii) the franchisee's cost of any accessories added on a vehicle;~~

~~(iv) the cost of new, undamaged, and unsold supplies, parts, and accessories as set forth in the franchisor's catalog at the time of termination or noncontinuation less all allowances paid or credited to the franchisee by the franchisor;~~

~~(v) except as provided in Subsection (1)(c), the fair market value, but not less than the franchisee's depreciated acquisition cost, of each undamaged sign owned by the franchisee that bears a common name, trade name, or trademark of the franchisor if acquisition of the sign was recommended or required by the franchisor;~~

~~(vi) the fair market value, but not less than the franchisee's depreciated acquisition cost, of all special tools, equipment, and furnishings acquired from the franchisor or sources approved by the franchisor that were recommended or required by the franchisor and are in good and usable condition; and~~

~~(vii) the cost of transporting, handling, packing, and loading powersport vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings.~~

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~~—— (b) The franchisor may deduct the sum of all allowances paid or credited to the franchisee by the franchisor from the amount owed under Subsection (1)(a).~~

~~—— (c) If a franchisee has a sign with multiple manufacturers listed, the franchisor shall pay only for [its] the franchisor's pro rata portion of the sign described in Subsection (1)(a)(v).~~

~~—— (2) The franchisor shall pay the franchisee the amounts specified in Subsection (1) within 90 days after the tender of the property to the franchisor if the franchisee has:~~

~~—— (a) clear title to the property; or~~

~~—— (b) the manufacturer's statement of origin.~~

~~—— (3) If repurchased inventory and equipment are subject to a security interest, the franchisor may make payment jointly to the franchisee and to the holder of the security interest.~~

~~—— Section 4.} **Effective date.**~~

~~{This} If approved by two-thirds of all the members elected to each house, this bill takes effect {on October 15, 2021.~~

~~{upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.~~