

POWERSPORT VEHICLE FRANCHISE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill amends provisions related to powersport vehicle franchises.

Highlighted Provisions:

This bill:

- ▶ amends definitions; and
- ▶ amends provisions related to the relocation of a powersport vehicle franchise.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-35-102, as last amended by Laws of Utah 2007, Chapter 86

13-35-302, as last amended by Laws of Utah 2005, Chapter 268

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

Section 1. Section **13-35-102** is amended to read:

13-35-102. Definitions.

As used in this chapter:

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

Advisory Board created in Section **13-35-103**.

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

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

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

32 for registration purposes under Section 13-35-105.

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

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

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

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

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

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

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

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

49 (ii) an intermediate distributor;

50 (iii) an agent, officer, or field or area representative of the franchisor; and

51 (iv) a person who is affiliated with a manufacturer or a representative or who directly
52 or indirectly through an intermediary is controlled by, or is under common control with the
53 manufacturer.

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

57 (8) "Lead" means the referral by a franchisor to a franchisee of an actual or potential

58 customer for the purchase or lease of a new powersport vehicle, or for service work related to
59 the franchisor's vehicles.

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

63 ~~[(11)]~~ (10) "New powersport vehicle dealer" means a person who is engaged in the
64 business of buying, selling, offering for sale, or exchanging new powersport vehicles either
65 outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise who has
66 established a place of business for the sale, lease, trade, or display of powersport vehicles.

67 ~~[(12)]~~ (11) "Notice" or "notify" includes both traditional written communications and
68 all reliable forms of electronic communication unless expressly prohibited by statute or rule.

69 ~~[(13)]~~ (12) (a) "Powersport vehicle" means:

- 70 (i) an all-terrain type I or type II vehicle "ATV" defined in Section 41-22-2;
- 71 (ii) a snowmobile as defined in Section 41-22-2;
- 72 (iii) a motorcycle as defined in Section 41-1a-102;
- 73 (iv) a personal watercraft as defined in Section 73-18-2;
- 74 (v) except as provided in Subsection (10)(b), a motor-driven cycle as defined in
75 Section 41-6a-102; or

76 (vi) a moped as defined in Section 41-6a-102.

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

- 78 (i) an electric assisted bicycle defined in Section 41-6a-102;
- 79 (ii) a motor assisted scooter as defined in Section 41-6a-102; or
- 80 (iii) an electric personal assistive mobility device as defined in Section 41-6a-102.

81 (13) "Relevant market area" means:

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

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

85 ~~[(b)]~~ (ii) in addition to the county described in Subsection (13)(a)(i), the area within a

86 15-mile radius from the site of the existing, new, or relocated dealership[-]; or

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

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

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

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

96 Section 2. Section **13-35-302** is amended to read:

97 **13-35-302. Issuance of additional franchises -- Relocation of existing franchisees.**

98 (1) (a) Except as provided in Subsection (2), a franchisor shall comply with Subsection
99 (1)(b) if the franchisor seeks to:

100 (i) enter into a franchise establishing a powersport vehicle dealership within a relevant
101 market area where the same line-make is represented by another franchisee; or

102 (ii) relocate an existing powersport vehicle dealership.

103 (b) (i) If a franchisor seeks to take an action listed in Subsection (1)(a), prior to taking
104 the action, the franchisor shall in writing notify the advisory board and each franchisee in that
105 line-make in the relevant market area that the franchisor intends to take an action described in
106 Subsection (1)(a).

107 (ii) The notice required by Subsection (1)(b)(i) shall:

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

109 (B) be delivered by registered or certified mail or by any form of reliable delivery
110 through which receipt is verifiable.

111 (c) Within 45 days of receiving notice required by Subsection (1)(b), any franchisee
112 that is required to receive notice under Subsection (1)(b) may protest to the advisory board the
113 establishing or relocating of the dealership. When a protest is filed, the department shall

114 inform the franchisor that:

115 (i) a timely protest has been filed;

116 (ii) a hearing is required;

117 (iii) the franchisor may not establish or relocate the proposed dealership until the
118 advisory board has held a hearing; and

119 (iv) the franchisor may not establish or relocate a proposed dealership if the executive
120 director determines that there is not good cause for permitting the establishment or relocation
121 of the dealership.

122 (d) If multiple protests are filed under Subsection (1)(c), hearings may be consolidated
123 to expedite the disposition of the issue.

124 (2) Subsection (1) does not apply to [~~a relocation that is: (a) less than one mile from the~~
125 ~~existing location of the franchisee's dealership; and (b) within the same county.] the relocation
126 of a franchisee's dealership:~~

127 (a) less than two miles from the existing location of the franchisee's dealership; or

128 (b) farther away from all powersport dealerships that are:

129 (i) of the same line-make as the franchisee's dealership; and

130 (ii) in the franchisee's existing dealership's relevant market area.

131 (3) For purposes of this section:

132 (a) relocation of an existing franchisee's dealership in excess of one mile from its
133 existing location is considered the establishment of an additional franchise in the line-make of
134 the relocating franchise;

135 (b) the reopening in a relevant market area of a dealership that has not been in
136 operation for one year or more is considered the establishment of an additional powersport
137 vehicle dealership; and

138 (c) (i) except as provided in Subsection (3)(c)(ii), the establishment of a temporary
139 additional place of business by a powersport vehicle franchisee is considered the establishment
140 of an additional powersport vehicle dealership; and

141 (ii) the establishment of a temporary additional place of business by a powersport

142 vehicle franchisee is not considered the establishment of an additional powersport vehicle
143 dealership if the powersport vehicle franchisee is participating in a trade show where three or
144 more powersport vehicle dealers are participating.