

POWERSPORT AND AUTOMOBILE FRANCHISE

AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

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;
- ▶ amends provisions related to a franchisor’s obligations upon termination or noncontinuation of a franchise; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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



28 [13-35-307](#), as last amended by Laws of Utah 2012, Chapter 262



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

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

32 **13-14-102. Definitions.**

33 As used in this chapter:

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

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

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

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

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

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

45 (4) "Aftermarket product" means any product or service not included in the franchisor's
46 suggested retail price of the new motor vehicle, as that price appears on the label required by
47 15 U.S.C. Sec. 1232(f).

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

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

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

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

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

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

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

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

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

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

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

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

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

72 (b) an intermediate distributor; and

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

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

78 (13) "Line-make" means:

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

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

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

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

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

89 (iv) belongs to a single, distinct classification of recreational vehicle product type

90 having a substantial degree of commonality in the construction of the chassis, frame, and body;
91 and

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

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

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

96 (16) (a) "Motor vehicle" means a vehicle that is:

97 (i) self-propelled;

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

99 ~~[(i)]~~ (iii) a travel trailer;

100 ~~[(ii) except as provided in Subsection (16)(b), a motor vehicle as defined in Section~~
101 ~~41-3-102;]~~

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

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

104 (v) a recreational vehicle.

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

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

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

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

109 (iv) a motorboat trailer as defined in Section 13-35-102;

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

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

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

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

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

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

118 (18) "New motor vehicle dealer" is a person who is licensed under Subsection
119 41-3-202(1)(a) to sell new motor vehicles.

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

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

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

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

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

126 (21) "Primary market area" means:

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

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

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

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

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

139 (b) "Recreational vehicle" includes:

140 (i) a travel trailer;

141 (ii) a camping trailer;

142 (iii) a motor home;

143 (iv) a fifth wheel trailer; and

144 (v) a van.

145 (25) (a) "Relevant market area," except with respect to recreational vehicles, 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 (26) "Sale, transfer, or assignment" means any disposition of a franchise or an interest
- 156 in a franchise, with or without consideration, including a bequest, inheritance, gift, exchange,
- 157 lease, or license.
- 158 (27) "Serve" or "served," unless expressly indicated otherwise by statute or rule,
- 159 includes any reliable form of communication.
- 160 (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) "Small trailer" means the same as that term is defined in Section 41-1a-102.
- 172 [~~29~~] (30) "Stop-sale order" means an order issued by a franchisor that prohibits a
- 173 franchisee from selling or leasing a certain used motor vehicle of the franchisor's line-make,
- 174 which then or thereafter is in the franchisee's inventory, due to a recall.
- 175 (31) "Trailer" means the same as that term is defined in Section 41-1a-102.
- 176 [~~30~~] (32) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable
- 177 vehicle without motive power, designed as a temporary dwelling for travel, recreational, or
- 178 vacation use that does not require a special highway movement permit when drawn by a
- 179 self-propelled motor vehicle.
- 180 [~~31~~] (33) "Used motor vehicle" means a motor vehicle that:
- 181 (a) has been titled and registered to a purchaser other than a franchisee; or
- 182 (b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven

183 7,500 or more miles.

184 ~~[(32)]~~ (34) "Value of a used motor vehicle" means the average trade-in value for a used
185 motor vehicle of the same year, make, and model as reported in a recognized, independent
186 third-party used motor vehicle guide.

187 ~~[(33)]~~ (35) "Written," "write," "in writing," or other variations of those terms shall
188 include all reliable forms of electronic communication.

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

190 **13-35-102. Definitions.**

191 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

235 ~~[(11)]~~ (13) "Notice" or "notify" includes both traditional written communications and
236 all reliable forms of electronic communication unless expressly prohibited by statute or rule.

237 ~~[(12)]~~ (14) (a) "Powersport vehicle" means:

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

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

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

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

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

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

245 (vii) a motorboat; or

246 (viii) a motorboat trailer.

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

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

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

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

251 [~~(13)~~] (15) "Relevant market area" means:

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

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

255 (ii) in addition to the county described in Subsection [~~(13)~~] (15)(a)(i), the area within a
256 15-mile radius from the site of the existing, new, or relocated dealership; or

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

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

262 [~~(15)~~] (17) "Serve" or "served," unless expressly indicated otherwise by statute or rule,
263 includes any reliable form of communication.

264 [~~(16)~~] (18) "Written," "write," "in writing," or other variations of those terms shall
265 include all reliable forms of electronic communication.

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

267 **13-35-307. Franchisor's repurchase obligations upon termination or**
268 **noncontinuation of franchise.**

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

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

274 (A) 30-month period immediately before the franchise is terminated or not continued;

275 or

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

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

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

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

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

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

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

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

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

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

299 (a) clear title to the property; or

300 (b) the manufacturer's statement of origin.

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