

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 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 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



28 [13-35-102](#), as last amended by Laws of Utah 2018, Chapter 166

29 [13-35-307](#), as last amended by Laws of Utah 2012, Chapter 262

30

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

32 Section 1. Section [13-14-102](#) is amended to read:

33 **[13-14-102. Definitions.](#)**

34 As used in this chapter:

35 (1) "Advisory board" or "board" means the Utah Motor Vehicle Franchise Advisory

36 Board created in Section [13-14-103](#).

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

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

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

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

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

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

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

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

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

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

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

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

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

59 period, in which:

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

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

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

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

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

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

73 (b) an intermediate distributor; and

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

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

79 (13) "Line-make" means:

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

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

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

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

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

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

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

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

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

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

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

99 (ii) a travel trailer;

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

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

103 (v) a recreational vehicle.

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

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

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

107 (iii) a small trailer;

108 (iv) a trailer that:

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

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

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

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

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

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

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

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

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

120 (18) "New motor vehicle dealer" is a person who is licensed under Subsection

121 41-3-202(1) to sell new motor vehicles.

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

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

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

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

128 (21) "Primary market area" means:

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

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

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

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

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

141 (b) "Recreational vehicle" includes:

142 (i) a travel trailer;

143 (ii) a camping trailer;

144 (iii) a motor home;

145 (iv) a fifth wheel trailer; and

146 (v) a van.

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

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

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

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

152 (ii) as applied to an existing dealership that is located in a county with a population of
153 225,000 or more, the area within a 10-mile radius of the existing dealership.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

184 (b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven
185 7,500 or more miles.

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

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

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

192 **13-35-102. Definitions.**

193 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

212 (7) (a) "Franchisor" means a person who has, in writing or in practice, agreed with or
213 permits a franchisee to purchase, sell, or offer for sale new powersport vehicles manufactured,

214 produced, represented, or distributed by the franchisor, and includes:

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

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

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

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

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

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

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

237 [~~(11)~~] (13) "Notice" or "notify" includes both traditional written communications and
238 all reliable forms of electronic communication unless expressly prohibited by statute or rule.

239 [~~(12)~~] (14) (a) "Powersport vehicle" means:

- 240 (i) an all-terrain type I, type II, or type III vehicle "ATV" defined in Section 41-22-2;
- 241 (ii) a snowmobile as defined in Section 41-22-2;
- 242 (iii) a motorcycle as defined in Section 41-1a-102;
- 243 (iv) a personal watercraft as defined in Section 73-18-2;
- 244 (v) except as provided in Subsection [~~(12)~~] (14)(b), a motor-driven cycle as defined in

245 Section ~~41-6a-102~~; [~~or~~]

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

247 (vii) a motorboat; or

248 (viii) a motorboat trailer.

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

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

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

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

253 [~~(13)~~] (15) "Relevant market area" means[-] the area within a 10-mile radius from the
254 site of an existing, new, or relocated powersport dealership.

255 [~~(a) for a powersport dealership in a county that has a population of less than 225,000;~~]

256 [~~(i) the county in which the powersport dealership exists or is to be established or~~
257 ~~relocated; and]~~

258 [~~(ii) in addition to the county described in Subsection (13)(a)(i), the area within a~~
259 ~~15-mile radius from the site of the existing, new, or relocated dealership; or]~~

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

262 [~~(14)~~] (16) "Sale, transfer, or assignment" means any disposition of a franchise or an
263 interest in a franchise, with or without consideration, including a bequest, inheritance, gift,
264 exchange, lease, or license.

265 [~~(15)~~] (17) "Serve" or "served," unless expressly indicated otherwise by statute or rule,
266 includes any reliable form of communication.

267 [~~(16)~~] (18) "Written," "write," "in writing," or other variations of those terms shall
268 include all reliable forms of electronic communication.

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

270 **13-35-307. Franchisor's repurchase obligations upon termination or**
271 **noncontinuation of franchise.**

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

274 (i) the franchisee's cost of new, undamaged, unsold, and unregistered powersport
275 vehicles in the franchisee's inventory acquired from the franchisor or another franchisee of the

276 same line-make and invoiced during the;

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

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

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

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

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

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

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

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

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

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

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

302 (a) clear title to the property; or

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

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

306 Section 4. **Effective date.**

307

This bill takes effect on October 15, 2021.