

NEW MOTOR VEHICLE FRANCHISE

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel R. Liljenquist

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies and enacts provisions under the New Automobile Franchise Act.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ enacts a definition of "site-control agreement";
- ▶ modifies provisions relating to prohibited actions by a new motor vehicle franchisor;
- ▶ prohibits a new motor vehicle franchisor from taking certain actions;
- ▶ modifies the basis for denial of a franchisee's claim for warranty compensation;
- ▶ enacts a provision relating to site-control agreements;
- ▶ modifies a provision relating to the relocation of a franchisee;
- ▶ modifies a provision relating to a franchisor's obligation to pay a franchisee upon the termination or noncontinuation of a franchise; and
- ▶ enacts a provision governing trust funds held by a franchisor.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **13-14-102**, as last amended by Laws of Utah 2009, Chapter 318

31 **13-14-201**, as last amended by Laws of Utah 2009, Chapter 318

32 **13-14-204**, as last amended by Laws of Utah 2009, Chapter 318

33 **13-14-302**, as last amended by Laws of Utah 2005, Chapter 249

34 **13-14-307**, as last amended by Laws of Utah 2009, Chapter 318

35 ENACTS:

36 **13-14-206**, Utah Code Annotated 1953

37 **13-14-310**, Utah Code Annotated 1953



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

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

41 **13-14-102. Definitions.**

42 As used in this chapter:

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

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

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

49 (4) "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 (5) "Department" means the Department of Commerce.

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

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

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

59 mark, or related characteristic; and

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

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

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

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

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

71 (b) an intermediate distributor; and

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

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

77 (11) "Line-make" means:

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

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

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

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

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

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

90 and

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

92 (12) "Mile" means 5,280 feet.

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

95 (14) (a) "Motor vehicle" means:

96 (i) a travel trailer;

97 (ii) except as provided in Subsection (14)(b), a motor vehicle as defined in Section
98 41-3-102;

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

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

101 (v) a recreational vehicle.

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

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

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

105 (iii) a small trailer as defined in Section 41-3-102.

106 (15) "New motor vehicle" means a motor vehicle as defined in Subsection (14) that has
107 never been titled or registered and has been driven less than 7,500 miles, unless the motor
108 vehicle is a trailer, travel trailer, or semitrailer, in which case the mileage limit does not apply.

109 (16) "New motor vehicle dealer" is a person who is licensed under Subsection
110 41-3-202(1)(a) to sell new motor vehicles.

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

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

116 (b) "Recreational vehicle" includes:

117 (i) a travel trailer;

118 (ii) a camping trailer;

119 (iii) a motor home;

120 (iv) a fifth wheel trailer; and

121 (v) a van.

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

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

124 (ii) the area within a [~~ten-mile~~] 15-mile radius from the site of the new or relocated
125 dealership.

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

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

128 (ii) the area within a 35-mile radius from the site of the new or relocated dealership.

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

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

134 (22) "Site-control agreement" means an agreement, however denominated and
135 regardless of its form or of the parties to it, that has the effect of:

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

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

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

145 [~~(22)~~] (23) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable
146 vehicle without motive power, designed as a temporary dwelling for travel, recreational, or
147 vacation use that does not require a special highway movement permit when drawn by a
148 self-propelled motor vehicle.

149 [~~(23)~~] (24) "Written," "write," "in writing," or other variations of those terms shall
150 include all reliable forms of electronic communication.

151 Section 2. Section **13-14-201** is amended to read:

152 **13-14-201. Prohibited acts by franchisors -- Affiliates -- Disclosures.**
153 (1) A franchisor may not in this state:
154 (a) except as provided in Subsection (3), require a franchisee to order or accept
155 delivery of any new motor vehicle, part, accessory, equipment, or other item not otherwise
156 required by law that is not voluntarily ordered by the franchisee;
157 (b) require a franchisee to:
158 (i) participate monetarily in any advertising campaign; or
159 (ii) contest, or purchase any promotional materials, display devices, or display
160 decorations or materials;
161 (c) require a franchisee to change the capital structure of the franchisee's dealership or
162 the means by or through which the franchisee finances the operation of the franchisee's
163 dealership, if the dealership at all times meets reasonable capital standards determined by and
164 applied in a nondiscriminatory manner by the franchisor;
165 (d) require a franchisee to refrain from participating in the management of, investment
166 in, or acquisition of any other line of new motor vehicles or related products, if the franchisee:
167 (i) maintains a reasonable line of credit for each make or line of vehicles; and
168 (ii) complies with reasonable capital and facilities requirements of the franchisor;
169 (e) require a franchisee to prospectively agree to a release, assignment, novation,
170 waiver, or estoppel that would:
171 (i) relieve a franchisor from any liability, including notice and hearing rights imposed
172 on the franchisor by this chapter; or
173 (ii) require any controversy between the franchisee and a franchisor to be referred to a
174 third party if the decision by the third party would be binding;
175 (f) require a franchisee to change the location of the principal place of business of the
176 franchisee's dealership or make any substantial alterations to the dealership premises, if the
177 change or alterations would be unreasonable or cause the franchisee to lose control of the
178 premises or impose any other unreasonable requirement related to the facilities or premises;
179 (g) coerce or attempt to coerce a franchisee to join, contribute to, or affiliate with an
180 advertising association;
181 (h) require, coerce, or attempt to coerce a franchisee to enter into an agreement with the
182 franchisor or do any other act that is unfair or prejudicial to the franchisee, by threatening to

183 cancel a franchise agreement or other contractual agreement or understanding existing between
184 the franchisor and franchisee;

185 (i) adopt, change, establish, enforce, modify, or implement a plan or system for the
186 allocation, scheduling, or delivery of new motor vehicles, parts, or accessories to its franchisees
187 so that the plan or system is not fair, reasonable, and equitable;

188 (j) increase the price of any new motor vehicle that the franchisee has ordered from the
189 franchisor and for which there exists at the time of the order a bona fide sale to a retail
190 purchaser if the order was made prior to the franchisee's receipt of an official written price
191 increase notification;

192 (k) fail to indemnify and hold harmless its franchisee against any judgment for
193 damages or settlement approved in writing by the franchisor:

194 (i) including court costs and attorney fees arising out of actions, claims, or proceedings
195 including those based on:

196 (A) strict liability;

197 (B) negligence;

198 (C) misrepresentation;

199 (D) express or implied warranty;

200 (E) revocation as described in Section 70A-2-608; or

201 (F) rejection as described in Section 70A-2-602; and

202 (ii) to the extent the judgment or settlement relates to alleged defective or negligent
203 actions by the franchisor;

204 (l) threaten or coerce a franchisee to waive or forbear its right to protest the
205 establishment or relocation of a same line-make franchisee in the relevant market area of the
206 affected franchisee;

207 (m) fail to ship monthly to a franchisee, if ordered by the franchisee, the number of
208 new motor vehicles of each make, series, and model needed by the franchisee to achieve a
209 percentage of total new vehicle sales of each make, series, and model equitably related to the
210 total new vehicle production or importation being achieved nationally at the time of the order
211 by each make, series, and model covered under the franchise agreement;

212 (n) require or otherwise coerce a franchisee to under-utilize the franchisee's existing
213 dealer facility or facilities, including by:

214 (i) requiring or otherwise coercing a franchisee to exclude or remove from the
215 franchisee's facility operations the selling or servicing of a line-make of vehicles for which the
216 franchisee has a franchise agreement to utilize the facilities; or

217 (ii) prohibiting the franchisee from locating, relocating, or occupying a franchise or
218 line-make in an existing facility owned or occupied by the franchisee that includes the selling
219 or servicing of another franchise or line-make at the facility provided that the franchisee gives
220 the franchisor written notice of the franchise co-location;

221 (o) fail to include in any franchise agreement or other agreement governing a
222 franchisee's ownership of a dealership or a franchisee's conduct of business under a franchise
223 the following language or language to the effect that: "If any provision in this agreement
224 contravenes the laws or regulations of any state or other jurisdiction where this agreement is to
225 be performed, or provided for by such laws or regulations, the provision is considered to be
226 modified to conform to such laws or regulations, and all other terms and provisions shall
227 remain in full force.";

228 (p) engage in the distribution, sale, offer for sale, or lease of a new motor vehicle to
229 purchasers who acquire the vehicle in this state except through a franchisee with whom the
230 franchisor has established a written franchise agreement, if the franchisor's trade name,
231 trademark, service mark, or related characteristic is an integral element in the distribution, sale,
232 offer for sale, or lease;

233 (q) engage in the distribution or sale of a recreational vehicle that is manufactured,
234 rented, sold, or offered for sale in this state without being constructed in accordance with the
235 standards set by the American National Standards Institute for recreational vehicles and
236 evidenced by a seal or plate attached to the vehicle;

237 (r) except as provided in Subsection (2), authorize or permit a person to perform
238 warranty service repairs on motor vehicles, except warranty service repairs:

239 (i) by a franchisee with whom the franchisor has entered into a franchise agreement for
240 the sale and service of the franchisor's motor vehicles; or

241 (ii) on owned motor vehicles by a person or government entity who has purchased new
242 motor vehicles pursuant to a franchisor's [~~or manufacturer's~~] fleet discount program;

243 (s) fail to provide a franchisee with a written franchise agreement;

244 (t) (i) except as provided in Subsection (1)(t)(ii) and notwithstanding any other

245 provisions of this chapter:

246 (A) unreasonably fail or refuse to offer to its same line-make franchised dealers all
247 models manufactured for that line-make;

248 (B) unreasonably require a dealer to:

249 (I) pay any extra fee, remodel, renovate, recondition the dealer's existing facilities; or

250 (II) purchase unreasonable advertising displays or other materials as a prerequisite to
251 receiving a model or series of vehicles;

252 (ii) notwithstanding Subsection (1)(t)(i), a recreational vehicle [~~manufacturer~~]

253 franchisor may split a line-make between motor home and travel trailer products;

254 (u) except as provided in Subsection (6), directly or indirectly:

255 (i) own an interest in a new motor vehicle dealer or dealership;

256 (ii) operate or control a new motor vehicle dealer or dealership;

257 (iii) act in the capacity of a new motor vehicle dealer, as defined in Section 13-14-102;

258 or

259 (iv) operate a motor vehicle service facility;

260 (v) fail to timely pay for all reimbursements to a franchisee for incentives and other
261 payments made by the franchisor;

262 (w) directly or indirectly influence or direct potential customers to franchisees in an
263 inequitable manner, including:

264 (i) charging a franchisee a fee for a referral regarding a potential sale or lease of any of
265 the franchisee's products or services in an amount exceeding the actual cost of the referral;

266 (ii) giving a customer referral to a franchisee on the condition that the franchisee agree
267 to sell the vehicle at a price fixed by the franchisor; or

268 (iii) advising a potential customer as to the amount that the potential customer should
269 pay for a particular product;

270 (x) fail to provide comparable delivery terms to each franchisee for a product of the
271 franchisor, including the time of delivery after the placement of an order by the franchisee;

272 (y) if personnel training is provided by the franchisor to its franchisees, unreasonably
273 fail to make that training available to each franchisee on proportionally equal terms;

274 (z) condition a franchisee's eligibility to participate in a sales incentive program on the
275 requirement that a franchisee use the financing services of the franchisor or a subsidiary or

276 affiliate of the franchisor for inventory financing;

277 (aa) make available for public disclosure, except with the franchisee's permission or
278 under subpoena or in any administrative or judicial proceeding in which the franchisee or the
279 franchisor is a party, any confidential financial information regarding a franchisee, including:

280 (i) monthly financial statements provided by the franchisee;

281 (ii) the profitability of a franchisee; or

282 (iii) the status of a franchisee's inventory of products;

283 (bb) use any performance standard, incentive program, or similar method to measure
284 the performance of franchisees unless the standard or program:

285 (i) is designed and administered in a fair, reasonable, and equitable manner;

286 (ii) if based upon a survey, utilizes an actuarially generally acceptable, valid sample;

287 and

288 (iii) is, upon request by a franchisee, disclosed and explained in writing to the
289 franchisee, including:

290 (A) how the standard or program is designed;

291 (B) how the standard or program will be administered; and

292 (C) the types of data that will be collected and used in the application of the standard or
293 program;

294 (cc) other than sales to the federal government, directly or indirectly, sell, lease, offer
295 to sell, or offer to lease, a new motor vehicle or any motor vehicle owned by the franchisor,
296 except through a franchised new motor vehicle dealer;

297 (dd) compel a franchisee, through a finance subsidiary, to agree to unreasonable
298 operating requirements, except that this Subsection (1)(dd) may not be construed to limit the
299 right of a financing subsidiary to engage in business practices in accordance with the usage of
300 trade in retail and wholesale motor vehicle financing;

301 (ee) condition the franchisor's participation in co-op advertising for a product category
302 on the franchisee's participation in any program related to another product category or on the
303 franchisee's achievement of any level of sales in a product category other than that which is the
304 subject of the co-op advertising;

305 (ff) except as provided in Subsections (7) through (9), discriminate against a franchisee
306 in the state in favor of another franchisee of the same line-make in the state:

307 (i) by selling or offering to sell a new motor vehicle to one franchisee at a higher actual
308 price, including the price for vehicle transportation, than the actual price at which the same
309 model similarly equipped is offered to or is made available by the franchisor to another
310 franchisee in the state during a similar time period;

311 (ii) except as provided in Subsection (8), by using a promotional program or device or
312 an incentive, payment, or other benefit, whether paid at the time of the sale of the new motor
313 vehicle to the franchisee or later, that results in the sale of or offer to sell a new motor vehicle
314 to one franchisee in the state at a higher price, including the price for vehicle transportation,
315 than the price at which the same model similarly equipped is offered or is made available by
316 the franchisor to another franchisee in the state during a similar time period;

317 (iii) except as provided in Subsection (9), by failing to provide or direct a lead in a fair,
318 equitable, and timely manner; or

319 (iv) if the franchisee complies with any reasonable requirement concerning the sale of
320 new motor vehicles, by using or considering the performance of any of its franchisees located
321 in this state relating to the sale of the [manufacturer's] franchisor's new motor vehicles in
322 determining the:

323 (A) dealer's eligibility to purchase program, certified, or other used motor vehicles
324 from the [manufacturer] franchisor;

325 (B) volume, type, or model of program, certified, or other used motor vehicles the
326 dealer is eligible to purchase from the [manufacturer] franchisor;

327 (C) price of any program, certified, or other used motor vehicles that the dealer is
328 eligible to purchase from the [manufacturer] franchisor; or

329 (D) availability or amount of any discount, credit, rebate, or sales incentive the dealer
330 is eligible to receive from the manufacturer for the purchase of any program, certified, or other
331 motor vehicle offered for sale by the [manufacturer] franchisor;

332 (gg) (i) take control over funds owned or under the control of a franchisee based on the
333 findings of a warranty audit or sales incentive audit unless the following conditions are
334 satisfied:

335 (A) the franchisor fully identifies in writing the basis for the franchisor's claim or
336 charge back arising from the audit, including notifying the franchisee that the franchisee has 20
337 days from the day on which the franchisee receives the franchisor's claim or charge back to

338 assert a protest in writing to the franchisor identifying the basis for the protest;

339 (B) the franchisee's protest shall inform the franchisor that the protest shall be
340 submitted to a mediator in the state who is identified by name and address in the franchisee's
341 notice to the franchisor;

342 (C) if mediation is requested under Subsection (1)(gg)(i)(B), mediation shall occur no
343 later than 30 days after the day on which the franchisor receives the franchisee's protest of a
344 claim or charge back;

345 (D) if mediation does not lead to a resolution of the protest, the protest shall be set for
346 binding arbitration in the same venue in which the mediation occurred;

347 (E) binding arbitration under Subsection (1)(gg)(i)(D) shall be conducted:

348 (I) by an arbitrator mutually agreed upon by the franchisor and the franchisee; and

349 (II) on a date mutually agreed upon by the franchisor and the franchisee, but shall be
350 held no later than 90 days after the franchisor's receipt of the franchisee's notice of protest;

351 (F) this Subsection (1)(gg)(i) applies exclusively to warranty audits and sales incentive
352 audits;

353 (G) Subsections (1)(gg)(i)(A) through (E) do not apply if the franchisor reasonably
354 believes that the amount of the claim or charge back is related to a fraudulent act by the
355 franchisee; and

356 (H) the costs of the mediator or arbitrator instituted under this Subsection (1)(gg) shall
357 be shared equally by the franchisor and the franchisee[-]; or

358 (ii) [~~A franchisor may not~~] require a franchisee to execute a written waiver of the
359 requirements of Subsection (1)(gg)(i);

360 (hh) coerce, or attempt to coerce a franchisee to purchase or sell an aftermarket product
361 manufactured by the franchisor, or obtained by the franchisor for resale from a third-party
362 supplier and the franchisor or its affiliate derives a financial benefit from the franchisee's sale
363 or purchase of the aftermarket product as a condition to obtaining preferential status from the
364 franchisor;

365 (ii) through an affiliate, take any action that would otherwise be prohibited under this
366 chapter; [~~or~~]

367 (jj) impose any fee, surcharge, or other charge on a franchisee designed to recover the
368 cost of a warranty repair for which the franchisee is paid by the franchisor[-];

369 (kk) directly or indirectly condition any of the following actions on the willingness of a
370 franchisee, prospective new franchisee, or owner of an interest in a dealership facility to enter
371 into a site control agreement:

372 (i) the awarding of a franchise to a prospective new franchisee;

373 (ii) the addition of a line-make or franchise to an existing franchisee;

374 (iii) the renewal of an existing franchisee's franchise;

375 (iv) the approval of the relocation of an existing franchisee's dealership facility; or

376 (v) the approval of the sale or transfer of a franchise's ownership;

377 (ll) subject to Subsection (11), deny a franchisee the right to return any or all parts or
378 accessories that:

379 (i) were specified for and sold to the franchisee under an automated ordering system
380 required by the franchisor; and

381 (ii) (A) are in good, resalable condition; and

382 (B) (I) the franchisee received within the previous 12 months; or

383 (II) are listed in the current parts catalog; or

384 (mm) subject to Subsection (12), obtain from a franchisee a waiver of a franchisee's
385 right, by threatening:

386 (i) to impose a detriment upon the franchisee's business; or

387 (ii) to withhold any entitlement, benefit, or service:

388 (A) to which the franchisee is entitled under a franchise agreement, contract, statute,
389 rule, regulation, or law; or

390 (B) that has been granted to more than one other franchisee of the franchisor in the
391 state.

392 (2) Notwithstanding Subsection (1)(r), a franchisor may authorize or permit a person to
393 perform warranty service repairs on motor vehicles if the warranty services is for a franchisor
394 of recreational vehicles.

395 (3) Subsection (1)(a) does not prevent the franchisor from requiring that a franchisee
396 carry a reasonable inventory of:

397 (a) new motor vehicle models offered for sale by the franchisor; and

398 (b) parts to service the repair of the new motor vehicles.

399 (4) Subsection (1)(d) does not prevent a franchisor from requiring that a franchisee

400 maintain separate sales personnel or display space.

401 (5) Upon the written request of any franchisee, a franchisor shall disclose in writing to
402 the franchisee the basis on which new motor vehicles, parts, and accessories are allocated,
403 scheduled, and delivered among the franchisor's dealers of the same line-make.

404 (6) (a) A franchisor may engage in any of the activities listed in Subsection (1)(u), for a
405 period not to exceed 12 months if:

406 (i) (A) the person from whom the franchisor acquired the interest in or control of the
407 new motor vehicle dealership was a franchised new motor vehicle dealer; and

408 (B) the franchisor's interest in the new motor vehicle dealership is for sale at a
409 reasonable price and on reasonable terms and conditions; or

410 (ii) the franchisor is engaging in the activity listed in Subsection (1)(u) for the purpose
411 of broadening the diversity of its dealer body and facilitating the ownership of a new motor
412 vehicle dealership by a person who:

413 (A) is part of a group that has been historically underrepresented in the franchisor's
414 dealer body;

415 (B) would not otherwise be able to purchase a new motor vehicle dealership;

416 (C) has made a significant investment in the new motor vehicle dealership which is
417 subject to loss;

418 (D) has an ownership interest in the new motor vehicle dealership; and

419 (E) operates the new motor vehicle dealership under a plan to acquire full ownership of
420 the dealership within a reasonable period of time and under reasonable terms and conditions.

421 (b) After receipt of the advisory board's recommendation, the executive director may,
422 for good cause shown, extend the time limit set forth in Subsection (6)(a) for an additional
423 period not to exceed 12 months.

424 (c) A franchisor who was engaged in any of the activities listed in Subsection (1)(u) in
425 this state prior to May 1, 2000, may continue to engage in that activity, but may not expand that
426 activity to acquire an interest in any other new motor vehicle dealerships or motor vehicle
427 service facilities after May 1, 2000.

428 (d) Notwithstanding Subsection (1)(u), a franchisor may own, operate, or control a new
429 motor vehicle dealership trading in a line-make of motor vehicle if:

430 (i) as to that line-make of motor vehicle, there are no more than four franchised new

431 motor vehicle dealerships licensed and in operation within the state as of January 1, 2000;

432 (ii) the franchisor does not own directly or indirectly, more than a 45% interest in the
433 dealership;

434 (iii) at the time the franchisor first acquires ownership or assumes operation or control
435 of the dealership, the distance between the dealership thus owned, operated, or controlled and
436 the nearest unaffiliated new motor vehicle dealership trading in the same line-make is not less
437 than 150 miles;

438 (iv) all the franchisor's franchise agreements confer rights on the franchisee to develop
439 and operate as many dealership facilities as the franchisee and franchisor shall agree are
440 appropriate within a defined geographic territory or area; and

441 (v) as of January 1, 2000, no fewer than half of the franchisees of the line-make within
442 the state own and operate two or more dealership facilities in the geographic area covered by
443 the franchise agreement.

444 (7) Subsection (1)(ff) does not apply to recreational vehicles.

445 (8) Subsection (1)(ff)(ii) does not prohibit a promotional or incentive program that is
446 functionally available to all competing franchisees of the same line-make in the state on
447 substantially comparable terms.

448 (9) Subsection (1)(ff)(iii) may not be construed to:

449 (a) permit provision of or access to customer information that is otherwise protected
450 from disclosure by law or by contract between a franchisor and a franchisee; or

451 (b) require a franchisor to disregard the preference volunteered by a potential customer
452 in providing or directing a lead.

453 (10) Subsection (1)(ii) does not limit the right of an affiliate to engage in business
454 practices in accordance with the usage of trade in which the affiliate is engaged.

455 (11) (a) Subsection (1)(ll) does not apply to parts or accessories that the franchisee
456 ordered and purchased outside of an automated parts ordering system required by the
457 franchisor.

458 (b) In determining whether parts or accessories in a franchisee's inventory were
459 specified and sold under an automated ordering system required by the franchisor, the parts and
460 accessories in the franchisee's inventory are presumed to be the most recent parts and
461 accessories that the franchisor sold to the franchisee.

462 (12) (a) Subsection (1)(mm) does not apply to a good faith settlement of a dispute,
463 including a dispute relating to contract negotiations, in which the franchisee gives a waiver in
464 exchange for fair consideration in the form of a benefit conferred on the franchisee.

465 (b) Subsection (12)(a) may not be construed to defeat a franchisee's claim that a waiver
466 has been obtained in violation of Subsection (1)(mm).

467 Section 3. Section **13-14-204** is amended to read:

468 **13-14-204. Franchisor's obligations related to service -- Franchisor audits -- Time**
469 **limits.**

470 (1) Each franchisor shall specify in writing to each of its franchisees licensed as a new
471 motor vehicle dealer in this state:

472 (a) the franchisee's obligations for new motor vehicle preparation, delivery, and
473 warranty service on its products;

474 (b) the schedule of compensation to be paid to the franchisee for parts, work, and
475 service; and

476 (c) the time allowance for the performance of work and service.

477 (2) (a) The schedule of compensation described in Subsection (1) shall include
478 reasonable compensation for diagnostic work, as well as repair service, parts, and labor.

479 (b) Time allowances described in Subsection (1) for the diagnosis and performance of
480 warranty work and service shall be reasonable and adequate for the work to be performed.

481 (3) (a) In the determination of what constitutes reasonable compensation under this
482 section, the principal factor to be considered is the prevailing wage rates being paid by
483 franchisees in the relevant market area in which the franchisee is doing business.

484 (b) Compensation of the franchisee for warranty service work may not be less than the
485 amount charged by the franchisee for like parts and service to retail or fleet customers, if the
486 amounts are reasonable. In the case of a recreational vehicle franchisee, reimbursement for
487 parts used in the performance of warranty repairs, including those parts separately warranted
488 directly to the consumer by a recreational vehicle parts supplier, may not be less than the
489 franchisee's cost plus 20%. For purposes of this Subsection (3)(b), the term "cost" shall be that
490 same price paid by a franchisee to a franchisor or supplier for the part when the part is
491 purchased for a nonwarranty repair.

492 (4) A franchisor may not fail to:

493 (a) perform any warranty obligation;

494 (b) include in written notices of franchisor's recalls to new motor vehicle owners and
495 franchisees the expected date by which necessary parts and equipment will be available to
496 franchisees for the correction of the defects; or

497 (c) compensate any of the franchisees for repairs effected by the recall.

498 (5) If a franchisor disallows a franchisee's claim for a defective part, alleging that the
499 part is not defective, the franchisor at its option shall:

500 (a) return the part to the franchisee at the franchisor's expense; or

501 (b) pay the franchisee the cost of the part.

502 (6) (a) A claim made by a franchisee pursuant to this section for labor and parts shall
503 be paid within 30 days after its approval.

504 (b) A claim shall be either approved or disapproved by the franchisor within 30 days
505 after receipt of the claim on a form generally used by the franchisor and containing the
506 generally required information. Any claim not specifically disapproved of in writing within 30
507 days after the receipt of the form is considered to be approved and payment shall be made
508 within 30 days.

509 (7) Warranty service audits of franchisee records may be conducted by the franchisor
510 on a reasonable basis.

511 (8) A franchisee's claim for warranty compensation may [not] be denied [except for
512 good cause such as performance of nonwarranty repairs, lack of material documentation, fraud,
513 or misrepresentation.] only if:

514 (a) the franchisee's claim is based on a nonwarranty repair;

515 (b) the franchisee lacks material documentation for the claim;

516 (c) the franchisee fails to comply materially with specific substantive terms and
517 conditions of the franchisor's warranty compensation program despite two or more prior
518 written warnings:

519 (i) from the franchisor;

520 (ii) delivered:

521 (A) (I) personally with the recipient's written acknowledgment of receipt; or

522 (II) by certified mail, return receipt requested; and

523 (B) to the franchisee's principal or general manager;

524 (iii) within the preceding two years; and
525 (iv) based on two or more instances of the franchisee's prior material noncompliance
526 with those same specific substantive terms and conditions; or

527 (d) the franchisor has a bona fide belief based on competent evidence that the
528 franchisee's claim is intentionally false, fraudulent, or misrepresented.

529 (9) (a) Any charge backs for warranty parts or service compensation and service
530 incentives shall only be enforceable for the [~~12-month~~] six-month period immediately
531 following the date the payment for warranty reimbursement was made by the franchisor.

532 (b) Except as provided in Subsection (9)(c), all charge backs levied by a franchisor for
533 sales compensation or sales incentives arising out of the sale or lease of a motor vehicle sold or
534 leased by a franchisee shall be compensable only if written notice of the charge back is
535 received by the franchisee within [~~12~~] six months immediately following the sooner of:

536 (i) the date when the sales incentive program terminates; or

537 (ii) the date when payment for the sales compensation or sales incentive was made by
538 the franchisor to the franchisee.

539 (c) The time limitations of this Subsection (9) do not preclude charge backs for any
540 fraudulent claim that was previously paid.

541 Section 4. Section **13-14-206** is enacted to read:

542 **13-14-206. Site-control agreements.**

543 (1) A site-control agreement entered into on or after May 11, 2010:

544 (a) is voidable at the election of the franchisee, prospective franchisee, or owner of an
545 interest in a dealership facility; and

546 (b) terminates immediately upon:

547 (i) a franchisor's sale, assignment, or other transfer of the right to manufacture or
548 distribute the line-make of vehicles covered by the franchisee's franchise;

549 (ii) a franchisor's ceasing to manufacture or distribute the line-make of vehicles
550 covered by the franchisee's franchise;

551 (iii) subject to Subsection (2), termination of the franchisee's franchise for any reason;

552 or

553 (iv) the failure of the franchisor or its affiliate to exercise a right of first refusal to
554 purchase the assets or ownership of the franchisee's business when given the opportunity to do

555 so under the franchise or other agreement.

556 (2) (a) If a franchisee voluntarily terminates a franchise, a site-control agreement under
557 which the franchisor provided separate cash consideration to the franchisee remains valid only
558 until the franchisee repays an equitable portion of the cash consideration, as provided in
559 Subsection (2)(b).

560 (b) (i) If the franchisor's cash consideration was used for the construction of a building
561 or improvement on the property that is subject to the site-control agreement, the amount of the
562 franchisee's repayment under Subsection (2)(a) is based on the remaining useful economic life,
563 not to exceed 10 years, of the building or improvement, using a standard depreciation schedule
564 or other guideline applicable to a motor vehicle dealership facility.

565 (ii) If the franchisor's cash consideration was not used for construction of a building or
566 improvement on the property that is subject to the site-control agreement, the amount of the
567 franchisee's repayment under Subsection (2)(a) is determined by multiplying the amount of the
568 cash consideration paid by the franchisor by a fraction, the denominator of which is the number
569 of years of the original express term of the site-control agreement or 10, whichever is less, and
570 the numerator of which is the number of years remaining under the original express term of the
571 site-control agreement or the difference between 10 and the number of years that the
572 site-control agreement has been in place, whichever is less.

573 (c) Immediately upon the franchisee's repayment under Subsection (2)(b):

574 (i) the site-control agreement is terminated; and

575 (ii) the franchisor or other party that is the beneficiary under the site-control agreement
576 shall prepare and deliver to the franchisee a recordable notice of termination of:

577 (A) the site-control agreement; and

578 (B) any lien or encumbrance arising because of the site-control agreement and
579 previously recorded against the property that is the subject of the site-control agreement.

580 Section 5. Section **13-14-302** is amended to read:

581 **13-14-302. Issuance of additional franchises -- Relocation of existing franchisees.**

582 (1) Except as provided in Subsection (6), a franchisor shall provide the notice and
583 documentation required under Subsection (2) if the franchisor seeks to:

584 (a) enter into a franchise agreement establishing a motor vehicle dealership within a
585 relevant market area where the same line-make is represented by another franchisee; or

586 (b) relocate an existing motor vehicle franchisee.

587 (2) (a) If a franchisor seeks to take an action listed Subsection (1), prior to taking the
588 action, the franchisor shall, in writing, notify the advisory board and each franchisee in that
589 line-make in the relevant market area.

590 (b) The notice required by Subsection (2)(a) shall:

591 (i) specify the intended action described under Subsection (1);

592 (ii) specify the good cause on which it intends to rely for the action; and

593 (iii) be delivered by registered or certified mail or by any form of reliable delivery
594 through which receipt is verifiable.

595 (3) (a) Except as provided in Subsection (3)(c), the franchisor shall provide to the
596 advisory board and each franchisee in that line-make in the relevant market area the following
597 documents relating to the notice described under Subsection (2):

598 (i) (A) any aggregate economic data and all existing reports, analyses, or opinions
599 based on the aggregate economic data that were relied on by the franchisor in reaching the
600 decision to proceed with the action described in the notice; and

601 (B) the aggregate economic data under Subsection (3)(a)(i)(A) includes:

602 (I) motor vehicle registration data;

603 (II) market penetration data; and

604 (III) demographic data;

605 (ii) written documentation that the franchisor has in its possession that it intends to rely
606 on in establishing good cause under Section 13-14-306 relating to the notice;

607 (iii) a statement that describes in reasonable detail how the establishment of a new
608 franchisee or the relocation of an existing franchisee will affect the amount of business
609 transacted by other franchisees of the same line-make in the relevant market area, as compared
610 to business available to the franchisees; and

611 (iv) a statement that describes in reasonable detail how the establishment of a new
612 franchisee or the relocation of an existing franchisee will be beneficial or injurious to the
613 public welfare or public interest.

614 (b) The franchisor shall provide the documents described under Subsection (3)(a) with
615 the notice required under Subsection (2).

616 (c) The franchisor is not required to disclose any documents under Subsection (3)(a) if:

- 617 (i) the documents would be privileged under the Utah Rules of Evidence;
- 618 (ii) the documents contain confidential proprietary information;
- 619 (iii) the documents are subject to federal or state privacy laws;
- 620 (iv) the documents are correspondence between the franchisor and existing franchisees
- 621 in that line-make in the relevant market area; or
- 622 (v) the franchisor reasonably believes that disclosure of the documents would violate:
- 623 (A) the privacy of another franchisee; or
- 624 (B) Section 13-14-201.
- 625 (4) (a) Within 45 days of receiving notice required by Subsection (2), any franchisee
- 626 that is required to receive notice under Subsection (2) may protest to the advisory board the
- 627 establishment or relocation of the dealership.
- 628 (b) When a protest is filed, the department shall inform the franchisor that:
- 629 (i) a timely protest has been filed;
- 630 (ii) a hearing is required;
- 631 (iii) the franchisor may not establish or relocate the proposed dealership until the
- 632 advisory board has held a hearing; and
- 633 (iv) the franchisor may not establish or relocate a proposed dealership if the executive
- 634 director determines that there is not good cause for permitting the establishment or relocation
- 635 of the dealership.
- 636 (5) If multiple protests are filed under Subsection (4), hearings may be consolidated to
- 637 expedite the disposition of the issue.
- 638 (6) Subsections (1) through (5) do not apply to a relocation of an existing or successor
- 639 dealer to a location that is:
- 640 (a) within the same county and less than [one] two aeronautical [mite] miles from the
- 641 existing location of the existing or successor franchisee's dealership; ~~and~~ or
- 642 ~~[(b) within the same county.]~~
- 643 (b) further away from a dealership of a franchisee of the same line-make.
- 644 (7) For purposes of this section:
- 645 (a) relocation of an existing franchisee's dealership in excess of one mile from its
- 646 existing location is considered the establishment of an additional franchise in the line-make of
- 647 the relocating franchise;

648 (b) the reopening in a relevant market area of a dealership that has not been in
649 operation for one year or more is considered the establishment of an additional motor vehicle
650 dealership; and

651 (c) (i) except as provided in Subsection (7)(c)(ii), the establishment of a temporary
652 additional place of business by a recreational vehicle franchisee is considered the establishment
653 of an additional motor vehicle dealership; and

654 (ii) the establishment of a temporary additional place of business by a recreational
655 vehicle franchisee is not considered the establishment of an additional motor vehicle dealership
656 if the recreational vehicle franchisee is participating in a trade show where three or more
657 recreational vehicle dealers are participating.

658 Section 6. Section **13-14-307** is amended to read:

659 **13-14-307. Franchisor's obligations upon termination or noncontinuation of**
660 **franchise or line-make.**

661 (1) Upon the termination or noncontinuation of a franchise or a line-make ~~by the~~
662 franchisor], the franchisor shall pay the franchisee:

663 (a) an amount calculated by:

664 ~~[(a)]~~ (i) including the franchisee's cost of ~~[new, undamaged, and]~~ unsold motor
665 vehicles that:

666 (A) are in the franchisee's inventory;

667 (B) were acquired;

668 (I) from the franchisor; or

669 (II) in the ordinary course of business from another franchisee of the same line-make
670 [representing both];

671 (C) are new, undamaged, and, except for franchisor accessories, unaltered;

672 (D) represent the current model year at the time of termination or noncontinuation ~~[and~~
673 ~~the immediately prior model year vehicles:];~~ or the two model years immediately before the
674 time of termination or noncontinuation;

675 (ii) reducing the amount in Subsection (1)(a)(i) by a prorated 1% for each 1,000 miles
676 over 500 miles registered on a new vehicle's odometer;

677 ~~[(i) plus]~~ (iii) adding any charges made by the franchisor, for distribution, delivery, or
678 taxes;

679 ~~[(ii) plus]~~ (iv) adding the franchisee's cost of any franchisor accessories added on the
680 vehicle, except only those recreational vehicle accessories that are listed in the franchisor's
681 wholesale product literature as options for that vehicle shall be repurchased; and

682 ~~[(iii) less]~~ (v) subtracting all allowances paid or credited to the franchisee by the
683 franchisor;

684 (b) the franchisee's cost of new and undamaged motor vehicles in the franchisee's
685 inventory of demonstrator vehicles, reduced by 1% for each 1000 miles registered on the
686 demonstrator vehicle's odometer, except recreational vehicles whose cost shall be reduced by
687 2% for each 1,000 miles registered on the odometer of demonstrator self-propelled recreational
688 vehicles, exclusive of miles incurred in delivery of the vehicle, and the cost of demonstrator
689 nonself-propelled recreational vehicles shall be reduced by 10% of the franchisee's vehicle
690 cost:

691 (i) plus any charges made by the franchisor for distribution, delivery, or taxes;

692 (ii) plus the franchisee's cost of any accessories added on the vehicles, except only
693 those recreational vehicle accessories that are listed in the franchisor's wholesale product
694 literature as options for that vehicle shall be repurchased; and

695 (iii) less all allowances paid or credited to the franchisee by the franchisor;

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

699 (d) the fair market value, but not less than the franchisee's depreciated acquisition cost
700 of each undamaged sign owned by the franchisee that bears a common name, trade name, or
701 trademark of the franchisor if acquisition of the sign was recommended or required by the
702 franchisor. If a recreational vehicle franchisee has a sign with multiple manufacturers listed,
703 the franchisor is only responsible for its pro rata portion of the sign;

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

708 (f) the cost of transporting, handling, packing, and loading motor vehicles, supplies,
709 parts, accessories, signs, special tools, equipment, and furnishings;

710 (g) subject to Subsection (5), reasonable compensation to the franchisee for any cost
711 incurred pertaining to the unexpired term of a lease agreement for the dealership's existing
712 location;

713 (h) the negotiated fair market value of the dealership premises, based on the fair market
714 value of the real property, if the dealer opts to sell the dealership premises; and

715 (i) compensate the franchisee for the blue sky or goodwill of the dealership, as
716 determined in accordance with the applicable industry standards taking into consideration the
717 effect that the timing of the manufacturer's announcement of discontinuance of a line make has
718 or will have on future profitability of the dealership.

719 (2) Subsections (1)(g), (h), and (i) do not apply if a franchise is terminated:

720 (a) by the franchisor for cause as defined in Subsections 13-14-301(1)(b) and (2)(a);

721 (b) upon mutual written agreement of the franchisor and franchisee as provided in
722 Subsection 13-14-301(2)(b); or

723 (c) upon voluntary termination by the franchisee as provided in Subsection
724 13-14-301(4).

725 (3) The franchisor shall pay the franchisee the amounts specified in Subsection (1)
726 within 90 days after the tender of the property to the franchisor if the franchisee:

727 (a) has clear title to the property; and

728 (b) is in a position to convey title to the franchisor.

729 (4) If repurchased inventory, equipment, or demonstrator vehicles are subject to a
730 security interest, the franchisor may make payment jointly to the franchisee and to the holder of
731 the security interest.

732 (5) Subsection (1)(g) does not relieve the franchisee or its lessor from an obligation
733 under their lease agreement to mitigate damages.

734 (6) (a) This section does not apply to a franchisee's voluntary termination or
735 noncontinuation of its franchise that occurs as a result of the franchisee's sale of its dealership
736 business entity or substantially all of the assets of that entity to a third party if the franchisor
737 contemporaneously grants a franchise to the third party on terms and conditions that are
738 comparable to those of the terminating or noncontinuing franchise.

739 (b) Subsection (6)(a) may not be construed to impair a contractual right of a
740 terminating or noncontinuing franchisee under a franchise or related agreement with a

741 franchisor or its affiliate, including a right to return unsold parts.

742 Section 7. Section **13-14-310** is enacted to read:

743 **13-14-310. Trust funds.**

744 (1) As used in this section:

745 (a) "Advertising fund" means money that:

746 (i) the franchisor charges a franchisee as a percentage of the invoice price of a motor
747 vehicle that the franchisor sold to the franchisee;

748 (ii) is intended to be held by the franchisor for the benefit of the franchisee; and

749 (iii) is used to reimburse the franchisee for advertising expenses that:

750 (A) the franchisee incurs; and

751 (B) meet the requirements imposed under the agreement between the franchisor and
752 franchisee.

753 (b) "Credit card reward" means money that:

754 (i) the holder of a credit card sponsored by a franchisor can accrue and accumulate;

755 (ii) the holder can use as partial payment for the purchase from a franchisee of a new
756 motor vehicle made by the franchisor or an affiliate;

757 (iii) the holder becomes entitled to use because of a purchase of a new motor vehicle
758 made by the franchisor or an affiliate; and

759 (iv) has been assigned to the franchisee by the holder or by operation of law or
760 contract.

761 (c) "Customer rebate" means money that:

762 (i) a franchisor agrees to extend to customers who purchase certain motor vehicles,
763 whether the customer retains the right to receive the rebate or assigns that right to the
764 franchisee; and

765 (ii) becomes due and payable by the franchisor at the time a customer purchases a
766 qualifying motor vehicle.

767 (d) "Employee buyout voucher" means a contractual arrangement under which a
768 franchisor provides a voucher:

769 (i) to an employee upon the employee's termination or as a bonus;

770 (ii) in a predetermined amount;

771 (iii) that the employee may use as a means of payment or partial payment for a new

772 motor vehicle manufactured by the franchisor or an affiliate; and
773 (iv) for which a franchisee has become entitled to be paid at the time the franchisee
774 accepts the voucher from an employee for a sale of a qualifying motor vehicle.
775 (e) "Employee or supplier discount" means money:
776 (i) that a franchisor has agreed to pay to a franchisee as additional consideration for the
777 sale of a motor vehicle;
778 (ii) in an amount computed as a fixed amount or a percentage of the sales price of a
779 motor vehicle that a franchisee sells under a franchisor's employees and suppliers plan;
780 (iii) that becomes due to the franchisee at the time of the sale of a vehicle to an
781 employee or supplier under the franchisor's plan; and
782 (iv) that becomes payable to the franchisee according to the terms of the plan or other
783 agreement between the franchisor and franchisee.
784 (f) "Franchisee cash rebate" means money or a concession that:
785 (i) a franchisor has agreed to pay to a franchisee;
786 (ii) becomes due at the time of the sale of a motor vehicle; and
787 (iii) becomes payable to the franchisee according to the terms of the agreement
788 between the franchisor and franchisee.
789 (g) "Franchisee holdback" means money that:
790 (i) the franchisor owes to the franchisee under an agreement between them, calculated
791 as a percentage of the franchisor's suggested retail price of a vehicle that the franchisor sold to
792 the franchisee;
793 (ii) becomes due at the time the franchisee sells the motor vehicle to a customer at
794 retail; and
795 (iii) is to be paid to the franchisee in monthly, quarterly, or other periodic installments.
796 (h) "Interest credit" means money that:
797 (i) a franchisor owes a franchisee in an amount or percentage agreed between them at
798 the time the franchisee takes delivery of a motor vehicle that the franchisee purchases from the
799 franchisor; and
800 (ii) is intended to pay the franchisee a portion of the interest or other carrying charge
801 that the franchisee incurs in financing or floor planning its inventory of new motor vehicles.
802 (i) "Marketing stimulus credit" means money that:

803 (i) the franchisor has agreed to pay to the franchisee based on a percentage of the
804 franchisor's invoices for certain model years of motor vehicles that the franchisor sold to the
805 franchisee; and

806 (ii) becomes payable upon the franchisee taking delivery of the vehicles in accordance
807 with the terms of the agreement between the franchisor and franchisee.

808 (j) "Trust funds":

809 (i) means money that a franchisor holds in order to be able to perform its obligations to
810 franchisees or customers; and

811 (ii) includes an advertising fund, credit card reward, customer rebate, employee buyout
812 voucher, employee or supplier discount, franchisee cash rebate, franchisee holdback, interest
813 credit, marketing stimulus credit, warranty payment, and other similar fund held by a
814 franchisor.

815 (k) "Warranty payment" means money that:

816 (i) a franchisor becomes obligated to pay to a franchisee or other repair facility for the
817 cost of parts, labor, and associated taxes and other charges incurred in performing repairs or
818 other services on a motor vehicle covered by a vehicle warranty that the franchisor extends or
819 provides on the motor vehicle;

820 (ii) becomes due at the time the parts, repairs, or services are provided; and

821 (iii) is payable as provided under the terms of the warranty or other applicable
822 agreement.

823 (2) The franchisor shall hold trust funds in trust for the benefit of any franchisee or
824 customer to whom the franchisor owes an obligation for which the trust funds are held.

825 (3) Money may not be considered to be excluded from trust funds because of an
826 inability to identify or trace the specific money in an account of the person holding the trust
827 funds.

828 (4) A person holding trust funds may not grant to a third party any security or other
829 interest in the trust funds.

Legislative Review Note
as of 1-29-10 12:03 PM

Office of Legislative Research and General Counsel

S.B. 129 - New Motor Vehicle Franchise Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses or local governments. Businesses could be impacted by this legislation, but the impact cannot be quantified.
