

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 10-0137.01 Jery Payne

HOUSE BILL 10-1049

HOUSE SPONSORSHIP

Rice and Looper, Balmer, Court, Hullinghorst, King S., May, McNulty, Nikkel, Scanlan, Sonnenberg, Stephens, Summers, Primavera

SENATE SPONSORSHIP

Romer and Mitchell, Foster, Hodge, Lundberg, Penry, Shaffer B.

House Committees

Business Affairs and Labor

Senate Committees

Business, Labor and Technology

A BILL FOR AN ACT

101 **CONCERNING THE FRANCHISE RIGHTS OF MOTOR VEHICLE DEALERS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Section 1 of the bill makes legislative findings.

Section 2 prohibits a manufacturer from charging a motor vehicle dealer for exporting a motor vehicle unless the manufacturer proves the dealer should have known the vehicle was intended for export. After a manufacturer has terminated a motor vehicle franchise, section 2 also requires the manufacturer to reimburse the dealer for any upgrades required by the manufacturer during the last 5 years and to pay the dealer

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

SENATE
Am ended 2nd Reading
March 8, 2010

HOUSE
3rd Reading Unamended
February 1, 2010

HOUSE
Am ended 2nd Reading
January 29, 2010

for the lost goodwill if the termination was due to the manufacturer's insolvency.

If the franchise of a motor vehicle dealer has been terminated by the manufacturer, **section 3** grants a right of first refusal when the manufacturer awards another franchise in the area. The right lasts for the greater of 10 years or the life of the dealership franchise. Section 3 also exempts a manufacturer from being required to offer the right if the manufacturer reimburses the dealer for investment and the value of the lost dealership as currently required by statute.

A manufacturer is currently prohibited from owning a motor vehicle dealer unless the manufacturer has no franchised dealers. **Section 4** narrows the exception to apply when the manufacturer has no dealers.

Section 5 prohibits judicial execution of the following payments currently required by statute:

- ! The motor vehicle dealer's cost of unsold motor vehicles, supplies, and parts;
- ! The fair market value of signs bearing trade names and trademarks required by the manufacturer;
- ! The fair market value of special tools and equipment acquired for the manufacturer;
- ! The cost of returning the motor vehicles, supplies, parts, signs, tools, and equipment to the manufacturer;
- ! The cost of the unexpired lease or the rental value of owned property for a period of up to 12 months; and
- ! The fair market value of the motor vehicle dealer's goodwill.

1 *Be it enacted by the General Assembly of the State of Colorado:*

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4 **SECTION 1.** 12-6-102, Colorado Revised Statutes, is amended

5 **BY THE ADDITION OF A NEW SUBSECTION** to read:

6 **12-6-102. Definitions.** As used in this part 1 and in part 5 of this
7 article, unless the context or section 12-6-502 otherwise requires:

8 (9.7) "FRANCHISE" MEANS THE AUTHORITY TO SELL OR SERVICE
9 AND REPAIR MOTOR VEHICLES OF A DESIGNATED LINE-MAKE GRANTED
10 THROUGH A SALES, SERVICE, AND PARTS AGREEMENT WITH A

1 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE.

2 SECTION 2. 12-6-120 (1) (r) (II) and (1) (s), Colorado Revised
3 Statutes, are amended, and the said 12-6-120 (1) is further amended BY
4 THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to
5 read:

6 12-6-120. Unlawful acts. (1) It shall be unlawful and a violation
7 of this part 1 for any manufacturer, distributor, or manufacturer
8 representative:

9 (r) To fail to pay to a motor vehicle dealer:

10 (II) Within ninety days after the termination, elimination, or
11 cessation of a line-make OR THE TERMINATION OF A FRANCHISE DUE TO
12 THE INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR, the fair market
13 value of the motor vehicle dealer's goodwill for the line-make as of the
14 date the manufacturer or distributor announces the action that results in
15 the termination, elimination, or cessation, not including any amounts paid
16 under sub-subparagraphs (A) to (E) of subparagraph (I) of paragraph (I)
17 of this subsection (1);

18 (s) To condition a franchise agreement on improvements to a
19 facility unless reasonably required by the technology of a motor vehicle
20 being sold at the facility; ~~and~~

21 (u) TO CHARGE BACK, DENY MOTOR VEHICLE ALLOCATION,
22 WITHHOLD PAYMENTS, OR TAKE OTHER ACTIONS AGAINST A MOTOR
23 VEHICLE DEALER IF A MOTOR VEHICLE SOLD BY THE MOTOR VEHICLE
24 DEALER IS EXPORTED FROM COLORADO UNLESS THE MANUFACTURER,
25 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE PROVES THAT THE
26 MOTOR VEHICLE DEALER KNEW OR REASONABLY SHOULD HAVE KNOWN A
27 MOTOR VEHICLE WAS INTENDED TO BE EXPORTED, WHICH SHALL OPERATE

1 AS A REBUTTABLE PRESUMPTION THAT THE MOTOR VEHICLE DEALER DID
2 NOT HAVE SUCH KNOWLEDGE; AND

3 (v) WITHIN NINETY DAYS AFTER THE TERMINATION, ELIMINATION,
4 OR CESSATION OF A LINE-MAKE OR THE TERMINATION, CANCELLATION, OR
5 NONRENEWAL OF A FRANCHISE BY THE MANUFACTURER, DISTRIBUTOR, OR
6 MANUFACTURER REPRESENTATIVE, FOR ANY REASON OTHER THAN THAT
7 THE MOTOR VEHICLE DEALER COMMITS FRAUD, MAKES A
8 MISREPRESENTATION, OR COMMITS ANY OTHER CRIME WITHIN THE SCOPE
9 OF THE FRANCHISE AGREEMENT OR IN THE OPERATION OF THE DEALERSHIP,
10 TO FAIL TO REIMBURSE A MOTOR VEHICLE DEALER FOR THE COST
11 DEPRECIATED BY FIVE PERCENT PER YEAR OF ANY UPGRADES OR
12 ALTERATIONS TO THE MOTOR VEHICLE DEALER'S FACILITIES REQUIRED BY
13 THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
14 WITHIN THE PREVIOUS FIVE YEARS.

15 SECTION 3. 12-6-120.3 (3), Colorado Revised Statutes, is
16 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

17 12-6-120.3. New, reopened, or relocated dealer - notice
18 required - grounds for refusal of dealer license - definitions - rules.

19 (3) As used in this section:

20 (c) "RIGHT OF FIRST REFUSAL AREA" MEANS A FIVE-MILE RADIUS
21 EXTENDING FROM THE LOCATION OF WHERE A MOTOR VEHICLE DEALER
22 HAD A FRANCHISE TERMINATED, CANCELLED, OR NOT RENEWED IF THE
23 FRANCHISE WAS IN A COUNTY WITH A POPULATION OF MORE THAN ONE
24 HUNDRED FIFTY THOUSAND OR A TEN-MILE RADIUS IF THE FRANCHISE WAS
25 IN A COUNTY WITH A POPULATION OF ONE HUNDRED FIFTY THOUSAND OR
26 LESS.

27 SECTION 4. The introductory portion to 12-6-120.3 (1),

1 12-6-120.3 (1.5), and the introductory portion to 12-6-120.3 (4) (a),
2 Colorado Revised Statutes, are amended, and the said 12-6-120.3 is
3 further amended BY THE ADDITION OF A NEW SUBSECTION, to
4 read:

5 **12-6-120.3. New, reopened, or relocated dealer - notice**
6 **required - grounds for refusal of dealer license - definitions - rules.**

7 (1) No manufacturer OR DISTRIBUTOR shall establish an additional new
8 motor vehicle dealer, reopen a previously existing motor vehicle dealer,
9 or relocate an existing motor vehicle dealer without first providing at least
10 sixty days' notice to all of its franchised dealers AND FORMER DEALERS
11 WHOSE FRANCHISES WERE TERMINATED, CANCELLED, OR NOT RENEWED BY
12 A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
13 IN THE PREVIOUS FIVE YEARS DUE TO THE INSOLVENCY OF THE
14 MANUFACTURER OR DISTRIBUTOR within whose relevant market area the
15 new, reopened, or relocated dealer would be located. ~~Such~~ THE notice
16 shall state:

17 (1.5) A manufacturer shall reasonably approve or disapprove of
18 a motor vehicle dealer facility initial site location or relocation request
19 within sixty days after the request or after sending the notice required by
20 subsection (1) of this section to all of its franchised dealers AND FORMER
21 DEALERS WHOSE FRANCHISES WERE TERMINATED, CANCELLED, OR NOT
22 RENEWED IN THE PREVIOUS FIVE YEARS DUE TO THE INSOLVENCY OF THE
23 MANUFACTURER OR DISTRIBUTOR, whichever is later, but not to exceed
24 one hundred days.

25 (4) (a) If a licensee OR FORMER LICENSEE WHOSE FRANCHISE WAS
26 TERMINATED, CANCELLED, OR NOT RENEWED BY THE MANUFACTURER,
27 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE IN THE PREVIOUS FIVE

1 YEARS DUE TO THE INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR
2 brings an action or proceeding before the executive director or a court
3 pursuant to this part 1, the manufacturer shall have the burden of proof on
4 the following issues:

5 (5) (a) NO MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
6 REPRESENTATIVE SHALL OFFER OR AWARD A PERSON A FRANCHISE OR
7 PERMIT THE RELOCATION OF AN EXISTING FRANCHISE TO THE RIGHT OF
8 FIRST REFUSAL AREA UNLESS THE MANUFACTURER, DISTRIBUTOR, OR
9 MANUFACTURER REPRESENTATIVE HAS COMPLIED WITH PARAGRAPH (b)
10 OF THIS SUBSECTION (5) OR UNLESS PARAGRAPH (b) OF THIS SUBSECTION
11 (5) DOES NOT APPLY.

12 (b) IF A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
13 REPRESENTATIVE, OR THE PREDECESSOR THEREOF, HAS TERMINATED,
14 CANCELLED, OR NOT RENEWED A MOTOR VEHICLE DEALER'S FRANCHISE
15 FOR A LINE-MAKE WITHIN THE RIGHT OF FIRST REFUSAL AREA DUE TO THE
16 INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR THAT WAS HELD BY
17 THE MOTOR VEHICLE DEALER IMMEDIATELY PRIOR TO THE FRANCHISE
18 BEING TERMINATED, CANCELLED, OR NOT RENEWED WITHIN THE AMOUNT
19 OF TIME THE RIGHT OF FIRST REFUSAL IS GRANTED UNDER PARAGRAPH (c)
20 OF THIS SUBSECTION (5), THE MANUFACTURER, DISTRIBUTOR, OR
21 MANUFACTURER REPRESENTATIVE, OR THE SUCCESSOR THEREOF, SHALL
22 OFFER THE FORMER MOTOR VEHICLE DEALER WHOSE FRANCHISE WAS
23 TERMINATED, CANCELLED, OR NOT RENEWED A FRANCHISE WITHIN THE
24 FIRST REFUSAL AREA PRIOR TO MAKING THE OFFER TO ANY OTHER PERSON
25 FOR THE SAME LINE-MAKE UNLESS THE FORMER MOTOR VEHICLE DEALER
26 ELECTS TO RECEIVE THE PAYMENTS REQUIRED BY SECTION 12-6-120(1)(l)
27 AND (1)(r) IN LIEU OF THE RIGHT OF FIRST REFUSAL OR THE MOTOR

1 VEHICLE DEALER HAS ACCEPTED COMPENSATION FROM THE
2 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER'S REPRESENTATIVE
3 FOR THE TERMINATION, CANCELLATION, OR NONRENEWAL OF THE
4 FRANCHISE AGREEMENT.

5 (c) THE DURATION OF THE RIGHT OF FIRST REFUSAL GRANTED IN
6 PARAGRAPH (b) OF THIS SUBSECTION (5) IS EQUAL TO FIVE YEARS AFTER
7 THE FRANCHISE IS TERMINATED, CANCELLED, OR NOT RENEWED.

8 (d) IF A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
9 REPRESENTATIVE, OR THE PREDECESSOR THEREOF, HAS MADE ANY
10 PAYMENT TO THE MOTOR VEHICLE DEALER IN CONSIDERATION FOR THE
11 TERMINATION, CANCELLATION, OR NONRENEWAL OF A FRANCHISE
12 AGREEMENT AND THE MOTOR VEHICLE DEALER OBTAINS A NEW FRANCHISE
13 AGREEMENT THROUGH THIS SUBSECTION (5), THE MOTOR VEHICLE DEALER
14 SHALL REIMBURSE THE MANUFACTURER, DISTRIBUTOR, OR
15 MANUFACTURER REPRESENTATIVE FOR SUCH PAYMENTS. THE MOTOR
16 VEHICLE DEALER MAY REIMBURSE THE MANUFACTURER, DISTRIBUTOR, OR
17 MANUFACTURER REPRESENTATIVE WITH A COMMERCIALY REASONABLE
18 REPAYMENT INSTALLMENT PLAN.

19 (e) THE RIGHT OF FIRST REFUSAL SURVIVES A COURT VOIDING THE
20 PAYMENTS REQUIRED BY SECTION 12-6-120 (1) (l) AND (1) (r).

21 (f) (I) THE RIGHT OF FIRST REFUSAL SURVIVES A MANUFACTURER,
22 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, OR PREDECESSOR
23 THEREOF, AWARDING A FRANCHISE WITHIN THE SAME RIGHT OF FIRST
24 REFUSAL FOR THE SAME LINE-MAKE TO A PERSON OR ENTITY OTHER THAN
25 THE FORMER MOTOR VEHICLE DEALER WHOSE FRANCHISE WAS
26 TERMINATED, CANCELLED, OR NOT RENEWED.

27 (II) IF A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER

1 REPRESENTATIVE, OR PREDECESSOR THEREOF, HAS AWARDED THE
2 FRANCHISE TO ANOTHER MOTOR VEHICLE DEALER IN THE SAME RIGHT OF
3 FIRST REFUSAL AREA WITHOUT GRANTING THE RIGHT OF FIRST REFUSAL
4 UNDER THIS SECTION, THE FORMER MOTOR VEHICLE DEALER MAY ELECT
5 TO EITHER RECEIVE A FRANCHISE AGREEMENT IN THE SAME AREA OR THE
6 PAYMENTS REQUIRED BY SECTION 12-6-120 (1) (l) AND (1) (r) FROM THE
7 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
8 UNLESS THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
9 REPRESENTATIVE, OR PREDECESSOR THEREOF, HAS PAID COMPENSATION
10 IN CONSIDERATION OF THE INITIAL TERMINATION, CANCELLATION, OR
11 NONRENEWAL OF THE FRANCHISE AGREEMENT.

12 **SECTION 5.** 12-6-120.5 (2) (d), Colorado Revised Statutes, is
13 amended, and the said 12-6-120.5 (2) is further amended BY THE
14 ADDITION OF A NEW PARAGRAPH, to read:

15 **12-6-120.5. Independent control of dealer - definitions.**

16 (2) Notwithstanding subsection (1) of this section, the following
17 activities are not prohibited:

18 (d) Operation of a motor vehicle dealer if the manufacturer has no
19 other franchised dealers of the same line-make in this state; and

20 (f) OPERATION OF A MOTOR VEHICLE DEALER IF THE
21 MANUFACTURER WAS OPERATING THE DEALER ON JANUARY 1, 2009, SO
22 LONG AS THE DEALER IS IN CONTINUOUS OPERATION AFTER JANUARY 1,
23 2009.

24 **SECTION 6.** 12-6-126 (1) and (2), Colorado Revised Statutes,
25 are amended to read:

26 **12-6-126. Audit reimbursement limitations - dealer claims.**

27 (1) (a) A manufacturer, distributor, or manufacturer representative shall

1 have the right to audit warranty, sales, or incentive claims of a motor
2 vehicle dealer for ~~fifteen months~~ NINE MONTHS after the date the claim
3 was submitted.

4 (b) A manufacturer, distributor, or manufacturer representative
5 shall not require documentation for warranty, sales, or incentive claims
6 or audit warranty, sales, or incentive claims of a motor vehicle dealer
7 more than ~~twenty-four~~ FIFTEEN months after the date the claim was
8 submitted, nor shall the manufacturer require a charge back,
9 reimbursement, or credit against a future transaction arising out of an
10 audit or request for documentation arising more than ~~fifteen months~~ NINE
11 MONTHS after the date the claim was submitted.

12 (2) The motor vehicle dealer shall have ~~fifteen months~~ NINE
13 MONTHS after making a sale or providing service to submit warranty,
14 sales, or incentive claims to the manufacturer, distributor, or manufacturer
15 representative.

16 **SECTION 7.** Part 1 of article 6 of title 12, Colorado Revised
17 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
18 SECTIONS to read:

19 **12-6-128. Payout exemption to execution.** A MOTOR VEHICLE
20 DEALER'S RIGHT TO RECEIVE PAYMENTS FROM A MANUFACTURER OR
21 DISTRIBUTOR REQUIRED BY SECTION 12-6-120 (1) (l) AND (1) (r) IS NOT
22 LIABLE TO ATTACHMENT OR EXECUTION AND MAY NOT OTHERWISE BE
23 SEIZED, TAKEN, APPROPRIATED, OR APPLIED IN A LEGAL OR EQUITABLE
24 PROCESS OR BY OPERATION OF LAW TO PAY THE DEBTS OR LIABILITIES OF
25 THE MANUFACTURER OR DISTRIBUTOR. THIS SECTION SHALL NOT PROHIBIT
26 A SECURED CREDITOR FROM EXERCISING RIGHTS ACCRUED PURSUANT TO
27 A SECURITY AGREEMENT IF THE RIGHT AROSE AS A RESULT OF THE

1 MANUFACTURER OR DISTRIBUTOR VOLUNTARILY CREATING A SECURITY
2 INTEREST BEFORE PAYING EXISTING DEBTS OR LIABILITIES OF THE
3 MANUFACTURER OR DISTRIBUTOR. THIS SECTION SHALL NOT PROHIBIT A
4 MANUFACTURER OR DISTRIBUTOR FROM WITHHOLDING A PORTION OF SUCH
5 PAYMENTS NECESSARY TO COVER AN AMOUNT OF MONEY OWED TO THE
6 MANUFACTURER OR DISTRIBUTOR AS AN OFFSET TO SUCH PAYMENTS IF
7 THE MANUFACTURER OR DISTRIBUTOR PROVIDES THE MOTOR VEHICLE
8 DEALER WRITTEN NOTICE THEREOF.

9 **SECTION 8.** 12-6-102, Colorado Revised Statutes, is amended
10 BY THE ADDITION OF A NEW SUBSECTION to read:

11 **12-6-502. Definitions.** As used in this part 5, unless the context
12 otherwise requires:

13 (9.7) "FRANCHISE" MEANS THE AUTHORITY TO SELL OR SERVICE
14 AND REPAIR POWERSPORTS VEHICLES OF A DESIGNATED LINE-MAKE
15 GRANTED THROUGH A SALES, SERVICE, AND PARTS AGREEMENT WITH A
16 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE.

17 **SECTION 9.** 12-6-523 (1) (r) (II), Colorado Revised Statutes, is
18 amended, and the said 12-6-523 (1) is further amended BY THE
19 ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

20 **12-6-523. Unlawful acts.** (1) It shall be unlawful and a violation
21 of this part 5 for any powersports vehicle manufacturer, distributor, or
22 manufacturer representative:

23 (r) To fail to pay to a powersports vehicle dealer:

24 (II) Within ninety days after the termination, elimination, or
25 cessation of a line-make OR THE TERMINATION OF A FRANCHISE DUE TO
26 THE INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR, the fair market
27 value of the powersports vehicle dealer's goodwill for the line-make as of

1 the date the manufacturer or distributor announces the action that results
2 in the termination, elimination, or cessation, not including any amounts
3 paid under subparagraphs (I) to (V) of paragraph (1) of this subsection (1);

4 and

5 (t) TO CHARGE BACK, DENY POWERSPORTS VEHICLE ALLOCATION,
6 WITHHOLD PAYMENTS, OR TAKE OTHER ACTIONS AGAINST A POWERSPORTS
7 VEHICLE DEALER IF A POWERSPORTS VEHICLE SOLD BY THE POWERSPORTS
8 VEHICLE DEALER IS EXPORTED FROM COLORADO UNLESS THE
9 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
10 PROVES THAT THE POWERSPORTS VEHICLE DEALER KNEW OR REASONABLY
11 SHOULD HAVE KNOWN A POWERSPORTS VEHICLE WAS INTENDED TO BE
12 EXPORTED, WHICH SHALL OPERATE AS A REBUTTABLE PRESUMPTION THAT
13 THE POWERSPORTS VEHICLE DEALER DID NOT HAVE SUCH KNOWLEDGE;

14 AND

15 (u) WITHIN NINETY DAYS AFTER THE TERMINATION, ELIMINATION,
16 OR CESSATION OF A LINE-MAKE OR THE TERMINATION, CANCELLATION, OR
17 NONRENEWAL OF A FRANCHISE BY THE MANUFACTURER, DISTRIBUTOR, OR
18 MANUFACTURER REPRESENTATIVE, FOR ANY REASON OTHER THAN THAT
19 THE POWERSPORTS VEHICLE DEALER COMMITS FRAUD, MAKES A
20 MISREPRESENTATION, OR COMMITS ANY OTHER CRIME WITHIN THE SCOPE
21 OF THE FRANCHISE AGREEMENT OR IN THE OPERATION OF THE DEALERSHIP,
22 TO FAIL TO REIMBURSE A POWERSPORTS VEHICLE DEALER FOR THE COST
23 DEPRECIATED BY FIVE PERCENT PER YEAR OF ANY UPGRADES OR
24 ALTERATIONS TO THE POWERSPORTS VEHICLE DEALER'S FACILITIES
25 REQUIRED BY THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
26 REPRESENTATIVE WITHIN THE PREVIOUS FIVE YEARS.

27 SECTION 10. 12-6-524 (3), Colorado Revised Statutes, is

1 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

2 **12-6-524. New, reopened, or relocated dealer - notice required**
3 **- grounds for refusal of dealer license - definitions - rules. (3) As**
4 used in this section:

5 (c) "RIGHT OF FIRST REFUSAL AREA" MEANS A FIVE-MILE RADIUS
6 EXTENDING FROM THE LOCATION OF WHERE A POWERSPORTS VEHICLE
7 DEALER HAD A FRANCHISE TERMINATED, CANCELLED, OR NOT RENEWED
8 IF THE FRANCHISE WAS IN A COUNTY WITH A POPULATION OF MORE THAN
9 ONE HUNDRED FIFTY THOUSAND OR A TEN-MILE RADIUS IF THE FRANCHISE
10 WAS IN A COUNTY WITH A POPULATION OF ONE HUNDRED FIFTY THOUSAND
11 OR LESS.

12 **SECTION 11.** The introductory portion to 12-6-524 (1), 12-6-524
13 (1.5), and the introductory portion to 12-6-524 (4) (a), Colorado Revised
14 Statutes, are amended, and the said 12-6-524 is further amended BY THE
15 ADDITION OF A NEW SUBSECTION, to read:

16 **12-6-524. New, reopened, or relocated dealer - notice required**
17 **- grounds for refusal of dealer license - definitions - rules. (1) No**
18 powersports vehicle manufacturer OR DISTRIBUTOR shall establish an
19 additional new powersports vehicle dealer, reopen a previously existing
20 powersports vehicle dealer, or relocate an existing powersports vehicle
21 dealer without first providing at least sixty days' notice to all of its
22 franchised dealers AND FORMER DEALERS WHOSE FRANCHISES WERE
23 TERMINATED, CANCELLED, OR NOT RENEWED BY A MANUFACTURER,
24 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE IN THE PREVIOUS FIVE
25 YEARS DUE TO THE INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR
26 within whose relevant market area the new, reopened, or relocated dealer
27 would be located. The notice shall state:

1 (1.5) A powersports vehicle manufacturer shall reasonably
2 approve or disapprove of a powersports vehicle dealer facility initial site
3 location or relocation request within sixty days after the request or after
4 sending the notice required by subsection (1) of this section to all of its
5 franchised powersports vehicle dealers AND FORMER DEALERS WHOSE
6 FRANCHISES WERE TERMINATED, CANCELLED, OR NOT RENEWED IN THE
7 PREVIOUS FIVE YEARS DUE TO THE INSOLVENCY OF THE MANUFACTURER
8 OR DISTRIBUTOR, whichever is later, but not to exceed one hundred days.

9 (4) (a) If a licensee OR FORMER LICENSEE WHOSE FRANCHISE WAS
10 TERMINATED, CANCELLED, OR NOT RENEWED BY THE MANUFACTURER,
11 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE IN THE PREVIOUS FIVE
12 YEARS DUE TO THE INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR
13 brings an action or proceeding before the executive director or a court
14 pursuant to this part 5, the powersports vehicle manufacturer shall have
15 the burden of proof on the following issues:

16 (5) (a) NO MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
17 REPRESENTATIVE SHALL OFFER OR AWARD A PERSON A FRANCHISE OR
18 PERMIT THE RELOCATION OF AN EXISTING FRANCHISE TO THE RELEVANT
19 RIGHT OF FIRST REFUSAL AREA UNLESS THE MANUFACTURER,
20 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE HAS COMPLIED WITH
21 PARAGRAPH (b) OF THIS SUBSECTION (5) OR UNLESS PARAGRAPH (b) OF
22 THIS SUBSECTION (5) DOES NOT APPLY.

23 (b) IF A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
24 REPRESENTATIVE, OR THE PREDECESSOR THEREOF, HAS TERMINATED,
25 CANCELLED, OR NOT RENEWED A POWERSPORTS VEHICLE DEALER'S
26 FRANCHISE FOR A LINE-MAKE WITHIN THE RELEVANT RIGHT OF FIRST
27 REFUSAL AREA ON ACCOUNT OF THE INSOLVENCY OF THE MANUFACTURER

1 OR DISTRIBUTOR THAT WAS HELD BY THE POWERSPORTS VEHICLE DEALER
2 IMMEDIATELY PRIOR TO THE FRANCHISE BEING TERMINATED, CANCELLED,
3 OR NOT RENEWED WITHIN THE AMOUNT OF TIME THE RIGHT OF FIRST
4 REFUSAL IS GRANTED UNDER PARAGRAPH (c) OF THIS SUBSECTION (5), THE
5 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, OR
6 THE SUCCESSOR THEREOF, SHALL OFFER THE FORMER POWERSPORTS
7 VEHICLE DEALER WHOSE FRANCHISE WAS TERMINATED, CANCELLED, OR
8 NOT RENEWED A FRANCHISE WITHIN THE SAME FIRST REFUSAL AREA PRIOR
9 TO MAKING THE OFFER TO ANY OTHER PERSON FOR THE SAME LINE-MAKE
10 UNLESS THE FORMER POWERSPORTS VEHICLE DEALER ELECTS TO RECEIVE
11 THE PAYMENTS REQUIRED BY SECTION 12-6-523 (1) (l) AND (1) (r) IN LIEU
12 OF THE RIGHT OF FIRST REFUSAL OR THE POWERSPORTS VEHICLE DEALER
13 HAS ACCEPTED COMPENSATION FROM THE MANUFACTURER, DISTRIBUTOR,
14 OR MANUFACTURER'S REPRESENTATIVE FOR THE TERMINATION,
15 CANCELLATION, OR NONRENEWAL OF THE FRANCHISE AGREEMENT.

16 (c) THE DURATION OF THE RIGHT OF FIRST REFUSAL GRANTED IN
17 PARAGRAPH (b) OF THIS SUBSECTION (5) IS EQUAL TO FIVE YEARS AFTER
18 THE FRANCHISE IS TERMINATED, CANCELLED, OR NOT RENEWED.

19 (d) IF A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
20 REPRESENTATIVE, OR THE PREDECESSOR THEREOF, HAS MADE ANY
21 PAYMENT TO THE POWERSPORTS VEHICLE DEALER IN CONSIDERATION FOR
22 THE TERMINATION, CANCELLATION, OR NONRENEWAL OF A FRANCHISE
23 AGREEMENT AND THE POWERSPORTS VEHICLE DEALER OBTAINS A NEW
24 FRANCHISE AGREEMENT THROUGH THIS SUBSECTION (5), THE
25 POWERSPORTS VEHICLE DEALER SHALL REIMBURSE THE MANUFACTURER,
26 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE FOR SUCH PAYMENTS.
27 THE POWERSPORTS VEHICLE DEALER MAY REIMBURSE THE

1 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
2 WITH A COMMERCIALY REASONABLE REPAYMENT INSTALLMENT PLAN.

3 (e) THE RIGHT OF FIRST REFUSAL SURVIVES A COURT VOIDING THE
4 PAYMENTS REQUIRED BY SECTION 12-6-523 (1) (l) AND (1) (r).

5 (f) (I) THE RIGHT OF FIRST REFUSAL SURVIVES A MANUFACTURER,
6 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, OR PREDECESSOR
7 THEREOF, AWARDING A FRANCHISE WITHIN THE SAME RIGHT OF FIRST
8 REFUSAL AREA FOR THE SAME LINE-MAKE TO A PERSON OR ENTITY OTHER
9 THAN THE FORMER POWERSPORTS VEHICLE DEALER WHOSE FRANCHISE
10 WAS TERMINATED, CANCELLED, OR NOT RENEWED.

11 (II) IF A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
12 REPRESENTATIVE, OR PREDECESSOR THEREOF, HAS AWARDED THE
13 FRANCHISE TO ANOTHER POWERSPORTS VEHICLE DEALER IN THE SAME
14 RIGHT OF FIRST REFUSAL AREA WITHOUT GRANTING THE RIGHT OF FIRST
15 REFUSAL UNDER THIS SECTION, THE FORMER POWERSPORTS VEHICLE
16 DEALER MAY ELECT TO EITHER RECEIVE A FRANCHISE AGREEMENT IN THE
17 SAME AREA OR THE PAYMENTS REQUIRED BY SECTION 12-6-523 (1) (l) AND
18 (1) (r) FROM THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
19 REPRESENTATIVE UNLESS THE MANUFACTURER, DISTRIBUTOR, OR
20 MANUFACTURER REPRESENTATIVE, OR PREDECESSOR THEREOF, HAS PAID
21 COMPENSATION IN CONSIDERATION OF THE INITIAL TERMINATION,
22 CANCELLATION, OR NONRENEWAL OF THE FRANCHISE AGREEMENT.

23 **SECTION 12. 12-6-526.5 (1) and (2), Colorado Revised Statutes,**
24 are amended to read:

25 **12-6-526.5. Audit reimbursement limitations - dealer claims.**
26 (1) (a) A manufacturer, distributor, or manufacturer representative shall
27 have the right to audit warranty, sales, or incentive claims of a

1 powersports vehicle dealer for ~~fifteen months~~ NINE MONTHS after the date
2 the claim was submitted.

3 (b) A manufacturer, distributor, or manufacturer representative
4 shall not require documentation for warranty, sales, or incentive claims
5 or audit warranty, sales, or incentive claims of a powersports vehicle
6 dealer more than ~~twenty-four~~ FIFTEEN months after the date the claim was
7 submitted, nor shall the manufacturer require a charge back,
8 reimbursement, or credit against a future transaction arising out of an
9 audit or request for documentation arising more than ~~fifteen months~~ NINE
10 MONTHS after the date the claim was submitted.

11 (2) The powersports vehicle dealer shall have ~~fifteen months~~ NINE
12 MONTHS after making a sale or providing service to submit warranty,
13 sales, or incentive claims to the manufacturer, distributor, or
14 manufacturer's representative.

15 SECTION 13. Part 5 of article 6 of title 12, Colorado Revised
16 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
17 read:

18 **12-6-534. Payout exemption to execution.** A POWERSPORTS
19 VEHICLE DEALER'S RIGHT TO RECEIVE PAYMENTS FROM A MANUFACTURER
20 OR DISTRIBUTOR REQUIRED BY SECTION 12-6-523 (1) (l) AND (1) (r) IS NOT
21 LIABLE TO ATTACHMENT OR EXECUTION AND MAY NOT OTHERWISE BE
22 SEIZED, TAKEN, APPROPRIATED, OR APPLIED IN A LEGAL OR EQUITABLE
23 PROCESS OR BY OPERATION OF LAW TO PAY THE DEBTS OR LIABILITIES OF
24 THE MANUFACTURER OR DISTRIBUTOR. THIS SECTION SHALL NOT PROHIBIT
25 A SECURED CREDITOR FROM EXERCISING RIGHTS ACCRUED PURSUANT TO
26 A SECURITY AGREEMENT IF THE RIGHT AROSE AS A RESULT OF THE
27 MANUFACTURER OR DISTRIBUTOR VOLUNTARILY CREATING A SECURITY

1 INTEREST BEFORE PAYING EXISTING DEBTS OR LIABILITIES OF THE
2 MANUFACTURER OR DISTRIBUTOR. THIS SECTION SHALL NOT PROHIBIT A
3 MANUFACTURER OR DISTRIBUTOR FROM WITHHOLDING A PORTION OF THE
4 PAYMENTS NECESSARY TO COVER AN AMOUNT OF MONEY OWED TO THE
5 MANUFACTURER OR DISTRIBUTOR AS AN OFFSET TO THE PAYMENTS IF THE
6 MANUFACTURER OR DISTRIBUTOR PROVIDES THE MOTOR VEHICLE DEALER
7 WRITTEN NOTICE THEREOF.

8 **SECTION 14. Safety clause.** The general assembly hereby finds,
9 determines, and declares that this act is necessary for the immediate
10 preservation of the public peace, health, and safety.