

2016

## **Tesla Motors Ut, Inc., v. Utah State Tax Commission, motor Vehicle Enforcement Division : Addendum to Brief of Petitioner/Appellant**

Utah Supreme Court

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**IN THE UTAH SUPREME COURT**

TESLA MOTORS UT, INC.,

Petitioner/Appellant,

vs.

UTAH STATE TAX COMMISSION,  
MOTOR VEHICLE ENFORCEMENT  
DIVISION,

Respondent/Appellee.

Appeal No. 20150792-SC

Tax Commission No. 15-1170

**ADDENDUM TO BRIEF OF PETITIONER/APPELLANT**

On Appeal from the Findings of Fact, Conclusions of Law and Final Decision of  
the Utah State Tax Commission

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**ADDENDUM A TO BRIEF OF PETITIONER/APPELLANT**

**RELEVANT PROVISIONS OF THE  
MOTOR VEHICLE ENFORCEMENT ACT**

**UTAH CODE ANN. §§ 41-3-1, et seq.**

West's Utah Code Annotated

Title 41. Motor Vehicles

Chapter 3. Motor Vehicle Business Regulation Act

Part 1. Administration (Refs & Annos)

U.C.A. 1953 § 41-3-101

§ 41-3-101. Short title

Currentness

This chapter is known as the Motor Vehicle Business Regulation Act.

**Credits**

Laws 1992, c. 234, § 12.

U.C.A. 1953 § 41-3-101, UT ST § 41-3-101

Current through 2015 First Special Session

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West's Utah Code Annotated  
Title 41. Motor Vehicles  
Chapter 3. Motor Vehicle Business Regulation Act  
Part 1. Administration (Refs & Annos)

U.C.A. 1953 § 41-3-102

§ 41-3-102. Definitions

Currentness

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) "Board" means the advisory board created in Section 41-3-106.
- (5) "Body shop" means a business engaged in rebuilding, restoring, repairing, or painting primarily the body of motor vehicles damaged by collision or natural disaster.
- (6) "Commission" means the State Tax Commission.
- (7) "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.
- (8)(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.

(9)(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.

(10) "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.

(11) "Distributor branch" means a branch office similarly maintained by a distributor for the same purposes a factory branch is maintained.

(12) "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.

(13) "Division" means the Motor Vehicle Enforcement Division created in Section 41-3-104.

(14) "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.

(15) "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.

(16) "Franchise" means a contract or agreement between a dealer and a manufacturer of new motor vehicles or its distributor or factory branch by which the dealer is authorized to sell any specified make or makes of new motor vehicles.

(17) "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.

(18) "Motorcycle" has the same meaning as defined in Section 41-1a-102.



(19)(a) "Motor vehicle" means a vehicle that is:

- (i) self-propelled;
- (ii) a trailer, travel trailer, or semitrailer; or
- (iii) an off-highway vehicle or 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 used in the production, harvesting, and care of farm products; and
- (iv) park model recreational vehicles as defined in Section 41-1a-102.

(20) "New motor vehicle" means a motor vehicle that has never been titled or registered and has been driven less than 7,500 miles, unless the motor vehicle is an off-highway vehicle, small trailer, trailer, travel trailer, or semitrailer, in which case the mileage limit does not apply.

(21) "Off-highway vehicle" has the same meaning as provided in Section 41-22-2.

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

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

- (a) devoted exclusively to the business for which the dealer, manufacturer, remanufacturer, transporter, dismantler, crusher, or body shop is licensed, and businesses incidental to them;
- (b) 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
- (c) 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.

(24) "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.

(25) "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.

(26) "Semitrailer" has the same meaning as defined in Section 41-1a-102.

(27) "Small trailer" means a trailer that has an unladen weight of more than 750 pounds, but less than 2,000 pounds.

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

(29) "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.

(30) "Trailer" has the same meaning as defined in Section 41-1a-102.

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

(32) "Travel trailer" has the same meaning as provided in Section 41-1a-102.

(33) "Used motor vehicle" means a vehicle that has been titled and registered to a purchaser other than a dealer or has been driven 7,500 or more miles, unless the vehicle is a trailer, or semitrailer, in which case the mileage limit does not apply.

(34) "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.

#### Credits

Laws 1949, c. 67, § 2; Laws 1961, c. 80, § 6; Laws 1965, c. 81, § 1; Laws 1965, c. 82, § 2; Laws 1981, c. 182, § 4; Laws 1987, c. 171, § 2; Laws 1990, c. 192, § 1; Laws 1991, c. 153, § 2; Laws 1992, c. 1, § 179; Laws 1992, c. 234, § 13; Laws 1995, c. 7, § 1, eff. May 1, 1995; Laws 1998, c. 165, § 1, eff. May 4, 1998; Laws 1998, c. 339, § 5, eff. May 4, 1998; Laws 2003, c. 157, § 1, eff. May 5, 2003; Laws 2008, c. 388, § 2, eff. July 1, 2008; Laws 2010, c. 393, § 1, eff. May 11, 2010; Laws 2014, c. 237, § 10, eff. Jan. 1, 2015.

Codifications C. 1943, Supp., § 57-6-12; C. 1953, § 41-3-7.

Notes of Decisions (1)

U.C.A. 1953 § 41-3-102, UT ST § 41-3-102  
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West's Utah Code Annotated  
Title 41. Motor Vehicles  
Chapter 3. Motor Vehicle Business Regulation Act  
Part 2. Licensing

U.C.A. 1953 § 41-3-201

§ 41-3-201. Licenses required--Restitution--Education

Currentness

(1) As used in this section, "new applicant" means a person who is applying for a license that the person has not been issued during the previous licensing year.

(2) A person may not act as any of the following without having procured a license issued by the administrator:

(a) a dealer;

(b) salvage vehicle buyer;

(c) salesperson;

(d) manufacturer;

(e) transporter;

(f) dismantler;

(g) distributor;

(h) factory branch and representative;

(i) distributor branch and representative;

(j) crusher;

(k) remanufacturer; or

(l) body shop.

(3)(a) Except as provided in Subsection (3)(c), a person may not bid on or purchase a vehicle with a nonrepairable or salvage certificate as defined in Section 41-1a-1001 at or through a motor vehicle auction unless the person is a licensed salvage vehicle buyer.

(b) Except as provided in Subsection (3)(c), a person may not offer for sale, sell, or exchange a vehicle with a nonrepairable or salvage certificate as defined in Section 41-1a-1001 at or through a motor vehicle auction except to a licensed salvage vehicle buyer.

(c) A person may offer for sale, sell, or exchange a vehicle with a nonrepairable or salvage certificate as defined in Section 41-1a-1001 at or through a motor vehicle auction:

(i) to an out-of-state or out-of-country purchaser not licensed under this section, but that is authorized to do business in the domestic or foreign jurisdiction in which the person is domiciled or registered to do business;

(ii) subject to the restrictions in Subsection (3)(d), to an in-state purchaser not licensed under this section that:

(A) has a valid business license in Utah; and

(B) has a Utah sales tax license; and

(iii) to a crusher.

(d)(i) An operator of a motor vehicle auction shall verify that an in-state purchaser not licensed under this section has the licenses required in Subsection (3)(c)(ii).

(ii) An operator of a motor vehicle auction may only offer for sale, sell, or exchange five vehicles with a salvage certificate as defined in Section 41-1a-1001 at or through a motor vehicle auction in any 12 month period to an in-state purchaser that does not have a salvage vehicle buyer license issued in accordance with Subsection 41-3-202(15).

(iii) The five vehicle limitation under this Subsection (3)(d) applies to each Utah sales tax license and not to each person with the authority to use a sales tax license.

(iv) An operator of a motor vehicle auction may not sell a vehicle with a nonrepairable certificate as defined in Section 41-1a-1001 to a purchaser otherwise allowed to purchase a vehicle under Subsection (3)(c)(ii).

(e) For a vehicle with a salvage certificate purchased under Subsection (3)(c)(ii), an operator of a motor vehicle auction shall:

(i)(A) until Subsection (3)(e)(i)(B) applies, make application for a salvage certificate of title on behalf of the Utah purchaser within seven days of the purchase if the purchaser does not have a salvage vehicle buyer license, dealer license, body shop license, or dismantler license issued in accordance with Section 41-3-202; or

(B) beginning on or after the date that the Motor Vehicle Division has implemented the Motor Vehicle Division's GenTax system, make application electronically, in a form and time period approved by the Motor Vehicle Division, for a salvage certificate of title to be issued in the name of the purchaser;

(ii) give to the purchaser a disclosure printed on a separate piece of paper that states:

"THIS DISCLOSURE STATEMENT MUST BE GIVEN BY THE SELLER TO THE BUYER EVERY TIME THIS VEHICLE IS RESOLD WITH A SALVAGE CERTIFICATE

Vehicle Identification Number (VIN)

Year:

Make:

Model:

SALVAGE VEHICLE--NOT FOR RESALE WITHOUT DISCLOSURE

WARNING: THIS SALVAGE VEHICLE MAY NOT BE SAFE FOR OPERATION UNLESS PROPERLY REPAIRED. SOME STATES MAY REQUIRE AN INSPECTION BEFORE THIS VEHICLE MAY BE REGISTERED. THE STATE OF UTAH MAY REQUIRE THIS VEHICLE TO BE PERMANENTLY BRANDED AS A REBUILT SALVAGE VEHICLE. OTHER STATES MAY ALSO PERMANENTLY BRAND THE CERTIFICATE OF TITLE.

Signature of Purchaser

Date";  
and

(iii) if applicable, provide evidence to the Motor Vehicle Division of:

(A) payment of sales taxes on taxable sales in accordance with Section 41-1a-510;

(B) the identification number inspection required under Section 41-1a-511; and

(C) the odometer disclosure statement required under Section 41-1a-902.

(f) The Motor Vehicle Division shall include a link to the disclosure statement described in Subsection (3)(e)(ii) on its website.



(g) The commission may impose an administrative entrance fee established in accordance with the procedures and requirements of Section 63J-1-504 not to exceed \$10 on a person not holding a license described in Subsection (3)(e)(i) that enters the physical premises of a motor vehicle auction for the purpose of viewing available salvage vehicles prior to an auction.

(h) A vehicle sold at or through a motor vehicle auction to an out-of-state purchaser with a nonrepairable or salvage certificate may not be certificated in Utah until the vehicle has been certificated out-of-state.

(4)(a) An operator of a motor vehicle auction shall keep a record of the sale of each salvage vehicle.

(b) A record described under Subsection (4)(a) shall contain:

(i) the purchaser's name and address; and

(ii) the year, make, and vehicle identification number for each salvage vehicle sold.

(c) An operator of a motor vehicle auction shall:

(i) provide the record described in Subsection (4)(a) electronically in a method approved by the division to the division within two business days of the completion of the motor vehicle auction;

(ii) retain the record described in this Subsection (4) for five years from the date of sale; and

(iii) make a record described in this Subsection (4) available for inspection by the division at the location of the motor vehicle auction during normal business hours.

(5)(a) If applicable, an operator of a motor vehicle auction shall comply with the reporting requirements of the National Motor Vehicle Title Information System overseen by the United States Department of Justice if the person sells a vehicle with a salvage certificate to an in-state purchaser under Subsection (3)(c)(ii).

(b) The Motor Vehicle Division shall include a link to the National Motor Vehicle Title Information System on its website.

(6)(a) An operator of a motor vehicle auction that sells a salvage vehicle to a person that is an out-of-country buyer shall:

(i) stamp on the face of the title so as not to obscure the name, date, or mileage statement the words "FOR EXPORT ONLY" in all capital, black letters; and

(ii) stamp in each unused reassignment space on the back of the title the words "FOR EXPORT ONLY."

(b) The words "FOR EXPORT ONLY" shall be:

(i) at least two inches wide; and

(ii) clearly legible.

(7) A supplemental license shall be secured by a dealer, manufacturer, remanufacturer, transporter, dismantler, crusher, or body shop for each additional place of business maintained by the licensee.

(8)(a) A person who has been convicted of any law relating to motor vehicle commerce or motor vehicle fraud may not be issued a license or purchase a vehicle with a salvage or nonrepairable certificate unless full restitution regarding those convictions has been made.

(b) An operator of a motor vehicle auction, a dealer, or a consignor may not sell a vehicle with a nonrepairable or salvage certificate to a buyer described in Subsection (8)(a) if the division has informed the operator of the motor vehicle auction, the dealer, or the consignor in writing that the buyer is prohibited from purchasing a vehicle with a nonrepairable or salvage certificate under Subsection (8)(a).

(9)(a) The division may not issue a license to a new applicant for a new or used motor vehicle dealer license, a new or used motorcycle dealer license, or a small trailer dealer license unless the new applicant completes an eight-hour orientation class approved by the division that includes education on motor vehicle laws and rules.

(b) The approved costs of the orientation class shall be paid by the new applicant.

(c) The class shall be completed by the new applicant and the applicant's partners, corporate officers, bond indemnitors, and managers.

(d)(i) The division shall approve:

(A) providers of the orientation class; and

(B) costs of the orientation class.

(ii) A provider of an orientation class shall submit the orientation class curriculum to the division for approval prior to teaching the orientation class.

(iii) A provider of an orientation class shall include in the orientation materials:

- (A) ethics training;
- (B) motor vehicle title and registration processes;
- (C) provisions of Title 13, Chapter 5, Unfair Practices Act, relating to motor vehicles;
- (D) Department of Insurance requirements relating to motor vehicles;
- (E) Department of Public Safety requirements relating to motor vehicles;
- (F) federal requirements related to motor vehicles as determined by the division; and
- (G) any required disclosure compliance forms as determined by the division.

(10) A person or purchaser described in Subsection (3)(c)(ii):

- (a) may not purchase more than five salvage vehicles with a nonrepairable or salvage certificate as defined in Section 41-1a-1001 in any 12-month period;
- (b) may not, without first complying with Section 41-1a-705, offer for sale, sell, or exchange more than two vehicles with a salvage certificate as defined in Section 41-1a-1001 in any 12-month period to a person not licensed under this section; and
- (c) may not, without first complying with Section 41-1a-705, offer for sale, sell, or exchange a vehicle with a nonrepairable certificate as defined in Section 41-1a-1001 to a person not licensed under this section.

(11) An operator of a motor vehicle auction, a dealer, or a consignor may not sell a vehicle with a nonrepairable or salvage certificate to a buyer described in Subsection (10)(a) if the division has informed the operator of the motor vehicle auction, the dealer, or the consignor in writing that the buyer is prohibited from purchasing a vehicle with a nonrepairable or salvage certificate under Subsection (10)(a).

#### Credits

Laws 1949, c. 67, § 1; Laws 1961, c. 80, § 5; Laws 1965, c. 81, § 1; Laws 1981, c. 182, § 3; Laws 1991, c. 153, § 1; Laws 1991, c. 241, § 65; Laws 1992, c. 234, § 23; Laws 1999, c. 239, § 1, eff. May 3, 1999; Laws 2000, c. 311, § 1, eff. July 1, 2000; Laws 2008, c. 388, § 3, eff. July 1, 2008; Laws 2009, c. 234, § 1, eff. May 12, 2009; Laws 2010, c. 393, § 4, eff. May 11, 2010; Laws 2012, c. 390, § 4, eff. Oct. 1, 2012; Laws 2013, c. 463, § 5, eff. May 14, 2013.

**Codifications** C. 1943, Supp., § 57-6-11; C. 1953, § 41-3-6.

Notes of Decisions (1)

U.C.A. 1953 § 41-3-201, UT ST § 41-3-201

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West's Utah Code Annotated

Title 41. Motor Vehicles

Chapter 3. Motor Vehicle Business Regulation Act

Part 2. Licensing

U.C.A. 1953 § 41-3-201.5

§ 41-3-201.5. Brokering of a new motor vehicle without a license prohibited

Currentness

(1)(a) A person may not, for a fee, commission, or other form of compensation, arrange, offer to arrange, or broker a transaction involving the sale or lease of more than two:

(i) new or used motor vehicles in any 12 consecutive month period, unless the person is licensed under Subsection 41-3-202(1); or

(ii) used motor vehicles in any 12 consecutive month period, unless the person is licensed under Subsection 41-3-202(2).

(b) Each transaction a person arranges, offers to arrange, or brokers involving the sale or lease of a motor vehicle for a fee, commission, or other form of compensation is a separate violation under this section if:

(i) the person has for a fee, commission, or other form of compensation, arranged, offered to arrange, or brokered the sale or lease of more than two new or used motor vehicles within the previous 12 consecutive month period; and

(ii) the person is not licensed under Subsection 41-3-202(1).

(2) A person who violates this section is guilty of a class B misdemeanor.

**Credits**

Laws 1997, c. 187, § 1, eff. May 5, 1997; Laws 2007, c. 105, § 1, eff. April 30, 2007; Laws 2010, c. 393, § 5, eff. May 11, 2010.

U.C.A. 1953 § 41-3-201.5, UT ST § 41-3-201.5

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West's Utah Code Annotated

Title 41. Motor Vehicles

Chapter 3. Motor Vehicle Business Regulation Act

Part 2. Licensing

U.C.A. 1953 § 41-3-201.7

§ 41-3-201.7. Supplemental license for additional place of business restrictions--Exception

Currentness

(1)(a) Subject to the requirements of Subsection (2), a supplemental license for an additional place of business issued pursuant to Subsection 41-3-201(7) may only be issued to a dealer if the dealer is:

(i) licensed in accordance with Section 41-3-202;

(ii) bonded in accordance with Section 41-3-205; and

(iii) in compliance with existing rules promulgated by the administrator of the division under Section 41-3-105.

(b) A supplemental license for a permanent additional place of business may only be issued to a used motor vehicle dealer if:

(i) the dealer independently satisfies the bond requirements under Section 41-3-205 for the permanent additional place of business;

(ii) the dealer is in compliance with existing rules promulgated by the administrator of the division under Section 41-3-105; and

(iii) the permanent additional place of business meets all the requirements for a principal place of business.

(2)(a) Except as provided in Subsections (2)(c) and (3), a supplemental license for an additional place of business issued pursuant to Subsection 41-3-201(7) for a new motor vehicle dealer may not be issued for an additional place of business that is beyond the geographic specifications outlined as the area of responsibility in the dealer's franchise agreement.

(b) A new motor vehicle dealer shall provide the administrator with a copy of the portion of the new motor vehicle dealer's franchise agreement identifying the dealer's area of responsibility before being issued a supplemental license for an additional place of business.

(c) The restrictions under Subsections (2)(a) and (b) do not apply to a new motor vehicle dealer if the license for an additional place of business is being issued for the sale of used motor vehicles.



(3) The provisions of Subsection (2) do not apply if the additional place of business is a trade show or exhibition if:

(a) there are five or more dealers participating in the trade show or exhibition; and

(b) the trade show or exhibition takes place at a location other than the principal place of business of one of the dealers participating in the trade show or exhibition.

(4) A supplemental license for a temporary additional place of business issued to a used motor vehicle dealer may not be for longer than 10 consecutive days.

#### **Credits**

Laws 2007, c. 70, § 1, eff. April 30, 2007; Laws 2009, c. 234, § 2, eff. May 12, 2009; Laws 2010, c. 393, § 6, eff. May 11, 2010; Laws 2012, c. 390, § 5, eff. Oct. 1, 2012.

U.C.A. 1953 § 41-3-201.7, UT ST § 41-3-201.7

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U.C.A. 1953 § 41-3-202

§ 41-3-202. Licenses--Classes and scope

Currentness

(1) A new motor vehicle dealer's license permits the licensee to:

- (a) offer for sale, sell, or exchange new motor vehicles if the licensee possesses a franchise from the manufacturer of the motor vehicle offered for sale, sold, or exchanged by the licensee;
- (b) offer for sale, sell, or exchange used motor vehicles;
- (c) operate as a body shop; and
- (d) dismantle motor vehicles.

(2) A used motor vehicle dealer's license permits the licensee to:

- (a) offer for sale, sell, or exchange used motor vehicles;
- (b) operate as a body shop; and
- (c) dismantle motor vehicles.

(3) A new motorcycle, off-highway vehicle, and small trailer dealer's license permits the licensee to:

- (a) offer for sale, sell, or exchange new motorcycles, off-highway vehicles, or small trailers if the licensee possesses a franchise from the manufacturer of the motorcycle, off-highway vehicle, or small trailer offered for sale, sold, or exchanged by the licensee;
- (b) offer for sale, sell, or exchange used motorcycles, off-highway vehicles, or small trailers; and

- (c) dismantle motorcycles, off-highway vehicles, or small trailers.
- (4) A used motorcycle, off-highway vehicle, and small trailer dealer's license permits the licensee to:
  - (a) offer for sale, sell, or exchange used motorcycles, off-highway vehicles, and small trailers; and
  - (b) dismantle motorcycles, off-highway vehicles, or small trailers.
- (5)(a) Except as provided in Subsection (5)(b), a salesperson's license permits the licensee to act as a motor vehicle salesperson and is valid for employment with only one dealer at a time.
  - (b) A licensee that has been issued a salesperson's license and that is employed by a dealer that operates as a wholesale motor vehicle auction may be employed by more than one dealer that operates as a wholesale motor vehicle auction at a time.
- (6)(a) A manufacturer's license permits the licensee to construct or assemble motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, at an established place of business and to remanufacture motor vehicles.
  - (b) Under rules made by the administrator, the licensee may issue and install vehicle identification numbers on manufactured motor vehicles.
  - (c) The licensee may franchise and appoint dealers to sell manufactured motor vehicles by notifying the division of the franchise or appointment.
- (7) A transporter's license permits the licensee to transport or deliver motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, from a manufacturing, assembling, or distributing point or from a dealer, to dealers, distributors, or sales agents of a manufacturer or remanufacturer, to or from detail or repair shops, and to financial institutions or places of storage from points of repossession.
- (8) A dismantler's license permits the licensee to dismantle motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, for the purpose of reselling parts or for salvage, or selling dismantled or salvage vehicles to a crusher or other dismantler.
- (9) A distributor or factory branch and distributor branch's license permits the licensee to sell and distribute new motor vehicles, parts, and accessories to their franchised dealers.
- (10) A representative's license, for factory representatives or distributor representatives permits the licensee to contact the licensee's authorized dealers for the purpose of making or promoting the sale of motor vehicles, parts, and accessories.

(11)(a)(i) A remanufacturer's license permits the licensee to construct, reconstruct, assemble, or reassemble motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, from used or new motor vehicles or parts.

(ii) Evidence of ownership of parts and motor vehicles used in remanufacture shall be available to the division upon demand.

(b) Under rules made by the administrator, the licensee may issue and install vehicle identification numbers on remanufactured motor vehicles.

(12) A crusher's license permits the licensee to engage in the business of crushing or shredding motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, for the purpose of reducing the useable materials and metals to a more compact size for recycling.

(13) A body shop's license permits the licensee to rebuild, restore, repair, or paint primarily the body of motor vehicles damaged by collision or natural disaster, and to dismantle motor vehicles.

(14) A special equipment dealer's license permits the licensee to:

(a) buy incomplete new motor vehicles with a gross vehicle weight of 12,000 or more pounds from a new motor vehicle dealer and sell the new vehicle with the special equipment installed without a franchise from the manufacturer;

(b) offer for sale, sell, or exchange used motor vehicles;

(c) operate as a body shop; and

(d) dismantle motor vehicles.

(15)(a) A salvage vehicle buyer license permits the licensee to bid on or purchase a vehicle with a salvage certificate as defined in Section 41-1a-1001 at any motor vehicle auction.

(b) A salvage vehicle buyer license may only be issued to a motor vehicle dealer, dismantler, or body shop who qualifies under rules made by the division and is licensed in any state as a motor vehicle dealer, dismantler, or body shop.

(c) The division may not issue more than two salvage vehicle buyer licenses to any one dealer, dismantler, or body shop.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the administrator shall make rules establishing qualifications of an applicant for a salvage vehicle buyer license. The criteria shall include:

- (i) business history;
- (ii) salvage vehicle qualifications;
- (iii) ability to properly handle and dispose of environmental hazardous materials associated with salvage vehicles; and
- (iv) record in demonstrating compliance with the provisions of this chapter.

#### Credits

Laws 1949, c. 67, § 6; Laws 1961, c. 80, § 9; Laws 1965, c. 81, § 1; Laws 1965, c. 82, § 3; Laws 1981, c. 182, § 7; Laws 1987, c. 171, § 5; Laws 1991, c. 153, § 4; Laws 1992, c. 234, § 24; Laws 1998, c. 165, § 2, eff. May 4, 1998; Laws 2000, c. 311, § 2, eff. July 1, 2000; Laws 2003, c. 157, § 2, eff. May 5, 2003; Laws 2008, c. 382, § 558, eff. May 5, 2008; Laws 2009, c. 78, § 1, eff. May 12, 2009.

**Codifications** C. 1943, Supp., § 57-6-16; C. 1953, § 41-3-12.

U.C.A. 1953 § 41-3-202, UT ST § 41-3-202

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U.C.A. 1953 § 41-3-203

§ 41-3-203. Licenses--Form--Seal--Custody of salesperson's license--  
Display of salesperson and dealer licenses--Licensee's pocket card

Currentness

- (1)(a) The administrator shall prescribe the form of each license and the seal of his office shall be imprinted on each license.
- (b) The license of each salesperson shall be delivered or mailed to the dealer employing the salesperson and it shall be kept in the custody and control of the dealer and conspicuously displayed in the dealer's place of business.
- (c) Each licensee shall display conspicuously his own license in his place of business.
- (2)(a) The administrator shall prepare and deliver a pocket card, certifying that the person whose name is on the card is licensed under this chapter.
- (b) Each salesperson's card shall also contain the name and address of the dealer employing him.
- (c) Each salesperson shall on request display his pocket card.

#### Credits

Laws 1949, c. 67, § 11; Laws 1961, c. 80, § 12; Laws 1981, c. 182, § 11; Laws 1991, c. 153, § 8; Laws 1992, c. 234, § 25.

Codifications C. 1943, Supp., § 57-6-21; C. 1953, § 41-3-19.

U.C.A. 1953 § 41-3-203, UT ST § 41-3-203  
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U.C.A. 1953 § 41-3-204

§ 41-3-204. Licenses--Principal place of business as prerequisite--  
Change of location--Relinquishment on loss of principal place of business

Currentness

(1)(a) The following licensees must maintain a principal place of business:

- (i) dealers;
- (ii) special equipment dealers;
- (iii) manufacturers;
- (iv) transporters;
- (v) remanufacturers;
- (vi) dismantlers;
- (vii) crushers;
- (viii) body shops; and
- (ix) distributors who:
  - (A) are located within the state; or
  - (B) have a branch office within the state.

(b) The administrator may not issue a license under Subsection (1)(a) to an applicant who does not have a principal place of business.

(c) If a licensee changes the location of his principal place of business, he shall immediately notify the administrator and a new license shall be granted for the unexpired portion of the term of the original license at no additional fee.

(2)(a) If a licensee loses possession of a principal place of business, the license is automatically suspended and he shall immediately notify the administrator and upon demand by the administrator deliver the license, pocket cards, special plates, and temporary permits to the administrator.

(b) The administrator shall hold the licenses, cards, plates, and permits until the licensee obtains a principal place of business.

#### Credits

Laws 1949, c. 67, § 12(A); Laws 1961, c. 80, § 13; Laws 1981, c. 182, § 12; Laws 1987, c. 171, § 9; Laws 1991, c. 153, § 9; Laws 1992, c. 234, § 26; Laws 1998, c. 165, § 3, eff. May 4, 1998; Laws 2008, c. 388, § 4, eff. July 1, 2008.

Codifications C. 1943, Supp., § 57-6-22(A); C. 1953, § 41-3-20.

U.C.A. 1953 § 41-3-204, UT ST § 41-3-204

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U.C.A. 1953 § 41-3-205

§ 41-3-205. Licenses--Bonds required--Maximum liability--Action against surety--Loss of bond

Currentness

(1)(a) Before a dealer's, special equipment dealer's, crusher's, or body shop's license is issued, the applicant shall file with the administrator a corporate surety bond in the amount of:

- (i) \$50,000 until June 30, 2006, and \$75,000 on or after July 1, 2006, for a motor vehicle dealer's license;
- (ii) \$20,000 until June 30, 2006, and \$75,000 on or after July 1, 2006, for a special equipment dealer's license;
- (iii) \$10,000 for a motorcycle, off-highway vehicle, or small trailer dealer's or crusher's license; or
- (iv) \$20,000 for a body shop's license.

(b) The corporate surety shall be licensed to do business within the state and have a rating of at least B+ by the A.M. Best Company.

(c) The form of the bond:

(i) shall be approved by the attorney general;

(ii) shall be conditioned upon the applicant's conducting business as a dealer without:

(A) fraud;

(B) fraudulent representation;

(C) violating Subsection 41-3-301(1) which requires a dealer to submit or deliver a certificate of title or manufacturer's certificate of origin; or

(D) violating Subsection 41-3-402(1) which requires payoff of liens on motor vehicles traded in; and

(iii) may be continuous in form.

(d) The total aggregate liability on the bond to all persons making claims, regardless of the number of claimants or the number of years a bond remains in force, may not exceed the amount of the bond.

(2)(a) A cause of action under Subsection (1) may not be maintained against a surety unless:

(i) a claim is filed in writing with the administrator within one year after the cause of action arose; and

(ii) the action is commenced within two years after the claim was filed with the administrator.

(b) The surety or principal shall notify the administrator if a claim on the bond is successfully prosecuted or settled against the surety or principal.

(3)(a) A surety or principal may not make a payment on a surety bond to any claimant until six months have expired from the date when the first claim on the bond was filed with the surety or principal in writing.

(b) After six months have expired following the filing of the first bond claim, the surety or principal shall:

(i) assess the validity of all claims on the bond; and

(ii) submit a distribution assessment determined in accordance with Subsection (3)(c) regarding the bond proceeds to the claimants of valid claims for approval.

(c)(i) If the total verifiable claims on the bond are less than the bond amount, then each bond claimant shall be entitled to the full amount of a valid claim.

(ii) If the total verifiable claims exceed the bond amount, then the proceeds shall be distributed pro rata to the bond claimants of valid claims.

(d) If the distribution assessment under Subsection (3)(b) is not unanimously approved by the claimants of all valid claims on the bond, the principal or surety shall file an interpleader action in the state district court where the defaulting dealer was licensed.

(4)(a) A person making a claim on the bond shall be awarded attorney fees in cases successfully prosecuted or settled against the surety or principal if the bond has not been depleted.

(b) A surety or principal may not be awarded attorney fees that exceed \$2,500 for an interpleader action filed under Subsection (3)(d).

(5)(a)(i) If a dealer, body shop, or crusher loses possession of the bond required by this chapter, the dealer, body shop, or crusher license is automatically suspended.

(ii) All licenses, pocket cards, temporary permits, and special plates issued to the licensee shall be immediately returned to the administrator.

(b) A dealer, body shop, or crusher may not continue to use or permit to be used licenses, pocket cards, temporary permits, or special plates until the required bond is on file with the administrator and the license has been reinstated.

(6) A representative or consignee of a dealer is not required to file a bond if the dealer for whom the representative or consignee acts fully complies with the provisions of this chapter.

#### Credits

Laws 1949, c. 67, § 8; Laws 1961, c. 80, § 11; Laws 1977, c. 175, § 1; Laws 1981, c. 182, § 9; Laws 1983, c. 188, § 1; Laws 1987, c. 171, § 7; Laws 1991, c. 27, § 1; Laws 1991, c. 153, § 6; Laws 1992, c. 234, § 27; Laws 1998, c. 165, § 4, eff. May 4, 1998; Laws 1999, c. 239, § 2, eff. May 3, 1999; Laws 2003, c. 157, § 3, eff. May 5, 2003; Laws 2005, c. 90, § 1, eff. July 1, 2005; Laws 2007, c. 267, § 1, eff. April 30, 2007; Laws 2010, c. 342, § 5, eff. May 11, 2010.

**Codifications** C. 1943, Supp., § 57-6-18; C. 1953, § 41-3-16.

#### Notes of Decisions (7)

U.C.A. 1953 § 41-3-205, UT ST § 41-3-205  
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U.C.A. 1953 § 41-3-205.5

§ 41-3-205.5. Licenses--Criminal background check required on salesperson's licenses--Payment of cost

Currentness

(1)(a) Every applicant for a salesperson's license shall submit fingerprints with a completed application to the division.

(b) A person required to renew a salesperson license on or before June 30, 2010, shall submit fingerprints to the division on or before November 30, 2010.

(2) The division shall submit fingerprints for each applicant described in Subsection (1) to the Bureau of Criminal Identification established in Section 53-10-201.

(3) The Bureau of Criminal Identification shall:

(a) check the information submitted by the division for an applicant under Subsection (2) against the applicable state and regional criminal records databases; and

(b) release to the division all information obtained under Subsection (3)(a) relating to the applicant.

(4)(a) The Bureau of Criminal Identification shall maintain a separate file of fingerprints submitted under Subsection (2) and notify the division when a new entry is made in the applicable state and regional database against a person whose fingerprints are held in the file regarding any matter involving an arrest under state law involving:

(i) motor vehicles;

(ii) controlled substances;

(iii) fraud; or

(iv) a registerable sex offense under Section 77-41-106.

(b) Upon request by the division, the Bureau of Criminal Identification shall inform the division whether a person whose arrest was reported to the division under Subsection (4)(a) was subsequently convicted of the charge for which the person was arrested.

(5) In addition to any fees imposed under this chapter, the division shall:

(a) impose on individuals submitting fingerprints in accordance with this section the fees that the Bureau of Criminal Identification is authorized to collect for the services the Bureau of Criminal Identification provides under Subsections (3) and (4); and

(b) remit the fees collected under Subsection (5)(a) to the Bureau of Criminal Identification.

(6) The division shall use information received from the Bureau of Criminal Identification under this section to determine whether a license should be denied, suspended, or revoked under Section 41-3-209.

#### Credits

Laws 2010, c. 291, § 1, eff. July 1, 2010; Laws 2012, c. 145, § 1, eff. May 8, 2012.

U.C.A. 1953 § 41-3-205.5, UT ST § 41-3-205.5

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U.C.A. 1953 § 41-3-206

§ 41-3-206. Duration of licenses--Expiration date--Renewal

Currentness

(1) Except as provided in Subsection (2), each license issued under this chapter expires on June 30 of each year and may be renewed upon application and payment of a fee required under Section 41-3-601, if the license has not been suspended or revoked.

(2) A motor vehicle salesperson's license expires as provided under Subsection (1) or when the salesperson terminates employment with the dealer with whom he is licensed, whichever comes first.

(3)(a) Beginning July 1, 1999, the division may not renew a license for a new or used motor vehicle dealer's license, a new or used motorcycle dealer's license, or a small trailer dealer's license unless the renewal applicant completes a three-hour class approved by the division that includes education on new motor vehicle laws and rules.

(b) The approved costs of the class shall be paid by the renewal applicant.

(c) The class shall be completed by the renewal applicant or any designated representative of the renewal applicant dealer.

(d) The division shall approve:

(i) the class providers; and

(ii) costs of the class.

Credits

Laws 1992, c. 234, § 28; Laws 1999, c. 239, § 3, eff. May 3, 1999; Laws 2008, c. 388, § 5, eff. July 1, 2008.

U.C.A. 1953 § 41-3-206, UT ST § 41-3-206

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U.C.A. 1953 § 41-3-207

§ 41-3-207. New motor vehicle dealer's license--Change, addition, or loss of franchise--Notification--Relinquishment of license and relicensing as used motor vehicle dealer--Continuance in business to dispose of stock

Currentness

(1) If a dealer changes to, adds, cancels, or loses a franchise for the sale of new motor vehicles he shall immediately notify the administrator.

(2)(a) If the dealer has cancelled or lost a franchise, the administrator shall determine whether the dealer should be licensed as a used motor vehicle dealer.

(b) If the administrator determines that the dealer should be licensed as a used motor vehicle dealer, he shall issue to the dealer a used motor vehicle dealer's license.

(c) A dealer relicensed as a used motor vehicle dealer may continue to sell new motor vehicles for up to six months from the date of the relicensing, to enable the dealer to dispose of his existing stock of new motor vehicles.

**Credits**

Laws 1949, c. 67, § 12(B); Laws 1992, c. 234, § 29.

**Codifications** C. 1943, Supp., § 57-6-22(B); C. 1953, § 41-3-21.

U.C.A. 1953 § 41-3-207, UT ST § 41-3-207

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U.C.A. 1953 § 41-3-207.5

§ 41-3-207.5. Liquidation of inventory for suspended used motor vehicle dealers

Currentness

(1) A used motor vehicle dealer whose used motor vehicle dealer's license has been suspended may liquidate any remaining inventory by selling the remaining used motor vehicles to:

(a) a licensed auto auction;

(b) another licensed motor vehicle dealer; or

(c) to any person, but only after the used motor vehicle has been titled in the name of the owner, partner, or corporate officer of the used motor vehicle dealer for at least 12 months.

(2) A dealer may sell inventory under Subsections (1)(a) and (b) for up to 90 days from the date the dealer's used motor vehicle dealer's license was suspended.

**Credits**

Laws 2008, c. 388, § 6, eff. July 1, 2008.

U.C.A. 1953 § 41-3-207.5, UT ST § 41-3-207.5

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U.C.A. 1953 § 41-3-208

§ 41-3-208. Salesperson's license--Relinquishment upon loss or  
change of employment--Notice to salesperson--New license required

Currentness

- (1) If a salesperson is discharged from or leaves his employer, the dealer who last employed the salesperson shall return the salesperson's license to the administrator.
- (2) The salesperson shall be notified at his last known place of residence that his license has been returned to the administrator.
- (3) A person may not act as a motor vehicle salesperson until a new license is procured.

**Credits**

Laws 1949, c. 67, § 12(C); Laws 1992, c. 234, § 30.

**Codifications** C. 1943, Supp., § 57-6-22(C); C. 1953, § 41-3-22.

U.C.A. 1953 § 41-3-208, UT ST § 41-3-208

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U.C.A. 1953 § 41-3-209

§ 41-3-209. Administrator's findings--Suspension and revocation of license

Currentness

- (1) If the administrator finds that an applicant is not qualified to receive a license, a license may not be granted.
- (2)(a) On December 1, 2010, the administrator shall suspend the license of a salesperson who fails to submit to the division fingerprints as required under Subsection 41-3-205.5(1)(b) on or before November 30, 2010.
- (b) If the administrator finds that there is reasonable cause to deny, suspend, or revoke a license issued under this chapter, the administrator shall deny, suspend, or revoke the license.
- (c) Reasonable cause for denial, suspension, or revocation of a license includes, in relation to the applicant or license holder or any of its partners, officers, or directors:
- (i) lack of a principal place of business;
  - (ii) lack of a sales tax license required under Title 59, Chapter 12, Sales and Use Tax Act;
  - (iii) lack of a bond in effect as required by this chapter;
  - (iv) current revocation or suspension of a dealer, dismantler, auction, or salesperson license issued in another state;
  - (v) nonpayment of required fees;
  - (vi) making a false statement on any application for a license under this chapter or for special license plates;
  - (vii) a violation of any state or federal law involving motor vehicles;
  - (viii) a violation of any state or federal law involving controlled substances;

(ix) charges filed with any county attorney, district attorney, or U.S. attorney in any court of competent jurisdiction for a violation of any state or federal law involving motor vehicles;

(x) a violation of any state or federal law involving fraud;

(xi) a violation of any state or federal law involving a registerable sex offense under Section 77-41-106; or

(xii) having had a license issued under this chapter revoked within five years from the date of application.

(d) Any action taken by the administrator under Subsection (2)(c)(ix) shall remain in effect until a final resolution is reached by the court involved or the charges are dropped.

(3) If the administrator finds that an applicant is not qualified to receive a license under this section, the administrator shall provide the applicant written notice of the reason for the denial.

(4) If the administrator finds that the license holder has been convicted by a court of competent jurisdiction of violating any of the provisions of this chapter or any rules made by the administrator, or finds other reasonable cause, the administrator may, by complying with the emergency procedures of Title 63G, Chapter 4, Administrative Procedures Act:

(a) suspend the license on terms and for a period of time the administrator finds reasonable; or

(b) revoke the license.

(5)(a) After suspending or revoking a license, the administrator may take reasonable action to:

(i) notify the public that the licensee is no longer in business; and

(ii) prevent the former licensee from violating the law by conducting business without a license.

(b) Action under Subsection (5)(a) may include signs, banners, barriers, locks, bulletins, and notices.

(c) Any business being conducted incidental to the business for which the former licensee was licensed may continue to operate subject to the preventive action taken under this subsection.

**Credits**

Laws 1949, c. 67, § 16; Laws 1987, c. 161, § 141; Laws 1987, c. 171, § 13; Laws 1992, c. 234, § 31; Laws 1998, c. 165, § 5, eff. May 4, 1998; Laws 2005, c. 144, § 1, eff. May 2, 2005; Laws 2008, c. 382, § 559, eff. May 5, 2008; Laws 2010, c. 291, § 2, eff. July 1, 2010; Laws 2010, c. 342, § 6, eff. May 11, 2010; Laws 2012, c. 145, § 2, eff. May 8, 2012.

**Codifications** C. 1943, Supp., § 57-6-26; C. 1953, § 41-3-26.

U.C.A. 1953 § 41-3-209, UT ST § 41-3-209

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U.C.A. 1953 § 41-3-210

§ 41-3-210. License holders--Prohibitions and requirements

Currentness

(1) The holder of any license issued under this chapter may not:

(a) intentionally publish, display, or circulate any advertising that is misleading or inaccurate in any material fact or that misrepresents any of the products sold, manufactured, remanufactured, handled, or furnished by a licensee;

(b) intentionally publish, display, or circulate any advertising without identifying the seller as the licensee by including in the advertisement the full name under which the licensee is licensed or the licensee's number assigned by the division;

(c) violate this chapter or the rules made by the administrator;

(d) violate any law of the state respecting commerce in motor vehicles or any rule respecting commerce in motor vehicles made by any licensing or regulating authority of the state;

(e) engage in business as a new motor vehicle dealer, special equipment dealer, used motor vehicle dealer, motor vehicle crusher, or body shop without having in effect a bond as required in this chapter;

(f) act as a dealer, dismantler, crusher, manufacturer, transporter, remanufacturer, or body shop without maintaining a principal place of business;

(g) engage in a business respecting the selling or exchanging of new or new and used motor vehicles for which he is not licensed, including selling or exchanging a new motor vehicle for which the licensee does not have a franchise, but this Subsection (1)(g) does not apply to a special equipment dealer who sells a new special equipment motor vehicle with a gross vehicle weight of 12,000 or more pounds after installing special equipment on the motor vehicle;

(h) dismantle or transport to a crusher for crushing or other disposition any motor vehicle without first obtaining a dismantling or junk permit under Section 41-1a-1009, 41-1a-1010, or 41-1a-1011;

- (i) as a new motor vehicle dealer, special equipment dealer, or used motor vehicle dealer fail to give notice of sales or transfers as required in Section 41-3-301;
- (j) advertise or otherwise represent, or knowingly allow to be advertised or represented on his behalf or at his place of business, that no down payment is required in connection with the sale of a motor vehicle when a down payment is required and the buyer is advised or induced to finance a down payment by a loan in addition to any other loan financing the remainder of the purchase price of the motor vehicle;
- (k) as a crusher, crush or shred a motor vehicle brought to the crusher without obtaining proper evidence of ownership of the motor vehicle; proper evidence of ownership is a certificate of title endorsed according to law or a dismantling or junk permit issued under Section 41-1a-1009, 41-1a-1010, or 41-1a-1011;
- (l) as a manufacturer or remanufacturer assemble a motor vehicle that does not comply with construction, safety, or vehicle identification number standards fixed by law or rule of any licensing or regulating authority;
- (m) as anyone other than a salesperson licensed under this chapter, be present on a dealer display space and contact prospective customers to promote the sale of the dealer's vehicles;
- (n) sell, display for sale, or offer for sale motor vehicles at any location other than the principal place of business or additional places of business licensed under this chapter; this provision is construed to prevent dealers, salespersons, or any other representative of a dealership from selling, displaying, or offering motor vehicles for sale from their homes or other unlicensed locations;
- (o)(i) as a dealer, dismantler, body shop, or manufacturer, maintain a principal place of business or additional place of business that shares any common area with a business or activity not directly related to motor vehicle commerce; or
  - (ii) maintain any places of business that share any common area with another dealer, dismantler, body shop, or manufacturer;
- (p) withhold delivery of license plates obtained by the licensee on behalf of a customer for any reason, including nonpayment of any portion of the vehicle purchase price or down payment;
- (q) issue a temporary permit for any vehicle that has not been sold by the licensee;
- (r) alter a temporary permit in any manner;
- (s) operate any principal place of business or additional place of business in a location that does not comply with local ordinances, including zoning ordinances;
- (t) sell, display for sale, offer for sale, or exchange any new motor vehicle if the licensee does not:



(i) have a new motor vehicle dealer's license under Section 41-3-202; and

(ii) possess a franchise from the manufacturer of the new motor vehicle sold, displayed for sale, offered for sale, or exchanged by the licensee; or

(u) as a new motor vehicle dealer or used motor vehicle dealer, encourage or conspire with any person who has not obtained a salesperson's license to solicit for prospective purchasers.

(2)(a) If a new motor vehicle is constructed in more than one stage, such as a motor home, ambulance, or van conversion, the licensee shall advertise, represent, sell, and exchange the vehicle as the make designated by the final stage manufacturer, except in those specific situations where the licensee possesses a franchise from the initial or first stage manufacturer, presumably the manufacturer of the motor vehicle's chassis.

(b) Sales of multiple stage manufactured motor vehicles shall include the transfer to the purchaser of a valid manufacturer's statement or certificate of origin from each manufacturer under Section 41-3-301.

(3) Each licensee, except salespersons, shall maintain and make available for inspection by peace officers and employees of the division:

(a) a record of every motor vehicle bought, or exchanged by the licensee or received or accepted by the licensee for sale or exchange;

(b) a record of every used part or used accessory bought or otherwise acquired;

(c) a record of every motor vehicle bought or otherwise acquired and wrecked or dismantled by the licensee;

(d) all buyers' orders, contracts, odometer statements, temporary permit records, financing records, and all other documents related to the purchase, sale, or consignment of motor vehicles; and

(e) a record of the name and address of the person to whom any motor vehicle or motor vehicle body, chassis, or motor vehicle engine is sold or otherwise disposed of and a description of the motor vehicle by year, make, and vehicle identification number.

(4) Each licensee required by this chapter to keep records shall:

(a) be kept by the licensee at least for five years; and

(b) furnish copies of those records upon request to any peace officer or employee of the division during reasonable business hours.

(5) A manufacturer, distributor, distributor representative, or factory representative may not induce or attempt to induce by means of coercion, intimidation, or discrimination any dealer to:

(a) accept delivery of any motor vehicle, parts, or accessories or any other commodity or commodities, including advertising material not ordered by the dealer;

(b) order or accept delivery of any motor vehicle with special features, appliances, accessories, or equipment not included in the list price of the motor vehicle as publicly advertised by the manufacturer;

(c) order from any person any parts, accessories, equipment, machinery, tools, appliances, or any other commodity;

(d) enter into an agreement with the manufacturer, distributor, distributor representative, or factory representative of any of them, or to do any other act unfair to the dealer by threatening to cancel any franchise or contractual agreement between the manufacturer, distributor, distributor branch, or factory branch and the dealer;

(e) refuse to deliver to any dealer having a franchise or contractual arrangement for the retail sale of new and unused motor vehicles sold or distributed by the manufacturer, distributor, distributor branch or factory branch, any motor vehicle, publicly advertised for immediate delivery within 60 days after the dealer's order is received; or

(f) unfairly, without regard to the equities of the dealer, cancel the franchise of any motor vehicle dealer; the nonrenewal of a franchise or selling agreement without cause is a violation of this subsection and is an unfair cancellation.

(6) A dealer may not assist an unlicensed dealer or salesperson in unlawful activity through active or passive participation in sales, or by allowing use of his facilities or dealer license number, or by any other means.

(7)(a) The holder of any new motor vehicle dealer license issued under this chapter may not sell any new motor vehicle to:

(i) another dealer licensed under this chapter who does not hold a valid franchise for the make of new motor vehicles sold, unless the selling dealer licenses and titles the new motor vehicle to the purchasing dealer; or

(ii) any motor vehicle leasing or rental company located within this state, or who has any branch office within this state, unless the dealer licenses and titles the new motor vehicle to the purchasing, leasing, or rental company.

(b) Subsection (7)(a)(i) does not apply to the sale of a new incomplete motor vehicle with a gross vehicle weight of 12,000 or more pounds to a special equipment dealer licensed under this chapter.

(8) A dealer licensed under this chapter may not take on consignment any new motor vehicle from anyone other than a new motor vehicle dealer, factory, or distributor who is licensed and franchised to distribute or sell that make of motor vehicle in this or any other state.

(9) A body shop licensed under this chapter may not assist an unlicensed body shop in unlawful activity through active or passive means or by allowing use of its facilities, name, body shop number, or by any other means.

(10) A used motor vehicle dealer licensed under this chapter may not advertise, offer for sale, or sell a new motor vehicle that has been driven less than 7,500 miles by obtaining a title only to the vehicle and representing it as a used motor vehicle.

(11)(a) Except as provided in Subsection (11)(c), or in cases of undue hardship or emergency as provided by rule by the division, a dealer or salesperson licensed under this chapter may not, on consecutive days of Saturday and Sunday, sell, offer for sale, lease, or offer for lease a motor vehicle.

(b) Each day a motor vehicle is sold, offered for sale, leased, or offered for lease in violation of Subsection (11)(a) and each motor vehicle sold, offered for sale, leased, or offered for lease in violation of Subsection (11)(a) shall constitute a separate offense.

(c) The provisions of Subsection (11)(a) shall not apply to a dealer participating in a trade show or exhibition if:

(i) there are five or more dealers participating in the trade show or exhibition; and

(ii) the trade show or exhibition takes place at a location other than the principal place of business of one of the dealers participating in the trade show or exhibition.

(12) For purposes of imposing the sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act, a licensee issuing a temporary permit under Section 41-3-302 shall separately identify the fees required by Title 41, Chapter 1a, Motor Vehicle Act.

(13)(a) A dismantler or dealer engaged in the business of dismantling motor vehicles for the sale of parts or salvage shall identify any vehicles or equipment used by the dismantler or dealer for transporting parts or salvage on the highways.

(b) The identification required under Subsection (13)(a) shall:

(i) include the name, address, and license number of the dismantler or dealer; and

(ii) be conspicuously displayed on both sides of the vehicle or equipment in clearly legible letters and numerals not less than two inches in height.

**Credits**

Laws 1949, c. 67, § 13; Laws 1961, c. 80, § 14; Laws 1965, c. 81, § 1; Laws 1965, c. 82, § 6; Laws 1967, c. 87, § 1; Laws 1981, c. 182, § 13; Laws 1987, c. 171, § 10; Laws 1991, c. 153, § 10; Laws 1991, c. 158, § 1; Laws 1992, c. 1, § 184; Laws 1992, c. 234, § 32; Laws 1993, c. 4, § 78; Laws 1995, c. 7, § 2, eff. May 1, 1995; Laws 1998, c. 165, § 6, eff. May 4, 1998; Laws 2000, c. 249, § 1, eff. May 1, 2000; Laws 2007, c. 322, § 6, eff. April 30, 2007.

**Codifications** C. 1943, Supp., § 57-6-23; C. 1953, § 41-3-23.

**Notes of Decisions (2)**

U.C.A. 1953 § 41-3-210, UT ST § 41-3-210

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West's Utah Code Annotated

Title 41. Motor Vehicles

Chapter 3. Motor Vehicle Business Regulation Act

Part 2. Licensing

U.C.A. 1953 § 41-3-211

§ 41-3-211. Unlawful acts or practices

Currentness

(1) A licensee may not knowingly or intentionally engage in any of the following unlawful acts or practices:

(a) provide a financial institution or person being contacted to provide financing for the purchase of a motor vehicle, a motor vehicle contract of sale, document of sale, contract, request for proposal, or other document that does not accurately state:

(i) the terms of the motor vehicle purchase; or

(ii) if the vehicle is a rebuilt vehicle;

(b) sell a motor vehicle to a purchaser that is subject to financing that is not the motor vehicle described in a motor vehicle contract of sale, document of sale, contract, request for proposal, or other document as of the time the contract of sale, document of sale, contract, request for proposal, or other document provided to the financial institution or person providing financing; or

(c) make payments on any loan or lease on a motor vehicle subject to a loan or lease that is subject to the payoff requirements of Subsection 41-3-402(1).

(2) The provisions of Subsection (1)(c) do not prohibit a dealer from making one or more loan or lease payments for a motor vehicle if making the payments is:

(a) stated in writing in a motor vehicle contract of sale, document of sale, contract, request for proposal, or other document; or

(b) stated in the notice to the lienholder of the trade-in of the vehicle as required by Subsection 41-3-402(5).

(3) A person who violates the provisions of this section is subject to the penalties provided in Section 41-3-701 and Subsection 41-3-702(1)(a).

#### Credits

Laws 2010, c. 342, § 7, eff. May 11, 2010.

U.C.A. 1953 § 41-3-211, UT ST § 41-3-211  
Current through 2015 First Special Session

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West's Utah Code Annotated  
Title 41. Motor Vehicles  
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U.C.A. 1953 § 41-3-201

§ 41-3-201. Licenses required--Restitution--Education

Currentness

(1) As used in this section, "new applicant" means a person who is applying for a license that the person has not been issued during the previous licensing year.

(2) A person may not act as any of the following without having procured a license issued by the administrator:

(a) a dealer;

(b) salvage vehicle buyer;

(c) salesperson;

(d) manufacturer;

(e) transporter;

(f) dismantler;

(g) distributor;

(h) factory branch and representative;

(i) distributor branch and representative;

(j) crusher;

(k) remanufacturer; or

(l) body shop.

(3)(a) Except as provided in Subsection (3)(c), a person may not bid on or purchase a vehicle with a nonrepairable or salvage certificate as defined in Section 41-1a-1001 at or through a motor vehicle auction unless the person is a licensed salvage vehicle buyer.

(b) Except as provided in Subsection (3)(c), a person may not offer for sale, sell, or exchange a vehicle with a nonrepairable or salvage certificate as defined in Section 41-1a-1001 at or through a motor vehicle auction except to a licensed salvage vehicle buyer.

(c) A person may offer for sale, sell, or exchange a vehicle with a nonrepairable or salvage certificate as defined in Section 41-1a-1001 at or through a motor vehicle auction:

(i) to an out-of-state or out-of-country purchaser not licensed under this section, but that is authorized to do business in the domestic or foreign jurisdiction in which the person is domiciled or registered to do business;

(ii) subject to the restrictions in Subsection (3)(d), to an in-state purchaser not licensed under this section that:

(A) has a valid business license in Utah; and

(B) has a Utah sales tax license; and

(iii) to a crusher.

(d)(i) An operator of a motor vehicle auction shall verify that an in-state purchaser not licensed under this section has the licenses required in Subsection (3)(c)(ii).

(ii) An operator of a motor vehicle auction may only offer for sale, sell, or exchange five vehicles with a salvage certificate as defined in Section 41-1a-1001 at or through a motor vehicle auction in any 12 month period to an in-state purchaser that does not have a salvage vehicle buyer license issued in accordance with Subsection 41-3-202(15).

(iii) The five vehicle limitation under this Subsection (3)(d) applies to each Utah sales tax license and not to each person with the authority to use a sales tax license.

(iv) An operator of a motor vehicle auction may not sell a vehicle with a nonrepairable certificate as defined in Section 41-1a-1001 to a purchaser otherwise allowed to purchase a vehicle under Subsection (3)(c)(ii).



(e) For a vehicle with a salvage certificate purchased under Subsection (3)(c)(ii), an operator of a motor vehicle auction shall:

(i)(A) until Subsection (3)(e)(i)(B) applies, make application for a salvage certificate of title on behalf of the Utah purchaser within seven days of the purchase if the purchaser does not have a salvage vehicle buyer license, dealer license, body shop license, or dismantler license issued in accordance with Section 41-3-202; or

(B) beginning on or after the date that the Motor Vehicle Division has implemented the Motor Vehicle Division's GenTax system, make application electronically, in a form and time period approved by the Motor Vehicle Division, for a salvage certificate of title to be issued in the name of the purchaser;

(ii) give to the purchaser a disclosure printed on a separate piece of paper that states:

"THIS DISCLOSURE STATEMENT MUST BE GIVEN BY THE SELLER TO THE BUYER EVERY TIME THIS VEHICLE IS RESOLD WITH A SALVAGE CERTIFICATE

Vehicle Identification Number (VIN)

Year:                      Make:                      Model:

SALVAGE VEHICLE--NOT FOR RESALE WITHOUT DISCLOSURE

WARNING: THIS SALVAGE VEHICLE MAY NOT BE SAFE FOR OPERATION UNLESS PROPERLY REPAIRED. SOME STATES MAY REQUIRE AN INSPECTION BEFORE THIS VEHICLE MAY BE REGISTERED. THE STATE OF UTAH MAY REQUIRE THIS VEHICLE TO BE PERMANENTLY BRANDED AS A REBUILT SALVAGE VEHICLE. OTHER STATES MAY ALSO PERMANENTLY BRAND THE CERTIFICATE OF TITLE.

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Signature of Purchaser

Date";  
and

(iii) if applicable, provide evidence to the Motor Vehicle Division of:

(A) payment of sales taxes on taxable sales in accordance with Section 41-1a-510;

(B) the identification number inspection required under Section 41-1a-511; and

(C) the odometer disclosure statement required under Section 41-1a-902.

(f) The Motor Vehicle Division shall include a link to the disclosure statement described in Subsection (3)(e)(ii) on its website.

(g) The commission may impose an administrative entrance fee established in accordance with the procedures and requirements of Section 63J-1-504 not to exceed \$10 on a person not holding a license described in Subsection (3)(e)(i) that enters the physical premises of a motor vehicle auction for the purpose of viewing available salvage vehicles prior to an auction.

(h) A vehicle sold at or through a motor vehicle auction to an out-of-state purchaser with a nonrepairable or salvage certificate may not be certificated in Utah until the vehicle has been certificated out-of-state.

(4)(a) An operator of a motor vehicle auction shall keep a record of the sale of each salvage vehicle.

(b) A record described under Subsection (4)(a) shall contain:

(i) the purchaser's name and address; and

(ii) the year, make, and vehicle identification number for each salvage vehicle sold.

(c) An operator of a motor vehicle auction shall:

(i) provide the record described in Subsection (4)(a) electronically in a method approved by the division to the division within two business days of the completion of the motor vehicle auction;

(ii) retain the record described in this Subsection (4) for five years from the date of sale; and

(iii) make a record described in this Subsection (4) available for inspection by the division at the location of the motor vehicle auction during normal business hours.

(5)(a) If applicable, an operator of a motor vehicle auction shall comply with the reporting requirements of the National Motor Vehicle Title Information System overseen by the United States Department of Justice if the person sells a vehicle with a salvage certificate to an in-state purchaser under Subsection (3)(c)(ii).

(b) The Motor Vehicle Division shall include a link to the National Motor Vehicle Title Information System on its website.

(6)(a) An operator of a motor vehicle auction that sells a salvage vehicle to a person that is an out-of-country buyer shall:

(i) stamp on the face of the title so as not to obscure the name, date, or mileage statement the words "FOR EXPORT ONLY" in all capital, black letters; and

(ii) stamp in each unused reassignment space on the back of the title the words "FOR EXPORT ONLY."

(b) The words "FOR EXPORT ONLY" shall be:

(i) at least two inches wide; and

(ii) clearly legible.

(7) A supplemental license shall be secured by a dealer, manufacturer, remanufacturer, transporter, dismantler, crusher, or body shop for each additional place of business maintained by the licensee.

(8)(a) A person who has been convicted of any law relating to motor vehicle commerce or motor vehicle fraud may not be issued a license or purchase a vehicle with a salvage or nonrepairable certificate unless full restitution regarding those convictions has been made.

(b) An operator of a motor vehicle auction, a dealer, or a consignor may not sell a vehicle with a nonrepairable or salvage certificate to a buyer described in Subsection (8)(a) if the division has informed the operator of the motor vehicle auction, the dealer, or the consignor in writing that the buyer is prohibited from purchasing a vehicle with a nonrepairable or salvage certificate under Subsection (8)(a).

(9)(a) The division may not issue a license to a new applicant for a new or used motor vehicle dealer license, a new or used motorcycle dealer license, or a small trailer dealer license unless the new applicant completes an eight-hour orientation class approved by the division that includes education on motor vehicle laws and rules.

(b) The approved costs of the orientation class shall be paid by the new applicant.

(c) The class shall be completed by the new applicant and the applicant's partners, corporate officers, bond indemnitors, and managers.

(d)(i) The division shall approve:

(A) providers of the orientation class; and

(B) costs of the orientation class.

(ii) A provider of an orientation class shall submit the orientation class curriculum to the division for approval prior to teaching the orientation class.

(iii) A provider of an orientation class shall include in the orientation materials:

- (A) ethics training;
- (B) motor vehicle title and registration processes;
- (C) provisions of Title 13, Chapter 5, Unfair Practices Act, relating to motor vehicles;
- (D) Department of Insurance requirements relating to motor vehicles;
- (E) Department of Public Safety requirements relating to motor vehicles;
- (F) federal requirements related to motor vehicles as determined by the division; and
- (G) any required disclosure compliance forms as determined by the division.

(10) A person or purchaser described in Subsection (3)(c)(ii):

- (a) may not purchase more than five salvage vehicles with a nonrepairable or salvage certificate as defined in Section 41-1a-1001 in any 12-month period;
- (b) may not, without first complying with Section 41-1a-705, offer for sale, sell, or exchange more than two vehicles with a salvage certificate as defined in Section 41-1a-1001 in any 12-month period to a person not licensed under this section; and
- (c) may not, without first complying with Section 41-1a-705, offer for sale, sell, or exchange a vehicle with a nonrepairable certificate as defined in Section 41-1a-1001 to a person not licensed under this section.

(11) An operator of a motor vehicle auction, a dealer, or a consignor may not sell a vehicle with a nonrepairable or salvage certificate to a buyer described in Subsection (10)(a) if the division has informed the operator of the motor vehicle auction, the dealer, or the consignor in writing that the buyer is prohibited from purchasing a vehicle with a nonrepairable or salvage certificate under Subsection (10)(a).

#### Credits

Laws 1949, c. 67, § 1; Laws 1961, c. 80, § 5; Laws 1965, c. 81, § 1; Laws 1981, c. 182, § 3; Laws 1991, c. 153, § 1; Laws 1991, c. 241, § 65; Laws 1992, c. 234, § 23; Laws 1999, c. 239, § 1, eff. May 3, 1999; Laws 2000, c. 311, § 1, eff. July 1, 2000; Laws 2008, c. 388, § 3, eff. July 1, 2008; Laws 2009, c. 234, § 1, eff. May 12, 2009; Laws 2010, c. 393, § 4, eff. May 11, 2010; Laws 2012, c. 390, § 4, eff. Oct. 1, 2012; Laws 2013, c. 463, § 5, eff. May 14, 2013.

**Codifications** C. 1943, Supp., § 57-6-11; C. 1953, § 41-3-6.

Notes of Decisions (1)

U.C.A. 1953 § 41-3-201, UT ST § 41-3-201  
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West's Utah Code Annotated

Title 41. Motor Vehicles

Chapter 3. Motor Vehicle Business Regulation Act

Part 2. Licensing

U.C.A. 1953 § 41-3-201.5

§ 41-3-201.5. Brokering of a new motor vehicle without a license prohibited

Currentness

(1)(a) A person may not, for a fee, commission, or other form of compensation, arrange, offer to arrange, or broker a transaction involving the sale or lease of more than two:

(i) new or used motor vehicles in any 12 consecutive month period, unless the person is licensed under Subsection 41-3-202(1); or

(ii) used motor vehicles in any 12 consecutive month period, unless the person is licensed under Subsection 41-3-202(2).

(b) Each transaction a person arranges, offers to arrange, or brokers involving the sale or lease of a motor vehicle for a fee, commission, or other form of compensation is a separate violation under this section if:

(i) the person has for a fee, commission, or other form of compensation, arranged, offered to arrange, or brokered the sale or lease of more than two new or used motor vehicles within the previous 12 consecutive month period; and

(ii) the person is not licensed under Subsection 41-3-202(1).

(2) A person who violates this section is guilty of a class B misdemeanor.

#### Credits

Laws 1997, c. 187, § 1, eff. May 5, 1997; Laws 2007, c. 105, § 1, eff. April 30, 2007; Laws 2010, c. 393, § 5, eff. May 11, 2010.

U.C.A. 1953 § 41-3-201.5, UT ST § 41-3-201.5

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U.C.A. 1953 § 41-3-201.7

§ 41-3-201.7. Supplemental license for additional place of business restrictions--Exception

Currentness

(1)(a) Subject to the requirements of Subsection (2), a supplemental license for an additional place of business issued pursuant to Subsection 41-3-201(7) may only be issued to a dealer if the dealer is:

- (i) licensed in accordance with Section 41-3-202;
- (ii) bonded in accordance with Section 41-3-205; and
- (iii) in compliance with existing rules promulgated by the administrator of the division under Section 41-3-105.

(b) A supplemental license for a permanent additional place of business may only be issued to a used motor vehicle dealer if:

- (i) the dealer independently satisfies the bond requirements under Section 41-3-205 for the permanent additional place of business;
- (ii) the dealer is in compliance with existing rules promulgated by the administrator of the division under Section 41-3-105; and
- (iii) the permanent additional place of business meets all the requirements for a principal place of business.

(2)(a) Except as provided in Subsections (2)(c) and (3), a supplemental license for an additional place of business issued pursuant to Subsection 41-3-201(7) for a new motor vehicle dealer may not be issued for an additional place of business that is beyond the geographic specifications outlined as the area of responsibility in the dealer's franchise agreement.

(b) A new motor vehicle dealer shall provide the administrator with a copy of the portion of the new motor vehicle dealer's franchise agreement identifying the dealer's area of responsibility before being issued a supplemental license for an additional place of business.

(c) The restrictions under Subsections (2)(a) and (b) do not apply to a new motor vehicle dealer if the license for an additional place of business is being issued for the sale of used motor vehicles.

(3) The provisions of Subsection (2) do not apply if the additional place of business is a trade show or exhibition if:

(a) there are five or more dealers participating in the trade show or exhibition; and

(b) the trade show or exhibition takes place at a location other than the principal place of business of one of the dealers participating in the trade show or exhibition.

(4) A supplemental license for a temporary additional place of business issued to a used motor vehicle dealer may not be for longer than 10 consecutive days.

#### Credits

Laws 2007, c. 70, § 1, eff. April 30, 2007; Laws 2009, c. 234, § 2, eff. May 12, 2009; Laws 2010, c. 393, § 6, eff. May 11, 2010; Laws 2012, c. 390, § 5, eff. Oct. 1, 2012.

U.C.A. 1953 § 41-3-201.7, UT ST § 41-3-201.7

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U.C.A. 1953 § 41-3-202

§ 41-3-202. Licenses--Classes and scope

Currentness

(1) A new motor vehicle dealer's license permits the licensee to:

- (a) offer for sale, sell, or exchange new motor vehicles if the licensee possesses a franchise from the manufacturer of the motor vehicle offered for sale, sold, or exchanged by the licensee;
- (b) offer for sale, sell, or exchange used motor vehicles;
- (c) operate as a body shop; and
- (d) dismantle motor vehicles.

(2) A used motor vehicle dealer's license permits the licensee to:

- (a) offer for sale, sell, or exchange used motor vehicles;
- (b) operate as a body shop; and
- (c) dismantle motor vehicles.

(3) A new motorcycle, off-highway vehicle, and small trailer dealer's license permits the licensee to:

- (a) offer for sale, sell, or exchange new motorcycles, off-highway vehicles, or small trailers if the licensee possesses a franchise from the manufacturer of the motorcycle, off-highway vehicle, or small trailer offered for sale, sold, or exchanged by the licensee;
- (b) offer for sale, sell, or exchange used motorcycles, off-highway vehicles, or small trailers; and

(c) dismantle motorcycles, off-highway vehicles, or small trailers.

(4) A used motorcycle, off-highway vehicle, and small trailer dealer's license permits the licensee to:

(a) offer for sale, sell, or exchange used motorcycles, off-highway vehicles, and small trailers; and

(b) dismantle motorcycles, off-highway vehicles, or small trailers.

(5)(a) Except as provided in Subsection (5)(b), a salesperson's license permits the licensee to act as a motor vehicle salesperson and is valid for employment with only one dealer at a time.

(b) A licensee that has been issued a salesperson's license and that is employed by a dealer that operates as a wholesale motor vehicle auction may be employed by more than one dealer that operates as a wholesale motor vehicle auction at a time.

(6)(a) A manufacturer's license permits the licensee to construct or assemble motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, at an established place of business and to remanufacture motor vehicles.

(b) Under rules made by the administrator, the licensee may issue and install vehicle identification numbers on manufactured motor vehicles.

(c) The licensee may franchise and appoint dealers to sell manufactured motor vehicles by notifying the division of the franchise or appointment.

(7) A transporter's license permits the licensee to transport or deliver motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, from a manufacturing, assembling, or distributing point or from a dealer, to dealers, distributors, or sales agents of a manufacturer or remanufacturer, to or from detail or repair shops, and to financial institutions or places of storage from points of repossession.

(8) A dismantler's license permits the licensee to dismantle motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, for the purpose of reselling parts or for salvage, or selling dismantled or salvage vehicles to a crusher or other dismantler.

(9) A distributor or factory branch and distributor branch's license permits the licensee to sell and distribute new motor vehicles, parts, and accessories to their franchised dealers.

(10) A representative's license, for factory representatives or distributor representatives permits the licensee to contact the licensee's authorized dealers for the purpose of making or promoting the sale of motor vehicles, parts, and accessories.

(11)(a)(i) A remanufacturer's license permits the licensee to construct, reconstruct, assemble, or reassemble motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, from used or new motor vehicles or parts.

(ii) Evidence of ownership of parts and motor vehicles used in remanufacture shall be available to the division upon demand.

(b) Under rules made by the administrator, the licensee may issue and install vehicle identification numbers on remanufactured motor vehicles.

(12) A crusher's license permits the licensee to engage in the business of crushing or shredding motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, for the purpose of reducing the useable materials and metals to a more compact size for recycling.

(13) A body shop's license permits the licensee to rebuild, restore, repair, or paint primarily the body of motor vehicles damaged by collision or natural disaster, and to dismantle motor vehicles.

(14) A special equipment dealer's license permits the licensee to:

(a) buy incomplete new motor vehicles with a gross vehicle weight of 12,000 or more pounds from a new motor vehicle dealer and sell the new vehicle with the special equipment installed without a franchise from the manufacturer;

(b) offer for sale, sell, or exchange used motor vehicles;

(c) operate as a body shop; and

(d) dismantle motor vehicles.

(15)(a) A salvage vehicle buyer license permits the licensee to bid on or purchase a vehicle with a salvage certificate as defined in Section 41-1a-1001 at any motor vehicle auction.

(b) A salvage vehicle buyer license may only be issued to a motor vehicle dealer, dismantler, or body shop who qualifies under rules made by the division and is licensed in any state as a motor vehicle dealer, dismantler, or body shop.

(c) The division may not issue more than two salvage vehicle buyer licenses to any one dealer, dismantler, or body shop.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the administrator shall make rules establishing qualifications of an applicant for a salvage vehicle buyer license. The criteria shall include:

- (i) business history;
- (ii) salvage vehicle qualifications;
- (iii) ability to properly handle and dispose of environmental hazardous materials associated with salvage vehicles; and
- (iv) record in demonstrating compliance with the provisions of this chapter.

**Credits**

Laws 1949, c. 67, § 6; Laws 1961, c. 80, § 9; Laws 1965, c. 81, § 1; Laws 1965, c. 82, § 3; Laws 1981, c. 182, § 7; Laws 1987, c. 171, § 5; Laws 1991, c. 153, § 4; Laws 1992, c. 234, § 24; Laws 1998, c. 165, § 2, eff. May 4, 1998; Laws 2000, c. 311, § 2, eff. July 1, 2000; Laws 2003, c. 157, § 2, eff. May 5, 2003; Laws 2008, c. 382, § 558, eff. May 5, 2008; Laws 2009, c. 78, § 1, eff. May 12, 2009.

**Codifications** C. 1943, Supp., § 57-6-16; C. 1953, § 41-3-12.

U.C.A. 1953 § 41-3-202, UT ST § 41-3-202

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U.C.A. 1953 § 41-3-203

§ 41-3-203. Licenses--Form--Seal--Custody of salesperson's license--  
Display of salesperson and dealer licenses--Licensee's pocket card

Currentness

- (1)(a) The administrator shall prescribe the form of each license and the seal of his office shall be imprinted on each license.
- (b) The license of each salesperson shall be delivered or mailed to the dealer employing the salesperson and it shall be kept in the custody and control of the dealer and conspicuously displayed in the dealer's place of business.
- (c) Each licensee shall display conspicuously his own license in his place of business.
- (2)(a) The administrator shall prepare and deliver a pocket card, certifying that the person whose name is on the card is licensed under this chapter.
- (b) Each salesperson's card shall also contain the name and address of the dealer employing him.
- (c) Each salesperson shall on request display his pocket card.

**Credits**

Laws 1949, c. 67, § 11; Laws 1961, c. 80, § 12; Laws 1981, c. 182, § 11; Laws 1991, c. 153, § 8; Laws 1992, c. 234, § 25.

**Codifications** C. 1943, Supp., § 57-6-21; C. 1953, § 41-3-19.

U.C.A. 1953 § 41-3-203, UT ST § 41-3-203  
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U.C.A. 1953 § 41-3-204

§ 41-3-204. Licenses--Principal place of business as prerequisite--  
Change of location--Relinquishment on loss of principal place of business

Currentness

(1)(a) The following licensees must maintain a principal place of business:

- (i) dealers;
- (ii) special equipment dealers;
- (iii) manufacturers;
- (iv) transporters;
- (v) remanufacturers;
- (vi) dismantlers;
- (vii) crushers;
- (viii) body shops; and
- (ix) distributors who:
  - (A) are located within the state; or
  - (B) have a branch office within the state.

(b) The administrator may not issue a license under Subsection (1)(a) to an applicant who does not have a principal place of business.

(c) If a licensee changes the location of his principal place of business, he shall immediately notify the administrator and a new license shall be granted for the unexpired portion of the term of the original license at no additional fee.

(2)(a) If a licensee loses possession of a principal place of business, the license is automatically suspended and he shall immediately notify the administrator and upon demand by the administrator deliver the license, pocket cards, special plates, and temporary permits to the administrator.

(b) The administrator shall hold the licenses, cards, plates, and permits until the licensee obtains a principal place of business.

#### Credits

Laws 1949, c. 67, § 12(A); Laws 1961, c. 80, § 13; Laws 1981, c. 182, § 12; Laws 1987, c. 171, § 9; Laws 1991, c. 153, § 9; Laws 1992, c. 234, § 26; Laws 1998, c. 165, § 3, eff. May 4, 1998; Laws 2008, c. 388, § 4, eff. July 1, 2008.

**Codifications** C. 1943, Supp., § 57-6-22(A); C. 1953, § 41-3-20.

U.C.A. 1953 § 41-3-204, UT ST § 41-3-204

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U.C.A. 1953 § 41-3-205

§ 41-3-205. Licenses--Bonds required--Maximum liability--Action against surety--Loss of bond

Currentness

(1)(a) Before a dealer's, special equipment dealer's, crusher's, or body shop's license is issued, the applicant shall file with the administrator a corporate surety bond in the amount of:

- (i) \$50,000 until June 30, 2006, and \$75,000 on or after July 1, 2006, for a motor vehicle dealer's license;
- (ii) \$20,000 until June 30, 2006, and \$75,000 on or after July 1, 2006, for a special equipment dealer's license;
- (iii) \$10,000 for a motorcycle, off-highway vehicle, or small trailer dealer's or crusher's license; or
- (iv) \$20,000 for a body shop's license.

(b) The corporate surety shall be licensed to do business within the state and have a rating of at least B+ by the A.M. Best Company.

(c) The form of the bond:

(i) shall be approved by the attorney general;

(ii) shall be conditioned upon the applicant's conducting business as a dealer without:

(A) fraud;

(B) fraudulent representation;

(C) violating Subsection 41-3-301(1) which requires a dealer to submit or deliver a certificate of title or manufacturer's certificate of origin; or

(D) violating Subsection 41-3-402(1) which requires payoff of liens on motor vehicles traded in; and



(iii) may be continuous in form.

(d) The total aggregate liability on the bond to all persons making claims, regardless of the number of claimants or the number of years a bond remains in force, may not exceed the amount of the bond.

(2)(a) A cause of action under Subsection (1) may not be maintained against a surety unless:

(i) a claim is filed in writing with the administrator within one year after the cause of action arose; and

(ii) the action is commenced within two years after the claim was filed with the administrator.

(b) The surety or principal shall notify the administrator if a claim on the bond is successfully prosecuted or settled against the surety or principal.

(3)(a) A surety or principal may not make a payment on a surety bond to any claimant until six months have expired from the date when the first claim on the bond was filed with the surety or principal in writing.

(b) After six months have expired following the filing of the first bond claim, the surety or principal shall:

(i) assess the validity of all claims on the bond; and

(ii) submit a distribution assessment determined in accordance with Subsection (3)(c) regarding the bond proceeds to the claimants of valid claims for approval.

(c)(i) If the total verifiable claims on the bond are less than the bond amount, then each bond claimant shall be entitled to the full amount of a valid claim.

(ii) If the total verifiable claims exceed the bond amount, then the proceeds shall be distributed pro rata to the bond claimants of valid claims.

(d) If the distribution assessment under Subsection (3)(b) is not unanimously approved by the claimants of all valid claims on the bond, the principal or surety shall file an interpleader action in the state district court where the defaulting dealer was licensed.

(4)(a) A person making a claim on the bond shall be awarded attorney fees in cases successfully prosecuted or settled against the surety or principal if the bond has not been depleted.

(b) A surety or principal may not be awarded attorney fees that exceed \$2,500 for an interpleader action filed under Subsection (3)(d).

(5)(a)(i) If a dealer, body shop, or crusher loses possession of the bond required by this chapter, the dealer, body shop, or crusher license is automatically suspended.

(ii) All licenses, pocket cards, temporary permits, and special plates issued to the licensee shall be immediately returned to the administrator.

(b) A dealer, body shop, or crusher may not continue to use or permit to be used licenses, pocket cards, temporary permits, or special plates until the required bond is on file with the administrator and the license has been reinstated.

(6) A representative or consignee of a dealer is not required to file a bond if the dealer for whom the representative or consignee acts fully complies with the provisions of this chapter.

#### Credits

Laws 1949, c. 67, § 8; Laws 1961, c. 80, § 11; Laws 1977, c. 175, § 1; Laws 1981, c. 182, § 9; Laws 1983, c. 188, § 1; Laws 1987, c. 171, § 7; Laws 1991, c. 27, § 1; Laws 1991, c. 153, § 6; Laws 1992, c. 234, § 27; Laws 1998, c. 165, § 4, eff. May 4, 1998; Laws 1999, c. 239, § 2, eff. May 3, 1999; Laws 2003, c. 157, § 3, eff. May 5, 2003; Laws 2005, c. 90, § 1, eff. July 1, 2005; Laws 2007, c. 267, § 1, eff. April 30, 2007; Laws 2010, c. 342, § 5, eff. May 11, 2010.

**Codifications** C. 1943, Supp., § 57-6-18; C. 1953, § 41-3-16.

#### Notes of Decisions (7)

U.C.A. 1953 § 41-3-205, UT ST § 41-3-205  
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U.C.A. 1953 § 41-3-205.5

§ 41-3-205.5. Licenses--Criminal background check required on salesperson's licenses--Payment of cost

Currentness

(1)(a) Every applicant for a salesperson's license shall submit fingerprints with a completed application to the division.

(b) A person required to renew a salesperson license on or before June 30, 2010, shall submit fingerprints to the division on or before November 30, 2010.

(2) The division shall submit fingerprints for each applicant described in Subsection (1) to the Bureau of Criminal Identification established in Section 53-10-201.

(3) The Bureau of Criminal Identification shall:

(a) check the information submitted by the division for an applicant under Subsection (2) against the applicable state and regional criminal records databases; and

(b) release to the division all information obtained under Subsection (3)(a) relating to the applicant.

(4)(a) The Bureau of Criminal Identification shall maintain a separate file of fingerprints submitted under Subsection (2) and notify the division when a new entry is made in the applicable state and regional database against a person whose fingerprints are held in the file regarding any matter involving an arrest under state law involving:

(i) motor vehicles;

(ii) controlled substances;

(iii) fraud; or

(iv) a registerable sex offense under Section 77-41-106.

(b) Upon request by the division, the Bureau of Criminal Identification shall inform the division whether a person whose arrest was reported to the division under Subsection (4)(a) was subsequently convicted of the charge for which the person was arrested.

(5) In addition to any fees imposed under this chapter, the division shall:

(a) impose on individuals submitting fingerprints in accordance with this section the fees that the Bureau of Criminal Identification is authorized to collect for the services the Bureau of Criminal Identification provides under Subsections (3) and (4); and

(b) remit the fees collected under Subsection (5)(a) to the Bureau of Criminal Identification.

(6) The division shall use information received from the Bureau of Criminal Identification under this section to determine whether a license should be denied, suspended, or revoked under Section 41-3-209.

#### Credits

Laws 2010, c. 291, § 1, eff. July 1, 2010; Laws 2012, c. 145, § 1, eff. May 8, 2012.

U.C.A. 1953 § 41-3-205.5, UT ST § 41-3-205.5

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U.C.A. 1953 § 41-3-206

§ 41-3-206. Duration of licenses--Expiration date--Renewal

Currentness

(1) Except as provided in Subsection (2), each license issued under this chapter expires on June 30 of each year and may be renewed upon application and payment of a fee required under Section 41-3-601, if the license has not been suspended or revoked.

(2) A motor vehicle salesperson's license expires as provided under Subsection (1) or when the salesperson terminates employment with the dealer with whom he is licensed, whichever comes first.

(3)(a) Beginning July 1, 1999, the division may not renew a license for a new or used motor vehicle dealer's license, a new or used motorcycle dealer's license, or a small trailer dealer's license unless the renewal applicant completes a three-hour class approved by the division that includes education on new motor vehicle laws and rules.

(b) The approved costs of the class shall be paid by the renewal applicant.

(c) The class shall be completed by the renewal applicant or any designated representative of the renewal applicant dealer.

(d) The division shall approve:

(i) the class providers; and

(ii) costs of the class.

**Credits**

Laws 1992, c. 234, § 28; Laws 1999, c. 239, § 3, eff. May 3, 1999; Laws 2008, c. 388, § 5, eff. July 1, 2008.

U.C.A. 1953 § 41-3-206, UT ST § 41-3-206

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U.C.A. 1953 § 41-3-207

§ 41-3-207. New motor vehicle dealer's license--Change, addition, or loss  
of franchise--Notification--Relinquishment of license and relicensing as  
used motor vehicle dealer--Continuance in business to dispose of stock

Currentness

(1) If a dealer changes to, adds, cancels, or loses a franchise for the sale of new motor vehicles he shall immediately notify the administrator.

(2)(a) If the dealer has cancelled or lost a franchise, the administrator shall determine whether the dealer should be licensed as a used motor vehicle dealer.

(b) If the administrator determines that the dealer should be licensed as a used motor vehicle dealer, he shall issue to the dealer a used motor vehicle dealer's license.

(c) A dealer relicensed as a used motor vehicle dealer may continue to sell new motor vehicles for up to six months from the date of the relicensing, to enable the dealer to dispose of his existing stock of new motor vehicles.

**Credits**

Laws 1949, c. 67, § 12(B); Laws 1992, c. 234, § 29.

**Codifications** C. 1943, Supp., § 57-6-22(B); C. 1953, § 41-3-21.

U.C.A. 1953 § 41-3-207, UT ST § 41-3-207

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U.C.A. 1953 § 41-3-207.5

§ 41-3-207.5. Liquidation of inventory for suspended used motor vehicle dealers

Currentness

(1) A used motor vehicle dealer whose used motor vehicle dealer's license has been suspended may liquidate any remaining inventory by selling the remaining used motor vehicles to:

(a) a licensed auto auction;

(b) another licensed motor vehicle dealer; or

(c) to any person, but only after the used motor vehicle has been titled in the name of the owner, partner, or corporate officer of the used motor vehicle dealer for at least 12 months.

(2) A dealer may sell inventory under Subsections (1)(a) and (b) for up to 90 days from the date the dealer's used motor vehicle dealer's license was suspended.

**Credits**

Laws 2008, c. 388, § 6, eff. July 1, 2008.

U.C.A. 1953 § 41-3-207.5, UT ST § 41-3-207.5

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U.C.A. 1953 § 41-3-208

§ 41-3-208. Salesperson's license--Relinquishment upon loss or  
change of employment--Notice to salesperson--New license required

Currentness

- (1) If a salesperson is discharged from or leaves his employer, the dealer who last employed the salesperson shall return the salesperson's license to the administrator.
- (2) The salesperson shall be notified at his last known place of residence that his license has been returned to the administrator.
- (3) A person may not act as a motor vehicle salesperson until a new license is procured.

**Credits**

Laws 1949, c. 67, § 12(C); Laws 1992, c. 234, § 30.

**Codifications** C. 1943, Supp., § 57-6-22(C); C. 1953, § 41-3-22.

U.C.A. 1953 § 41-3-208, UT ST § 41-3-208

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U.C.A. 1953 § 41-3-209

§ 41-3-209. Administrator's findings--Suspension and revocation of license

Currentness

- (1) If the administrator finds that an applicant is not qualified to receive a license, a license may not be granted.
- (2)(a) On December 1, 2010, the administrator shall suspend the license of a salesperson who fails to submit to the division fingerprints as required under Subsection 41-3-205.5(1)(b) on or before November 30, 2010.
- (b) If the administrator finds that there is reasonable cause to deny, suspend, or revoke a license issued under this chapter, the administrator shall deny, suspend, or revoke the license.
- (c) Reasonable cause for denial, suspension, or revocation of a license includes, in relation to the applicant or license holder or any of its partners, officers, or directors:
- (i) lack of a principal place of business;
  - (ii) lack of a sales tax license required under Title 59, Chapter 12, Sales and Use Tax Act;
  - (iii) lack of a bond in effect as required by this chapter;
  - (iv) current revocation or suspension of a dealer, dismantler, auction, or salesperson license issued in another state;
  - (v) nonpayment of required fees;
  - (vi) making a false statement on any application for a license under this chapter or for special license plates;
  - (vii) a violation of any state or federal law involving motor vehicles;
  - (viii) a violation of any state or federal law involving controlled substances;

(ix) charges filed with any county attorney, district attorney, or U.S. attorney in any court of competent jurisdiction for a violation of any state or federal law involving motor vehicles;

(x) a violation of any state or federal law involving fraud;

(xi) a violation of any state or federal law involving a registerable sex offense under Section 77-41-106; or

(xii) having had a license issued under this chapter revoked within five years from the date of application.

(d) Any action taken by the administrator under Subsection (2)(c)(ix) shall remain in effect until a final resolution is reached by the court involved or the charges are dropped.

(3) If the administrator finds that an applicant is not qualified to receive a license under this section, the administrator shall provide the applicant written notice of the reason for the denial.

(4) If the administrator finds that the license holder has been convicted by a court of competent jurisdiction of violating any of the provisions of this chapter or any rules made by the administrator, or finds other reasonable cause, the administrator may, by complying with the emergency procedures of Title 63G, Chapter 4, Administrative Procedures Act:

(a) suspend the license on terms and for a period of time the administrator finds reasonable; or

(b) revoke the license.

(5)(a) After suspending or revoking a license, the administrator may take reasonable action to:

(i) notify the public that the licensee is no longer in business; and

(ii) prevent the former licensee from violating the law by conducting business without a license.

(b) Action under Subsection (5)(a) may include signs, banners, barriers, locks, bulletins, and notices.

(c) Any business being conducted incidental to the business for which the former licensee was licensed may continue to operate subject to the preventive action taken under this subsection.

**Credits**

Laws 1949, c. 67, § 16; Laws 1987, c. 161, § 141; Laws 1987, c. 171, § 13; Laws 1992, c. 234, § 31; Laws 1998, c. 165, § 5, eff. May 4, 1998; Laws 2005, c. 144, § 1, eff. May 2, 2005; Laws 2008, c. 382, § 559, eff. May 5, 2008; Laws 2010, c. 291, § 2, eff. July 1, 2010; Laws 2010, c. 342, § 6, eff. May 11, 2010; Laws 2012, c. 145, § 2, eff. May 8, 2012.

**Codifications** C. 1943, Supp., § 57-6-26; C. 1953, § 41-3-26.

U.C.A. 1953 § 41-3-209, UT ST § 41-3-209

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U.C.A. 1953 § 41-3-210

§ 41-3-210. License holders--Prohibitions and requirements

Currentness

(1) The holder of any license issued under this chapter may not:

(a) intentionally publish, display, or circulate any advertising that is misleading or inaccurate in any material fact or that misrepresents any of the products sold, manufactured, remanufactured, handled, or furnished by a licensee;

(b) intentionally publish, display, or circulate any advertising without identifying the seller as the licensee by including in the advertisement the full name under which the licensee is licensed or the licensee's number assigned by the division;

(c) violate this chapter or the rules made by the administrator;

(d) violate any law of the state respecting commerce in motor vehicles or any rule respecting commerce in motor vehicles made by any licensing or regulating authority of the state;

(e) engage in business as a new motor vehicle dealer, special equipment dealer, used motor vehicle dealer, motor vehicle crusher, or body shop without having in effect a bond as required in this chapter;

(f) act as a dealer, dismantler, crusher, manufacturer, transporter, remanufacturer, or body shop without maintaining a principal place of business;

(g) engage in a business respecting the selling or exchanging of new or new and used motor vehicles for which he is not licensed, including selling or exchanging a new motor vehicle for which the licensee does not have a franchise, but this Subsection (1)(g) does not apply to a special equipment dealer who sells a new special equipment motor vehicle with a gross vehicle weight of 12,000 or more pounds after installing special equipment on the motor vehicle;

(h) dismantle or transport to a crusher for crushing or other disposition any motor vehicle without first obtaining a dismantling or junk permit under Section 41-1a-1009, 41-1a-1010, or 41-1a-1011;

- (i) as a new motor vehicle dealer, special equipment dealer, or used motor vehicle dealer fail to give notice of sales or transfers as required in Section 41-3-301;
- (j) advertise or otherwise represent, or knowingly allow to be advertised or represented on his behalf or at his place of business, that no down payment is required in connection with the sale of a motor vehicle when a down payment is required and the buyer is advised or induced to finance a down payment by a loan in addition to any other loan financing the remainder of the purchase price of the motor vehicle;
- (k) as a crusher, crush or shred a motor vehicle brought to the crusher without obtaining proper evidence of ownership of the motor vehicle; proper evidence of ownership is a certificate of title endorsed according to law or a dismantling or junk permit issued under Section 41-1a-1009, 41-1a-1010, or 41-1a-1011;
- (l) as a manufacturer or remanufacturer assemble a motor vehicle that does not comply with construction, safety, or vehicle identification number standards fixed by law or rule of any licensing or regulating authority;
- (m) as anyone other than a salesperson licensed under this chapter, be present on a dealer display space and contact prospective customers to promote the sale of the dealer's vehicles;
- (n) sell, display for sale, or offer for sale motor vehicles at any location other than the principal place of business or additional places of business licensed under this chapter; this provision is construed to prevent dealers, salespersons, or any other representative of a dealership from selling, displaying, or offering motor vehicles for sale from their homes or other unlicensed locations;
- (o)(i) as a dealer, dismantler, body shop, or manufacturer, maintain a principal place of business or additional place of business that shares any common area with a business or activity not directly related to motor vehicle commerce; or
  - (ii) maintain any places of business that share any common area with another dealer, dismantler, body shop, or manufacturer;
- (p) withhold delivery of license plates obtained by the licensee on behalf of a customer for any reason, including nonpayment of any portion of the vehicle purchase price or down payment;
- (q) issue a temporary permit for any vehicle that has not been sold by the licensee;
- (r) alter a temporary permit in any manner;
- (s) operate any principal place of business or additional place of business in a location that does not comply with local ordinances, including zoning ordinances;
- (t) sell, display for sale, offer for sale, or exchange any new motor vehicle if the licensee does not:

(i) have a new motor vehicle dealer's license under Section 41-3-202; and

(ii) possess a franchise from the manufacturer of the new motor vehicle sold, displayed for sale, offered for sale, or exchanged by the licensee; or

(u) as a new motor vehicle dealer or used motor vehicle dealer, encourage or conspire with any person who has not obtained a salesperson's license to solicit for prospective purchasers.

(2)(a) If a new motor vehicle is constructed in more than one stage, such as a motor home, ambulance, or van conversion, the licensee shall advertise, represent, sell, and exchange the vehicle as the make designated by the final stage manufacturer, except in those specific situations where the licensee possesses a franchise from the initial or first stage manufacturer, presumably the manufacturer of the motor vehicle's chassis.

(b) Sales of multiple stage manufactured motor vehicles shall include the transfer to the purchaser of a valid manufacturer's statement or certificate of origin from each manufacturer under Section 41-3-301.

(3) Each licensee, except salespersons, shall maintain and make available for inspection by peace officers and employees of the division:

(a) a record of every motor vehicle bought, or exchanged by the licensee or received or accepted by the licensee for sale or exchange;

(b) a record of every used part or used accessory bought or otherwise acquired;

(c) a record of every motor vehicle bought or otherwise acquired and wrecked or dismantled by the licensee;

(d) all buyers' orders, contracts, odometer statements, temporary permit records, financing records, and all other documents related to the purchase, sale, or consignment of motor vehicles; and

(e) a record of the name and address of the person to whom any motor vehicle or motor vehicle body, chassis, or motor vehicle engine is sold or otherwise disposed of and a description of the motor vehicle by year, make, and vehicle identification number.

(4) Each licensee required by this chapter to keep records shall:

(a) be kept by the licensee at least for five years; and

(b) furnish copies of those records upon request to any peace officer or employee of the division during reasonable business hours.

(5) A manufacturer, distributor, distributor representative, or factory representative may not induce or attempt to induce by means of coercion, intimidation, or discrimination any dealer to:

(a) accept delivery of any motor vehicle, parts, or accessories or any other commodity or commodities, including advertising material not ordered by the dealer;

(b) order or accept delivery of any motor vehicle with special features, appliances, accessories, or equipment not included in the list price of the motor vehicle as publicly advertised by the manufacturer;

(c) order from any person any parts, accessories, equipment, machinery, tools, appliances, or any other commodity;

(d) enter into an agreement with the manufacturer, distributor, distributor representative, or factory representative of any of them, or to do any other act unfair to the dealer by threatening to cancel any franchise or contractual agreement between the manufacturer, distributor, distributor branch, or factory branch and the dealer;

(e) refuse to deliver to any dealer having a franchise or contractual arrangement for the retail sale of new and unused motor vehicles sold or distributed by the manufacturer, distributor, distributor branch or factory branch, any motor vehicle, publicly advertised for immediate delivery within 60 days after the dealer's order is received; or

(f) unfairly, without regard to the equities of the dealer, cancel the franchise of any motor vehicle dealer; the nonrenewal of a franchise or selling agreement without cause is a violation of this subsection and is an unfair cancellation.

(6) A dealer may not assist an unlicensed dealer or salesperson in unlawful activity through active or passive participation in sales, or by allowing use of his facilities or dealer license number, or by any other means.

(7)(a) The holder of any new motor vehicle dealer license issued under this chapter may not sell any new motor vehicle to:

(i) another dealer licensed under this chapter who does not hold a valid franchise for the make of new motor vehicles sold, unless the selling dealer licenses and titles the new motor vehicle to the purchasing dealer; or

(ii) any motor vehicle leasing or rental company located within this state, or who has any branch office within this state, unless the dealer licenses and titles the new motor vehicle to the purchasing, leasing, or rental company.

(b) Subsection (7)(a)(i) does not apply to the sale of a new incomplete motor vehicle with a gross vehicle weight of 12,000 or more pounds to a special equipment dealer licensed under this chapter.

(8) A dealer licensed under this chapter may not take on consignment any new motor vehicle from anyone other than a new motor vehicle dealer, factory, or distributor who is licensed and franchised to distribute or sell that make of motor vehicle in this or any other state.

(9) A body shop licensed under this chapter may not assist an unlicensed body shop in unlawful activity through active or passive means or by allowing use of its facilities, name, body shop number, or by any other means.

(10) A used motor vehicle dealer licensed under this chapter may not advertise, offer for sale, or sell a new motor vehicle that has been driven less than 7,500 miles by obtaining a title only to the vehicle and representing it as a used motor vehicle.

(11)(a) Except as provided in Subsection (11)(c), or in cases of undue hardship or emergency as provided by rule by the division, a dealer or salesperson licensed under this chapter may not, on consecutive days of Saturday and Sunday, sell, offer for sale, lease, or offer for lease a motor vehicle.

(b) Each day a motor vehicle is sold, offered for sale, leased, or offered for lease in violation of Subsection (11)(a) and each motor vehicle sold, offered for sale, leased, or offered for lease in violation of Subsection (11)(a) shall constitute a separate offense.

(c) The provisions of Subsection (11)(a) shall not apply to a dealer participating in a trade show or exhibition if:

(i) there are five or more dealers participating in the trade show or exhibition; and

(ii) the trade show or exhibition takes place at a location other than the principal place of business of one of the dealers participating in the trade show or exhibition.

(12) For purposes of imposing the sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act, a licensee issuing a temporary permit under Section 41-3-302 shall separately identify the fees required by Title 41, Chapter 1a, Motor Vehicle Act.

(13)(a) A dismantler or dealer engaged in the business of dismantling motor vehicles for the sale of parts or salvage shall identify any vehicles or equipment used by the dismantler or dealer for transporting parts or salvage on the highways.

(b) The identification required under Subsection (13)(a) shall:

(i) include the name, address, and license number of the dismantler or dealer; and

(ii) be conspicuously displayed on both sides of the vehicle or equipment in clearly legible letters and numerals not less than two inches in height.



**Credits**

Laws 1949, c. 67, § 13; Laws 1961, c. 80, § 14; Laws 1965, c. 81, § 1; Laws 1965, c. 82, § 6; Laws 1967, c. 87, § 1; Laws 1981, c. 182, § 13; Laws 1987, c. 171, § 10; Laws 1991, c. 153, § 10; Laws 1991, c. 158, § 1; Laws 1992, c. 1, § 184; Laws 1992, c. 234, § 32; Laws 1993, c. 4, § 78; Laws 1995, c. 7, § 2, eff. May 1, 1995; Laws 1998, c. 165, § 6, eff. May 4, 1998; Laws 2000, c. 249, § 1, eff. May 1, 2000; Laws 2007, c. 322, § 6, eff. April 30, 2007.

**Codifications** C. 1943, Supp., § 57-6-23; C. 1953, § 41-3-23.

**Notes of Decisions (2)**

U.C.A. 1953 § 41-3-210, UT ST § 41-3-210

Current through 2015 First Special Session

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West's Utah Code Annotated

Title 41. Motor Vehicles

Chapter 3. Motor Vehicle Business Regulation Act

Part 2. Licensing

U.C.A. 1953 § 41-3-211

§ 41-3-211. Unlawful acts or practices

Currentness

(1) A licensee may not knowingly or intentionally engage in any of the following unlawful acts or practices:

(a) provide a financial institution or person being contacted to provide financing for the purchase of a motor vehicle, a motor vehicle contract of sale, document of sale, contract, request for proposal, or other document that does not accurately state:

(i) the terms of the motor vehicle purchase; or

(ii) if the vehicle is a rebuilt vehicle;

(b) sell a motor vehicle to a purchaser that is subject to financing that is not the motor vehicle described in a motor vehicle contract of sale, document of sale, contract, request for proposal, or other document as of the time the contract of sale, document of sale, contract, request for proposal, or other document provided to the financial institution or person providing financing; or

(c) make payments on any loan or lease on a motor vehicle subject to a loan or lease that is subject to the payoff requirements of Subsection 41-3-402(1).

(2) The provisions of Subsection (1)(c) do not prohibit a dealer from making one or more loan or lease payments for a motor vehicle if making the payments is:

(a) stated in writing in a motor vehicle contract of sale, document of sale, contract, request for proposal, or other document; or

(b) stated in the notice to the lienholder of the trade-in of the vehicle as required by Subsection 41-3-402(5).

(3) A person who violates the provisions of this section is subject to the penalties provided in Section 41-3-701 and Subsection 41-3-702(1)(a).

#### Credits

Laws 2010, c. 342, § 7, eff. May 11, 2010.

U.C.A. 1953 § 41-3-211, UT ST § 41-3-211  
Current through 2015 First Special Session

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**ADDENDUM B TO BRIEF OF PETITIONER/APPELLANT**

**RELEVANT PROVISIONS OF THE  
NEW AUTOMOBILE FRANCHISE ACT**

**UTAH CODE ANN. §§ 13-14-101, et seq.**

West's Utah Code Annotated  
Title 13. Commerce and Trade  
Chapter 14. New Automobile Franchise Act  
Part 1. General Administration (Refs & Annos)

U.C.A. 1953 § 13-14-101

§ 13-14-101. Title--Legislative purpose

Currentness

(1) This chapter shall be cited as the "New Automobile Franchise Act."

(2) The Legislature finds that:

(a) The distribution and sales of new motor vehicles through franchise arrangements in the state vitally affects the general economy of the state, the public interest, and the public welfare. A substantial inequality of bargaining power between motor vehicle franchisors and motor vehicle franchisees enables a franchisor:

(i) to compel a franchisee to execute agreements that contain terms and conditions that a franchisee generally would not be agreed to absent the compulsion and duress that arise out of the inequality of bargaining power; and

(ii) in some cases to terminate a franchise without good cause, or to force a franchisee out of business by the use of unfair practices.

(b) Termination of franchises, without good cause or by unfair means:

(i) diminishes competition and, as a result, leads to higher retail prices and fewer purchase options;

(ii) adversely affects communities that depend on a franchisee to make available motor vehicles for sale or lease and to provide warranty work and other services related to vehicles; and

(iii) undercuts expectations of consumers concerning the availability of future services including warranty work from the franchisee.

(c) To promote the public welfare and in the exercise of the state's police powers, it is necessary to establish statutory guidelines regulating the relationship between franchisors and franchisees in the motor vehicle industry.

**Credits**

Laws 1996, c. 277, § 1, eff. April 29, 1996.

U.C.A. 1953 § 13-14-101, UT ST § 13-14-101  
Current through 2015 First Special Session

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West's Utah Code Annotated

Title 13. Commerce and Trade

Chapter 14. New Automobile Franchise Act

Part 1. General Administration (Refs & Annos)

U.C.A. 1953 § 13-14-102

§ 13-14-102. Definitions

Currentness

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

(8)(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.

(9) "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.

(10) "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) an intermediate distributor; and
- (c) an agent, officer, or field or area representative of the franchisor.

(11) "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.

(12) "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.

(13) "Mile" means 5,280 feet.

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

(15)(a) "Motor vehicle" means:

(i) a travel trailer;

(ii) except as provided in Subsection (15)(b), a motor vehicle as defined in Section 41-3-102;

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

(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.

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

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

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

(19) "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.

(20) "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.

(21)(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.

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

(i) 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.

(23) "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.

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

(25) "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.

(26) "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.

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

**Credits**

Laws 1996, c. 277, § 2, eff. April 29, 1996; Laws 1997, c. 162, § 1, eff. May 5, 1997; Laws 1998, c. 339, § 1, eff. May 4, 1998; Laws 2000, c. 86, § 2, eff. May 1, 2000; Laws 2002, c. 68, § 1, eff. May 6, 2002; Laws 2004, c. 123, § 1, eff. May 3, 2004; Laws 2005, c. 167, § 1, eff. May 2, 2005; Laws 2005, c. 249, § 1, eff. May 2, 2005; Laws 2008, c. 362, § 1, eff. May 5, 2008; Laws 2008, c. 388, § 1, eff. July 1, 2008; Laws 2009, c. 318, § 1, eff. March 25, 2009; Laws 2010, c. 33, § 1, eff. May 11, 2010; Laws 2015, c. 268, § 1, eff. May 12, 2015.

**Notes of Decisions (1)**

U.C.A. 1953 § 13-14-102, UT ST § 13-14-102

Current through 2015 First Special Session

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West's Utah Code Annotated

Title 13. Commerce and Trade

Chapter 14. New Automobile Franchise Act

Part 1. General Administration (Refs & Annos)

U.C.A. 1953 § 13-14-103

§ 13-14-103. Utah Motor Vehicle Franchise Advisory Board--Creation--  
Appointment of members--Alternate members--Chair--Quorum--Conflict of interest

Currentness

(1) There is created within the department the Utah Motor Vehicle Franchise Advisory Board that consists of:

(a) the executive director or the executive director's designee; and

(b) 11 members appointed by the executive director, with the concurrence of the governor as follows:

(i) one recreational motor vehicle franchisee;

(ii) three new motor vehicle franchisees from different congressional districts in the state;

(iii) three members representing motor vehicle franchisors registered by the department pursuant to Section 13-14-105;

(iv) three members of the general public, none of whom shall be related to any franchisee; and

(v) one representative of the Utah League of Cities and Towns.

(2)(a) The executive director shall appoint, with the concurrence of the governor, five alternate members, with one alternate from each of the designations described in Subsections (1)(b)(i) through (v), except that the new motor vehicle franchisee alternate for the designation under Subsection (1)(b)(ii) may be from any congressional district.

(b) An alternate shall take the place of a regular advisory board member from the same designation at a meeting of the advisory board where that regular advisory board member is absent or otherwise disqualified from participating in the advisory board meeting.

(3)(a)(i) Members of the advisory board appointed under Subsections (1)(b) and (2) are appointed for a term of four years.

(ii) No specific term applies to the executive director or the executive director's designee.

(b) The executive director may adjust the term of members who were appointed to the advisory board prior to July 1, 2001, by extending the unexpired term of a member for up to two additional years in order to insure that approximately half of the members are appointed every two years.

(c) In the event of a vacancy on the advisory board of a member appointed under Subsection (1)(b) or (2), the executive director with the concurrence of the governor, shall appoint an individual to complete the unexpired term of the member whose office is vacant.

(d) A member may not be appointed to more than two consecutive terms.

(4)(a) The executive director or the executive director's designee is the chair of the advisory board.

(b) The department shall keep a record of all hearings, proceedings, transactions, communications, and recommendations of the advisory board.

(5)(a) Four or more members of the advisory board constitute a quorum for the transaction of business.

(b) The action of a majority of a quorum present is considered the action of the advisory board.

(6)(a) A member of the advisory board may not participate as a board member in a proceeding or hearing:

(i) involving the member's licensed business or employer; or

(ii) when a member, a member's business or family, or employer has a pecuniary interest in the outcome or other conflict of interest concerning an issue before the advisory board.

(b) If a member of the advisory board is disqualified under Subsection (6)(a), the executive director shall select the appropriate alternate member to act on the issue before the advisory board as provided in Subsection (2).

(7) Except for the executive director or the executive director's designee, an individual may not be appointed or serve on the advisory board while holding any other elective or appointive state or federal office.

(8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(9) The department shall provide necessary staff support to the advisory board.

**Credits**

Laws 1996, c. 277, § 3, eff. April 29, 1996; Laws 1997, c. 162, § 2, eff. May 5, 1997; Laws 2001, c. 158, § 1, eff. April 30, 2001; Laws 2002, c. 68, § 2, eff. May 6, 2002; Laws 2004, c. 123, § 2, eff. May 3, 2004; Laws 2005, c. 249, § 2, eff. May 2, 2005; Laws 2008, c. 362, § 2, eff. May 5, 2008; Laws 2010, c. 286, § 39, eff. May 11, 2010; Laws 2015, c. 268, § 2, eff. May 12, 2015.

U.C.A. 1953 § 13-14-103, UT ST § 13-14-103

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West's Utah Code Annotated  
Title 13. Commerce and Trade  
Chapter 14. New Automobile Franchise Act  
Part 1. General Administration (Refs & Annos)

U.C.A. 1953 § 13-14-104

§ 13-14-104. Powers and duties of the advisory board and the executive director

Currentness

(1)(a) Except as provided in Subsection 13-14-106(3), the advisory board shall make recommendations to the executive director on the administration and enforcement of this chapter, including adjudicative and rulemaking proceedings.

(b) The executive director shall:

(i) consider the advisory board's recommendations; and

(ii) issue any rules or final decisions by the department.

(2) The executive director, in consultation with the advisory board, shall make rules for the administration of this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3)(a) An adjudicative proceeding under this chapter shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(b) In an adjudicative proceeding under this chapter, any order issued by the executive director:

(i) shall comply with Section 63G-4-208, whether the proceeding is a formal or an informal adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act; and

(ii) if the order modifies or rejects a finding of fact in a recommendation from the advisory board, shall be made on the basis of information learned from the executive director's:

(A) personal attendance at the hearing; or

(B) review of the record developed at the hearing.

(4) The executive director's decision under this section shall be made available to the public.



**Credits**

Laws 1996, c. 277, § 4, eff. April 29, 1996; Laws 1997, c. 162, § 3, eff. May 5, 1997; Laws 2005, c. 249, § 3, eff. May 2, 2005; Laws 2008, c. 362, § 3, eff. May 5, 2008; Laws 2008, c. 382, § 131, eff. May 5, 2008; Laws 2015, c. 268, § 3, eff. May 12, 2015.

U.C.A. 1953 § 13-14-104, UT ST § 13-14-104

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West's Utah Code Annotated

Title 13. Commerce and Trade

Chapter 14. New Automobile Franchise Act

Part 2. Franchises in General

U.C.A. 1953 § 13-14-201

§ 13-14-201. Prohibited acts by franchisors--Affiliates--Disclosures

Currentness

(1) A franchisor may not in this state:

(a) except as provided in Subsection (3), require a franchisee to order or accept delivery of any new motor vehicle, part, accessory, equipment, or other item not otherwise required by law that is not voluntarily ordered by the franchisee;

(b) require a franchisee to:

(i) participate monetarily in any advertising campaign; or

(ii) contest, or purchase any promotional materials, display devices, or display decorations or materials;

(c) require a franchisee to change the capital structure of the franchisee's dealership or the means by or through which the franchisee finances the operation of the franchisee's dealership, if the dealership at all times meets reasonable capital standards determined by and applied in a nondiscriminatory manner by the franchisor;

(d) require a franchisee to refrain from participating in the management of, investment in, or acquisition of any other line of new motor vehicles or related products, if the franchisee:

(i) maintains a reasonable line of credit for each make or line of vehicles; and

(ii) complies with reasonable capital and facilities requirements of the franchisor;

(e) require a franchisee to prospectively agree to a release, assignment, novation, waiver, or estoppel that would:

(i) relieve a franchisor from any liability, including notice and hearing rights imposed on the franchisor by this chapter; or

(ii) require any controversy between the franchisee and a franchisor to be referred to a third party if the decision by the third party would be binding;

(f) require a franchisee to change the location of the principal place of business of the franchisee's dealership or make any substantial alterations to the dealership premises, if the change or alterations would be unreasonable or cause the franchisee to lose control of the premises or impose any other unreasonable requirement related to the facilities or premises;

(g) coerce or attempt to coerce a franchisee to join, contribute to, or affiliate with an advertising association;

(h) require, coerce, or attempt to coerce a franchisee to enter into an agreement with the franchisor or do any other act that is unfair or prejudicial to the franchisee, by threatening to cancel a franchise agreement or other contractual agreement or understanding existing between the franchisor and franchisee;

(i) adopt, change, establish, enforce, modify, or implement a plan or system for the allocation, scheduling, or delivery of new motor vehicles, parts, or accessories to its franchisees so that the plan or system is not fair, reasonable, and equitable, including a plan or system that imposes a vehicle sales objective, goal, or quota on a franchisee, or that evaluates a franchisee's sales effectiveness or overall sales performance, without providing a reasonable opportunity for the franchisee to acquire the necessary vehicles in a timely manner from the franchisor on commercially reasonable terms;

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

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

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

(A) strict liability;

(B) negligence;

(C) misrepresentation;

(D) express or implied warranty;

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

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

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

- (l) threaten or coerce a franchisee to waive or forbear its right to protest the establishment or relocation of a same line-make franchisee in the relevant market area of the affected franchisee;
- (m) fail to ship monthly to a franchisee, if ordered by the franchisee, the number of new motor vehicles of each make, series, and model needed by the franchisee to achieve a percentage of total new vehicle sales of each make, series, and model equitably related to the total new vehicle production or importation being achieved nationally at the time of the order by each make, series, and model covered under the franchise agreement;
- (n) require or otherwise coerce a franchisee to under-utilize the franchisee's existing dealer facility or facilities, including by:
  - (i) requiring or otherwise coercing a franchisee to exclude or remove from the franchisee's facility operations the selling or servicing of a line-make of vehicles for which the franchisee has a franchise agreement to utilize the facilities; or
  - (ii) prohibiting the franchisee from locating, relocating, or occupying a franchise or line-make in an existing facility owned or occupied by the franchisee that includes the selling or servicing of another franchise or line-make at the facility provided that the franchisee gives the franchisor written notice of the franchise co-location;
- (o) fail to include in any franchise agreement or other agreement governing a franchisee's ownership of a dealership or a franchisee's conduct of business under a franchise the following language or language to the effect that: "If any provision in this agreement contravenes the laws or regulations of any state or other jurisdiction where this agreement is to be performed, or provided for by such laws or regulations, the provision is considered to be modified to conform to such laws or regulations, and all other terms and provisions shall remain in full force.";
- (p) engage in the distribution, sale, offer for sale, or lease of a new motor vehicle to purchasers who acquire the vehicle in this state except through a franchisee with whom the franchisor has established a written franchise agreement, if the franchisor's trade name, trademark, service mark, or related characteristic is an integral element in the distribution, sale, offer for sale, or lease;
- (q) engage in the distribution or sale of a recreational vehicle that is manufactured, rented, sold, or offered for sale in this state without being constructed in accordance with the standards set by the American National Standards Institute for recreational vehicles and evidenced by a seal or plate attached to the vehicle;
- (r) except as provided in Subsection (2), authorize or permit a person to perform warranty service repairs on motor vehicles, except warranty service repairs:
  - (i) by a franchisee with whom the franchisor has entered into a franchise agreement for the sale and service of the franchisor's motor vehicles; or
  - (ii) on owned motor vehicles by a person or government entity who has purchased new motor vehicles pursuant to a franchisor's fleet discount program;

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

(t)(i) except as provided in Subsection (1)(t)(ii) and notwithstanding any other provisions of this chapter:

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

(B) unreasonably require a dealer to:

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

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

(ii) notwithstanding Subsection (1)(t)(i), a recreational vehicle franchisor may split a line-make between motor home and travel trailer products;

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

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

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

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

(iv) operate a motor vehicle service facility;

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

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

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

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

- (iii) advising a potential customer as to the amount that the potential customer should pay for a particular product;
- (x) fail to provide comparable delivery terms to each franchisee for a product of the franchisor, including the time of delivery after the placement of an order by the franchisee;
- (y) if personnel training is provided by the franchisor to its franchisees, unreasonably fail to make that training available to each franchisee on proportionally equal terms;
- (z) condition a franchisee's eligibility to participate in a sales incentive program on the requirement that a franchisee use the financing services of the franchisor or a subsidiary or affiliate of the franchisor for inventory financing;
- (aa) make available for public disclosure, except with the franchisee's permission or under subpoena or in any administrative or judicial proceeding in which the franchisee or the franchisor is a party, any confidential financial information regarding a franchisee, including:
  - (i) monthly financial statements provided by the franchisee;
  - (ii) the profitability of a franchisee; or
  - (iii) the status of a franchisee's inventory of products;
- (bb) use any performance standard, incentive program, or similar method to measure the performance of franchisees unless the standard or program:
  - (i) is designed and administered in a fair, reasonable, and equitable manner;
  - (ii) if based upon a survey, utilizes an actuarially generally acceptable, valid sample; and
  - (iii) is, upon request by a franchisee, disclosed and explained in writing to the franchisee, including:
    - (A) how the standard or program is designed;
    - (B) how the standard or program will be administered; and
    - (C) the types of data that will be collected and used in the application of the standard or program;
- (cc) other than sales to the federal government, directly or indirectly, sell, lease, offer to sell, or offer to lease, a new motor vehicle or any motor vehicle owned by the franchisor, except through a franchised new motor vehicle dealer;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) require a franchisee to execute a written waiver of the requirements of Subsection (1)(gg)(i);

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

(ii) through an affiliate, take any action that would otherwise be prohibited under this chapter;



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

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

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

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

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

(iv) the approval of the relocation of an existing franchisee's dealership facility, unless the franchisor pays, and the franchisee voluntarily accepts, additional specified cash consideration to facilitate the relocation; or

(v) the approval of the sale or transfer of a franchise's ownership, unless the franchisor pays, and the buyer voluntarily accepts, additional specified cash consideration to facilitate the sale or transfer;

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

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

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

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

(II) are listed in the current parts catalog;

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

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

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

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

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

(nn) coerce a franchisee to establish, or provide by agreement, program, or incentive provision that a franchisee must establish, a price at which the franchisee is required to sell a product or service that is:

(i) sold in connection with the franchisee's sale of a motor vehicle; and

(ii)(A) in the case of a product, not manufactured, provided, or distributed by the franchisor or an affiliate; or

(B) in the case of a service, not provided by the franchisor or an affiliate;

(oo) except as necessary to comply with a health or safety law, or to comply with a technology requirement compliance with which is necessary to sell or service a motor vehicle that the franchisee is authorized or licensed by the franchisor to sell or service, coerce or require a franchisee, through a penalty or other detriment to the franchisee's business, to:

(i) construct a new dealer facility or materially alter or remodel an existing dealer facility before the date that is 10 years after the date the construction of the new dealer facility at that location was completed, if the construction substantially complied with the franchisor's brand image standards or plans that the franchisor provided or approved; or

(ii) materially alter or remodel an existing dealer facility before the date that is 10 years after the date the previous alteration or remodeling at that location was completed, if the previous alteration or remodeling substantially complied with the franchisor's brand image standards or plans that the franchisor provided or approved; or

(pp) notwithstanding the terms of a franchise agreement providing otherwise and subject to Subsection (14):

(i) coerce or require a franchisee, including by agreement, program, or incentive provision, to purchase a good or service, relating to a facility construction, alteration, or remodel, from a vendor that a franchisor or its affiliate selects, identifies, or designates, without allowing the franchisee, after consultation with the franchisor, to obtain a like good or service of substantially similar quality from a vendor that the franchisee chooses; or

(ii) coerce or require a franchisee, including by agreement, program, or incentive provision, to lease a sign or other franchisor image element from the franchisor or an affiliate without providing the franchisee the right to purchase a sign or other franchisor image element of like kind and quality from a vendor that the franchisee chooses.

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

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

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

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

(4) Subsection (1)(d) does not prevent a franchisor from requiring that a franchisee maintain separate sales personnel or display space.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) as to that line-make of motor vehicle, there are no more than four franchised new motor vehicle dealerships licensed and in operation within the state as of January 1, 2000;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13)(a) As used in Subsection (1)(oo):

(i) "Materially alter":

(A) means to make a material architectural, structural, or aesthetic alteration; and

(B) does not include routine maintenance, such as interior painting, reasonably necessary to keep a dealership facility in attractive condition.

(ii) "Penalty or other detriment" does not include a payment under an agreement, incentive, or program that is offered to but declined or not accepted by a franchisee, even if a similar payment is made to another franchisee in the state that chooses to participate in the agreement, incentive, or program.

(b) Subsection (1)(oo) does not apply to:

(i) a program that provides a lump sum payment to assist a franchisee to make a facility improvement or to pay for a sign or a franchisor image element, if the payment is not dependent on the franchisee selling or purchasing a specific number of new vehicles;

(ii) a program that is in effect on May 8, 2012, with more than one franchisee in the state or to a renewal or modification of the program;

(iii) a program that provides reimbursement to a franchisee on reasonable, written terms for a substantial portion of the franchisee's cost of making a facility improvement or installing signage or a franchisor image element; or

(iv) a written agreement between a franchisor and franchisee, in effect before May 8, 2012, under which a franchisee agrees to construct a new dealer facility.

(14)(a) Subsection (1)(pp)(i) does not apply to:

(i) signage purchased by a franchisee in which the franchisor has an intellectual property right; or

(ii) a good used in a facility construction, alteration, or remodel that is:

(A) a moveable interior display that contains material subject to a franchisor's intellectual property right; or

(B) specifically eligible for reimbursement of over one-half its cost pursuant to a franchisor or distributor program or incentive granted to the franchisee on reasonable, written terms.

(b) Subsection (1)(pp)(ii) may not be construed to allow a franchisee to:

(i) impair or eliminate a franchisor's intellectual property right; or

(ii) erect or maintain a sign that does not conform to the franchisor's reasonable fabrication specifications and intellectual property usage guidelines.

#### Credits

Laws 1996, c. 277, § 8, eff. April 29, 1996; Laws 1997, c. 162, § 7, eff. May 5, 1997; Laws 1998, c. 339, § 2, eff. May 4, 1998; Laws 2000, c. 330, § 1, eff. May 1, 2000; Laws 2002, c. 68, § 3, eff. May 6, 2002; Laws 2005, c. 167, § 2, eff. May 2, 2005; Laws 2005, c. 249, § 7, eff. May 2, 2005; Laws 2008, c. 362, § 4, eff. May 5, 2008; Laws 2009, c. 318, § 2, eff. March 25, 2009; Laws 2010, c. 33, § 2, eff. May 11, 2010; Laws 2011, c. 203, § 1, eff. May 10, 2011; Laws 2012, c. 186, § 1, eff. May 8, 2012.

U.C.A. 1953 § 13-14-201, UT ST § 13-14-201

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U.C.A. 1953 § 13-14-202

§ 13-14-202. Sale or transfer of ownership

Currentness

(1)(a) The franchisor shall give effect to the change in a franchise agreement as a result of an event listed in Subsection (1)(b):

(i) subject to Subsection 13-14-305(2)(b); and

(ii) unless exempted under Subsection (2).

(b) The franchisor shall give effect to the change in a franchise agreement pursuant to Subsection (1)(a) for the:

(i) sale of a dealership;

(ii) contract for sale of a dealership;

(iii) transfer of ownership of a franchisee's dealership by:

(A) sale;

(B) transfer of the business; or

(C) stock transfer; or

(iv) change in the executive management of the franchisee's dealership.

(2) A franchisor is exempted from the requirements of Subsection (1) if:

(a) the transferee is denied, or would be denied, a new motor vehicle franchisee's license pursuant to Title 41, Chapter 3, Motor Vehicle Business Regulation Act; or

(b) the proposed sale or transfer of the business or change of executive management will be substantially detrimental to the distribution of franchisor's new motor vehicles or to competition in the relevant market area, provided that the franchisor has given written notice to the franchisee within 60 days following receipt by the franchisor of the following:

(i) a copy of the proposed contract of sale or transfer executed by the franchisee and the proposed transferee;

(ii) a completed copy of the franchisor's written application for approval of the change in ownership or executive management, if any, including the information customarily required by the franchisor; and

(iii)(A) a written description of the business experience of the executive management of the transferee in the case of a proposed sale or transfer of the franchisee's business; or

(B) a written description of the business experience of the person involved in the proposed change of the franchisee's executive management in the case of a proposed change of executive management.

(3) For purposes of this section, the refusal by the franchisor to accept a proposed transferee is presumed to be unreasonable and undertaken without good cause if the proposed franchisee:

(a) is of good moral character; and

(b) otherwise meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the franchisor relating to the business experience of executive management and financial capacity to operate and maintain the dealership required by the franchisor of its franchisees.

(4)(a) If after receipt of the written notice from the franchisor described in Subsection (1) the franchisee objects to the franchisor's refusal to accept the proposed sale or transfer of the business or change of executive management, the franchisee may file an application for a hearing before the advisory board up to 60 days from the date of receipt of the notice.

(b) After a hearing and the executive director's receipt of the advisory board's recommendation, the executive director shall determine, and enter an order providing that:

(i) the proposed transferee or change in executive management:

(A) shall be approved; or

(B) may not be approved for specified reasons; or

(ii) a proposed transferee or change in executive management is approved if specific conditions are timely satisfied.



(c)(i) The franchisee shall have the burden of proof with respect to all issues raised by the franchisee's application for a hearing as provided in this section.

(ii) During the pendency of the hearing, the franchise agreement shall continue in effect in accordance with its terms.

(d) The advisory board and the executive director shall expedite, upon written request, any determination sought under this section.

#### Credits

Laws 1996, c. 277, § 9, eff. April 29, 1996; Laws 2005, c. 249, § 8, eff. May 2, 2005.

U.C.A. 1953 § 13-14-202, UT ST § 13-14-202

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U.C.A. 1953 § 13-14-203

§ 13-14-203. Succession to franchise

Currentness

(1)(a) A successor, including a family member of a deceased or incapacitated franchisee, who is designated by the franchisee may succeed the franchisee in the ownership and operation of the dealership under the existing franchise agreement if:

(i) the designated successor gives the franchisor written notice of an intent to succeed to the rights of the deceased or incapacitated franchisee in the franchise agreement within 180 days after the franchisee's death or incapacity;

(ii) the designated successor agrees to be bound by all of the terms and conditions of the franchise agreement; and

(iii) the designated successor meets the criteria generally applied by the franchisor in qualifying franchisees.

(b) A franchisor may refuse to honor the existing franchise agreement with the designated successor only for good cause.

(2) The franchisor may request in writing from a designated successor the personal and financial data that is reasonably necessary to determine whether the existing franchise agreement should be honored. The designated successor shall supply the personal and financial data promptly upon the request.

(3)(a) If a franchisor believes that good cause exists for refusing to honor the requested succession, the franchisor shall serve upon the designated successor notice of its refusal to approve the succession, within 60 days after the later of:

(i) receipt of the notice of the designated successor's intent to succeed the franchisee in the ownership and operation of the dealership; or

(ii) receipt of the requested personal and financial data.

(b) Failure to serve the notice pursuant to Subsection (3)(a) is considered approval of the designated successor and the franchise agreement is considered amended to reflect the approval of the succession the day following the last day the franchisor can serve notice under Subsection (3)(a).

(4) The notice of the franchisor provided in Subsection (3) shall:

(a) state the specific grounds for the refusal to approve the succession; and

(b) that discontinuance of the franchise agreement shall take effect not less than 180 days after the date the notice of refusal is served unless the proposed successor files an application for hearing under Subsection (6).

(5)(a) This section does not prevent a franchisee from designating a person as the successor by written instrument filed with the franchisor.

(b) If a franchisee files an instrument under Subsection (5)(a), the instrument governs the succession rights to the management and operation of the dealership subject to the designated successor satisfying the franchisor's qualification requirements as described in this section.

(6)(a) If a franchisor serves a notice of refusal to a designated successor pursuant to Subsection (3), the designated successor may, within the 180-day period provided in Subsection (4), file with the advisory board an application for a hearing and a determination by the executive director regarding whether good cause exists for the refusal.

(b) If application for a hearing is timely filed, the franchisor shall continue to honor the franchise agreement until after:

(i) the requested hearing has been concluded;

(ii) a decision is rendered by the executive director; and

(iii) the applicable appeal period has expired following a decision by the executive director.

#### Credits

Laws 1996, c. 277, § 10, eff. April 29, 1996; Laws 2002, c. 68, § 4, eff. May 6, 2002; Laws 2005, c. 249, § 9, eff. May 2, 2005.

U.C.A. 1953 § 13-14-203, UT ST § 13-14-203

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U.C.A. 1953 § 13-14-204

§ 13-14-204. Franchisor's obligations related to service--Franchisor audits--Time limits

Currentness

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

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

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

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

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

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

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

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

(4) A franchisor may not fail to:

(a) perform any warranty obligation;

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

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

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

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

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

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

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

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

(8) A franchisee's claim for warranty compensation may be denied only if:

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

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

(c) the franchisee fails to comply materially with specific substantive terms and conditions of the franchisor's warranty compensation program; or

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

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

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

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

- (ii) the date when payment for the sales compensation or sales incentive was made by the franchisor to the franchisee.
- (c)(i) Upon an audit, the franchisor shall provide the franchisee automated or written notice explaining the amount of and reason for a charge back.
  - (ii) A franchisee may respond in writing within 30 days after the notice under Subsection (9)(c)(i) to:
    - (A) explain a deficiency; or
    - (B) provide materials or information to correct and cure compliance with a provision that is a basis for a charge back.
- (d) A charge back:
  - (i) may not be based on a nonmaterial error that is clerical in nature; and
  - (ii)(A) shall be based on one or more specific instances of material noncompliance with the franchisor's warranty compensation program or sales incentive program; and
  - (B) may not be extrapolated from a sampling of warranty claims or sales incentive claims.
- (e) The time limitations of this Subsection (9) do not preclude charge backs for any fraudulent claim that was previously paid.

#### Credits

Laws 1996, c. 277, § 11, eff. April 29, 1996; Laws 1997, c. 162, § 8, eff. May 5, 1997; Laws 2004, c. 123, § 3, eff. May 3, 2004; Laws 2009, c. 318, § 3, eff. March 25, 2009; Laws 2010, c. 33, § 3, eff. May 11, 2010.

U.C.A. 1953 § 13-14-204, UT ST § 13-14-204  
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U.C.A. 1953 § 13-14-205

§ 13-14-205. Liability for damages to motor vehicles in transit--Disclosure required

Currentness

(1)(a) A franchisee is solely liable for damage to a new motor vehicle after delivery by and acceptance from the carrier.

(b) A delivery receipt or bill of lading, or similar document, signed by a franchisee is evidence of a franchisee's acceptance of a new motor vehicle.

(2) A franchisor is liable for all damage to a motor vehicle before delivery to and acceptance by the franchisee, including that time in which the vehicle is in the control of a carrier or transporter.

(3)(a) A franchisor shall disclose to the franchisee any repairs made prior to delivery, except a recreational vehicle franchisor shall disclose to a recreational vehicle franchisee any repair made to the vehicle prior to delivery only if:

(i) the cost of the repair exceeds 3% of the manufacturer's wholesale price, as measured by retail repair costs; or

(ii) the repair is to the exterior sidewalls or roof of the vehicle, and repairs total over \$500.

(b) Replacement of a recreational vehicle's glass, tires, wheels, audio equipment, in-dash components, instrument panels, appliances, furniture, and components other than built-in cabinetry contained in the vehicle's living quarters, is not considered a repair under this subsection if the component replaced has been replaced with original manufacturers parts and materials.

(4) Notwithstanding Subsections (1), (2), and (3), the franchisee is liable for damage to a new motor vehicle after delivery to the carrier or transporter if the franchisee selected:

(a) the method and mode of transportation; and

(b) the carrier or transporter.

Credits

Laws 1996, c. 277, § 12, eff. April 29, 1996; Laws 1997, c. 162, § 9, eff. May 5, 1997.

U.C.A. 1953 § 13-14-205, UT ST § 13-14-205  
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Chapter 14. New Automobile Franchise Act  
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U.C.A. 1953 § 13-14-206

§ 13-14-206. Site-control agreements

Currentness

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

(a) may be voluntarily terminated by a franchisee, subject to Subsection (2)(a); and

(b) terminates immediately upon:

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

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

(iii) a franchisor's termination of a franchisee's franchise without cause and against the franchisee's will; or

(iv) the failure of the franchisor or its affiliate to exercise a right of first refusal to purchase the assets or ownership of the franchisee's business when given the opportunity to do so under the franchise or other agreement, subject to the repayment requirements of Subsection (2) if the right of first refusal arises because of the voluntary action of the franchisee.

(2)(a) If a franchisee voluntarily terminates a site-control agreement after the franchisor has paid and the franchisee or other recipient has accepted additional specified cash consideration, the site-control agreement remains valid only until the franchisee or other recipient satisfies the repayment terms specified in Subsection (2)(b).

(b)(i) If the franchisor's additional specified cash consideration was used for the construction of a building or improvement on the property that is the subject of the site-control agreement, the amount of the repayment under Subsection (2)(a):

(A) is based on any repayment terms specified in the site-control agreement, if the parties to the site-control agreement have willingly agreed to the terms; and

(B) may not exceed the market value of the portion of the building or improvement constructed with the additional specified cash consideration paid by the franchisor, after allowing for depreciation based on a market-based depreciation schedule, as determined by an independent appraiser at the request of the franchisee or other recipient.

(ii) If the franchisor's additional specified cash consideration was not used for construction of a building or improvement on the property that is the subject of the site-control agreement, the amount of the repayment under Subsection (2)(a) is an equitable portion of the cash consideration, as determined under any terms specified in the site-control agreement for the equitable repayment following a franchisee's voluntary termination of the agreement.

(c) Immediately upon the repayment under Subsection (2)(b):

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

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

(A) the site-control agreement; and

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

#### Credits

Laws 2010, c. 33, § 4, eff. May 11, 2010.

U.C.A. 1953 § 13-14-206, UT ST § 13-14-206

Current through 2015 First Special Session

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West's Utah Code Annotated  
Title 13. Commerce and Trade  
Chapter 14. New Automobile Franchise Act  
Part 2. Franchises in General

U.C.A. 1953 § 13-14-201

§ 13-14-201. Prohibited acts by franchisors--Affiliates--Disclosures

Currentness

(1) A franchisor may not in this state:

(a) except as provided in Subsection (3), require a franchisee to order or accept delivery of any new motor vehicle, part, accessory, equipment, or other item not otherwise required by law that is not voluntarily ordered by the franchisee;

(b) require a franchisee to:

(i) participate monetarily in any advertising campaign; or

(ii) contest, or purchase any promotional materials, display devices, or display decorations or materials;

(c) require a franchisee to change the capital structure of the franchisee's dealership or the means by or through which the franchisee finances the operation of the franchisee's dealership, if the dealership at all times meets reasonable capital standards determined by and applied in a nondiscriminatory manner by the franchisor;

(d) require a franchisee to refrain from participating in the management of, investment in, or acquisition of any other line of new motor vehicles or related products, if the franchisee:

(i) maintains a reasonable line of credit for each make or line of vehicles; and

(ii) complies with reasonable capital and facilities requirements of the franchisor;

(e) require a franchisee to prospectively agree to a release, assignment, novation, waiver, or estoppel that would:

(i) relieve a franchisor from any liability, including notice and hearing rights imposed on the franchisor by this chapter; or

(ii) require any controversy between the franchisee and a franchisor to be referred to a third party if the decision by the third party would be binding;

(f) require a franchisee to change the location of the principal place of business of the franchisee's dealership or make any substantial alterations to the dealership premises, if the change or alterations would be unreasonable or cause the franchisee to lose control of the premises or impose any other unreasonable requirement related to the facilities or premises;

(g) coerce or attempt to coerce a franchisee to join, contribute to, or affiliate with an advertising association;

(h) require, coerce, or attempt to coerce a franchisee to enter into an agreement with the franchisor or do any other act that is unfair or prejudicial to the franchisee, by threatening to cancel a franchise agreement or other contractual agreement or understanding existing between the franchisor and franchisee;

(i) adopt, change, establish, enforce, modify, or implement a plan or system for the allocation, scheduling, or delivery of new motor vehicles, parts, or accessories to its franchisees so that the plan or system is not fair, reasonable, and equitable, including a plan or system that imposes a vehicle sales objective, goal, or quota on a franchisee, or that evaluates a franchisee's sales effectiveness or overall sales performance, without providing a reasonable opportunity for the franchisee to acquire the necessary vehicles in a timely manner from the franchisor on commercially reasonable terms;

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

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

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

(A) strict liability;

(B) negligence;

(C) misrepresentation;

(D) express or implied warranty;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(t)(i) except as provided in Subsection (1)(t)(ii) and notwithstanding any other provisions of this chapter:

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

(B) unreasonably require a dealer to:

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

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

(ii) notwithstanding Subsection (1)(t)(i), a recreational vehicle franchisor may split a line-make between motor home and travel trailer products;

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

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

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

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

(iv) operate a motor vehicle service facility;

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

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

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

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

- (iii) advising a potential customer as to the amount that the potential customer should pay for a particular product;
- (x) fail to provide comparable delivery terms to each franchisee for a product of the franchisor, including the time of delivery after the placement of an order by the franchisee;
- (y) if personnel training is provided by the franchisor to its franchisees, unreasonably fail to make that training available to each franchisee on proportionally equal terms;
- (z) condition a franchisee's eligibility to participate in a sales incentive program on the requirement that a franchisee use the financing services of the franchisor or a subsidiary or affiliate of the franchisor for inventory financing;
- (aa) make available for public disclosure, except with the franchisee's permission or under subpoena or in any administrative or judicial proceeding in which the franchisee or the franchisor is a party, any confidential financial information regarding a franchisee, including:
  - (i) monthly financial statements provided by the franchisee;
  - (ii) the profitability of a franchisee; or
  - (iii) the status of a franchisee's inventory of products;
- (bb) use any performance standard, incentive program, or similar method to measure the performance of franchisees unless the standard or program:
  - (i) is designed and administered in a fair, reasonable, and equitable manner;
  - (ii) if based upon a survey, utilizes an actuarially generally acceptable, valid sample; and
  - (iii) is, upon request by a franchisee, disclosed and explained in writing to the franchisee, including:
    - (A) how the standard or program is designed;
    - (B) how the standard or program will be administered; and
    - (C) the types of data that will be collected and used in the application of the standard or program;
- (cc) other than sales to the federal government, directly or indirectly, sell, lease, offer to sell, or offer to lease, a new motor vehicle or any motor vehicle owned by the franchisor, except through a franchised new motor vehicle dealer;



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

(ii) require a franchisee to execute a written waiver of the requirements of Subsection (1)(gg)(i);

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

(ii) through an affiliate, take any action that would otherwise be prohibited under this chapter;

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

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

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

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

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

(iv) the approval of the relocation of an existing franchisee's dealership facility, unless the franchisor pays, and the franchisee voluntarily accepts, additional specified cash consideration to facilitate the relocation; or

(v) the approval of the sale or transfer of a franchise's ownership, unless the franchisor pays, and the buyer voluntarily accepts, additional specified cash consideration to facilitate the sale or transfer;

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

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

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

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

(II) are listed in the current parts catalog;

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

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

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

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

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

(nn) coerce a franchisee to establish, or provide by agreement, program, or incentive provision that a franchisee must establish, a price at which the franchisee is required to sell a product or service that is:

(i) sold in connection with the franchisee's sale of a motor vehicle; and

(ii)(A) in the case of a product, not manufactured, provided, or distributed by the franchisor or an affiliate; or

(B) in the case of a service, not provided by the franchisor or an affiliate;

(oo) except as necessary to comply with a health or safety law, or to comply with a technology requirement compliance with which is necessary to sell or service a motor vehicle that the franchisee is authorized or licensed by the franchisor to sell or service, coerce or require a franchisee, through a penalty or other detriment to the franchisee's business, to:

(i) construct a new dealer facility or materially alter or remodel an existing dealer facility before the date that is 10 years after the date the construction of the new dealer facility at that location was completed, if the construction substantially complied with the franchisor's brand image standards or plans that the franchisor provided or approved; or

(ii) materially alter or remodel an existing dealer facility before the date that is 10 years after the date the previous alteration or remodeling at that location was completed, if the previous alteration or remodeling substantially complied with the franchisor's brand image standards or plans that the franchisor provided or approved; or

(pp) notwithstanding the terms of a franchise agreement providing otherwise and subject to Subsection (14):

(i) coerce or require a franchisee, including by agreement, program, or incentive provision, to purchase a good or service, relating to a facility construction, alteration, or remodel, from a vendor that a franchisor or its affiliate selects, identifies, or designates, without allowing the franchisee, after consultation with the franchisor, to obtain a like good or service of substantially similar quality from a vendor that the franchisee chooses; or

(ii) coerce or require a franchisee, including by agreement, program, or incentive provision, to lease a sign or other franchisor image element from the franchisor or an affiliate without providing the franchisee the right to purchase a sign or other franchisor image element of like kind and quality from a vendor that the franchisee chooses.

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

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

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

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

(4) Subsection (1)(d) does not prevent a franchisor from requiring that a franchisee maintain separate sales personnel or display space.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) as to that line-make of motor vehicle, there are no more than four franchised new motor vehicle dealerships licensed and in operation within the state as of January 1, 2000;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13)(a) As used in Subsection (1)(oo):

(i) "Materially alter":

(A) means to make a material architectural, structural, or aesthetic alteration; and

(B) does not include routine maintenance, such as interior painting, reasonably necessary to keep a dealership facility in attractive condition.

(ii) "Penalty or other detriment" does not include a payment under an agreement, incentive, or program that is offered to but declined or not accepted by a franchisee, even if a similar payment is made to another franchisee in the state that chooses to participate in the agreement, incentive, or program.

(b) Subsection (1)(oo) does not apply to:

(i) a program that provides a lump sum payment to assist a franchisee to make a facility improvement or to pay for a sign or a franchisor image element, if the payment is not dependent on the franchisee selling or purchasing a specific number of new vehicles;

(ii) a program that is in effect on May 8, 2012, with more than one franchisee in the state or to a renewal or modification of the program;

(iii) a program that provides reimbursement to a franchisee on reasonable, written terms for a substantial portion of the franchisee's cost of making a facility improvement or installing signage or a franchisor image element; or

(iv) a written agreement between a franchisor and franchisee, in effect before May 8, 2012, under which a franchisee agrees to construct a new dealer facility.

(14)(a) Subsection (1)(pp)(i) does not apply to:

(i) signage purchased by a franchisee in which the franchisor has an intellectual property right; or

(ii) a good used in a facility construction, alteration, or remodel that is:

(A) a moveable interior display that contains material subject to a franchisor's intellectual property right; or

(B) specifically eligible for reimbursement of over one-half its cost pursuant to a franchisor or distributor program or incentive granted to the franchisee on reasonable, written terms.

(b) Subsection (1)(pp)(ii) may not be construed to allow a franchisee to:

(i) impair or eliminate a franchisor's intellectual property right; or

(ii) erect or maintain a sign that does not conform to the franchisor's reasonable fabrication specifications and intellectual property usage guidelines.

#### Credits

Laws 1996, c. 277, § 8, eff. April 29, 1996; Laws 1997, c. 162, § 7, eff. May 5, 1997; Laws 1998, c. 339, § 2, eff. May 4, 1998; Laws 2000, c. 330, § 1, eff. May 1, 2000; Laws 2002, c. 68, § 3, eff. May 6, 2002; Laws 2005, c. 167, § 2, eff. May 2, 2005; Laws 2005, c. 249, § 7, eff. May 2, 2005; Laws 2008, c. 362, § 4, eff. May 5, 2008; Laws 2009, c. 318, § 2, eff. March 25, 2009; Laws 2010, c. 33, § 2, eff. May 11, 2010; Laws 2011, c. 203, § 1, eff. May 10, 2011; Laws 2012, c. 186, § 1, eff. May 8, 2012.

U.C.A. 1953 § 13-14-201, UT ST § 13-14-201

Current through 2015 First Special Session

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West's Utah Code Annotated  
Title 13. Commerce and Trade  
Chapter 14. New Automobile Franchise Act  
Part 2. Franchises in General

U.C.A. 1953 § 13-14-202

§ 13-14-202. Sale or transfer of ownership

Currentness

(1)(a) The franchisor shall give effect to the change in a franchise agreement as a result of an event listed in Subsection (1)(b):

(i) subject to Subsection 13-14-305(2)(b); and

(ii) unless exempted under Subsection (2).

(b) The franchisor shall give effect to the change in a franchise agreement pursuant to Subsection (1)(a) for the:

(i) sale of a dealership;

(ii) contract for sale of a dealership;

(iii) transfer of ownership of a franchisee's dealership by:

(A) sale;

(B) transfer of the business; or

(C) stock transfer; or

(iv) change in the executive management of the franchisee's dealership.

(2) A franchisor is exempted from the requirements of Subsection (1) if:

(a) the transferee is denied, or would be denied, a new motor vehicle franchisee's license pursuant to Title 41, Chapter 3, Motor Vehicle Business Regulation Act; or



(b) the proposed sale or transfer of the business or change of executive management will be substantially detrimental to the distribution of franchisor's new motor vehicles or to competition in the relevant market area, provided that the franchisor has given written notice to the franchisee within 60 days following receipt by the franchisor of the following:

(i) a copy of the proposed contract of sale or transfer executed by the franchisee and the proposed transferee;

(ii) a completed copy of the franchisor's written application for approval of the change in ownership or executive management, if any, including the information customarily required by the franchisor; and

(iii)(A) a written description of the business experience of the executive management of the transferee in the case of a proposed sale or transfer of the franchisee's business; or

(B) a written description of the business experience of the person involved in the proposed change of the franchisee's executive management in the case of a proposed change of executive management.

(3) For purposes of this section, the refusal by the franchisor to accept a proposed transferee is presumed to be unreasonable and undertaken without good cause if the proposed franchisee:

(a) is of good moral character; and

(b) otherwise meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the franchisor relating to the business experience of executive management and financial capacity to operate and maintain the dealership required by the franchisor of its franchisees.

(4)(a) If after receipt of the written notice from the franchisor described in Subsection (1) the franchisee objects to the franchisor's refusal to accept the proposed sale or transfer of the business or change of executive management, the franchisee may file an application for a hearing before the advisory board up to 60 days from the date of receipt of the notice.

(b) After a hearing and the executive director's receipt of the advisory board's recommendation, the executive director shall determine, and enter an order providing that:

(i) the proposed transferee or change in executive management:

(A) shall be approved; or

(B) may not be approved for specified reasons; or

(ii) a proposed transferee or change in executive management is approved if specific conditions are timely satisfied.

(c)(i) The franchisee shall have the burden of proof with respect to all issues raised by the franchisee's application for a hearing as provided in this section.

(ii) During the pendency of the hearing, the franchise agreement shall continue in effect in accordance with its terms.

(d) The advisory board and the executive director shall expedite, upon written request, any determination sought under this section.

#### Credits

Laws 1996, c. 277, § 9, eff. April 29, 1996; Laws 2005, c. 249, § 8, eff. May 2, 2005.

U.C.A. 1953 § 13-14-202, UT ST § 13-14-202

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U.C.A. 1953 § 13-14-203

§ 13-14-203. Succession to franchise

Currentness

(1)(a) A successor, including a family member of a deceased or incapacitated franchisee, who is designated by the franchisee may succeed the franchisee in the ownership and operation of the dealership under the existing franchise agreement if:

(i) the designated successor gives the franchisor written notice of an intent to succeed to the rights of the deceased or incapacitated franchisee in the franchise agreement within 180 days after the franchisee's death or incapacity;

(ii) the designated successor agrees to be bound by all of the terms and conditions of the franchise agreement; and

(iii) the designated successor meets the criteria generally applied by the franchisor in qualifying franchisees.

(b) A franchisor may refuse to honor the existing franchise agreement with the designated successor only for good cause.

(2) The franchisor may request in writing from a designated successor the personal and financial data that is reasonably necessary to determine whether the existing franchise agreement should be honored. The designated successor shall supply the personal and financial data promptly upon the request.

(3)(a) If a franchisor believes that good cause exists for refusing to honor the requested succession, the franchisor shall serve upon the designated successor notice of its refusal to approve the succession, within 60 days after the later of:

(i) receipt of the notice of the designated successor's intent to succeed the franchisee in the ownership and operation of the dealership; or

(ii) receipt of the requested personal and financial data.

(b) Failure to serve the notice pursuant to Subsection (3)(a) is considered approval of the designated successor and the franchise agreement is considered amended to reflect the approval of the succession the day following the last day the franchisor can serve notice under Subsection (3)(a).

(4) The notice of the franchisor provided in Subsection (3) shall:

- (a) state the specific grounds for the refusal to approve the succession; and
  - (b) that discontinuance of the franchise agreement shall take effect not less than 180 days after the date the notice of refusal is served unless the proposed successor files an application for hearing under Subsection (6).
- (5)(a) This section does not prevent a franchisee from designating a person as the successor by written instrument filed with the franchisor.
- (b) If a franchisee files an instrument under Subsection (5)(a), the instrument governs the succession rights to the management and operation of the dealership subject to the designated successor satisfying the franchisor's qualification requirements as described in this section.
- (6)(a) If a franchisor serves a notice of refusal to a designated successor pursuant to Subsection (3), the designated successor may, within the 180-day period provided in Subsection (4), file with the advisory board an application for a hearing and a determination by the executive director regarding whether good cause exists for the refusal.
- (b) If application for a hearing is timely filed, the franchisor shall continue to honor the franchise agreement until after:
- (i) the requested hearing has been concluded;
  - (ii) a decision is rendered by the executive director; and
  - (iii) the applicable appeal period has expired following a decision by the executive director.

#### Credits

Laws 1996, c. 277, § 10, eff. April 29, 1996; Laws 2002, c. 68, § 4, eff. May 6, 2002; Laws 2005, c. 249, § 9, eff. May 2, 2005.

U.C.A. 1953 § 13-14-203, UT ST § 13-14-203

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U.C.A. 1953 § 13-14-204

§ 13-14-204. Franchisor's obligations related to service--Franchisor audits--Time limits

Currentness

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

- (a) the franchisee's obligations for new motor vehicle preparation, delivery, and warranty service on its products;
- (b) the schedule of compensation to be paid to the franchisee for parts, work, and service; and
- (c) the time allowance for the performance of work and service.

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

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

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

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

(4) A franchisor may not fail to:

(a) perform any warranty obligation;

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

- (c) compensate any of the franchisees for repairs effected by the recall.
- (5) If a franchisor disallows a franchisee's claim for a defective part, alleging that the part is not defective, the franchisor at its option shall:
- (a) return the part to the franchisee at the franchisor's expense; or
  - (b) pay the franchisee the cost of the part.
- (6)(a) A claim made by a franchisee pursuant to this section for labor and parts shall be paid within 30 days after its approval.
- (b) A claim shall be either approved or disapproved by the franchisor within 30 days after receipt of the claim on a form generally used by the franchisor and containing the generally required information. Any claim not specifically disapproved of in writing within 30 days after the receipt of the form is considered to be approved and payment shall be made within 30 days.
- (7) Warranty service audits of franchisee records may be conducted by the franchisor on a reasonable basis.
- (8) A franchisee's claim for warranty compensation may be denied only if:
- (a) the franchisee's claim is based on a nonwarranty repair;
  - (b) the franchisee lacks material documentation for the claim;
  - (c) the franchisee fails to comply materially with specific substantive terms and conditions of the franchisor's warranty compensation program; or
  - (d) the franchisor has a bona fide belief based on competent evidence that the franchisee's claim is intentionally false, fraudulent, or misrepresented.
- (9)(a) Any charge backs for warranty parts or service compensation and service incentives shall only be enforceable for the six-month period immediately following the date the payment for warranty reimbursement was made by the franchisor.
- (b) Except as provided in Subsection (9)(c), all charge backs levied by a franchisor for sales compensation or sales incentives arising out of the sale or lease of a motor vehicle sold or leased by a franchisee shall be compensable only if written notice of the charge back is received by the franchisee within six months immediately following the sooner of:
- (i) the date when the sales incentive program terminates; or

- (ii) the date when payment for the sales compensation or sales incentive was made by the franchisor to the franchisee.
- (c)(i) Upon an audit, the franchisor shall provide the franchisee automated or written notice explaining the amount of and reason for a charge back.
  - (ii) A franchisee may respond in writing within 30 days after the notice under Subsection (9)(c)(i) to:
    - (A) explain a deficiency; or
    - (B) provide materials or information to correct and cure compliance with a provision that is a basis for a charge back.
  - (d) A charge back:
    - (i) may not be based on a nonmaterial error that is clerical in nature; and
    - (ii)(A) shall be based on one or more specific instances of material noncompliance with the franchisor's warranty compensation program or sales incentive program; and
    - (B) may not be extrapolated from a sampling of warranty claims or sales incentive claims.
  - (e) The time limitations of this Subsection (9) do not preclude charge backs for any fraudulent claim that was previously paid.

#### Credits

Laws 1996, c. 277, § 11, eff. April 29, 1996; Laws 1997, c. 162, § 8, eff. May 5, 1997; Laws 2004, c. 123, § 3, eff. May 3, 2004; Laws 2009, c. 318, § 3, eff. March 25, 2009; Laws 2010, c. 33, § 3, eff. May 11, 2010.

U.C.A. 1953 § 13-14-204, UT ST § 13-14-204  
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U.C.A. 1953 § 13-14-205

§ 13-14-205. Liability for damages to motor vehicles in transit--Disclosure required

Currentness

(1)(a) A franchisee is solely liable for damage to a new motor vehicle after delivery by and acceptance from the carrier.

(b) A delivery receipt or bill of lading, or similar document, signed by a franchisee is evidence of a franchisee's acceptance of a new motor vehicle.

(2) A franchisor is liable for all damage to a motor vehicle before delivery to and acceptance by the franchisee, including that time in which the vehicle is in the control of a carrier or transporter.

(3)(a) A franchisor shall disclose to the franchisee any repairs made prior to delivery, except a recreational vehicle franchisor shall disclose to a recreational vehicle franchisee any repair made to the vehicle prior to delivery only if:

(i) the cost of the repair exceeds 3% of the manufacturer's wholesale price, as measured by retail repair costs; or

(ii) the repair is to the exterior sidewalls or roof of the vehicle, and repairs total over \$500.

(b) Replacement of a recreational vehicle's glass, tires, wheels, audio equipment, in-dash components, instrument panels, appliances, furniture, and components other than built-in cabinetry contained in the vehicle's living quarters, is not considered a repair under this subsection if the component replaced has been replaced with original manufacturers parts and materials.

(4) Notwithstanding Subsections (1), (2), and (3), the franchisee is liable for damage to a new motor vehicle after delivery to the carrier or transporter if the franchisee selected:

(a) the method and mode of transportation; and

(b) the carrier or transporter.

Credits

Laws 1996, c. 277, § 12, eff. April 29, 1996; Laws 1997, c. 162, § 9, eff. May 5, 1997.



U.C.A. 1953 § 13-14-205, UT ST § 13-14-205

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U.C.A. 1953 § 13-14-206

§ 13-14-206. Site-control agreements

Currentness

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

(a) may be voluntarily terminated by a franchisee, subject to Subsection (2)(a); and

(b) terminates immediately upon:

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

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

(iii) a franchisor's termination of a franchisee's franchise without cause and against the franchisee's will; or

(iv) the failure of the franchisor or its affiliate to exercise a right of first refusal to purchase the assets or ownership of the franchisee's business when given the opportunity to do so under the franchise or other agreement, subject to the repayment requirements of Subsection (2) if the right of first refusal arises because of the voluntary action of the franchisee.

(2)(a) If a franchisee voluntarily terminates a site-control agreement after the franchisor has paid and the franchisee or other recipient has accepted additional specified cash consideration, the site-control agreement remains valid only until the franchisee or other recipient satisfies the repayment terms specified in Subsection (2)(b).

(b)(i) If the franchisor's additional specified cash consideration was used for the construction of a building or improvement on the property that is the subject of the site-control agreement, the amount of the repayment under Subsection (2)(a):

(A) is based on any repayment terms specified in the site-control agreement, if the parties to the site-control agreement have willingly agreed to the terms; and

(B) may not exceed the market value of the portion of the building or improvement constructed with the additional specified cash consideration paid by the franchisor, after allowing for depreciation based on a market-based depreciation schedule, as determined by an independent appraiser at the request of the franchisee or other recipient.

(ii) If the franchisor's additional specified cash consideration was not used for construction of a building or improvement on the property that is the subject of the site-control agreement, the amount of the repayment under Subsection (2)(a) is an equitable portion of the cash consideration, as determined under any terms specified in the site-control agreement for the equitable repayment following a franchisee's voluntary termination of the agreement.

(c) Immediately upon the repayment under Subsection (2)(b):

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

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

(A) the site-control agreement; and

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

#### Credits

Laws 2010, c. 33, § 4, eff. May 11, 2010.

U.C.A. 1953 § 13-14-206, UT ST § 13-14-206

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U.C.A. 1953 § 13-14-301

§ 13-14-301. Termination or noncontinuance of franchise

Currentness

(1) Except as provided in Subsection (2), a franchisor may not terminate or refuse to continue a franchise agreement or the rights to sell and service a line-make pursuant to a franchise agreement, whether through termination or noncontinuance of the franchise, termination or noncontinuance of a line-make, or otherwise, unless:

(a) the franchisee has received written notice from the franchisor 60 days before the effective date of termination or noncontinuance setting forth the specific grounds for termination or noncontinuance that are relied on by the franchisor as establishing good cause for the termination or noncontinuance;

(b) the franchisor has good cause for termination or noncontinuance; and

(c) the franchisor is willing and able to comply with Section 13-14-307.

(2) A franchisor may terminate a franchise, without complying with Subsection (1):

(a) if the franchisee's license as a new motor vehicle dealer is revoked under Title 41, Chapter 3, Motor Vehicle Business Regulation Act; or

(b) upon a mutual written agreement of the franchisor and franchisee.

(3)(a) At any time before the effective date of termination or noncontinuance of the franchise, the franchisee may apply to the advisory board for a hearing on the merits, and following notice to all parties concerned, the hearing shall be promptly held as provided in Section 13-14-304.

(b) A termination or noncontinuance subject to a hearing under Subsection (3)(a) may not become effective until:

(i) final determination of the issue by the executive director; and

(ii) the applicable appeal period has lapsed.

(4) A franchisee may voluntarily terminate its franchise if the franchisee provides written notice to the franchisor at least 30 days prior to the termination.

**Credits**

Laws 1996, c. 277, § 13, eff. April 29, 1996; Laws 2005, c. 249, § 10, eff. May 2, 2005; Laws 2009, c. 318, § 4, eff. March 25, 2009.

U.C.A. 1953 § 13-14-301, UT ST § 13-14-301

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U.C.A. 1953 § 13-14-302

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

Currentness

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

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

(b) relocate an existing motor vehicle franchisee.

(2) In determining whether a new or relocated dealership is within a relevant market area where the same line-make is represented by an existing dealership, the relevant market area is measured from the closest property boundary line of the existing dealership to the closest property boundary line of the new or relocated dealership.

(3)(a) If a franchisor seeks to take an action listed in Subsection (1), before taking the action, the franchisor shall, in writing, notify the advisory board, the clerk of each affected municipality, and each franchisee in that line-make in the relevant market area.

(b) The notice required by Subsection (3)(a) shall:

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

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

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

(4)(a) Except as provided in Subsection (4)(c), the franchisor shall provide to the advisory board, each affected municipality, and each franchisee in that line-make in the relevant market area the following documents relating to the notice described under Subsection (3):

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

(B) the aggregate economic data under Subsection (4)(a)(i)(A) includes:

(I) motor vehicle registration data;

(II) market penetration data; and

(III) demographic data;

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

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

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

(b) The franchisor shall provide the documents described under Subsection (4)(a) with the notice required under Subsection (3).

(c) The franchisor is not required to disclose any documents under Subsection (4)(a) if:

(i) the documents would be privileged under the Utah Rules of Evidence;

(ii) the documents contain confidential proprietary information;

(iii) the documents are subject to federal or state privacy laws;

(iv) the documents are correspondence between the franchisor and existing franchisees in that line-make in the relevant market area; or

(v) the franchisor reasonably believes that disclosure of the documents would violate:

(A) the privacy of another franchisee; or

(B) Section 13-14-201.

(5)(a) Within 30 days of receiving notice required by Subsection (3), any franchisee that is required to receive notice under Subsection (3) may protest to the advisory board the establishment or relocation of the dealership.

(b) No later than 10 days after the day on which a protest is filed, the department shall inform the franchisor that:

(i) a timely protest has been filed;

(ii) a hearing is required;

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

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

(6) If multiple protests are filed under Subsection (5), hearings may be consolidated to expedite the disposition of the issue.

(7) Subsections (1) through (6) do not apply to a relocation of an existing or successor dealer to a location that is:

(a) within the same county and less than two miles from the existing location of the existing or successor franchisee's dealership; or

(b) further away from a dealership of a franchisee of the same line-make.

(8) For purposes of this section:

(a) relocation of an existing franchisee's dealership in excess of two miles from the dealership's existing location is considered the establishment of an additional franchise in the line-make of the relocating franchise;

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

(c)(i) except as provided in Subsection (8)(c)(ii), the establishment of a temporary additional place of business by a recreational vehicle franchisee is considered the establishment of an additional motor vehicle dealership; and

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



**Credits**

Laws 1996, c. 277, § 14, eff. April 29, 1996; Laws 2000, c. 86, § 3, eff. May 1, 2000; Laws 2004, c. 123, § 4, eff. May 3, 2004; Laws 2004, c. 187, § 1, eff. May 3, 2004; Laws 2005, c. 249, § 11, eff. May 2, 2005; Laws 2010, c. 33, § 5, eff. May 11, 2010; Laws 2011, c. 203, § 2, eff. May 10, 2011; Laws 2015, c. 268, § 4, eff. May 12, 2015.

U.C.A. 1953 § 13-14-302, UT ST § 13-14-302

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U.C.A. 1953 § 13-14-302.5

§ 13-14-302.5. Application of new franchise process with respect to certain terminated franchises

Currentness

(1) As used in this section:

(a) "Covered franchisee":

(i) means a person who was a franchisee under a pre-bankruptcy franchise; and

(ii) is a "covered dealership," as that term is defined in the federal franchise arbitration law.

(b) "Covered franchisor":

(i) means a person who was a franchisor under a pre-bankruptcy franchise; and

(ii) is a "covered manufacturer," as that term is defined in the federal franchise arbitration law.

(c) "Federal franchise arbitration law" means Section 747 of the Consolidated Appropriations Act of 2010, Pub. L. No. 111-117.

(d) "New franchisor":

(i) means a person who is a franchisor of the same line-make as the franchisor under a pre-bankruptcy franchise that has become a terminated franchise; and

(ii) is a "covered manufacturer," as that term is defined in the federal franchise arbitration law.

(e) "Pre-bankruptcy franchise" means a franchise in effect as of October 3, 2008.

(f) "Reinstated franchise" means:

(i) a terminated franchise that a reinstatement order determines should be reinstated, renewed, continued, assigned, or assumed; or

(ii) a franchise that a reinstatement order otherwise determines should be reestablished in or added to the dealer network of a new franchisor in the geographic area where the covered franchisee was located before October 3, 2008.

(g) "Reinstated franchisee" means a covered franchisee:

(i) whose franchise became a terminated franchise with less than 90 days' notice prior to termination; and

(ii) that becomes entitled to a reinstated franchise under a reinstatement order.

(h) "Reinstatement order" means an arbitrator's written determination:

(i) in an arbitration proceeding held under the federal franchise arbitration law; and

(ii)(A) that a terminated franchise should be reinstated, renewed, continued, assigned, or assumed; or

(B) that a covered franchisee should otherwise be reestablished as a franchisee in or added to the dealer network of a new franchisor in the geographic area where the covered franchisee was located before October 3, 2008.

(i) "Terminated franchise" means a covered franchisee's pre-bankruptcy franchise that was terminated or not continued or renewed as a result of a bankruptcy proceeding involving a covered franchisor as the bankruptcy debtor.

(2) The process under Sections 13-14-302, 13-14-304, and 13-14-306 for the issuance of a franchise, including Subsections 13-14-302(5) and (6) and Section 13-14-304 relating to a protest by another franchisee in the line-make in the relevant market area against the establishment or relocation of a franchise, does not apply to a reinstated franchise or reinstated franchisee.

#### Credits

Laws 2010, c. 41, § 1, eff. March 22, 2010; Laws 2015, c. 268, § 5, eff. May 12, 2015.

U.C.A. 1953 § 13-14-302.5, UT ST § 13-14-302.5

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U.C.A. 1953 § 13-14-303

§ 13-14-303. Effect of terminating a franchise

Currentness

If under Section 13-14-301 the executive director permits a franchisor to terminate or not continue a franchise and prohibits the franchisor from entering into a franchise for the sale of new motor vehicles of a line-make in a relevant market area, the franchisor may not enter into a franchise for the sale of new motor vehicles of that line-make in the specified relevant market area unless the executive director determines, after a recommendation by the advisory board, that there has been a change of circumstances so that the relevant market area at the time of the establishment of the new franchise agreement can reasonably be expected to support the new franchisee.

#### Credits

Laws 1996, c. 277, § 15, eff. April 29, 1996; Laws 2005, c. 249, § 12, eff. May 2, 2005.

U.C.A. 1953 § 13-14-303, UT ST § 13-14-303

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U.C.A. 1953 § 13-14-304

§ 13-14-304. Hearing regarding termination, relocation, or establishment of franchises

Currentness

(1)(a) Within 10 days after the day on which the advisory board receives an application from a franchisee under Subsection 13-14-301(3) challenging a franchisor's right to terminate or not continue a franchise, or an application under Section 13-14-302 challenging the establishment or relocation of a franchise, the executive director shall:

(i) enter an order designating the time and place for the hearing; and

(ii) send a copy of the order by certified or registered mail, with return receipt requested, or by any form of reliable delivery through which receipt is verifiable to:

(A) the applicant;

(B) the franchisor; and

(C) if the application involves the establishment of a new franchise or the relocation of an existing dealership, each affected municipality and to each franchisee in the relevant market area engaged in the business of offering to sell or lease the same line-make.

(b) A copy of an order mailed under Subsection (1)(a) shall be addressed to the franchisee at the place where the franchisee's business is conducted.

(2) An affected municipality and any other person who can establish an interest in the application may intervene as a party to the hearing, whether or not that person receives notice.

(3) Any person, including an affected municipality, may appear and testify on the question of the public interest in the termination or noncontinuation of a franchise or in the establishment of an additional franchise.

(4)(a)(i) Any hearing ordered under Subsection (1) shall be conducted no later than 90 days after the day on which the application for hearing is filed.

(ii) A final decision on the challenge shall be made by the executive director no later than 20 days after the day on which the hearing ends.

(b) Failure to comply with the time requirements of Subsection (4)(a) is considered a determination that the franchisor acted with good cause or, in the case of a protest of a proposed establishment or relocation of a dealer, that good cause exists for permitting the proposed additional or relocated new motor vehicle dealer, unless:

(i) the delay is caused by acts of the franchisor or the additional or relocating franchisee; or

(ii) the delay is waived by the parties.

(5) The franchisor has the burden of proof to establish by a preponderance of the evidence that under the provisions of this chapter it should be granted permission to:

(a) terminate or not continue the franchise;

(b) enter into a franchise agreement establishing an additional franchise; or

(c) relocate the dealership of an existing franchisee.

(6) Any party to the hearing may appeal the executive director's final decision in accordance with Title 63G, Chapter 4, Administrative Procedures Act, including the franchisor, an existing franchisee of the same line-make whose relevant market area includes the site of the proposed dealership, or an affected municipality.

#### Credits

Laws 1996, c. 277, § 16, eff. April 29, 1996; Laws 2000, c. 86, § 4, eff. May 1, 2000; Laws 2004, c. 187, § 2, eff. May 3, 2004; Laws 2005, c. 249, § 13, eff. May 2, 2005; Laws 2008, c. 362, § 5, eff. May 5, 2008; Laws 2015, c. 268, § 6, eff. May 12, 2015.

U.C.A. 1953 § 13-14-304, UT ST § 13-14-304

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U.C.A. 1953 § 13-14-305

§ 13-14-305. Evidence to be considered in determining cause to terminate or discontinue

Currentness

(1) In determining whether a franchisor has established good cause for terminating or not continuing a franchise agreement, the advisory board and the executive director shall consider:

- (a) the amount of business transacted by the franchisee, as compared to business available to the franchisee;
- (b) the investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise agreement;
- (c) the permanency of the investment;
- (d) whether it is injurious or beneficial to the public welfare or public interest for the business of the franchisee to be disrupted;
- (e) whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumer for the new motor vehicles handled by the franchisee and has been and is rendering adequate services to the public;
- (f) whether the franchisee refuses to honor warranties of the franchisor under which the warranty service work is to be performed pursuant to the franchise agreement, if the franchisor reimburses the franchisee for the warranty service work;
- (g) failure by the franchisee to substantially comply with those requirements of the franchise agreement that are determined by the advisory board or the executive director to be:
  - (i) reasonable;
  - (ii) material; and
  - (iii) not in violation of this chapter;

(h) evidence of bad faith by the franchisee in complying with those terms of the franchise agreement that are determined by the advisory board or the executive director to be:

(i) reasonable;

(ii) material; and

(iii) not in violation of this chapter;

(i) prior misrepresentation by the franchisee in applying for the franchise;

(j) transfer of any ownership or interest in the franchise without first obtaining approval from the franchisor or the executive director after receipt of the advisory board's recommendation; and

(k) any other factor the advisory board or the executive director consider relevant.

(2) Notwithstanding any franchise agreement, the following do not constitute good cause, as used in this chapter for the termination or noncontinuation of a franchise:

(a) the sole fact that the franchisor desires greater market penetration or more sales or leases of new motor vehicles;

(b) the change of ownership of the franchisee's dealership or the change of executive management of the franchisee's dealership unless the franchisor proves that the change of ownership or executive management will be substantially detrimental to the distribution of the franchisor's motor vehicles; or

(c) the fact that the franchisee has justifiably refused or declined to participate in any conduct covered by Section 13-14-201.

(3) For purposes of Subsection (2), "substantially detrimental" includes the failure of any proposed transferee to meet the objective criteria applied by the franchisor in qualifying franchisees at the time of application.

#### Credits

Laws 1996, c. 277, § 17, eff. April 29, 1996; Laws 2005, c. 249, § 14, eff. May 2, 2005.

U.C.A. 1953 § 13-14-305, UT ST § 13-14-305

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U.C.A. 1953 § 13-14-306

§ 13-14-306. Evidence to be considered in determining  
cause to relocate or establish a new franchised dealership

Currentness

In determining whether a franchisor has established good cause for relocating an existing franchisee or establishing a new franchised dealership for the same line-make in a given relevant market area, the advisory board and the executive director shall consider:

(1) the amount of business transacted by other franchisees of the same line-make in that relevant market area, as compared to business available to the franchisees;

(2) the investment necessarily made and obligations incurred by other franchisees of the same line-make in that relevant market area in the performance of their part of their franchisee agreements;

(3) the permanency of the existing and proposed investment;

(4) whether it is injurious or beneficial to the public welfare or public interest for an additional franchise to be established, including:

(a) the impact on any affected municipality;

(b) population growth trends in any affected municipality;

(c) the number of dealerships in the primary market area of the new or relocated dealership compared to the number of dealerships in each primary market area adjacent to the new or relocated dealership's primary market area; and

(d) how the new or relocated dealership would impact the distance and time that an individual in the new or relocated dealership's primary market area would have to travel to access a dealership in the same line-make as the new or relocated dealership.

(5) whether the franchisees of the same line-make in that relevant market area are providing adequate service to consumers for the motor vehicles of the line-make, which shall include the adequacy of:

- (a) the motor vehicle sale and service facilities;
  - (b) equipment;
  - (c) supply of vehicle parts; and
  - (d) qualified service personnel; and
- (6) whether the relocation or establishment would cause any material negative economic effect on a dealer of the same line-make in the relevant market area.

**Credits**

Laws 1996, c. 277, § 18, eff. April 29, 1996; Laws 2005, c. 249, § 15, eff. May 2, 2005; Laws 2008, c. 362, § 6, eff. May 5, 2008; Laws 2015, c. 268, § 7, eff. May 12, 2015.

U.C.A. 1953 § 13-14-306, UT ST § 13-14-306

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U.C.A. 1953 § 13-14-307

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

Currentness

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

(a) an amount calculated by:

(i) including the franchisee's cost of unsold motor vehicles that:

(A) are in the franchisee's inventory;

(B) were acquired:

(I) from the franchisor; or

(II) in the ordinary course of business from another franchisee of the same line-make ;

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

(D) represent the current model year at the time of termination or noncontinuation , or the two model years immediately before the time of termination or noncontinuation;

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

(iii) adding any charges made by the franchisor, for distribution, delivery, or taxes;

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

- (v) subtracting all allowances paid or credited to the franchisee by the franchisor;
- (b) the franchisee's cost of new and undamaged motor vehicles in the franchisee's inventory of demonstrator vehicles, reduced by a prorated 1% for each 1000 miles over 500 miles registered on the demonstrator vehicle's odometer, except recreational vehicles whose cost shall be reduced by 2% for each 1,000 miles registered on the odometer of demonstrator self-propelled recreational vehicles, exclusive of miles incurred in delivery of the vehicle, and the cost of demonstrator nonself-propelled recreational vehicles shall be reduced by 10% of the franchisee's vehicle cost:
  - (i) plus any charges made by the franchisor for distribution, delivery, or taxes;
  - (ii) plus the franchisee's cost of any accessories added on the vehicles, except only those recreational vehicle accessories that are listed in the franchisor's wholesale product literature as options for that vehicle shall be repurchased; and
  - (iii) less all allowances paid or credited to the franchisee by the franchisor;
- (c) the cost of all new, undamaged, and unsold supplies, parts, and accessories as set forth in the franchisor's catalog at the time of termination or noncontinuation for the supplies, parts, and accessories, less all allowances paid or credited to the franchisee by the franchisor;
- (d) the fair market value, but not less than the franchisee's depreciated acquisition cost of each undamaged sign owned by the franchisee that bears a common name, trade name, or trademark of the franchisor if acquisition of the sign was recommended or required by the franchisor. If a recreational vehicle franchisee has a sign with multiple manufacturers listed, the franchisor is only responsible for its pro rata portion of the sign;
- (e) the fair market value, but not less than the franchisee's depreciated acquisition cost, of all special tools, equipment, and furnishings acquired from the franchisor or sources approved by the franchisor that were required by the franchisor and are in good and usable condition;
- (f) the cost of transporting, handling, packing, and loading motor vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings;
- (g) subject to Subsection (5), reasonable compensation to the franchisee for any cost incurred pertaining to the unexpired term of a lease agreement for the dealership's existing location;
- (h) the negotiated fair market value of the dealership premises, based on the fair market value of the real property, if the dealer opts to sell the dealership premises; and
- (i) compensate the franchisee for the blue sky or goodwill of the dealership, as determined in accordance with the applicable industry standards taking into consideration the effect that the timing of the manufacturer's announcement of discontinuance of a line make has or will have on future profitability of the dealership.

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

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

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

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

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

(a) has clear title to the property; and

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

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

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

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

(b) Subsection (6)(a) may not be construed to impair a contractual right of a terminating or noncontinuing franchisee under a franchise or related agreement with a franchisor or its affiliate, including a right to return unsold parts.

(7) This section does not apply to a termination, cancellation, or nonrenewal of:

(a) a recreational vehicle franchise; or

(b) a line-make by a recreational vehicle franchisor.

#### Credits

Laws 1996, c. 277, § 19, eff. April 29, 1996; Laws 1997, c. 162, § 10, eff. May 5, 1997; Laws 2008, c. 362, § 7, eff. May 5, 2008; Laws 2009, c. 318, § 5, eff. March 25, 2009; Laws 2010, c. 33, § 6, eff. May 11, 2010.

U.C.A. 1953 § 13-14-307, UT ST § 13-14-307  
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U.C.A. 1953 § 13-14-307.5

§ 13-14-307.5. Termination, cancellation, or nonrenewal of a recreational vehicle franchise agreement

Currentness

(1) This section applies only to a recreational vehicle franchisee's termination, cancellation, or nonrenewal of:

(a) a recreational vehicle franchise; or

(b) a recreational vehicle line-make.

(2)(a) A recreational vehicle franchisee may, at any time and with or without good cause, terminate, cancel, or not renew its recreational vehicle franchise agreement or a recreational vehicle line-make by giving 30 days' prior written notice to the recreational vehicle franchisor.

(b) A franchisee has the burden of showing that a termination, cancellation, or nonrenewal is for good cause.

(c) Good cause for a franchisee's termination, cancellation, or nonrenewal is considered to exist if:

(i) the franchisor is convicted of or enters a plea of nolo contendere to a felony;

(ii) the business operations of the franchisor are:

(A) abandoned; or

(B) closed for 10 consecutive business days, unless the closing is due to an act of God, a strike, a labor difficulty, or another cause over which the franchisor has no control;

(iii) the franchisor makes a misrepresentation that materially and adversely affects the business relationship with the recreational vehicle franchisee;

(iv) a material violation of this chapter is not cured within 30 days after the franchisee gives 30 days' written notice of the violation to the recreational vehicle franchisor; or

(v) the recreational vehicle franchisor:

(A) becomes insolvent;

(B) declares bankruptcy; or

(C) makes an assignment for the benefit of creditors.

(3) If the franchisee terminates, cancels, or does not renew the recreational vehicle franchise agreement or line-make for cause, the franchisor shall, at the franchisee's election and within 45 days after termination, cancellation, or nonrenewal, repurchase:

(a)(i) all new, unaltered recreational vehicles, including demonstrators, that the franchisee acquired from the franchisor within 18 months before the date of the termination, cancellation, or nonrenewal; and

(ii) for a repurchase price equal to 100% of the original net invoice cost, including transportation, reduced by:

(A) any applicable rebates and discounts to the franchisee; and

(B) the cost to repair any damage to a repurchased recreational vehicle, if the vehicle is damaged after delivery to the franchisee but before repurchase occurs;

(b)(i) all undamaged accessories and proprietary parts sold by the recreational vehicle franchisor to the franchisee within one year before termination, cancellation, or nonrenewal, if accompanied by the original invoice; and

(ii) for a repurchase price equal to 100% of the original net invoice cost, plus an additional 5% of the original net invoice cost to compensate the franchisee for packing and shipping the returned accessories and parts to the franchisor; and

(c)(i) any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery that:

(A) the franchisee purchased:

(I) from the franchisor within five years before termination, cancellation, or nonrenewal; and

(II) at the franchisor's request or because of the franchisor's requirement; and

(B) are no longer usable in the normal course of the franchisee's ongoing business, as the franchisee reasonably determines; and



(ii) for a repurchase price equal to 100% of the original net cost that the franchisee paid, plus any applicable shipping charges and sales taxes.

(4) A recreational vehicle franchisor shall pay the franchisee all money due under Subsection (3) within 30 days after the franchisor's receipt of the repurchased items.

#### Credits

Laws 2010, c. 33, § 7, eff. May 11, 2010.

U.C.A. 1953 § 13-14-307.5, UT ST § 13-14-307.5  
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U.C.A. 1953 § 13-14-308

§ 13-14-308. Private right of action

Currentness

(1) A franchisee has a private right of action for actual damages and reasonable attorney fees against a franchisor for a violation of this chapter that results in damage to the franchisee.

(2)(a) As used in this Subsection (2):

(i) "New franchisor" has the same meaning as defined in Section 13-14-302.5.

(ii) "Reinstated franchise" has the same meaning as defined in Section 13-14-302.5.

(iii) "Reinstated franchisee" has the same meaning as defined in Section 13-14-302.5.

(b) A reinstated franchisee has a private right of action for actual damages and reasonable attorney fees against a new franchisor if:

(i) the new franchisor:

(A) establishes a new franchisee of the same line-make as a line-make of the reinstated franchisee within the relevant market area of the reinstated franchisee; or

(B) adds a line-make to another franchisor's existing franchisee within the relevant market area of the reinstated franchisee that is the same line-make as a line-make of the reinstated franchisee; and

(ii) the franchisor's action under Subsection (2)(b)(i) causes a substantial diminution in value of the reinstated franchisee's reinstated franchise.

(c) A new franchisor may not be held liable under Subsection (2)(b) based on a franchisee's purchase of another existing franchise, both of which are within the relevant market area of a reinstated franchisee, for the purpose of combining the purchased franchise with the franchise of the purchasing franchisee.

**Credits**

Laws 2008, c. 362, § 8, eff. May 5, 2008; Laws 2010, c. 41, § 2, eff. March 22, 2010.

U.C.A. 1953 § 13-14-308, UT ST § 13-14-308

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U.C.A. 1953 § 13-14-309

§ 13-14-309. Change in distribution plan

Currentness

If there is a change in the plan of distribution of a line make that contemplates a continuation of that line make in the state, a manufacturer or distributor may not directly or indirectly, through the action of any parent of the manufacturer or distributor, subsidiary of the manufacturer or distributor, or common entity cause a termination, cancellation, or nonrenewal of a dealer franchise agreement by a present or previous manufacturer or distributor unless, by the effective date of the action the manufacturer or distributor offers the new motor vehicle dealer whose dealer franchise agreement is terminated, cancelled, or not renewed, a dealer franchise agreement that is substantially similar to the dealer franchise agreement that existed with the previous manufacturer or distributor allowing the dealer to represent the line make under the new plan of distribution.

#### Credits

Laws 2008, c. 362, § 9, eff. May 5, 2008.

U.C.A. 1953 § 13-14-309, UT ST § 13-14-309

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KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

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Title 13. Commerce and Trade  
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Part 3. Restrictions on Termination, Relocation, and Establishment of Franchises

U.C.A. 1953 § 13-14-310

§ 13-14-310. Reporting requirement

Currentness

By November 30 of each year, the advisory board shall submit an annual report to the Business and Labor Interim Committee that, for the 12 months before the day on which the report is submitted, describes:

- (1) the number of applications for a new or relocated dealership that the advisory board received; and
- (2) for each application described in Subsection (1):
  - (a) the number of protests that the advisory board received;
  - (b) whether the advisory board conducted a hearing;
  - (c) if the advisory board conducted a hearing, the disposition of the hearing; and
  - (d) the basis for any disposition described in Subsection (2)(c).

**Credits**

Laws 2015, c. 268, § 8, eff. May 12, 2015.

U.C.A. 1953 § 13-14-310, UT ST § 13-14-310

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U.C.A. 1953 § 13-14-301

§ 13-14-301. Termination or noncontinuance of franchise

Currentness

(1) Except as provided in Subsection (2), a franchisor may not terminate or refuse to continue a franchise agreement or the rights to sell and service a line-make pursuant to a franchise agreement, whether through termination or noncontinuance of the franchise, termination or noncontinuance of a line-make, or otherwise, unless:

(a) the franchisee has received written notice from the franchisor 60 days before the effective date of termination or noncontinuance setting forth the specific grounds for termination or noncontinuance that are relied on by the franchisor as establishing good cause for the termination or noncontinuance;

(b) the franchisor has good cause for termination or noncontinuance; and

(c) the franchisor is willing and able to comply with Section 13-14-307.

(2) A franchisor may terminate a franchise, without complying with Subsection (1):

(a) if the franchisee's license as a new motor vehicle dealer is revoked under Title 41, Chapter 3, Motor Vehicle Business Regulation Act; or

(b) upon a mutual written agreement of the franchisor and franchisee.

(3)(a) At any time before the effective date of termination or noncontinuance of the franchise, the franchisee may apply to the advisory board for a hearing on the merits, and following notice to all parties concerned, the hearing shall be promptly held as provided in Section 13-14-304.

(b) A termination or noncontinuance subject to a hearing under Subsection (3)(a) may not become effective until:

(i) final determination of the issue by the executive director; and

(ii) the applicable appeal period has lapsed.

(4) A franchisee may voluntarily terminate its franchise if the franchisee provides written notice to the franchisor at least 30 days prior to the termination.

**Credits**

Laws 1996, c. 277, § 13, eff. April 29, 1996; Laws 2005, c. 249, § 10, eff. May 2, 2005; Laws 2009, c. 318, § 4, eff. March 25, 2009.

U.C.A. 1953 § 13-14-301, UT ST § 13-14-301

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U.C.A. 1953 § 13-14-302

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

Currentness

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

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

(b) relocate an existing motor vehicle franchisee.

(2) In determining whether a new or relocated dealership is within a relevant market area where the same line-make is represented by an existing dealership, the relevant market area is measured from the closest property boundary line of the existing dealership to the closest property boundary line of the new or relocated dealership.

(3)(a) If a franchisor seeks to take an action listed in Subsection (1), before taking the action, the franchisor shall, in writing, notify the advisory board, the clerk of each affected municipality, and each franchisee in that line-make in the relevant market area.

(b) The notice required by Subsection (3)(a) shall:

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

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

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

(4)(a) Except as provided in Subsection (4)(c), the franchisor shall provide to the advisory board, each affected municipality, and each franchisee in that line-make in the relevant market area the following documents relating to the notice described under Subsection (3):

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



(B) the aggregate economic data under Subsection (4)(a)(i)(A) includes:

(I) motor vehicle registration data;

(II) market penetration data; and

(III) demographic data;

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

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

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

(b) The franchisor shall provide the documents described under Subsection (4)(a) with the notice required under Subsection (3).

(c) The franchisor is not required to disclose any documents under Subsection (4)(a) if:

(i) the documents would be privileged under the Utah Rules of Evidence;

(ii) the documents contain confidential proprietary information;

(iii) the documents are subject to federal or state privacy laws;

(iv) the documents are correspondence between the franchisor and existing franchisees in that line-make in the relevant market area; or

(v) the franchisor reasonably believes that disclosure of the documents would violate:

(A) the privacy of another franchisee; or

(B) Section 13-14-201.

(5)(a) Within 30 days of receiving notice required by Subsection (3), any franchisee that is required to receive notice under Subsection (3) may protest to the advisory board the establishment or relocation of the dealership.

(b) No later than 10 days after the day on which a protest is filed, the department shall inform the franchisor that:

(i) a timely protest has been filed;

(ii) a hearing is required;

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

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

(6) If multiple protests are filed under Subsection (5), hearings may be consolidated to expedite the disposition of the issue.

(7) Subsections (1) through (6) do not apply to a relocation of an existing or successor dealer to a location that is:

(a) within the same county and less than two miles from the existing location of the existing or successor franchisee's dealership; or

(b) further away from a dealership of a franchisee of the same line-make.

(8) For purposes of this section:

(a) relocation of an existing franchisee's dealership in excess of two miles from the dealership's existing location is considered the establishment of an additional franchise in the line-make of the relocating franchise;

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

(c)(i) except as provided in Subsection (8)(c)(ii), the establishment of a temporary additional place of business by a recreational vehicle franchisee is considered the establishment of an additional motor vehicle dealership; and

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

**Credits**

Laws 1996, c. 277, § 14, eff. April 29, 1996; Laws 2000, c. 86, § 3, eff. May 1, 2000; Laws 2004, c. 123, § 4, eff. May 3, 2004; Laws 2004, c. 187, § 1, eff. May 3, 2004; Laws 2005, c. 249, § 11, eff. May 2, 2005; Laws 2010, c. 33, § 5, eff. May 11, 2010; Laws 2011, c. 203, § 2, eff. May 10, 2011; Laws 2015, c. 268, § 4, eff. May 12, 2015.

U.C.A. 1953 § 13-14-302, UT ST § 13-14-302

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U.C.A. 1953 § 13-14-302.5

§ 13-14-302.5. Application of new franchise process with respect to certain terminated franchises

Currentness

(1) As used in this section:

(a) "Covered franchisee":

(i) means a person who was a franchisee under a pre-bankruptcy franchise; and

(ii) is a "covered dealership," as that term is defined in the federal franchise arbitration law.

(b) "Covered franchisor":

(i) means a person who was a franchisor under a pre-bankruptcy franchise; and

(ii) is a "covered manufacturer," as that term is defined in the federal franchise arbitration law.

(c) "Federal franchise arbitration law" means Section 747 of the Consolidated Appropriations Act of 2010, Pub. L. No. 111-117.

(d) "New franchisor":

(i) means a person who is a franchisor of the same line-make as the franchisor under a pre-bankruptcy franchise that has become a terminated franchise; and

(ii) is a "covered manufacturer," as that term is defined in the federal franchise arbitration law.

(e) "Pre-bankruptcy franchise" means a franchise in effect as of October 3, 2008.

(f) "Reinstated franchise" means:

(i) a terminated franchise that a reinstatement order determines should be reinstated, renewed, continued, assigned, or assumed; or

(ii) a franchise that a reinstatement order otherwise determines should be reestablished in or added to the dealer network of a new franchisor in the geographic area where the covered franchisee was located before October 3, 2008.

(g) "Reinstated franchisee" means a covered franchisee:

(i) whose franchise became a terminated franchise with less than 90 days' notice prior to termination; and

(ii) that becomes entitled to a reinstated franchise under a reinstatement order.

(h) "Reinstatement order" means an arbitrator's written determination:

(i) in an arbitration proceeding held under the federal franchise arbitration law; and

(ii)(A) that a terminated franchise should be reinstated, renewed, continued, assigned, or assumed; or

(B) that a covered franchisee should otherwise be reestablished as a franchisee in or added to the dealer network of a new franchisor in the geographic area where the covered franchisee was located before October 3, 2008.

(i) "Terminated franchise" means a covered franchisee's pre-bankruptcy franchise that was terminated or not continued or renewed as a result of a bankruptcy proceeding involving a covered franchisor as the bankruptcy debtor.

(2) The process under Sections 13-14-302, 13-14-304, and 13-14-306 for the issuance of a franchise, including Subsections 13-14-302(5) and (6) and Section 13-14-304 relating to a protest by another franchisee in the line-make in the relevant market area against the establishment or relocation of a franchise, does not apply to a reinstated franchise or reinstated franchisee.

#### Credits

Laws 2010, c. 41, § 1, eff. March 22, 2010; Laws 2015, c. 268, § 5, eff. May 12, 2015.

U.C.A. 1953 § 13-14-302.5, UT ST § 13-14-302.5

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U.C.A. 1953 § 13-14-303

§ 13-14-303. Effect of terminating a franchise

Currentness

If under Section 13-14-301 the executive director permits a franchisor to terminate or not continue a franchise and prohibits the franchisor from entering into a franchise for the sale of new motor vehicles of a line-make in a relevant market area, the franchisor may not enter into a franchise for the sale of new motor vehicles of that line-make in the specified relevant market area unless the executive director determines, after a recommendation by the advisory board, that there has been a change of circumstances so that the relevant market area at the time of the establishment of the new franchise agreement can reasonably be expected to support the new franchisee.

Credits

Laws 1996, c. 277, § 15, eff. April 29, 1996; Laws 2005, c. 249, § 12, eff. May 2, 2005.

U.C.A. 1953 § 13-14-303, UT ST § 13-14-303

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West's Utah Code Annotated

Title 13. Commerce and Trade

Chapter 14. New Automobile Franchise Act

Part 3. Restrictions on Termination, Relocation, and Establishment of Franchises

U.C.A. 1953 § 13-14-304

§ 13-14-304. Hearing regarding termination, relocation, or establishment of franchises

Currentness

(1)(a) Within 10 days after the day on which the advisory board receives an application from a franchisee under Subsection 13-14-301(3) challenging a franchisor's right to terminate or not continue a franchise, or an application under Section 13-14-302 challenging the establishment or relocation of a franchise, the executive director shall:

(i) enter an order designating the time and place for the hearing; and

(ii) send a copy of the order by certified or registered mail, with return receipt requested, or by any form of reliable delivery through which receipt is verifiable to:

(A) the applicant;

(B) the franchisor; and

(C) if the application involves the establishment of a new franchise or the relocation of an existing dealership, each affected municipality and to each franchisee in the relevant market area engaged in the business of offering to sell or lease the same line-make.

(b) A copy of an order mailed under Subsection (1)(a) shall be addressed to the franchisee at the place where the franchisee's business is conducted.

(2) An affected municipality and any other person who can establish an interest in the application may intervene as a party to the hearing, whether or not that person receives notice.

(3) Any person, including an affected municipality, may appear and testify on the question of the public interest in the termination or noncontinuation of a franchise or in the establishment of an additional franchise.

(4)(a)(i) Any hearing ordered under Subsection (1) shall be conducted no later than 90 days after the day on which the application for hearing is filed.

(ii) A final decision on the challenge shall be made by the executive director no later than 20 days after the day on which the hearing ends.

(b) Failure to comply with the time requirements of Subsection (4)(a) is considered a determination that the franchisor acted with good cause or, in the case of a protest of a proposed establishment or relocation of a dealer, that good cause exists for permitting the proposed additional or relocated new motor vehicle dealer, unless:

(i) the delay is caused by acts of the franchisor or the additional or relocating franchisee; or

(ii) the delay is waived by the parties.

(5) The franchisor has the burden of proof to establish by a preponderance of the evidence that under the provisions of this chapter it should be granted permission to:

(a) terminate or not continue the franchise;

(b) enter into a franchise agreement establishing an additional franchise; or

(c) relocate the dealership of an existing franchisee.

(6) Any party to the hearing may appeal the executive director's final decision in accordance with Title 63G, Chapter 4, Administrative Procedures Act, including the franchisor, an existing franchisee of the same line-make whose relevant market area includes the site of the proposed dealership, or an affected municipality.

#### Credits

Laws 1996, c. 277, § 16, eff. April 29, 1996; Laws 2000, c. 86, § 4, eff. May 1, 2000; Laws 2004, c. 187, § 2, eff. May 3, 2004; Laws 2005, c. 249, § 13, eff. May 2, 2005; Laws 2008, c. 362, § 5, eff. May 5, 2008; Laws 2015, c. 268, § 6, eff. May 12, 2015.

U.C.A. 1953 § 13-14-304, UT ST § 13-14-304

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U.C.A. 1953 § 13-14-305

§ 13-14-305. Evidence to be considered in determining cause to terminate or discontinue

Currentness

(1) In determining whether a franchisor has established good cause for terminating or not continuing a franchise agreement, the advisory board and the executive director shall consider:

- (a) the amount of business transacted by the franchisee, as compared to business available to the franchisee;
- (b) the investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise agreement;
- (c) the permanency of the investment;
- (d) whether it is injurious or beneficial to the public welfare or public interest for the business of the franchisee to be disrupted;
- (e) whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumer for the new motor vehicles handled by the franchisee and has been and is rendering adequate services to the public;
- (f) whether the franchisee refuses to honor warranties of the franchisor under which the warranty service work is to be performed pursuant to the franchise agreement, if the franchisor reimburses the franchisee for the warranty service work;
- (g) failure by the franchisee to substantially comply with those requirements of the franchise agreement that are determined by the advisory board or the executive director to be:
  - (i) reasonable;
  - (ii) material; and
  - (iii) not in violation of this chapter;

(h) evidence of bad faith by the franchisee in complying with those terms of the franchise agreement that are determined by the advisory board or the executive director to be:

(i) reasonable;

(ii) material; and

(iii) not in violation of this chapter;

(i) prior misrepresentation by the franchisee in applying for the franchise;

(j) transfer of any ownership or interest in the franchise without first obtaining approval from the franchisor or the executive director after receipt of the advisory board's recommendation; and

(k) any other factor the advisory board or the executive director consider relevant.

(2) Notwithstanding any franchise agreement, the following do not constitute good cause, as used in this chapter for the termination or noncontinuation of a franchise:

(a) the sole fact that the franchisor desires greater market penetration or more sales or leases of new motor vehicles;

(b) the change of ownership of the franchisee's dealership or the change of executive management of the franchisee's dealership unless the franchisor proves that the change of ownership or executive management will be substantially detrimental to the distribution of the franchisor's motor vehicles; or

(c) the fact that the franchisee has justifiably refused or declined to participate in any conduct covered by Section 13-14-201.

(3) For purposes of Subsection (2), "substantially detrimental" includes the failure of any proposed transferee to meet the objective criteria applied by the franchisor in qualifying franchisees at the time of application.

#### Credits

Laws 1996, c. 277, § 17, eff. April 29, 1996; Laws 2005, c. 249, § 14, eff. May 2, 2005.

U.C.A. 1953 § 13-14-305, UT ST § 13-14-305

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U.C.A. 1953 § 13-14-306

§ 13-14-306. Evidence to be considered in determining  
cause to relocate or establish a new franchised dealership

Currentness

In determining whether a franchisor has established good cause for relocating an existing franchisee or establishing a new franchised dealership for the same line-make in a given relevant market area, the advisory board and the executive director shall consider:

(1) the amount of business transacted by other franchisees of the same line-make in that relevant market area, as compared to business available to the franchisees;

(2) the investment necessarily made and obligations incurred by other franchisees of the same line-make in that relevant market area in the performance of their part of their franchisee agreements;

(3) the permanency of the existing and proposed investment;

(4) whether it is injurious or beneficial to the public welfare or public interest for an additional franchise to be established, including:

(a) the impact on any affected municipality;

(b) population growth trends in any affected municipality;

(c) the number of dealerships in the primary market area of the new or relocated dealership compared to the number of dealerships in each primary market area adjacent to the new or relocated dealership's primary market area; and

(d) how the new or relocated dealership would impact the distance and time that an individual in the new or relocated dealership's primary market area would have to travel to access a dealership in the same line-make as the new or relocated dealership.

(5) whether the franchisees of the same line-make in that relevant market area are providing adequate service to consumers for the motor vehicles of the line-make, which shall include the adequacy of:

(a) the motor vehicle sale and service facilities;

(b) equipment;

(c) supply of vehicle parts; and

(d) qualified service personnel; and

(6) whether the relocation or establishment would cause any material negative economic effect on a dealer of the same line-make in the relevant market area.

#### Credits

Laws 1996, c. 277, § 18, eff. April 29, 1996; Laws 2005, c. 249, § 15, eff. May 2, 2005; Laws 2008, c. 362, § 6, eff. May 5, 2008; Laws 2015, c. 268, § 7, eff. May 12, 2015.

U.C.A. 1953 § 13-14-306, UT ST § 13-14-306

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U.C.A. 1953 § 13-14-307

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

Currentness

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

(a) an amount calculated by:

(i) including the franchisee's cost of unsold motor vehicles that:

(A) are in the franchisee's inventory;

(B) were acquired:

(I) from the franchisor; or

(II) in the ordinary course of business from another franchisee of the same line-make ;

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

(D) represent the current model year at the time of termination or noncontinuation , or the two model years immediately before the time of termination or noncontinuation;

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

(iii) adding any charges made by the franchisor, for distribution, delivery, or taxes;

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

- (v) subtracting all allowances paid or credited to the franchisee by the franchisor;
- (b) the franchisee's cost of new and undamaged motor vehicles in the franchisee's inventory of demonstrator vehicles, reduced by a prorated 1% for each 1000 miles over 500 miles registered on the demonstrator vehicle's odometer, except recreational vehicles whose cost shall be reduced by 2% for each 1,000 miles registered on the odometer of demonstrator self-propelled recreational vehicles, exclusive of miles incurred in delivery of the vehicle, and the cost of demonstrator nonself-propelled recreational vehicles shall be reduced by 10% of the franchisee's vehicle cost;
- (i) plus any charges made by the franchisor for distribution, delivery, or taxes;
- (ii) plus the franchisee's cost of any accessories added on the vehicles, except only those recreational vehicle accessories that are listed in the franchisor's wholesale product literature as options for that vehicle shall be repurchased; and
- (iii) less all allowances paid or credited to the franchisee by the franchisor;
- (c) the cost of all new, undamaged, and unsold supplies, parts, and accessories as set forth in the franchisor's catalog at the time of termination or noncontinuation for the supplies, parts, and accessories, less all allowances paid or credited to the franchisee by the franchisor;
- (d) the fair market value, but not less than the franchisee's depreciated acquisition cost of each undamaged sign owned by the franchisee that bears a common name, trade name, or trademark of the franchisor if acquisition of the sign was recommended or required by the franchisor. If a recreational vehicle franchisee has a sign with multiple manufacturers listed, the franchisor is only responsible for its pro rata portion of the sign;
- (e) the fair market value, but not less than the franchisee's depreciated acquisition cost, of all special tools, equipment, and furnishings acquired from the franchisor or sources approved by the franchisor that were required by the franchisor and are in good and usable condition;
- (f) the cost of transporting, handling, packing, and loading motor vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings;
- (g) subject to Subsection (5), reasonable compensation to the franchisee for any cost incurred pertaining to the unexpired term of a lease agreement for the dealership's existing location;
- (h) the negotiated fair market value of the dealership premises, based on the fair market value of the real property, if the dealer opts to sell the dealership premises; and
- (i) compensate the franchisee for the blue sky or goodwill of the dealership, as determined in accordance with the applicable industry standards taking into consideration the effect that the timing of the manufacturer's announcement of discontinuance of a line make has or will have on future profitability of the dealership.

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

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

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

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

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

(a) has clear title to the property; and

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

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

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

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

(b) Subsection (6)(a) may not be construed to impair a contractual right of a terminating or noncontinuing franchisee under a franchise or related agreement with a franchisor or its affiliate, including a right to return unsold parts.

(7) This section does not apply to a termination, cancellation, or nonrenewal of:

(a) a recreational vehicle franchise; or

(b) a line-make by a recreational vehicle franchisor.

#### Credits

Laws 1996, c. 277, § 19, eff. April 29, 1996; Laws 1997, c. 162, § 10, eff. May 5, 1997; Laws 2008, c. 362, § 7, eff. May 5, 2008; Laws 2009, c. 318, § 5, eff. March 25, 2009; Laws 2010, c. 33, § 6, eff. May 11, 2010.

U.C.A. 1953 § 13-14-307, UT ST § 13-14-307  
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U.C.A. 1953 § 13-14-307.5

§ 13-14-307.5. Termination, cancellation, or nonrenewal of a recreational vehicle franchise agreement

Currentness

(1) This section applies only to a recreational vehicle franchisee's termination, cancellation, or nonrenewal of:

(a) a recreational vehicle franchise; or

(b) a recreational vehicle line-make.

(2)(a) A recreational vehicle franchisee may, at any time and with or without good cause, terminate, cancel, or not renew its recreational vehicle franchise agreement or a recreational vehicle line-make by giving 30 days' prior written notice to the recreational vehicle franchisor.

(b) A franchisee has the burden of showing that a termination, cancellation, or nonrenewal is for good cause.

(c) Good cause for a franchisee's termination, cancellation, or nonrenewal is considered to exist if:

(i) the franchisor is convicted of or enters a plea of nolo contendere to a felony;

(ii) the business operations of the franchisor are:

(A) abandoned; or

(B) closed for 10 consecutive business days, unless the closing is due to an act of God, a strike, a labor difficulty, or another cause over which the franchisor has no control;

(iii) the franchisor makes a misrepresentation that materially and adversely affects the business relationship with the recreational vehicle franchisee;

(iv) a material violation of this chapter is not cured within 30 days after the franchisee gives 30 days' written notice of the violation to the recreational vehicle franchisor; or

(v) the recreational vehicle franchisor:

(A) becomes insolvent;

(B) declares bankruptcy; or

(C) makes an assignment for the benefit of creditors.

(3) If the franchisee terminates, cancels, or does not renew the recreational vehicle franchise agreement or line-make for cause, the franchisor shall, at the franchisee's election and within 45 days after termination, cancellation, or nonrenewal, repurchase:

(a)(i) all new, unaltered recreational vehicles, including demonstrators, that the franchisee acquired from the franchisor within 18 months before the date of the termination, cancellation, or nonrenewal; and

(ii) for a repurchase price equal to 100% of the original net invoice cost, including transportation, reduced by:

(A) any applicable rebates and discounts to the franchisee; and

(B) the cost to repair any damage to a repurchased recreational vehicle, if the vehicle is damaged after delivery to the franchisee but before repurchase occurs;

(b)(i) all undamaged accessories and proprietary parts sold by the recreational vehicle franchisor to the franchisee within one year before termination, cancellation, or nonrenewal, if accompanied by the original invoice; and

(ii) for a repurchase price equal to 100% of the original net invoice cost, plus an additional 5% of the original net invoice cost to compensate the franchisee for packing and shipping the returned accessories and parts to the franchisor; and

(c)(i) any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery that:

(A) the franchisee purchased:

(I) from the franchisor within five years before termination, cancellation, or nonrenewal; and

(II) at the franchisor's request or because of the franchisor's requirement; and

(B) are no longer usable in the normal course of the franchisee's ongoing business, as the franchisee reasonably determines; and

(ii) for a repurchase price equal to 100% of the original net cost that the franchisee paid, plus any applicable shipping charges and sales taxes.

(4) A recreational vehicle franchisor shall pay the franchisee all money due under Subsection (3) within 30 days after the franchisor's receipt of the repurchased items.

#### Credits

Laws 2010, c. 33, § 7, eff. May 11, 2010.

U.C.A. 1953 § 13-14-307.5, UT ST § 13-14-307.5

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U.C.A. 1953 § 13-14-308

§ 13-14-308. Private right of action

Currentness

(1) A franchisee has a private right of action for actual damages and reasonable attorney fees against a franchisor for a violation of this chapter that results in damage to the franchisee.

(2)(a) As used in this Subsection (2):

(i) "New franchisor" has the same meaning as defined in Section 13-14-302.5.

(ii) "Reinstated franchise" has the same meaning as defined in Section 13-14-302.5.

(iii) "Reinstated franchisee" has the same meaning as defined in Section 13-14-302.5.

(b) A reinstated franchisee has a private right of action for actual damages and reasonable attorney fees against a new franchisor if:

(i) the new franchisor:

(A) establishes a new franchisee of the same line-make as a line-make of the reinstated franchisee within the relevant market area of the reinstated franchisee; or

(B) adds a line-make to another franchisor's existing franchisee within the relevant market area of the reinstated franchisee that is the same line-make as a line-make of the reinstated franchisee; and

(ii) the franchisor's action under Subsection (2)(b)(i) causes a substantial diminution in value of the reinstated franchisee's reinstated franchise.

(c) A new franchisor may not be held liable under Subsection (2)(b) based on a franchisee's purchase of another existing franchise, both of which are within the relevant market area of a reinstated franchisee, for the purpose of combining the purchased franchise with the franchise of the purchasing franchisee.

**Credits**

Laws 2008, c. 362, § 8, eff. May 5, 2008; Laws 2010, c. 41, § 2, eff. March 22, 2010.

U.C.A. 1953 § 13-14-308, UT ST § 13-14-308

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U.C.A. 1953 § 13-14-309

§ 13-14-309. Change in distribution plan

Currentness

If there is a change in the plan of distribution of a line make that contemplates a continuation of that line make in the state, a manufacturer or distributor may not directly or indirectly, through the action of any parent of the manufacturer or distributor, subsidiary of the manufacturer or distributor, or common entity cause a termination, cancellation, or nonrenewal of a dealer franchise agreement by a present or previous manufacturer or distributor unless, by the effective date of the action the manufacturer or distributor offers the new motor vehicle dealer whose dealer franchise agreement is terminated, cancelled, or not renewed, a dealer franchise agreement that is substantially similar to the dealer franchise agreement that existed with the previous manufacturer or distributor allowing the dealer to represent the line make under the new plan of distribution.

**Credits**

Laws 2008, c. 362, § 9, eff. May 5, 2008.

U.C.A. 1953 § 13-14-309, UT ST § 13-14-309

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KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

West's Utah Code Annotated  
Title 13. Commerce and Trade  
Chapter 14. New Automobile Franchise Act  
Part 3. Restrictions on Termination, Relocation, and Establishment of Franchises

U.C.A. 1953 § 13-14-310

§ 13-14-310. Reporting requirement

Currentness

By November 30 of each year, the advisory board shall submit an annual report to the Business and Labor Interim Committee that, for the 12 months before the day on which the report is submitted, describes:

(1) the number of applications for a new or relocated dealership that the advisory board received; and

(2) for each application described in Subsection (1):

(a) the number of protests that the advisory board received;

(b) whether the advisory board conducted a hearing;

(c) if the advisory board conducted a hearing, the disposition of the hearing; and

(d) the basis for any disposition described in Subsection (2)(c).

#### Credits

Laws 2015, c. 268, § 8, eff. May 12, 2015.

U.C.A. 1953 § 13-14-310, UT ST § 13-14-310

Current through 2015 First Special Session

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## **ADDENDUM C TO BRIEF OF PETITIONER/APPELLANT**

### **RELEVANT PROVISIONS OF THE UTAH CONSTITUTION**



West's Utah Code Annotated  
Constitution of Utah  
Article I. Declaration of Rights

U.C.A. 1953, Const. Art. 1, § 2

Sec. 2. [All political power inherent in the people]

Currentness

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.

Notes of Decisions (67)

U.C.A. 1953, Const. Art. 1, § 2, UT CONST Art. 1, § 2  
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West's Utah Code Annotated Constitution of Utah Article I. Declaration of Rights
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U.C.A. 1953, Const. Art. 1, § 7

Sec. 7. [Due process of law]

Currentness

No person shall be deprived of life, liberty or property, without due process of law.

Notes of Decisions (635)

U.C.A. 1953, Const. Art. 1, § 7, UT CONST Art. 1, § 7

Current through 2015 First Special Session

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West's Utah Code Annotated  
Constitution of Utah  
Article I. Declaration of Rights

U.C.A. 1953, Const. Art. 1, § 15

Sec. 15. [Freedom of speech and of the press--Libel]

Currentness

No law shall be passed to abridge or restrain the freedom of speech or of the press. In all criminal prosecutions for libel the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Notes of Decisions (130)

U.C.A. 1953, Const. Art. 1, § 15, UT CONST Art. 1, § 15

Current through 2015 First Special Session

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West's Utah Code Annotated  
Constitution of Utah  
Article I. Declaration of Rights

U.C.A. 1953, Const. Art. 1, § 24

Sec. 24. [Uniform operation of laws]

Currentness

All laws of a general nature shall have uniform operation.

Notes of Decisions (333)

U.C.A. 1953, Const. Art. 1, § 24, UT CONST Art. 1, § 24

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West's Utah Code Annotated Constitution of Utah Article VI. Legislative Department
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U.C.A. 1953, Const. Art. 6, § 26

Sec. 26. [Private laws forbidden]

Currentness

No private or special law shall be enacted where a general law can be applicable.

**Credits**

Laws 1972, S.J.R. 1.

Notes of Decisions (92)

U.C.A. 1953, Const. Art. 6, § 26, UT CONST Art. 6, § 26

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West's Utah Code Annotated  
Constitution of Utah  
Article XII. Corporations

U.C.A. 1953, Const. Art. 12, § 20

Sec. 20. [Free market system as state policy--Restraint of trade and monopolies prohibited]

Currentness

It is the policy of the state of Utah that a free market system shall govern trade and commerce in this state to promote the dispersion of economic and political power and the general welfare of all the people. Each contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is prohibited. Except as otherwise provided by statute, it is also prohibited for any person to monopolize, attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of trade or commerce.

Credits

Laws 1992, S.J.R. 7, § 18, adopted at election Nov. 3, 1992, eff. Jan. 1, 1993.

Notes of Decisions (27)

U.C.A. 1953, Const. Art. 12, § 20, UT CONST Art. 12, § 20

Current through 2015 First Special Session

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**ADDENDUM D TO BRIEF OF PETITIONER/APPELLANT**

**RELEVANT PROVISIONS OF THE  
UNITED STATES CONSTITUTION**

United States Code Annotated  
Constitution of the United States  
Annotated  
Article I. The Congress (Refs & Annos)

U.S.C.A. Const. Art. I § 8, cl. 1

Section 8, Clause 1. Powers of Congress; Levy of Taxes for  
Common Defense and General Welfare; Uniformity of Taxation

Currentness

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Notes of Decisions (359)

U.S.C.A. Const. Art. I § 8, cl. 1, USCA CONST Art. I § 8, cl. 1

Current through P.L. 114-112 (excluding 114-92, 114-94 and 114-95) approved 12-18-2015

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United States Code Annotated  
Constitution of the United States  
Annotated  
Article I. The Congress (Refs & Annos)

U.S.C.A. Const. Art. I § 8, cl. 3

Section 8, Clause 3. Regulation of Commerce

Currentness

<Notes of Decisions for Constitution Art. I, § 8, cl. 3, Regulation of Commerce, are displayed in two separate documents. Notes of Decisions for subdivisions I to XV are contained in this document. For Notes of Decisions for subdivisions XVI to end, see second document for Constitution Art. I, § 8, cl. 3, Regulation of Commerce.>

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Notes of Decisions (2912)

U.S.C.A. Const. Art. I § 8, cl. 3, USCA CONST Art. I § 8, cl. 3

Current through P.L. 114-112 (excluding 114-92, 114-94 and 114-95) approved 12-18-2015

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United States Code Annotated

Constitution of the United States

Annotated

Amendment I. Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances  
(Refs & Annos)

U.S.C.A. Const. Amend. I-Full text

Amendment I. Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances

Currentness

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

<This amendment is further displayed in three separate documents according to subject matter>

<see USCA Const Amend. I, Religion>

<see USCA Const Amend. I, Speech>

<see USCA Const Amend. I, Assemblage>

U.S.C.A. Const. Amend. I-Full text, USCA CONST Amend. I-Full text

Current through P.L. 114-112 (excluding 114-92, 114-94 and 114-95) approved 12-18-2015

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United States Code Annotated  
Constitution of the United States  
Annotated

Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection;  
Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV-Full Text

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE  
PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION;  
DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

**Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Section 2.** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

**Section 3.** No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

**Section 4.** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

**Section 5.** The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

U.S.C.A. Const. Amend. XIV-Full Text, USCA CONST Amend. XIV-Full Text  
Current through P.L. 114-112 (excluding 114-92, 114-94 and 114-95) approved 12-18-2015

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**ADDENDUM E TO BRIEF OF PETITIONER/APPELLANT**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
FINAL DECISION FROM UTAH STATE TAX  
COMMISSION**

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BEFORE THE UTAH STATE TAX COMMISSION

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TESLA MOTORS UT INC,

Petitioner,

vs.

MOTOR VEHICLE ENFORCEMENT DIVISION,  
UTAH STATE TAX COMMISSION,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND FINAL DECISION**

Appeal No. 15-1170

Account No. 47-2748833

Type: Dealer License Denial

Judge: Phan

**Presiding:**

John Valentine, Commission Chair  
Michael Cragun, Commissioner  
Robert Pero, Commissioner  
Rebecca Rockwell, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: George Riley, Attorney at Law  
Michael Petrogeorge, Attorney at Law  
Elysa Wan, Attorney at Law  
Diarmuid O'Connell, Vice President Business Development, Tesla Motors,  
Inc.

For Respondent: Gale Francis, Assistant Attorney General  
Laron Lind, Assistant Attorney General  
Curtis Stoddard, Assistant Director, Motor Vehicle Enforcement Division

**STATEMENT OF THE CASE**

This matter came before the Utah State Tax Commission for a Formal Hearing on August 14, 2015, in accordance with Utah Code §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT<sup>1</sup>

1. On February 12, 2015, Tesla Motors Utah, Inc. ("Tesla UT") filed an application for a new motor vehicle dealer's license (the "February Application").<sup>2</sup>
2. In letters dated February 26, 2015 and March 2, 2015, Assistant Attorney General Gale Francis notified Tesla UT that the Respondent, Motor Vehicle Enforcement Division ("MVED"), would deny Tesla UT's new motor vehicle dealer's license application.<sup>3</sup>
3. On March 4, 2015, Tesla UT submitted a letter to the MVED and Mr. Francis responding to Mr. Francis' letters of February 26, 2015 and March 2, 2015.<sup>4</sup>
4. On April 13, 2015, Tesla UT submitted a second application to the MVED for a new motor vehicle dealer's license (the "April Application").<sup>5</sup>
5. On May 11, 2015, Tesla UT submitted a letter to the Utah Attorney General's office supporting Tesla UT's April Application.<sup>6</sup>
6. On May 14, 2015, Mr. Francis submitted a letter to the MVED recommending the denial of Tesla UT's April Application for a new motor vehicle dealer's license.<sup>7</sup>
7. On May 21, 2015, the MVED formally denied Tesla UT's application, stating that Tesla UT does not meet the relevant provisions of the Motor Vehicle Business Regulation Act and New Automobile Franchise Act.<sup>8</sup>
8. Curtis Stoddard, Assistant Director of the Motor Vehicle Enforcement Division, testified it was his understanding of the law in effect when he reviewed the application that in order to hold a new motor vehicle dealer license, the dealer had to have a franchise. After review of Tesla UT's February Application he requested legal counsel for MVED to review the matter.
9. Tesla Motors, Inc. ("TMI") is the manufacturer of Tesla motor vehicles. Tesla UT is a wholly owned subsidiary of TMI.<sup>9</sup> TMI had incorporated and registered Tesla Motors UT, Inc., with the State of Utah Department of Commerce on January 6, 2015.<sup>10</sup>

<sup>1</sup> Findings of Fact, Nos. 1-7 are from a Stipulation of Facts entered into between the parties on August 4, 2015, and received into the Formal Hearing record.

<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibit 2.

<sup>4</sup> Exhibit 3.

<sup>5</sup> Exhibit 4.

<sup>6</sup> Exhibit 5.

<sup>7</sup> Exhibit 6.

<sup>8</sup> Exhibit 7.

<sup>9</sup> Exhibit 1, Letter dated February 10, 2015, from Jonathan Chang, Tesla Deputy General Counsel, and Exhibit 3.

<sup>10</sup> Exhibit 1.

10. TMI manufactures all-electric vehicles using technology that is relatively new to perspective purchasers of these vehicles. TMI's vehicles have won awards such as Motor Trend's Car of the Year. TMI's sales and service operations have also received top marks from Consumer Reports.<sup>11</sup>

11. TMI does not sell the vehicles it manufactures through independent franchise dealers anywhere in the world. TMI sells its vehicles using a direct sales and distribution model through retail locations owned by TMI or wholly owned subsidiaries of TMI, via its internet website or over the telephone. TMI currently has 21 stores in the United States.<sup>12</sup> TMI had incorporated Tesla UT, a wholly owned subsidiary to operate and sell vehicles from the Utah retail and service location.

12. On November 15, 2014, TMI entered into an agreement to lease property at 2312 South State Street, in South Salt Lake City, Utah. The lease provided a five year term at a rate of \$15,000 per month and options for renewal. The lease did have some provisions for termination by TMI if it was unable to obtain certain licenses or approvals.<sup>13</sup>

13. TMI incurred significant expense in setting up its retail store location at this address.<sup>14</sup> Photographs submitted of the 2312 South State Street location indicate that the site has a showroom. There is also a charging station and service center at this location.<sup>15</sup>

14. On the Bonded Motor Vehicle Business Application, dated January 15, 2015, to obtain a new motor vehicle dealer license, Tesla UT listed the business address for the vehicle dealership to be 2312 South State Street, South Salt Lake City.<sup>16</sup>

15. The retail store portion has had to remain shuttered due to MVED's denial to issue the license.<sup>17</sup>

16. Effective April 13, 2015, TMI and Tesla UT entered into a "Dealer Agreement" which provided that TMI would sell Tesla vehicles and parts to Tesla UT and Tesla UT would sell the vehicles and parts and provide customer services on behalf of the owners and prospective owners of these products.<sup>18</sup> Tesla UT is referred to as "Dealer" in the Dealer Agreement, which contains in pertinent part the following provisions:

...

<sup>11</sup> Testimony of Diarmuid O'Connell, Vice President for Business Development, Tesla Motors, Inc.

<sup>12</sup> Testimony of Mr. O'Connell.

<sup>13</sup> Exhibit 1, Lease between Tesla Motors, Inc. and 2312 South State Street, LLC. The termination provisions are at Sec. 1.2.3 of the Lease. This order makes no conclusions and offers no opinion regarding whether TMI may terminate the lease under these provisions.

<sup>14</sup> Testimony of Mr. O'Connell.

<sup>15</sup> Exhibit 1.

<sup>16</sup> Exhibit 1.

<sup>17</sup> Testimony of Mr. O'Connell, Exhibit 1.

<sup>18</sup> Exhibit 4.



2. OBLIGATIONS OF TMI. TMI agrees to sell and deliver Tesla Products to Dealer in accordance with the terms and conditions of this Agreement.

3.1 TMI agrees to allocate and sell Tesla Vehicles to Dealer in conformity with TMI sale practices, as determined by TMI from time to time.

3.2 Payment to TMI for Tesla Vehicles is due and will be made by Dealer upon presentation of TMI's invoice for said Tesla Vehicles to Dealer or by such other method as TMI may from time to time adopt. Title and ownership to Tesla Vehicles will remain with TMI until payment in full for such vehicles has actually been received by TMI.

6.2 Throughout the term of this Agreement, Dealer will keep its Dealership Facilities open for business during, and for not less than, the customary business hours of the trade in Dealer's area.

6.5 Dealer will use its best efforts to comply with all reasonable directives and suggestions of TMI in the marketing and sale of Tesla Vehicles, the sale of Tesla Parts and the performance of customer services.

7.1 Dealer will use its best efforts to actively promote the sale of Tesla Products through systematic contacts with existing and potential owners of Tesla Vehicles and through such other reasonable means as TMI may from time to time suggest. Unless otherwise approved in writing by TMI, Dealer shall offer Tesla Products for retail sale at the manufacturer's suggested retail price established by TMI.

10.1 Dealer may not use TMI's trade name, trademark, service mark, or related characteristic (collectively, "Tesla Trademarks") for any purpose or in any manner.

10.2 Dealer acknowledges the exclusive ownership by TMI of, and the validity of, the Tesla Trademarks and all registrations thereof.

10.3 Dealer and TMI hereby agree that nothing in this Agreement shall constitute a grant of a license by TMI to Dealer of Tesla Trademarks. All Tesla Trademarks are the sole and exclusive property of TMI and no license or other right to such Tesla Trademarks is granted or implied hereby.

16.1 Dealer is an independent contractor and is not an agent, servant, employee, legal representative, partner or joint venture of TMI. In addition, Dealer hereby agrees that this Agreement does not form a franchise relationship between Dealer and TMI, and Dealer further agrees that it is not a franchisee (as such term may be defined under UCA 1953 Sec. 13-14-102). TMI hereby agrees that this Agreement does not form a franchise between Dealer and TMI, and TMI further agrees that it is not a franchisor (as such term may be defined under UCA 1953 Sec. 13-14-102).

17. The Dealer Agreement does not provide for the arrangement between TMI and Tesla UT regarding Tesla UT's use of the premises leased by TMI at 2312 South State Street. However, the

agreement does note it is "between Tesla Motors, Inc., a Delaware corporation having its headquarters offices at 3500 Deer Creek Road Palo Alto, CA 94304 ("TMI"), and Tesla Motors UT, Inc., a Delaware corporation and wholly owned subsidiary of TMI, having its principal place of business at 2312 South State Street, South Salt Lake City, Utah 84115." The Tesla name and logo are on the building at 2312 South State Street.<sup>19</sup>

18. Tesla UT's retail operations are based on a direct sales business model, which, based on the testimony of TMI's Vice President of Business Development, Diarmuid O'Connell,<sup>20</sup> is the model that TMI has chosen to utilize to sell its vehicles. Mr. O'Connell testified that TMI does not sell vehicles through independent franchisees anywhere in the world. Mr. O'Connell testified a factor in using this model is that TMI wanted to encourage the adoption and ownership of electric vehicles, and that there was a "huge education requirement" in introducing this new technology. He testified that they have optimized a sales and service model for education, and that it takes roughly 25 days from first contact with a customer to a purchase. Prospective purchasers must first learn about electric vehicle technology in general, then about TMI's product, and then they may decide to purchase.<sup>21</sup>

19. Mr. O'Connell testified that the price for the vehicles, "is transparent and consistent across all markets" and that "the Model S is - - and its various options are the same price everywhere in the world." He goes on to note for example that a Model S in China would be the same price as in the U.S., but they would add on transportation and duty costs.<sup>22</sup> Another factor in TMI's sales model that is different is that their retail locations may have only one vehicle in the showroom and only a couple vehicles there available for test drives. The vehicles are generally custom built to buyers' specifications once the buyer has purchased the vehicle. About 95% of its vehicles are custom built in this manner. He testified the TMI salespeople are not incentivized to "up-sell folks" "into options and features that they may or may not want."<sup>23</sup> Additionally, he states the service department is not operated as a profit center and their successful performance is based on "customer happiness."<sup>24</sup> Another difference he noted between traditional manufacturers is that TMI does not engage in paid advertisements for their vehicles. Additionally, TMI does not buy trade-ins. If a customer wants to trade in another manufacturer's vehicle, they will help facilitate the customer making a contact with a third party business that buys the trade-in.

20. One factor noted at the hearing was the relatively small number of vehicles that TMI manufactured. For example, TMI's first generation product was the Tesla Roadster. TMI produced

<sup>19</sup> Exhibit 1.

<sup>20</sup> Mr. O'Connell's testimony is found at pages 33-74 of the hearing transcript.

<sup>21</sup> Hearing Transcript, pg. 50.

<sup>22</sup> Hearing Transcript, pg. 52.

<sup>23</sup> Hearing Transcript, pg. 55.

<sup>24</sup> Hearing Transcript, pg. 58.

roughly 800 of these vehicles per year from 2008 to 2011. Then TMI developed the Model S, a mid-volume, mid-price sedan, which it launched mid 2012. Mr. O'Connell testified that TMI produced 3,000 of these vehicles in 2012 and he noted, "To fast forward to this year where we will be producing and delivering 50,000, at least 50,000 vehicles to the market."<sup>25</sup>

21. Tesla UT presented expert witness testimony of Fiona Scott Morton, Ph.D.<sup>26</sup> Dr. Morton testified that she had reviewed relevant Utah statutes, the Utah Constitution, publically available information concerning TMI and this dispute, research on retail sales, the dealership model, consumer preferences in the industry, reports that examine the economics of automobile distribution and the impact of franchise laws that restrict distribution. It was Dr. Morton's expert opinion that Tesla's business model, which she referred to as a vertically integrated sales model, was highly effective for a firm producing a new and novel product and a lower-cost alternative to the traditional franchised dealer model. She stated that the manufacturer should be able to choose the business model it uses to sell its vehicles and the free market would let us know if it was a good choice. When asked, she did acknowledge that it was possible for TMI to use a model where it sold vehicles through third party dealers, stating, "If Tesla wanted to do something like that, it – it could. The fact that it's choosing not to and that we're here explaining why it really wants to sell through its own stores suggests to me that there are good reasons why it wants to sell through its own stores."<sup>27</sup>

22. It was Dr. Morton's opinion that prohibiting TMI from selling new vehicles directly to consumers in Utah harms Utah consumers and Utah's economy. She states prohibiting this is anti-competitive, will mean a loss of jobs in Utah, does not benefit the public, and will cause more pollution.

23. Dr. Morton testified that because this was a young firm, it had to be concerned with brand building. It also was attempting to build its brand without paid advertisements. For this reason, TMI had to set up its stores and make the customer service exactly how it wanted it to be done. It was her opinion that TMI's vertically integrated sales model eliminated double marginalization, where both the manufacturer and the dealer add a mark-up. She testified double marginalization may increase the price the consumer pays for the vehicle. She also noted that there were cost effective savings in TMI's brand building approach. TMI had a cost savings because it did not pay for advertisement. There was also a savings to TMI because of its inventory. TMI did not fill up lots with cars in hope they would sell, they instead built the cars that the customers wanted and the vehicles are not constructed until they are purchased, so there is better cash flow.

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<sup>25</sup> Hearing Transcript, pg. 41.

<sup>26</sup> Dr. Morton's Testimony is found at pages 74-120 of the Hearing Transcript.

<sup>27</sup> Hearing Transcript, pg. 108.

24. Dr. Morton testified that the traditional franchised dealer model, where a manufacturer sells its vehicles through numerous franchised dealers, leads to intrabrand competition. The various franchised dealers of a single brand may compete against each other for sales. There is also interbrand competition, or competition between brands. She noted that TMI's vertically integrated sales model would still lead to interbrand competition. Dr. Morton testified in her opinion that the state did not have an interest in requiring a manufacturer to sell through franchised dealers, but did acknowledge the state had an interest in protecting dealers who are currently in the dealership format from predatory actions on the part of their own manufacturers.<sup>28</sup> Dr. Morton was asked during the hearing, "So it's your testimony then that there is a state interest in protecting dealers once you have a dealer and franchise arrangement. But if you always stay as a company store and never go to the franchise model, that's where you then say . . . there is a lack of state interest in protecting that particular model." In response Dr. Morton testified, "I think there's a state interest in protecting that model, in allowing it to enter, but I don't think there's any entity within the Tesla column that needs protecting."<sup>29</sup> To further clarify Dr. Morton was asked if TMI grew in size to the point where franchising became important, if it would be "important to prohibit them from owning company-owned stores," Dr. Morton stated in part . . . "As I said, there is some controversy about how much dealers need to be protected. . . But if Tesla were to grow and decide it wanted this traditional franchise model, then I think under Utah law, the franchise laws would apply to that - that - if Tesla created third-party independent stores that were dealers that were selling its product, then you already have a law in place for regulating that."<sup>30</sup>

25. Tesla UT presented an Expert Witness Statement from Herbert E. Waltner, MBA, BBA, SPA, and CFE, which was received into the record at the Formal Hearing.<sup>31</sup> Mr. Waltner had 25 years of experience in the automotive industry, most of which was focused on automotive retail. In his written testimony he described the retail operations of independent franchise dealerships and compared that to Tesla's direct sales model. It was his testimony that the "traditional dealerships are massive operations, relative to a Tesla store, with high overhead, requiring a high volume of fast-paced vehicle sales and service work to remain profitable."<sup>32</sup> He also states that, "traditional dealerships derive significant profits from sales of service and parts, used vehicles, financing, insurance products and other 'ad-ons.'" He notes that "traditional dealerships rely on manufacturers to fund advertising and incentive programs."<sup>33</sup> He explains that TMI's direct sales model relies on much smaller facilities with low overhead. He states,

<sup>28</sup> Hearing Transcript, pg. 110.

<sup>29</sup> Hearing Transcript, pg. 114.

<sup>30</sup> Hearing Transcript, pg. 115.

<sup>31</sup> Exhibit 11.

<sup>32</sup> Exhibit 11, pg. 2, lines 23-24.

<sup>33</sup> Exhibit 11, pg. 3.



"Because Tesla cars are custom manufactured for each purchaser, Tesla stores generally have only one or two Tesla vehicles on-site for test drives and education purposes."<sup>34</sup> He also indicated that the sales pace is slower in the Tesla stores stating, "The public is often skeptical of electric vehicle technology because it is new and unfamiliar to them. The sale of a Tesla car requires significant time and a low-pressure environment to teach consumers about the operation and benefits of electric vehicles."<sup>35</sup> His written testimony is that traditional dealerships have other profit centers, like the sale of used vehicles, financing or sales of insurance as well as a service and parts department. He notes in contrast that "Tesla derives the vast majority of its profits from the sale of new Tesla cars. Tesla's operations are not based on profits derived from servicing Tesla cars, used vehicle sales, financing or sales of insurance products."<sup>36</sup> It was Mr. Waltner's opinion "that it would not be viable for Tesla to sell its cars to consumers through independent franchised dealerships in Utah."<sup>37</sup>

#### APPLICABLE LAW

Utah law requires a person to obtain a license from MVED before they can sell new or used vehicles in this state. Utah Code Sec. 41-3-201(2) provides:

A person may not act as any of the following without having procured a license issued by the administrator: (a) a dealer; . . .

For purposes of Utah Code Sec. 41-3-201(2) "dealer" is defined at Utah Code 41-3-102(8) to be:

(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 vehicles or off-highway vehicles in any 12-month period.

Utah Code Sec. 41-3-202(1) of the Motor Vehicle Business Regulation Act provides the actions a new motor vehicle dealer license permits a dealer to lawfully perform in this state as follows:

- (1) A new motor vehicle dealer's license permits the licensee to:
  - (a) offer for sale, sell, or exchange new motor vehicles if the licensee possesses a franchise from the manufacturer for the motor vehicle offered for sale, sold or exchanged by the licensee;
  - (b) offer for sale, sell or exchange used motor vehicles;
  - (c) operate as a body shop; and
  - (d) dismantle motor vehicles.

Utah Code Sec. 41-3-210(1) provides actions that are prohibited on the part of a license holder. In relevant part this subsection provides:

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<sup>34</sup> Exhibit 11, pgs. 11-12.

<sup>35</sup> Exhibit 11, pg. 12.

<sup>36</sup> Exhibit 11, pg. 13.

<sup>37</sup> Exhibit 11, pg. 2.

(1) The holder of any license issued under this chapter may not:

...  
(d) violate any law of the state respecting commerce in motor vehicles or any rule respecting commerce in motor vehicles made by any licensing or regulating authority of the state;  
...

(g) engage in a business respecting the selling or exchanging of new or new and used motor vehicles for which he is not licensed, including selling or exchanging a new motor vehicle for which the licensee does not have a franchise ...

The Motor Vehicle Business Regulation Act defines "franchise" at Utah Code Sec. 41-3-102(16) as follows:

"Franchise" means a contract or agreement between a dealer and a manufacturer of new motor vehicles or its distributor or factory branch by which the dealer is authorized to sell any specified make or makes of new motor vehicles.

Under the Motor Vehicle Business Regulation Act, MVED denies issuance of a license at Utah Code Sec. 41-3-209(1) as follows:

If the administrator finds that an applicant is not qualified to receive a license, a license may not be granted.

State laws respecting commerce in motor vehicles are also found in the New Automobile Franchise Act. That Act defines "dealership," "franchise" or "franchise agreement," "franchisee," "franchisor" and "new motor vehicle dealer" at Utah Code Sec. 13-14-102 as follows:

As used in this chapter:

...  
(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 purpose under Section 41-3-204.  
...

(8) (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.

(9) "Franchisee" means a person with whom a franchisor has 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.

(10) "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) an intermediate distributor; and (c) an agent, officer, or field or area representative of the franchisor.

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

The New Automobile Franchise Act lists acts that are prohibited by a franchisor at Utah Code Sec. 13-14-201 as follows:

(1) A franchisor may not in this state:

...  
(u) except as provided Subsection (6), directly or indirectly: (i) own an interest in a new motor vehicle dealer or dealership; (ii) operate or control a new motor vehicle dealer or dealership; (iii) act in the capacity of a new motor vehicle dealer, as defined in Section 13-14-102; or (iv) operate a motor vehicle service facility;

#### DISCUSSION

Regardless of whether the traditional franchise model for sales of new motor vehicles may not be the best business model for TMI or Tesla UT, or whether it is merely not the sales model TMI has decided to employ, the traditional franchise model is the manner under which new motor vehicles may be sold in this state based on longstanding provisions of Utah law. Under the Motor Vehicle Business Regulation Act at Utah Code Sec. 41-3-201, a person may not act as a motor vehicle dealer without obtaining a license from MVED. Utah Code Sec. 41-3-202(1), makes it clear that a new motor vehicle dealer license permits a dealer to lawfully offer for sale, sell, or exchange new motor vehicles if the dealer possesses a "franchise" from the manufacturer for the motor vehicle offered for sale. Additionally, Utah Code Sec. 41-3-210(1)(g) prohibits a licensee from selling a new motor vehicle for which the licensee does not have a "franchise." With these provisions, the current law requires a franchise arrangement for the sale of new motor vehicles, which is consistent with the traditional dealership sales model pursuant to which new motor vehicles have been sold in this state for years.

Under the Motor Vehicle Business Regulation Act, at Utah Code Sec. 41-3-102(16), a "franchise" is defined as, "a contract or agreement between a dealer and a manufacture of new motor vehicles . . . by which the dealer is authorized to sell any specified make or makes of new motor vehicles." When Tesla UT filed its February Application, it did not provide a written agreement or contract. The Division, after consultation with counsel from the Attorney General's Office, concluded that Tesla UT did not have a

franchise and, therefore, found that Tesla UT was not qualified to receive the license. Mr. Gale Francis, Assistant Attorney General, notified Tesla UT on February 26, and March 2, 2015 that MVED would deny the license. Under Utah Code Sec. 41-3-209, if the applicant was found not qualified, MVED may not issue the license.

On April 13, 2015, Tesla UT submitted to MVED a second application for a new motor vehicle dealer's license ("April Application"). With this application Tesla UT included the Dealership Agreement, with an effective date of April 13, 2015.<sup>38</sup> Under this agreement TMI agreed to allocate and sell Tesla vehicles to Tesla UT and Tesla UT agreed to "use its best efforts to comply with all reasonable directives and suggestions of TMI in the marketing and sale of Tesla vehicles."<sup>39</sup> Sec. 16.1 of the Dealership Agreement states, "Dealer [Tesla UT] hereby agrees that this Agreement does not form a franchise relationship between Dealer and TMI, and Dealer further agrees that it is not a franchisee (as such term may be defined under UCA 1953 Sec. 13-14-102). TMI hereby agrees that this Agreement does not form a franchise relationship between Dealer and TMI, and TMI further agrees that it is not a franchisor (as such term may be defined under UCA 1953 Sec. 13-14-102)." After reviewing the April Application with the Dealership Agreement, Mr. Francis recommended the denial of the license and MVED formally denied the license, which denial is the subject of this hearing.

At the hearing in this matter, although Tesla UT had entered into the Dealership Agreement and argued that it provided authorization to Tesla UT to sell Tesla vehicles, it was Tesla UT's position that it was not a "franchise agreement." Therefore, it was Tesla UT's assertion that this agreement was a "franchise" for purposes of the Motor Vehicle Business Regulation Act, but not a "franchise" or "franchise agreement" for purposes of the New Automobile Franchise Act. Tesla UT's counsel point out the agreement specifically states that Tesla UT may not "use TMI's trade name, trademark, service mark or related characteristic."<sup>40</sup> It was not explained at the hearing how this would work with the name and trademark already on the building which Tesla UT had designated as its dealership. Additionally Tesla UT's counsel point to Sec. 16.1 of the Dealership Agreement in which the parties "agree" that the agreement does not form a franchise relationship, that TMI is not a franchisor or Tesla UT a franchisee as that term is defined under Utah Code Sec. 13-14-102.

It appears from review of the arguments presented at the hearing, the reason for the distinction that Tesla UT attempts to make is that under the New Automobile Franchise Act, TMI is prohibited from being a franchisor with Tesla UT as the franchisee, because TMI is the sole, or 100% owner, of Tesla UT.

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<sup>38</sup> Exhibit 4.

<sup>39</sup> Exhibit 4, pg. 3.

<sup>40</sup> Exhibit 4, pg. 4.



As noted by MVED at the hearing, Utah Code Sec. 13-14-201(1)(u) provides, "a franchisor may not in this state. . . directly or indirectly: (i) own an interest in a new motor vehicle dealer or dealership; (ii) operate or control a new motor vehicle dealer or dealership; (iii) act in the capacity of a new motor vehicle dealer . . ." For this reason Tesla UT argues it has a franchise for purposes of the Motor Vehicle Business Regulation Act, but that there is no Franchise Agreement for purposes of the New Automobile Franchise Act. For support of this claim, Tesla UT's counsel makes the assertion that there were different legislative purposes for these two acts. Therefore, he argues they may be subject to differing interpretations. It was his argument that the intent of the Motor Vehicle Business Regulation Act was to protect the public or consumers from unfair practices when they purchased motor vehicles. He argued that the intent of the legislature in adopting the New Automobile Franchise Act was to protect franchisees or dealerships from exploitation by the franchisors. Tesla's counsel also made the point that the two acts are enforced by different government divisions and asserted that MVED did not have the authority to make determinations regarding violations under the New Automobile Franchise Act.

It is MVED's position at the hearing that Tesla UT must have a franchise to sell the Tesla vehicles in order for the Division to issue it a new motor vehicle dealer's license, and if the Dealer Agreement or practice between TMI and Tesla UT rose to the level of a franchise, it violated provisions of the New Automobile Franchise Act because Tesla UT was a wholly owned subsidiary of TMI. MVED argues that Tesla UT must comply with provisions of both the Motor Vehicle Business Regulation Act and the New Automobile Franchise Act, citing for authority Utah Code Sec. 41-3-210(1), which provides that a holder of a license may not violate any law of the state respecting commerce in motor vehicles.

Considering the parties' arguments and the applicable statutory provisions, the New Automobile Franchise Act is certainly made up of laws respecting commerce in motor vehicles. Additionally, the New Automobile Franchise Act specifically references provisions in the Motor Vehicle Business Regulation Act that are relevant in this case. "New motor vehicle dealer,"<sup>41</sup> which is what Tesla UT has requested a license for in Utah, is defined at Utah Code Sec. 13-14-102(17) to be "a person who is licensed under Subsection 41-3-202(1)(a)." Utah Code Sec. 41-3-202(1) provides the actions that may be performed by a "new motor vehicle dealer" which include to sell in this state new motor vehicles if the dealer possesses a franchise from the manufacturer. Based on the plain language of these two acts, MVED's position is correct that MVED must consider provisions of the New Motor Vehicle Franchise Act, and if the issuance

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<sup>41</sup> The definitions of "Dealership" and "Motor Vehicle" provided in the New Automobile Franchise Act, at Utah Code Sec. 13-14-102(5) and (15) respectively also specifically reference provisions in the Motor Vehicle Regulation Act.

of the license would cause TMI and Tesla UT to be in violation of the New Automobile Franchise Act, MVED may not issue the license to Tesla UT.

Tesla UT had argued that the legislative intent and basis of these two acts were distinct and should be interpreted based on that distinct intent. However, in regards to statutory interpretation the courts have noted, “When interpreting statutory language, our primary objective is to ascertain the intent of the legislature. To discern legislative intent, we first look to the plain language of the statute.” *Ivory Homes, Ltd. v. Utah State Tax Comm’n*, 2011 UT 54, ¶ 21, Citing *LPI Services v McGee*, 2009 UT 41, 11, 215 P.3d 135. The Court in *Ivory* goes on to note, “We presume that the legislature used each word advisedly and read each term according to its ordinary and accepted meaning.” However, “our plain language analysis is not so limited that we only inquire into individual words and subsections in isolation; our interpretation of a statute requires that each part of a section be construed in connection with every other part of section so as to produce a *harmonious whole* (Emphasis in Original, Internal Citations Omitted).” *Id.* at 2011 UT 54, ¶ 21. To reach the interpretation requested by Tesla UT, the Commission would have to ignore the plain language of the applicable provisions in both the Motor Vehicle Business Regulation Act and the New Automobile Franchise Act.

Tesla UT has also asserted in this proceeding that its Dealership Agreement is not a franchise agreement, therefore it should not be construed a violation of the New Automobile Franchise Act. TMI and Tesla UT drafted into their agreement a provision that says, “this Agreement does not form a franchise” and “TMI further agrees that it is not a franchisor (as such term may be defined under UCA 1953 Sec 13-14-102).”<sup>42</sup> Parties may not contract away applicable provisions of law they find inconvenient. If the agreement or the relationship between TMI and Tesla UT meet the requirements of “Franchisor,” or “Franchisee” as those terms are defined in Utah Code Sec. 13-14-102, then they are a “Franchisor” and “Franchisee,” for purposes of the New Automobile Franchise Act regardless of their written agreement. Utah Code Sec. 13-14-102(10) defines “franchisor” to be “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 . . . by the franchisor.” Based on the plain language of these provisions,<sup>43</sup> TMI is a Franchisor because TMI is permitting Tesla UT to purchase, sell or offer for sale new Tesla vehicles manufactured by TMI. Utah Code Sec. 13-14-102(9) defines “franchisee” as “a person with whom a

<sup>42</sup> Exhibit 4, Dealer Agreement, pg. 6.

<sup>43</sup> As noted by the Utah Supreme Court in *Macfarlane v. State Tax Comm’n*, 134 P.3d, 1116, 1118 (Utah 2006), “We look first to the plain language of a statute to determine its meaning. Only when there is ambiguity do we look further.” Citing *J. Pochynok Co., Inc. v. Smedsrud*, 2005 UT 39, ¶15, 116 P.3d 353. The Court in *Macfarlane* goes on to state, “Moreover, “[w]hen examining the plain language, we must assume that each term included in the [statute] was used advisedly.” Citing *Carrier v. Salt Lake County*, 2004 UT 98, ¶30, 104 P.3d 1208.

franchisor has agreed with or permits a franchisee to purchase, sell, or offer for sale new motor vehicles manufactured . . . by the franchisor.” Tesla UT is a franchisee under this definition.

As TMI is a “franchisor” its agreement or practice with its franchisee Tesla UT is in violation of Utah Code Sec. 13-14-201(1)(u) because under that section TMI may not in this state directly or indirectly own an interest in a new motor vehicle dealer or dealership. Because the franchisor/franchisee agreement or practice is directly in violation of Utah Code Sec. 13-14-201(1)(u), MVED appropriately determined that Tesla UT did not qualify for the license, as under Utah Code Sec. 41-3-210(1)(d) the holder of a license may not violate any law of the state respecting commerce in motor vehicles. The franchise agreement or practice that Tesla UT is participating in is unequivocally in violation of Utah Code Sec. 13-14-201(1)(u). Based on the agreement or practice between TMI and Tesla UT, and the applicable provisions of the Utah Code which are currently in effect, a new motor vehicle dealer license may not be issued to Tesla UT.

Tesla UT argues that MVED’s decision to deny Tesla UT a new motor vehicle dealer license violates the Constitution of Utah and the U. S. Constitution and argues that the Commission should avoid an unconstitutional interpretation of the statutes by finding that they do not bar the grant of Tesla UT’s license. Tesla UT cites<sup>44</sup> to *Howe v. Tax Commission*, 353 P.2d 468, 470 (Utah 1960) in which the court had stated “[I]f there is doubt or uncertainty as to the meaning to be given to a statute, one of which would make it unconstitutional and the other constitutional, the latter should be given effect.” However, there is not a plain language reading of the applicable laws at issue in this case that would allow a new motor vehicle dealer license to be issued to Tesla UT. Under the Motor Vehicle Regulation Act, Tesla UT needs a franchise in order to sell new motor vehicles in this state. Under the New Automobile Franchise Act, based on the agreement or practice, TMI is a franchisor and the fact that TMI is the sole owner of Tesla UT violates provisions of that act.

Tesla UT argues that MVED’s statutory interpretation violates Utah Const. art. XII, Sec. 20, which provides, “It is the policy of the state of Utah that a free market system shall govern trade and commerce in this state to promote the dispersion of economic and political power and the general welfare of the people.” Tesla UT points out that the Utah Supreme Court has rejected legislative actions that violate this section, citing<sup>45</sup> to *Gen. Elec. Co. v. Thrift Sales, Inc.*, 301 P.2d 741, 751-52 (Utah 1956); *Pride Oil Co. v. Salt Lake Cnty.*, 370 P.2d 355, 355-56 (Utah 1962); *Gammon v Federated Milk*

<sup>44</sup> See Tesla UT’s Prehearing Brief, pg. 20. For the position that the Commission should avoid an unconstitutional interpretation of the statutes, Tesla UT also cites to *Elks Lodges No. 719 (Ogden) and No. 2021 (Moab) v. Department of Alcoholic Beverage Control*, 905 P.2d 1189, 1202 (Utah 1995); *Society of Separationists, Inc. v. Whitehead*, 870 P.2d 916, 920 (Utah 1993); *Chris & Dick’s Lumber & Hardware v. Tax Comm’n*, 791 P.2d 511, 516 (Utah 1990).

<sup>45</sup> Tesla UT’s Prehearing Brief, pg. 20.

*Producers Ass'n, Inc.*, 360 P.2d 1018, 1023 (Utah 1961). It was Tesla UT's argument that MVED's statutory interpretation of the New Motor Vehicle Regulation Act and the New Automobile Franchise Act created artificial state-sanctioned barriers to entry and shielded incumbents from competition.

In addition, Tesla UT argues that MVED's denial of the license violates the substantive Due Process and Equal Protection Clauses of the U.S. Constitution (U.S. Const. Amend. XIV, Sec. 1) and article I, Sections 2, 7, and 24, and Article VI, section 26 of the Utah Constitution. Tesla UT cites<sup>46</sup> to *Washington v. Glucksburg*, 521 U.S. 702, 720 (1997); *Bartell v. Aurora Pub. Schs.*, 263 F.3d 1143, 1149 (10<sup>th</sup> Cir. 2001); *Palisades FruitLands v. Todd*, 279 F.3d 1204, 1210 (10<sup>th</sup> Cir. 2002). It was Tesla UT's contention that denying the license did not serve the purposes of the Motor Vehicle Business Regulation Act or the purposes of the New Automobile Franchise Act and the only purpose served was the economic protection of Utah's current new motor vehicle dealers. Tesla UT asserts that the majority of circuits have rejected pure economic protectionism.<sup>47</sup>

Tesla UT has also made the argument that the denial of the license violates the Commerce Clause of the U.S. Constitution, U.S. Const. art. 1, Sec. 8, cl.3, because it imposes a burden on interstate commerce that is excessive in relation to its local benefits,<sup>48</sup> as well as violates its right to freedom of commercial speech under the First Amendment of the U.S. Constitution and article 1 section 15 of the Utah Constitution.<sup>49</sup>

Regarding the state and federal constitutional arguments provided by Tesla UT, as the law in this matter is clear and unambiguous, this is not similar to the findings in *Howe v. Tax Commission*, 353 P.2d 468, 470 (Utah 1960) where there were two possible meanings, one of which would make it constitutional and the other unconstitutional. The statutes in this case provide that the license should be denied. Tesla UT argues that this is an unconstitutional result and argued the constitutional claims in this proceeding as may be required by the courts if this decision is to be appealed. As the Utah Supreme Court in *Jim Nebeker, dba, Jim Nebeker Trucking v Utah State Tax Comm'n*, 2001 UT 74, ¶18, held, "[t]he district court could not have heard the constitutional claims because Nebeker failed to raise these claims in his initial proceeding before the Tax Commission. Having failed to raise the issue in the initial proceeding,

<sup>46</sup> Tesla UT's Prehearing Brief, pg 26.

<sup>47</sup> In its Prehearing Brief, pg 28, Tesla UT cites to *Compare Craigmiles v. Giles*, 312 F.3d 220, 224 (6<sup>th</sup> Cir. 2002); *St. Joseph Abbey v. Castille*, 712 F.3d 215, 222 (5<sup>th</sup> Cir. 2013); and *Powers v Harris*, 379 F.3d 1208, 1223-25 (10<sup>th</sup> Cir. 2004)

<sup>48</sup> Tesla UT Prehearing Brief, pg. 30, citing *Blue Circle Cement, Inc. v. Bd. Of Cnty. Comm'rs of Cnty. of Rogers*, 27 F.3d 1499, 1511 (10<sup>th</sup> Cir. 1994); *Wendover City v. W. Wendover City*, 404 F. Supp. 2d 1324, 1331 (D. Utah 2005); and *Overstock.com, Inc. v. SmartBargains, Inc.*, No. 040909525, 2006 WL6200977 (Utah Dist. Ct. Dec. 2006).

<sup>49</sup> For this position Tesla UT cites to *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 566 (1980); and *State v. Café Erotica, Inc.*, 270 Ga. 97, 99 (Ga. 1998).



Nebeker waived any opportunity to bring it later either before the district court or in another forum.” In *Nebeker* at ¶15, the Courts had cited to *State Tax Commission v. Wright*, 596 P.2d 634 (Utah 1979) for the position that “[I]t is not for the Tax Commission to determine questions of legality or constitutionality of legislative enactments.” The Nebeker court also noted the decision in *Johnson v. Utah State Ret. Office*, 621 P.2d 1234, 1237 (Utah 1980) in which that court held, “while “[a]dministrative agencies do not generally determine the constitutionality of their organic legislation, . . . the mere introduction of a constitutional issue does not obviate the need for exhaustion of administrative remedies.”

In this appeal both parties recognized that the Utah State Tax Commission does not have authority to find provisions of the Motor Vehicle Business Regulation Act or the New Automobile Franchise Act to be unconstitutional and the arguments were proffered to preserve them on appeal. The expert witness testimony lays out the direct marketing approach that TMI would like to pursue in Utah, how that approach may be more beneficial to TMI than the traditional franchise model given that TMI is a start up, low volume manufacturer of a new technology. The testimony also indicates that while Tesla’s direct marketing approach may create interbrand competition it may reduce intrabrand competition. There were arguments made as to how the acts provided protections deemed to be needed by the Utah legislature for consumers and franchisees. The Commission does not have authority to find the acts as set out by the Utah Legislature to be unconstitutional and so does not issue a conclusion on the constitutional arguments.

#### CONCLUSIONS OF LAW

1. Under Utah Code Sec. 41-3-201(2) and 41-3-202(1) Tesla UT needs a new motor vehicle license to sell new motor vehicles in Utah. Utah Code Secs. 41-3-210(1)(g) and 41-3-202(1) provide that new motor vehicles may only be sold by someone with a franchise. Tesla UT argues its Dealership Agreement provides it adequate authorization to sell Tesla vehicles and meets the requirements of being a franchise under the Motor Vehicle Business Regulation Act.

2. Utah Code Sec. 41-3-210(1) provides a license holder may not violate any law of the state respecting commerce in motor vehicles. The New Automobile Franchise Act contains laws respecting commerce in motor vehicles. Additionally, under the New Automobile Franchise Act, at Utah Code Sec. 13-14-102(17), a “new motor vehicle dealer” is a person who is licensed under the Motor Vehicle Business Regulation Act. Notwithstanding Tesla UT’s argument that the Division lacked authority to consider the New Automobile Franchise Act, the Division was correct in its interpretation that it must consider whether the licensee violates provisions of that Act.

3. Although Tesla UT argues that they met the franchise requirements under the Motor Vehicle Enforcement Act, they argue they did not have a franchise or franchise agreement under the New

Automobile Franchise Act. However, this argument does not have merit. Based on the agreement or practice between TMI and Tesla UT, TMI is a franchisor and Tesla UT a franchisee as those terms are defined at Utah Code Sec. 13-14-102, of the New Automobile Franchise Act. Because TMI is the 100% owner of Tesla UT, this is in violation of Utah Code Sec. 13-14-201(1)(u).

4. Under Utah Code Sec. 41-3-209(1) MVED may not issue a new motor vehicle dealer license to Tesla UT because to do so would immediately put Tesla UT in violation of Utah Code Sec. 13-14-201(1)(u).

5. Tesla UT has made the arguments discussed above that denial of this license is a violation of the Utah Constitution and the U. S. Constitution. If the Commission had found there was a statutory construction that was consistent with constitutional principles and one that was not, the Commission could take into consideration the constitutional arguments as this was noted in *Howe v. Tax Commission*, 353 P.2d 468, 470 (Utah 1960). However, in this appeal the applicable law requires the license be denied. As the Courts have already noted, "[I]t is not for the Tax Commission to determine questions of legality or constitutionality of legislative enactments." *Jim Nebeker Trucking v Utah State Tax Comm'n*, 2001 UT 74, ¶18, citing *State Tax Commission v. Wright*, 596 P.2d 634 (Utah 1979). The Tax Commission has received these arguments and testimony, but should not issue a conclusion on whether provisions of the Motor Vehicle Business Regulation Act or the New Automobile Franchise Act are in violation of the Utah Constitution or the U.S. Constitution.

Based on the foregoing Findings of Fact and Conclusions of law, the Commission should deny Tesla UT's appeal.



Jane Phan  
Administrative Law Judge


DECISION AND ORDER


Based on the foregoing, the Commission upholds MVED's decision to deny Tesla UT a new motor vehicle dealer's license. It is so ordered.


DATED this 20 day of August, 2015.

  
John L. Valentine  
Commission Chair



  
Michael J. Cragun  
Commissioner

  
Robert P. Pero  
Commissioner

  
Rebecca L. Rockwell  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.

**Certificate of Mailing**

**Tesla Motors UT Inc vs. Motor Vehicle Enforcement Division**

**15-1170**

**Motor Vehicle Enforcement Division**

210 North 1950 West  
Salt Lake City, UT 84134

**Respondent**

**Laron J. Lind**

160 East 300 South, 5th Floor  
Salt Lake City, UT 84114

**Attorney for Respondent**

**Gale K. Francis**

160 East 300 South, 5th Floor  
Salt Lake City, UT 84144

**Attorney for Respondent**

**Tesla Motors UT Inc**

3500 Deer Creek Road  
Palo Alto, CA 94304-1317

**Petitioner**

**Francis M Wikstrom**

201 South Main Street, Ste 1800  
Salt Lake City, UT 84111

**Representative**

**Michael P Petrogeorge**

201 South Main Street, Ste 1800  
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**Representative**

**George Riley**

O'Melveny & Meyers  
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**Representative**

**Elysa Q Wan**

O'Melveny & Meyers  
Two Embarcadero Center 28th Floor  
San Francisco, CA 94111

**Representative**

**\*\*\*\* CERTIFICATION \*\*\*\***

I certify on this date I mailed a copy of the foregoing document addressed to each of the above named parties.

**August 28, 2015**

Date

  
Signature



**ADDENDUM F TO BRIEF OF PETITIONER/APPELLANT**

**CORRESPONDENCE BETWEEN TESLA AND  
MVED/ATTORNEY GENERAL'S OFFICE**

# STATE OF UTAH

OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES

ATTORNEY GENERAL

SPENCER E. AUSTIN  
Chief Criminal Deputy

PARKER DOUGLAS  
General Counsel & Chief of Staff

BRIDGET K. ROMANO  
Solicitor General

BRIAN L. TARBET  
Chief Civil Deputy

February 26, 2015

Ingrid Robertson  
Tesla Motors, UT, Inc.  
3500 Deer Creek Rd.  
Palo Alto, CA 94304-1317

**Re: Denial of New Motor Vehicle License Application**

Dear Ms. Robertson:

I have been asked to review the application of Tesla Motors UT, Inc. From prior correspondence to and between you and the Motor Vehicle Enforcement Division ("MVED") of the Utah State Tax Commission I recite the following understanding of facts:

- A. Tesla Motors, UT, Inc. is deemed by you to be a manufacturer of new motor vehicles.
- B. The same business entity is the applicant for the new motor vehicle dealer's license.
- C. Tesla Motors, UT, Inc. has admitted that its business model does not include being a franchisor, will not issue a franchise in the state of Utah, nor does it have franchisees in other states.

With these facts in mind, the MVED has determined that it must deny the application. Reasoning for this conclusion is based on the following rationale.

The Utah Code Ann. Chapter 41-3 is known as the Motor Vehicle Business Regulation Act. It defines a franchise in Section 41-3-201. 41-3-202 defines the types, classes, and scope of license for various licenses issued by the state of Utah. Additionally, Section 41-3-210 lists a number of prohibitions and requirements for the various license holders. Included in those prohibitions, is the following:

- (g) engage in a business respecting the selling or exchanging of new or new and used motor vehicles for which he is not licensed, including selling or exchanging a new motor vehicle for which the licensee does not have a franchise, but this Subsection (1)(g) does not apply to a special equipment dealer who sells a new special equipment motor vehicle with a gross vehicle weight of 12,000 or more pounds after installing special equipment on the motor vehicle; . . . .

Since Tesla Motor UT, Inc. is not a franchisee, MVED cannot issue a license as a new car dealer. MVED sees no prohibition against a license for other classes of licensure, including a used motor vehicle dealer, but it cannot hold a new motor vehicle license. Even if this provision were not found to prohibit issuance of such license, however, there are additional problems found in the Utah Commerce Code, as stated below.

In conjunction with the research on your application, Tesla Motors, UT, Inc. is also licensed by the Utah Department of Commerce. Regulation of franchises and specifically, the New Automobile Franchise Act found in Utah Code Ann., Title 13, Chapter 14 regulates franchise law for new automobile (motor vehicle) franchises. Section 13-14-102(9) defines a franchisor as:

- (9) "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) an intermediate distributor; and
  - (c) an agent, officer, or field or area representative of the franchisor.

Therefore, the conclusion of MVED is that by being a manufacturer, Tesla Motors UT, Inc., is specifically defined by statute as a franchisor, under the Commerce Code.

In Section 13-14-201 (1)(u), there is a prohibition against the following:

- (1) A franchisor may not in this state: . . .
- (u) except as provided in Subsection (6), directly or indirectly:
  - (i) own an interest in a new motor vehicle dealer or

- dealership;
- (ii) operate or control a new motor vehicle dealer or dealership;
- (iii) act in the capacity of a new motor vehicle dealer, as defined in Section 13-14-102; or
- (iv) operate a motor vehicle service facility; . . .

Section 13-14-201(6) (d)(ii) further restricts ownership of a new car dealer:

- (6) (d) Notwithstanding Subsection (1)(u), a franchisor may own, operate, or control a new motor vehicle dealership trading in a line-make of motor vehicle if:
  - (i) as to that line-make of motor vehicle, there are no more than four franchised new motor vehicle dealerships licensed and in operation within the state as of January 1, 2000;
  - (ii) the franchisor does not own directly or indirectly, more than a 45% interest in the dealership;
  - (iii) at the time the franchisor first acquires ownership or assumes operation or control of the dealership, the distance between the dealership thus owned, operated, or controlled and the nearest unaffiliated new motor vehicle dealership trading in the same line-make is not less than 150 miles;
  - (iv) all the franchisor's franchise agreements confer rights on the franchisee to develop and operate as many dealership facilities as the franchisee and franchisor shall agree are appropriate within a defined geographic territory or area; and
  - (v) as of January 1, 2000, no fewer than half of the franchisees of the line-make within the state own and operate two or more dealership facilities in the geographic area covered by the franchise agreement.

Since you have identified the corporation applying for the New Dealer license as NOT being a franchisor, or franchisee, and yet defined it as a manufacturer, the entity is by definition a franchisor under the Commerce Code. Therefore, for all of the reasons above, MVED is prohibited from issuing a license to this business.

Respectfully,



Gale K. Francis

Assistant Attorney General

STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES  
ATTORNEY GENERAL

SPENCER E. AUSTIN  
Chief Criminal Deputy

PARKER DOUGLAS  
General Counsel & Chief of Staff

BRIDGET K. ROMANO  
Solicitor General

BRIAN L. TARBET  
Chief Civil Deputy

March 2, 2015

Ingrid Robertson  
Tesla Motors, UT, Inc.  
3500 Deer Creek Rd.  
Palo Alto, CA 94304-1317

**Re: Addendum to Denial of New Motor Vehicle License Application letter of  
February 26, 2015**

Dear Ms. Robertson:

In light of events concerning the consideration of the application above, and in order to inform all interested individuals of the current law on New Motor Vehicle Dealerships, I've been asked to alert you to other relevant provisions..

Utah Code Ann. Section 41-3-201(2) declares that a license is required to act as a defined licensee. It states: "(2) A person may not act as any of the following without having procured a license issued by the Administrator: . . . (a) a dealer; . . ."

Additionally, Utah Code Ann. Section 41-3-202(1) specifically relates to a "new motor vehicle dealer's license, declaring: "(1) A new motor vehicle dealer's license permits the licensee to: (a) offer for sale, sell, or exchange new motor vehicles if the licensee possesses a franchise from the manufacturer of the motor vehicle offered for sale, sold, or exchanged by the licensee . . ." (Other subdivisions relate to used motor vehicle dealers, body shops, and dismantlers licenses.)

The language of these statutes within the Motor Vehicle Business Regulation Code (Title 41), are also material to the issues raised in the prior letter.

Respectfully,

Gale K. Francis  
Assistant Attorney General

GKF/se



March 4, 2015

**VIA FEDEX AND EMAIL**

Office of the Attorney General  
State of Utah  
160 East 300 South, 5<sup>th</sup> Floor  
Salt Lake City, UT 84114-0874  
Attn: Gale Francis (gfrancis@utah.gov)

**Re: Tesla Motors UT, Inc. Dealer License Application**

Dear Mr. Francis,

I am in receipt of your letters dated February 26, 2015 and March 2, 2015 regarding Tesla Motors UT, Inc.'s ("Tesla UT") new motor vehicle dealer license application. We have reviewed the law on the matter, including the statutes you cite in your letters, and we disagree with the preliminary conclusions that you have made regarding our ability to be licensed as a new motor vehicle dealer in Utah. This letter will detail our analysis of the relevant statutes and their proper interpretation as applied to Tesla. We ask that you reconsider your stated position in light of the arguments presented and allow Tesla UT to be licensed as a new motor vehicle dealer. This is the legally correct result and is consistent with how virtually every other state with a similar statutory framework has looked at the issue. In addition, denial of our license application would be anti-business, anti-free market, and anti-environment.

**Background**

Tesla Motors, Inc. designs and manufactures the world's most advanced electric vehicles. Tesla has won multiple industry awards for the capabilities of its vehicles as well as for its customer focused sales and service operations. The Tesla Model S has won *Motor Trend's Car of the Year* among numerous other awards, and our sales and service operations have received top marks from various surveys and reviews by *Consumer Reports*, beating out *all* traditional franchised dealers and independent shops.

Most importantly to the legal analysis, Tesla does not have any independent franchise dealers anywhere in the world. This is the key fact that distinguishes us from virtually all other car

manufacturers, and is the central reason why the direct sale prohibition does not apply to a non-franchising manufacturer like Tesla.

We sell our cars directly to consumers because the traditional franchise dealer model does not make sense for our products or our business model. Traditional franchise dealers survive on high volume sales and rely on significant revenue from used car sales and service. Tesla, on the other hand, is a relatively small volume manufacturer that does not generate any significant revenue from used car sales or from service. In fact, Tesla operates its service department as a non-profit operation under the principle that it should not profit from having a vehicle that requires repair. Even regular or scheduled maintenance is minimal with electric vehicles, which do not require oil and other fluid changes, and only require an annual inspection. There is a plethora of other reasons why the traditional franchise dealer model does not make sense for Tesla or consumers, but the overarching reason is that Tesla would not survive if it were forced to sell vehicles through franchise dealers.

Tesla's direct-to-consumer distribution model is new for the U.S. motor vehicle industry; an industry that has been dominated by century old manufacturers that had the freedom to choose a distribution method (they chose the franchise dealer system) that made sense for their business. While statutes have been enacted over time with the franchise model in mind, none of them forecloses the ability of a manufacturer that *does not have any franchises* from selling its products. In fact, nowhere in Utah law does it require that all new motor vehicles must be sold and purchased through franchise dealers.

#### **Motor Vehicle Business Regulation Act**

The Motor Vehicle Business Regulation Act (U.C.A. § 41-3-201, et. seq.) (the "BRA") is a licensing statute that grants regulatory authority to the Motor Vehicle Enforcement Division (the "MVED") and provides a framework for regulation. The overriding purpose of the BRA is to provide for licensure of certain business activities so as to monitor and regulate the activities to prevent fraud and other untoward acts on consumers. This is clear in the provisions of the BRA which regulate, for example, disclosures for the sale of vehicles; criminal background checks and training for salespersons; bonds for surety to fulfill obligations; advertising; and titling and registration of vehicles. These provisions are enacted for the purpose of consumer protection and should be liberally construed to effect such purpose.

In your letters, you reference U.C.A. §§ 41-3-202(1)(a), and 210(1)(g) for the proposition that new vehicles must be sold through a franchise dealer. However, keeping the BRA's purpose in mind, it is clear that the franchise requirement for licensure is for the purpose of ensuring that privity exists between the manufacturer (the party that will be ultimately responsible for the vehicle and warranty) and the dealer (the party purporting to sell "authorized" goods). The requirement is clearly intended to prevent a dealership from selling a "new motor vehicle" when it has not been authorized by the manufacturer to sell its vehicles. That relationship and assurance of the legitimacy of its products are no



stronger than if the manufacturer *is* the seller of the vehicle, in which case there is no issue of an unscrupulous dealer selling gray market, unauthorized goods.

It would be an illogical result for Utah consumers, who the BRA is intended to protect, to be prohibited from purchasing vehicles directly from a manufacturer where there is no question of authenticity and manufacturer support. It would also be illogical that Tesla would not be able to subject itself to the MVED's regulatory authority and that Utah consumers would instead have to purchase Tesla vehicles from out-of-state without the protections of Utah law and the MVED. The BRA's purpose is to protect consumers, not to create a vehicle distribution monopoly for franchise dealers, and it should be interpreted to give effect to its purpose.

Even assuming that a franchise is required by the BRA, Tesla UT's application should satisfy the requirement. "Franchise" is defined under the BRA as "a contract or agreement between a dealer and a manufacturer of new motor vehicles or its distributor or factory branch by which the dealer is authorized to sell any specified make or makes of new motor vehicles." (U.C.A. § 41-3-102(16)). In its corporate structure, Tesla Motors, Inc. is the manufacturer of Tesla motor vehicles. Tesla UT, a wholly owned subsidiary of Tesla Motors, Inc., is the dealer (as defined under the BRA) that would be selling and servicing vehicles in Utah. As a wholly owned subsidiary of Tesla Motors, Inc., Tesla UT is an authorized dealer of Tesla vehicles, thereby satisfying the BRA's requirement.

Before submitting our dealer license application, we had initial conversations with the MVED in which MVED personnel had agreed that we could meet all requirements for licensure. Relying on MVED's advice, Tesla invested significant amounts in committing to a long-term lease and construction of a facility in South Salt Lake City. If MVED has now changed its opinion on our ability to be licensed, we are willing to put in place an agreement between Tesla Motors, Inc. and Tesla UT (two distinct and separate entities), such that the "franchise" requirement under the BRA would be satisfied in all respects under your new interpretation. While we maintain our position that such an agreement is unnecessary for the reasons outlined above, we can establish the relationship to satisfy the purported dealer licensing requirement.

#### **New Automobile Franchise Act**

In your February 26 letter, you cite the New Automobile Franchise Act (the "AFA") for the propositions that: (1) Tesla is a "franchisor" under the AFA (referencing U.C.A. § 13-14-102(9)); and (2) that Tesla cannot sell vehicles except through a franchise dealer (referencing U.C.A. §§ 13-14-201(1)(u) and 201(6)(d)(ii)). This, however, is not the proper application of the AFA to Tesla. In fact, the AFA does not apply to Tesla and its direct-to-consumer business model.

Given that Tesla does not have any independent franchise dealers anywhere, the AFA simply does not apply. The AFA governs relationships between *franchisors* and their respective *franchisees*. Its



provisions dictate what the parties can and cannot do with respect to each other. This is codified in the statute itself, which explicitly states as follows:

The Legislature finds that:

- (a) The distribution and sales of new motor vehicles through franchise arrangements in the state vitally affects the general economy of the state, the public interest, and the public welfare. A substantial inequality of bargaining power between motor vehicle franchisors and motor vehicle franchisees enables a franchisor:
- (i) To compel a franchisee to execute agreements that contain terms and conditions that a franchisee generally would not be agreed to absent the compulsion and duress that arise out of the inequality of bargaining power; and
  - (ii) In some cases to terminate a franchise without good cause, or to force a franchisee out of business by the use of unfair practices.
- (b) Termination of franchises, without good cause or by unfair means:
- (i) diminishes competition and, as a result leads to higher retail prices and fewer purchase options;
  - (ii) adversely affects communities that depend on a franchisee to make available motor vehicles for sale or lease and to provide warranty work and other services related to vehicles; and
  - (iii) undercuts expectations of consumers concerning the availability of future services including warranty work from the franchisee.
- (c) To promote the public welfare and in the exercise of the state's police powers, it is necessary to establish statutory guidelines regulating the relationship between franchisors and franchisees in the motor vehicle industry.

U.C.A. § 13-14-101 (emphasis added).

It is clear from the stated "Legislative Purpose" that the AFA was enacted to address the "substantial inequality of bargaining power" between franchisors and franchisees and to prevent abuses of franchisees by their respective franchisors. Tesla does not have any independent franchise dealers anywhere. As such, there is no "bargaining power" to be equalized. Tesla's business model does not fall within the explicit scope of the AFA. Even if an arrangement were made between Tesla Motors, Inc. and its wholly owned subsidiary, Tesla UT, that relationship would not be governed by the AFA. Even in that relationship, there is no inequality in bargaining power and no concern regarding abuse of a franchisee because Tesla UT is wholly owned and controlled by Tesla Motors, Inc.

It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme. *Util. Air Regulatory Grp. V. E.P.A.*, 134 S. Ct. 2427, 2411, 189 L. Ed. 2d 372 (2014). Here, the Legislature has expressly codified the purpose of the AFA and, in the context of the overall statutory scheme, it cannot apply to Tesla. Indeed,

*each and every* section of the AFA governs the relationship between a franchisor and its independent franchise dealer. That relationship is fundamental to the provisions of the AFA, which cannot operate outside of that scope. For example:

- § 13-14-201 – Prohibited Acts: Lists numerous acts that a *franchisor* cannot do to its franchisee, such as:
  - Requiring a franchisee to order or take delivery of a vehicle or other item not required by law;
  - Forcing a franchisee to participate in an advertising campaign;
  - Requiring a franchisee to change capital structure;
  - Requiring a release of liability from the franchisee;
  - Requiring third party dispute resolution for conflicts with a franchisee;
  - Requiring a franchisee to change location;
  - Requiring a franchisee to join an advertising association;
  - Threatening to cancel an agreement to coerce franchisee to act;
  - Adopting objectives, goals and quotas that cannot be reasonably met by the franchisee;
  - Increasing pricing on existing franchisee orders;
  - Failing to indemnify a franchisee;
  - Threatening franchisee and its right to protest;
  - Failing to ship product to franchisee;
  - Requiring franchisee to underutilize assets;
  - Failing to include certain provisions in franchise agreements;
  - Competing against the franchisee;
  - Failing to provide a written franchise agreement;
  - Selectively allocating inventory to other franchisees;
  - Failing to timely reimburse franchisees for certain costs;
  - Selectively directing potential customer to other franchisees;
  - ... *the list continues on from subparagraph (a) to (pp)*...
- §§ 13-14-202 and 203 – deal with the sale or transfer of ownership of a franchise.
- § 13-14-204 – deal with franchisors obligations for service and for audits of franchisees.
- § 13-14-205 – assigns liability for vehicles in transit as between a franchisor and franchisee.
- § 13-14-206 – deals with site control agreements between a franchisor and its franchisee.
- § 13-14-301 – deals with termination of franchises.
- § 13-14-302 – deals with relocation of franchises.
- § 13-14-302.5 – deals with new franchises.
- §§ 13-14-304 to 307.5 – deal with termination of franchises.
- §§ 13-14-308 – deals with a franchisee's private right of action against its franchisor.

- § 13-14-309 – deals with changes in distribution plans between a franchisor and a franchisee.

In this sea of provisions that make up the AFA, *every* provision requires the existence of a franchisor and an independent franchisee. Without that relationship, the provisions do not make sense. Given the context of the AFA and taking into account the entire statutory scheme, it would be wholly inapposite to interpret any provision to apply outside of the independent franchise relationship. Indeed, the codified legislative purpose in U.C.A. § 13-14-101 confirms this and leaves no room for doubt.

Even if you assume that the AFA applies outside of the franchise relationship (which it does not), Tesla does not fall under its purview. In your letter, you conclude that Tesla UT is a “franchisor” as defined under the AFA, U.C.A. § 13-14-102(9). This is not correct. The plain language of the statute does not dictate that every manufacturer is a “franchisor.” A “franchisor” is defined as:

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) An intermediate distributor; and
- (c) An agent, officer, or field or area representative of the franchisor.

U.C.A. § 13-14-102(9) (emphasis added).

In your letter, you state that because the term “manufacturer” is listed in subparagraph (a) that Tesla is therefore a “franchisor,” however, such a reading is clearly wrong because it ignores the definition that requires that a franchise relationship exist. Additionally, as the words “... and includes:” plainly indicate, the listing of the parties under (a), (b) and (c) are *examples* of what would contemplate a franchisor, but this of course does not undo the expressly stated requirement in the definition that a franchise relationship must exist in order for an entity to be a franchisor. Moreover, saying that a manufacturer *is* automatically a franchisor is like defining a species as an entire phylum. A franchisor is one possible type of manufacturer, but not all manufacturers are franchisors. As such, Tesla’s business model should not and cannot be shoehorned into the auspices of the AFA.

Your letter further states that the AFA, through U.C.A. §§ 13-14-201(1)(u) and 201(6)(d)(ii), creates a distribution monopoly for franchise dealers. But, applying the fundamental canons of statutory construction, it is clear that this is not the proper interpretation. As described above, the purpose of the AFA is to address the “inequality in bargaining power between motor vehicle franchisors and motor vehicle franchisees.” (U.C.A. U.C.A. § 13-14-101). This codified purpose of the AFA is critical to the analysis of its applicability to Tesla, which does not have any independent franchise dealers. The sections you cite in your letter address *interbrand* competition only—that is, competition between a franchisor and its affiliated franchisee. The entire AFA regulates only this relationship. It would only apply to Tesla if Tesla had an independent franchise dealer for which there could exist an inequality in

bargaining power. Where no inequality exists, the AFA serves no purpose and cannot be applied to Tesla. The AFA should not be interpreted to regulate anything outside the independent franchise relationship. Its limited scope is expressly stated in the first section of the AFA.

### Precedent

Tesla's interpretation of these statutes is not a unique or unfounded interpretation. In fact, statutes similar to the AFA and BRA have been tried and litigated in Tesla's favor. There are no courts that have ruled to the contrary.

In Massachusetts, a similar matter was resolved at the Supreme Judicial Court, the highest court of the state. Massachusetts has laws that are very similar to Utah's AFA and BRA, and Tesla was sued by the Massachusetts State Automobile Dealers Association for the alleged violation of Massachusetts' AFA equivalent. The lawsuit was dismissed and affirmed by the Supreme Judicial Court. In ruling in favor of Tesla, the Court held that:

"[Massachusetts' AFA equivalent] is aimed primarily at protecting motor vehicle dealers from injury caused by the unfair business practices of manufacturers and distributors with which they are associated, generally in a franchise relationship."

*MSADA v. Tesla Motors MA, Inc.*, 469 Mass. 675, 676 (2014).

"It would be anomalous to find, within this detailed list of rights and protections that are conferred on dealers vis-à-vis their manufacturers and distributors, a lone provision giving dealers protection against competition from an unaffiliated manufacturer."

*Id.* at 685.

The Greater New York Automobile Dealers Association (the "GNYADA") brought a similar lawsuit against the New York DMV and Tesla. The GNYADA claimed that Tesla was in violation of certain provisions (similar to those in Utah's AFA), which preclude a franchisor owning an interest in a franchise. The New York Supreme Court dismissed the lawsuit in favor of Tesla and in its opinion stated that:

"The Franchised Dealer Act regulates the relationship between a car company (manufacturer) and its franchised dealers... Manufacturers and dealers cannot utilize the Franchised Dealer Act as a means to sue their competitors."

*GNYADA v. DMV*, 969 N.Y.S.2d 721, 726 (Sup. Ct. 2013).

The Ohio Automobile Dealers Association brought a similar lawsuit against the Ohio State Department of Public Safety and Tesla. As with the other lawsuits, the presiding magistrate ruled in favor of Tesla, and in his decision stated that:

"... although these sections [similar to Utah's AFA] reference franchise relationships and responsibilities, it is readily apparent that they do so only in the context of when such an arrangement first contractually exists in writing."

*OADA v. Ohio DPS*, Case No. 13CVH12-13334, 19 (Ct. of Common Pleas 2014).

Numerous other Attorney Generals and agencies of other states that have statutes that are extremely similar to Utah's AFA and BRA have also interpreted their respective statutes in favor of Tesla. These include Florida, Illinois, Indiana, Minnesota, Missouri, North Carolina, Oregon, Pennsylvania, Tennessee, and Washington. Tesla is a licensed dealer in all of these states, among others. If Utah were to deny Tesla's license application under the type of statute that exists in Utah, it would be acting inconsistently with the licensing agencies of every other similarly situated state.

We hope that this letter helps to clarify Tesla's business model and how Utah's franchise and licensing laws apply to us. It is not the purpose or intent of the AFA or BRA to create a distribution monopoly for franchise dealers. If that were the case, such a policy would have broad ranging effects that are detrimental to Utah's residents, and an interpretation of law stretching the bounds of the AFA and BRA in such way would be anti-consumer, anti-free market, anti-business, anti-innovation, and anti-environment.

We request that you reconsider our dealer license application in light of the information presented in this letter. Please feel free to contact me should you have any questions or would like to discuss the matter further. We appreciate the continued dialogue and look forward to bringing our award winning cars and service to Utah.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Chang', written over a horizontal line.

Jonathan Chang  
Deputy General Counsel

cc: Attorney General Sean Reyes (sreyes@utah.gov)  
Parker Douglas, General Counsel & Chief of Staff (pdouglas@utah.gov)  
Brian L. Tarbet, Chief Civil Deputy (btarbet@utah.gov)



May 11, 2015

**VIA EMAIL**

Office of the Attorney General  
State of Utah  
160 East 300 South, 5<sup>th</sup> Floor  
Salt Lake City, UT 84114-0874  
Attn: Gale Francis (gfrancis@utah.gov)

**Re: Tesla Motors UT, Inc. Dealer License Application**

Dear Mr. Francis,

Thank you for your continued review of our most recent dealer license application. In addition to the arguments presented in our previous communications, I want to reiterate the arguments below as to why our current dealer license application satisfies all requirements of Utah law. As you know, this issue is the last hurdle for us to open our store, which has been shuttered for the past several months. In the meantime, we continue to expend resources on this facility, and our store staff continues to be on standby, eagerly awaiting to be gainfully employed.

In our letter to you dated March 4, 2015 and in our meeting in April, we discussed our original dealer license application and expressed our ability to be flexible with our corporate structure. While we do not believe the structures are necessary under the purpose and intent of the applicable statutes (as we describe in our March 4, 2015 letter, a copy of which is enclosed), we remained open minded. Our most recent dealer license application, submitted on April 13, 2015, reflects our flexibility.

**TESLA UT'S DEALER LICENSE APPLICATION MEETS THE REQUIREMENTS OF THE MOTOR VEHICLE BUSINESS REGULATION ACT**

The most recent dealer license application for Tesla Motors UT, Inc. (Tesla UT) includes a dealer agreement between Tesla Motors, Inc. (as the manufacturer) and Tesla UT (as the dealer). There should be no question that this qualifies us for licensure under the Motor Vehicle Business Regulation Act (U.C.A. § 41-3-201, et. seq.) (BRA). There is a bona fide legal contract between Tesla Motors and Tesla UT that meets all the requirements of the BRA. The BRA defines a "franchise" as "a contract or agreement between a dealer and a manufacturer of new motor vehicles or its distributor or factory branch by which the dealer is authorized to sell any specified make or makes of new motor vehicles."



(U.C.A. 1953 § 41-3-102(16)). The dealer agreement that we submitted with our application is an agreement between Tesla UT (a dealer) and Tesla Motors (a manufacturer) that authorizes Tesla UT to sell Tesla vehicles. The dealer agreement thus forms a "franchise" under the BRA, and Tesla UT undeniably qualifies for licensure.

The MVED need not look any further. With respect to dealer licensing, the MVED is only tasked and statutorily authorized to review licensing applications under the BRA as the "Administrator." There is no crossover into other statutory acts such as the New Automobile Franchise Act (U.C.A. 1953 § 13-14-1) (Franchise Act). MVED is not tasked as an administrator of the Franchise Act. Indeed, the State of Utah recognizes this as well by separating the functions within different state agencies. The MVED operates under the Tax Commission, while the Department of Commerce administers the Franchise Act. For purposes of MVED's review of our license application they need look no further than the BRA; and under the BRA, we meet all requirements of licensure. Nevertheless, even if the MVED goes beyond their statutory authorization and reads in the Franchise Act, Tesla UT still qualifies for licensure.

#### **THE FRANCHISE ACT DOES NOT PROHIBIT TESLA UT FROM BECOMING A LICENSED DEALER**

As we explained in our March 4, 2015 letter, the Franchise Act does not apply to Tesla UT or Tesla Motors. It would be wholly inconsistent with the express purpose of the Franchise Act for it to govern a relationship where no "inequality of bargaining power" exists. But, not only is the legislative intent conclusive in this analysis, so is the plain language of the statute.

While Tesla UT's dealer agreement qualifies as a "franchise" under the BRA, it does *not* qualify as a "franchise agreement" under the Franchise Act. This distinction is in the plain language of the statutes. Under the Franchise Act, a "franchise" or "franchise agreement" is defined as:

"... 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."

*U.C.A. 1953 § 13-14-102(7)(a) (emphasis added)*

The dealer agreement between Tesla UT and Tesla Motors does not contain the important and explicit first prong of the definition. The legislature was express in this requirement that there must be a grant of a license to use a trademark or related characteristics to qualify as a "franchise agreement" under the Franchise Act. Tesla UT's dealer agreement does not meet this requirement. In fact, the parties expressly state in the dealer agreement that there is no grant of any license to any trade name, trademark, service mark or related characteristic. Undeniably, there is no grant of any type of

intellectual property rights between the parties. Despite forming a "franchise" under the BRA, the dealer agreement between Tesla UT and Tesla Motors does not form a "franchise" under the Franchise Act. That is plain fact.

**TESLA MOTORS (THE MFG.) DOES NOT OWN A "DEALERSHIP" THAT WOULD PROHIBIT TESLA UT FROM BECOMING A LICENSED DEALER**

Even if you blatantly ignore the plain language of the FPA and the express legislative purpose of the FPA and deem Tesla to be a franchisor, Tesla UT is still not prohibited from obtaining a dealer license. You have cited the alleged prohibition in the Franchise Act to be U.C.A. 1953 § 13-14-201(1)(u), however, there is an exception under U.C.A. 1953 § 13-14-201(6)(d), for which Tesla Motors would qualify. The exception reads as follows:

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

- (i) As to that line-make of motor vehicle, there are no more than four franchised new motor vehicle dealerships licensed and in operation within the state as of January 1, 2000;
- (ii) The franchisor does not own directly or indirectly, more than a 45% interest in the dealership;
- (iii) At the time the franchisor first acquires ownership or assumes operation or control of the dealership, the distance between the dealership thus owned, operated, or controlled and the nearest unaffiliated new motor vehicle dealership trading in the same line-make is not less than 150 miles;
- (iv) All the franchisor's franchise agreements confer rights on the franchisee to develop and operate as many dealership facilities as the franchisee and franchisor shall agree are appropriate within a defined geographic territory or area; and
- (v) As of January 1, 2000, no fewer than half of the franchisees of the line-make within the state own and operate two or more dealership facilities in the geographic area covered by the franchise agreement."

*U.C.A. 1953 § 13-14-201(6)(d)*

We can apply each of this exception's requirements to Tesla in turn:

- (i) The first requirement is satisfied because, as of January 1, 2000, Tesla had no more than four franchised new motor vehicle dealerships within Utah (Tesla has never had any franchised dealers).
- (ii) The second requirement is satisfied because Tesla Motors does not own, directly or indirectly, more than a 45% interest in any dealership. A "dealership" is defined under the FPA as "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." (U.C.A. 1953 § 13-14-102(4)). Key to this definition is "site or location." "Dealership" is not defined as the business of the dealer. Tesla Motors owns neither the site nor location (either directly or indirectly) at which the business is conducted or that is identified as the dealer's principal place of business. In fact, Tesla Motors owns 0% interest in any site or location in Utah. The site or location from which Tesla UT wishes to operate from is leased from a landlord, unaffiliated with Tesla, who owns the property.

- (iii) The third requirement is satisfied because there are no Tesla dealers anywhere in Utah.
- (iv) This fourth requirement is satisfied because, as noted above, Tesla Motors has no "franchise agreements" as defined in the FPA.
- (v) This fifth requirement is satisfied because Tesla Motors had no franchisees as of January 1, 2000.

As you can plainly see, Tesla affirmatively satisfies every prong of the exemption provided for by U.C.A. 1953 § 13-14-201(6)(d).

**ANY INTERPRETATION OF UTAH LAW TO PROHIBIT TESLA UT FROM BECOMING A LICENSED DEALER IS UNCONSTITUTIONAL**

If the statutes were interpreted to prohibit Tesla UT from obtaining a dealer license, they would be interpreted in an unconstitutional manner. Such an interpretation would violate the due process clauses of the United States and Utah constitutions, as it would put undue limitations on Tesla's ability to conduct business in the state. Moreover, such an interpretation would deprive Tesla equal protection of the laws in violation of the United States Constitution by treating franchise dealers differently from Tesla without any rational or legitimate basis.<sup>1</sup> Lastly, the Utah Constitution in Article XII, Section 20 expressly states that the "free market shall govern trade and commerce in this state to promote the dispersion of economic and political power and the general welfare of the people." Given the weight of the plain language and statutory intent of the BRA and Franchise Act, it would be inapposite for the statutes to be interpreted in a manner that would restrict the free market and concentrate economic and political power in the hands of franchised dealers.

The arguments are clear. There is no reason that Tesla UT should not be able to obtain a dealer license. This outcome is consistent at every level of statutory interpretation. The plain language of the

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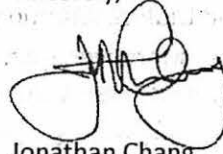
<sup>1</sup> In *Craigmiles v. Giles*, 312 F.3d 220 (6<sup>th</sup> Cir., 2002) and *St. Joseph Abbey v. Castille*, 712 F.3d 215 (5<sup>th</sup> Cir., 2012), the Court of Appeals struck down laws that purported to prohibit manufacturers of caskets from selling their products except through middlemen distributors. The courts held that economic protectionism is not a legitimate state interest.

statutes permits licensure. The express legislative intent is consistent with licensure. Even if we look to the U.S. Constitution and Utah Constitution, the laws must be interpreted to allow Tesla UT's licensure.

I want to be clear that Tesla's goal is not to upend the franchise dealer system. Our positions regarding the statutes are *not* inconsistent with the franchise dealer model, which will continue to thrive. Other manufacturers that distribute their vehicles through the franchise system freely chose the best system for their respective businesses, and they remain subject to the Franchise Act and its provisions. Tesla, on the other hand, has no independent franchised dealers anywhere. The Franchise Act provides protections for franchisees from their respective franchisors. It does not create a monopoly on new vehicle distribution for franchised dealers. The creation of such a monopoly is anticompetitive, anti-consumer<sup>2</sup> and unconstitutional, and should not be so casually and erroneously read into the statutes. The plain language of the statutes, the express legislative intent and the guiding constitutional provisions weigh clearly and heavily in favor of Tesla UT obtaining its dealer license.

As you continue to review our application, Tesla UT's store remains closed. The facility stands ready to employ scores of Utah residents and to bring Tesla's award winning vehicles and unparalleled service to Utah. You can visit the closed facility in South Salt Lake City at Free Spirit Plaza. Below a memorial flag, you will find a dedication plaque that reads as follows: "*Free Spirit Plaza - Dedicated to the independence and free spirit of Americans as exemplified by the Free Enterprise System.*" We sincerely hope that these virtues are indeed celebrated and honored in Utah.

Sincerely,



Jonathan Chang  
Deputy General Counsel

Cc: Attorney General Sean Reyes ([sreyes@utah.gov](mailto:sreyes@utah.gov))  
Parker Douglas, General Counsel & Chief of Staff ([pdouglas@utah.gov](mailto:pdouglas@utah.gov))  
Brian L. Tarbet, Chief Civil Deputy ([btarbet@utah.gov](mailto:btarbet@utah.gov))  
Curtis Stoddard, Assistant Director, MVED ([mved@utah.gov](mailto:mved@utah.gov))

Enclosure: Tesla's March 4, 2015 Letter

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<sup>2</sup> See opinions and commentary of the U.S. Federal Trade Commission at: <https://www.ftc.gov/news-events/blogs/competition-matters/2014/04/who-decides-how-consumers-should-shop>; <https://www.ftc.gov/news-events/press-releases/2014/05/ftc-staff-missouri-new-jersey-should-repeal-their-prohibitions>; and most recently: <https://www.ftc.gov/news-events/blogs/competition-matters/2015/05/direct-consumer-auto-sales-its-not-just-about-tesla>. See, also, correspondence by 70 of the world's leading economists and scholars: [http://law.wm.edu/documents/Tesla letter.pdf](http://law.wm.edu/documents/Tesla%20letter.pdf).

STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES  
ATTORNEY GENERAL

SPENCER E. AUSTIN  
Chief Criminal Deputy

PARKER DOUGLAS  
General Counsel & Chief of Staff

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Solicitor General

BRIAN L. TARBET  
Chief Civil Deputy

May 14, 2015

Kent Jorgensen, Director  
Curtis Stoddard, Deputy Director  
Motor Vehicle Enforcement Division  
Utah State Tax Commission  
210 N 1950 W  
Salt Lake City UT 841134

**Re: Tesla Motors, Inc. – Second Application for Distributor and Dealership Licenses**

Dear Kent and Curtis:

You have requested an informal evaluation of the distributor and dealership applications of Tesla Motors, Inc., submitted on or about April 15, 2015.

**RECOMMENDATION**

Although Jonathan Chang, in his letter of April 13, 2015, believes that the "Dealer Agreement" creates a franchise under UCA §§ 41-3-102, and 201, the language in the Dealer Agreement, Exhibit "A," paragraph 16.1 specifically denies that the agreement creates a franchise relationship. These positions seem contradictory. Mr. Chang doesn't think they do conflict because "franchise" is defined differently in Title 13 than it is in Title 41.

**Without an actual franchise agreement between TMI and TMUT, absent ownership of a dealer by the franchisor, under current Utah law, the dealer license application should be denied.**

**SUMMARY:**

- 41-3-202(1) A New Motor Vehicle Dealer's license permits selling new motor vehicles if the licensee possesses a franchise from the manufacturer of the vehicle.
- 41-3-210(1)(d) Prohibits a holder of any license from violating any law of the state

Kent Jorgensen, Director  
Curtis Stoddard, Deputy Director  
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respecting commerce in motor vehicles made by any licensing or regulating authority of the state. (MVED cannot ignore UCA 13-14 as a regulatory authority of the state.)

- UCA 41-3-210(1)(g) Prohibits engaging in business selling new motor vehicles for which the licensee does not have a franchise.
- UCA 41-3-102(16) defines "Franchise" as a contract or agreement between a dealer and a manufacturer of new motor vehicles.
- TMI's "Dealer Agreement" ¶16.1 specifies that the agreement does not form a franchise relationship (as defined in UCA 13-14), while claiming that it does create a franchise for purposes of UCA 41-3-102. TMI has previously declared that its business model does NOT include traditional franchise dealers, but direct sales from the manufacturer.
- TMI's "Dealer Agreement" specifies that TMUT is a wholly owned subsidiary of TMI.
- UCA 13-14-102 defines a franchise by law (de jure) as created by agreement or contract, or by fact (de facto) "in practice," or by "a course of dealing."
- UCA 13-14-102 includes a manufacturer as a franchisor, by definition.
- UCA 13-14-201 prohibits acts by franchisors, including the owning of an interest in a new motor vehicle dealer or dealership by a franchisor.

CONCLUSION: Either TMI and TMUT do exist as a franchise, (by law/agreement or fact/practice) and are disqualified as a New Car Dealer licensee because the manufacturer/franchisor (TMI) owns the franchisee (TMUT), or they by declaration of TMI, are NOT a franchise. This disqualifies TMIUT as a dealer licensee, because both the Motor Vehicle Business Regulation, or New Motor Vehicle Franchise Act require dealers to have a franchise relationship.

## BACKGROUND

In February, 2015, during the legislative session, Tesla Motors, Inc. ("TMI") was given two letters from the Attorney General's Office regarding a denial of their previous application for a Utah New Car Dealer license. (See my prior correspondence dated February 26, 2015 and March 3, 2015.) As you will recall for the reasons articulated in that correspondence, you asked our office to communicate the denial of the New Car Dealer License Application to TMI. On or about April 15, 2015, Motor Vehicle Enforcement Division "MVED" sent me a letter from Jonathan Chang, Deputy General Counsel of TMI, dated April 13, 2015. Included with that correspondence were a letter from Mr. Chang, a new application for a distributor's license, and a new car dealer license. Because no statutory notice letter from MVED was sent in the first application, we believe MVED should do so now, with their notice of appeal rights.

On April 28, 2015, you requested a review of these applications. We now make, with help from our Commercial Enforcement Division, this recommendation to assist you in your decision. Attached are documents which we received:

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- a. Exhibit "A," Dealer Agreement, between Tesla Motors, Inc. ("TMI") and Tesla Motors UT, Inc. ("TMUT").
- b. Exhibit "B," Letter from Jonathan Chang, Deputy General Counsel, TMI dated April 13, 2015.
- c. Exhibit "C," Bonded Motor Vehicle Business Application, Utah form TC-301, Distributor branch/Distributor factory branch application for license dated 1/15/2015.
- d. Exhibit "D," Bonded Motor Vehicle Business Application, Utah form TC-301 for New Motor Vehicle Dealer license application dated 1/15/2015.
- e. Exhibit "E," Department of Commerce documents showing the public filings for TMI and TMUT.

As TMI established in Mr. Chang's letter of March 4, 2015, TMI believes a legal precedent has been set in other states where this technique allowed the licensing administrative agency to issue a dealer's license. On page 7 of that letter, they use Massachusetts, New York, and Ohio as examples. (I have previously forwarded to you PDF versions of these state decisions for your reference.) Mr. Chang argues that because of the Dealer Agreement with TMUT, it complies with our Motor Vehicle Regulation, and TMUT should be given its licenses. We disagree.

### REASONING

1. Evaluating the statements of TMI in both the correspondence relating to the first application as well as documentation, supplied relating to the second application, TMI itself rules out having a franchise relationship. In TMI's letter of March 4, 2015, they stated "most importantly to the legal analysis, Tesla does not have any independent franchise dealers anywhere in the world. This is the key fact that distinguishes us from virtually all other car manufacturers, and is the central reason why the direct sell prohibition does not apply to a non-franchising manufacturer like 'Tesla.'" That statement, and repeated comments like it which state that Tesla's business model is a direct sale, rather than franchise model, appear to rule out franchises per se, in Massachusetts, New York, and Ohio as well. Even in the Dealer Agreement (Exhibit "A"), paragraph 16.1 states "Dealer" hereby agrees that this Agreement does not form a franchise relationship between 'Dealer' and TMI, and Dealer further agrees that it is not a franchisee (as such term may be defined under U.C. A. 1953, § 13-14-102). TMI hereby agrees that this Agreement does not form a franchise between 'Dealer' and TMI, and TMI further agrees that it is not a franchisor (as such term may be defined under U. C. A. 1953 § 13-14-102)."

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2. TMUT appears to want its cake and be able to eat it as well. The Chang letter of April 13, 2015, argues that for purposes of the Motor Vehicle Enforcement Act (Title 41), TMUT is a franchisee; but for purposes of the New Automobile Franchise Act (Title 13, Chapter 14), it is not a franchisee. It should not be able to have it both ways. MVED should include the Franchise Act in its consideration, since UCA 41-3-210(1)(d) mandates it. Both applicable chapters in Utah law will be discussed.

## **NEW AUTOMOBILE DEALERS MUST BE FRANCHISED UNDER CURRENT UTAH LAW**

### **A. New Automobile Franchise Act**

In the definitions section of the New Automobile Franchise Act, the legislature has defined the terms "franchise," "franchise agreement," "franchisee" and "franchisor." These definitions are given as follows:

In Utah Code Ann. § 13-14-102, Subparagraphs (7), (8), and (9).

#### **UCA 13-14-102**

- (7) (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.
- (8) "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.
- (9) "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;

13-14-201 Prohibited acts by franchisors -- Affiliates -- Disclosures.

- (1) A franchisor may not in this state:

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

- (i) own an interest in a new motor vehicle dealer or dealership;
    - (ii) operate or control a new motor vehicle dealer or dealership;
    - (iii) act in the capacity of a new motor vehicle dealer, as defined in Section 13-14-102; or
    - (iv) operate a motor vehicle service facility; . . .

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

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

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

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

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

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

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

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

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

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

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

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

(i) as to that line-make of motor vehicle, there are no more than four franchised new motor vehicle dealerships licensed and in operation within the state as of January 1, 2000;

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

(iii) at the time the franchisor first acquires ownership or



assumes operation or control of the dealership, the distance between the dealership thus owned, operated, or controlled and the nearest unaffiliated new motor vehicle dealership trading in the same line-make is not less than 150 miles;

(iv) all the franchisor's franchise agreements confer rights on the franchisee to develop and operate as many dealership facilities as the franchisee and franchisor shall agree are appropriate within a defined geographic territory or area; and as of January 1, 2000, no fewer than half of the franchisees of the line-make within the state own and operate two or more dealership facilities in the geographic area covered by the franchise agreement.

Note that these definitions specifically state that a franchise may exist without agreement, by saying, "in the absence of a written agreement, that the course of dealing or practice," (§ 13-14-102(7)(a)), or in "writing or in practice," (§ 13-14-102 (8) and (9)). This implies that a franchise may exist by the way it is operated (de facto) or by agreement meaning by operation of law (de jure).

TMI is caught in a dilemma of franchise terms regarding this chapter, as was pointed out in our previous correspondence. Refer to § 13-14-201, which includes "prohibited acts by franchisors." Sub paragraph (1) (u) states: "a franchisor may not in this state: . . . except as provided in subsection (6) (and subsections there), directly or indirectly, (i) own an interest in a new motor vehicle dealer or dealership; . . . or (iii) act in the capacity of a new motor vehicle dealer, as defined in section 13-14-102; . . ." (As we previously mentioned in correspondence about TMI's first application, the limited exception in subsection (6) would limit ownership to less than or equal to 45% of the dealership that ownership can only last for a period not to exceed 12 months). This chapter in the Franchise Act would disqualify a TMI – TMUT franchise relationship based on TMUT's status as a wholly owned subsidiary of TMI.

## **B. Motor Vehicle Business Regulation Analysis**

Even if the MVED determines that a de facto franchise relationship exists between TMI and TMUT, or within the definition of franchise in Title 41, issuing a new automobile dealer license may still be prohibited due to the restrictions within the current Motor Vehicle Business Regulation. UCA 41-3-210(1)(d) states: "The holder of any license issued under this chapter may not: . . . (d) violate any law of the state respecting commerce in motor vehicles or any rule respecting commerce in motor vehicles made by any licensing or regulating authority of the

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Curtis Stoddard, Deputy Director  
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state: . . .” Thus, MVED must consider the commercial codes of the state, and the New Motor Vehicle Franchise Act in particular, in its licensing authority. Because this section broadly includes licensing and regulatory authorities, the commerce code relating to new motor vehicle franchise codes.

Section 41-3-210(1)(g) also requires that the licensee have a franchise, which also raises the dilemma between Mr. Chang’s letter claiming TMI’s franchise agreement satisfies the Motor Vehicle Code needs, yet the written agreement specifically denies a franchise. Considering the fact that both the Commerce Code and Motor Vehicle Code focus on the requirement of being a franchise, and that the Dealer Agreement denies a franchise relationship exists, licensing this dealer is prohibited.

Even if it is determined to be a franchisee, TMUT still has a problem with the facts given in the Dealer Agreement identifying TMUT as wholly owned by TMI. Attached as Exhibit “E” is current Utah Department of Commerce information regarding Tesla Motors UT, Inc. (“TMUT”), and Tesla Motors, Inc. (“TMI”). Ownership is not disclosed in the public documents in Exhibit “E;” but it does show a common principal in both entities, Deepak Ahuja.

TMI would specifically be defined as a “franchisor” as previously mentioned in correspondence dated February 26, 2015, because UCA § 13-14-102(9) defines a franchisor as including a manufacturer, which TMI admits it is. (See Jonathan Chang’s letter dated March 4, 2015.)

MVED must consider whether wholly owning a subsidiary, which is seeking to be a dealer of new motor vehicles in Utah, is an acceptable relationship between the franchisor (manufacturer), and the franchisee (dealer). MVED should review prior correspondence regarding TMI and TMUT and Franchise Restrictions within Chapter 3 of Title 41.

Though Mr. Chang believes that TMI and TMUT have done everything necessary to obtain a dealer license in the state of Utah, creating a defacto “franchise” under the Motor Vehicle Business Regulation Act, MVED must make its independent determination based on the applicable laws, documentation, and facts presented.

### COURT OPINION SUMMARY

Having reviewed the three court cases referenced in Tesla’s correspondence, the Massachusetts Supreme Court case of MSADA v. Tesla Motors MA, Inc., 469 Mass. 675 (2014), the New York case of GNYAD v. DMV, 969. N.Y.S.2d 721, (sup CT 2013) and OADA v. Ohio DPS, Case No. 13CVH12-13334, (ct.) of common Pleas 2014), here is our summary of these cases.

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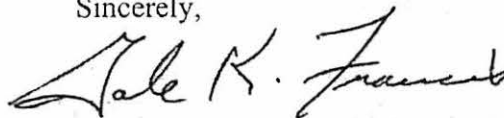
In each of these cases, the three state administrative agencies issued a dealer license to a TMI entity which applied for a dealer license. Then the automobile dealer associations in each state sued TMI, and the administrative agencies who granted the licenses. In each decision reviewed, the Courts ruled that the Automobile Dealer's Associations did not have standing, and therefore each case was dismissed as a matter of law. TMI was allowed to open the dealership.

The reasoning of the courts included the lack of provable harm to the dealerships within the dealer associations. Also, two of the cases found that in the protective nature of the state statutes, their legislative intent was restricted in scope to protecting motor vehicle dealers from unfair acts and practices from their own brand, manufacturers, and distributors. (Commonly referred to as "Line make.") Since this was not their line make, they had no risk of harm. None of these cases discussed whether their statutes included the requirement of franchise language.

#### CONCLUSION

TMI was involved during the last Utah legislative session with attempting to amend Utah law to allow for an exception to the typical franchise requirements for new automobile dealers. However, no new changes were made with regard to statutory construction relating to new automobile dealers. Until that is done, the dilemma within which TMI finds itself, continues. Our conclusion is that unless a franchise relationship actually exists, and unless the franchisor does not own the entity or "person" that is the new automobile dealer, a license should not be granted.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gale K. Francis". The signature is fluid and cursive, with the first name "Gale" being more prominent.

Gale K. Francis  
Assistant Attorney General

GKF:lr



## State of Utah

GARY R. HERBERT  
*Governor*

GREG BELL  
*Lieutenant Governor*

## Utah State Tax Commission

R. BRUCE JOHNSON  
*Commission Chair*

D'ARCY DIXON PIGNANELLI  
*Commissioner*

MICHAEL J. CRAGUN  
*Commissioner*

ROBERT P. PERO  
*Commissioner*

BARRY C. CONOVER  
*Executive Director*

May 21, 2015

Tesla Motors UT Inc  
3500 Deer Creek Road  
Palo Alto CA 94304

We have received your form TC-301, Bonded Motor Vehicle Application. Upon receiving recommendation from legal counsel, Tesla Motors UT, doesn't not currently meet the requirement necessary under UCA 41-3 and UCA 13-14 to receive a "New Motor Vehicle Dealer's license." Therefore the license is denied.

Enclosed are the applications, bond and payment.

You do have appeal rights. If you disagree with this decision, you may appeal by filling out and sending in form TC-739, Petition for Expedited Hearing (Appeal Form), before June 20, 2015. Get the TC-739 online at [taxexpress.utah.gov](http://taxexpress.utah.gov). Attach a copy of this letter to your petition and return both to: Utah State Tax Commission, Appeals Unit, 210 N 1950 W, SLC UT 84134-6200. If you have questions about the appeal scheduling or events, call the Appeals Unit at 801-297-3900 or 1-800-662-4335 ext 3900.

If you have any other questions, please contact the Motor Vehicle Enforcement Division at 801-297-2600 or you may write to MVED at 210 N 1950 W, SLC UT 84134-6200.

Sincerely,

Motor Vehicle Enforcement Division

210 North 1950 West  
Salt Lake City, Utah 84134  
801-297-2200  
Fax: 801-297-6358  
[www.tax.utah.gov](http://www.tax.utah.gov)

*If you need an accommodation under the Americans with Disabilities Act, call 801-297-3811 or Telecommunication Device for the Deaf (TDD) 801-297-2020. Please allow three working days for a response.*

**ADDENDUM G TO BRIEF OF PETITIONER/APPELLANT**

**STIPULATION OF FACTS**

BEFORE THE UTAH STATE TAX COMMISSION

TESLA MOTORS UTAH, INC.,

Petitioner,

vs.

MOTOR VEHICLE ENFORCEMENT  
DIVISION OF THE UTAH STATE TAX  
COMMISSION,

Respondent.

Appeal No. 15-1170

**STIPULATION OF FACTS**

Tesla Motors Utah, Inc. ("Tesla UT") and the Motor Vehicle Enforcement Division of the Utah State Tax Commission ("MVED") submit the following stipulation of facts to be received into evidence in lieu of further proof or testimony. Tesla UT and the MVED hereby stipulate that:

1. On February 12, 2015, Tesla UT filed an application for a new motor vehicle dealer's license (the "February Application"). A true and correct copy of Tesla UT's February Application is attached as Exhibit 1.

2. In letters dated February 26, 2015 and March 2, 2015, Assistant Attorney General Gale Francis notified Tesla UT that the MVED would deny Tesla UT's new motor vehicle dealer's license application. A true and correct copy of Mr. Francis's correspondence is attached as Exhibit 2.

3. On March 4, 2015, Tesla UT submitted a letter to the MVED and Mr. Francis responding to Mr. Francis's letters of February 26, 2015 and March 2, 2015. A true and correct copy of Tesla UT's letter is attached as Exhibit 3.


4. On April 13, 2015, Tesla UT submitted a second application to the MVED for a new motor vehicle dealer's license (the "April Application"). A true and correct copy of Tesla UT's April Application is attached as Exhibit 4.

5. On May 11, 2015, Tesla UT submitted a letter to the Utah Attorney General's office supporting Tesla UT's April Application. A true and correct copy of Tesla UT's letter is attached as Exhibit 5.

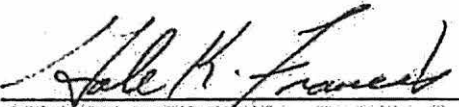
6. On May 14, 2015, Mr. Francis submitted a letter to the MVED recommending the denial of Tesla UT's April Application for a new motor vehicle dealer's license. A true and correct copy of Mr. Francis's letter is attached as Exhibit 6.

7. On May 21, the MVED formally denied Tesla UT's application, stating that Tesla UT does not meet the relevant provisions of the MVBRA and NAFA. A true and correct copy of the MVED's denial is attached as Exhibit 7.

DATED this 4<sup>th</sup> day of August, 2015.

  
FRANCIS M. WIKSTROM  
MICHAEL P. PETROGEORGE  
Parsons Behle & Latimer

*Attorneys for Petitioner*

  
GALE K. FRANCIS  
LARON J. LIND  
Assistant Attorney General  
SEAN D. REYES  
Attorney General

*Attorneys for Respondent*

**ADDENDUM H TO BRIEF OF PETITIONER/APPELLANT**

**WITNESS STATEMENT OF HERBERT E. WALTER**



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BEFORE THE UTAH STATE TAX COMMISSION

TESLA MOTORS UTAH, INC.,

Petitioner,

vs.

MOTOR VEHICLE ENFORCEMENT  
DIVISION OF THE UTAH STATE TAX  
COMMISSION,

Respondent.

Appeal No. 15-1170

**EXPERT WITNESS STATEMENT OF HERBERT E. WALTER**

**SUBMITTED BY TESLA MOTORS UTAH, INC.**

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1 I, Herbert E. Walter, hereby declare as follows:

2 **I. QUALIFICATIONS**

3 1. I am an independent consultant with more than 35 years of financial and  
4 management consulting experience. I have an MBA from the University of Cincinnati with  
5 concentrations in Finance and Quantitative Analysis and a BBA from the University of Cincinnati  
6 with majors in Finance and Accounting. I am also certified as a CPA and a Certified Fraud  
7 Examiner (CFE). I was employed by PricewaterhouseCoopers LLP for 32 years, the last 20 of  
8 which I was a partner. My curriculum vitae is attached as Exhibit 1.

9 2. I have approximately 25 years of experience in the automotive industry, most of  
10 which has focused on automotive retail. I have studied hundreds of dealerships across the United  
11 States—including dealerships in Utah—by (1) reviewing their financial records to evaluate the  
12 financial and operational performance of dealerships overall, and of each department; (2)  
13 evaluating their financing and capital structure; (3) studying their sales and inventory  
14 management; (4) analyzing their relationship with manufacturers, finance companies, and  
15 customers; and (5) reviewing their performance according to the franchise agreements. I have  
16 been retained by most major vehicle manufacturers including Audi, Chrysler,<sup>1</sup> Ford, GM, Honda,  
17 Hyundai, Jaguar, Kia, Lamborghini, Nissan, Subaru, Suzuki, Toyota, and VW. I have also  
18 consulted for manufacturers and dealers in cases in which incumbent dealerships objected to the  
19 opening of a new dealership or to the relocation of an existing dealership close to the incumbent  
20 dealerships. This work has involved dealerships ranging from small, exclusive-brand dealerships  
21 to major dealerships owned by large, privately-capitalized companies or publicly owned  
22 companies.

23 3. I have been qualified to testify as an expert regarding the retail operations of  
24 independent franchise dealerships and have testified concerning my opinions in federal and state  
25 court trials and in administrative hearings approximately 40 or 50 times in roughly 20 different  
26 states. My work related to dealerships in Utah has included evaluating their financial

27 \_\_\_\_\_  
28 <sup>1</sup> Previously Chrysler Group and now FCA – Fiat Chrysler Automobiles.

1 performance as described above, both individually and as part of groups of dealerships included  
2 in composite financial results.

## 3 **II. SCOPE OF TESTIMONY**

4 4. I have been retained by Tesla Motors, Inc. ("Tesla") to compare Tesla's business  
5 model for selling new cars through its network of company-owned stores to that of a traditional  
6 independent franchised dealership. In preparation for my testimony, I reviewed Tesla's  
7 applications for a Utah new motor vehicle dealer license as well as the correspondence between  
8 Tesla and the MVED<sup>2</sup> regarding those applications, researched and analyzed data relating to  
9 vehicle<sup>3</sup> sales in Utah, interviewed several Tesla employees about Tesla's sales model and  
10 business operations in Utah and other states, visited a Tesla store, reviewed Tesla's SEC filings,  
11 and relied on my knowledge of the automotive industry and dealerships. I also heard and  
12 reviewed testimony in a prior action in Georgia from Tesla employees and an economist (Dr.  
13 Fiona Scott Morton) about Tesla's business model and sales practices.

14 5. Tesla has retained me at an hourly rate of \$475. I was assisted in preparing my  
15 analysis by associates at Urban Science<sup>4</sup> whose rates range from \$200 to \$300 per hour. I have  
16 spent more than 150 hours studying Tesla's business model for selling cars and comparing that  
17 model to the operation of traditional franchised dealerships.

## 18 **III. SUMMARY OF OPINIONS**

19 6. Based on my analysis and expertise in the industry, it is my opinion that it would  
20 not be viable for Tesla to sell its cars to consumers through independent franchised dealerships in  
21 Utah. This is true for a variety of reasons that arise from the vast disparities between Tesla's  
22 direct sales model and the independent franchised dealership model. *See infra* §§ IV, V and VI.  
23 First, traditional dealerships are massive operations, relative to a Tesla store, with high overhead,  
24 requiring a high volume of fast-paced vehicle sales and service work to remain profitable. This

25  
26 <sup>2</sup> The Motor Vehicle Enforcement Division of the Utah State Tax Commission.

27 <sup>3</sup> The term "vehicles" refers to and includes cars, SUVs, pickup trucks, and other light trucks.

28 <sup>4</sup> Urban Science is a business-solutions company focused on supporting the needs of the sales and marketing function of the automotive industry.

1 varies dramatically from Tesla's direct sales model, which relies on much smaller facilities that  
2 focus on customer education and the highest-quality customer service. Second, traditional  
3 dealerships derive significant profits from sales of service and parts, used vehicles, financing,  
4 insurance products and other "add-ons." These sources of profits, however, are largely  
5 unavailable to a traditional dealership selling Tesla cars. Third, traditional dealerships rely on  
6 manufacturers to fund advertising and incentives programs. Tesla does not advertise and does not  
7 offer incentives programs; thus, dealerships selling Tesla cars would be forced to pay for  
8 advertising and incentives programs on their own. Finally, Tesla will continue to offer its  
9 standard, "no haggle" pricing for sales through Tesla-owned stores and on Tesla's website.  
10 Dealerships that mark up the retail price of the Tesla cars they sell in order to cover their costs  
11 and make a profit will be unable to compete with Tesla's "no haggle" pricing.

12 7. In addition, studies demonstrate that traditional dealerships, when given the  
13 opportunity to sell electric vehicles, have either declined to do so or been wholly ineffective at  
14 doing so. *See infra* § VII. Finally, existing Utah dealerships are likely contractually prohibited  
15 by their franchising manufacturers from selling Tesla cars. *See infra* § VIII. To reinforce their  
16 brand image, most franchising manufacturers preclude their franchised dealerships from selling  
17 new vehicles from other manufacturers in the same facility.

18 8. I will begin by comparing the independent franchised dealership model to Tesla's  
19 direct sales model. I will then explain in detail why the independent franchised dealership model  
20 is not a viable means for selling Tesla cars. I will then discuss the studies demonstrating that  
21 traditional dealerships are ineffective at selling electric cars. Finally, I will explain the standard  
22 contract between franchising manufacturers and their franchised dealerships that will likely  
23 prohibit existing Utah dealerships from selling Tesla cars.

#### 24 **IV. THE INDEPENDENT FRANCHISED DEALERSHIP MODEL**

##### 25 **A. The Facility**

26 9. Traditional dealerships are massive enterprises, typically with large facilities  
27 located on acres of land that incur substantial overhead costs. Corporations often own multiple  
28

dealerships, frequently tens and sometimes hundreds of dealerships. Franchised dealerships must sell large volumes of new vehicles because the profit margin on sales of new vehicles is very low. In addition, due to this low profit margin, dealerships must make substantial sales of used vehicles and service and parts to remain profitable. This significant volume of sales of both new and used vehicles requires that traditional dealers have large lots on which to store their new and used vehicle inventory.

10. The average Utah dealership sold 899 new vehicles in 2014.<sup>5</sup> These vehicles were sold from the dealership's new vehicle inventory or obtained through trades with other dealerships. In 2014, dealerships maintained in new vehicle inventory an approximately 55 to 70 days supply of vehicles,<sup>6</sup> *i.e.*, the number of vehicles they would sell over that time period, given their average rate of sales.<sup>7</sup> Assuming a 60 days supply, the average Utah dealership maintained 148 vehicles in new vehicle inventory.<sup>8</sup> An inventory this size would cost a dealership roughly \$4.1 million to purchase.<sup>9, 10</sup>

11. A traditional dealership that sells 899 new vehicles per year, like the average Utah dealership, typically sells around 547 used vehicles per year.<sup>11</sup> These vehicles are obtained from trade-ins when customers purchase new vehicles or are purchased by the dealerships at vehicle auctions or from other sources.<sup>12</sup> In 2014, the average Utah dealership maintained 42<sup>13</sup> vehicles in used vehicle inventory. An inventory this size would cost a dealership roughly \$666,390 to

<sup>5</sup> NADADATA: Annual Financial Profile of America's Franchised New-Vehicle Dealerships 2014, pages 4 and 16 (New Vehicles Sales for Average Utah Dealership (899) = New Vehicles Sales in Utah (123,170) / New Vehicle Dealerships in Utah (137)).

<sup>6</sup> NADADATA: Annual Financial Profile of America's Franchised New-Vehicle Dealerships 2014, page 7.

<sup>7</sup> "Days supply" is the number of days a dealership could continue selling vehicles without receiving new inventory. "Days supply" is based on current month-end inventory and average sales rate over some period, and it assumes that the sales rate remains constant going forward. For example, if a dealership has 30 vehicles in inventory and sells ten new vehicles per month, it has a three-month, or a 90-day supply.

<sup>8</sup>  $148 = (899/365) \times 60$ .

<sup>9</sup> New vehicles estimated average cost = NADA 2014 average selling price x 85%;  $\$27,725 = \$32,618 \times 85\%$ .

<sup>10</sup> Approximate new vehicles inventory value;  $\$4,103,344 = (148 \times \$27,725)$ .

<sup>11</sup> Used to New Ratio = Used Vehicle Retailed / New Vehicle Unit Sales =  $10,000,000/16,436,991 = 0.608$ ;  $0.608 \times 899 = 547$ .

<sup>12</sup> 2014 NADA State-of-the-Industry Report, page 10.

<sup>13</sup>  $41.6 = (74.75/265.75) \times 148$ . See *infra* ¶ 13.



1 purchase.<sup>14, 15</sup>

2 12. There are 137 new vehicle dealerships in Utah.<sup>16</sup> Utah's dealerships cumulatively  
3 reported \$7.144 billion in sales in 2014, averaging sales of \$52.1 million per dealership.<sup>17</sup> In  
4 2014, the average dealership made a profit of over \$1 million before taxes and employed 64  
5 employees.<sup>18</sup>

6 13. There are four dealerships located near Tesla's store on State Street in Salt Lake  
7 City (from across the street to 2.2 miles away).<sup>19</sup> These dealerships reported an average of 266  
8 vehicles in new vehicle inventory on July 25, 2015.<sup>20</sup> A new vehicle inventory of this size would  
9 cost the dealership roughly \$7.3 million to purchase.<sup>21</sup> These dealerships also reported an  
10 average of 75 vehicles in used vehicle inventory on July 25, 2015.<sup>22</sup> A used vehicle inventory of  
11 this size would cost the dealer roughly \$1.2 million to purchase.<sup>23, 24</sup> The total average inventory  
12 for these four dealerships was 341 new and used vehicles, with a combined purchase cost to the  
13 dealerships of approximately \$8.5 million.<sup>25</sup> These four dealerships operate on lots ranging from  
14 2.6 acres to 9.5 acres, with an average lot size of 5.1 acres.<sup>26</sup>

15 14. Traditional franchised dealerships require many millions of dollars in financing to  
16 fund the cost of purchasing vehicle inventory. The business model for a traditional dealership is  
17 centered on acquiring, selling, and servicing large numbers of new and used vehicles. The  
18 dealership must generate the sales and related profits from all of its departments to support the

19  
20 <sup>14</sup> Used vehicles estimated average cost = NADA 2014 average selling price x 85%; \$16,019 = \$18,846 x 85%,  
<sup>15</sup> Approximate used vehicles inventory value; \$666,390 = (41.6 x \$16,019).

21 <sup>16</sup> NADADATA: Annual Financial Profile of America's Franchised New-Vehicle Dealerships 2014, page 4.

22 <sup>17</sup> NADADATA: Annual Financial Profile of America's Franchised New-Vehicle Dealerships 2014, page 5.

23 <sup>18</sup> NADADATA: Annual Financial Profile of America's Franchised New-Vehicle Dealerships 2014, pages 3 and 13.

24 <sup>19</sup> The dealerships are Audi Salt Lake City (1.8 miles away), Salt Lake City Buick GMC (2.0 miles away), Salt Lake  
City Chrysler Jeep Dodge RAM (0.1 miles away), and Ken Garff Nissan (2.2 miles away).

25 <sup>20</sup> New vehicles in inventory July 25, 2015: Audi Salt Lake City 223, Salt Lake City Buick GMC 200, Salt Lake City  
Chrysler Jeep Dodge RAM 279, Ken Garff Nissan 361; average 265.75 = (223 + 200 + 279 + 361)/4.

26 <sup>21</sup> Approximate new vehicles inventory value; \$7,367,998 = (265.75 x \$27,725).

27 <sup>22</sup> Used vehicles in inventory July 25, 2015: Audi Salt Lake City 72, Salt Lake City Buick GMC 107, Salt Lake City  
Chrysler Jeep Dodge RAM 61, Ken Garff Nissan 59; average 74.75 = (72 + 107 + 61 + 59)/4.

28 <sup>23</sup> Used vehicles estimated average cost = NADA 2014 average selling price x 85%; \$16,019 = \$18,846 x 85%.

<sup>24</sup> Approximate used vehicles inventory value; \$1,197,428 = (74.75 x \$16,019).

<sup>25</sup> Estimated total inventory value; \$8,565,426 = (\$7,367,998 + \$1,197,428).

<sup>26</sup> Based on Google Earth Pro mapping; Audi Salt Lake City 2.60 acres, Salt Lake City Buick GMC 9.47 acres, Salt  
Lake City Chrysler Jeep Dodge RAM 4.32 acres, Ken Garff Nissan 3.90 acres.

1 operation of this massive enterprise and to produce a bottom-line profit.

2 **B. The Purchase Process**

3 15. A traditional franchised dealership typically relies on a high-pressure sales  
4 approach that incentivizes closing sales as quickly as possible at the highest negotiated price.  
5 Dealerships are incentivized to sell products quickly not only to make sufficient profits to sustain  
6 their business model, but because the highest performing dealerships earn relatively more vehicle  
7 allocation from their franchising manufacturers. Ideally, from the dealership's perspective, a  
8 potential customer drives to the dealership in one vehicle and drives away a few hours later in a  
9 new vehicle. Because the purchase process often occurs in a few hours, rather than days or  
10 weeks, customers have limited time to ask questions, test drive the new vehicle, trade in their old  
11 vehicle, and complete their financing and insurance paperwork.

12 16. As a result, customers often arrive at a traditional franchised dealership with the  
13 intent of purchasing a specific new vehicle. Many customers have researched the vehicle brand  
14 and model along with competitive brands and models before visiting the dealership. The  
15 salesperson, therefore, need not spend significant time educating the customer about any  
16 particular vehicle.

17 17. The base compensation for salespeople at traditional franchised dealerships is low,  
18 sometimes as low as minimum wage. Salespeople are compensated primarily through  
19 commissions from new vehicle sales, with the department's overall profits contributing to  
20 commissions and bonuses for the dealership's management team. This compensation structure  
21 incentivizes the high-pressure sales environment in which dealerships attempt to make sales as  
22 quickly as possible. The consistency and quality of customer service with respect to new vehicle  
23 sales varies from salesperson to salesperson, from dealership to dealership, and from brand to  
24 brand.



1           **C.     Pricing**

2           18.     Traditional dealerships do not adhere to set vehicle prices, but rather negotiate  
3     prices with customers in an effort to sell the vehicle for the highest price possible.<sup>27</sup> The price of  
4     a vehicle is frequently obscured by the multiple transactions taking place simultaneously—for  
5     example, the new vehicle sale, the used vehicle trade-in, the vehicle financing, and the sale of  
6     add-ons sold with the vehicle, such as an extended service contract or various insurance products.  
7     Each of these components of a single new vehicle transaction provides a traditional dealership  
8     with multiple opportunities to generate profits.

9           **D.     Profit Centers**

10          19.     Traditional franchised dealerships rely heavily on profits from used car sales, sales  
11     of service and parts, and sales of various other add-ons. They operate three departments: (1) new  
12     vehicle sales, (2) service and parts sales, and (3) used vehicle sales.<sup>28, 29</sup> The new vehicle sales  
13     department of a traditional dealership generates a large amount of revenue (57.6%<sup>30</sup>), but  
14     contributes little to the net profits (4.6%<sup>31</sup>). Thus, to make a profit, traditional dealerships rely on  
15     the service and parts department (33% of net profits<sup>32</sup>) and used vehicle sales (12% of net  
16     profits<sup>33</sup>). “Miscellaneous income” makes up the rest of a dealership’s profits. Miscellaneous  
17     income includes documentation fees, manufacturer incentives, and other income.

22     <sup>27</sup> A few traditional dealerships have experimented with “no haggle” pricing for new vehicles. There are also various  
23     buying programs that offer purchaser pre-arranged discounts when purchasing a vehicle through these programs, e.g.  
24     AAA, Costco, and American Bar Association.

25     <sup>28</sup> The NADA Report combines the service and parts departments for most of the reported metrics. For purposes of  
26     this Declaration, I will combine the service and parts departments as the NADA Report has done.

27     <sup>29</sup> Some dealerships also operate a body shop as a fourth department. A fifth, the Financing and Insurance  
28     department, operates within and supports both the new and the used vehicle departments.

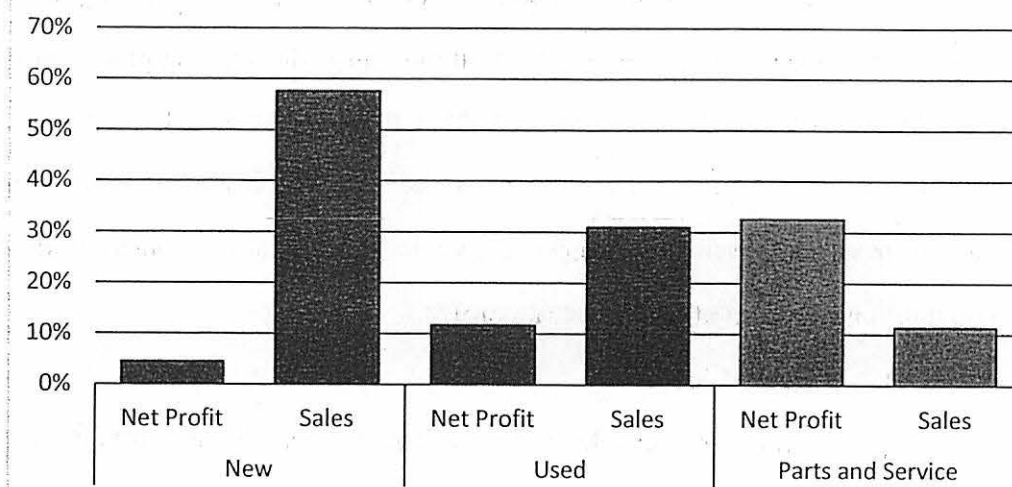
29     <sup>30</sup> NADADATA: Annual Financial Profile of America’s Franchised New-Vehicle Dealerships 2014, page 3.

30     <sup>31</sup> NADADATA: Annual Financial Profile of America’s Franchised New-Vehicle Dealerships 2014, pages 3 and 6  
31     (% of Net Profit (4.6%) = (Department Net Profit (\$50,000)/ Net Profit Before Taxes (1,093,805)) x 100).

32     <sup>32</sup> NADADATA: Annual Financial Profile of America’s Franchised New-Vehicle Dealerships 2014, pages 3 and 6.

33     <sup>33</sup> NADADATA: Annual Financial Profile of America’s Franchised New-Vehicle Dealerships 2014, pages 3 and 6.

Percentage of Sales and Percentage of Net Profit by Department



20. Traditional dealerships maximize profits from their service and parts department by leveraging the large base of vehicles eligible for service. Traditional dealerships have generally been in business for a long time and sold a large number of new and used vehicles that need servicing. The base of vehicles from which a traditional dealership draws most of its service and parts business is referred to in the industry as its “units in operation” (“UIO”). UIO is typically measured based on the five to seven most recent model years for a given vehicle brand, as these are the vehicles most likely to be brought into a dealership for service work. In 2014, Utah dealerships sold on average 899 new vehicles per dealership. *See supra* ¶ 10. Assuming the same average over five to seven years, each Utah dealership would have a UIO base of approximately 3,700 to 4,900 vehicles from which to draw its service and parts business.<sup>34</sup>

21. Traditional dealerships may also increase profits from their service and parts department by pushing the sale of additional services, which is referred to as “upselling.” Dealerships often compensate their service advisors with commissions, incentivizing them to recommend additional work to customers. In addition, service work is paid on a flat rate, meaning that service employees are compensated by the job rather than by the hour. This can

<sup>34</sup> NADADATA: Annual Financial Profile of America’s Franchised New-Vehicle Dealerships 2008 to 2014; 3,680 = (553 + 656 + 748 + 823 + 899); 4,851 = (647 + 523 + 553 + 656 + 748 + 823 + 899).

1 encourage service technicians to rush work, thereby maximizing their compensation and the  
2 dealership's profits.

3 22. As noted above, sales of used vehicles are a major source of profit for franchised  
4 dealerships. A used vehicle department that, like the average Utah dealership, sells 547 used  
5 vehicles per year generates \$10.3 million in revenue from those sales.<sup>35</sup>

6 23. Traditional dealerships realize a profit on used vehicle sales by obtaining used  
7 vehicles at lower trade-in prices and reselling them at higher retail prices. Traditional dealerships  
8 acquire approximately 66% of the used vehicles they sell through trade-ins on new or used  
9 vehicle purchases.<sup>36</sup> Traditional dealerships conduct their own inspections of trade-in vehicles,  
10 creating a potential conflict of interest because they want to purchase the vehicle for as low a  
11 price as possible. This incentivizes the dealership to identify as many "issues" as possible,  
12 whether or not they are issues that actually affect the vehicle resale value.

13 24. The used vehicle department and the service and parts departments of traditional  
14 franchised dealerships are critical profit centers that help insulate these dealerships during  
15 economic downturns. As shown below, the average new vehicle department reported losses  
16 between 2006 and 2010.<sup>37</sup> This trend was evident in Utah, where total new vehicle unit sales  
17 declined from 116,550 in 2005<sup>38</sup> to 72,703 in 2009<sup>39</sup>, a 37.6% decline.<sup>40</sup> During this time,  
18 however, profits from used vehicle sales and service and parts sales increased, as consumers  
19 purchased lower-priced used vehicles or repaired their used vehicles instead of buying new ones.

20  
21  
22  
23  
24  

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<sup>35</sup> (Average Retail Selling price of a used vehicle (\$18,846)) x (Used vehicle sales (547)) = \$10,308,762.

25 <sup>36</sup> NADADATA: Annual Financial Profile of America's Franchised New-Vehicle Dealerships 2014, page 10.

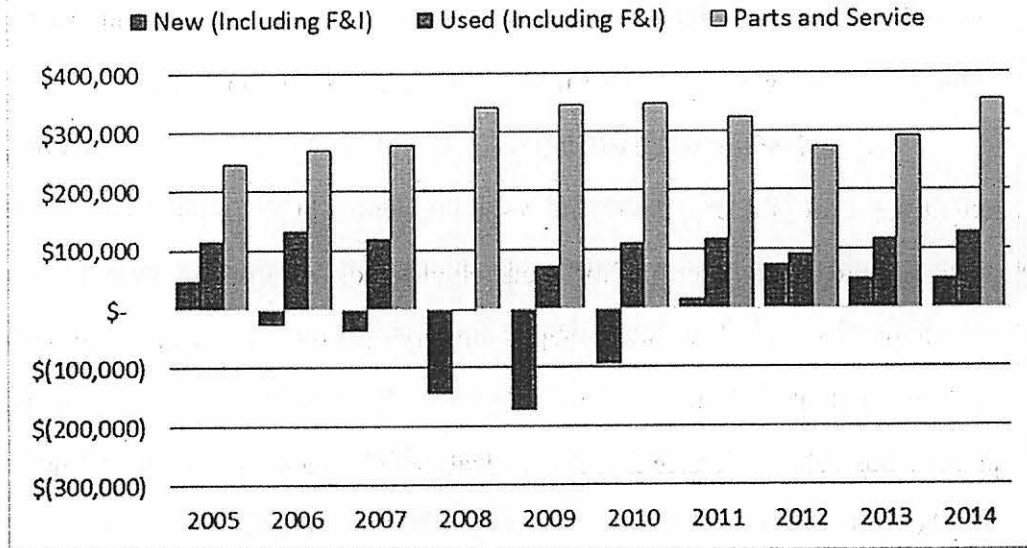
26 <sup>37</sup> NADADATA: Annual Financial Profile of America's Franchised New-Vehicle Dealerships 2014, page 6.

27 <sup>38</sup> NADADATA: Annual Financial Profile of America's Franchised New-Vehicle Dealerships 2006, page 19.

28 <sup>39</sup> NADADATA: Annual Financial Profile of America's Franchised New-Vehicle Dealerships 2010, page 16.

<sup>40</sup> (New Vehicle Registrations in 2005 – New Vehicle Registrations in 2009)/New Vehicle Registrations in 2009 =  
(116,550-72,703)/116,550 = 37.6%.

## Average Dealership Net Profit by Department



25. The Financing and Insurance ("F&I") department of a traditional dealership is highly lucrative. In 2014, it accounted for roughly 23% of the gross profit derived from new and used vehicle departments.<sup>41</sup> The F&I department generally charges a "dealership markup" on the interest rate a lender offers. If a lender, for example, agrees to finance a loan for 5.0% interest, the dealership may charge that customer 6.0% interest and retain the 1.0% markup as profit.<sup>42, 43</sup> The markup percentage varies from dealership to dealership and from deal to deal. Employees of a traditional dealership's F&I department typically earn a commission for successfully selling F&I products to new and used vehicle customers.

<sup>41</sup> NADADATA: Annual Financial Profile of America's Franchised New-Vehicle Dealerships 2014, page 9.

<sup>42</sup> Chicago Tribune: "Dealers defend car loan mark ups," May 28, 2014 – "As compensation, most lenders typically allow dealers to add as much as 2.5 percentage points to the interest rate on loans up to 60 month and 2 percent for longer than 60 months."

<sup>43</sup> USNews: "The Hidden Cost of Car Loans," February 27, 2014 – "What most car buyers don't know is that the bank funding the loan allows the dealer to increase the interest rate for compensation. For example, a bank may be willing to buy a contract as long as the interest rate is at least 4 percent, but will permit the dealer to charge the consumer up to 6.5 percent interest."

1           **E.       Advertising And Incentives**

2           26.       Traditional dealerships rely heavily on advertising to draw customer traffic to the  
3 dealership. The typical advertising model for the automotive industry involves multiple levels or  
4 tiers. First, there are advertisements from the manufacturer. Then, there are ads sponsored by  
5 groups of dealerships or co-ops, recognizable with statements or tag lines such as “brought to you  
6 by [city or area] [brand] dealer’s association” and listing the participating dealerships by name.  
7 Finally, there are advertisements sponsored by individual dealerships. Many manufacturers  
8 include a percentage in the vehicle invoice that is accumulated to fund advertising. Thus, while  
9 the dealership is “paying” for the advertising, it is being subsidized by the manufacturer and/or  
10 reimbursed through the cost of the vehicle. In total, traditional dealerships spent \$8 billion on  
11 advertising in 2014.<sup>44</sup> A dealership selling 899 new vehicles, as the average dealership in Utah  
12 does, incurred about \$539,400 in advertising expenses in 2014.<sup>45</sup>

13           27.       Traditional dealerships also move inventory using incentives offered by  
14 manufacturers such as “cash back” on vehicle purchases, or special interest rate financing such as  
15 0.9% financing for “qualified customers.” Through special rate financing, the manufacturer  
16 subsidizes the customer’s interest rate or supports higher lease residuals, with lower monthly  
17 lease payments, through its captive finance company. Manufacturer incentive programs to  
18 stimulate sales have become nearly ubiquitous in the automotive retail industry, such that they are  
19 regularly available on many, if not most, brands and models.

20       **V.       TESLA’S DIRECT SALES MODEL**

21           **A.       The Facility**

22           28.       In sharp contrast to large franchised dealerships that have significant new and used  
23 vehicle inventory, Tesla stores are generally small and have no inventory. Because Tesla cars are  
24 custom manufactured for each purchaser, Tesla stores generally have only one or two Tesla  
25

26 <sup>44</sup> NADADATA: Annual Financial Profile of America’s Franchised New-Vehicle Dealerships 2014, page 17.

27 <sup>45</sup> NADADATA: Annual Financial Profile of America’s Franchised New-Vehicle Dealerships 2014, page 17 (Total  
28 Dealership Advertising Expense (\$539,400) = (Total Dealership Advertising per New Unit Sold (\$600) x New  
Vehicle Units Sold (899))).

vehicles on-site for test drives and educational purposes. One of these cars is often a “naked chassis,” *i.e.*, a car without the body used to display its inner elements—the battery, motor, drive units, suspension systems, etc.—for educational purposes.

#### **B. The Purchase Process**

29. Tesla’s retail staff is trained to educate potential customers about electric vehicle technology and Tesla cars. The public is often skeptical of electric vehicle technology because it is new and unfamiliar to them. The sale of a Tesla car requires significant time and a low-pressure environment to teach consumers about the operation and benefits of electric vehicles. Potential Tesla customers may have such unique questions as:

- How is the car designed? How does it work?
- How far can I drive on one charge?
- How does the cost of charging compare to the cost of gas?
- How does the carbon footprint of a Tesla car compare to that of a gas vehicle?
- How long does the car take to charge?
- How do I charge the car at home? On the road?
- Do I have to rewire my house to install a charger at home? How does that work?
- Who does this for me?
- Can you show me the different routes I might take from my home to Florida for a vacation that I’m planning, and charge my car along the way?
- What are the differences in electric usage between hot and cold weather?
- What is regenerative braking?
- The touch screen computer in the console—how does that run the car?
- What does the computer tell me about the car?
- What will need to be serviced on my car?
- How does the service process work? Where does the service take place?

30. Tesla encourages customers to take their time in asking these and many other questions, often over multiple visits to the Tesla store. It often takes weeks for a customer to



1 progress from the initial visit to a Tesla store to his or her purchase of a Tesla car. Tesla's  
2 internal data show that, on average, 25 days pass between the time a customer provides Tesla  
3 with a valid email address and the time the customer purchases a Tesla car. This 25-day period  
4 does not include customer visits to the store before the customer provides Tesla with an email  
5 address.

6 31. Tesla's salespeople are salaried employees. While they are paid certain  
7 commissions, these commissions are significantly less and structured differently than those paid  
8 by traditional dealerships that incentivize haggling over price and "add-ons."

9 **C. Pricing**

10 32. Information on all aspects of Tesla's cars, such as price, warranties, and financing,  
11 is transparent and uniform. Tesla sells its cars at a set, "no haggle" list price. The list price  
12 depends on the configuration of and options for each car, but nothing else. Tesla does not offer  
13 negotiated prices, sales pricing, special rate financing, or cash incentives on its cars. Tesla  
14 customers pay the same price whether they purchase through Tesla's website, at a local store, or  
15 at a store in a different state.

16 **D. Profit Centers**

17 33. Unlike traditional franchised dealerships, Tesla derives the vast majority of its  
18 profits from the sale of new Tesla cars. Tesla's operations are not based on profits derived from  
19 servicing Tesla cars, used vehicle sales, financing, or sales of insurance products.

20 34. Tesla does not operate its service and parts department as a profit center. First,  
21 Tesla's service base, *i.e.*, the Tesla cars on the road that need servicing, is extremely small  
22 compared to that of a traditional franchised dealer. Tesla sold 2,650 Model S cars worldwide in  
23 2012, 22,500 in 2013, and 32,000 in 2014.<sup>46</sup> Since the release of the Model S in 2012, Tesla has  
24 sold 247 Model S cars to Utah residents. In contrast, traditional dealerships sold more than 16.5  
25 million cars in the United States in 2014 alone.<sup>47</sup>

26 <sup>46</sup> See Tesla Motors, Inc. Annual Report for the year ending December 31, 2014; Tesla Motors, Inc. Forms 8-K for  
27 2012-2015.

28 <sup>47</sup> 2 Automotive News: U.S. Car and Light-Truck Sales by Make December 2014, Total Vehicle Sales in 2014.

1           35.     Second, Tesla's national service platform takes advantage of new technologies that  
2 reduce the need for customer trips to the Tesla service center. Tesla can perform over-the-air  
3 software updates to its cars, and can diagnose cars remotely to track problems before they occur.  
4 In addition, Tesla's service technicians are in close communication with Tesla engineers to  
5 troubleshoot and solve problems quickly.

6           36.     Third, Tesla service employees, unlike the service employees at traditional  
7 dealerships, are paid by the hour rather than the job and are not paid commissions. This  
8 eliminates the incentive to perform hasty work to complete more jobs in a shorter amount of time,  
9 or to encourage customers to purchase potentially unnecessary additional work, both of which are  
10 techniques that may be used to increase service profits at a traditional dealership.

11          37.     Tesla does not derive significant profits from used vehicle sales. While Tesla  
12 recently began selling pre-owned Tesla cars, Tesla has never bought or sold non-Tesla used  
13 vehicles.<sup>48</sup> If a customer wishes to "trade-in" a non-Tesla vehicle in connection with the purchase  
14 of a Tesla car, Tesla arranges for an independent third-party inspection and collects one or more  
15 offers from other dealerships. The customer then decides whether to sell his or her used vehicle  
16 and to which dealership, presumably the dealership that made the highest offer. Tesla does not  
17 receive any monetary compensation, from either the customer or the dealership that purchases the  
18 used car, for assisting the customer with the trade-in. Thus, in contrast to traditional dealerships  
19 accepting a trade-in on the purchase of a new or used car, Tesla's participation in the trade-in  
20 process creates no perceived or actual conflict of interest.

21          38.     Tesla does not operate its financing department as a profit center. Tesla's  
22 centralized financing group, in Palo Alto, California, works with banks with which Tesla has an  
23 established relationship to secure financing options for Tesla's customers. Tesla does not mark  
24 up the financing plans offered by its financial partners. Tesla receives only a small referral fee  
25 from the lender that is based on a fixed percentage of the loan size. The fee does not vary based  
26 on the consumer's credit score or credit tier, or the interest rate to the consumer.

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27 <sup>48</sup> In April 2015, Tesla began selling a small number of pre-owned Tesla cars.  
28



1           **E.     Advertising and Incentives**

2           39.     Tesla does not use paid advertising or provide incentive programs to encourage  
3 consumers to purchase Tesla cars. Instead, Tesla relies on brand recognition, goodwill and word  
4 of mouth among consumers. Thus, it needs to provide the highest level of customer service  
5 before, during, and after the purchase of a Tesla car to promote its new technology and brand.

6           **VI.    TESLA CANNOT SELL ITS CARS THROUGH THE INDEPENDENT**  
7           **FRANCHISED DEALERSHIP MODEL**

8           40.     As described above, Tesla's direct sale model has proven to be a highly effective  
9 means of selling Tesla's innovative electric vehicle technology. Customers have been more than  
10 willing to adopt this new technology when given significant time to learn about it in the  
11 environment of Tesla's stores. Because Tesla maintains control of its sales and service  
12 operations, it is able to provide the highest level of customer service at all stages of the car-  
13 buying process, thereby solidifying its brand reputation and promoting its cars. And by  
14 maintaining a lean operation with small stores and custom-made cars rather than massive  
15 facilities and large inventories, Tesla is not burdened with the overhead cost associated with  
16 traditional dealerships and is not required to pass that cost on to consumers through increased  
17 retail prices, increased service prices, or other means. For all of these reasons, Tesla has  
18 determined that its direct sales model is the only viable means for selling its cars.

19          41.     Even if the traditional dealership model, with its fast-paced sales tactics, variable  
20 customer service, and massive inventories and overhead costs, were an effective means of selling  
21 Tesla cars, traditional dealerships would not make a sufficient profit to justify the investment.  
22 This is true for the following reasons: (1) traditional dealerships cannot derive a significant profit  
23 from servicing Tesla cars; (2) traditional dealerships cannot derive a significant profit from  
24 selling used Tesla or non-Tesla cars; (3) dealerships would be individually responsible for the  
25 expenses associated with advertising and incentives programs; and (4) to cover the additional  
26 costs and make a profit, dealerships would be forced to mark up the price of Tesla cars and would  
27  
28

1 therefore be unable to compete with Tesla's "no haggle" pricing available from Tesla's company-  
2 owned stores in other locations and through its website.

3 **A. Dealerships Cannot Derive Any Significant Profit From Servicing Tesla Cars**

4 42. Thirty-three percent of a traditional dealership's profit is generated by the service  
5 and parts department. *See supra* ¶ 19. This is possible in large part because traditional  
6 dealerships have a large UIO base of vehicles; I estimated 3,700 to 4,900 vehicles for each Utah  
7 dealership. *See supra* ¶ 20. Tesla, on the other hand, has sold in total only 247 Tesla cars to Utah  
8 residents. *See supra* ¶ 34. A UIO base of 247 cars is dramatically lower than the UIO base of  
9 thousands of vehicles typically relied on by dealerships to generate a profit through service.  
10 There are simply not enough existing Tesla cars on the road to generate the service profits  
11 necessary to support the traditional dealership model.

12 43. In addition, Tesla's vehicles and service model minimize the need for in-person  
13 repairs. *See supra* ¶ 35. Tesla performs over-the-air software updates to its cars, thus often  
14 avoiding a trip to a service center. *Id.*

15 **B. Dealerships Cannot Derive Any Significant Profit From Used Vehicle Sales**

16 44. Twelve percent of a traditional dealership's profit is generated from the sale of  
17 used vehicles. *See supra* ¶ 19. The majority of these vehicles is acquired through trade-ins when  
18 a customer purchases a new vehicle. A dealership's used inventory is stored on the dealership's  
19 lot.

20 45. The average Utah dealership sells around 547 used vehicles per year. *See supra* ¶  
21 11. This dramatically exceeds the number of pre-owned Tesla cars available for sale in Utah. As  
22 stated above, Tesla has sold 247 Tesla cars to Utah residents since 2012. *See supra* ¶ 34.  
23 Moreover, the magnitude of Tesla's worldwide sales is eclipsed by the magnitude of sales made  
24 by traditional dealerships. From its release in 2012 through the end of 2014, Tesla sold  
25 approximately 57,150 of its Model S cars worldwide. *Id.* In 2014 alone, traditional dealerships  
26 sold 16.5 million vehicles in the United States. *Id.* The inventory of pre-owned Tesla cars

1 available for sale in Utah, nationwide, and even worldwide is insufficient to support the  
2 magnitude of profit from used vehicle sales traditional dealerships have come to expect.

3 46. In addition, traditional dealerships obtain a large percentage of their used cars  
4 through trade-ins when customers purchase new cars. Because Tesla sells significantly fewer  
5 cars than a traditional dealership selling gas-powered vehicles, a traditional dealership selling  
6 Tesla cars would be able to acquire far fewer trade-ins (either Teslas or non-Teslas). As a result,  
7 the number of used cars in its inventory and its ability to profit from used car sales would be  
8 extremely limited, if at all.

9 47. Finally, Tesla's existing stores typically do not have lots and, as a result, Tesla  
10 need not pay the overhead cost associated with having lots. A traditional dealership, which relies  
11 on profits from used vehicle sales, would be forced to acquire a lot for storing used vehicles and  
12 somehow absorb the overhead cost of the lot, thereby reducing the profits associated with used  
13 vehicle sales.

14 **C. Dealerships Would Be Individually Responsible For Advertising Expenses**  
15 **And Incentives Programs**

16 48. Traditional dealerships rely heavily on vehicle manufacturers to fund incentives  
17 programs, and manufacturers and dealership co-ops to fund advertising. *See supra* ¶¶ 26-27.  
18 Incentives and advertising are two of the primary tools used by traditional franchised dealerships  
19 to generate potential customers as "traffic" through the door, into the dealerships. *Id.* Tesla does  
20 not use paid advertising or provide incentive programs to encourage consumers to purchase Tesla  
21 cars, instead relying on its brand and excellent customer service to promote its technology  
22 through word of mouth. *See supra* ¶ 39. It is unlikely that traditional dealerships would be able  
23 to replicate Tesla's high quality customer service on an individualized basis in order to sustain  
24 that reputation. As a result, they would need to rely on dealership-funded advertising and  
25 incentive programs, resulting in reduced profits.

1           **D.     Independent Dealerships Would Have To Markup Retail Prices And Could**  
2           **Not Compete With Tesla's Uniform "No Haggle" Prices**

3           49.     A traditional dealership selling Tesla cars would, like Tesla, need to derive the  
4 majority of its profits from new car sales. As explained above, sales of service and parts and  
5 sales of used cars are not viable sources of profits for dealerships selling Tesla cars. *See supra*  
6 §§ VI(A)-(B). In addition, dealerships selling Tesla cars would be required to absorb the cost of  
7 any advertising and incentives programs they wished to implement. *See supra* § VI(C). Thus, the  
8 vast majority of the dealerships' profits and costs (including advertising costs, overhead, etc.)  
9 would need to be included in the markup the dealership adds to the retail price of a Tesla car.

10          50.     However, increasing the retail price above the "no haggle" prices offered by Tesla  
11 would not be viable for a dealer because customers could turn to Tesla stores or Tesla's website  
12 to purchase cars at the lower prices. Tesla, moreover, has set its "no haggle" price at a level that  
13 supports the operation of its business and given the low volumes of Tesla cars sold and the  
14 custom-made nature of Tesla vehicles, there is no basis for Tesla to offer a dealership reduced  
15 pricing. Thus, since Tesla would be selling its cars to dealerships at the same retail prices it  
16 offered to customers in its Tesla-owned stores and through its website, dealerships could not  
17 recover their costs and remain profitable while competing with Tesla's "no haggle" prices.

18          51.     The same would be true if dealerships attempted to profit from financing and  
19 insurance. *See supra* ¶ 25. Customers are far more likely to choose the low cost financing made  
20 available by Tesla stores in other states than to select the "marked-up" financing typically offered  
21 by traditional dealerships. *See supra* ¶ 38.

22       **VII.   EVIDENCE SHOWS THAT INDEPENDENT FRANCHISED DEALERSHIPS**  
23       **ARE INEFFECTIVE AT SELLING ELECTRIC CARS**

24          52.     Existing studies demonstrate that traditional dealerships are not well-suited to sell  
25 electric cars. In particular, the studies reveal that salespeople at traditional dealerships are often  
26 unfamiliar with electric vehicle technology and the costs and benefits of owning an electric  
27 vehicle, and lack incentive to spend the time and energy necessary to sell an electric vehicle. *See*  
28

1 *infra* ¶¶ 53-58. As a result, customers are dissatisfied with the experience of purchasing an  
2 electric vehicle from a traditional dealership. *See id.* It is not surprising that the vast majority—  
3 93.5%<sup>49</sup>—of new vehicles sold in the United States are gas-powered, and only 0.5% of new  
4 vehicles are 100% electric.<sup>50</sup>

5 53. A study by Consumer Reports regarding experiences of potential customers  
6 interested in an electric vehicle at a traditional dealership found:

7 “Overall, many dealership sales people [at traditional dealerships]  
8 were not as knowledgeable about electric cars as one might expect.  
9 While we discovered several very knowledgeable salespeople at  
10 some dealerships, few provided accurate and specific answers about  
battery life and battery warranties. And many seemed not to have a  
good understanding of electric-car tax breaks and other incentives  
or of charging needs and costs.”<sup>51</sup>

11 54. A Green Car Reports article entitled “Many Car Dealers Don’t Want to Sell  
12 Electric Cars: Here’s Why” found:

13 “The salient point is that it takes much longer to sell a plug-in  
14 electric car, today, than it does a gasoline or diesel car. And dealers  
15 maximize their profits by exploiting the difference in information  
16 about complex financial transactions between buyers who do it  
17 once every five of six years, on average, and salespeople who sell  
18 multiple cars per day. Every salesperson’s mission is to close the  
deal, today, at maximum profit with minimum time invested.  
Selling a plug-in car takes three to five times as long for a deal as  
does selling a gasoline car. It requires explanation, education,  
training, all of the fuss and bother associated with installing a  
charging station in the garage if the buyer wants one, and so on.”<sup>52</sup>

19 55. In 2014, Cadillac launched its ELR model, its first plug-in hybrid vehicle. The  
20 ELR, a hybrid powered by gasoline and a rechargeable battery, is similarly priced to the Tesla  
21 Model S. In connection with its launch, Cadillac announced that 410 of its 940 traditional  
22 dealerships in the United States, or 44%, decided not to sell the ELR.<sup>53, 54</sup> When this vehicle

23 <sup>49</sup> NADA Market Beat: Review of New Light-Vehicle Sales, December 2014, page 3.

24 <sup>50</sup> *Id.*

25 <sup>51</sup> Consumer Reports, “Dealers Not Always Plugged in About Electric Cars,” April 22, 2014,  
<http://www.consumerreports.org/cro/news/2014/04/dealers-not-always-plugged-in-about-electric-cars-secret-shopper-study-reveals/index.htm>.

26 <sup>52</sup> Green Car Reports, “Many Car Dealers Don’t Want To Sell Electric Cars: Here’s Why,” February 14, 2014,  
[http://www.greencarreports.com/news/1090281\\_many-car-dealers-dont-want-to-sell-electric-cars-heres-why](http://www.greencarreports.com/news/1090281_many-car-dealers-dont-want-to-sell-electric-cars-heres-why).

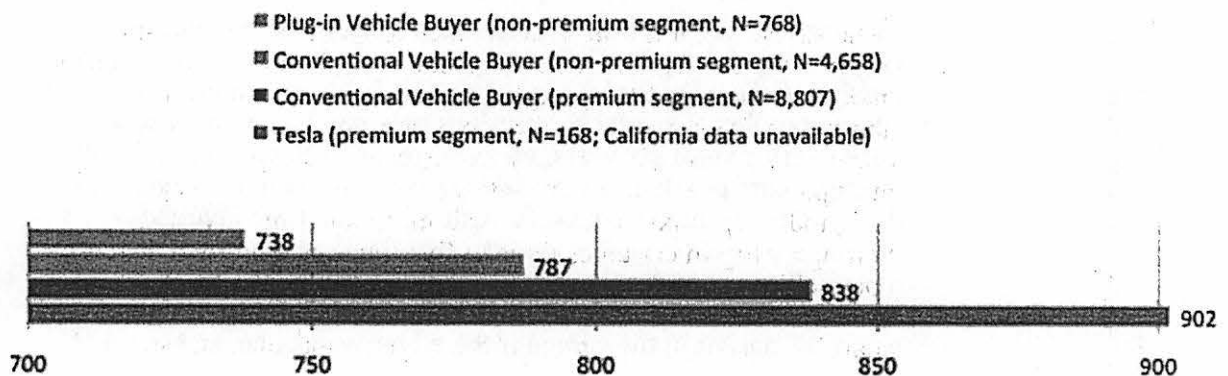
27 <sup>53</sup> Edmunds Inc., “Cadillac Tallies Dealers Set to Sell 2014 Cadillac ELR,” February 13, 2014,  
<http://www.edmunds.com/car-news/cadillac-tallies-dealers-set-to-sell-2014-cadillac-elr.html>.



launched in 2014, Cadillac offered incentives to its dealerships to sell the ELR, agreeing to “pay \$5,000 for each ELR assigned to the test [drive] fleet”<sup>55</sup> up to \$10,000. Cadillac also offered dealership and customer incentives with the sale of an ELR vehicle.

56. A 2014 study by the UC Davis Institute of Transportation Studies that analyzed sales satisfaction and customer satisfaction data for new vehicle buyers found that purchasers of electric vehicles from franchised dealerships had a poor customer experience—worse than that of buyers of gasoline-powered cars. The experience of Tesla customers, by contrast, was the most positive experience of all.<sup>56</sup> The UC Davis study analyzed the J.D. Power 2013 Sales Satisfaction Index (SSI) data reflecting customer satisfaction at traditional dealerships and Tesla retail outlets. As shown below, the customer experience of most electric vehicle purchasers at traditional dealerships was very low, whereas buyer satisfaction for Tesla customers was much higher.<sup>57</sup>

#### Buyer satisfaction with the new vehicle purchase experience



57. The UC Davis study found:

“[O]n average, plug-in car buyers rated dealers much lower in sales satisfaction than conventional car buyers. In contrast, buyers ranked Tesla much more favorably. The magnitude of these disparities is extraordinary by industry standards and indicate the problem is

<sup>54</sup> Automotive News, “GM offers dealers \$5,000 for Cadillac ELR test drives,” May 12, 2014, [http://www.autonews.com/article/20140512/RETAIL01/140519983/gm-offers-dealers-\\$5000-for-cadillac-elr-test-drives](http://www.autonews.com/article/20140512/RETAIL01/140519983/gm-offers-dealers-$5000-for-cadillac-elr-test-drives).

<sup>55</sup> Automotive News, “GM offers dealers \$5,000 for Cadillac ELR test drives,” May 12, 2014, [http://www.autonews.com/article/20140512/RETAIL01/140519983/gm-offers-dealers-\\$5000-for-cadillac-elr-test-drives](http://www.autonews.com/article/20140512/RETAIL01/140519983/gm-offers-dealers-$5000-for-cadillac-elr-test-drives).

<sup>56</sup> UC Davis Institute of Transportation Studies—New Vehicle Dealers and Retail Innovation in California’s Plug-In Electric Vehicle Market (Working Paper, October 2014).

<sup>57</sup> UC Davis Institute of Transportation Studies—New Vehicle Dealers and Retail Innovation in California’s Plug-In Electric Vehicle Market at page 7.

likely systemic. Poor purchase experience may adversely impact PEV sales and the growth of the nascent plug-in car market through missed opportunities to attract and retain customers to the technology.”<sup>58</sup>

58. The UC Davis study explained that the experiences of non-Tesla electric vehicle buyers varied significantly from dealership to dealership, contributing to the low satisfaction scores, because of the structure of the franchised dealer system. The study stated:

“The highly decentralized nature of the franchise model, in which contractual arrangements and franchise laws confer a great degree of operating freedom to new car dealers, translates into divergent processes across the dealer community. Franchise laws bar automakers from setting uniform processes for its retail networks.”<sup>59</sup>

#### **VIII. EXISTING UTAH DEALERSHIPS ARE CONTRACTUALLY PROHIBITED FROM SELLING TESLA CARS ALONGSIDE NEW VEHICLES FROM OTHER MANUFACTURERS**

59. Traditional dealerships are generally prohibited from selling Tesla cars alongside new vehicles made by other manufacturers.

60. Manufacturers have developed and implemented various programs to reinforce their brand image. This is the case not only for automotive dealerships, but for fast-food restaurants, retail establishments, and service industry locations. For traditional dealerships, these programs have included facility image programs that present a manufacturer’s brand in a consistent and recognizable way. As a result, the facades, showrooms, and service areas of most dealerships for a brand have the same elements, including building design, walls and flooring, furniture and fixtures, and signage.

61. Concurrently with the focus on implementing brand image programs, manufacturers typically require that dealerships sell only their brand of vehicle. It would be incongruous to have a brand image facility for a given brand, while having multiple brands on

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<sup>58</sup> UC Davis Institute of Transportation Studies—New Vehicle Dealers and Retail Innovation in California’s Plug-In Electric Vehicle Market at page 7.

<sup>59</sup> UC Davis Institute of Transportation Studies—New Vehicle Dealers and Retail Innovation in California’s Plug-In Electric Vehicle Market at page 8

1 display in that facility. As a result, traditional dealerships are generally prohibited from selling  
2 multiple brands in a single facility.

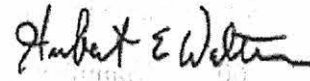
3 62. Dualled dealerships—dealerships that sell more than one manufacturer's new  
4 vehicles from a single facility—were once popular, but are now rare. Driven by manufacturers'  
5 desire to protect the exclusivity of their brands, the trend for many years has been to "de-dual"  
6 dealerships. Many dealerships that were once dualled have moved into separate buildings so that  
7 showroom displays, sales staff, and service lanes and bays are separate.

8 63. In Utah, only 13 out of 137 dealerships are still dualled.

9 64. It is unlikely that existing Utah dealerships would be permitted to sell Tesla cars at  
10 their existing dealerships because the franchise's sales and service agreement would prohibit it.

11  
12 I declare under penalty of perjury that the foregoing is true and correct.

13  
14 Executed on July 28, 2015.



15  
16 Herbert E. Walter  
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CERTIFICATE OF SERVICE

I hereby certify on this 28<sup>th</sup> day of July, 2015, that I caused to be e-mailed a true and correct copy of the foregoing **EXPERT WITNESS STATEMENT OF HERBERT E. WALTER** to the following:

Gale K. Francis  
Laron J. Lind  
Assistant Attorney General  
160 E. 300 South, 5<sup>th</sup> Floor  
P.O. Box 140874  
Salt Lake City, Utah 84114-0874  
grancis@utah.gov  
llind@utah.gov

/s/ Michael P. Petrogeorge

**ADDENDUM I TO BRIEF OF PETITIONER/APPELLANT**

**EXPERT WITNESS STATEMENT OF  
FIONA SCOTT MORTON**

BEFORE THE UTAH STATE TAX COMMISSION

TESLA MOTORS UTAH, INC.,

Petitioner,

vs.

MOTOR VEHICLE ENFORCEMENT  
DIVISION OF THE UTAH STATE TAX  
COMMISSION,

Respondent.

Appeal No. 15-1170

**EXPERT WITNESS STATEMENT OF FIONA SCOTT MORTON**

**SUBMITTED BY TESLA MOTORS UTAH, INC.**

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1 I, Fiona Scott Morton, hereby declare as follows:

2 **I. QUALIFICATIONS**

3 1. My name is Fiona Scott Morton and I am the Theodore Nierenberg Professor of  
4 Economics at the Yale University School of Management, where I teach courses in the area of  
5 competitive strategy and conduct research into empirical industrial organization. I am also a  
6 Visiting Professor at the University of Edinburgh, a Senior Consultant at Charles River  
7 Associates, and a Research Associate at the National Bureau of Economic Research. I hold a  
8 Bachelor's degree in Economics from Yale and a Ph.D. in Economics from the Massachusetts  
9 Institute of Technology.

10 2. I have been a professor at Yale since 1999, during which time I have been the  
11 Senior Associate Dean for Faculty Development. Before becoming a professor at Yale, I was an  
12 Assistant Professor of Economics and Strategy at the University of Chicago's Graduate School of  
13 Business. Before that, I was an Assistant Professor of Strategic Management at Stanford  
14 University's Graduate School of Business.

15 3. From 2011 to 2012, I held the position of Deputy Assistant Attorney General for  
16 Economic Analysis in the Antitrust Division of the U.S. Department of Justice. In this role, I  
17 supervised the economists in the Antitrust Division analyzing the cases that came before the  
18 Division. In many of these cases, the economists at the Division developed and assessed  
19 evidence of whether an organization's behavior was pro- or anti-competitive in light of the net  
20 impact of the behavior on consumers in terms of price, innovation, or quality.

21 4. I currently teach two courses at the Yale School of Management: Competitive  
22 Strategy, and Advanced Competition Economics and Policy. Competitive Strategy is an MBA  
23 elective course covering theories of how firms compete, including competition with respect to  
24 price, quantity, entry and exit into the market, research and development, and product  
25 differentiation. Advanced Competition Economics and Policy focuses on antitrust concepts.

26 5. I have published more than 20 articles in peer-reviewed journals. I also serve in an  
27 editing role on various academic economics journals, and I am a referee for a number of journals,  
28 including the *Review of Economic Studies*, the *Quarterly Journal of Economics*, the *RAND*

1 *Journal of Economics*, the *Journal of Industrial Economics*, and the *Journal of Law and*  
2 *Economics*. I am also a member of the American Economic Association.

3 6. My research is in the field of empirical industrial organization, which is the  
4 application of empirical methods to the field of industrial organization. The field of industrial  
5 organization examines the structure of firms and markets, including competitive markets and  
6 monopolies. My work focuses on empirical studies of competition among companies and firms,  
7 including in areas such as pricing, entry, and product differentiation.

8 7. I have researched and published peer-reviewed articles about the automotive  
9 industry, including research and publications on price negotiation in the U.S. auto retailing  
10 industry, state franchising laws related to dealer terminations, internet car retailing and  
11 transactions, price discrimination against women and minorities at dealerships, and inventory  
12 fluctuations at dealerships. Several of these papers received awards, including the Green Award  
13 from the *Journal of Marketing Research* for the paper on internet car retailing and transactions.

14 8. I have testified as a qualified expert about the franchise system, including the  
15 economics of the franchise system and the reasons that auto manufacturers reorganized their  
16 franchise network in the wake of the financial crisis. I have testified in front of Congress on  
17 pricing in the pharmaceutical industry. A copy of my curriculum vitae is attached as Exhibit 1.

## 18 **II. SCOPE OF TESTIMONY**

19 9. Counsel for Tesla Motors, Inc. ("Tesla") asked me to review the economic  
20 rationales for Tesla's sales model, which involves selling its cars directly to consumers, and the  
21 independent franchised dealership model.

22 10. In preparation for my testimony, I reviewed the relevant Utah statutes, including  
23 the Utah Business Regulation Act and the Utah New Automobile Franchise Act, the Utah  
24 Constitution and relevant amendments to the constitution, publicly available information  
25 concerning Tesla and this dispute, and research on retail sales, the dealership model, and  
26 consumer preferences in the automotive industry. I have also spoken to and heard and reviewed  
27 testimony from Tesla employees and an automotive expert (Herb Walter) about Tesla's business  
28 model and sales practices. I have personally visited a Tesla store and taken a test drive. I have

1 also read a number of reports that examine the economics of automobile distribution as well as  
2 letters from the Federal Trade Commission and other economists describing the impacts of  
3 franchise laws that restrict distribution.

4 11. Tesla has retained me at an hourly rate of \$1,000. I have spent more than 50 hours  
5 studying the economic rationales for Tesla's sales model and the independent franchised  
6 dealership model.

7 12. It is my opinion that Tesla's retail business model is highly effective for a firm  
8 producing a new and novel product and represents a lower-cost alternative to the traditional  
9 franchised dealer model. It is also my opinion that prohibiting any non-franchising manufacturer,  
10 including Tesla, from selling new vehicles directly to consumers in Utah would harm Utah  
11 consumers and its economy, be inefficient and anti-competitive, and serve no legitimate  
12 government purpose.

13 **III. TESLA'S DIRECT-SALES MODEL IS CRITICAL TO ITS SUCCESS**

14 13. Tesla's sales and distribution model differs significantly from the traditional  
15 manufacturer-independent franchise model used to sell almost all new vehicles in the United  
16 States. Under the franchise model, each franchised dealer has a contract with a car manufacturer.  
17 The dealer buys vehicles from the manufacturer and maintains an inventory of vehicles on its lot.  
18 The dealer maintains a showroom and sales staff to sell new vehicles, and offers service and  
19 repairs, including warranty repairs, for existing vehicles from that manufacturer. The staff at a  
20 traditional dealership is educated about gasoline-powered cars, is trained to sell those cars, and  
21 receives financial incentives to sell those cars. The base compensation for salespeople at  
22 traditional franchised dealerships is low, sometimes minimum wage. Salespeople are  
23 compensated primarily through commissions—calculated based on the sale price of the new car  
24 —with the department's overall profits contributing to commissions/bonuses for the dealership's  
25 management team. The franchise dealer usually offers financing at a significant mark-up.  
26 Typically the staff is also incentivized through commissions (often higher than the commissions  
27 on new car sales) to sell "add-ons" such as additional features, service contracts and warranties.  
28

1 Prices for new vehicles and “add-ons” are usually negotiable, with the dealer attempting to obtain  
2 the highest price that he or she can.

3 14. In contrast with the traditional independent franchise model, Tesla sells its cars  
4 directly to consumers through stores it owns and operates. These stores are staffed by Tesla  
5 employees with a thorough knowledge of Tesla vehicles. The stores generally have no inventory  
6 in stock and only one or two vehicles for test drives and service loaners. Tesla cars are made to  
7 order, and delivered to the store or other locations for pick-up by customers. Tesla’s salespeople  
8 are salaried employees. While they are paid certain commissions on the sales of cars, the  
9 commissions are significantly less in amount and are structured differently than those paid by  
10 traditional dealerships that incentivize haggling over price and “add-ons.” Tesla offers assistance  
11 with financing through its financial partners, but it does not mark-up the finance with points or  
12 fees. Tesla receives only a small referral fee, which is based on a fixed percentage of the loan  
13 size. Unlike traditional dealerships, Tesla does not try to develop revenue streams through  
14 financing and insurance or the sale of add-on features.

15 15. Tesla’s view is that it would be financially disastrous if Tesla were forced to sell  
16 its cars through a franchised dealer model because Tesla cars are extremely different from  
17 gasoline-powered cars, must be sold in a different environment, and are currently sold on a  
18 relatively small scale. It is my opinion that there are several strong economic justifications for  
19 these beliefs and that selling Tesla cars through the existing network of traditional dealers would  
20 not be economically feasible or cost effective.

21 A. Independent Franchised Dealers Are Not Incentivized To Sell Tesla Cars  
22 Over Gasoline-Powered Cars

23 16. Tesla’s direct-sales model is incompatible with the independent franchised dealer  
24 model because dealers that sell gasoline-powered cars are not incentivized to promote Tesla’s  
25 novel cars effectively for a number of reasons.

26 17. First, the amount of information that needs to be conveyed to the buyer of an  
27 electric vehicle is large and the information is complex. A sales force focused primarily on  
28 selling gasoline-powered cars is unlikely to have the time or incentive to master it, particularly



1 given Tesla's very small number of sales compared to other car manufacturers. With Tesla's car  
2 production still at an early stage, Tesla's sales are relatively low, especially compared to gasoline-  
3 powered car sales. In 2014, for example, Tesla delivered 31,655 Model S cars worldwide.<sup>1</sup> In  
4 contrast, traditional dealers in the United States sold more than 16.5 million cars in 2014, the vast  
5 majority of which were gasoline-powered.<sup>2</sup> To date, Tesla has sold 247 cars in Utah. To ensure  
6 that customers are provided with sufficient information about Tesla cars in an attractive and  
7 relaxed environment, Tesla has opened its own stores staffed with its own employees. Similar  
8 motivations have led other firms selling innovative and novel products (Apple, for example) to  
9 establish their own company-owned and operated stores.

10 18. Second, a traditional dealership does not provide incentives to its salespeople to  
11 spend the time necessary to educate consumers about a new and innovative technology for a small  
12 market. The people who come in to Tesla stores are often simply curious about its innovative  
13 product and often visit multiple times before they buy a vehicle. A salesperson at a traditional  
14 dealership would not find it financially worthwhile to spend time educating a potential purchaser  
15 of a Tesla vehicle when he or she could be engaging in a much quicker sale of a gasoline-  
16 powered vehicle.

17 19. Third, in order to cover their costs and make a profit, a franchised dealership  
18 selling Tesla cars would have to mark up the retail price of the car. But such a price could not  
19 compete with (or match) the uniform "No Hagggle" prices Tesla offers over the Internet and  
20 through its wholly-owned stores in other states. The franchised dealership could not then make  
21 up this loss through service revenue or by selling used Tesla cars because of the relatively low  
22 volume of Tesla sales to date.

23 20. Several studies have researched consumer satisfaction with the process of  
24 purchasing an electric vehicle at a traditional dealership. These studies have uniformly shown  
25 that buying an electric vehicle at a traditional dealership is not a successful experience.  
26 According to an article in *Consumer Reports*, for example, "when asked about a Prius plug-in, a  
27

28 <sup>1</sup> Tesla Motors, Inc. Annual Report for the year ending December 31, 2014.

<sup>2</sup> Automotive News: U.S. Car and Light-Truck Sales by Make December 2014.

1 salesperson at Star Toyota Scion of Bayside, New York, would not even show our shopper the  
2 car, despite having one in stock.”<sup>3</sup> For this article, Consumer Reports undertook a study where it  
3 sent secret shoppers to traditional dealerships to try and buy electric cars. The secret shoppers  
4 reported that salespeople at traditional dealerships usually did not know very much about electric  
5 cars and were not particularly enthusiastic about the electric cars. Another study performed by  
6 the University of California at Davis found that plug-in vehicle buyers were unhappy with their  
7 experiences at traditional dealerships.<sup>4</sup> In that study, a number of interviews were conducted at  
8 dealerships, surveys were sent to buyers in California, and national sales data was collected from  
9 J.D. Power that allowed the authors to compare the survey answers with data about the sales  
10 transaction underlying the survey questions.

11 21. These studies support Tesla’s conclusion that it could not successfully sell its cars  
12 through traditional dealers. This result is not surprising in light of the underlying economics. A  
13 traditional dealership incentivizes its salespeople to obtain high margins on every car sold  
14 because a salesperson is paid more if he obtains a higher price on a vehicle. In contrast, the price  
15 of a Tesla car is fixed, so there is no role for the salesperson to assess the consumer’s willingness  
16 to pay and increase the margin accordingly. Furthermore, because electric vehicles are a new  
17 technology that many people aren’t familiar with, it takes time to educate them before they are  
18 ready to make a purchase. Traditional dealerships are not incentivized to invest this time on this  
19 new, relatively low-volume technology when they could be making higher profits on the faster-  
20 selling gasoline-powered vehicles. Nor can they be expected to promote the advantages of  
21 electric cars over gasoline cars, which make up most of the vast majority of their revenue.

22 **B. Tesla’s Direct-Sales Model Is More Cost-Effective**

23 22. Tesla’s direct-sales model also makes sense economically because selling its cars  
24 through traditional dealerships would not be feasible for Tesla. As a new brand that is still at an  
25 early stage of ramping its vehicle production, Tesla has very low sales as compared to long-

26  
27 <sup>3</sup> *Dealers Not Always Plugged in About Electric Cars, Consumer Reports’ Study Reveals*, ConsumerReports.org  
(Apr. 22, 2014); *see also 2014 BMW i3 Test Drive: No Help from Salesman for Electric-Car Buyer*, Green Car  
Reports (May 23, 2014).

28 <sup>4</sup> UC Davis Institute of Transportation Studies - *New Car Dealers and Retail Innovation in California’s Plug-In  
Electric Vehicle Market* at p. 6.

1 established car manufacturers. The cost of sustaining a dedicated franchisee on a large plot of  
2 land with a repair shop to sell only a handful of cars per month would be prohibitively high,  
3 especially in light of the low number of existing Tesla cars that would need service and repairs. It  
4 is highly unlikely that prospective franchisees would be willing to commit significant assets to  
5 build such a facility. Because of these high fixed costs for traditional dealers, they need to sell  
6 large volumes of cars quickly, a sales model incompatible with Tesla's need to patiently educate  
7 consumers about a relatively new company and new technology.

8         23. By contrast, Tesla's stores in operation today have very low fixed and variable  
9 costs because they typically have only a few people on staff and no inventory because Tesla cars  
10 are custom-made. Tesla's use of rented space for its stores allows it to free up capital and readily  
11 expand or relocate as circumstances warrant. This low level of overhead is practical and cost-  
12 effective given the still-early stage of Tesla's vehicle production and the relatively low amount of  
13 sales that go with it. These choices are driven by the needs of the technology as well as the scale  
14 of the firm. It would significantly increase Tesla's costs to require it to sell through independent  
15 franchised dealers, which, assuming that Tesla cars would even sell through that model, would  
16 make its cars more expensive and less accessible to consumers.

17         24. Based on Tesla's product and scale, Tesla's sales model makes sense for its  
18 business, while the standard franchised dealership model is incompatible with Tesla's business  
19 and products. Tesla's business model undercuts the primary source of profits for a standard  
20 dealership—used car sales and the repairs and maintenance business. Tesla does not buy and sell  
21 non-Tesla used vehicles, and its pool of available Tesla used vehicles is tiny compared to  
22 franchised dealers. And Tesla's service and parts revenue is constricted because Tesla's past and  
23 current sales are relatively quite low. Traditional franchised dealerships would need to compete  
24 with Tesla's uniform retail prices in Tesla-owned stores and over the Internet. Moreover, because  
25 the product (as well as the company) is new and novel, Tesla requires different selling behavior,  
26 different sales skills, and a different environment than other manufacturers. Because of all of  
27 these differences, the standard independent franchised dealer model is not viable for Tesla's  
28 products.

1 **IV. DENYING TESLA A NEW MOTOR VEHICLE DEALER LICENSE WOULD**  
2 **HARM CONSUMERS AND COMPETITION**

3 25. As an economist who has studied regulation and competition, it is my opinion that  
4 preventing Tesla from adopting a direct-sales model in Utah would have a negative effect on  
5 consumers and competition. If Tesla were denied a new motor vehicle dealer license, consumers  
6 in Utah would have fewer choices, and in particular, they would not have the option of easily  
7 shopping for Tesla's innovative car, which has the potential to create significant utility and  
8 consumer welfare.

9 26. In general, studies show that consumers dislike shopping for cars at traditional  
10 independent franchised dealerships, and find it to be a very unpleasant experience. For example,  
11 a report by McKinsey & Company<sup>5</sup> on the automotive retail market found that one in four  
12 customers is not satisfied with his experience at a dealership. Recognizing this reality, Tesla  
13 adopted a very different business model and chose to set uniform prices, promote education, and  
14 create a low-pressure and relaxed environment. The creation of this alternative model is good for  
15 the consumer because it creates more choices. If consumers like this retail experience, and the  
16 retail experience is one factor that drives Tesla's sales, this will put competitive pressure on  
17 traditional dealers. Competing dealers will want to improve their own buying experience in order  
18 to retain consumers—and all consumers will benefit from this competition.

19 27. Tesla's direct-sales approach has been endorsed by its customers. In a recent  
20 survey of its subscribers conducted by *Consumer Reports* covering quality, reliability, and  
21 consumer satisfaction, the Tesla Model S earned a score of 99, the highest score any car has ever  
22 received.<sup>6</sup> This superior overall score suggests that Tesla Model S owners are pleased with their  
23 sales and service experience as well as by the inherent quality of the vehicle. As an economist, I  
24 put significant weight on the behavior of consumers because it is an indicator of what they prefer.  
25 If consumers are purchasing Tesla cars, it's because they like the car at the price they paid better  
26

27 <sup>5</sup> McKinsey & Company, *Innovating Automotive Retail* (Feb. 2014) (discussing results of McKinsey's 2013 Retail  
28 Innovation Consumer Survey).

<sup>6</sup> *Tesla Model S Takes the Top Spot in Consumer Reports Car Owner-Satisfaction Ratings*, ConsumerReports.org  
(Nov. 21, 2013) ; see also *Would You Buy Your Car Again?*, ConsumerReports.org (Dec. 2014).

1 than the other available options in the market. The fact that consumers rate Tesla highly indicates  
2 that consumer loss would be significant if Tesla vehicles were not available.

3 28. Tesla's direct control of service and maintenance has also generated significant  
4 benefits to the consumer. First, Tesla's national service platform takes advantage of new  
5 technologies. Tesla, for example can perform over-the-air software updates to its cars, thus  
6 avoiding a trip to a service center. Second, Tesla's service technicians are also in close  
7 communication with Tesla engineers to troubleshoot and solve problems quickly. Third, Tesla  
8 service employees, unlike those at dealerships, are paid by the hour rather than the job and are not  
9 paid commissions. This eliminates the incentive to perform hasty work to complete more jobs in  
10 a shorter amount of time or encourage customers to purchase potentially unnecessary additional  
11 work, both of which can increase service profits at a traditional dealership. A *Consumer Reports*  
12 survey gave Tesla's service operation its highest marks, beating all other repair facilities  
13 (including franchised dealerships and independent repair shops) for repair satisfaction, on-time  
14 repairs, courtesy, price, quality, and overall satisfaction.<sup>7</sup>

15 29. Moreover, if Tesla were not granted a dealer license, Utah consumers would be  
16 denied ready access to Tesla's new vehicles. While some Utah consumers might still choose to  
17 purchase Tesla cars in neighboring states (Nevada and Colorado have Tesla stores) or online,  
18 these consumers would be inconvenienced by having to travel out of state or to self-register their  
19 "out of state" vehicles with the Division of Motor Vehicles of the Utah State Tax Commission.  
20 Other potential Tesla buyers in Utah might never hear of the car, never obtain purchase  
21 information, or otherwise be deterred from purchasing Tesla cars because Tesla will be precluded  
22 from actively marketing its cars in the state. Further, if Tesla were prohibited from selling  
23 directly to consumers in Utah and had to use an inefficient method of distribution, this would  
24 raise prices. These higher prices would be borne by consumers.

25 30. In contrast, if Tesla were permitted to open a store to sell its cars in Utah,  
26 consumers would have more car-buying choice and readily available information about those  
27

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28 <sup>7</sup> Consumer Reports, *Independent vs. Dealer Shops For Car Repair*, January 22, 2015, available at  
<http://www.consumerreports.org/cro/magazine/2015/03/best-places-to-get-your-car-repaired/index.htm>.



1 choices, which is good for competition. Additionally, the arrival of Tesla in the state would not  
2 be just like adding another manufacturer similar to the ones already present; the impact on  
3 consumer choices would likely be larger because Tesla is so different. It uses a different and  
4 innovative technology, has a different environmental impact, and offers a very different shopping  
5 experience in the automotive industry. These new options in the car market hold great potential  
6 for Utah consumers, whether they purchase electric vehicles or gas-powered ones. If Tesla were  
7 denied a license, dealers of competing models would no longer face increased incentives to  
8 compete on the basis of lower prices and/or superior customer service.

9       31. One of the two government agencies tasked with enforcing US competition laws  
10 supports the conclusion that automobile firms, including Tesla, should be free to choose the  
11 distribution model that is best-suited for their needs. The Federal Trade Commission (“FTC”),  
12 whose mandate is to protect consumers and ensure competition, submitted comments in three  
13 states as they considered permitting direct distribution in the automotive industry—in two states  
14 the FTC specifically urged legislators to lift prohibitions on Tesla’s direct sales.<sup>8</sup> The FTC  
15 explained that government-imposed mandates requiring companies to run their business through  
16 one particular business model does not serve the best interest of consumers. By contrast, giving  
17 companies the freedom to choose the model that makes the most sense for them, and letting the  
18 market determine whether it succeeds or fails, is in the best interest of consumers and  
19 competition.

20       32. Directors of three FTC divisions also authored a blog post endorsing Tesla’s  
21 direct-to-consumer sales strategy finding that “American consumers and businesses benefit from  
22

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23 <sup>8</sup> See FTC Staff Comment Before the Missouri House of Representatives Regarding House Bill 1124, Which Would  
24 Expand the Current Prohibition on Direct-to-Consumer Sales by Manufacturers of Automobiles, May 15, 2014,  
25 available at [http://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-missouri-house-representatives-regarding-house-bill-1124-which-would-expand/140515mo-autoadvocacy.pdf](http://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-missouri-house-representatives-regarding-house-bill-1124-which-would-expand/140515mo-autoadvocacy.pdf); FTC Staff Comment  
26 Before the New Jersey General Assembly Regarding Assembly Bills 2986, 3096, 3041, and 3216, Which Would  
27 Create Limited Exceptions to New Jersey’s Prohibition on Direct-to-Consumer Sales by Manufacturers of  
28 Automobiles, May 16, 2014, available at [http://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-new-jersey-general-assembly-regarding-assembly-bills-2986-3096-3041-3216-which/140516nj-autoadvocacy.pdf](http://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-new-jersey-general-assembly-regarding-assembly-bills-2986-3096-3041-3216-which/140516nj-autoadvocacy.pdf); and FTC Staff Comment Regarding Michigan Senate Bill 268 Which Would Create A Limited  
Exception To Michigan Law, May 7, 2015, available at  
[https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-regarding-michigan-senate-bill-268-which-would-create-limited-exception-current/150511michiganautocycle.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-regarding-michigan-senate-bill-268-which-would-create-limited-exception-current/150511michiganautocycle.pdf).

1 a dynamic and diverse economy where new technologies and business models can and have  
2 disrupted stable and stagnant industries, often by responding to unmet or under-served consumer  
3 needs.”<sup>9</sup> The blog post concluded that “efforts by auto dealers and others to bar new sources of  
4 competition [are] expressions of a lack of confidence in the competitive process that can only  
5 make consumers worse off.” Academic literature also contains studies that show why firms  
6 might choose direct distribution in some cases and franchising in other cases.

7 **V. DENYING A LICENSE TO TESLA WOULD HARM UTAH’S ECONOMY**

8 33. Barring Tesla from selling vehicles in Utah would produce several deleterious  
9 effects on Utah’s economy. First, Utah would lose potential new jobs if Tesla were not granted a  
10 dealer license. Without a license, Tesla would not be able to open full-service stores in Utah,  
11 which would likely employ Utah residents. With fewer Tesla vehicles being sold to Utah  
12 residents, Tesla might also find it uneconomical to operate its service facility in Salt Lake City.  
13 Such actions would risk the jobs of the Utah residents that Tesla already employs.

14 34. Second, the state government could be expected to suffer a loss of sales tax  
15 revenues if Tesla were precluded from selling vehicles directly in Utah. Some of these losses  
16 might be offset if prospective Tesla buyers opt to purchase other vehicles in Utah instead, but  
17 because (1) Tesla’s novel product may attract buyers who otherwise would not have chosen to  
18 purchase a new vehicle and (2) Tesla vehicles command a premium price compared to all but a  
19 few gasoline-powered models, any such offset is likely to be incomplete. The state also could  
20 expect to lose income tax revenue if Tesla moves jobs from Utah to other states.

21 35. Third, with fewer electric cars on its roads, Utah would forego environmental  
22 benefits that occur when electric cars replace gasoline-powered cars, including reductions in local  
23 air pollution and in greenhouse gas emissions.

24 **VI. NO RATIONAL ECONOMIC INTEREST SUPPORTS THE DENIAL OF A NEW**  
25 **MOTOR VEHICLE DEALER LICENSE TO TESLA**

26 36. Utah’s Motor Vehicle Enforcement Division (“MVED”) may claim that the  
27 restriction on direct sales in the current franchised dealer system is justified because it provides

28 <sup>9</sup> See “Who Decides How Consumers Should Shop?” dated April 24, 2014, available at <https://www.ftc.gov/news-events/blogs/competition-matters/2014/04/who-decides-how-consumers-should-shop>

1 price competition or ensures important consumer protections. It is my opinion that neither of  
2 these claims is valid. Denying a new motor vehicle license to Tesla will reduce price competition  
3 and will not provide protections to purchasers of Tesla cars.

4       A.     **Tesla's Vertically Integrated Sales Model Eliminates Double Marginalization**

5       37.     The MVED may claim that the presence of independent franchised dealerships  
6 promotes price competition. There are two types of competition: competition among dealers of  
7 the same brand (*intra*brand competition) and competition among manufacturers of different  
8 brands (*inter*brand competition). Independent franchised dealerships only promote intra-brand  
9 price competition—i.e., competition for the same brand of automobile. But the use of  
10 independent franchised dealerships brings with it the problem of “double marginalization” that  
11 increases prices for consumers. Tesla’s vertically integrated sales model avoids this entirely  
12 while promoting competition with other automobile brands.

13       38.     “Double marginalization” is an economics term that refers to the problem that  
14 arises when two companies both apply mark-ups to the same product. Double marginalization is  
15 inherent in the traditional franchised dealership model: first, the manufacturer marks-up its  
16 manufacturing costs to arrive at the wholesale price; second, the dealership adds an additional  
17 mark-up to produce the retail price. Interbrand competition occurs at the first stage—  
18 manufacturers compete with each other as they set the wholesale price of the vehicle. Intra-brand  
19 competition occurs in the second stage—dealerships selling the same car brand compete with  
20 each other by reducing their dealer markup over the manufacturer’s price. The franchised  
21 dealership model only promotes *intra*brand competition and it does not affect the manufacturer’s  
22 wholesale price.

23       39.     The magnitude of double marginalization depends on the level of competition  
24 among dealers. For example, if there are a number of Ford dealers in a particular area all  
25 competing against each other for the same customers, the dealers’ margins will be low. But if a  
26 dealer faces minimal intra-brand competition from other dealers, then the dealer controls retail  
27 margins without being disciplined by competition from other dealers. Without competition, the  
28 Ford dealer charges a monopoly price for its retailer services on top of Ford’s wholesale price for



the car. Competition among franchise dealers may be limited by state law restrictions on the establishment of new franchise dealers for a particular area. For example, a 1986 study by the FTC estimated that franchising laws restricting the establishment of new automobile dealerships raised the average price of the Chevrolet cars that were sampled by about 6 percent.<sup>10</sup>

40. As demonstrated in the following hypothetical illustration, Tesla's sales model eliminates double marginalization while offering increased competition with other brands.

	1 dealer sells desired car	3 dealerships compete to sell desired car	Manufacturer sells directly
Manufacturer cost of sales	\$950	\$950	\$950
Manufacturer retail costs (rent and staff)			\$25
+ Manufacturer mark-up	\$50	\$50	\$51
Dealer invoice cost for vehicle	\$1,000	\$1,000	-
Dealer cost of sales (rent, advertising, floor plan)	\$50	\$50	-
<b>Dealer mark-up</b>	<b>\$100</b>	<b>\$10</b>	-
Consumer Pays	\$1,150	\$1,060	\$1,026

41. In this example, the manufacturer's wholesale price for a car is \$1,000. In the first scenario there is only one franchise dealer in the region, that is, there is limited intrabrand competition. This example assumes the franchised dealer's retail cost is \$50 per car, which covers the dealer's rent, advertising, sales staff, etc. The franchised dealer exerts significant market power and the dealer may charge a relatively high mark-up over the wholesale price and the dealer's costs. In this case the dealer mark-up is \$100, and the final retail price of the car is \$1,150. In the second scenario three competing dealers purchase the vehicle from the manufacturer at an identical wholesale price (as is generally required by law). Because of the competition between dealers, each dealer exerts less market power and the dealer mark-up falls to \$10, resulting in a lower retail price.

42. A vertically integrated sales model, which Tesla employs, is vastly different from the first two scenarios. The manufacturer's retail costs are lower because it does not carry an inventory of cars, has no advertising costs, and employs fewer salespeople. While the

<sup>10</sup> Robert P. Rogers, *The Effect of State Entry Regulation on Retail Automobile Markets*, Bureau of Economics Staff Report to the Federal Trade Commission (Jan. 1986).

1 manufacturer may charge a higher mark-up (e.g., \$51 rather than \$50), the final retail price is  
2 much lower than it would be if the vehicle was marked-up by both the manufacturer and the  
3 dealer.

4 43. In the vertically integrated sales model, Tesla's manufacturer mark-up is limited  
5 by interbrand competition. Tesla has strong incentives to manage its sales operations as  
6 efficiently as possible and has no incentive to raise prices at the retail level beyond those that best  
7 enable it to compete with other manufacturers.

8 **B. Tesla Already Has Powerful Incentives To Protect Its Consumers**

9 44. Utah may also claim that independent franchised dealerships are necessary to  
10 protect consumers. But this claim ignores the powerful incentives Tesla has to ensure their  
11 customers are well-served and well-served. Tesla's incentives to provide excellent service to its  
12 customers are particularly high as its cars are a new and novel product. Tesla is building a  
13 reputation for excellent customer service that enhances the reputation of its cars.<sup>11</sup> In recent  
14 comments, the FTC concurred that providing inadequate customer service is contrary to the  
15 economic self-interest of an auto manufacturer.<sup>12</sup>

16 45. Tesla also has a clear incentive to carry out repairs quickly and well because it  
17 faces no externalities; a good brand with a good reputation for quality redounds entirely to the  
18 company. Tesla's sterling reputation is particularly important because, in addition to having to  
19 sell the public on a novel technology, it is doing so without any paid advertising. If Tesla fails to  
20 provide adequate warranty repairs for its cars, consumers will find out rapidly, and the brand will  
21 be harmed. In contrast, because an independent franchised dealer earns its own profits from  
22 warranty repairs, it may maximize those profits in a way that harms the brand; the harm to the

23  
24 <sup>11</sup> Consumer Reports, "Tesla Model S Takes the Top Spot in Consumer Reports Car Owner-Satisfaction Ratings,"  
November 21, 2013, available at <http://pressroom.consumerreports.org/pressroom/2013/11/my-entry-2.html>.

25 <sup>12</sup> See FTC Staff Comment Before the Missouri House of Representatives Regarding House Bill 1124, Which Would  
26 Expand the Current Prohibition on Direct-to-Consumer Sales by Manufacturers of Automobiles, May 15, 2014, p. 7,  
available at [http://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-missouri-house-representatives-regarding-house-bill-1124-which-would-expand/140515mo-autoadvocacy.pdf](http://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-missouri-house-representatives-regarding-house-bill-1124-which-would-expand/140515mo-autoadvocacy.pdf) and FTC Staff  
27 Comment Before the New Jersey General Assembly Regarding Assembly Bills 2986, 3096, 3041, and 3216, Which  
Would Create Limited Exceptions to New Jersey's Prohibition on Direct-to-Consumer Sales by Manufacturers of  
28 Automobiles, May 16, 2014, pp. 6-7, available at  
[http://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-new-jersey-general-assembly-regarding-assembly-bills-2986-3096-3041-3216-which/140516nj-autoadvocacy.pdf](http://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-new-jersey-general-assembly-regarding-assembly-bills-2986-3096-3041-3216-which/140516nj-autoadvocacy.pdf).

1 brand is not fully absorbed by the dealer, but is shared with the manufacturer and all the other  
2 franchised dealers. A dealership has imperfect incentives to preserve its brand's reputation with  
3 good service because other dealers and the manufacturer may share in the benefits of its efforts.  
4 Tesla, on the other hand, has incentives to make sure that each store provides top quality service  
5 to each customer, no matter the store visited. It is, therefore, unsurprising that Tesla consistently  
6 receives top marks for customer service, repairs and maintenance. See ¶¶ 27-28.

7 **VII. CONCLUSION**

8 46. The denial of a new motor vehicle dealer license to Tesla in Utah would harm  
9 Utah consumers and its economy, would be anti-competitive, and is not in the public interest.  
10 Refusing to grant a license to Tesla would effectively bar an innovative entrant from selling  
11 automobiles in the state of Utah and would hamper future efforts by Tesla or other manufacturers  
12 to use new and potentially more efficient methods to sell and distribute new automobiles.

13 I declare under penalty of perjury that the foregoing is true and correct.

14 Executed on July 28, 2015.

/s/ Fiona Scott Morton  
Fiona Scott Morton

1 CERTIFICATE OF SERVICE

2 I hereby certify on this 28<sup>th</sup> day of July, 2015, that I caused to be e-mailed a true and  
3 correct copy of the foregoing **EXPERT WITNESS STATEMENT OF FIONA SCOTT**  
4 **MORTON** to the following:

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6 Laron J. Lind  
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10  
11 /s/ Michael P. Petrogeorge  
12  
13  
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**ADDENDUM J TO BRIEF OF PETITIONER/APPELLANT**

**HEARING TRANSCRIPT – AUGUST 14, 2015**

1  
2 BEFORE THE UTAH STATE TAX COMMISSION  
3

4 TESLA MOTORS UT, INC., )

5 Petitioner, )

6 v. )

) Appeal No. 15-1170

7 MOTOR VEHICLE ENFORCEMENT )  
8 DIVISION OF THE UTAH TAX )  
9 COMMISSION, )

Respondent. )  
10  
11

12 HEARING TRANSCRIPT

13 Salt Lake City, Utah

14 Friday, August 14, 2015  
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24 Reported by: Daren S. Bloxham, RPR No. 000335

25 JOB No.: 260717

Page 2

1 Hearing taken at Utah State Tax Commission,  
 2 located at 210 North 1950 West, Salt Lake City, Utah,  
 3 on August 14, 2015, at 9:07 a.m., before Daren S.  
 4 Bloxham, Certified Court Reporter, in and for the State  
 5 of Utah.

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Page 4

1 MR. FRANCIS: Gale Francis, Assistant  
 2 Attorney General, on behalf of the Motor Vehicle  
 3 Enforcement Division.

4 MR. LIND: Laron Lind, Assistant Attorney  
 5 General, also here on behalf of the Division.

6 JUDGE PHAN: Okay. And we have in the  
 7 audience at this time -- why don't you go ahead and  
 8 introduce the people who are here as your witnesses.

9 MR. RILEY: Certainly. Thank you,  
 10 Your Honor. First, Diarmuid O'Connell, who is the  
 11 Vice President of Business Development from Tesla. Our  
 12 second witness will be Professor Fiona Scott Morton,  
 13 who is endowed chair at the Yale School of Management  
 14 in economics.

15 And with the Court's permission, I'd like to  
 16 introduce two other individuals who are here from  
 17 Tesla. First is Todd Maron. Todd Maron is the General  
 18 Counsel of Tesla. And then we have Lynn Miller, who is  
 19 the Associate General Counsel from Tesla. Finally, my  
 20 colleague from O'Melveny & Meyers, Elysa Wan. Thank  
 21 you.

22 JUDGE PHAN: Okay. All right. And the  
 23 Division, who do you intend to call as witnesses?

24 MR. FRANCIS: We intend to call George --  
 25 excuse me -- what is your first name?

Page 3

P-R-O-C-E-E-D-I-N-G-S

--OOO--

3 JUDGE PHAN: Everyone have a seat. All  
 4 right. I'm turning on the recording system. Let's  
 5 see, and I know we do have a court reporter here for  
 6 the record, but we will be keeping a recording as well.

7 Okay. We are here for the formal hearing in  
 8 the matter of Tesla Motors Utah, Inc. versus Motor  
 9 Vehicle Enforcement Division. I'm Jane Phan. I'm the  
 10 Administrative Law Judge here at the State Tax  
 11 Commission.

12 Presiding at this hearing, we have  
 13 Commissioner Chair John Valentine. We have all  
 14 commissioners here, Commissioner Michael Cragun down  
 15 there, Commissioner Robert Pero, and Commissioner  
 16 Rebecca Rockwell at the end.

17 So let's have the parties introduce  
 18 themselves for the record. Those who are representing  
 19 Tesla, go ahead.

20 MR. PETROGEORGE: Michael Petrogeorge from  
 21 Parsons, Behle & Latimer.

22 MR. RILEY: George Riley from O'Melveny &  
 23 Meyers for Tesla.

24 JUDGE PHAN: All right. Those who are here  
 25 representing the Respondent Division?

Page 5

1 THE WITNESS: Curtis.

2 MR. FRANCIS: Curtis Stoddard from the  
 3 Division. Also in the room is Helen Frohlich, who is  
 4 an Assistant Attorney General with our Division as  
 5 well.

6 JUDGE PHAN: All right. And generally our  
 7 hearings are closed to the public. But I just let you  
 8 know in the back of the room are two Tax Commission  
 9 employees, Charlie Roberts and Christa Johnson.

10 Let's go ahead and have opening statements.

OPENING ARGUMENT

12 BY MR. RILEY:

13 Thank you, Your Honor. Chairman Valentine,  
 14 honorable commissioners, I'm George Riley. And it is a  
 15 privilege to appear before you today to represent Tesla  
 16 in the appeal from the May 21st, 2015, denial of the  
 17 application for a new motor vehicle license. On behalf  
 18 of Tesla, I thank you for making the time available to  
 19 us on an expedited basis for this hearing and for all  
 20 commissioners being here present.

21 We believe that the evidence will show in  
 22 this case that these applications were wrongly denied  
 23 as a matter of law by the Division. Under the proper  
 24 construction of the statutes, indeed, under the  
 25 constitutional construction of the statutes, a new



1 motor vehicle dealer's license should have been issued  
2 to Tesla Utah.

3 First, some background on Tesla. Founded in  
4 2003, Tesla is revolutionizing the automobile industry.  
5 From its award-winning electric vehicles to its unique  
6 methods of selling and servicing these vehicles, Tesla  
7 is setting new standards in a market long dominated by  
8 old assumptions and outdated methods.

9 As a U.S. manufacturer of cars, Tesla's  
10 innovation and customer services have brought much  
11 needed competition to the marketplace. This is Tesla's  
12 current model car, the Model S. And it really is a  
13 unique combination of engineering genius and design  
14 innovation. One version of the Model S can travel 265  
15 miles on a single charge, yet it's powerful enough to  
16 go from 0 to 60 in 3.2 seconds.

17 But safety comes first at Tesla. This car  
18 has achieved the highest rankings in safety ever given  
19 by the National Highway Traffic Safety Administration.  
20 Consumers have embraced the benefits offered by Tesla.  
21 This is demonstrated in the sales. Just a few years  
22 ago, this upstart company only sold a few thousand cars  
23 a year. This year, 2015, they plan to sell 50,000  
24 automobiles, all made at its factory in Fremont,  
25 California.

1 both in its methods of distribution and sale, as well  
2 as in the design of the cars, has challenged other  
3 companies to up their game, to improve their delivery  
4 of services and automobiles to consumers. This is the  
5 free market at its best.

6 Well, to survive in a market that is  
7 dominated by gasoline-powered cars, today electric  
8 vehicles, for all the success that Tesla has had, less  
9 than 1 percent of all cars sold in the United States  
10 are electric vehicles.

11 In order to survive, Tesla has had to create  
12 a direct sales model that is as efficient, consumer  
13 friendly, and innovative as its cars. Indeed, the  
14 evidence will show in this case that it would not be  
15 viable for Tesla to sell to an independent franchise  
16 dealer. In fact, Tesla nowhere in the world sells its  
17 cars through independent franchise dealers.

18 In his testimony, Mr. O'Connell will explain  
19 the principle aspects of the direct sales model.  
20 Professor Scott Morton will discuss the broader  
21 economic implications of this model and explain why  
22 Tesla cannot viably sell cars through independent  
23 franchise dealers.

24 Now, key to this model is the contrast with  
25 an independent franchise dealer. Unlike the highly

1 In the first quarter of 2015, Tesla sold  
2 10,030 cars. That's a 55 percent increase over the  
3 same quarter in 2014. But the benefits to consumers is  
4 also evidenced in the extraordinary rankings in  
5 consumer rankings that Tesla has received.

6 For example, in 2012, the Model S got the  
7 CNET Tech car of the year. Motor Trend Magazine in  
8 2013 voted it car of the year. This is the first time  
9 a car has received a unanimous vote as the top car of  
10 the year.

11 Consumer Reports says it's the best car ever  
12 tested and the best overall car. And then finally  
13 Consumer Reports says best service and repair. And  
14 this is an interesting survey because it compared Tesla  
15 not only to other manufacturers, but independent  
16 franchise dealers and independent service facilities.  
17 And Tesla outranked them all in every single category.

18 Finally, Car and Driver deems the 2015  
19 Model S the car of the century, even though we're only  
20 a few years into the current century. I'm sorry for  
21 the technical difficulty.

22 But beyond the benefits to consumers who  
23 purchase Tesla, Tesla's obvious benefits are for the  
24 environment. These are zero emission vehicles, all  
25 electric vehicles. And, finally, these innovations

1 pressurized fast-paced environment in a traditional  
2 franchise dealer, Tesla employees, employees of Tesla,  
3 in Tesla-owned and operated stores, take their time  
4 with customers.

5 It can take as long as a month to educate a  
6 customer in this environment in order to introduce  
7 them to the technology and convince them to buy an  
8 automobile. That just doesn't work in a traditional  
9 franchise dealer.

10 In a traditional franchise dealer model,  
11 sales people are incentivized by structured commission  
12 to sell, up-sell consumers on various features.  
13 Sometimes their commissions increase depending on the  
14 feature. That's not the case at Tesla. At Tesla, the  
15 sales people are under no such incentives to try to  
16 up-sell consumers to new wheels or various features on  
17 the car.

18 Again, Tesla is trying to remove the friction  
19 from buying a car to make the experience the best it  
20 possibly can be because they're selling a new  
21 technology to a public that's skeptical about electric  
22 vehicles. They have a lot of questions about electric  
23 vehicles.

24 Traditional dealerships are characterized by  
25 massive inventories. They buy cars from the



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1 manufacturer, and they sit on the lots. Tesla doesn't  
 2 do that. Its stores don't carry inventories. They  
 3 build the car to the custom specifications of the  
 4 consumer. This saves money. It's highly efficient and  
 5 delivers a car specifically designed to the customer's  
 6 preferences.

7 We have submitted testimony from Herb Walter,  
 8 who is a very experienced, well-known expert in the  
 9 field of retail dealer economics. According to  
 10 Mr. Walter, independent dealers traditionally look to  
 11 service and used cars and other things such as  
 12 financing for their profit margins.

13 None of those are profit margins at Tesla.  
 14 Tesla offers the best service in the industry, but it's  
 15 not a profit center. They don't pay their technicians  
 16 based on the job that they perform. They pay them on  
 17 an hourly basis. There's no incentive to do work  
 18 that's not necessary.

19 Tesla doesn't add points and unnecessary fees  
 20 to financing. It doesn't make money. It's not a  
 21 profit center to finance the cars. It does this as a  
 22 unique form of customer service, customer service that  
 23 is incompatible with the traditional franchise dealer  
 24 model.

25 In addition, Tesla maintains transparent

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1 service, for fraud, for improper titling of  
 2 automobiles, nothing. Its record is absolutely  
 3 immaculate.

4 And in addition, in all of these states,  
 5 Tesla operates selling directly to customers through  
 6 its stores alongside other manufacturers who sell  
 7 through franchise dealers. The two models can coexist,  
 8 direct sales by Tesla through its own operated stores,  
 9 as well as a franchise system operated by other  
 10 manufacturers.

11 So the direct sales model, which exists in  
 12 all of these 20 states, as well as over the Internet,  
 13 has been a great success for consumers, as well as for  
 14 the environment.

15 Well, let's talk about Utah. In Utah, there  
 16 are 270 residents who own Tesla automobiles. Now,  
 17 these residents -- approximately 270. These residents  
 18 had to go to Nevada or Colorado or California to buy  
 19 their car, or they bought it over the Internet because  
 20 we do not have a store in Utah to sell directly to  
 21 customers.

22 Well, to that end, Tesla in 2014-2015 formed  
 23 Tesla Utah, a wholly-owned subsidiary of Tesla, Inc.  
 24 And in addition, they took out a lease on a store at  
 25 2312 State Street here in Salt Lake City, invested a

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1 uniform pricing. If you buy a Tesla off of its  
 2 website, you pay the same price that you do if you buy  
 3 it from a Tesla-owned store in New Jersey. All of the  
 4 pricing is laid out. There's no haggling, no  
 5 negotiation, no incentive to try to up-sell you on  
 6 features that you may not want or need.

7 Finally, as Mr. Walter and Professor Scott  
 8 Morton will testify, the traditional dealer model  
 9 simply will not work for Tesla in light of this uniform  
 10 transparent pricing. There's no room for a traditional  
 11 middleman to add a margin to cover his or her cost.  
 12 That just doesn't exist in the Tesla model.

13 Well, this direct sales model has had a great  
 14 success for consumers. As a growing company, Tesla  
 15 sells directly over the Internet, but it also sells in  
 16 company-owned and operated stores in 20 states. These  
 17 states include, for example, California, which is the  
 18 largest retail automobile market in the country. It  
 19 includes Nevada and Colorado, your neighbor states.

20 Now, we would like to include Utah in this  
 21 list of states where Tesla owns and operates and sells  
 22 directly to customers. But in all of these 20 states,  
 23 and I think this is very compelling evidence, there's  
 24 never been a single claim against Tesla by any  
 25 government agency for improper business, for improper

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1 couple million dollars in the lease and in building out  
 2 the Tesla store.

3 Now, unfortunately, this store is shuttered.  
 4 There's no sales activity going on there because the  
 5 new motor vehicle dealers licenses were improperly  
 6 denied by MVED. Well, let's look at the basis for that  
 7 denial.

8 There really were two separate bases, which  
 9 we will discuss in this hearing. The first is citing  
 10 the Licensing Act. The Division said that Tesla was  
 11 not a franchise, had to be a franchise in order to sell  
 12 through a dealer here in Utah. That was the first  
 13 basis.

14 This is a quote from Exhibit 2 in your  
 15 exhibit books. This is the letter that was sent to  
 16 Tesla by the Attorney General on behalf of the  
 17 Division. "Since Tesla Motors Utah is not a  
 18 franchisee, MVED cannot issue a license as a new car  
 19 dealer."

20 This is an interesting denial because the  
 21 word "franchisee" does not appear in the Licensing Act  
 22 at all. Doesn't appear. The word "franchise"  
 23 appeared, and we will go through that definition. But  
 24 the fact that Tesla Motors Utah was not a franchisee is  
 25 no proper basis for denying the application.

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1 The second basis which was given by the  
 2 Department was that if you are in compliance with the  
 3 Licensing Act, you are violating the Franchise Act  
 4 because in order to be in compliance with the Licensing  
 5 Act, you had to be a franchisee. But if you own and  
 6 operate the franchisee, you're in violation of the  
 7 Franchise Act.

8 So what the Division said was that this was a  
 9 dilemma. That this was a dilemma; that if Tesla wasn't  
 10 a franchise, it couldn't get a license. But if Tesla  
 11 had a franchise, Tesla Utah had a franchise, then it  
 12 was in violation of the Franchise Act, which says a  
 13 franchisor cannot own and operate a licensed motor  
 14 vehicle dealer. You're in a dilemma, Tesla. We can't  
 15 issue the license to you. That was the explanation  
 16 that we received.

17 But I would submit it's a false dilemma  
 18 because the Licensing Act, properly construed, does not  
 19 require Tesla Motors Utah to be a franchisee. Again,  
 20 the word "franchisee" is nowhere in the statute. What  
 21 it does require is that there's some evidence of  
 22 authorization by Tesla Motors Utah, the subsidiary, to  
 23 sell Tesla automobiles.

24 As a wholly-owned subsidiary, it has the  
 25 inherent authority to sell Tesla cars. But even if it

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1 from the manufacturer. Not so with the dealer. Dealer  
 2 is someone who sells, is licensed to sell new motor  
 3 vehicles. The franchise is not required in the  
 4 definition of dealer.

5 In fact, in 1992, when the legislature  
 6 amended the statute, they repealed the definition of  
 7 dealer, new motor vehicle dealer, that included a  
 8 franchise. So the point of this is by their very  
 9 definitions, "dealer" and "manufacturer" do not require  
 10 evidence of a franchise.

11 And, in fact, when you go to apply for a  
 12 license, in the items that you have to submit, it  
 13 doesn't require proof of franchise. Some states do.  
 14 Some states say when you apply, when you fill out the  
 15 application, we need some evidence of authority to sell  
 16 the cars that you are going to display and advertise.  
 17 Some states ask for a franchise agreement.

18 Not so here in Utah. The materials submitted  
 19 do not require proof of franchise. The reasons to  
 20 revoke -- that the Division can use to revoke a license  
 21 don't include the absence of a franchise.

22 So what then is the purpose of "franchise" as  
 23 defined in the Licensing Act? The purposes of  
 24 "franchise" as defined in the Licensing Act is to  
 25 evidence authority, authority to sell the cars that you

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1 didn't, there was an agreement between Tesla, the  
 2 parent, and Tesla Utah, the subsidiary, that authorized  
 3 Tesla Utah to sell cars. So Tesla was in compliance  
 4 with the Licensing Act. Licenses should have been  
 5 issued.

6 With regard to the Franchise Act, the  
 7 Franchise Act does not apply to a company that is  
 8 selling directly to consumers through its wholly-owned  
 9 subsidiary. Does not apply. So let's go to the  
 10 Licensing Act and take a look at the provisions that  
 11 allegedly applied here.

12 First, and I think this is highly  
 13 significant, when the legislature passed the Licensing  
 14 Act -- and it was significantly amended in 1992 -- the  
 15 legislator did not say that a licensee could not be  
 16 owned by a manufacturer.

17 There is no prohibition against common  
 18 ownership of the licensed dealer and a manufacturer in  
 19 the Licensing Act. It's not there. If the legislature  
 20 had wanted a separation of ownership, it could have  
 21 been in the statute. But it wasn't there.

22 The terms "dealer" and "manufacturer"  
 23 definitions in the act do not refer to a franchise.  
 24 Now, we can contrast that with the definition of  
 25 distributor. A distributor has to have a franchise

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1 are displaying, offering to sell.

2 And that is indeed the way in which the  
 3 statute is written. The scope of the license that's  
 4 issued does not exceed the scope of the franchise. A  
 5 Ford dealer is not authorized to sell Chevrolets.  
 6 That's the purpose of the franchise.

7 For Tesla, which is selling only its own cars  
 8 and selling them directly to residents and consumers,  
 9 this would have no applicability at all. So, again,  
 10 the argument is there is no franchise requirement that  
 11 would apply to Tesla because Tesla is selling directly  
 12 and, hence, doesn't need a separate authorization by a  
 13 manufacturer in order to sell.

14 So the denial of the license on this basis  
 15 was improper. And this goes directly to the dilemma.  
 16 Since there is no requirement for a  
 17 franchisor-franchisee relationship, it doesn't run  
 18 afoul of the Franchise Act, which says that a  
 19 franchisor cannot own and operate a licensed motor  
 20 dealer. This is a way out of the alleged dilemma.

21 But even if the Commission decides to  
 22 construe the statute as requiring a franchise, which we  
 23 believe will be the wrong construction, Tesla still  
 24 satisfies that requirement. And that is because there  
 25 was a dealer agreement.

Page 18

1 Again, after the first application was  
 2 denied, Tesla met with the Attorney General and said,  
 3 Well, what if we had an agreement between Tesla, Inc.  
 4 and Tesla Utah, would that be sufficient? And Division  
 5 agreed to reconsider a new application. So Tesla  
 6 signed an agreement between Tesla, Inc. and Tesla Utah,  
 7 which would authorize Tesla Utah to sell cars. We  
 8 don't believe that's necessary, but we did that.  
 9 Now, again, the Licensing Act does not  
 10 prohibit a manufacturer from owning a dealer. That is  
 11 clear from the statute. Nor does it prohibit in any  
 12 way a manufacturer who owns a dealer from entering into  
 13 a contract with that dealer. Parents and subsidiaries  
 14 under Utah law can enter into enforceable agreements.  
 15 A parent can enter into an agreement with its  
 16 wholly-owned subsidiary.  
 17 And here's the definition of franchise: "A  
 18 contractor agreement between a dealer and a  
 19 manufacturer of new motor vehicles by which the dealer  
 20 is authorized to sell any specified make or makes of  
 21 new motor vehicles." Nothing more is required than  
 22 that. There's no further formalization of a franchise  
 23 than what you see in this definition.  
 24 Well, the dealer agreement does just that.  
 25 The dealer agreement is an enforceable agreement

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1 practices by dealers.  
 2 And all of the provisions of the act really  
 3 speak to that. There are background checks and  
 4 training for sales people. We had to submit, for  
 5 example, materials for background checks for people who  
 6 are going to work in our store. We had to post a bond  
 7 that consumers can go against if they're treated  
 8 unfairly or illegally.  
 9 The license can be revoked for unfair,  
 10 unsharp, or illegal practices towards consumers. Then  
 11 as we've seen, the franchise provisions ensure that  
 12 customers can rely on the dealer's authority to sell  
 13 cars. Of course, the Licensing Act is enforced by the  
 14 Division.  
 15 On the other side is the Franchise Act, which  
 16 is enforced by the Department of Commerce. And the  
 17 Franchise Act by its very terms, both its legislative  
 18 purpose and its terms, is to protect franchisees from  
 19 exploitation by their affiliated franchisors.  
 20 The legislature found there was an imbalance  
 21 of power between a franchisor, large manufacturer, and  
 22 a franchisee, independent business, which is under  
 23 contract with that franchisor and could lead to unfair  
 24 practices, unfair allocation, termination, refusal to  
 25 provide inventory. None of that applies to a

Page 19

1 between the parent, Tesla, Inc., and the subsidiary  
 2 that runs the store, Tesla Utah, which is a  
 3 wholly-owned subsidiary of Tesla, Inc. So the dealer  
 4 agreement -- if the Commission imposed a franchise  
 5 requirement, the dealer agreement satisfies that and,  
 6 hence, the license should have been granted.  
 7 Now, we believe that that is the end of the  
 8 matter. If the statute is properly construed, the  
 9 franchise is not required. If a franchise is required,  
 10 it is satisfied by the dealer agreement, in which  
 11 case -- in either case the license should have been  
 12 granted.  
 13 But let's turn to the second part of the  
 14 dilemma, which was if you comply with this, if you have  
 15 a dealer agreement, then you necessarily are a  
 16 franchisor. If you're a franchisor, you can't own a  
 17 wholly owned -- you cannot own a motor vehicle license  
 18 dealer under the Franchise Act. So now you're in  
 19 violation of the Franchise Act. That's the dilemma.  
 20 So let's take a look at the Franchise Act.  
 21 Well, it's important to understand the differences. I  
 22 know that you're familiar with these -- these statutes,  
 23 and we provide copies for you in the exhibit book. But  
 24 the Licensing Act is really a consumer protection  
 25 measure. It protects consumers from unfair business

Page 21

1 wholly-owned subsidiary of the manufacturer.  
 2 So these provisions of protecting franchisees  
 3 from unjust termination by their franchisors, it allows  
 4 franchisees to challenge new franchises formed by their  
 5 franchisors in the relevant market area.  
 6 It doesn't protect a franchisee from another  
 7 manufacturer at all. That's good competition, Ford  
 8 versus GM, BMW versus Porsche. But it does protect a  
 9 BMW dealer who's franchised by BMW from another  
 10 franchisee from BMW coming into that relevant market.  
 11 Again, none of that would have application to  
 12 Tesla. Tesla is protecting its own subsidiary from  
 13 termination. It makes no sense. So the Franchise Act  
 14 by the terms and purposes just doesn't apply to the  
 15 situation of Tesla.  
 16 Again, we can see this in the legislative  
 17 purpose. The legislative purpose said a substantial  
 18 inequality of bargaining power between motor vehicle  
 19 franchisors and motor vehicle franchisees enables these  
 20 kinds of unfair practices, forcing a franchisee to sign  
 21 an unfair agreement, terminating a franchise without  
 22 good cause, etc. Again, this would not apply to a  
 23 wholly-owned subsidiary.  
 24 So we believe that all of the provisions of  
 25 the Franchise Act have to be construed in light of that



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1 purpose of protecting independent franchisees from  
2 misconduct by their affiliated franchisors, not to  
3 restrict a manufacturer who's selling directly from  
4 selling directly.

5 You can see that in the definition of  
6 franchisor, is a person who in writing or practice  
7 agrees with or permits a franchisee to purchase, sell,  
8 offer new motor vehicles. A franchisee is a person  
9 with whom a franchisor has agreed or permitted to  
10 purchase, sell, or offer new motor vehicles.

11 Now, if you look at this as sort of a  
12 circular definition -- but this would include, for  
13 example, a distributor who sold to a customer. That  
14 would -- a customer is someone who agreed to buy a car  
15 from a distributor.

16 Well, a customer isn't a franchisee. That's  
17 not our concept of franchisee. So these ambiguities in  
18 the statute have to be resolved by looking at the  
19 legislative history and purpose of the statute, which  
20 was to protect independent franchisees from their  
21 affiliated franchisors.

22 Again, you can see this in the terms. A  
23 franchisor, for example, may not force a franchisee to  
24 order new motor vehicles. That makes no sense when the  
25 dealer is a wholly-owned subsidiary of the

Page 24

1 the dealer is wholly owned and operated by the  
2 manufacturer. So the very definition of the franchise  
3 takes it out of the situation where the dealer is  
4 wholly owned and operated by the manufacturer.

5 So we believe that when these statutes --  
6 when this statute, the Franchise Act, is construed in  
7 light of the purpose of the law, it would have no  
8 applicability to Tesla. And it certainly should not  
9 form the basis for denying the license.

10 That should be left to the Department of  
11 Commerce to interpret and construe and should not be a  
12 basis to deny a license to serve the people of Utah  
13 directly through an owned and operated store, just as  
14 Tesla does in 20 other states and the District of  
15 Columbia.

16 Now, we believe that the proper construction  
17 of these statutes will result in a reversal of the  
18 denial of the applications. But we are also going to  
19 put on evidence today with regard to the  
20 constitutionality of the construction because we  
21 believe that if the Division's construction of these  
22 statutes, their interpretation of these statutes, is  
23 upheld, it will be unconstitutional.

24 Now, my understanding is this tribunal is not  
25 empowered to declare a statute unconstitutional, but it

Page 23

1 manufacturer. There's no coercion there. They're  
2 owned and operated by the same company. To issue a new  
3 franchise in a relevant market area without good cause,  
4 again, that just has no application where the dealer is  
5 wholly owned by the manufacturer.

6 For example, requiring the franchisee to  
7 participate in ad campaigns, that just makes no sense  
8 when the dealer is owned by the manufacturer. It's  
9 part of an overall corporate advertising strategy.

10 We don't think of a wholly-owned subsidiary  
11 being coerced by the parent. That terminology only  
12 applies where the independent franchisee is a separate  
13 business that could be subject to these kinds of unfair  
14 practices.

15 And, finally, if you look at the term  
16 "franchise," which is defined differently in the  
17 Franchise Act than it is in the Licensing Act, so we're  
18 looking at the definition in the Franchise Act, it  
19 talks about a written agreement or course of dealing  
20 where a person grants another to use a license to use a  
21 trademark. And there is a community of interest in the  
22 marketing of a new motor vehicle.

23 You can see that language has applicability.  
24 We have an independent dealer who has separate  
25 interests than the franchisor. It wouldn't apply where

Page 25

1 is a cardinal rule of statutory construction to avoid,  
2 if possible, a construction that renders a statute  
3 unconstitutional. And, hence, we believe if there's  
4 any doubt about the construction, certainly the  
5 Commission should adopt an interpretation that avoids  
6 these constitutional issues.

7 In Utah -- and this is a very unique  
8 provision. I'm not aware of any other state that has a  
9 provision that effectively writes into the state  
10 constitution the philosophy of a free market system.

11 And this says it is the policy of Utah that a  
12 free market system shall govern trade and commerce in  
13 this state to promote the dispersion of economic and  
14 political power and the general welfare of the people.

15 The construction of these two statutes  
16 advocated by the Division runs directly afoul of that  
17 provision because what it does is it constructs a  
18 monopoly over retail new motor vehicle sales in the  
19 hands of independent franchise dealers in the state of  
20 Utah.

21 Now, that was not the intent of the statutes.  
22 But if that is the construction that they're given, it  
23 runs afoul of this constitutional provision, as well as  
24 the federal constitutional provisions.

25 But, again, we don't believe that you need to

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1 reach the constitutional issues because the proper  
 2 construction of the statutes will result in the  
 3 issuance of a license in this case.  
 4 And the store which Tesla has invested in  
 5 located on State Street should be open to the public to  
 6 provide the same benefits that the citizens of other  
 7 states have received from the direct sales and service  
 8 model offered by Tesla. Thank you very much.  
 9 JUDGE PHAN: All right. I would like to  
 10 apologize for the heat. We did request the air  
 11 conditioning be turned up. Unfortunately, we don't  
 12 have a thermostat in this room to do it, and we had to  
 13 request it, and I guess they're working on it.  
 14 MS. JOHNSON: They're working on it.  
 15 MR. VALENTINE: Your Honor, I would be okay  
 16 if everyone wanted to remove their coats if everyone  
 17 would like to do that, including the Chair.  
 18 JUDGE PHAN: Remove your jackets, loosen your  
 19 ties, that's okay. And I'll try shutting the blinds.  
 20 All right, Mr. Francis.  
 21 OPENING ARGUMENT  
 22 BY MR. FRANCIS:  
 23 Thank you, Judge Phan, commissioners,  
 24 esteemed counsel. I'm Gale Francis, an Assistant  
 25 Attorney General, here on behalf of the Motor Vehicle

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1 new motor vehicle license.  
 2 State licensing is the granting of the  
 3 privilege of doing business in the state. The  
 4 respondent and the Tax Commission are given the  
 5 authority to grant licenses involving the motor vehicle  
 6 industry. But statutory law dictates the scope and  
 7 limitations of such licensing.  
 8 This appeal is about statutory construction.  
 9 The Division asserts that Tesla's dealership  
 10 application does not comply with Utah's existing law.  
 11 The Division understands that Tesla strongly disagrees,  
 12 and this area of disagreement is the core of this  
 13 proceeding.  
 14 What the evidence will show is that in theory  
 15 and in practice, the one thing that the petitioner  
 16 refuses to do is to change to a model of a legal  
 17 franchise. What the law will show is that without a  
 18 franchise relationship, a company wholly owned by a  
 19 manufacturer has no right to a new car dealership  
 20 currently.  
 21 Utah Code Annotated Title 41, the Motor  
 22 Vehicle Act, requires the enforcer of that act, which  
 23 in this case is the respondent, Motor Vehicle  
 24 Enforcement Division, to deny the application of the  
 25 petitioner on the basis of prohibited acts by the

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1 Enforcement Division.  
 2 There's no doubt that Tesla Motors  
 3 Incorporated is an innovative and cutting-edge company.  
 4 The petitioner, Tesla Motors Utah, Inc., was created to  
 5 operate in this state. They steadfastly adhere to  
 6 their structure and operational model.  
 7 As a result, we believe and the Division has  
 8 decided that they are not entitled to a new motor  
 9 vehicle dealer license under current Utah law. The  
 10 Motor Vehicle Enforcement Division therefore asks the  
 11 Tax Commission to affirm the denial of the motor  
 12 vehicle dealer license to Tesla.  
 13 You will hear much about Tesla's mission, you  
 14 have heard already, with lofty goals of reforming the  
 15 world of personal transportation. You will hear much  
 16 about their manufacturing, operational, and marketing  
 17 models. They care about customers, sell through  
 18 salaried employees and direct market through the  
 19 Internet, allowing custom orders to build a car to the  
 20 personal choice of the purchaser. And they've won  
 21 awards in many industrial categories.  
 22 However, the simple conclusion that the  
 23 Commission should make is that regardless of all of the  
 24 innovation and technology and methodology, under  
 25 current Utah law, this applicant is not entitled to a

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1 applicant in accordance with Chapter 3.  
 2 When we focus on a critical subsection of  
 3 Section 41-3-210, which is subparagraph 1(d), the clear  
 4 language requires the Motor Vehicle Code to take into  
 5 consideration all laws and rules of the state of Utah  
 6 with regard to licensing.  
 7 The Motor Vehicle Business Regulation, which  
 8 is Chapter 3, prohibits the violation of "any law or  
 9 rule of the state respecting commerce and motor  
 10 vehicles."  
 11 By this language, the Commerce Code or the  
 12 Franchise Code as it's been referred to by opposing  
 13 counsel, specifically the New Motor Vehicle Franchise  
 14 Act, Title 13, Chapter 14, is relevant and necessary to  
 15 the enforcement of the Motor Vehicle Act.  
 16 Chapter 3 then prohibits engaging in business  
 17 in selling new motor vehicles for which the licensee  
 18 does not have a franchise. The petitioner directly  
 19 denies having a franchise relationship with Tesla  
 20 Motors, Inc., its owner.  
 21 It does this in its own dealer agreement,  
 22 which is Exhibit 4, and in correspondence to the Motor  
 23 Vehicle Enforcement Division, which obviously had an  
 24 impact on the decision of the Division.  
 25 The petitioner could, in other words, it is

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1 feasible, but won't change its operation to comply with  
 2 these sections of the Utah code. The respondent, the  
 3 Division, argues that the testimony and evidence  
 4 presented will establish that the petitioner could  
 5 accomplish its mission or objectives under a franchise  
 6 agreement, but it chooses not to.

7 We've heard that it is not viable,  
 8 potentially I think the testimony will show that it may  
 9 not be -- that it may increase the cost or financial  
 10 profit basis of Tesla Motors, but it certainly is not  
 11 impossible to adopt a franchise agreement.

12 Therefore, in simple terms of syllogism, the  
 13 Utah code states that a company must be a franchisee to  
 14 have this license. Petitioner negates being a  
 15 franchising operation. The only logical conclusion,  
 16 therefore, is petitioner cannot qualify for this  
 17 license at this time.

18 To the extent that Tesla argues that the  
 19 application of Utah's existing statutes does not make  
 20 sense in regard to the intent of the statutes and  
 21 Tesla's business model, those issues should be  
 22 addressed not in this forum but by the legislature  
 23 itself.

24 This forum, the Commission, is tasked with  
 25 enforcement of the statutes of the state within its

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1 one of the reasons why we are here.

2 The Division as respondent asks the  
 3 Commission to focus on the law as it applies to the  
 4 evidence that it will hear, documentary and  
 5 testamentary, and rule in favor of the Division. Thank  
 6 you.

7 JUDGE PHAN: All right. Mr. Riley or  
 8 Petrogeorge?

9 MR. RILEY: Thank you. Thank you very much.

10 JUDGE PHAN: Would you like to call your  
 11 first witness?

12 MR. RILEY: We would like to call our first  
 13 witness, Diarmuid O'Connell.

14 JUDGE PHAN: Mr. O'Connell, if you stand and  
 15 raise your right hand.

16 --oOo--

17 DIARMUID O'CONNELL,  
 18 having been first duly sworn to tell the  
 19 truth, was examined and testified as follows:

20 --oOo--

21 JUDGE PHAN: Go ahead and have a seat up  
 22 there.

23 DIRECT EXAMINATION

24 BY MR. RILEY:

25 Q. Please state your full name and position for

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1 jurisdiction. The same is true in regard to Tesla's  
 2 constitutional claims. The Division asserts that the  
 3 Licensing Act and the Franchise Act are constitutional  
 4 as enacted and as interpreted by the Division.

5 Tesla's argument is essentially that these  
 6 acts are unnecessary and counterproductive with regard  
 7 to their company. However, the statute and Motor  
 8 Vehicle Enforcement Division's regulation govern an  
 9 industry, not a single player within that industry.

10 Although the accomplishments and model of the  
 11 petitioner may be innovative and award winning, the  
 12 regulatory body must use the law in equally evaluating  
 13 every player. It has.

14 Much like a single manufacturer of a  
 15 pharmaceutical who may claim that the safest and most  
 16 effective drug exists within their purview, the FDA  
 17 cannot make an exception in its regulatory legal  
 18 mandate. FDA regulation may cause an increase in costs  
 19 of business and be unnecessary for one company, but it  
 20 is critical within the industry to protect consumers  
 21 and ensure fair competition.

22 The applicable statutes and the Division's  
 23 application of them treat in-state and out-of-state  
 24 interests equally. And current law entitles all  
 25 applicants and licensees alike to due process. That is

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1 the record.

2 A. My name is --

3 JUDGE PHAN: Is the green light on?

4 THE WITNESS: Yes. My name is Diarmuid  
 5 O'Connell. I'm the vice president for business  
 6 development for Tesla Motors.

7 Q. (By Mr. Riley) Could you briefly describe  
 8 your duties for Tesla?

9 A. Sure. I have a range of duties that can be  
 10 characterized as sort of strategic affairs. I'm  
 11 involved in market development of our products in  
 12 Europe and in China.

13 I'm responsible for our relationships with  
 14 other car manufacturers and our emissions trading  
 15 business. I'm involved with or responsible for all of  
 16 our relationships with governing bodies, whether local,  
 17 state, federal, and increasingly foreign governments.  
 18 And as a consequence of some of that have been very  
 19 involved in the development of our retail network and  
 20 the model that we pursue.

21 Q. When did you join Tesla?

22 A. I joined Tesla almost 10 years ago in 2006.

23 Q. Please describe Tesla's corporate mission.

24 A. Yes. So our mission is something that we  
 25 hold very dear. And as someone who was with the



1 company when we were just barely 50 people, I feel it  
2 as deeply or more deeply than most.

3 The company was founded not because the world  
4 needed another car company, but because the world  
5 needed a car company we felt that was wholly focused  
6 and devoted to the introduction of electric vehicle  
7 technology.

8 So the mission of the company is to serve as  
9 a catalyst for sustainable transportation through the  
10 introduction of electric vehicles. Everything we do is  
11 truly measured against that standard.

12 Q. And can you briefly describe your background  
13 before you joined Tesla in 2006?

14 A. Yes. I have a background in international  
15 marketing, have done work in strategic consulting, have  
16 experience as a founder of a technology startup. I  
17 served for two and a half years in the most recent Bush  
18 administration in the capacity of national security.  
19 And then I joined Tesla Motors.

20 Q. And could you again describe what you did in  
21 the Bush administration?

22 A. Yes. I served as chief of staff for  
23 political military affairs in the State Department, in  
24 which capacity I was partly responsible for operational  
25 and policy support to the military, particularly as it

1 facilities.

2 Q. How many employees do you have in the  
3 United States?

4 A. I believe we're approaching 12,000 employees  
5 right now.

6 Q. And how are they allocated?

7 A. Roughly 30/30/30 around -- in the first  
8 place, engineering and development, 30 percent there;  
9 about 30 percent of our headcount is in manufacturing  
10 of the products; and about 30 percent of our products  
11 is in sales and service organization, with roughly  
12 10 percent in business over those operations.

13 Q. What are your plans to expand operations in  
14 the United States?

15 A. Well, we have very aggressive plans. I  
16 believe we'll be opening on the order of 20 new stores  
17 this year alone. We've been progressively opening up  
18 new markets in new states. This is also true of our  
19 international markets. We have an extensive network in  
20 Europe and growing network in China, Japan,  
21 international as well.

22 Q. What about manufacturing in United States of  
23 components?

24 A. Yeah. We were very fortunate to acquire a  
25 manufacturing facility, 5 million square feet, which we

1 was involved in Iraq and Afghanistan.

2 It was there that I formed a judgment about  
3 the effects, negative effects, of oil dependence on our  
4 economy, on our national security profile, and  
5 determined to devote my -- the next phase of my  
6 professional career to developing or working on  
7 technologies that would reduce oil in our economy.

8 Oil in our economy is used primarily in  
9 transportation. So the generic idea was to work on a  
10 technology that would reduce oil in transportation. I  
11 was very fortunate in finding such a project in  
12 California.

13 Q. Could you describe Tesla's current  
14 operations?

15 A. Tesla at this point is a global enterprise,  
16 in that we sell our products around the world,  
17 throughout Europe and China, Japan, Asia Pacific,  
18 around the United States, and with plans to enter new  
19 markets this year.

20 We develop the vehicles in our engineering  
21 facility in Palo Alto, California. We manufacture  
22 those vehicles in an old GM plant that we  
23 recommissioned in Fremont, California, south of  
24 Oakland. And we sell and service those vehicles around  
25 the country and around the world in our wholly-owned

1 have not yet filled up. But we anticipate that with  
2 growth in the markets in Europe and in Asia that we  
3 will need additional manufacturing capacity.

4 We have also this past year commissioned an  
5 effort to build a battery facility. It will be the  
6 largest battery facility in the world, known as the  
7 Gigafactory.

8 Q. Where will the Gigafactory be located?

9 A. The first Gigafactory will be located outside  
10 Reno, Nevada.

11 Q. What are the projections for employment at  
12 the Nevada facility?

13 A. So this will be about a 10 million square  
14 foot facility. At full capacity, it will have the  
15 ability to produce more batteries than are produced by  
16 all of the aggregated battery manufacturing capacity in  
17 the world, which is primarily currently located in  
18 Japan, Korea, and increasingly in China. The planned  
19 full employment for the facility is something around  
20 6,500 employees.

21 Q. So this one plant can make more capacity in  
22 batteries than the entire world does today?

23 A. That is correct. We believe that it's  
24 necessary to increase the source of lithium ion battery  
25 technology in order to accomplish our greater mission

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1 of a world dominated by -- maybe perhaps ultimately  
 2 exclusively by electric vehicles.

3 Q. Let's talk about the electric vehicles that  
 4 you've made at Tesla beginning with your first model.  
 5 I think we have a photograph of that.

6 A. Yeah. Hopefully that will come up here. So  
 7 the first project at Tesla Motors was to develop the  
 8 full battery and powertrain system. That was largely  
 9 an engineering project, unimpressive for the purpose of  
 10 visual.

11 We productized that technology with our first  
 12 generation product, the Tesla Roadster. This is a  
 13 product that we made from 2008 to 2011. We did roughly  
 14 800 vehicles a year, for 2,500 vehicles in total, at a  
 15 price point of \$109,000, not atypical for first  
 16 generation technology. I can speak to the business  
 17 plan separately.

18 But the product itself had three salient  
 19 attributes. The first is long range. It had 245 miles  
 20 of range. This was to explode the myth that electric  
 21 vehicles were necessarily short-range vehicles.

22 It had all the performance characteristics of  
 23 vehicles in its class, Porsches and so forth, in that  
 24 its acceleration was 0 to 60 in 3.7 seconds and had  
 25 world-class handling and steering.

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1 single charge.

2 The highest end version of this car achieves  
 3 0 to 60 in the 2.8 second range. And, again, I hope  
 4 you agree, it's an attractive product. It has greater  
 5 utility obviously than the Roadster, which was a small  
 6 two-seat sports car. It can seat five adults, plus two  
 7 children.

8 Q. Let's talk about the future. Let's take a  
 9 look at the Model X. This is also in the binders.

10 JUDGE PHAN: It's the smaller binder.

11 THE WITNESS: Yes. So ultimately the goal is  
 12 to get to a mass market of electric vehicle, what we  
 13 call the Model 3. That would be a \$35,000 price point  
 14 vehicle made in the hundreds of thousands of units.

15 But in the meantime -- that will be in the  
 16 market by 2017. In the meantime, we've developed a  
 17 variant, an SUV variant off of the Model S platform.  
 18 Imagine a vehicle of the relative size of Model S.  
 19 Just for reference, Model S is in the category of  
 20 vehicle such as the Mercedes E and S class, the BMW 5  
 21 and 7 series, so a large sedan.

22 The Model X will be a crossover SUV, both on  
 23 the same platform, similar to SUVs that are built on  
 24 large sedan platforms. It will have seating for seven  
 25 passengers. It will have all-wheel drive capability.

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1 Finally, if you could see the visual, we  
 2 wanted to introduce an attractive car. It's fair to  
 3 say that most electric vehicles that have been in the  
 4 market over the course of time have been explorations  
 5 of the form of a golf cart and haven't exactly  
 6 attracted the kind of interest that a sports car would.  
 7 This was our first product, intended to set the terms  
 8 for the company, the terms for its product, and to  
 9 stimulate interest in the technology.

10 Q. Tell us about the Model S, which we looked at  
 11 during the opening statement.

12 A. A brief introduction to our business model.  
 13 It's very much the technology introduction model that's  
 14 been -- that successfully led to laptops, cellphones,  
 15 air travel, in fact, which is the first generation  
 16 product is necessarily expensive because of the cost of  
 17 development, because of low scale.

18 But as you attract interest and capital, you  
 19 can grow scale, your manufacturing scale, and thereby  
 20 bring down cost and then also make technology  
 21 introduction.

22 Whereas the Roadster was a very low volume  
 23 product, our second milestone was the development of a  
 24 mid-volume, mid-price sedan. That is the Model S. It  
 25 is a vehicle that achieves 265 miles of range on a

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1 It will have innovation such as what we refer  
 2 to as falcon wing doors, which allow for easy ingress  
 3 and egress. And it opens up a new market for us in  
 4 all-wheel drive markets and weather-challenged markets  
 5 for other family applications.

6 Q. (By Mr. Riley) Could you summarize the sales  
 7 growth for these vehicles?

8 A. Sure. So we introduced the Model S, launched  
 9 the Model S in mid-2012 and in that half year produced  
 10 3,000 vehicles. So you could extrapolate that we might  
 11 have done 6,000 in a full year. To fast forward to  
 12 this year where we'll be producing and delivering  
 13 50,000, at least 50,000 vehicles to the market.

14 Q. What was your first calendar quarter results  
 15 like in 2015?

16 A. 2015, I think we sold over 10,000 vehicles.

17 Q. How does that compare to first quarter of  
 18 2014?

19 A. Quite impressively. I can't quite remember  
 20 the number, but it's almost a factor increase.

21 Q. And have these vehicles received awards in  
 22 consumer ratings?

23 A. They have. At the risk of repeating some of  
 24 what you already said --

25 Q. Well, we have a slide, which is slide 5, that



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1 we can bring up.

2 A. So the most important -- the first and most  
3 important award that we received was the Motor Trend  
4 car of the year award. The Motor Trend car of the year  
5 award, you can think of it as the Oscars of the car  
6 category. It is a testament to design and engineering  
7 and performance standards rigorously tested.

8 The next most important that I would point to  
9 here is in the next year, following year, received  
10 Consumer Reports best overall car award. In fact, the  
11 article said that this was the best car that they had  
12 ever tested. And that was a tremendous additional  
13 validation.

14 But I think the most recent and most  
15 important award we've received, again, from Consumer  
16 Reports, testifies to our car ownership and service  
17 experience, where we've received awards -- scores  
18 indicating that we have the best service and repair  
19 profile.

20 And that's taking into account the other --  
21 the other players. There are dealer-owned service  
22 operations, as well as independent service operations.  
23 Against all of that population, we rate best. It also  
24 has received from the actual owners of the car the best  
25 overall ownership experience for two years in a row.

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1 Q. How are those cars designed and engineered to  
2 accomplish this?

3 A. Well, so our first car was -- just, again, a  
4 brief digression -- was a conversion of an existing  
5 car. We look a Lotus Elise chassis already engineered  
6 and adapted it to an electric drive train technology.

7 But with the capital and time and interest in  
8 developing a ground-up vehicle, we did so for the  
9 Model S. So essentially we redesigned the vehicle to  
10 exploit all the potential improvements that electric  
11 vehicle technology offers.

12 By introducing electric drivetrain, you take  
13 all the mechanical parts out of a car that lead to  
14 breakdown, friction, heat loss, heat and energy loss.  
15 So you can package that in a very compact way, frankly,  
16 coaxial in the wheel well of the car. So it's  
17 independent of -- so it's almost invisible to the user.

18 The battery, the biggest and most --  
19 heaviest -- frankly, most expensive component of the  
20 car, is arrayed pretty much as a flat table, something  
21 of this sort here, which extends out to the bat -- it's  
22 about this thick, extends out to the battery rails and  
23 out to the axles and provides an extraordinary low  
24 center of gravity and a balanced platform for the  
25 vehicle.

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1 Q. What about safety, where does Tesla rank in  
2 safety?

3 A. So from the beginning of the company, safety  
4 has been a hallmark. As the introducers of new  
5 technology, we have a heavy burden to introduce the  
6 safest possible technology, particularly if you're  
7 going to be successful in converting the mass market to  
8 the technology. With respect to the Model S, we set a  
9 standard for ourselves to produce the safest vehicle  
10 that's ever been produced.

11 If I could digress again for a moment, our  
12 goal has never been to produce the best electric  
13 vehicle in the world. It's actually been to produce  
14 the best vehicles in the world, because we felt by  
15 doing so, we would have the best possible chance of  
16 converting folks from a known gasoline-driven  
17 technology to electric vehicles.

18 But with respect to safety, we achieved our  
19 goal happily. We have been rated 5 star by NHTSA,  
20 which is the highest standard. If you just aggregate  
21 the numbers in that score, you would find that we are  
22 the safest vehicle that has ever been tested by NHTSA  
23 or were at that time. As well under the -- some would  
24 argue slightly more rigorous European standards, we've  
25 already received the highest possible scores.

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1 So the vehicle is extraordinarily safe. It  
2 handles well. It doesn't pitch. It doesn't yaw as you  
3 turn corners or brake hard. It's very well planted.  
4 And it's, frankly, almost -- well, not almost  
5 impossible, but it's very difficult to roll over this  
6 vehicle even for test purposes, so extraordinarily  
7 safe.

8 And so with that platform, think of it as a  
9 skateboard -- if we had a picture of it, I think we do  
10 later -- we can then develop the vehicle on top of it.  
11 With the vehicle on top of it, we want to explore all  
12 of the opportunities we have with new space.

13 So where the engine compartment would be in a  
14 gasoline-driven car, you have a void, which we've --  
15 which we've created the storage area called "the  
16 front." We also have opportunities in the rear of the  
17 car of a rear wheel well into which you can fold in or  
18 fold out a third row rear-facing seat for children,  
19 similar to the one I grew up in in a Ford Country  
20 Squire some years ago. This allows for the  
21 seven-passenger opportunity I was talking about.

22 It's a rear hatchback. So you can -- with  
23 the seats folded down, you can, frankly, carry as much  
24 or more capacity than most large SUVs. So, again,  
25 every effort was made to explore how to use this new

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1 space.

2 Indeed, we also introduced a new concept to  
3 the vehicle. We removed all the button switches and  
4 knobs in the user interface and replaced it with what's  
5 effectively a 17-inch touch screen, very much like an  
6 iPad, where all of the -- all of your interface with  
7 the vehicle is contained.

8 So whether it's your navigation, your climate  
9 control, your entertainment, and other features that we  
10 introduced, such as Web surfing and so forth, all of  
11 this is made possible on this single screen, which  
12 vastly simplifies the user experience in the vehicle,  
13 reduces complexity in the parts as well.

14 Q. Turning to slide 6, this is the picture of  
15 the Tesla factory in Fremont. How has your  
16 manufacturing contributed to the success of the  
17 vehicle?

18 A. So we were very fortunate to be able to  
19 acquire a large manufacturing facility in Fremont,  
20 California, south of Oakland. This is the last car  
21 plant on the West Coast.

22 The good news was we were able to acquire it  
23 relatively cheaply. The bad news is it was developed  
24 in 1960. We basically stripped it all out and within  
25 the shell have introduced the state-of-the-art

1 Q. What else has Tesla done to encourage the  
2 adoption of its electric vehicle technology?

3 A. Among other things -- so as a general  
4 proposition, with 265 miles of range, even in geography  
5 such as Utah, most people people's daily driving needs  
6 are satisfied.

7 And they're satisfied by the fact that if the  
8 customer -- the customer plugs the car into a very  
9 simple plug, very much like as here in the wall,  
10 overnight, they leave their garage every morning with  
11 265 miles of range.

12 But in order to be a perfect substitute for  
13 the gasoline vehicles that we're selling against, we  
14 wanted to have a long range driving capability. We  
15 introduced what's called the Supercharger network. So  
16 this is --

17 Q. Let's refer to slide 7.

18 A. Yes. This is -- this is portrayal of our  
19 Supercharging network as it exists right now in the  
20 U.S. We have developed a fast charging technology  
21 which allows you to recapture roughly 60 percent of the  
22 range of the vehicle, so almost 200 miles of range,  
23 within 30 minutes, so roughly approximating a rest stop  
24 on a long-distance trip.

25 These stations are stand-alone stations.

1 automation and robotics technology in order to ensure  
2 that we are producing the highest possible quality  
3 vehicle.

4 As I said before, the vehicles we're  
5 competing with are not other electric vehicles. It's  
6 the best-of-class vehicles in the luxury and  
7 performance segment, whether it's Cadillac or BMW or  
8 Audi and the other brands in that segment. We have to  
9 hit those -- that level of refinement. And so we've  
10 introduced start-of-the-art technology in order to do  
11 that.

12 Q. And how are the cars built for each customer?

13 A. Yes. Again, at risk of covering some old  
14 ground, our system is to deliver to customers the exact  
15 vehicle that they order. So we don't -- we build very  
16 small amounts of inventory. More than 95 percent of  
17 our vehicles I believe are custom built.

18 So the custom -- the prospect will come into  
19 a Tesla store, interact with us online or by phone,  
20 make a decision to purchase, and then go to our website  
21 and into a configurator, and identify the exact colors  
22 and features that they want in their vehicle. And then  
23 at a reasonable period later, generally speaking a  
24 month, at most two months, that car is delivered to  
25 them.

1 They are -- they provide electricity free to our  
2 customers. And we've invested in this network across  
3 the United States, making it possible to drive up and  
4 down the coast, across the country in a couple of  
5 different fashions. We have 10 of these facilities  
6 around the state of Utah in order to make it possible  
7 to drive some of the long distances that are driven  
8 here.

9 We also have an extensive network of these  
10 throughout Europe, as well as in China. This is a  
11 system that we're building using our own balance sheet.  
12 So this is not a system that relies on any sort of  
13 public subsidy.

14 This is something we're doing to encourage  
15 the imagery that an electric vehicle is as capable as  
16 any other vehicle that you would ever consider  
17 purchasing.

18 Q. Let's turn to Tesla's sales model. Could you  
19 please describe that for the Commission?

20 A. Sure. Our sales model derives directly from  
21 the mission that I stated at the beginning. We want to  
22 do everything both with our products and with our  
23 operations to encourage the adoption and ownership and  
24 prepurchase of electric vehicles.

25 So our analysis of the situation, our

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1 experience in introducing -- some of us in introducing  
2 new technologies to the markets is that that is best  
3 done -- one, there's a huge education requirement.  
4 When you're asking someone to convert from a technology  
5 that they're habituated -- that they've been habituated  
6 to their full lifetime, it's a rather large leap, and  
7 made more difficult when the purchase itself is as  
8 consequential as a car, the second most expensive  
9 purchase that most people will make in their lifetime.

10 So we have optimized a sales and service  
11 model for education. As you mentioned earlier, it  
12 takes roughly 25 days from first -- first touch with a  
13 customer to ultimate conversion to a purchase of one of  
14 our vehicles.

15 The experience in our stores is one of hours,  
16 where people come in and they experience with our  
17 product specialists. First, they learn about electric  
18 vehicle technology in general, our product  
19 specifically, and then ultimately if we're -- if we are  
20 successful in converting them to the idea, then  
21 ultimately making the purchase.

22 And then in their ownership experience, we  
23 strive to serve them with a service network, which is,  
24 frankly, more persuasive than our stores, and which is  
25 notable for the fact that it is not optimized for

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1 across all markets. Side note here is that the Model S  
2 is -- and its various options are the same price  
3 everywhere in the world.

4 So a Model S in China is the same price as it  
5 is here in the U.S., though we do have to add on of  
6 course transportation and duty costs associated with  
7 doing business in China, same in Europe, same  
8 everywhere in the world.

9 So the idea is to reduce complexity, reduce  
10 friction in the process, and make sure that everybody's  
11 incentives are aligned. We found tremendous reception  
12 to this approach.

13 Q. Let's go to the design studio on your  
14 website. Can you describe how a consumer would use  
15 this?

16 A. Sure. This is an exemplary of our  
17 customization process where in a simple environment,  
18 one can configure a vehicle and sort of test the look  
19 and feel of that vehicle by picking out paint color,  
20 roof choices, whether a solid roof or glass roof, wheel  
21 choices, interior fitness, and so forth.

22 Q. You mentioned you sell through your stores,  
23 and I think you prepared this slide that lists the  
24 states in which you have your own stores?

25 A. That's right. We are currently operating in

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1 profit. Frankly, we don't want to make any money on  
2 our service infrastructure. That is not the business  
3 model.

4 The business model is to keep people in their  
5 cars and on the road with the view that they will have  
6 such a good experience that they will return to the  
7 franchise when they want to buy a new car.

8 Q. So what are the channels in the United States  
9 through which you sell Tesla vehicles?

10 A. So there's only one physical channel, and  
11 that's our stores. But people can also access  
12 information and transact with the company either online  
13 or on the phone. We try to make that as easy as  
14 possible.

15 Q. Let's take a quick look at the website.  
16 Could you briefly describe that for the Commission?

17 A. Sure. Our website, I think consistent with a  
18 lot of our brand presence in our stores and service  
19 centers, is simple and clean. We want to remove all of  
20 the complexity from the purchase consideration process.

21 So we do a number of things. We make the  
22 choice set as simple as possible, you know, the options  
23 or packages that the people might want to -- that  
24 prospects might want to purchase.

25 The price is transparent and consistent

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1 20 states, plus the District of Columbia without --  
2 without any sort of conflict or disruption as you  
3 suggest. There are other states where we could operate  
4 where the regulatory statutory environment is  
5 permissive. They're small enough markets that we  
6 haven't yet invested.

7 Q. I'd like to ask you to walk us through the  
8 process that's used in one of your stores to sell  
9 directly. Let's look at the interior of the store on  
10 State Street here in Salt Lake City, which is not  
11 opened.

12 A. Right. So a couple of elements that I draw  
13 your attention to here. First of all, it's an  
14 educational environment. Our product specialists are  
15 trained to really focus on evangelizing for the  
16 technology as much or perhaps more than they are in the  
17 actual sale of the vehicle.

18 But a couple things here. One, it's a  
19 relatively clean environment I think consistent with  
20 what you might find in an Apple store, emphasis on the  
21 technology, emphasis on the product.

22 We have to the left of the screen the chassis  
23 system. I mentioned a sort of skateboard architecture.  
24 You can see elements of it right there. First of all,  
25 it's an all-aluminum product, the first and I think



1 still only all aluminum vehicle produced in the  
2 United States. Even the Ford 150, which we're pleased  
3 to see is using aluminum, isn't as intense as this  
4 vehicle.

5 But it's essentially a skateboard chassis  
6 with the battery in the middle, low slung under the  
7 passenger compartment. You can sort of see it there.  
8 The motor is not visible because it's actually in that  
9 rear wheel well.

10 If you can imagine a tubular construction  
11 about this long and about -- diameter of about that is  
12 the motor, the inverter, which is the power electronics  
13 and the gear box, all technology that Tesla develops  
14 and manufactures.

15 We have an all-wheel drive variant of the  
16 vehicle we introduced this past year which -- this  
17 year. I'm sorry. That has a motor in the front wheel  
18 well as well.

19 So that's the -- that's how we educate folks  
20 as to the technology itself. You see on the right-hand  
21 side a touch screen, which is a little hard to see  
22 there, but is an interactive way for folks to configure  
23 their car, similar to how they would do it at home on a  
24 PC and then some -- some of the features.

25 So the things on the top or how you would

1 up-sell in the fashion that's traditional in the  
2 industry.

3 Q. What about finance, do you offer financing  
4 for your stores?

5 A. We do make it possible, also consistent with  
6 our desire to help folks to get into the technology.  
7 We do make financing possible ourselves and through our  
8 partners.

9 Q. How is that structured? Is that a profit  
10 center for you?

11 A. No, it's not a profit center. I believe  
12 there's a small fee, flat fee, associated with the  
13 origination of any financing -- any particular customer  
14 financing.

15 But the practice in the industry is a rather  
16 opaque one whereby sales agents are rewarded for  
17 directing customers to particular financing packages  
18 and have incremental commissions that they can earn  
19 from that process. We have none of that, never will.

20 Q. Why is that?

21 A. Because we want to make the process as  
22 transparent and trustworthy as we possibly can. We're  
23 trying to remove, as I said, all the barriers to  
24 introduction of the technology because the introduction  
25 of the technology is, as I said, the mission of the

1 judge the color of the car, the wheels below, and some  
2 of the interior fitness. Again, it's a very simple  
3 environment.

4 Couple other notable things. You don't see a  
5 lot of cars in the parking lot because, as I said, we  
6 have a custom order, custom build system. So we don't  
7 have a parking lot full of vehicles. Typically we will  
8 only have one vehicle on the floor of the store and  
9 make maybe a couple vehicles available for test rides  
10 or test drives.

11 Q. And are your sales people incentivized to try  
12 to up-sell customers with features?

13 A. No. Huge contrast. I mean, consistent with  
14 our desire to remove friction and any sort of barrier  
15 to adopt this new technology, we wanted to eliminate  
16 all of the historical friction, dissonance, conflict in  
17 the car buying experience.

18 And so that's exemplified in the fact that we  
19 are not incentivizing our employees to up-sell folks  
20 into -- into options and features that they may or may  
21 not want or to confuse -- a process which often  
22 confuses and even more often frustrates folks. We  
23 wanted to avoid all of that.

24 So our folks are trained and referred to as  
25 "product specialists," and they are not incentivized to

1 company.

2 Q. What about trading in used cars by other  
3 manufacturers, do you do that?

4 A. We do -- well, we facilitate that process,  
5 but we take no financial interest in it. That is to  
6 say that if a customer comes into our store with a BMW  
7 or a Cadillac of some sort, we make it possible for  
8 them to connect with a third-party reseller of those  
9 vehicles, and there are many. But we do not  
10 participate in that transaction.

11 Q. Why is that?

12 A. It's just not -- fundamentally, we want to  
13 help folks to migrate to the new technology, and we --  
14 we want to make that as efficient a process as  
15 possible.

16 Q. Let's talk about service. You mentioned the  
17 awards you've won in service. How can you accomplish  
18 that? What is your structure for that?

19 A. So our service staff are either hourly or  
20 salary employees. There is a mode of -- the typical  
21 mode of operation in the car business is, again, to  
22 up-sell or sell incremental service. The profit --  
23 service is a huge profit center in the traditional car  
24 business.

25 And so there are -- there's a system in most

1 dealership models whereby service staff, service  
2 advisors are trying to sell a customer incremental  
3 service. If they come in for an oil change, what else  
4 can we do?

5 We actually -- we judge our performance by  
6 what we call customer happiness. We do a survey, a  
7 very direct survey, which really measures how -- how  
8 happy customers were with the service experience.

9 As I said, we seek to make no money. We want  
10 to have cars in and out as quickly as possible. And so  
11 we -- we do not reward folks for doing work that's  
12 either incremental or in worst case unnecessary.

13 Q. What is your approach to advertising?

14 A. As a practical matter, we don't do any  
15 advertising, which is to say we don't pay anyone to  
16 advertise our products. Our primary manner of  
17 marketing our products is through our store and service  
18 venues, the products on the road, and to a degree our  
19 Superchargers.

20 We do -- we do engage in what's referred to  
21 as earned media traditionally, public relations, where  
22 people -- we engage with journalists so -- in the hope  
23 that they will write good things about our products.  
24 But we don't do traditional advertising.

25 Q. And do you offer manufacturer incentives and

1 Q. Now, returning to the stores that you own and  
2 operate in 20 states and the District of Columbia, has  
3 Tesla to your knowledge ever been cited by any  
4 government agency for fraud or improper or unfair sales  
5 practices?

6 A. No. To my knowledge, we've never been cited  
7 for anything of that sort.

8 Q. In the service centers associated with those  
9 stores in the 20 states and District of Columbia, has  
10 to your knowledge Tesla ever been cited for unfair  
11 business practices or fraud?

12 A. No. To my knowledge, we have never been so  
13 cited.

14 Q. To your knowledge, has Tesla ever been cited  
15 for delivering an improper title to a car?

16 A. No. I have no knowledge of us being cited in  
17 that fashion.

18 Q. So has Tesla in its 12 years of existence  
19 ever sold a car through an independent franchise  
20 dealer?

21 A. No, we have not.

22 Q. Why?

23 A. The primary purpose of our retail strategy is  
24 to educate a public which is largely unfamiliar with  
25 this new technology and to -- to invest in that

1 co-op advertising programs and things that we  
2 traditionally associate with franchise dealers?

3 A. No, we do not. Most of those things would be  
4 impossible to do in that we're representing ourselves  
5 in those instances. So cooperative advertising  
6 wouldn't be feasible. No, we don't do any of that.

7 Q. With regard to the price, how does the price  
8 at the stores differ from the price that you offer  
9 consumers online?

10 A. There is absolutely no difference in the  
11 price offered online, over the phone, or in our stores,  
12 or, as I said, across markets around the world. It's  
13 the same price for the same product or same features or  
14 options that the customer might select.

15 Q. So there's no additional margin charged at  
16 the store level?

17 A. There is zero additional margin.

18 Q. Why do you do that?

19 A. Well, it goes back to what I've said before,  
20 which is trying to create a set of -- an alignment of  
21 incentives and a system that is frictionless so that  
22 all of the normal barriers to consideration of a new  
23 car are eliminated in the interest of advocating for  
24 the technology itself and focusing folks on adoption  
25 and hopefully the transaction.

1 relationship and that educational process.

2 As a practical matter, we have no need for  
3 the kind of -- the narrow benefits that the dealer  
4 system might offer to Tesla, one being ability to  
5 expand into diverse world geography.

6 We are primarily selling into urban and  
7 suburban markets right now. So where as the dealer  
8 system might allow us to expand the number of stores,  
9 that's not -- those aren't markets we're focused on  
10 right now.

11 As a second and much more compelling business  
12 issue, we are as I mentioned building custom vehicles.  
13 We are selling these vehicles on a one-off basis. The  
14 traditional dealer-manufacturer system has the  
15 manufacturer offloading hundreds or thousands of  
16 products from its balance sheet to a dealer for markup  
17 and sale.

18 We are not a high-volume manufacturer at this  
19 point in our corporate development, and so we do not  
20 have the need or desire to resell or have products  
21 marked up.

22 One could suggest that our vehicles are  
23 expensive, and, indeed, they are at this point until we  
24 produce a \$35,000 vehicle. But we are trying to make  
25 that technology as cost efficiently as possible and as

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1 inexpensively as possible in order to make -- deliver  
 2 those products to the customer at the lowest cost  
 3 possible.  
 4 Q. But wouldn't, as counsel said, it be possible  
 5 for you to sell consistent with your business model  
 6 through an independent franchise dealer?  
 7 A. So the problem -- the very specific problem  
 8 that one would have there is that in a world where  
 9 dealers make profit on markup of the initial sale and  
 10 service of the vehicle in the post-sale environment,  
 11 neither of those opportunities would exist for a dealer  
 12 selling independently but in parallel to Tesla's own  
 13 efforts.  
 14 So they would not have the ability to mark up  
 15 a vehicle when the customer can see for themselves on  
 16 the Website that they could have the vehicle for the  
 17 Tesla price at a cheaper rate. So that's -- that's a  
 18 very -- that's a very specific issue there.  
 19 The same principle applies in service.  
 20 Our -- why would a customer go to -- have their vehicle  
 21 serviced with a third party, at a dealer, when they  
 22 know they can have that vehicle less expensively in a  
 23 Tesla service facility?  
 24 Q. So you've explored this but determined that  
 25 it's not possible?

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1 here in Utah for Tesla?  
 2 A. Yes. So this is a plan that was initiated  
 3 last year to identify a location in the Great Salt Lake  
 4 area to serve our growing customer base here. As  
 5 mentioned before, something on the order of 270  
 6 Model S, so we wanted to be here to service, and  
 7 consistent with our model to open a sales opportunity  
 8 as well.  
 9 As a practical matter, you see Superchargers  
 10 there in the foreground. We also offer free charging  
 11 at this facility as well. That effort initiated last  
 12 year with the clear view toward opening the store in  
 13 the first quarter of this year.  
 14 Q. Were you involved in that process of applying  
 15 for a new motor vehicle dealer's license?  
 16 A. At a high level. We have a legal and retail  
 17 development team that is involved in the actual  
 18 paperwork and planning of these exercises.  
 19 Q. And did you receive a license from the Motor  
 20 Vehicle Enforcement Division?  
 21 A. We did not.  
 22 Q. And what recourse did you take at that point?  
 23 A. So there -- we had been approached earlier in  
 24 the year by Representative Coleman to participate in  
 25 the legislative effort, well meaning, to clarify the

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1 A. Well, we've studied this. Exploration would  
 2 suggest that we've actually -- might suggest that we  
 3 had actually discussed this with third parties. But  
 4 our study, view, and experience with this suggests that  
 5 this is unambiguously the case.  
 6 Q. Let's turn to the efforts --  
 7 JUDGE PHAN: Maybe before we start a new  
 8 section, it's about 10:30. This clock up there --  
 9 MR. VALENTINE: Is fast.  
 10 JUDGE PHAN: I think we'll take a break.  
 11 MR. VALENTINE: Chairman needs to make a call  
 12 to an elected official at a break at 10:30. Take about  
 13 a 10-minute break at this time.  
 14 MR. RILEY: Thank you very much.  
 15 (Recess taken at 10:29, resuming at 10:44.)  
 16 MR. VALENTINE: Thank you very much, Counsel.  
 17 MR. RILEY: Thank you very much,  
 18 Mr. Chairman.  
 19 JUDGE PHAN: Okay. We're back on the record.  
 20 MR. RILEY: Thank you.  
 21 Q. (By Mr. Riley) Mr. O'Connell, I'd like to now  
 22 turn to the plan to start operations here in Utah. And  
 23 we have slide 12, which is a photograph of the store on  
 24 State Street here in Salt Lake City.  
 25 Could you describe the plans to open a store

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1 ability of all manufacturers to sell in a certain way  
 2 online here in Utah. We saw the effort as unnecessary  
 3 relative to our specific goals and aims, well meaning  
 4 as it was, and declined to participate in that effort.  
 5 With the rejection of the license, however,  
 6 we revisited conversations with Representative  
 7 Coleman's office, and, admittedly late in the 46th  
 8 legislative session here, engaged in an effort to  
 9 modify the language in a fashion that would permit the  
 10 narrow activities that we sought, the narrow activity,  
 11 specifically the licensing of this facility that we  
 12 sought.  
 13 Q. And did you make any effort at that point to  
 14 enter into a license with an independent franchise  
 15 dealer?  
 16 A. No.  
 17 Q. Why?  
 18 A. It would not make sense. There is no profit  
 19 opportunity for a licensed dealer, and it would not  
 20 serve our customers.  
 21 Q. Why would it not serve your customers?  
 22 A. For many of the reasons I've described. Our  
 23 model is to educate, not to up-sell, and to service  
 24 without up-selling or extracting additional monies from  
 25 our customers.



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1 Q. And have you reviewed the literature on this  
2 process of selling through dealers?  
3 A. I have a lot of practical experience with  
4 this issue having been drawn into disputes in something  
5 on the order of 30 other venues, so I have a general  
6 but well understood view of the practice of third-party  
7 car sales.  
8 Q. And with respect to the State Street store,  
9 what is the current status?  
10 A. My understanding is that the store is -- that  
11 the service center is open, but the store itself is  
12 shuttered.  
13 MR. RILEY: Thank you. I have no more  
14 questions.  
15 JUDGE PHAN: All right. Mr. Francis?  
16 CROSS-EXAMINATION  
17 BY MR. FRANCIS:  
18 Q. Mr. O'Connell, I have a couple of questions  
19 with regard to Tesla Motors, Inc.'s relationship with  
20 their stores. You've mentioned that the sales people  
21 are salaried.  
22 Is there an agreement between TMI, I'll refer  
23 to it as that, the parent company or the manufacturer,  
24 and their stores with splitting the profits from the  
25 sale of a single vehicle?

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1 independent franchise dealership?  
2 A. I do not. I have not done that analysis.  
3 Q. Couldn't Tesla create a franchise  
4 relationship where the franchise agreement would  
5 include all of the restrictions that currently exist  
6 with the store's sales model and everything that Tesla  
7 does with their stores?  
8 A. No.  
9 Q. Why?  
10 A. There are many reasons. The principal one,  
11 which I indicated first off, is there's no profit  
12 opportunity for the third party. There are all of the  
13 other conceptual issues that I discussed regarding  
14 mission, regarding the culture of education as opposed  
15 to transaction, and other issues I've mentioned.  
16 Q. But couldn't all of that still take place  
17 with an independent party that it would agree to the  
18 same structure, that TMI, the parent company, would pay  
19 the expenses of the facility and salaried personnel?  
20 A. No. The introduction of a third party would  
21 introduce a new set of diverse incentives that were not  
22 consistent with our goals and our practice.  
23 Q. Unless they contracted otherwise?  
24 A. Our study of this issue suggests that it  
25 could not be done and will not be done.

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1 A. No. To my knowledge, there is not.  
2 Q. How is the store funded then?  
3 A. The store is funded by -- on the corporate  
4 balance sheet as I understand it. There may be  
5 financial transactions below that that I'm not aware  
6 of. But as a practical matter, Tesla is investing  
7 monies directly to build new stores and service  
8 facilities, as with the Supercharger network.  
9 Q. Is there a manager of a store?  
10 A. There typically is a manager of a store.  
11 Q. So all of the profits from all of the sales  
12 go to the parent company, and the parent company on its  
13 balance sheet deducts the amounts of salaries of  
14 personnel in the stores themselves?  
15 A. I'm unfamiliar with the exact modalities that  
16 you're describing.  
17 Q. Do you know what the margin of profit is on  
18 the sale of a vehicle that would go to TMI?  
19 A. No, I'm not at this moment. I am generally  
20 aware of the corporate goals we set for ourselves that  
21 we communicate to the public markets, but that's as far  
22 as my knowledge goes.  
23 Q. Do you know whether or not the margin of  
24 profit on a sale of a vehicle is higher than the margin  
25 of profit that would go to a manufacturer in an

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1 MR. FRANCIS: No further questions.  
2 JUDGE PHAN: Okay. Are there -- before we  
3 have redirect, let's see if commissioners have  
4 questions.  
5 Commissioner Pero?  
6 MR. PERO: Mr. O'Connell, I've not heard  
7 anything about warranty on the vehicles.  
8 THE WITNESS: So we offer a full warranty  
9 consistent with every other vehicle in its -- in the  
10 category.  
11 MR. PERO: What is the warranty?  
12 THE WITNESS: I don't have the specifics in  
13 front of me, but we offer at least -- there's a  
14 vehicle-side warranty, which is -- I should know this,  
15 I apologize for this. It's perhaps a 3- to 5-year  
16 warranty, but I don't want to stipulate to that. We  
17 can get you these details. We also offer an extended  
18 warranty on the battery, which is for most customers  
19 the perceived riskiest part of the transaction.  
20 MR. PERO: So if I'm an owner of a Tesla,  
21 could I go to any of the facilities across the  
22 United States?  
23 THE WITNESS: Absolutely. Yes.  
24 MR. PERO: Okay. If -- if I'm an owner of a  
25 Tesla and I want to trade it in, let's say I have an X

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1 and I want an S, do you handle that?

2 THE WITNESS: We have recently in the past

3 month introduced a CPO, certified preowned system, that

4 allow folks to bring their Model S in and -- and trade

5 it in for a new version. We take those cars, we

6 recondition them, and we offer a warranty and resell

7 them.

8 MR. PERO: Those would be sold through Tesla,

9 not through a third party?

10 THE WITNESS: That is correct. I -- I would

11 also mention here that I think it is true that other

12 third parties can acquire Teslas and sell them

13 themselves. That's something we can't control. We

14 can't control what a customer does with their car. But

15 we do offer this --

16 MR. PERO: That probably gets into my last

17 question. I own an X, and I don't like it. So I go to

18 Larry Miller, one of the dealers in town, and I want to

19 get a Chevrolet. If I am successful in getting that

20 trade done, can they do anything with my Tesla or --

21 THE WITNESS: It's a -- it's a free market to

22 resell a product that one acquires legally. So I don't

23 know of the specific rules in Utah with respect to this

24 issue, but I know that this is done in most other

25 venues where it's been explored.

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1 THE WITNESS: Yes, that is correct.

2 MR. VALENTINE: Do you have other vendors

3 that you use as well, or is AutoNation your exclusive?

4 THE WITNESS: I believe we do, but I'm

5 unaware of the specific names. I wouldn't want to

6 stipulate to that.

7 MR. VALENTINE: Thank you. That's all I

8 have.

9 JUDGE PHAN: Commissioner Cragun? No?

10 Commissioner Rockwell? No?

11 Okay. Your redirect?

12 MR. RILEY: Thank you.

13 REDIRECT EXAMINATION

14 BY MR. RILEY:

15 Q. Question on the states, line of questioning

16 about handling all of these issues through a contract

17 with an independent franchise.

18 Now, is it your understanding that

19 terminating that independent franchisee, for example,

20 for not following your contract is governed by state

21 law?

22 A. Unfortunately, I'm not a lawyer, and I'm not

23 practiced in these issues. So I, frankly, can't speak

24 to how these things might be handled under contract

25 law.

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1 So the answer is yes, they can acquire it,

2 and they can resell it themselves. Our CPO program,

3 just to be clear, is it to make it easy for customers

4 to stay within the franchise, so that's why we offer

5 it.

6 JUDGE PHAN: Any other questions?

7 MR. VALENTINE: I have some. Similar

8 questions to Commissioner Pero, and that is talk a

9 little bit more about this trade-in policy with those

10 outside of the Tesla market. I come in with my Chevy

11 to use his example, and I want to buy a Tesla. You

12 don't have a trade-in for my Tesla, but you do what?

13 Explain again what happens.

14 THE WITNESS: We have -- we have general

15 agreements with a couple of resellers, used car sales,

16 AutoNation being one of them, AutoNation being a pretty

17 well-known brand in the business. We simply make the

18 connection for the customer with AutoNation, so it's a

19 relatively frictionless transaction.

20 MR. VALENTINE: You make the connection with

21 AutoNation, and they negotiate with AutoNation for the

22 sale of their vehicle?

23 THE WITNESS: If -- if by "they" you mean the

24 customer?

25 MR. VALENTINE: The customer. I'm sorry.

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1 Q. Let's talk about the incentive structure that

2 you did mention. A Tesla store in New Jersey, a

3 customer is visiting from Wyoming. Does the employee

4 in that New Jersey store have an incentive to help that

5 customer even though they may likely not buy the car?

6 A. Absolutely. They are a salaried employee of

7 Tesla Motors, so they would have as much incentive as

8 the local salesperson.

9 Q. How does that compare with, for example, an

10 independent franchisee?

11 A. It's quite different in that each sales --

12 well, each dealership as I understand it and the sales

13 people within those dealerships have very diverse

14 incentives to -- to both move a customer into a

15 product, as well as into a set of features inclusive of

16 options, as well as financing schemes.

17 And as I've discussed, some of those are

18 commissioned in a way to direct certain behavior. So

19 the bottom line is that the price would be -- price

20 would be quite diverse across different venues, even

21 within the same geography.

22 Q. You testified I believe about the additional

23 margin would not be available to the independent

24 middleman. What did you mean by that?

25 A. Well, very simply that if Tesla on its



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1 website is suggesting that the car -- is stipulating  
 2 the car sells for this, and that is also the price  
 3 through which we sold to a third party, then that third  
 4 party, whoever it is, has very little ability to earn  
 5 incremental profit on that sale of that same product  
 6 because the customer can quite easily see that they can  
 7 get a better price from Tesla.  
 8 MR. RILEY: Thank you. No further questions.  
 9 JUDGE PHAN: All right. Mr. O'Connell, you  
 10 can take a seat.  
 11 Mr. Riley, go ahead and call your next  
 12 witness.  
 13 MR. RILEY: Thank you, Your Honor. Our next  
 14 witness is Fiona Scott Morton.  
 15 JUDGE PHAN: Will you stand and raise your  
 16 right hand.  
 17 --oOo--  
 18 FIONA SCOTT MORTON,  
 19 having been first duly sworn to tell the  
 20 truth, was examined and testified as follows:  
 21 --oOo--  
 22 JUDGE PHAN: Have a seat.  
 23 DIRECT EXAMINATION  
 24 BY MR. RILEY:  
 25 Q. Good morning, Professor. Could you please

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1 Business School.  
 2 Q. How long have you been a professor at Yale?  
 3 A. About 15 years, almost 16.  
 4 Q. And have you held other positions at Yale  
 5 besides professor?  
 6 A. I was Associate Dean for a few years, which  
 7 is an administrative function helping to organize the  
 8 faculty.  
 9 Q. And have you had held any positions in  
 10 government, Professor?  
 11 A. Yes. For a year and a half, I was the chief  
 12 economist at the Department of Justice Antitrust  
 13 Division.  
 14 Q. What were your duties as a Deputy Assistant  
 15 Attorney General?  
 16 A. The economics deputy is in charge of  
 17 supervising and guiding about 45 or 50 Ph.D. economists  
 18 who work as civil service staff at the DOJ. They  
 19 evaluate antitrust and merger cases and competition  
 20 advocacy. And the chief economist who comes in from  
 21 academia leads that group and, you know, helps run  
 22 cases.  
 23 Q. And what were your specific duties at the  
 24 Department of Justice with regard to antitrust cases?  
 25 A. Well, you do the economic analysis. There's

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1 state your full name and occupation for the record?  
 2 A. Fiona Scott Morton. I'm a professor of  
 3 economics at the Yale School of Management.  
 4 Q. Could you describe your educational  
 5 background?  
 6 A. Yes. I have an undergraduate degree from  
 7 Yale and a Ph.D. in economics from MIT.  
 8 Q. If you could, refer to your exhibit book.  
 9 There is your curriculum vitae as Exhibit 10.1. Is  
 10 this a current curriculum vitae?  
 11 A. Yes, it is.  
 12 Q. Now, it lists you as a Theodore Nierenberg  
 13 Professor of Economics. What is that?  
 14 A. That's an endowed chair. Mr. Nierenberg gave  
 15 money in honor of his father, and I was selected to  
 16 occupy that chair.  
 17 Q. And what courses do you teach at Yale?  
 18 A. I teach courses on competition, competitive  
 19 trajectory for MBAs, and then a competition economics  
 20 class.  
 21 Q. Have you held other teaching positions at  
 22 universities?  
 23 A. Yes. Before I came to Yale, I was a  
 24 professor -- an assistant professor at the University  
 25 of Chicago Business School and before that at Stanford

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1 a team, and you're looking at the data. You're  
 2 weighing the pros and cons of certain behavior, looking  
 3 at whether it has anticompetitive effect, trying to  
 4 quantify that anticompetitive effect, determining if  
 5 there's a less anticompetitive way to achieve the  
 6 firm's business objectives, you know, that kind of  
 7 analysis that goes into determining whether the  
 8 Division would bring a case, for example.  
 9 Q. Could you please describe your areas of  
 10 research focus?  
 11 A. Yes. My area is called industrial  
 12 organization. And that's the study of competition  
 13 among firms. I've worked -- I've done research in a  
 14 variety of industries, pharmaceuticals, auto retailing,  
 15 caskets, magazines, a number of different industries.  
 16 Q. Have you been qualified as an expert in  
 17 economics by a court or administrative forum?  
 18 A. Yes, I have.  
 19 Q. Could you describe those occasions?  
 20 A. I've done a number of -- I've testified in a  
 21 number of trials in the pharmaceutical industry. I  
 22 have testified for Chrysler in the matter of dealer  
 23 terminations. I've testified for Tesla in Georgia.  
 24 Those would be the most recent.  
 25 Q. And what is your expertise in the automotive

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1 industry?

2 A. I have written a series of papers with a

3 friend and colleague at Northwestern looking at auto

4 retailing and the way in which prices are negotiated,

5 how consumers search, how consumers bargain, the way

6 prices are set in that context.

7 Q. And have you published any peer-reviewed

8 articles on that subject?

9 A. Yes, I have. Several looking at the

10 automotive retailing market and then the introduction

11 of the Internet and its impact on the way consumers

12 search and the way they bargain.

13 Q. Have you been previously engaged by Tesla?

14 A. I have.

15 Q. Could you describe those engagements?

16 A. Yes. I worked a little bit on the case in

17 New Jersey. I worked on the case in Georgia and

18 testified in that instance. And I wrote a small piece

19 for the case in Connecticut, my home state.

20 Q. Are you being compensated here for your time

21 and preparation?

22 A. Yes, I am.

23 Q. What are you being compensated at?

24 A. \$1,000 an hour.

25 Q. Approximately how many hours have you devoted

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1 at the 10-K, you know, a number of other things like

2 that.

3 Q. So I would like to ask you at this point if

4 you could summarize your opinion based on the work you

5 have done to analyze the economic implications of

6 prohibiting Tesla from selling vehicles directly to

7 Utah customers. What is the summary of your opinion?

8 A. It's a very clear summary. Preventing Tesla

9 from selling direct to Utah customers is

10 anticompetitive. It's going to cause higher prices,

11 going to cause consumers to have less choice. There's

12 going to be less innovation.

13 It's also inefficient. Consumers in Utah

14 will have to drive to Nevada if they want to test drive

15 a car. There won't be the environmental benefits in

16 Utah because there won't be as many cars. There won't

17 be jobs in Utah. And there is no benefit to the public

18 from restricting the way an auto manufacturer sells its

19 cars.

20 Q. Let's turn to one of the bases for your

21 opinion, which is that it would be inefficient to

22 prohibit Tesla from selling directly to consumers

23 through a Tesla-owned and operated store. What's the

24 basis for that opinion?

25 A. Well, if a consumer is trying to shop for

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1 to the Utah-specific issues?

2 A. Well, the Utah specific issues are related,

3 of course, to the broader issues that I had to learn

4 about for the New Jersey and the Georgia cases, in

5 particular. For example, I visited a Tesla store and

6 test drove the car. So it's been about 50 hours all

7 told for all these matters put together.

8 MR. RILEY: Your Honor, I'd like to offer

9 Professor Scott Morton as an expert in competition and

10 regulation in the automotive industry.

11 MR. FRANCIS: We have no objection.

12 MR. RILEY: Thank you.

13 Q. (By Mr. Riley) Professor, what were you asked

14 to do in this matter?

15 A. I was asked to evaluate the Tesla business

16 model and determine whether there was any

17 procompetitive justification for restricting the way

18 that Tesla sells cars in the state of Utah.

19 Q. And what did you examine in your preparation?

20 A. I examined -- you know, I learned about the

21 technology of the car. I visited a retail store and

22 acted like a customer and received the tour of the

23 technology, did a test drive, read a number of articles

24 about -- sort of Consumer Reports kinds of studies and

25 other studies about purchasing these vehicles, looked

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1 cars and is looking across the variety of models that

2 are out there and is interested in the Tesla, then

3 obviously the easiest thing for that consumer is if

4 there's a Tesla store within range of, perhaps, so that

5 she can go learn about the vehicle, test drive the

6 vehicle, get educated, maybe go back several times

7 easily.

8 If she had to drive to Colorado or some kind

9 of neighboring state to get this information, then that

10 makes the whole process of searching more difficult.

11 It reduces her choice in vehicles.

12 And it doesn't -- it's going to reduce the

13 number of -- because it reduces her choice and it's

14 more difficult, there aren't going to be as many Teslas

15 sold in Utah.

16 That's going to reduce the environmental

17 benefits, more pollution on the roads and so forth, and

18 also denies Utah citizens the ability to have a job

19 working for Tesla in this store.

20 Q. But why not, as counsel suggested, just force

21 Tesla to contract with an independent franchise dealer?

22 A. Well, you know, of course a state has the

23 ability to write laws of that form. But the question

24 from -- for an economist is why would you do that?

25 There is no reason to do that.

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1 Normally we think if a clothing brand would  
2 like to franchise its stores, it's welcome to do that.  
3 If it wants to own the stores, it's welcome to do that.  
4 It's going to pick the retailing structure it thinks  
5 that consumers like best and that's going to work best  
6 for its clothing brand.

7 That's what we let manufacturers do because  
8 it's efficient. And we let the free market decide  
9 whether the owned store really works. If consumers  
10 don't like the owned store, they wouldn't buy the  
11 product there. And the free market would let us know  
12 that that wasn't a good choice. But we don't have the  
13 government deciding how manufacturers should retail  
14 their products.

15 Q. Is Tesla's direct sales model cost efficient  
16 in your opinion?

17 A. Yes, I think it is because this is a small  
18 firm, so they don't have a lot of volume to spread  
19 around. And it is a brand new technology. So this --  
20 the salesperson job is not really sales in the  
21 traditional sense. It's a lot of education, and it's  
22 brand building. You're trying to build a global brand.  
23 And so trying to get that right requires a lot of  
24 control.

25 I think part of the answer to your -- to

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1 A. Well, terminating anybody is costly and takes  
2 a long time, and it is probably protected by the state  
3 franchise laws. Anyway, that's not the relationship  
4 you want to have. You want to get it right.

5 The object is not to be terminating people.  
6 The object is to get it right and with employees whom  
7 you train yourself and promote and let go and have  
8 store managers and so on yourself.

9 You can make that customer experience exactly  
10 what you want it to be. It's a little like the Apple  
11 stores. Apple stores are very different from kind of  
12 the Best Buy retailing experience of 10 years ago. And  
13 that's a conscious choice by that manufacturer to  
14 create that retailing experience as part of their  
15 brand.

16 Q. Have you studied the incentive structures  
17 between the traditional franchise dealer and Tesla's  
18 model?

19 A. Yes, I have.

20 Q. And what is your opinion with regard to those  
21 incentive structures?

22 A. They're completely different. The  
23 traditional franchise dealer compensates salesmen on  
24 the margin of the car. How much margin that salesman  
25 can negotiate with that customer. They're compensated

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1 Mr. O'Connell's question earlier, why can't -- on the  
2 cross-examination, why can't you just set up a contract  
3 that makes exactly what you want to have happen in the  
4 store happen but with a third party?

5 The answer is there's a long literature in  
6 economics that says it's really hard to write those  
7 contracts. There's always things that occur that you  
8 didn't realize would occur at the time you're writing  
9 that contract.

10 And then that third party is a free agent and  
11 can do what they want because it isn't written down in  
12 the contract that they should smile at a certain moment  
13 or open the door at a certain moment or change the air  
14 conditioning at a certain moment.

15 And so the firm doesn't have control. And  
16 the way it would is if it was its own store and its own  
17 employees. That control when you're a young firm  
18 building a brand, when you don't do any advertising,  
19 the consumer's experience in the store is the  
20 advertising. It is the brand building. They have  
21 to -- Tesla has to be able to do that exactly the way  
22 they want it done.

23 Q. What about just simply write it into a  
24 contract, and if the independent franchisee doesn't  
25 follow it, you just terminate them?

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1 for selling additional extras, add-ons, additional  
2 insurance, financing.

3 They're compensated on the margin they can  
4 earn on the trade-in, all these different business  
5 lines that Tesla does not have for one thing, and then  
6 also is trying to avoid with a fixed price that we're  
7 going to put our sales people on salary.

8 We're going to have a fixed price system  
9 where depending on the options and configuration of the  
10 car you select, there's just one price visible on the  
11 Internet to everybody. There's no bargaining at all.

12 There's no kind of extraction of -- of the  
13 customer's money. Let's try to figure out *how much*  
14 you're willing to pay, and I'll take that. That's the  
15 traditional model, and that's what those sales people  
16 are trained and incentivized to do.

17 Q. Have you studied Tesla's service model?

18 A. I have.

19 Q. And how does that differ from a traditional  
20 model?

21 A. Well, that's also different partially  
22 because, of course, the technology is so different,  
23 some servicing can be done remotely with software  
24 updates.

25 Q. Could you explain that, remotely?

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1 A. Yes. This car has an operating system. If  
 2 Tesla wants to change something about the functionality  
 3 of the car, Tesla can, using a mobile communications,  
 4 do a software update in the car, just like you would do  
 5 a software update of your laptop with a wifi  
 6 connection. And so that kind of service happens  
 7 without the consumer needing to do anything or bring  
 8 the car anywhere.

9 There's also the kinds of service that  
 10 requires mechanics. And those mechanics are, again,  
 11 not paid per job, rush, rush and finish this as quickly  
 12 as possible, but they're paid to make the brand strong.  
 13 They're paid to get the repair done correctly the first  
 14 time so that there's a happy customer. We see that in  
 15 Consumer Reports readings, for example.

16 Q. And in your study of this industry, how does  
 17 that differ from the traditional franchise model?

18 A. The traditional franchise model makes lots of  
 19 money on repairs. They're incentivized to get you in  
 20 the door. But then the brand is not their concern.  
 21 They're a Ford dealer. They'd like you to come back to  
 22 them.

23 But in terms of building the Ford brand and  
 24 if you move to another state wanting you to buy the  
 25 Ford there, that's not the dealership's primary

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1 same way Tesla has.

2 Q. That focus on brand building, how does that  
 3 translate to the customer's experience in a store in a  
 4 particular geography, for example?

5 A. It's very much related to that. As we heard  
 6 from everybody this morning, the Tesla idea of sales is  
 7 to make the process frictionless, by which I think they  
 8 mean you don't have to argue with the salesperson about  
 9 how much you're going to pay for the car.

10 You don't have to be restricted to what  
 11 models are sitting on the lot. You can choose your own  
 12 model. Your financing isn't going to be marked up. So  
 13 the whole shopping experience becomes very transparent  
 14 and very easy.

15 I can choose the battery I want. I can  
 16 choose the wheels I want. If I wonder about the  
 17 characteristics of wheels, I can ask the salesman in  
 18 the store, and I know that he's not being paid to get  
 19 me to buy expensive wheels.

20 He's there as an educator. He wants me to  
 21 buy a car, but he wants me to be happy with my car.  
 22 He's going to help me figure out which wheels I want.  
 23 I choose them, and they have a transparent price on the  
 24 website. They cost whatever they cost. And I can see  
 25 that.

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1 concern, unlike an integrated model where the store is  
 2 part of the mother ship and wants the brand to be  
 3 built. So the franchise dealer doesn't have the same  
 4 incentives for quality of repairs and for repeat  
 5 business.

6 Q. We had some questions from the Commission  
 7 about warranty repairs. Have you looked at that with  
 8 regard to Tesla and a traditional independent franchise  
 9 model?

10 A. Yes, I have.

11 Q. What opinions have you reached on that?

12 A. Well, this goes back to what I was saying  
 13 about incentives. The warranty is designed to give  
 14 people comfort in the product and the brand and  
 15 guarantee that product.

16 And Tesla, because they're brand building on  
 17 a global basis, is very interested in having this work  
 18 out beautifully and have the customer like the car and  
 19 recommend the car to all their friends and relations  
 20 because, remember, they don't do any advertising. So  
 21 the word of mouth is really critical.

22 For a franchise dealer, the warranty is a  
 23 source of profits. If the car breaks down, they do the  
 24 warranty work, but there isn't a long-run concern there  
 25 for making the customer happy with the brand in the

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1 The whole thing can be very relaxed and  
 2 non-confrontational and positive. And then I can --  
 3 I'm going to go home and tell all my friends that this  
 4 was a marvelous shopping experience.

5 Q. What does it mean in terms of efficiency that  
 6 Tesla spends no money on paid advertising?

7 A. Well, that's a tremendous cost savings.  
 8 Anybody who watches the Super Bowl or drives down the  
 9 highway knows that car manufacturers and their  
 10 associated dealers spend a great deal of money on  
 11 advertising.

12 Q. Have you looked at inventory and compared  
 13 inventory management between the traditional franchise  
 14 dealer model and Tesla?

15 A. Yes. The inventory -- not holding inventory  
 16 is an incredible cost savings. When you build the  
 17 inventory, you're trying to guess what consumers want.  
 18 So you put 100 cars on the dealer's lot, and you're  
 19 hoping those are the 100 cars that the consumers who  
 20 walk in would like to buy.

21 When you build to order, there's no waste.  
 22 You're building exactly the car the consumer wants. If  
 23 you're Tesla, the cash flow is better because you  
 24 collect the money as you deliver the car. So it's not  
 25 the case that I build a car, incur all those costs, I

1 have it sit on the lot for a month, then the dealer  
2 sells it, then maybe I make my money.

3 So the cash flow is quicker, and there's not  
4 waste for building the wrong car for somebody who  
5 doesn't want it. And because the production process is  
6 quite quick, this is a four-week, eight-week at most  
7 delay for the consumer.

8 Q. Let's talk about the traditional franchise  
9 dealer and the experience of selling electric vehicles.  
10 Are you aware of any literature that supports your  
11 opinion in that respect?

12 A. Yes. There have been several studies.  
13 UC Davis and Consumer Reports sent people to purchase  
14 alternative fuel vehicles and found that the experience  
15 was really not very good outside of the Tesla store.

16 Q. Let's look at the slide that you prepared,  
17 slide number 2, Consumer Reports. It says, "When asked  
18 about a Prius plug-in, a salesperson in Star Toyota  
19 Scion of Bayside New York would not even show our  
20 shopper the car despite having one in stock."

21 A. Yes. And maybe that sales person thought  
22 that they could persuade the shopper to buy a more  
23 expensive gasoline car, and they wanted the margin on  
24 that gasoline car.

25 And maybe they thought it would take a long

1 the car. They learn a little bit. They go away, think  
2 about it. It's a long sales process because the  
3 technology is so different.

4 Q. Then you mentioned this study in your direct  
5 testimony by the University of California at Davis.  
6 And perhaps you could explain that to us.

7 A. Yes. I mean, it's well known that people do  
8 not enjoy shopping for a new car. And what this study  
9 does is it compares different buyers, plug-in vehicle  
10 buyers, non-premium, so that's the Volt and so on, and  
11 then compares that to conventional vehicle non-premium,  
12 conventional vehicle premium, and then Tesla.

13 What you can see is that the ratings for the  
14 shopping process gets consecutively better as you go up  
15 that list. And this is because the plug-in is this odd  
16 duck in the regular conventional lot. And the dealers  
17 are not training -- don't have the incentives to train  
18 the salesmen to do a good job with that.

19 And then you see as the cars get more  
20 expensive, people enjoy the shopping process a little  
21 bit more. But Tesla beats all of them I think because  
22 of this no haggling and this kind of transparent  
23 friendly process where, you know, the consumer doesn't  
24 feel stressed about visiting the dealership.

25 Q. So on the chart, Tesla is the dark blue line?

1 time to explain the Prius plug-in. That would waste  
2 two hours of their day that they could be spending on  
3 selling cars to somebody else.

4 Q. And then Green Car Report says, "The salesman  
5 who showed BMW's first ever electric car on sale had  
6 never driven it, nor had received any training."

7 A. This is a typical problem where you have  
8 sales people who are compensated on selling cars and on  
9 the margin of selling cars. They're not going to want  
10 to take two days out of selling cars to get trained on  
11 electric vehicle technology.

12 That is just very costly to them because  
13 they're not getting paid for that day. And then every  
14 customer who comes in takes a really long time to  
15 educate and convince about the electric car. So it's  
16 really not in the interest of the salesperson at a  
17 traditional dealership to invest in learning how to  
18 sell these cars.

19 Q. And then Green Car goes on to say, "Selling a  
20 plug-in car takes three to five times as long for a  
21 dealer as does selling a gasoline car."

22 A. Yeah. It's really an education process  
23 because people are unfamiliar with the technology. So  
24 you would expect them to come in. They're curious.  
25 They see the store in the mall. They want to look at

1 A. Line at the bottom doing better than  
2 everybody, yeah.

3 Q. In the categories of facility, salesperson,  
4 working out the deal, delivery, and overall  
5 satisfaction?

6 A. Correct.

7 Q. So I'd like to turn to the question that  
8 counsel for the state posed, which is wouldn't it just  
9 be possible given Tesla's model in the rest of the  
10 country to come here in Utah and contract with an  
11 independent franchisee? Doesn't that make sense?

12 A. It doesn't make sense.

13 Q. Why?

14 A. It's completely inconsistent with Tesla's  
15 strategy. They want the store under their control.  
16 They want to brand build in this way. There is  
17 nothing -- there's no profit built if for a third  
18 party. There's no markup they can do on the vehicle.

19 They're not selling used cars. They're not  
20 selling marked-up financing. They're not selling  
21 additional add-ons. So there would be no place for  
22 that third-party franchisee to earn any money doing --  
23 selling a Tesla car.

24 Q. But have you identified any harm to customers  
25 from prohibiting Tesla from selling directly to

1 customers through a store in Utah?

2 A. No. This is a question of retailing form. A  
3 manufacturer -- I mean, the car is the same. We're not  
4 talking about a safety issue about the car. We're  
5 talking about the method by which the manufacturer  
6 chooses to retail that car.

7 And that's a business choice, which a  
8 business should select according to what's most  
9 convenient and is going to enhance their strategy in  
10 the product market, which typically is going to be a  
11 choice that they think makes consumers happy.

12 And if the goal is to have an efficient  
13 economy with happy consumers, you want manufacturers to  
14 be able to decide for themselves how they're going to  
15 retail their product.

16 Q. Let me ask the question in reverse. Is there  
17 any harm to customers from prohibiting Tesla from  
18 selling directly through its own store in Utah?

19 A. Yeah, most definitely. Utah loses that  
20 entry. That entry is valuable for several reasons.  
21 First of all, it's really a different and innovative  
22 entry. It's not just another car similar to ones we  
23 already have. It's really unique.

24 That's going to give consumers a lot of  
25 choice. And then it's going to put competitive

1 their own decision making.

2 There's -- in other settings besides auto  
3 retailing, there's a number of different papers that  
4 look at gasoline stations, for example, and whether  
5 they're restricted from having a repair store or  
6 self-serve versus full serve, so on.

7 There's also explicit advice on this topic  
8 from the Federal Trade Commission which cites a number  
9 of these papers in its letter to different states who  
10 have encountered this same problem with dealers trying  
11 to block the entry of Tesla, in which the Federal Trade  
12 Commission says -- and this is one of our two antitrust  
13 agencies -- says there is no reason to protect  
14 consumers in this way.

15 It's not protecting consumers to restrict the  
16 manufacturer's choice of retailing strategy, that the  
17 free market is quite capable of letting -- of  
18 determining which retailing strategy is going to win.

19 Consumers will choose the one they like. And  
20 there isn't any -- any public interest reason for  
21 restricting the way a consumer -- a manufacturer  
22 chooses to sell its cars.

23 Q. Are you aware of any surveys or other  
24 literature that supports your opinion about the  
25 consumer benefits provided by Tesla's direct sale

1 pressure on the incumbent vehicle sellers in the state  
2 of Utah, which is really good for consumers. So it's  
3 going to put pricing pressure on luxury cars because  
4 they're going to have another competitor that they have  
5 to try to convince consumers to come to them.

6 So if I'm Mercedes, I may have to try harder.  
7 I may have to lower my price. I might have to have  
8 nicer sales people. I might have to do something to  
9 compete with Tesla.

10 If I'm the fully-loaded Ford beneath the  
11 Mercedes, I'm going to respond to the Mercedes.  
12 Dealers may decide that they need to have different  
13 kinds of facilities or different kinds of workers to  
14 help with buyer satisfaction. The entry of Tesla is  
15 going to up the competitive landscape in Utah, which is  
16 great for Utah consumers.

17 Q. Is there any economic literature that  
18 supports your opinion about the harm to consumers of  
19 restricting Tesla from selling directly through its own  
20 stores?

21 A. It's not economic literature, but it's --  
22 it's the federal -- I mean -- well, so there's plenty  
23 of economic literature that says that firms profit  
24 maximize, and the thing that they do is try to please  
25 consumers. And you're best off if you leave firms to

1 model?

2 A. Surveys?

3 Q. Yes, consumer surveys.

4 A. Yes. I reference a number of surveys in my  
5 statement, and these have been carried out by Consumer  
6 Reports in particular, by the Davis people, by a number  
7 of different organizations that have looked at the  
8 benefits of Tesla and how consumers have -- are highly  
9 rated, both the car and the service that comes with the  
10 car.

11 Q. As an economist, what is the significance of  
12 those surveys to you?

13 A. Well, we're in the business I think here of  
14 trying to set up a market economy that serves the  
15 consumer. So if the consumer is very happy with a  
16 particular product or a particular retailing method or  
17 particular kind of service, then the economy is serving  
18 the consumer well. We don't want to restrict the  
19 choice that is creating so much consumer benefit.

20 Q. How do you respond to the argument that  
21 having local independent franchisees supports  
22 competition in the market?

23 A. The many franchisees of -- let's take Ford as  
24 an example -- compete with each other over selling --  
25 over the -- they all buy the car from Ford at the same



1 price. That's in the franchise law.  
2 Then the question is how much do they mark it  
3 up? So they're competing with each other over that  
4 markup. That's intrabrand competition. They're all  
5 Ford dealers. They're selling the same car. They  
6 bought it at the same price.

7 And the question is -- I can drive from one  
8 to the other and say, What's the best price you're  
9 offering me for this truck? And I can get different  
10 offers from those different Ford dealerships and pick  
11 the lowest one. So this demonstrative, the slide here  
12 illustrates that.

13 Q. We're referring to slide 6 for the record.

14 A. Yes. Each make of car, each manufacturer has  
15 multiple dealers, and they compete with each other to  
16 reduce the retailing price, okay, not the wholesale  
17 price, but the retailing price. The markup the  
18 consumer faces is reduced by intrabrand competition.

19 Q. What about Tesla's model, which is not to  
20 have these independent dealers?

21 A. Well, if we go to the next slide, you can  
22 visually see how Tesla fits in. Tesla is going to own  
23 its own store, and its store is competing with all  
24 those dealers.

25 Tesla when it competes with Ford and BMW and

1 A. Certainly. So let's take the first column  
2 and imagine that we have a dealer that's just one  
3 dealer of a manufacturer. And that the dealer buys  
4 that car for \$1,000. Now, where does that \$1,000 come  
5 from?

6 Let's assume the manufacturer's cost is 950.  
7 Then the manufacturer is going to have a markup.  
8 That's about a 5 percent markup. So the dealer's going  
9 to sell the car -- the manufacturer is going to sell  
10 the car for \$1,000 to the dealer, and then the dealer  
11 is going to have some cost of sales, rent, advertising,  
12 floor plan. Then the dealer is going to apply his own  
13 markup. So we get at the bottom there \$1,150.

14 Now let's imagine that that dealer is facing  
15 intrabrand competition. There are three dealerships  
16 nearby, three dealerships in the local area that  
17 compete to sell to the consumer. That \$100 markup is  
18 going to shrink.

19 Remember that the dealer's costs here are  
20 really 50 they're selling on the car, the 1,000 they're  
21 getting back when they sell the car. Dealer's costs  
22 are 50. And their markup just went from twice their  
23 cost to 1/5th their cost because they're competing. We  
24 got a net price of \$1,060.

25 Now let's think about the Tesla model. Same

1 Toyota is engaging in interbrand competition. It's  
2 thinking about I want that BMW buyer to come to me  
3 instead. I'm going to set a price to convince that  
4 buyer that they should switch brands. That's  
5 interbrand competition. Tesla doesn't have to worry  
6 about the dealer marking up its car because it's a  
7 store, it's itself, just sets that final retail price.

8 Q. Are there benefits to consumers of this  
9 vertical integration from manufacturer to dealer?

10 A. Yes, there are. It's something called double  
11 marginalization. It's the main reason that we give --  
12 when we're looking at mergers that are a vertical  
13 merger from -- that integrate two pieces of the supply  
14 chain, and the basic intuition is when you look at BMW,  
15 you see there's two places to put a markup. BMW itself  
16 can put a markup, and the dealer can put a markup.  
17 That ends up flowing through to the consumer as a high  
18 price.

19 When the two entities are combined into one,  
20 there's only one markup. And the result of that is a  
21 net lower price. And I have an arithmetic example on  
22 the next slide.

23 Q. So this is slide number 8 entitled "Double  
24 Marginalization Increases Price." Could you walk us  
25 through each of the columns, please?

1 cost of goods sold here, \$950. The manufacturer retail  
2 costs are going to be borne by Tesla. They're going --  
3 in this example, I've made them less than \$50 because  
4 Tesla is not carrying inventory, okay, and Tesla is  
5 not -- doesn't have the same large staff costs. So  
6 that's going to be a lower cost for Tesla.

7 And then the sum of that is going to be  
8 marked up because the manufacturer gets to mark up the  
9 product. But you can see because there's only one  
10 markup, we end up with a net lower price. Okay.

11 That's the -- what we call the elimination of  
12 double marginalization. And it's a benefit to not  
13 having a chain of independent entities, each of which  
14 needs a profit margin.

15 Q. So what are the benefits to consumers of  
16 eliminating the double marginalization?

17 A. A lower price.

18 Q. And how does that affect competition?

19 A. That, of course, enhances competition because  
20 that lower price, that efficient way of organizing,  
21 puts competitive pressure on all of the competing car  
22 sellers in the region.

23 Q. Now, Professor, I'd like to ask you given  
24 that Tesla is directly in the marketplace in many  
25 markets in this country and sells nationally over its

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1 website, I want you to assume that's the case, wouldn't  
 2 it still be possible for Tesla to sell through an  
 3 independent franchise dealer in Utah under those  
 4 constraints?  
 5 A. I don't really see how because you've got  
 6 this price, let's call it \$1,026, that people can  
 7 freely see on the Internet. That independent dealer is  
 8 going to buy the car for \$1,026 or else Tesla has to  
 9 sell it to them for a lot less.  
 10 And then Tesla is paying that dealer to  
 11 engage in activities that they can't control properly.  
 12 If they're selling it to them for \$1,026, there's no  
 13 basis of economic support for that independent entity  
 14 because they can't mark up the car any more. No one  
 15 would buy it from them. They would just go on the  
 16 website and buy it.  
 17 And you don't in general want to have a third  
 18 party you can't control very well building your brand  
 19 when you're so young and when the brand -- when the  
 20 brand building is the way that you're essentially doing  
 21 advertising and stimulating growth.  
 22 Q. What about the traditional profit centers  
 23 such as used car sales, service, finance, and so forth?  
 24 A. Those don't exist for Tesla. So the  
 25 traditional dealer today doesn't make very much money

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1 So if the firm wants to do something  
 2 innovative like have a store with a staff that are  
 3 compensated by salary and selling a fixed priced item,  
 4 that might be an innovation that consumers really love.  
 5 So I don't see why -- there just isn't a state interest  
 6 in stopping that kind of innovation.  
 7 MR. RILEY: I have no further questions.  
 8 Pass the witness.  
 9 JUDGE PHAN: All right, Mr. Lind?  
 10 CROSS-EXAMINATION  
 11 BY MR. LIND:  
 12 Q. Good morning, Ms. Morton.  
 13 A. Good morning.  
 14 Q. I have some questions, primarily deals with  
 15 your Apple example. I want to start with that one.  
 16 Apple's model has direct Apple stores, but  
 17 doesn't it also sell through retailers?  
 18 A. I only know about Apple as a consumer, but I  
 19 believe that's correct. Yes.  
 20 Q. The prices for the Apple products are  
 21 consistent in the Apple store and at the retail  
 22 locations?  
 23 A. That's correct.  
 24 Q. Is it your understanding and belief that  
 25 Apple makes the product available to the retailers for

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1 off of new cars. They mostly make their money off of  
 2 used car and parts and service and, you know, extended  
 3 warranties and things like that.  
 4 And Tesla does not sell those things. So  
 5 those are not sources of profit for a third party.  
 6 They would have to make their money off of the new car.  
 7 And there just isn't a way to do it in this setup.  
 8 Q. So forcing Tesla to sell to an independent  
 9 franchise dealer is tantamount to forcing Tesla out of  
 10 the state. Is that your opinion?  
 11 A. That is my opinion, yeah.  
 12 Q. Now, in examining the impact of this as an  
 13 economist, do you find any legitimate interest that is  
 14 served by the state by prohibiting Tesla from selling  
 15 through its own operated store in Utah?  
 16 A. No, I don't see one. I think the consumer  
 17 safety issue is a very important issue, but that's  
 18 dealt with through, you know, the NHTSA and through the  
 19 licensing procedure to make sure that the vehicle is  
 20 authentic and has passed all its safety tests.  
 21 Once you have finished that kind of consumer  
 22 protection, then the method by which, you know, the car  
 23 is retailed does not impact consumer welfare, except  
 24 insofar as you stop firms from doing innovative things  
 25 that consumers like.

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1 a lower price than it does to the consumers at its  
 2 Apple store so that the retailers can make a profit?  
 3 A. I haven't studied the Apple retailing  
 4 setting. I mean, I would return to the general  
 5 principle that Apple should be allowed to do what it  
 6 thinks is in its best interests in terms of retailing.  
 7 If it wants a hybrid model, some owned  
 8 stores, some third-party stores, it should be free to  
 9 try that and see if it works. I don't see any reason  
 10 why the state should come in and say, Oh, I'm sorry,  
 11 you can't sell through Best Buy, you may only sell  
 12 through your stores.  
 13 Q. That really wasn't my question. You referred  
 14 to this as a hybrid model. Economically, how does a  
 15 hybrid model work when the ultimate sales price is the  
 16 same in the manufacturer's store and at the retail  
 17 outlets?  
 18 A. I don't know enough about Apple. I mean, as  
 19 I said, I've consumed Apple products, so I know that  
 20 the prices are comparable in the different kinds of  
 21 outlets, but I have no idea how they incentivize or  
 22 price or contract to sell those products.  
 23 Q. As an economist dealing with marketplaces,  
 24 including retail marketplaces, do you have any  
 25 knowledge how that model works with that background?



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1 A. It would be voluntary on both sides because  
2 there's no state regulation telling Apple what to do.  
3 So that means it must be in the interest of Apple to  
4 sell through Best Buy if that's what they're doing and  
5 in the interest of Best Buy.

6 Now, there are many reasons why Best Buy  
7 might want Apple consumers to walk in the door. They  
8 may be trying to sell other things. Apple may have  
9 some special arrangement with Best Buy to do some  
10 special service. I have no idea. But both parties  
11 have to be happy with it. It's not forced on either  
12 side.

13 Q. But if there's some reason to enter that  
14 arrangement, is it your understanding in the hybrid  
15 model with a fixed sales price, which presumably is  
16 done pursuant to an agreement because it's voluntary,  
17 that the product is made available to the retailers at  
18 a lower price than it is from the Apple store directly  
19 to the consumers?

20 A. I have no idea. Firms can get very creative  
21 in this -- in this way as I said. There are many  
22 benefits that might flow to a firm from having Apple  
23 customers walk through the door. So I really don't  
24 know how they set it up. I don't want to speculate.

25 Q. The benefit to the manufacturer could be

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1 A. It's plausible, but we don't really -- as  
2 economists, we don't really think that we know better  
3 than the firm itself how it wants to execute its  
4 strategy.

5 If Tesla wanted to do something like that,  
6 it -- it could. The fact that it's choosing not to and  
7 that we're here explaining why it really wants to sell  
8 through its own stores suggests to me that there are  
9 good reasons why it wants to sell through its own  
10 stores.

11 We could get all micromanaging and say the  
12 state is going to charge this much, and we're going to  
13 save that much, and we're going to authorize -- force  
14 you to sell at a particular price to a particular third  
15 party. But how does that help the consumer? The firm  
16 knows best how to get its product into the hands of the  
17 consumer.

18 MR. LIND: I don't have any further  
19 questions.

20 JUDGE PHAN: Questions from commissioners?

21 MS. ROCKWELL: Yes. Again, I'm referring to  
22 slide 8. And in studying Tesla's business model, have  
23 you found anything to suggest that Tesla's manufacturer  
24 markup on a vehicle is shared with the local store?

25 THE WITNESS: I have not found anything to

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1 making sales that it wouldn't otherwise make, for  
2 whatever reason it may be sales that it wouldn't  
3 otherwise make, whether it's state regulation or simply  
4 volume increases?

5 A. You're saying the benefit to Apple through  
6 selling through third parties would be incremental  
7 sales? That's a perfectly sensible hypothesis. I  
8 don't know, but it makes sense.

9 Q. So returning to your slide -- could you go to  
10 page 8, please. To make that model work and illustrate  
11 my example, assuming that Tesla mandates that the sales  
12 price of a Tesla vehicle or it could be an iPad,  
13 \$1,026, this is at the Apple store.

14 But to make that possible, Tesla would have  
15 to -- well, it would avoid the manufacturer's rent and  
16 staff costs because it would -- over here, so that's  
17 \$25 off.

18 But it could allow some of its manufacturers'  
19 markup to reduce the cost to the independent dealers.  
20 So that the sales price would be the same, \$1,026, at  
21 each location.

22 Tesla would be already less on the sale  
23 through the dealerships than it is from direct sales,  
24 but it would be making the sales that perhaps it  
25 wouldn't otherwise make. Is that a plausible scenario?

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1 suggest that. I believe it's a unitary system with the  
2 store paying the employees a salary. Because you would  
3 imagine that different kinds of neighborhoods are  
4 interested in different kinds of features.

5 They might love the wheels in California and  
6 not care about them in New England. So I would think  
7 there would be different kinds of patterns of what  
8 people would buy across different geographies. But  
9 sales people are not compensated based on the type of  
10 car that the consumers --

11 MS. ROCKWELL: I guess my question didn't go  
12 to sales people but, rather, to the store itself.

13 THE WITNESS: Because the store isn't -- the  
14 store I don't think has a sort of profit and loss  
15 statement that goes to compensate anybody because it's  
16 not an independent business. It's a store.

17 I mean, someone's keeping track of how many  
18 cars they're selling, of course. But it's not as if  
19 the manager of the store at the end of the month gets  
20 to keep whatever's left over at the bottom in terms of  
21 his costs and his sales.

22 MS. ROCKWELL: Thank you.

23 JUDGE PHAN: Commissioner Valentine,  
24 Commission Chair?

25 MR. VALENTINE: Thank you. I'd like to

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1 explore more about the state interest that you've  
2 testified about earlier. I think you concluded the  
3 state had no state interest in trying to require a  
4 franchise agreement methodology for the manufacturer.

5 Have I got your testimony correct?

6 THE WITNESS: That's pretty much right, yes.

7 MR. VALENTINE: If you'd turn to slide 7, the  
8 slide just before this one.

9 Does the state have an interest to protect  
10 the dealers who are right now in the present dealership  
11 format with franchises from the manufacturer engaged in  
12 predatory actions? I turn your attention to --

13 THE WITNESS: From their own manufacturer?

14 MR. VALENTINE: From their own manufacturer.

15 THE WITNESS: Yes. I think that is something  
16 that has been of concern in a number of states and why  
17 there are franchise laws in a number of states where  
18 legislators have been worried that there's an imbalance  
19 of power, that BMW is much stronger than the franchise  
20 dealers; therefore, it's in the state's interests to  
21 protect those smaller independent dealers because  
22 they're in a long-term relationship really.

23 They're a BMW dealer, and they can't sort of  
24 snap their fingers and become Toyota. They're kind of  
25 stuck with BMW. Therefore, that long-run relationship

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1 Corporation selling their new cars through their  
2 franchise dealers. That's just intrabrand competition  
3 of the normal kind we think benefits consumers.

4 Here Tesla is doing that very same thing. We  
5 don't have to protect BMW against Tesla. We might have  
6 to protect a BMW dealer against the manufacturer BMW if  
7 we think there's some imbalance of power.

8 There's some controversy among economists  
9 about whether there is an imbalance of power anymore  
10 because a lot of dealers are part of very large groups  
11 now, and they're quite powerful themselves. But if you  
12 were worried about that, then that's the relationship  
13 you would regulate.

14 MR. VALENTINE: So the state does have a  
15 interest in regulating that particular aspect of the  
16 relationship between dealers and the manufacturers?

17 THE WITNESS: Yes. I'm sorry. When you  
18 summarized my testimony before, what I thought you were  
19 saying was the state doesn't have an interest in  
20 telling a manufacturer whether to use the business  
21 model on the left or the business model on the right.  
22 I don't think there's any consumer benefit gained by  
23 the state instructing manufacturers about that.

24 Once a manufacturer has chosen the business  
25 model on the left and there is this concern about the

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1 needs to be protected. In contrast, I would say to  
2 Tesla where it's just one unitary thing, there isn't  
3 anyone to protect.

4 MR. VALENTINE: Doesn't the state have an  
5 interest in trying to protect the market from -- from  
6 abusive-type actions of having a very large  
7 manufacturer, say a BMW, Toyota, or Ford, from engaging  
8 in practices that then becomes anticompetitive by  
9 virtue of the actions they do on the dealer? Doesn't  
10 the state have a state interest in that regard?

11 THE WITNESS: I think I don't fully  
12 understand your question. Do you mean BMW entering as  
13 a vertically integrated whole to compete against  
14 itself?

15 MR. VALENTINE: Yes, against its dealers.

16 THE WITNESS: Yes. So I think that that's  
17 the purpose of the current franchise law is to restrict  
18 actions like that because BMW is selling exactly the  
19 same thing, of course, as its own franchise dealers.

20 I think the distinction with Tesla is it's  
21 like saying suppose there was XYZ Corporation that  
22 invented some car and came in with a bunch of dealer  
23 franchises.

24 We wouldn't think that the state had an  
25 interest in protecting Toyota and Ford against XYZ

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1 bargaining power, then there's a set of laws already in  
2 place to -- to deal with that.

3 MR. VALENTINE: Isn't that set of laws  
4 prohibiting the manufacturer from going out and  
5 operating that dealer so they can compete against their  
6 own dealers?

7 THE WITNESS: Right. Because the issue there  
8 is if I'm a BMW dealer, I have invested in a plant. I  
9 have a lease. I've advertised on the radio. I have  
10 billboards. I've really sunk a lot of assets into my  
11 small business.

12 And if BMW, the corporation, were to come and  
13 put a facility a block away and could undercut me  
14 because of double marginalization or because they  
15 decided to, my whole business that I have -- I had  
16 relied on that not happening to build my business, I  
17 might never really, frankly, have done -- built that  
18 business if I knew that they were going to come in a  
19 block away.

20 But once I built that business, then the  
21 state has an interest in making sure franchise  
22 agreements protect everybody's investments. Because if  
23 people aren't willing to invest, obviously we don't  
24 have auto retailing. That's a problem.

25 So there is a whole set of issues around the

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1 relationship between those investments that the local  
2 business makes and the brand name sitting in the  
3 background.

4 But that's not a relevant issue when it's a  
5 company-owned store because the company itself, if it  
6 puts another Tesla store a block away, it's hurting  
7 itself, or it's putting another Tesla store a block  
8 away because there's so much demand for Teslas that it  
9 needs that additional store. And it's quite capable of  
10 working that out because it's all its own dollars.

11 MR. VALENTINE: So it's your testimony then  
12 that there is a state interest in protecting dealers  
13 once you have a dealer and franchise arrangement. But  
14 if you always stay as a company store and never go to  
15 the franchise model, that's where you then say it's  
16 your opinion that there is a lack of state interest in  
17 protecting that particular model?

18 THE WITNESS: I think there's a state  
19 interest in protecting that model, in allowing it to  
20 enter, but I don't think there's any entity within that  
21 Tesla column that needs protecting.

22 It's a manufacturer. It's grown up. It can  
23 look after itself. It can choose its store locations  
24 itself. There isn't a state interest in protecting the  
25 store in some sense because the store is not a separate

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1 do, that's terrific.

2 MR. VALENTINE: But the issue is does the  
3 state have an interest in regulating this area. I  
4 think if I understand your testimony correctly, you're  
5 saying, 'yes, in some instances and, no, in other  
6 instances?

7 THE WITNESS: Well, it depends what you mean  
8 by "this area." If you mean all of automobile  
9 retailing, then --

10 MR. VALENTINE: Let's define it as automobile  
11 retailing.

12 THE WITNESS: Okay. I think some people  
13 would argue, and I'm not going to push back against  
14 them too hard, that there is a role for the state to be  
15 worried about the relationship between a franchisor and  
16 an independent dealer in a world where those  
17 independent dealers have invested in developing the  
18 brand in a particular place, that that is something  
19 worth paying attention to.

20 I don't think the state has any reason to  
21 worry about competition between BMW and Tesla where  
22 Tesla chooses to have a store instead because that kind  
23 of competition is just good for free markets,  
24 efficiency, consumer choice, and so on. And there  
25 isn't an independent dealer to protect in the Tesla

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1 thing.

2 MR. VALENTINE: But if Tesla then decided as  
3 its business model grew out, because I think your  
4 testimony was because it's small, it's got efficiency  
5 to be company owned, if they grew out to the point  
6 where franchising became important, then it would be  
7 really important to prohibit them from owning  
8 company-owned stores per the testimony you just gave?

9 THE WITNESS: As I said, there's some  
10 controversy about how much these dealers need to be  
11 protected because, as I said, some of them are quite  
12 large. And there are quite a few laws already in  
13 place, just normal contract laws, that would protect  
14 those dealers.

15 But if Tesla were to grow and decide it  
16 wanted this traditional franchise model, then I think  
17 under Utah law, the franchise laws would apply to  
18 that -- that -- if Tesla created third-party  
19 independent stores that were dealers that were selling  
20 its product, then you already have a law in place for  
21 regulating that.

22 But they're not at the present moment. And I  
23 think it's interesting that a company is experimenting  
24 with this owned-store approach. I think it's an  
25 exciting development. Consumers may love it. If they

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1 world. They're just selling cars.

2 MR. VALENTINE: That's been very helpful.  
3 Thank you.

4 JUDGE PHAN: Any other questions? Mr. Riley,  
5 redirect?

6 MR. RILEY: Thank you.

7 REDIRECT EXAMINATION

8 BY MR. RILEY:

9 Q. Professor Scott Morton, to clarify in  
10 response to -- in response to Commissioner Rockwell's  
11 question, you mentioned a unitary accounting.

12 What did you mean by that with regard to not  
13 having separate profit and loss statements for the  
14 stores?

15 A. When a store is company owned, what that  
16 means is the decision about how that store is run is  
17 taken ultimately at headquarters or some kind of  
18 regional place where the cost of the store, the  
19 building of the store, the payroll of the store, all of  
20 that -- all of those decisions are made.

21 And for instance, if you were opening a store  
22 in Utah, you might not expect that store to have a lot  
23 of sales in the first year because it's a brand new  
24 product. You're teaching people about it. And maybe  
25 there'll be 250 sales. And maybe if you were to look

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1 at the cost of the running the store and the sales out  
2 of the store, there might be a big loss on that store  
3 that year.

4 I think that doesn't mean that the employees  
5 or the manager of that store don't get paid because  
6 this is a corporate decision. The corporation has  
7 decided we're investing in Utah, we're building the  
8 store over the long haul. This is going to be  
9 profitable.

10 And, meanwhile, we pay everybody at the store  
11 for following all the procedures, doing the training,  
12 having good ratings from their customers and so forth.  
13 So it's a unitary financial model.

14 Q. In studying this and in your personal  
15 experience in the stores, how does that affect the  
16 treatment that a customer is given in one geography  
17 from someplace else?

18 A. It's interesting. When I went to the store  
19 in New York, there was a couple there ahead of me who  
20 were from Egypt. And the -- they had a long layover or  
21 something. They had come to the Tesla store from JFK.

22 And the salesman was taking a long time with  
23 them, answering all their questions, telling them about  
24 the technology. And I just don't think that would  
25 happen in a world where the salesperson was compensated

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1 We do want to protect potentially -- as I  
2 said, there's some disagreement, but you might want to  
3 protect a dealer's relationship with an existing dealer  
4 who's invested in the state its relationship with its  
5 own manufacturer.

6 That I would set to one side as a special  
7 area. There's franchise law to deal with that. But  
8 there is no reason to protect the existing incumbent  
9 sellers of cars in Utah from more competition.

10 MR. RILEY: Thank you very much.

11 JUDGE PHAN: You may have a seat.

12 THE WITNESS: Thank you.

13 JUDGE PHAN: Mr. Riley, before we move on,  
14 let's talk about exhibits. Were you intending to offer  
15 Exhibits 10.1 through 10.15 at this time or some other  
16 time?

17 MR. RILEY: At this time, Your Honor. In  
18 fact, I would like to offer -- we've exchanged with the  
19 State Exhibits 10.1 through 10.15 to Professor Scott  
20 Morton's pre-filed testimony, as well as the exhibits  
21 and the pre-filed testimony of Herb Walter, which we  
22 filed with the Commission and exchanged with the State.

23 JUDGE PHAN: Okay. Does the Division have  
24 any objections to, first of all, Exhibits 10.1 through  
25 10.15?

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1 on the margin of the car and kind of was trying to push  
2 through lots of cars every day.

3 This is a brand-building, long-term vision of  
4 a global brand. Tesla doesn't sell in Egypt today, but  
5 maybe some day they will, and then there will be a  
6 customer there who knows about Tesla cars or who will  
7 enable that entry somehow or, perhaps, drive over the  
8 border and buy a car and be an evangelist in Egypt for  
9 the brand. So that's the kind of sales effort you can  
10 get when you're compensating your employees this way.

11 Q. And then, finally, with regard to the  
12 Chairman's questions about Tesla, is it your  
13 understanding Tesla has never sold through an  
14 independent franchise dealer?

15 A. Correct.

16 Q. Is there any state interest in forcing Tesla  
17 to sell through an independent franchise dealer?

18 A. No. There is no state interest.

19 Q. Well, is protecting independent franchise  
20 dealers an interest in that situation?

21 A. Well, we don't want to protect independent  
22 franchise dealers from entry of a new brand. That's  
23 interbrand competition. That -- if we protected them  
24 from entry of a new brand, that would be creating  
25 monopolies and would be very anticompetitive.

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1 MR. LIND: Well, we want a limitation. A lot  
2 of these exhibits are stand-alone exhibits, substantive  
3 evidence, and would be objectionable, lack of  
4 foundation, hearsay, etc. To the extent they form the  
5 basis of Professor Morton's expert opinion, we have no  
6 objection and are illustrative of her testimony.

7 MR. RILEY: Your Honor, we would accept that  
8 these were the -- form part of the basis for her  
9 opinion and were illustrative of her opinion as an  
10 expert.

11 JUDGE PHAN: Okay. All right. Then  
12 Exhibits 10.1 through 10.15 are received with that  
13 limitation.

14 MR. RILEY: And then with regard to Herbert  
15 Walter, whose testimony has been filed with the  
16 Commission, we would offer on the same basis  
17 Exhibits 11.1 through 11.20.

18 JUDGE PHAN: I'm not sure I have a copy. Do  
19 we have another binder?

20 MR. CRAGUN: We figured out that we're  
21 sharing this binder.

22 JUDGE PHAN: So you said 11 --

23 MR. RILEY: .1 through 11.20 to the previous  
24 filed testimony of Herbert Walter, an expert on retail  
25 findings.

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<p style="text-align: right;">Page 122</p> <p>1 JUDGE PHAN: Is his previous filed testimony 2 in here? 3 MR. RILEY: Yes. 4 JUDGE PHAN: It's one of the exhibits? 5 MR. RILEY: It's in the exhibit binder with 6 the stipulated facts and exhibits. 7 JUDGE PHAN: Okay. 8 MR. PETROGEORGE: Exhibit 11. 9 MR. RILEY: Exhibit 11. Excuse me. 10 MR. CRAGUN: That's at the end of this one. 11 MR. FRANCIS: It's in volume 1, number 11, I 12 believe. 13 MR. PETROGEORGE: Yes. 14 MR. CRAGUN: Volume 1, Exhibit 11. I think 15 you're supposed to have all the big binders, and we 16 just got the little binders. 17 JUDGE PHAN: Okay. So for Exhibits 11.1 18 through 11.20, the same -- 19 MR. LIND: We just want them to be treated 20 the same way as they were with Professor Morton. 21 MR. RILEY: We accept that, yes. Thank you. 22 MR. PETROGEORGE: Your Honor, on the exhibit 23 binders, if I may, we did deliver a full set of all the 24 exhibits, including the big volumes, five sets so that 25 each of you would have a copy. I don't know if all of</p>	<p style="text-align: right;">Page 123</p> <p>1 them are up there on the bench, but we delivered those 2 yesterday. 3 MR. CRAGUN: We'll track them down. 4 MR. VALENTINE: Thank you. 5 JUDGE PHAN: We seem to have maybe one set. 6 MR. CRAGUN: There should be four volumes. 7 MR. PETROGEORGE: There's actually five -- 8 there's four volumes of exhibits, and every one of 9 you -- each of you should have a copy of all four. 10 MR. VALENTINE: And then there's one 11 illustrative of demonstrative exhibits. 12 MR. PETROGEORGE: That's one of the four I'm 13 referring to. 14 MR. VALENTINE: That's the fourth volume. 15 What we're lacking up here is 1, 2, 3, and 5. 16 MR. PETROGEORGE: There's only four, so 1, 2, 17 and 3. 18 MR. VALENTINE: I'm sorry. I thought you 19 said there's five. 20 MS. ROCKWELL: I have volume 1. 21 JUDGE PHAN: You have a volume 1? 22 MR. VALENTINE: We found them. 23 MR. FRANCIS: We'll give you the lunch break 24 to read them all. 25 MR. VALENTINE: Oh, you're so kind.</p>
<p style="text-align: right;">Page 124</p> <p>1 JUDGE PHAN: So we will receive the 2 Exhibits 11.1 through 11.20 based on a stipulation that 3 they represent the testimony of Mr. Herbert Walter, 4 that they don't represent testimony, but they are the 5 basis of his expert opinion. Okay. We have another 6 box full. Okay. 7 All right. And then the pre-filed testimony 8 of Mr. Herbert Walter, what exhibit is that one? 9 MR. PETROGEORGE: Exhibit 11. 10 JUDGE PHAN: Any objection from the Division 11 on Exhibit 11? 12 MR. FRANCIS: No. 13 JUDGE PHAN: Okay. That is received. Were 14 there exhibits that the parties had stipulated to 15 that -- which exhibits are those? 16 MR. PETROGEORGE: Exhibits 1 through 8 are 17 stipulated exhibits. 18 JUDGE PHAN: Okay. And those are received at 19 this time. Did that -- there was a stipulation of 20 facts that was submitted with the pre-hearing briefs. 21 Are those included in Exhibits 1 through 8? 22 MR. PETROGEORGE: Exhibits 1 through 8 were 23 the attachments to that stipulation of facts. The 24 stipulation of facts was the stipulation regarding the 25 authentication of those exhibits.</p>	<p style="text-align: right;">Page 125</p> <p>1 JUDGE PHAN: Okay. The stipulation of facts 2 is also received into the record. Okay. Any other 3 exhibits that we need to deal with at this time? 4 MR. RILEY: No, Your Honor. Thank you. 5 JUDGE PHAN: Okay. All right. Do we want to 6 have the lunch break now? 7 MR. VALENTINE: It's up to the parties. I'm 8 okay to go for a little while longer, or we can break 9 now. 10 JUDGE PHAN: Okay. I don't know if she came 11 back with your lunch. 12 MR. RILEY: Your Honor, that concludes the 13 presentation of our evidence with the admission of 14 those exhibits and stipulations. So it's now the 15 State's case. 16 JUDGE PHAN: All right. 17 MR. CRAGUN: I'd like to ask Mr. Riley a 18 question before we break. In your opening statement, I 19 thought I understood you to say that at one time there 20 was the same linkage in the dealer definition in 21 Title 41 as there is in the distributor definition 22 where there was a "franchise" referenced in the dealer 23 definition, and that that was removed. Can you give us 24 any more detail about that? 25 MR. RILEY: Yes. The legislative history</p>

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1 doesn't indicate why that was changed.  
 2 MR. CRAGUN: I want to know when.  
 3 MR. RILEY: It was in 1992 --  
 4 MR. CRAGUN: Okay.  
 5 MR. RILEY: -- when a number of changes were  
 6 made to the statute. The term "franchise" was  
 7 eliminated from the definition of dealer. It's still  
 8 in the definition of distributor.  
 9 MR. CRAGUN: I can track that down. Thank  
 10 you.  
 11 MR. RILEY: Thank you.  
 12 JUDGE PHAN: Okay. All right. Then at this  
 13 point we will break for lunch. Are we all okay with a  
 14 half-hour lunch?  
 15 MR. RILEY: Yes. That's fine for Tesla.  
 16 Thank you.  
 17 JUDGE PHAN: Okay.  
 18 MR. FRANCIS: That's acceptable.  
 19 JUDGE PHAN: So 12:30.  
 20 (Recess taken at 12:00, resuming at 12:41.)  
 21 JUDGE PHAN: All right. Thanks, everyone.  
 22 Have a seat. We are now back on the record.  
 23 Mr. Riley, I believe before the break, you  
 24 indicated you had called your final witness; is that  
 25 correct?

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1 long as there isn't an intentional effort to damage by  
 2 the battery by the customer.  
 3 The third is a happiness guaranty, if you  
 4 will, whereby a customer who is unhappy with their  
 5 vehicle can bring it back at any time. And the final  
 6 is a residual value guaranty, and this relates to the  
 7 trade-in of a vehicle where we have pegged -- electric  
 8 vehicles being relatively new technology and not having  
 9 a body of data to support what projected residual value  
 10 guarantees would be in the out years.  
 11 What we've done is we've pegged the residual  
 12 value to a typical residual value in the class of  
 13 vehicles we sell. We provide that as a guaranty for  
 14 the purpose of trade.  
 15 Q. Are those warranties and guarantees honored  
 16 at any time?  
 17 A. They're honored at any Tesla store. That's  
 18 correct.  
 19 MR. RILEY: Commissioner, I hope that answers  
 20 your question.  
 21 MR. PERO: It does. Thanks.  
 22 JUDGE PHAN: Commissioners?  
 23 MR. RILEY: We have no further witnesses,  
 24 Your Honor.  
 25 JUDGE PHAN: Okay. Then for the Division?

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1 MR. RILEY: Yes, Your Honor. However, during  
 2 the break, we were able to obtain the information about  
 3 warranties that Commissioner Pero requested. So I  
 4 would request permission to recall Mr. O'Connell just  
 5 to answer that question for you so that the record is  
 6 accurate.  
 7 JUDGE PHAN: Okay.  
 8 MR. RILEY: Thank you.  
 9 (Mr. O'Connell was recalled as a witness.)  
 10 JUDGE PHAN: Mr. O'Connell, you're still  
 11 under oath from prior.  
 12 THE WITNESS: Thank you.  
 13 MR. RILEY: Thank you, Your Honor.  
 14 REDIRECT EXAMINATION  
 15 BY MR. RILEY:  
 16 Q. Would you please explain the warranties that  
 17 are offered by Tesla?  
 18 A. Certainly. There are at least four  
 19 categories. The first is a conventional  
 20 four-year, 50,000-mile guarantee. And this is a  
 21 warranty. This is consistent with, as I said, other  
 22 models in this segment.  
 23 The second is related to the battery, which  
 24 is an 8-year unlimited mileage guarantee where  
 25 essentially we will replace the battery at any time as

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1 Mr. Francis?  
 2 MR. FRANCIS: Thank you. I would call Curtis  
 3 Stoddard as a witness.  
 4 --oOo--  
 5 CURTIS STODDARD,  
 6 having been first duly sworn to tell the  
 7 truth, was examined and testified as follows:  
 8 --oOo--  
 9 DIRECT EXAMINATION  
 10 BY MR. FRANCIS:  
 11 Q. Please state your name and position with the  
 12 Division.  
 13 A. Curtis Stoddard, the Assistant Director of  
 14 the Motor Vehicle Enforcement Division.  
 15 Q. How long have you held that position?  
 16 A. Approximately five years.  
 17 Q. How long have you been employed with the  
 18 Motor Vehicle Enforcement Division?  
 19 A. All together about 15 years.  
 20 Q. Are you familiar with the application  
 21 submitted by Tesla Motors Utah, Inc.?  
 22 A. I am.  
 23 Q. What responsibility does the Division have  
 24 with regard to the motor vehicle licensing?  
 25 A. So the Division is required by statute to

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1 look at motor vehicle dealers. We also license sales  
2 people, manufacturers, distributors, remanufacturers,  
3 body shops, dismantlers, crushers. And I'm sure I  
4 forgot some. But basically we regulate the automotive  
5 industry.

6 Q. What's the process in evaluating an  
7 application for a new motor vehicle dealer's license?

8 A. So an application will be submitted to the  
9 Division. The support staff will take that  
10 application, and they will check to make sure that  
11 everything is complete; that all the requirements of  
12 the Division are in that application.

13 With that, if they're all complete and there  
14 are no criminal violations or anything that would cause  
15 a review to happen, then the license would be  
16 processed.

17 Q. With regard to the first application of  
18 Tesla, approximately when did that come into the  
19 Division?

20 A. I believe it was in February.

21 Q. What happened after you received their  
22 application?

23 A. The application -- I believe there was some  
24 things that were missing that our staff had some  
25 correspondence with Tesla. One of the things that was

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1 JUDGE PHAN: Before you move on, we're  
2 thumbing through our exhibit binders, and we don't seem  
3 to have the exhibit over there.

4 MR. PERO: Volume 1.

5 MR. FRANCIS: Volume 1, Exhibit 1.

6 JUDGE PHAN: Exhibit 1. Okay.

7 MR. FRANCIS: That's the problem. It's quite  
8 a thick packet.

9 MR. VALENTINE: I'm still trying to find the  
10 11th down.

11 MR. FRANCIS: I had a hard time thumbing  
12 through and finding it, too. Commissioner Valentine,  
13 you're too far. We're looking for this.

14 MR. VALENTINE: I've got it. Thank you.

15 Q. (By Mr. Francis) Once you received that  
16 letter, Mr. Stoddard, what happened?

17 A. With the -- I consulted with the director.  
18 It appeared that by -- through statute -- the code that  
19 the Division was unable to issue a new motor vehicle  
20 dealer's license to Tesla.

21 Q. What statute are you referring to?

22 A. It is -- if I can look in the code book under  
23 41-3-210, and then it would be 1(g) which states,  
24 "Engaged in a business respecting the selling or  
25 exchanging of new or new and used motor vehicles for

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1 missing at the time was a franchise agreement. So a  
2 franchise agreement was mailed in. We received that.  
3 Because of what it said on the letter, the franchise  
4 letter, the staff came to myself.

5 Q. Was it a franchise agreement, or was it a  
6 letter regarding franchising at all?

7 A. It was a letter regarding what Tesla does  
8 with franchising.

9 Q. Would you find that exhibit? I believe it's  
10 an exhibit in the first volume, Exhibit 1, and the 11th  
11 divider down.

12 MR. FRANCIS: Exhibit 1. Then there are a  
13 series of orange dividers. It's actually after the  
14 11th divider.

15 Q. (By Mr. Francis) What is the date of that  
16 letter?

17 A. The date appears to be February 10th, 2015.

18 Q. And who is it from?

19 A. It is from -- signed, "Sincerely, Jonathan  
20 Chang, Deputy General Counsel."

21 Q. And once you got that, what was -- well, what  
22 is the nature of the correspondence?

23 A. The letter basically states that there is no  
24 franchise agreement between a dealer and a -- Tesla  
25 itself, that they sell directly to the public.

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1 which he is not licensed, including selling or  
2 exchanging new motor vehicles for which the licensee  
3 does not have a franchise.

4 "But this Section 1(g) does not apply to  
5 special equipment dealer who sells a new special  
6 equipment motor vehicle with a gross vehicle weight of  
7 12,000 or more pounds after installing special  
8 equipment on the motor vehicle."

9 Q. And paragraph 1, which precedes all of those  
10 subparagraphs, says that these are prohibited actions  
11 by a licensee?

12 A. Correct. In order to hold a new motor  
13 vehicle dealer's license, the dealer must have a  
14 franchise to sell that particular make.

15 Q. Upon that initial finding under the statute  
16 Section 209, what is the administrator supposed to do?

17 A. Under 41-3-209(1) states, "If the  
18 administrator finds that the applicant is not qualified  
19 to receive a license, a license may not be granted."

20 Q. In consultation with the Division, did you  
21 seek additional information before making the Division  
22 decision as to Tesla's application?

23 A. We did. We referred it to our legal counsel  
24 and took it to the Attorney General's office.

25 Q. And after you received input, what was the



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1 decision of the Division?

2 A. That without a franchise agreement, that we

3 could not issue a new motor vehicle dealer's license.

4 Q. How was that decision delivered to the

5 applicant?

6 A. In this particular case, a letter was

7 generated by the Attorney General's office and was

8 mailed to Tesla.

9 Q. In your discussions with Tesla, did you

10 discuss any other options other than a new motor

11 vehicle dealer's license?

12 A. I did. I had the opportunity to talk with I

13 believe a representative of Tesla. The name was

14 Ingrid, I want to say Robinson, but I'm not positive on

15 her last name, and discussed that we could license

16 Tesla as a used motor vehicle dealer without having the

17 franchise, and we would be happy to do that.

18 Q. Was there any response to that?

19 A. She responded that at the current time that

20 that was not something that they were looking at doing,

21 but they may in the future.

22 Q. Did you later receive another application?

23 A. The Division did, yes.

24 Q. Was that the April application that's been

25 previously referred to in testimony?

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1 A. That there still was not a franchise

2 agreement that we could issue a new dealer's license.

3 Q. Did you consult additional sections of Code

4 Section 210, 41-3-210, with regard to franchises?

5 A. We did. With franchise law which is covered

6 under the 13 section, there are additional requirements

7 for a franchise agreement. In that, it also -- which

8 210 -- I'm sorry -- 41-3-210, Section 1(d) states that,

9 "The holder of a license may not violate any law of the

10 state respecting customers in motor vehicles or any

11 rule respecting commerce in motor vehicles made by any

12 licensing or regulatory authority of the state."

13 Q. Did you seek further consultation from other

14 areas or agencies in the state?

15 A. We did. We actually contacted the Attorney

16 General's office and asked to help interpret this 13

17 section because we knew that there was other sections

18 that regulate the franchise agreement.

19 With that, we were able to determine under --

20 it is -- this one's a big one. Sorry. 13-14-201, and

21 then it is 6(d) and then (ii) which states that, "A

22 franchisor does own directly or indirectly more than

23 45-percent interest in the dealership." And that's --

24 they could have a dealership if they did not own 45

25 percent of it.

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1 A. I believe it was in mid-April, yes.

2 Q. What was different in the April application

3 than from the February application?

4 A. In that application, there was an agreement,

5 which I'm not sure -- a dealer agreement -- exactly

6 where that is in the exhibits.

7 Q. Turn to -- in volume 1, Exhibit 4, and tell

8 me if that appears to be it.

9 A. That does appear to be the dealer agreement

10 that was sent.

11 Q. And did you review that dealer agreement?

12 A. Yes.

13 Q. What in that dealer agreement caused you

14 concern with regard to franchising?

15 A. It still appears that in that dealer

16 agreement, it states that they do not franchise

17 dealers, and that under Subsection 16, I believe

18 it's 1, in that on page 6, it states, "Dealer is an

19 independent contractor and is not an agent, servant,

20 employee, legal representative, partner, or joint

21 venture of TMI. In addition, dealer hereby agrees that

22 this agreement does not form a franchise relationship

23 between dealer and TMI."

24 Q. And with regard to that statement, what did

25 you conclude about the dealer agreement?

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1 Q. Was that an alternative to paragraph 1(u)

2 previously in that same section?

3 A. I believe 1(u) states, "Except as provided in

4 Subsection 6," which that's where we went to, "directly

5 or indirectly own an interest in a motor vehicle dealer

6 or dealership, operate or control a new motor vehicle

7 dealer or dealership, act in the capacity of a new

8 motor vehicle dealer as defined in Section 13-14-102,

9 or operate a motor vehicle service facility."

10 Q. And, again, those are a list of prohibited

11 actions by a franchisor?

12 A. Correct.

13 Q. What was the conclusion of the Division

14 regarding licensure in the April application?

15 A. Again, that we would be unable to issue a new

16 motor vehicle dealer's license.

17 Q. And how was that communicated to the

18 applicant?

19 A. That was a letter that was generated by the

20 Division. And, again, apologize, I don't know where

21 that is in the novel that we have in front of us.

22 Q. It might be Exhibit No. 7 in the same book

23 that you're in.

24 A. That does appear to be the letter that was

25 sent. And that was dated May 21st.

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1 Q. Did you draft that?  
 2 A. I did not, but it was drafted by my  
 3 authority.  
 4 Q. If the dealer agreement would have  
 5 acknowledged that a true franchise relationship existed  
 6 between Tesla Utah and its manufacturer, would the  
 7 license have been granted?  
 8 A. Yes.  
 9 Q. In February as well?  
 10 A. It would have.  
 11 Q. Do you believe that there are owners of  
 12 dealerships, either individual entities for dealerships  
 13 within the state of Utah, where those owners actually  
 14 live outside the state of Utah?  
 15 A. I'm sure there is. I couldn't state who, but  
 16 that would be nothing that would prohibit them if they  
 17 did live outside of the state.  
 18 Q. Thank you. Is the Division in any way  
 19 intentionally trying to block entry into Utah's market  
 20 of any business or individual or entity from being a  
 21 dealer within the state of Utah?  
 22 A. Is our Division doing that?  
 23 Q. Yes.  
 24 A. I do not believe so, no.  
 25 Q. Is the Division in evaluating these

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1 correct?  
 2 A. Not if it comes from the Attorney General's  
 3 office, no.  
 4 Q. Okay. But you worked -- you reviewed this  
 5 letter before it was issued, correct?  
 6 A. I believe I did.  
 7 Q. Yes. And in this letter, if we could, this  
 8 is the letter that declined the first application that  
 9 was submitted by Tesla, correct?  
 10 A. Correct.  
 11 Q. And the first application, which was made in  
 12 February, did not include the dealer agreement,  
 13 correct?  
 14 A. It had the letter that we discussed that was,  
 15 I believe, Exhibit -- I think it was 4. And then in  
 16 4 -- so it did include the letter dated February 10th.  
 17 Q. February 10th. Okay. The application was  
 18 dated February 12th, the letter was dated  
 19 February 10th, correct?  
 20 A. I believe so. If we could go to the  
 21 application, I could tell you.  
 22 Q. And then that letter that was submitted with  
 23 the first application, the first application in  
 24 February, that letter said Tesla does not engage with  
 25 independent franchise dealers, correct?

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1 applications for now motor vehicle licensing responding  
 2 to pressure of any external group in making its  
 3 decision?  
 4 A. The sole decision of the Division is based on  
 5 current statute.  
 6 MR. FRANCIS: I have no further questions at  
 7 this time of Mr. Stoddard.  
 8 JUDGE PHAN: Okay. All right. Mr. Riley?  
 9 MR. RILEY: Thank you.  
 10 CROSS-EXAMINATION  
 11 BY MR. RILEY:  
 12 Q. Good afternoon, Mr. Stoddard.  
 13 A. Good afternoon.  
 14 Q. I'd like you to turn to Exhibit No. 2 in your  
 15 book, please. Now, Exhibit No. 2 is a letter dated  
 16 February 26, 2015, on the stationery of the Attorney  
 17 General directed to Ingrid Robertson at Tesla Motors,  
 18 correct?  
 19 A. That's what it appears, yes.  
 20 Q. This letter was drafted under your authority,  
 21 correct?  
 22 A. We requested that the Attorney General  
 23 respond to the application.  
 24 Q. But in your direct, you said these kinds of  
 25 letters were done "under your authority"; is that

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1 A. Correct.  
 2 Q. So that was submitted, and then your  
 3 department rejected the application and notified Tesla  
 4 in what is Exhibit No. 2, correct?  
 5 A. Correct.  
 6 Q. Now, if we could turn to the page 2 of  
 7 Exhibit No. 2, the letter rejecting Tesla's  
 8 application, it says, in the second paragraph, "Since  
 9 Tesla Motors Utah, Inc. is not a franchisee, MVED  
 10 cannot issue a license as a new car dealer." Do you  
 11 see that?  
 12 A. I agreed that Tesla did not hold a franchise  
 13 for selling Tesla.  
 14 Q. But the term "franchisee" doesn't appear in  
 15 the statute, does it?  
 16 A. Under 41-3? Because it does appear in many  
 17 places. So where are we --  
 18 Q. Okay. Let me be precise. The Licensing Act  
 19 is what authorized your Division to issue new motor  
 20 vehicle dealer licenses, correct?  
 21 A. Correct.  
 22 Q. The term "franchisee" does not appear in the  
 23 Licensing Act?  
 24 A. I don't know. I would have to look at  
 25 definitions to make sure that it doesn't. But --

http://www.yeslaw.net/help

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1 Q. Flip to the definitions. You did this  
2 before. If we could go --  
3 MR. RILEY: For the commissioners, we have  
4 included in the booklet of exhibits the Licensing Act  
5 and then the Franchise Act. So we can all turn in  
6 Exhibit No. 1.  
7 MR. PETROGEORGE: Volume 1.  
8 MR. RILEY: In volume 1 to 41-3-101.  
9 MR. VALENTINE: Where's the tab at, Counsel?  
10 MR. PETROGEORGE: It's at the back of  
11 volume 1. There's a tab for licensing and one for the  
12 MVDRA.  
13 Q. (By Mr. Riley) So it has as listed in  
14 alphabetical order the various definitions, and it has  
15 a definition for "franchise" but not "franchisee,"  
16 correct?  
17 A. That's what it appears, correct.  
18 Q. So the definition of "franchise," and I want  
19 to focus on that for one moment, which is the 16th  
20 definition there on -- in the Licensing Act, "Franchise  
21 means a contract or agreement between a dealer and a  
22 manufacturer of new motor vehicles or its distributor  
23 or factory branch by which the dealer is authorized to  
24 sell any specified make or makes of new motor  
25 vehicles." Do you see that?

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1 avoid any sort of franchise requirement if it became a  
2 used car dealer?  
3 A. No. What I said is that they could sell used  
4 vehicles at that dealership. Correct.  
5 Q. At that dealership. They could sell used  
6 vehicles?  
7 A. Correct.  
8 Q. And I think you said a little bit more. You  
9 told them how they could do that, correct?  
10 A. I did.  
11 Q. All right. Let's take a look at the  
12 provisions of the Utah statute that relate to used car  
13 dealers. So this is your witness statement -- if we  
14 could just take one moment -- that was filed here.  
15 You said, "In discussion with representatives  
16 of Tesla Motors Utah, I suggested other license options  
17 were available, which did not include or require  
18 franchise relationship." That was your testimony?  
19 A. There are many types of licenses that we  
20 issue that do not require a franchise, correct.  
21 Q. And one of them is a used motor vehicle  
22 license dealer?  
23 A. Correct.  
24 Q. What you suggested to Tesla was that it take  
25 its cars that came off the factory, put a couple miles

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1 A. I do.  
2 Q. Now, it doesn't require that contract or  
3 agreement to be in writing, does it?  
4 A. The definition does not, no.  
5 Q. Right. It also focuses on the authorization  
6 to sell the make or model, correct?  
7 A. It does.  
8 Q. And other than that authorization, there is  
9 no other requirement to satisfy the definition of a  
10 franchise?  
11 A. In this particular section?  
12 Q. Yes.  
13 A. Correct.  
14 Q. But you declined the first application even  
15 though Tesla Motors Utah was a wholly-owned subsidiary  
16 of Tesla, and Tesla has the authority to sell its own  
17 cars, doesn't it?  
18 A. It does, yes, through --  
19 Q. Thank you.  
20 A. -- the correct form, yes.  
21 Q. Now, you stated in your -- in your direct  
22 that after you declined it, that you talked to Tesla  
23 about Tesla selling its vehicles as used cars?  
24 A. Correct.  
25 Q. And what you were suggesting was it could

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1 on them, and then transfer the title to someone, and  
2 then sell it as a used car. Is that what you  
3 suggested?  
4 A. Kind of, yes.  
5 Q. All right. So what you were suggesting is  
6 that they skirt the requirement of a franchise  
7 relationship by engaging in these kind of transactions?  
8 A. No. I was not suggesting that.  
9 Q. Let's look at the law. I assume you're  
10 familiar with 41-3-102-33, right?  
11 A. I am, yes.  
12 Q. It says, "A used motor vehicle means a  
13 vehicle that has been titled and registered to a  
14 purchaser other than a dealer or has been driven 7,500  
15 or more miles, unless the vehicle is a trailer."  
16 So I believe what you told Tesla was, Look,  
17 you can title and register it to someone else and then  
18 transfer it to the store, put a couple miles on it, and  
19 sell it as a used car?  
20 A. Doesn't say anything about miles. I said  
21 that a vehicle is used if it has been titled and  
22 registered. So if the vehicle is titled and  
23 registered, then they could legally by the statute sell  
24 them as a used vehicle. Didn't say anything about  
25 miles. That was not part of the conversation.

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1 Q. You didn't mention the 7,500 miles?  
 2 A. I would have told them that is the other  
 3 reason that makes them used, correct.  
 4 Q. So what this would result in then is Tesla  
 5 would have to absorb the additional expense of titling  
 6 and registering, for example, in another state,  
 7 correct?  
 8 A. Not in another state, no. They could have  
 9 done it in our state. All I was trying to do is said  
 10 if they did not have a franchise agreement, that there  
 11 were other options that they could open a dealership in  
 12 our state.  
 13 Q. But it would have to be in another state  
 14 because you're saying they don't have a license to sell  
 15 it in Utah?  
 16 A. That doesn't mean that you cannot title and  
 17 register a vehicle in our state.  
 18 Q. And then they would sell that vehicle -- they  
 19 would have to advertise it as a used vehicle, right?  
 20 A. Correct.  
 21 Q. So they would have to be telling customers  
 22 that this car, which might have no mileage on it, is a  
 23 used car and sell it as such?  
 24 A. Correct.  
 25 Q. And that would be a competitive disadvantage

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1 Q. -- California?  
 2 MR. RILEY: No more questions, Your Honor.  
 3 Thank you.  
 4 JUDGE PHAN: All right. Questions from the  
 5 commissioners? Commissioner Cragun?  
 6 MR. CRAGUN: I just want to look at this  
 7 theory that Tesla is advocating through their counsel  
 8 this idea that if you just look at the definition of  
 9 "franchise" in 41-3-102, their dealer agreement seems  
 10 to comply with the requirement of 41-3-210. So I need  
 11 to understand from you why it is that you have to go  
 12 and look at Title 13?  
 13 THE WITNESS: In -- under 41-3-210 and then  
 14 it is 1(d), it states that they can't violate any law  
 15 of the state respecting commerce in motor vehicles,  
 16 which 13-14 obviously does do that. So they would be  
 17 required to also do what 13-14 states they must do.  
 18 MR. CRAGUN: Okay. So how does their  
 19 argument that Title 13 doesn't even apply to them  
 20 because they don't have a franchise agreement --  
 21 THE WITNESS: Under --  
 22 MR. CRAGUN: If they don't have a franchise  
 23 agreement, why would we even look at Title 13?  
 24 THE WITNESS: Because under Title 13, it  
 25 states that a manufacturer can't own the dealership and

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1 to Tesla selling against other new car dealers, right?  
 2 A. I don't know if that would have been a  
 3 competitive disadvantage. I was trying to give them a  
 4 way that we could license them in our state.  
 5 Q. And you also understood that by selling it as  
 6 a used car, customers would be denied the tax benefits  
 7 that are given to purchasers of new electric vehicles,  
 8 right?  
 9 A. I had no -- I did not consider that at all.  
 10 Q. And this would require for a sale to a  
 11 particular member of the public two stages of title and  
 12 registration, first by Tesla in order to sell it as a  
 13 used car and then, second, by the customer when they  
 14 bought it, right?  
 15 A. In order to make it a used vehicle, it would  
 16 have to be titled and registered. If they sold it to a  
 17 customer, then yes, that additional title and  
 18 registration would have to occur.  
 19 Q. So that would impose an additional  
 20 transaction cost to sell the very same vehicle, right?  
 21 A. That -- that happens all the time by law.  
 22 Used vehicles are sold throughout our state every day.  
 23 Q. Right. But used vehicles straight off the  
 24 assembly line in Fremont --  
 25 A. Yep.

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1 the dealership itself. In order for us to license a  
 2 new motor vehicle dealer in our state, they have to  
 3 have a franchise.  
 4 MR. CRAGUN: I understand what you're reading  
 5 in the statute. What I'm not understanding is how you  
 6 reached your conclusion. I understand that if a  
 7 manufacturer has a franchise relationship with a dealer  
 8 that the manufacturer cannot own the dealer. But if  
 9 the manufacturer has no franchise under Title 13, why  
 10 do we care how much they own?  
 11 THE WITNESS: And because of the statute  
 12 stating that they must have a franchise in order for us  
 13 to give them a new dealer's license.  
 14 MR. CRAGUN: Is that 41 -- 41-3-210?  
 15 THE WITNESS: 41-3-210, correct. And then  
 16 it's 1(g), "Engage in a business respecting the selling  
 17 or exchanging of new or new and used motor vehicles for  
 18 which he is not licensed, including selling or  
 19 exchanging a new motor vehicle for which the licensee  
 20 does not have a franchise."  
 21 MR. CRAGUN: That's where I want to focus.  
 22 That word "franchise" is defined in 41-3-102. Have  
 23 they not met the definition of 43 -- what is it,  
 24 41-3-102(16)? Does their dealer agreement not meet  
 25 that definition of "franchise"?



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1 THE WITNESS: It appears that it could, yes,  
 2 but that there are additional statutes. And that's why  
 3 the Division considered referring this or consulting  
 4 the Attorney General's office and involving the  
 5 Department of Commerce, which includes the 13-14, which  
 6 has other definitions, including a franchisee. And  
 7 that is the title of that act, 14 -- 13-14-101 states,  
 8 "This chapter shall be cited as the new Automobile  
 9 Franchise Act."  
 10 MR. CRAGUN: And the hook between 41 --  
 11 between Title 41, Chapter 3 to Title 13, Chapter 14 is  
 12 41-3-210 (1)(d)?  
 13 THE WITNESS: Correct.  
 14 MR. CRAGUN: That's the only linkage that  
 15 you're aware of?  
 16 THE WITNESS: That I'm aware of.  
 17 MR. CRAGUN: All right. So if we accept  
 18 Tesla's theory, their argument, their premise, whatever  
 19 it is they're doing, what effect will that have on new  
 20 car dealers that are currently located -- that are  
 21 currently selling cars in the state?  
 22 THE WITNESS: It may have no effect unless  
 23 the manufacturers come into the state and state,  
 24 Because of this, we want to open our own and not have a  
 25 franchise, which then could basically state that they

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1 application?  
 2 THE WITNESS: Correct.  
 3 MR. CRAGUN: Okay. Talk to me about the  
 4 difference between a definition of "dealer" and a  
 5 definition of "dismantler" in 41-3-102, where  
 6 dismantler specifically -- not dismantler,  
 7 distributor -- where it talks specifically about a  
 8 person who has a franchise.  
 9 But in the definition of "dealer," it doesn't  
 10 even mention the word "franchise." The only place that  
 11 "franchise" and "dealers" come into play is in  
 12 41-3-210. Does that have any significance to the  
 13 Division?  
 14 THE WITNESS: I wasn't here when these laws  
 15 were written, and I don't know if I can say why certain  
 16 things weren't there or were included. The Division's  
 17 trying to equitably enforce these statutes and these  
 18 laws the best that they can with respect to motor  
 19 vehicle commerce.  
 20 MR. CRAGUN: Let me ask the question this  
 21 way. Were you aware that the definition of "dealer"  
 22 did not include the word "franchise" in it, but the  
 23 definition of "distributor" did include the  
 24 "franchise"?  
 25 THE WITNESS: Honestly, I have not until

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1 could put a dealership across the street from one that  
 2 is in existence and put them out of business.  
 3 MR. CRAGUN: How could they do that and still  
 4 comply with the new Automobile Dealer's Franchise Act?  
 5 THE WITNESS: And I don't think that they  
 6 could. However, that's why we are also including that  
 7 in the reasoning behind it that states that a  
 8 manufacturer cannot own more than 45 percent of the  
 9 dealership.  
 10 In order to sell a vehicle in the state of  
 11 Utah, you have to have a dealer's license. That  
 12 dealer's license allows them to do certain things.  
 13 It's a level, a step. So a new motor vehicle dealer  
 14 can sell new franchise dealers to whatever make or  
 15 model that they have.  
 16 A used dealer is a step down from that. They  
 17 could sell anything that basically is licensed and  
 18 titled in the state of Utah. Then there's other  
 19 dealerships below that. There's small trailer and ATV  
 20 dealers. They can only sell those types.  
 21 So the linkage of that that -- the separation  
 22 is what's difficult because if we say that it acts for  
 23 all of the current dealers in the state, that we feel  
 24 that it needs to also be the same for Tesla.  
 25 MR. CRAGUN: So you see it as a uniform

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1 today really noticed that. That would have not been  
 2 something that would have been apparent.  
 3 MR. CRAGUN: Didn't consider that at all in  
 4 making your decision to deny the license?  
 5 THE WITNESS: No.  
 6 MR. CRAGUN: Okay. I think that's all the  
 7 questions I have for Mr. Stoddard. But Mr. Riley and  
 8 Mr. Francis, we're going to need to explore this a  
 9 little bit more before the Commission is ready to make  
 10 a decision. I think it's probably legal argument  
 11 rather than testimony.  
 12 JUDGE PHAN: Are there any other questions  
 13 from the commissioners?  
 14 MR. VALENTINE: I have a few.  
 15 JUDGE PHAN: Commissioner Chair?  
 16 MR. VALENTINE: This is a carry-on to the  
 17 discussion that my colleague, Commissioner Cragun, has  
 18 asked. I'd like to go back to Title 13 and  
 19 specifically in the definition sections under 13-14-102  
 20 focus on paragraph 8 for a minute, which is the  
 21 definition of "franchise."  
 22 For franchise agreement, can you just walk  
 23 through the definition and ask each one of those  
 24 elements where this particular application failed? I'm  
 25 talking specifically about the second one because they

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1 have a written agreement in the second one.  
 2 Franchise means a written agreement or, in  
 3 the absence of a written agreement, of course, a  
 4 dealer. Did they have a written agreement in that  
 5 second application?  
 6 THE WITNESS: I would say yes.  
 7 MR. VALENTINE: The next element was a person  
 8 grants to another person. Were two people involved,  
 9 even though they are wholly-owned subsidiaries, they  
 10 were two separate corporations?  
 11 THE WITNESS: It appears to be that way, yes.  
 12 MR. VALENTINE: Is there also a license to  
 13 use the trade name, trademark, service mark, or related  
 14 characteristics?  
 15 THE WITNESS: I would say yes.  
 16 MR. VALENTINE: Then the next element was, "A  
 17 community of interest exists in the marketing of new  
 18 motor vehicles."  
 19 What is your understanding -- as you have to  
 20 enforce this, what's your understanding of that  
 21 community of interest?  
 22 THE WITNESS: And normally with 13-14, that  
 23 is enforced by Commerce, the Department of Commerce.  
 24 So it would be better to have somebody from Commerce  
 25 answer those questions.

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1 THE WITNESS: It doesn't appear to be, no.  
 2 MR. VALENTINE: Okay. We are going to have  
 3 to explore this with counsel when we get to legal  
 4 argument. Thank you.  
 5 JUDGE PHAN: Any other questions? Okay. Do  
 6 you have redirect, Mr. Francis?  
 7 MR. FRANCIS: Well, just one question.  
 8 REDIRECT EXAMINATION  
 9 BY MR. FRANCIS:  
 10 Q. If you'll turn to the dealer agreement.  
 11 A. Can you help me where that is?  
 12 MR. FRANCIS: That is 7. And read again  
 13 paragraph 16.1.  
 14 MR. PETROGEORGE: Exhibit 4.  
 15 MR. FRANCIS: Exhibit 4. Excuse me. Thanks.  
 16 THE WITNESS: It's 16.1?  
 17 Q. (By Mr. Francis) Yes.  
 18 A. "Dealer is an independent contractor and is  
 19 not an agent, servant, employee, legal representative,  
 20 partner, or joint venture of TMI. In addition, dealer  
 21 hereby agrees that this agreement does not form a  
 22 franchise relationship between dealer and TMI.  
 23 "And dealer further agrees that this is not a  
 24 franchisee as term defined under Utah Code Annotated  
 25 19-15, Subsection 13-14-102. TMI hereby agrees that

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1 MR. VALENTINE: But you had to make a  
 2 determination for this rejection because you were  
 3 relying upon this section. So what was the basis for  
 4 your denial under this part of the test?  
 5 THE WITNESS: Just the definition itself, it  
 6 wasn't. It was going into 13-14, and then it appears  
 7 to be --  
 8 MR. VALENTINE: 13-14, what section? I need  
 9 a title and chapter.  
 10 THE WITNESS: I don't see the exact --  
 11 MR. FRANCIS: 201.  
 12 MR. VALENTINE: 201?  
 13 THE WITNESS: Sorry, 13-14-201.  
 14 MR. VALENTINE: 1(u)?  
 15 THE WITNESS: And then 1(u).  
 16 MR. VALENTINE: Let me get there. So this is  
 17 prohibited acts by franchisors, is that correct, this  
 18 Section 201?  
 19 THE WITNESS: Correct.  
 20 MR. VALENTINE: So let's go back and find  
 21 what a franchisor is. Subpart 10, "A franchisor means  
 22 a person who has in writing" -- drop out a couple words  
 23 here -- "agrees with or permits a franchisee to  
 24 purchase," but the franchisee is not defined in  
 25 Title 41, is it?

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1 this agreement does not form a franchise between dealer  
 2 and TMI. And TMI further agrees that this is not a  
 3 franchisor as such term defined under Utility Code  
 4 19-15, same Subsection 102."  
 5 Q. And when you reviewed the dealer agreement  
 6 since it by its own language denied being a franchisee  
 7 and franchise agreement under Title 13 -- excuse  
 8 me -- yes, Chapter 14, did that weigh into your  
 9 consideration of denying the license because a  
 10 franchise agreement didn't exist?  
 11 A. Yes.  
 12 JUDGE PHAN: All right. Mr. Stoddard, you  
 13 may be seated.  
 14 THE WITNESS: Thank you.  
 15 MR. FRANCIS: We have no further witnesses.  
 16 JUDGE PHAN: Okay. All right. Is there  
 17 rebuttal from Tesla?  
 18 MR. RILEY: No, Your Honor. We're prepared  
 19 to make closing arguments.  
 20 JUDGE PHAN: Okay.  
 21 MR. CRAGUN: Is there an opportunity here to  
 22 engage in a dialogue, or do you have something you want  
 23 to say first?  
 24 MR. RILEY: Your Honor, I would like to do  
 25 whatever's most helpful to you. I can discuss the

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1 provisions that you were questioning the witness about,  
2 as well as describe some of the more general points. I  
3 would like to reserve 10 minutes for rebuttal following  
4 the State's closing.

5 MR. CRAGUN: Is there anything that you still  
6 need to do to create a record for constitutional  
7 challenges?

8 MR. RILEY: I believe we've made our  
9 evidentiary showing in that respect. I will address  
10 some of the constitutional issues in my closing.

11 MR. VALENTINE: Why don't you go ahead then,  
12 and let's have you go ahead and make that. If you  
13 don't mind, we'll handle this like we would in an  
14 appellate court that we can ask questions. Then if you  
15 haven't covered some of the issues, then we'll ask  
16 questions.

17 MR. RILEY: Thank you, Your Honor.

18 CLOSING ARGUMENT

19 BY MR. RILEY:

20 I'd like to turn, first, to an issue that  
21 Commissioner Cragun raised, and that goes to the  
22 definition of "franchise" for the Licensing Act. I  
23 think we all agree that the definition of "franchise"  
24 in the Licensing Act is different than the definitions  
25 in the Franchise Act.

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1 first. In fact, they cross-reference.

2 MR. CRAGUN: What I'm thinking is if we  
3 overturn the Division, and you went out and nullified  
4 the authorization agreement that's currently in place,  
5 the Division might be able to come in and say, Hey, now  
6 you're in violation of the law. We're revoking your  
7 license. Then it would be the time to make that  
8 discussion.

9 MR. RILEY: I believe that given the sequence  
10 of events where in response to an invitation to make a  
11 subsequent application, the denial for the first  
12 application is still right before this Commission.

13 If this Commission found as a matter of law  
14 that the statute should be interpreted as authorization  
15 is inherent in the parent-child relationship, the  
16 subsidiary and the parent, then we comply with the  
17 statute, and we don't even get into franchise  
18 agreements.

19 MR. CRAGUN: I appreciate that because what  
20 I'm worried about is a jurisdictional issue here. You  
21 didn't appeal the first denial, so we can't deal with  
22 that. But I think I see where we could make a finding  
23 as a matter of law that you don't need to have the  
24 agreement that you do, in fact, have now.

25 MR. RILEY: Yes. Thank you. Of course, the

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1 Let me put that differently. The definition  
2 in the Licensing Act, which is shown here on the  
3 screen, is different from that in the Franchise Act in  
4 some important respects.

5 It is our contention that "franchise" in the  
6 Licensing Act, which is a term of art in the act  
7 itself, requires only the conveyance of authority to  
8 sell. It doesn't have to be between independent  
9 parties. It doesn't have to involve trademarks.

10 It doesn't have to involve trade names. It  
11 doesn't involve applications, inventories, community of  
12 interest, none of the things that you all can see with  
13 definitions of "franchise." It simply says that the  
14 manufacturer of new motor vehicles or its distributor  
15 is authorized to sell any specified make or makes of  
16 new motor vehicles.

17 Now, it's our contention that that is  
18 satisfied simply by the relationship between a parent  
19 and a wholly-owned subsidiary. And the license should  
20 have been issued the first -- on the first application  
21 where there was no discussion of a franchise.

22 MR. CRAGUN: But that issue is not really  
23 before us because you didn't appeal that denial.

24 MR. RILEY: I believe it is still before us  
25 because the second denial is based in part on the

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1 final denial references the first denial. But it is  
2 our argument that the dealer's agreement satisfies this  
3 requirement, clearly satisfies this requirement because  
4 it is an authorization by Tesla, Inc. to Tesla Utah to  
5 sell its cars. That's all that's needed to satisfy the  
6 licensing agreement.

7 MR. VALENTINE: But then once you're  
8 licensed, don't you get to the second part of the  
9 dilemma as you called it, which is that you're now  
10 having direct sales in violation of the Franchise Act,  
11 which has specific provisions in it dealing with direct  
12 sales?

13 MR. RILEY: And the answer to that is no,  
14 we're not in violation of the Franchise Act. The  
15 reason is we are not a franchisor under that act.  
16 Mr. Stoddard misspoke when he said this act prohibits  
17 manufacturers from owning and operating dealers. That  
18 is not what the provision says.

19 That provision of Chapter 13, it says,  
20 "Franchisor may not sell, may not own and operate a  
21 dealer." Again, for the record, so that we're  
22 completely clear about this, if you turn to Title 13,  
23 Chapter 14-201, it says, "Prohibited acts by  
24 franchisors." Again, this is the Franchise Act,  
25 part 2, franchises in general. "Prohibited acts by



1 franchisors."  
2 MR. CRAGUN: Can you also turn back to the  
3 definition of "franchisor" and look at Subsection A,  
4 which references a manufacturer of new motor vehicles  
5 and talk about how that applies.

6 MR. RILEY: Yes. That is one example of a  
7 franchisor. It doesn't say all manufacturers are  
8 franchisors. You have to look at the rest of the  
9 definition.

10 It says, "Means a person who has in writing  
11 or practice agreed with or permits a franchisee," so  
12 you have to identify the franchisee, "to purchase,  
13 sell, or offer for sale new motor vehicles,  
14 manufactured," etc.

15 So a franchisor only exists if the franchisor  
16 has a franchise. Here Tesla Utah is not a franchisee  
17 because there is not an existence of a franchise  
18 agreement under the Franchise Act.

19 Because the definition of a franchise  
20 agreement under the Franchise Act is fundamentally  
21 different than the definition of a franchise under the  
22 licensing agreement. So I believe Commissioner Cragun  
23 anticipated this in his questions because it is our  
24 contention that these terms, "franchise, franchise  
25 agreement, franchisee, franchisor," in the Franchise

1 Ford's dealers have to be given a license to  
2 use the Ford trademark on the store. The legislature  
3 wrote that requirement into the Franchise Act because  
4 that's the nature of doing business with an independent  
5 franchisee. You have to have a separate contract.  
6 Here you can use the Ford logo on the store.

7 Tesla doesn't need that because it owns and  
8 operates Tesla Utah. So the dealer agreement expressly  
9 says this is not a trademark agreement, which is  
10 required to be a franchise in the Franchise Act. So  
11 that's how the dilemma is avoided.

12 MR. VALENTINE: Let me ask you this question  
13 then because no one's really addressed this issue.  
14 That is when you go over back to -- again, the section  
15 we're dealing with, the definitions in 13-14-102, go to  
16 definition 17, which nobody has really made any kind of  
17 statements on a new motor vehicle dealer is a person  
18 who's licensed under 41-202-1-A to sell new motor  
19 vehicles. Isn't that the tie between the two acts?

20 MR. RILEY: That is one tie because what the  
21 statute says, Your Honor, is it says, for example, a  
22 franchisor shall not own or operate, subject to these  
23 other limitations, a new motor vehicle dealer.

24 But it doesn't say any manufacturer is  
25 prohibited. It says a franchisor is prohibited from

1 Act have to be read in light of the express legislative  
2 purpose of this statute, which is to protect  
3 independent franchisees from being exploited by their  
4 franchisors. It has no application to a direct sales  
5 model. That's why the term "franchise" is defined the  
6 way it is.

7 Now, if you look at the dealer's agreement,  
8 and it was read into the record, the provisions that  
9 expressly disclaim the creation of a franchise  
10 relationship within the meaning of the franchise  
11 agreement.

12 Again, this was in 16.1 of Exhibit 4, which  
13 is the dealer agreement. They're an independent  
14 contractor. They are not a franchisee as that term is  
15 used in Title 13. There's not a franchise as that term  
16 is used in Title 13. In addition, this contract  
17 specifically says no trademark license in Section 10.  
18 No trademarks.

19 The extension of a trademark license is one  
20 of the characteristics, essential characteristics of a  
21 franchise and franchise agreement under the Franchise  
22 Act. And it makes sense because if you're dealing with  
23 independent companies, an independent franchisor, an  
24 independent franchisee, you want to expressly convey  
25 the rights to a trademark.

1 owning and operating that licensed dealer. So there  
2 are those cross-references from a Franchise Act  
3 because, again, they're trying to protect the  
4 independent franchise dealers who are licensed to sell  
5 from their franchisors.

6 But the key is not the definition of  
7 "dealer," it's the definition of "franchisor." And in  
8 response to Commissioner Cragun's question, a  
9 franchisor requires a franchisee and a franchise  
10 agreement under the definition of the Franchise Act.  
11 We do not meet that definition.

12 If you acquire a franchise under the  
13 Licensing Act, we meet that because we have the express  
14 authorization. But more is required to be a franchise  
15 under the Franchise Act, including a trademark license,  
16 which we don't have because we don't need it because  
17 it's a Tesla-owned and operated store.

18 And that's -- that is the way through this  
19 very clear statutory course through these  
20 constructions. And, again, it makes sense because of  
21 the purposes of these statutes. The Licensing Act is  
22 to protect consumers from unfair practices, background  
23 checks, bond requirements, and so forth.

24 The Franchise Act, which defines franchise  
25 differently and defines franchisor and franchisee, is

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1 to protect independent franchise dealers from their  
 2 franchisors. That's why you have a specific definition  
 3 of a franchise agreement that includes what you would  
 4 require to run an independent franchise business, such  
 5 as a trademark license.

6 We do not have that here. So the Division  
 7 should have issued the license either because we don't  
 8 require franchise, or we satisfy the requirement of  
 9 franchise with a dealer agreement.

10 The dealer agreement by its term is not a  
 11 franchise agreement under the Franchise Act because  
 12 that's regulating specific contracts between  
 13 independent franchisors and their licensed dealers.

14 And this, again, harmonizes with the purposes  
 15 of the Franchise Act. It doesn't talk about protecting  
 16 dealers from dealers selling other kinds of cars. It's  
 17 about protecting franchisees from exploitation by their  
 18 franchisors.

19 A substantial inequality of bargaining power  
 20 between motor vehicle franchisors and motor vehicle  
 21 franchisees enables a franchisor to do these things.  
 22 Then the statute has specific prohibitions such as  
 23 termination, such as forcing inventory, such as  
 24 withholding cars.

25 None of that applies where the manufacturer

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1 became now a larger and larger segment of the market  
 2 and chose to go with franchise dealers, you would not  
 3 have any objection to having all the provisions of both  
 4 acts apply then?

5 MR. RILEY: That is correct, Your Honor. At  
 6 that point we would be a franchisor under the  
 7 definition. And those independent companies would come  
 8 to us and say, Okay, I want to open a store in Provo.

9 We understand you have a company-owned store  
 10 in Salt Lake City, but we're going to have the Provo  
 11 market, and we're going to enter into a franchise for  
 12 that. And you can't put another Tesla store in the  
 13 Provo market. But that's where this act would kick in.

14 MR. VALENTINE: At that point would you not  
 15 be in violation because you have a company-owned store  
 16 as well?

17 MR. RILEY: No, because when we entered into  
 18 that relationship, we were not a franchisor. We were  
 19 only a franchisor once we entered into a relationship  
 20 with a franchisee.

21 MR. VALENTINE: So you could abrogate the  
 22 statute by starting out as a company-owned store and  
 23 then have franchises and company-owned stores at the  
 24 same time in contravention of the act?

25 MR. RILEY: No, we would not be abrogating

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1 is selling through its own wholly-owned subsidiary.  
 2 It's not a franchisor-franchisee relationship. The  
 3 statute makes that very clear in the definition of  
 4 "franchise" and "franchise agreement."

5 And I appreciate that this is confusing, but  
 6 we're dealing with two statutes that have different  
 7 definitions for similar terms. But if we keep in mind  
 8 the broader purposes of these statutes, then I think it  
 9 becomes clear.

10 And -- and I think we had compelling  
 11 testimony here today that what the Franchise Act is  
 12 intended to do is to protect, as we show here on  
 13 slide 6, the relationship between these dealers, these  
 14 are licensed dealers, and their franchisor, Ford  
 15 dealers with Ford as their manufacturing franchisor.

16 There is nothing in the statute to suggest  
 17 that it is to protect these dealers selling Fords  
 18 from -- from Tesla at all, nothing. If the Commission  
 19 were to hold that, you would be creating a monopoly  
 20 among independent franchise dealers. That would be the  
 21 only way you could enter the retail market in Utah, and  
 22 that's not what these statutes say.

23 MR. VALENTINE: I asked the question earlier  
 24 maybe of your witness, and I'll ask you now to respond  
 25 to the same. If Tesla chose to as they've expanded and

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1 the statute because the statute is to protect a  
 2 franchisor and a franchisee who have an existing  
 3 relationship from the franchisor interfering with that  
 4 relationship.

5 If the company-owned store were already in  
 6 place, you're not interfering with an existing  
 7 contractual relationship with a franchisee. Tesla has  
 8 no franchisees. It doesn't become a franchisor under  
 9 the statute until it engages with a franchisee. At  
 10 that point it's not abrogating the statute. It's  
 11 complying with the statute with regard to that  
 12 franchisee.

13 MR. VALENTINE: But, nonetheless, would still  
 14 have company-owned stores within the state?

15 MR. RILEY: As it was permitted and licensed  
 16 appropriately when it first entered the state. The  
 17 point of the protections of the statute only kick in  
 18 when you're dealing with another independent  
 19 franchisee.

20 And that is assuming that the scenario ever  
 21 took place. As the record shows, we've never sold a  
 22 car through an independent franchisee anywhere in the  
 23 world. And we coexist with other companies that have  
 24 chosen that model.

25 I think that one of the telling pieces of

1 evidence here is the absence of any evidence at all  
2 suggesting that this preventing Tesla from entering the  
3 market has any negative impact on consumers at all, or  
4 that it interferes with the purposes of the Franchise  
5 Act.

6 It doesn't. The state hasn't presented one  
7 iota of evidence that the public interest is served by  
8 prohibiting Tesla from entering the market, not at all  
9 none whatsoever. So I'd like to, if I could, if there  
10 aren't any other questions, reserve the balance of my  
11 time for rebuttal.

12 MS. ROCKWELL: I do have questions.

13 MR. CRAGUN: I have questions, too.

14 MR. RILEY: Sure.

15 MS. ROCKWELL: The term "franchise agreement"  
16 is not actually used in Subsection 13-14-201-1(u), and  
17 your briefs rely on the term "franchise agreement" with  
18 respect to legislative intent.

19 Can you tell me how the term "franchise  
20 agreement" is actually used in the body of the act  
21 aside from the legislative intent?

22 MR. RILEY: It's used in connection with, for  
23 example, with prohibitions, limitations. I'm not sure  
24 I can turn immediately to -- with regard to what the  
25 franchisor can do to the franchisee. Excuse me.

1 "dealer" change anything? Because I'm presuming that  
2 there were already franchise dealers in the state.

3 MR. RILEY: I believe the definition -- I  
4 believe we covered this in the opening, and -- is that  
5 there was a definition of "new motor vehicle dealer" in  
6 the prior version, which did reference a franchise.  
7 That's --

8 MR. CRAGUN: Okay. I need to find that.

9 MR. RILEY: That section was taken out, and  
10 then they added the definition of "dealer."

11 MR. CRAGUN: Of "dealer."

12 MR. RILEY: It's our contention that by  
13 adding the definition of "dealer," that did not require  
14 a franchise, unlike the definition of "distributors" as  
15 Commissioner Cragun has pointed out, that this suggests  
16 a legislative intent that not all dealers have to hold  
17 a franchise.

18 MR. CRAGUN: Okay. I found that. Where they  
19 struck the definition of "new motor vehicle dealer"?

20 MR. RILEY: That's correct.

21 MR. CRAGUN: It did have a requirement that  
22 they be -- that they have a franchise, but the new  
23 definition of "dealer" did not. Okay. So presumably  
24 the legislature knew what they were doing when they  
25 struck it.

1 If you turn to, for example,  
2 Section 13-14-202, this relates to protections accorded  
3 in connection with the sale or transfer or ownership of  
4 a franchise. And it says, for example, "The franchisor  
5 shall give effect to the change in a franchise  
6 agreement pursuant to subsection whatever."

7 So this is an example of where the franchisor  
8 is -- for example, there's going to be a change in  
9 ownership of the franchisee. And the state law imposes  
10 certain restrictions on what can be done pursuant to  
11 the franchise agreement. This is an example of how the  
12 term "franchise agreement" is used, which is consistent  
13 with the legislative purposes.

14 MS. ROCKWELL: Thank you.

15 MR. CRAGUN: I'd like to look a little bit at  
16 the definition of "dealer" and "distributor" in  
17 Title 41, Chapter 3. Actually, I went and got the  
18 section laws from 1992 since it's not online.

19 And as I'm looking through it, it looks like  
20 what the legislature did was actually add the  
21 definition of "dealer." Prior to this, there was no  
22 definition of "dealer" in the code. So "distributors"  
23 were there, and they already had the franchise  
24 agreement.

25 Does the mere addition of a definition for

1 MR. RILEY: That is correct, Your Honor.

2 MR. CRAGUN: Thank you.

3 MR. RILEY: Thank you. Other questions?

4 JUDGE PHAN: No other questions?

5 MR. CRAGUN: I don't.

6 MR. VALENTINE: I don't.

7 JUDGE PHAN: Okay.

8 MR. RILEY: Thank you very much. I will  
9 reserve for rebuttal.

10 JUDGE PHAN: All right. Mr. Francis?

11 MR. FRANCIS: I don't know that I dare  
12 venture into the pit.

13 MR. VALENTINE: Just warming up for the  
14 Supreme Court.

CLOSING ARGUMENT

16 BY MR. FRANCIS:

17 We have talked of statutory gymnastics I  
18 think and ping-ponging between the definitions or among  
19 the definitions that are involved in the two different  
20 acts. The Division, of course, made their decision  
21 based on the link, which they believe exists between  
22 the Motor Vehicle Act and the Franchise Act.

23 That was centered around 41-3-210-1(d). And  
24 the Division continues to argue that the licensing  
25 statute and the franchise statute cannot be isolated



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1 from one another. And a lot of that, I guess, has to  
 2 do with some of the confusing definitional implications  
 3 of the clear language of the statutes themselves, which  
 4 further muddy the water.

5 I don't envy the Commission in trying to work  
 6 between these acts and then settle the issues as to  
 7 whether or not the facts and the testimony are going to  
 8 allow this license to be granted. The Division does  
 9 not think that it could be, and we've given the  
 10 statutory reasoning for it. As I mentioned in my  
 11 opening, it's going to come down to statutory  
 12 interpretation.

13 We came across another definition in Title 13  
 14 that may even further confuse all of us a little more.  
 15 If you look at 13-14-102(4), we have a new term to put  
 16 in the mix here, and that is "dealership." I'll wait  
 17 until you get there.

18 MR. VALENTINE: I actually had that  
 19 underlined to talk about it, so go ahead.

20 MR. FRANCIS: "Dealership means a site or  
 21 location in this state, A, at which a franchisee  
 22 conducts the business of a new motor vehicle dealer;  
 23 and, B, that is identified as a new motor vehicle  
 24 dealer's principal place of business for licensing  
 25 purposes under Section 41-3-204."

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1 or do you want to wait until --

2 MR. FRANCIS: No. Sure. No, hit me with the  
 3 questions.

4 MR. CRAGUN: So let's talk about Tesla's  
 5 assertion that they're complying with that section  
 6 because Title 13 doesn't even apply to them. They  
 7 don't have a franchise in this state.

8 MR. FRANCIS: All I can say is we disagree  
 9 with that conclusion. We believe that because it says  
 10 any law of the state respecting commerce in motor  
 11 vehicles, that we would have to look at any law in the  
 12 state respecting motor vehicles. It's extremely broad.

13 MR. CRAGUN: Okay.

14 MR. FRANCIS: So if we were looking at a Venn  
 15 diagram, we would have to include motor vehicle law,  
 16 and both statutes would be included within that circle.

17 I would like to address one other issue -  
 18 statutory construction. As I mentioned, the Commission  
 19 is going to have to come to a conclusion as to whether  
 20 or not some of these definitions are included or linked  
 21 to each other. We argue that they are. Obviously the  
 22 petitioner argues that they're not.

23 And the Division felt under the restrictions,  
 24 it was an elimination type of reasoning. If they did  
 25 not have a franchise under both acts, then they could

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1 So here is another link between these two  
 2 acts. And, of course, I'm not counsel for the  
 3 Department of Commerce. And I sure wish he were here  
 4 rather than me. But I can't get past at least arguing  
 5 that "franchisor" as defined in the Franchise Act  
 6 specifically includes the manufacturer. Now,  
 7 "manufacturer" is not defined in that act.

8 MR. VALENTINE: Actually, Subpart 10 says  
 9 "manufacturer -- vehicles manufactured." Doesn't talk  
 10 about the term "manufacturer."

11 MR. CRAGUN: 10(a).

12 MR. VALENTINE: 10(a), manufactured. It  
 13 starts using --

14 MR. FRANCIS: 10(a) in 13-14-102?

15 MR. VALENTINE: "Or includes the  
 16 manufacture." I understand now. Okay.

17 MR. FRANCIS: Yes. I believe that was --  
 18 now, the links between these two statutes, of course,  
 19 does create the crux of the denial of the license by  
 20 the Division. Mr. Stoddard testified that the Division  
 21 believes that because of 41-3-210-1(d), which has that  
 22 requirement that any law or any rule respecting  
 23 commerce in motor vehicles would have to include a  
 24 review of the New Motor Vehicle Franchise Act --

25 MR. CRAGUN: Are you open to discussion now,

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1 not receive a license. The Commission very well may  
 2 come to a different conclusion.

3 But let me address the concept of the  
 4 franchise model and what some of our testimony -- if  
 5 you'll remember in my opening argument, I said that  
 6 feasibility might be an issue because it costs -- would  
 7 cost the petitioner more money to comply with Utah's  
 8 act, that it goes against their grain to do that.

9 But in the testimony that was given, for  
 10 instance, in Mr. O'Connell's testimony, he studied the  
 11 concept of having independent dealer ownership and came  
 12 to the conclusion, We wouldn't do it, if I'm quoting  
 13 him correctly. There's no profit incentive in order to  
 14 do that for the company.

15 And then there was a dismissal of the concept  
 16 that -- but if someone as an independent contractor  
 17 actually agreed to be paid by the parent company or  
 18 what would be the parent company and to do things  
 19 exactly in the manner in which Tesla wants to operate  
 20 their franchise, testimony of Ms. Scott Morton was it's  
 21 difficult to contract for that, but it's still  
 22 possible.

23 And she answered, Why would they do it?  
 24 Again, they wouldn't make the choice to do it, but it  
 25 doesn't eliminate the possibility. She testified in

1 relation to incremental sales that franchise dealers  
2 were plausible in cross-examination to Mr. Lind, but  
3 the fact that Tesla, she said, chooses not to means  
4 there are good reasons not to. And she said later,  
5 "The firm knows best."  
6 Again, we think that profit motive and  
7 economics probably does run that gamut and makes that  
8 decision for Tesla. But it doesn't mean that they  
9 couldn't comply with what we consider to be the  
10 statutory requirements of franchise relationships. We  
11 would submit it on that basis.  
12 Any further questions?  
13 MR. VALENTINE: I have one. You heard the  
14 exchange between me and counsel that followed the  
15 exchange we had with their expert witness. The  
16 troublesome part that I'm still troubled with is the  
17 ability of a company to come in with nothing but  
18 company-owned motor vehicle stores, assuming their  
19 reading of the statute is correct, and then within a  
20 relatively short time start franchising.  
21 I think counsel argued that Tesla could  
22 continue to have company-owned stores and franchise  
23 stores. I think it shows the weakness for me of -- of  
24 either the way the statute's written or the position  
25 that is being articulated to us. Would you care to

1 Mr. Riley?  
2 MR. RILEY: Your Honor, may I have a couple  
3 of moments to consult with my client?  
4 JUDGE PHAN: Sure. Why don't we take a  
5 10-minute break.  
6 MR. VALENTINE: 10-minute break and let you  
7 have your final rebuttal. 10 minutes.  
8 MR. RILEY: Thank you, Your Honor.  
9 (Recess taken at 1:57, resuming at 2:09.)  
10 JUDGE PHAN: Okay. We're ready to get  
11 started. Back on the record.  
12 MR. RILEY: Thank you.  
13 JUDGE PHAN: Mr. Riley, go ahead.  
14 REBUTTAL ARGUMENT  
15 BY MR. RILEY:  
16 Thank you very much. I'd like to return to  
17 the issues that Commissioner Valentine raised about  
18 sort of a hypothetical, what happens in the future if  
19 Tesla started to franchise independent dealers,  
20 something we haven't done, something that's not on the  
21 road map, something that is I think in large measure  
22 hypothetical. But let's consider that.  
23 MR. VALENTINE: One of the reasons I'm doing  
24 that is not just focused on Tesla, but it's the next  
25 company, XYZ Company says, we're going to follow the

1 expand on that?  
2 MR. FRANCIS: I would like to comment on  
3 that. As I recall, the counterargument was that it  
4 would facilitate the potentiality of having a monopoly  
5 agreement among dealers of a certain line make.  
6 What wasn't said, and yet what is as likely a  
7 possibility, is what if Tesla at the current time is  
8 the infant gorilla and doesn't threaten the structure  
9 of the other companies right now, but if they get their  
10 wish and complete their mission, they become the  
11 monopoly that affects not only intra but intermake  
12 competition?  
13 I would agree that under the current law,  
14 Commissioner Valentine, there is a problem in trying to  
15 coexist with both models. And I don't know what the  
16 legislative history is as to why the codes in both  
17 cases read the way they do. But there are potential  
18 problems with both.  
19 And in that regard, if it were allowed to be  
20 this way and have two different sets of possibilities  
21 here, I wouldn't want to be in the Motor Vehicle  
22 Enforcement Division's shoes in trying to enforce both.  
23 But that's all I can do is surmise what might happen.  
24 MR. VALENTINE: Thank you.  
25 JUDGE PHAN: Any other questions? No? Okay.

1 Tesla model, but we're bad actors. We're not Tesla.  
2 We're going to come in and start with a single company  
3 store, and then we'll cherrypick and pick out some of  
4 the best companies, and some we're going to franchise.  
5 I'm worried about not only facts as it  
6 applies to this case, but then the next case that we  
7 have to consider. That's one of the reasons why I  
8 questioned you so hard on this.  
9 MR. RILEY: I appreciate that. I think  
10 that's an excellent way to summarize the hypothetical.  
11 Let's use XYZ Company. Because Tesla has no intent to  
12 do this, and I think it would be unfair to deny us a  
13 license because of some speculative hypothetical.  
14 I think your point is well taken. XYZ comes  
15 in, establishes an independent -- establishes a  
16 company-owned store in Salt Lake City. It's not a  
17 franchisor under the Franchise Act because it doesn't  
18 have any independent franchisees. It doesn't have --  
19 doesn't meet of the definition of a franchise agreement  
20 under the Franchise Act because it owns and operates  
21 its own store.  
22 So it is licensed under the Licensing Act to  
23 run that company-owned store. XYZ Company can run the  
24 store. A few years later, it decides it's going to  
25 establish independent franchisees in the state of Utah.

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1 Now, of course, the dynamics are different.  
 2 Those independent franchisees would know there's a  
 3 company-owned store, and they could bargain  
 4 accordingly. It's not the same equities as I'm already  
 5 in an independent franchise relationship, and I'm being  
 6 extorted. These are very sophisticated companies, and  
 7 they can make their own agreement.  
 8 Let's say they do that. The opportunity for  
 9 regulation, Mr. Chairman, that exists in that case is  
 10 very clear under the statute, which is every year, XYZ  
 11 Company has to come and gets its license renewed.  
 12 At that point the Division could say, Back in  
 13 2015, you weren't a franchisor because you only had one  
 14 store, and you owned it. You didn't have a franchisee  
 15 under the Franchise Act. But we now think you are a  
 16 franchisor because you've opened up an independent  
 17 franchisee in Provo. You now run afoul of the  
 18 Franchise Act. We're going to deny your license on  
 19 that basis.  
 20 Now, that's assuming that this Commission  
 21 decides that it's appropriate for the Division to  
 22 interpret and enforce the Franchise Act. But let's  
 23 assume the Commission makes that decision on the  
 24 rationale that was given earlier.  
 25 At that point you believe that they were

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1 because we're not required to franchise under the  
 2 Licensing Act, or we satisfied the franchise provisions  
 3 by the dealer agreement.  
 4 We are not a franchisor under the Franchise  
 5 Act because we don't have a franchisee or a franchise  
 6 agreement that defines that relationship because those  
 7 relationships exist between independent companies.  
 8 That's the way through this alleged dilemma.  
 9 Finally, I would suggest that the law says to  
 10 us how we should interpret that dilemma, which is in a  
 11 way that avoids constitutional infirmity. If counsel  
 12 believes that these are confusing and difficult to  
 13 analyze, the Constitution gives us a light, so to  
 14 speak, to negotiate that dilemma by adopting a  
 15 construction that preserves the constitutionality of  
 16 the statutes.  
 17 And Utah is alone in its advocacy of  
 18 enactments that preserve the free market. This pattern  
 19 where Tesla is eliminated from the free market from  
 20 competing with dealers from other companies would run  
 21 afoul of that provision in Utah's Constitution.  
 22 And there really shouldn't be any dispute.  
 23 There's no evidence, no economic evidence, on the other  
 24 side of this issue at all. Tesla cannot viably operate  
 25 in Utah through an independent franchisee. We cannot

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1 violating the Franchise Act, and this represented some  
 2 threat, you could deny the license to the company-owned  
 3 store, which has to be renewed on an annual basis.  
 4 And, again, that serves the consumer protection  
 5 function of ensuring that licensees are complying with  
 6 the licensing statute. So you would have an  
 7 opportunity at that point to regulate that conduct if  
 8 you felt it was appropriate to regulate that conduct.  
 9 What I believe would be, frankly, wrong would  
 10 be on the basis of that sort of hypothetical, which you  
 11 can address under the statutes, to deny the issuance of  
 12 a license to a company which is not a franchisor under  
 13 the franchise agreement.  
 14 MR. VALENTINE: Thank you. That helps.  
 15 MR. RILEY: The company that meets all of its  
 16 obligations under the Licensing Act because all it  
 17 needs is authority to satisfy the franchise provisions.  
 18 Now, I appreciate counsel's concession that  
 19 some of these provisions are confusing, and there are  
 20 some interlinkage. But obviously we have to look at  
 21 the actual definitions. And where the statutes use  
 22 different definitions, we have to honor those different  
 23 definitions.  
 24 And the construction, which we have argued  
 25 today, does that. We're entitled to a license, either

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1 offer a franchisee's margin. We can't offer the  
 2 middleman the margin to operate.  
 3 The reason for that is we're not going to  
 4 abandon our direct sales model nationally or in other  
 5 states. We're going to maintain a single transparent  
 6 price because it's good for consumers. And no  
 7 independent franchisee could cover its costs, its  
 8 traditional costs, and sell higher than that price.  
 9 We're not offering discounts to dealers  
 10 because we don't have the inventory to offer volume  
 11 discounts to dealers so that they can make their  
 12 margin. We've eliminated areas that have, frankly,  
 13 been abused, service contracts, service that's not  
 14 needed, repairs that aren't needed, undercoats,  
 15 haggling over -- we've eliminated all of that, which  
 16 has been a source of profits and friction and the  
 17 source of consumer complaints.  
 18 And I question Mr. Stoddard -- and I  
 19 appreciate what he was trying to do by suggesting, Why  
 20 don't you become a used car dealer? Sell your new  
 21 Teslas as used cars. Have we sunk to that point that  
 22 we have to sort of engage in that sort of circumvention  
 23 of the statute selling new cars as used cars? That's  
 24 wrong.  
 25 We can give vitality and life to these

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1 statutes by finding that Tesla is an appropriate  
2 candidate for a license, but it is not subject to the  
3 Franchise Act's requirements or prohibition of  
4 ownership.

5 We've given a clear analysis of the statutes  
6 that result in that conclusion. We should be informed  
7 by the cardinal rule of statutory interpretation, which  
8 is not to interpret these statutes that give rise to  
9 constitutional dilemmas and problems.

10 I believe that is a very, very clear course  
11 to resolving this and giving consumers the great  
12 benefits that Tesla offers and introducing competition  
13 to the market. Because ultimately, all of these  
14 statutes can only be justified if they serve the public  
15 interest. This is a result that is contrary to the  
16 public interest.

17 In fact, it would be wrong --- the fact that  
18 the Division has no problem if we sell the same cars as  
19 used cars, that shows that there's no state interest in  
20 stopping us from selling the car. They just want us to  
21 engage in a circumvention of the statute. That's just  
22 wrong.

23 Not when these statutes offer a way through,  
24 a way that allows us to be licensed as we should be as  
25 new motor vehicle dealers who are not running afoul of

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1 Commission. We sent it back, this one, because we  
2 wanted to be able to try to get it resolved as quickly  
3 as possible.

4 So whoever is the non-prevailing party can  
5 make some kind of choice where they want to go after  
6 this. You have both done a very credible job in your  
7 presentations. And I salute both of you for how well  
8 you've presented and the nature of the arguments. It's  
9 a close call, but we really appreciate the work of both  
10 counsel, both sides' counsel. Thank you very much.

11 MR. RILEY: Thank you, Your Honor.

12 JUDGE PHAN: Okay. As far as the decision,  
13 these are the types of cases we try to expedite the  
14 decision, but because of the complexity, we don't know.

15 MR. VALENTINE: No.

16 JUDGE PHAN: The decision will be issued as  
17 soon as possible. It could be 30 days, it could be  
18 longer, maybe possibly shorter, but that's how it goes.  
19 At this point then I'll just close the record and end  
20 the hearing. Thanks, everyone.

21 (The proceedings concluded at 2:20 p.m.)  
22  
23  
24  
25

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1 the Franchise Act because we do not engage in  
2 independent franchising. That's the constitutional  
3 breakthrough with this dilemma. Thank you very much.

4 MR. VALENTINE: Thank you, Counsel.

5 JUDGE PHAN: Thanks. All right. At this  
6 point --

7 MR. PETROGEORGE: I have one housekeeping  
8 matter, Your Honor. We just want to make sure the  
9 demonstratives do not come in as affirmative evidence.  
10 We would like them recognized as something as part of  
11 the record for any future appeal so that they're  
12 reviewable by the appellate court or at least saved by  
13 the appellate court.

14 JUDGE PHAN: Okay.

15 MR. LIND: We don't have an objection. I  
16 know in other cases, we've treated them akin to briefs,  
17 PowerPoint presentations.

18 MR. PETROGEORGE: If we can submit that  
19 binder of -- volume 4 in that vein.

20 MR. VALENTINE: Similar to a brief, yes.

21 JUDGE PHAN: So volume 4 is received.

22 Anything else before we end?

23 MR. VALENTINE: I might make just one quick  
24 statement. This was a very, very engaging presentation  
25 today. We hear a lot of very interesting cases at the

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5 I, Daren S. Bloxham, a Notary Public and  
6 Certified Shorthand Reporter, Registered Professional  
7 Reporter, hereby certify:

8 THAT the foregoing proceedings were taken  
9 before me at the time and place set forth in the  
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11 me in shorthand and thereafter my notes were  
12 transcribed through computer-aided transcription; and  
13 the foregoing transcript constitutes a full, true, and  
14 accurate record of such testimony adduced and oral  
15 proceedings had, and of the whole thereof.

16 I have subscribed my name on this 24th day of  
17 August, 2015.

18   
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