



User Name: ROBERTA HOWELL

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1. [2020 Bill Text UT S.B. 128](#)

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All versions of this bill:

Search Type: Natural Language

Narrowed by:

Content Type
Statutes and Legislation

Narrowed by
-None-

2020 Bill Text UT S.B. 128

Substituted, February 20, 2020

Reporter

2020 Bill Text UT S.B. 128

Notice

Added: Text highlighted in green

Deleted: ~~Red text with a strikethrough~~

THE STATE OF UTAH BILL TEXT > UTAH 63RD LEGISLATURE - 2020 GENERAL SESSION > SENATE BILL 128

Progress



High chance to pass next stage | [Legislative Outlook in detail](#)

Introduced



Passed 1st
Committee



Passed 1st
Chamber



Passed 2nd
Committee



Passed 2nd
Chamber



Enacted



Synopsis

LONG TITLE

General Description:

This bill amends provisions of the New Automobile Franchise Act and the Motor Vehicle Business Regulation Act.

Digest

DIGEST:

ROBERTA HOWELL

Highlighted Provisions:

This bill:

- defines terms;
- excludes certain trailers from the New Automobile Franchise Act; 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 2018, Chapter 245

[41-3-102, as last amended](#) by Laws of Utah 2019, Chapter 424

Text

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

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

13-14-102.

Definitions.

As used in this chapter:

(1)

"Advisory board" or "board" means the Utah Motor Vehicle Franchise Advisory Board created in Section 13-14-103.

(2)

"Affected municipality" means an incorporated city or town:

(a)

that is located in the notice area; and

(b)

(i)

within which a franchisor is proposing a new or relocated dealership that is within the relevant market area of an existing dealership of the same line-make owned by another franchisee; or

(ii)

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

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- (3)
"Affiliate" has the meaning set forth in Section 16-10a-102.
- (4)
"Aftermarket product" means any product or service not included in the franchisor's suggested retail price of the new motor vehicle, as that price appears on the label required by [15 U.S.C. Sec. 1232\(f\)](#).
- (5)
"Dealership" means a site or location in this state:
- (a)
at which a franchisee conducts the business of a new motor vehicle dealer; and
- (b)
that is identified as a new motor vehicle dealer's principal place of business for licensing purposes under Section 41-3-204.
- (6)
"Department" means the Department of Commerce.
- (7)
"Do-not-drive order" means an order issued by a franchisor that instructs an individual not to operate a motor vehicle of the franchisor's line-make due to a recall.
- (8)
"Executive director" means the executive director of the Department of Commerce.
- (9)
(a)
"Franchise" or "franchise agreement" means a written agreement, or in the absence of a written agreement, then a course of dealing or a practice for a definite or indefinite period, in which:
- (i)
a person grants to another person a license to use a trade name, trademark, service mark, or related characteristic; and
- (ii)
a community of interest exists in the marketing of new motor vehicles, new motor vehicle parts, and services related to the sale or lease of new motor vehicles at wholesale or retail.
- (b)
"Franchise" or "franchise agreement" includes a sales and service agreement.
- (10)
"Franchisee" means a person with whom a franchisor has agreed or permitted, in writing or in practice, to purchase, sell, or offer for sale new motor vehicles manufactured, produced, represented, or distributed by the franchisor.
- (11)
"Franchisor" means a person who has, in writing or in practice, agreed with or permits a franchisee to purchase, sell, or offer for sale new motor vehicles manufactured, produced, assembled, represented, or distributed by the franchisor, and includes:
- (a)
the manufacturer, producer, assembler, or distributor of the new motor vehicles;
- (b)

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an intermediate distributor; and

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

(12)

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

(13)

"Line-make" means:

(a)

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

(b)

for a recreational vehicle, a specific series of recreational vehicle product that:

(i)

is identified by a common series trade name or trademark;

(ii)

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

(iii)

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

(iv)

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

(v)

a franchise agreement authorizes a dealer to sell.

(14)

"Mile" means 5,280 feet.

(15)

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

(16)

(a)

"Motor vehicle" means:

(I)

EXCEPT AS PROVIDED IN SUBSECTION (16)(B), A TRAILER;

(i) (II)

a travel trailer;

(ii) (III)

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

(iii) (IV)

a semitrailer as defined in Section 41-1a-102; AND

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

(v) a recreational vehicle.

(b)

"Motor vehicle" does not include:

(i)

a motorcycle as defined in Section 41-1a-102;

(ii)

an off-highway vehicle as defined in Section 41-3-102; ~~and~~

(iii)

a small trailer as defined in Section 41-3-102~~;~~ ;

(IV)

A TRAILER THAT:

(A)

IS NOT DESIGNED FOR HUMAN HABITATION; AND

(B)

HAS A GROSS VEHICLE WEIGHT RATING OF LESS THAN 26,000 POUNDS.

(V)

A MOBILE HOME AS DEFINED IN SECTION 41-1A-102;

(VI)

A TRAILER OF 750 POUNDS OR LESS UNLADEN WEIGHT; AND

(VII)

A FARM TRACTOR OR OTHER MACHINE OR TOOL USED IN THE PRODUCTION, HARVESTING, OR CARE OF A FARM PRODUCT.

(17)

"New motor vehicle" means a motor vehicle that:

(a)

has never been titled or registered; and

(b)

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

(18)

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

(19)

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

(20)

"Notice area" means the geographic area that is:

- (a) within a radius of at least six miles and no more than 10 miles from the site of an existing dealership; and
- (b) located within a county with a population of at least 225,000.

(21)

"Primary market area" means:

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

(22)

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

(23)

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

(24)

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

- (b)

"Recreational vehicle" includes:

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

(25)

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

- (i)

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

(A)

the county in which the existing dealership is located; and

(B)

the area within a 15-mile radius of the existing dealership; or

(ii)

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

(b)

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

(i)

the county in which the dealership is to be established or relocated; and

(ii)

the area within a 35-mile radius from the site of the existing dealership.

(26)

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

(27)

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

(28)

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

(a)

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

(b)

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

(c)

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

(29)

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

(30)

"TRAILER" MEANS THE SAME AS THAT TERM IS DEFINED IN SECTION 41-3-102.

(30) (31)

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

(31) (32)

"Used motor vehicle" means a motor vehicle that:

- (a) has been titled and registered to a purchaser other than a franchisee; or
- (b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven 7,500 or more miles.

(32) (33)

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

(33) (34)

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

Section 2. Section 41-3-102 is amended to read:

41-3-102.

Definitions.

As used in this chapter:

- (1) "Administrator" means the motor vehicle enforcement administrator.
- (2) "Agent" means a person other than a holder of any dealer's or salesperson's license issued under this chapter, who for salary, commission, or compensation of any kind, negotiates in any way for the sale, purchase, order, or exchange of three or more motor vehicles for any other person in any 12-month period.
- (3) "Auction" means a dealer engaged in the business of auctioning motor vehicles, either owned or consigned, to the general public.
- (4) "Authorized service center" means an entity that:
 - (a) is in the business of repairing exclusively the motor vehicles of the same line-make as the motor vehicles a single direct-sale manufacturer manufactures;
 - (b) the direct-sale manufacturer described in Subsection (4)(a) authorizes to complete warranty repair work for motor vehicles that the direct-sale manufacturer sells, displays for sale, or offers for sale or exchange; and
 - (c) conducts business primarily from an enclosed commercial repair facility that is permanently located in the state.
- (5)

"Board" means the advisory board created in Section 41-3-106.

(6)

"Body shop" means a person engaged in rebuilding, restoring, repairing, or painting the body of motor vehicles for compensation.

(7)

"Commission" means the State Tax Commission.

(8)

"Crusher" means a person who crushes or shreds motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, to reduce the useable materials and metals to a more compact size for recycling.

(9)

(a)

"Dealer" means a person:

(i)

whose business in whole or in part involves selling new, used, or new and used motor vehicles or off-highway vehicles; and

(ii)

who sells, displays for sale, or offers for sale or exchange three or more new or used motor vehicles or off-highway vehicles in any 12-month period.

(b)

"Dealer" includes a representative or consignee of any dealer.

(10)

"Direct-sale manufacturer" means a person:

(a)

that is both a manufacturer and a dealer;

(b)

that, in this state, sells, displays for sale, or offers for sale or exchange only new motor vehicles of the person's own line-make that are:

(i)

exclusively propelled through the use of electricity, a hydrogen fuel cell, or another non-fossil fuel source;

(ii)

(A)

passenger vehicles with a gross vehicle weight rating of 14,000 pounds or less; or

(B)

trucks with a gross vehicle weight rating of 14,000 pounds or less; and

(iii)

manufactured by the person;

(c)

that is not a franchise holder;

(d)

that is domiciled in the United States; and

- (e) whose chief officers direct, control, and coordinate the person's activities as a direct-sale manufacturer from a physical location in the United States.
- (11) "Direct-sale manufacturer salesperson" means an individual who for a salary, commission, or compensation of any kind, is employed either directly, indirectly, regularly, or occasionally by a direct-sale manufacturer to sell, purchase, or exchange or to negotiate for the sale, purchase, or exchange of a motor vehicle manufactured by the direct-sale manufacturer who employs the individual.
- (12) (a) "Dismantler" means a person engaged in the business of dismantling motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, for the resale of parts or for salvage.
- (b) "Dismantler" includes a person who dismantles three or more motor vehicles in any 12-month period.
- (13) "Distributor" means a person who has a franchise from a manufacturer of motor vehicles to distribute motor vehicles within this state and who in whole or in part sells or distributes new motor vehicles to dealers or who maintains distributor representatives.
- (14) "Distributor branch" means a branch office similarly maintained by a distributor for the same purposes a factory branch is maintained.
- (15) "Distributor representative" means a person and each officer and employee of the person engaged as a representative of a distributor or distributor branch of motor vehicles to make or promote the sale of the distributor or the distributor branch's motor vehicles, or for supervising or contacting dealers or prospective dealers of the distributor or the distributor branch.
- (16) "Division" means the Motor Vehicle Enforcement Division created in Section 41-3-104.
- (17) "Factory branch" means a branch office maintained by a person who manufactures or assembles motor vehicles for sale to distributors, motor vehicle dealers, or who directs or supervises the factory branch's representatives.
- (18) "Factory representative" means a person and each officer and employee of the person engaged as a representative of a manufacturer of motor vehicles or by a factory branch to make or promote the sale of the manufacturer's or factory branch's motor vehicles, or for supervising or contacting the dealers or prospective dealers of the manufacturer or the factory branch.
- (19) (A) "Franchise" means a contract or agreement between a dealer and a manufacturer of new motor vehicles or a manufacturer's distributor or factory branch by which the dealer is authorized to sell any specified make or makes of new motor vehicles.

(B)

"FRANCHISE" INCLUDES A CONTRACT OR AGREEMENT DESCRIBED IN SUBSECTION (19)(A) REGARDLESS OF WHETHER THE CONTRACT OR AGREEMENT IS SUBJECT TO TITLE 13, CHAPTER 14, NEW AUTOMOBILE FRANCHISE ACT, TITLE 13, CHAPTER 35, POWERSPORT VEHICLE FRANCHISE ACT, OR NEITHER.

(20)

(a)

"Franchise holder" means a manufacturer who:

(i)

previously had a franchised dealer in the United States;

(ii)

currently has a franchised dealer in the United States;

(iii)

is a successor to another manufacturer who previously had or currently has a franchised dealer in the United States;

(iv)

is a material owner of another manufacturer who previously had or currently has a franchised dealer in the United States;

(v)

is under legal or common ownership, or practical control, with another manufacturer who previously had or currently has a franchised dealer in the United States; or

(vi)

is in a partnership, joint venture, or similar arrangement for production of a commonly owned line-make with another manufacturer who previously had or currently has a franchised dealer in the United States.

(b)

"Franchise holder" does not include a manufacturer described in Subsection (20)(a), if at all times during the franchised dealer's existence, the manufacturer had legal or practical common ownership or common control with the franchised dealer.

(21)

"Line-make" means motor vehicles that are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the manufacturer.

(22)

"Manufacturer" means a person engaged in the business of constructing or assembling new motor vehicles, ownership of which is customarily transferred by a manufacturer's statement or certificate of origin, or a person who constructs three or more new motor vehicles in any 12-month period.

(23)

"Material owner" means a person who possesses, directly or indirectly, the power to direct, or cause the direction of, the management, policies, or activities of another person:

(a)

through ownership of voting securities;

(b)

by contract or credit arrangement; or

(c)

in another way not described in Subsections (23)(a) and (b).

(24)

(a)

"Motor vehicle" means a vehicle that is:

(i)

self-propelled;

(ii)

a trailer~~, or~~ ;

(iii)

A travel trailer~~, or~~ ;

(iv)

A semitrailer; ~~or~~

(v)

an off-highway vehicle ; or

(vi)

A small trailer.

(b)

"Motor vehicle" does not include:

(i)

mobile homes as defined in Section 41-1a-102;

(ii)

trailers of 750 pounds or less unladen weight;

(iii)

~~farm tractors and other machines and tools~~ A FARM TRACTOR OR OTHER MACHINE OR TOOL used in the production, harvesting, ~~and~~ OR care of A farm ~~products~~ PRODUCT ; and

(iv)

park model recreational vehicles as defined in Section 41-1a-102.

(25)

"Motorcycle" ~~has the same meaning as~~ MEANS THE SAME AS THAT TERM IS defined in Section 41-1a-102.

(26)

"New motor vehicle" means a motor vehicle that:

(a)

has never been titled or registered; and

(b)

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

(27)

"Off-highway vehicle" ~~has the same meaning as provided~~ MEANS THE SAME AS THAT TERM IS DEFINED in Section 41-22-2.

(28)

"Pawnbroker" means a person whose business is to lend money on security of personal property deposited with him.

(29)

(a)

"Principal place of business" means a site or location in this state:

(i)

devoted exclusively to the business for which the dealer, manufacturer, remanufacturer, transporter, dismantler, crusher, or body shop is licensed, and businesses incidental to them;

(ii)

sufficiently bounded by fence, chain, posts, or otherwise marked to definitely indicate the boundary and to admit a definite description with space adequate to permit the display of three or more new, or new and used, or used motor vehicles and sufficient parking for the public; and

(iii)

that includes a permanent enclosed building or structure large enough to accommodate the office of the establishment and to provide a safe place to keep the books and other records of the business, at which the principal portion of the business is conducted and the books and records kept and maintained.

(b)

"Principal place of business" means, with respect to a direct-sale manufacturer, the direct-sale manufacturer's showroom, which shall comply with the requirements of Subsection (29)(a).

(30)

"Remanufacturer" means a person who reconstructs used motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, to change the body style and appearance of the motor vehicle or who constructs or assembles motor vehicles from used or new and used motor vehicle parts, or who reconstructs, constructs, or assembles three or more motor vehicles in any 12-month period.

(31)

"Salesperson" means an individual who for a salary, commission, or compensation of any kind, is employed either directly, indirectly, regularly, or occasionally by any new motor vehicle dealer or used motor vehicle dealer to sell, purchase, or exchange or to negotiate for the sale, purchase, or exchange of motor vehicles.

(32)

"Semitrailer" ~~has the same meaning as~~ MEANS THE SAME AS THAT TERM IS defined in Section 41-1a-102.

(33)

"Showroom" means a site or location in the state that a direct-sale manufacturer uses for the direct-sale manufacturer's business, including the display and demonstration of new motor vehicles that are exclusively of the same line-make that the direct-sale manufacturer manufactures.

(34)

"Small trailer" means a trailer that has an unladen weight of :

(A)

more than 750 pounds, ~~but~~ ; AND

(B)

less than 2,000 pounds.

(35)

"Special equipment" includes a truck mounted crane, cherry picker, material lift, post hole digger, and a utility or service body.

(36)

"Special equipment dealer" means a new or new and used motor vehicle dealer engaged in the business of buying new incomplete motor vehicles with a gross vehicle weight of 12,000 or more pounds and installing special equipment on the incomplete motor vehicle.

(37)

"Trailer" ~~has the same meaning as~~ MEANS THE SAME AS THAT TERM IS defined in Section 41-1a-102.

(38)

"Transporter" means a person engaged in the business of transporting motor vehicles as described in Section 41-3-202.

(39)

"Travel trailer" ~~has the same meaning as provided~~ MEANS THE SAME AS THAT TERM IS DEFINED in Section 41-1a-102.

(40)

"Used motor vehicle" means a vehicle that:

(a)

has been titled and registered to a purchaser other than a dealer; or

(b)

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

(41)

"Wholesale motor vehicle auction" means a dealer primarily engaged in the business of auctioning consigned motor vehicles to dealers or dismantlers who are licensed by this or any other jurisdiction.

Section 3. Effective date.

THIS BILL TAKES EFFECT ON OCTOBER 15, 2020.

History

SENATOR CURTIS S. BRAMBLE PROPOSES THE FOLLOWING SUBSTITUTE BILL:

NON-VEHICLE FRANCHISE AGREEMENT AMENDMENTS

2020 GENERAL SESSION

ROBERTA HOWELL

STATE OF UTAH

CHIEF SPONSOR: CURTIS S. BRAMBLE

HOUSE SPONSOR: _____

Sponsor(s)

Bramble

Load-Date: February 21, 2020

THE STATE OF UTAH BILL TEXT
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