

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

March 1, 2010
Date

Committee on Business, Labor and Technology.

After consideration on the merits, the Committee recommends the following:

HB10-1049 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend reengrossed bill, page 5, strike lines 12 through 17 and substitute:

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

14 Page 5, after line 17 insert:

15 "**SECTION 4.** 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:

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

8 Renumber succeeding sections accordingly.

9 Page 5, line 24, strike "RELEVANT" and substitute "RIGHT OF FIRST
10 REFUSAL".

11 Page 5, line 25, strike "MARKET".

12 Page 6, line 5, strike "RELEVANT MARKET" and substitute "RIGHT OF FIRST
13 REFUSAL".

14 Page 6, line 14, strike "MARKET AREA" and substitute "FIRST REFUSAL
15 AREA PRIOR TO MAKING SUCH OFFER TO ANY OTHER PERSON."

16 Page 6, strike lines 20 through 24 and substitute "PARAGRAPH (b) OF THIS
17 SUBSECTION (5) IS EQUAL TO SEVEN YEARS AFTER THE FRANCHISE IS
18 TERMINATED, CANCELLED, OR NOT RENEWED."

19 Page 6, after line 24 insert:

20 "(d) WHEN A MANUFACTURER OR DISTRIBUTOR OFFERS IN WRITING
21 TO A MOTOR VEHICLE DEALER A FRANCHISE AGREEMENT PURSUANT TO
22 THIS SUBSECTION (5), THE FORMER MOTOR VEHICLE DEALER SHALL EITHER
23 ACCEPT OR REJECT THE OFFER WITHIN SIXTY DAYS AFTER THE MOTOR
24 VEHICLE DEALER RECEIVES THE OFFER. IF THE FORMER MOTOR VEHICLE
25 DEALER FAILS TO ACCEPT THE OFFER WITHIN SIXTY DAYS, THE OFFER IS
26 DEEMED REJECTED BY THE MOTOR VEHICLE DEALER."

27 Reletter succeeding paragraph accordingly.

28 Page 6, after line 26 insert:

29 "(f) THE RIGHT OF FIRST REFUSAL SURVIVES A MANUFACTURER,
30 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, OR PREDECESSOR

1 THEREOF, AWARDING A FRANCHISE WITHIN THE SAME MARKET FOR THE
2 SAME LINE-MAKE TO A PERSON OR ENTITY OTHER THAN THE FORMER
3 MOTOR VEHICLE DEALER WHOSE FRANCHISE WAS TERMINATED,
4 CANCELLED, OR NOT RENEWED."

5 Page 8, line 5, strike "A NEW SECTION" and substitute "THE
6 FOLLOWING NEW SECTIONS".

7 Page 8, line 18, after the period add "THIS SECTION SHALL NOT PROHIBIT
8 A MANUFACTURER OR DISTRIBUTOR FROM WITHHOLDING A PORTION OF
9 SUCH PAYMENTS NECESSARY TO COVER AN AMOUNT OF MONEY OWED TO
10 THE MANUFACTURER OR DISTRIBUTOR AS AN OFFSET TO SUCH PAYMENTS
11 IF THE MANUFACTURER OR DISTRIBUTOR PROVIDES THE MOTOR VEHICLE
12 DEALER WRITTEN NOTICE THEREOF."

13 Page 8, after line 18 insert:

14 **"12-6-129. Reinstatement following insolvency.** (1) IF A
15 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, OR
16 THE PREDECESSOR THEREOF, HAS TERMINATED, CANCELLED, OR NOT
17 RENEWED A MOTOR VEHICLE DEALER'S FRANCHISE FOR A LINE-MAKE DUE
18 TO THE INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR BETWEEN
19 MAY 1, 2009, AND THE EFFECTIVE DATE OF THIS SECTION, THE
20 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
21 SHALL OFFER THE MOTOR VEHICLE DEALER A FRANCHISE WITHIN THE SAME
22 RELEVANT MARKET AREA WITHIN THIRTY DAYS AFTER THE EFFECTIVE
23 DATE OF THIS SECTION, NOTWITHSTANDING ANY OTHER PROVISION OF LAW
24 TO THE CONTRARY. THE FRANCHISE AGREEMENT SHALL GIVE THE MOTOR
25 VEHICLE DEALER THE RIGHT TO SELL ALL VEHICLES WITHIN THE
26 LINE-MAKE.

27 (2) A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER'S
28 REPRESENTATIVE THAT VIOLATES THIS SECTION COMMITS A
29 MISDEMEANOR, PUNISHABLE BY A FINE OF ONE THOUSAND DOLLARS.
30 EACH DAY FOLLOWING THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS
31 SECTION THAT THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER'S
32 REPRESENTATIVE FAILS TO ENTER INTO A FRANCHISE AGREEMENT IN
33 VIOLATION OF THIS SECTION SHALL CONSTITUTE A SEPARATE VIOLATION
34 OF THIS SECTION.

35 **SECTION 9.** 12-6-102, Colorado Revised Statutes, is amended

1 BY THE ADDITION OF A NEW SUBSECTION to read:

2 **12-6-502. Definitions.** As used in this part 5, unless the context
3 otherwise requires:

4 (9.7) "FRANCHISE" MEANS THE AUTHORITY TO SELL OR SERVICE
5 AND REPAIR POWERSPORTS VEHICLES OF A DESIGNATED LINE-MAKE
6 GRANTED THROUGH A SALES, SERVICE, AND PARTS AGREEMENT WITH A
7 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE.

8 **SECTION 10.** 12-6-523 (1) (r) (II), Colorado Revised Statutes,
9 is amended, and the said 12-6-523 (1) is further amended BY THE
10 ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

11 **12-6-523. Unlawful acts.** (1) It shall be unlawful and a violation
12 of this part 5 for any powersports vehicle manufacturer, distributor, or
13 manufacturer representative:

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

15 (II) Within ninety days after the termination, elimination, or
16 cessation of a line-make OR THE TERMINATION OF A FRANCHISE DUE TO
17 THE INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR, the fair market
18 value of the powersports vehicle dealer's goodwill for the line-make as of
19 the date the manufacturer or distributor announces the action that results
20 in the termination, elimination, or cessation, not including any amounts
21 paid under subparagraphs (I) to (V) of paragraph (1) of this subsection (1);
22 ~~and~~

23 (t) TO CHARGE BACK, DENY POWERSPORTS VEHICLE ALLOCATION,
24 WITHHOLD PAYMENTS, OR TAKE OTHER ACTIONS AGAINST A POWERSPORTS
25 VEHICLE DEALER IF A POWERSPORTS VEHICLE SOLD BY THE POWERSPORTS
26 VEHICLE DEALER IS EXPORTED FROM COLORADO UNLESS THE
27 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
28 PROVES THAT THE POWERSPORTS VEHICLE DEALER KNEW OR REASONABLY
29 SHOULD HAVE KNOWN A POWERSPORTS VEHICLE WAS INTENDED TO BE
30 EXPORTED, WHICH SHALL OPERATE AS A REBUTTABLE PRESUMPTION THAT
31 THE POWERSPORTS VEHICLE DEALER DID NOT HAVE SUCH KNOWLEDGE;
32 AND

33 (u) TO FAIL TO REIMBURSE A POWERSPORTS VEHICLE DEALER

1 WITHIN NINETY DAYS AFTER THE TERMINATION, CANCELLATION, OR
2 NONRENEWAL OF A FRANCHISE FOR THE COST OF ANY UPGRADES OR
3 ALTERATIONS TO THE POWERSPORTS VEHICLE DEALER'S FACILITIES
4 REQUIRED BY THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
5 REPRESENTATIVE WITHIN THE PREVIOUS FIVE YEARS.

6 **SECTION 11.** 12-6-524, Colorado Revised Statutes, is amended
7 BY THE ADDITION OF A NEW SUBSECTION to read:

8 **12-6-524. New, reopened, or relocated dealer - notice required**
9 **- grounds for refusal of dealer license - definitions - rules.** (5) (a) NO
10 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
11 SHALL OFFER OR AWARD A PERSON A FRANCHISE OR PERMIT THE
12 RELOCATION OF AN EXISTING FRANCHISE TO THE RELEVANT MARKET AREA
13 UNLESS THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
14 REPRESENTATIVE HAS COMPLIED WITH PARAGRAPH (b) OF THIS
15 SUBSECTION (5) OR UNLESS PARAGRAPH (b) OF THIS SUBSECTION (5) DOES
16 NOT APPLY.

17 (b) IF A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
18 REPRESENTATIVE, OR THE PREDECESSOR THEREOF, HAS TERMINATED,
19 CANCELLED, OR NOT RENEWED A POWERSPORTS VEHICLE DEALER'S
20 FRANCHISE FOR A LINE-MAKE WITHIN THE RELEVANT MARKET AREA ON
21 ACCOUNT OF THE INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR
22 THAT WAS HELD BY THE POWERSPORTS VEHICLE DEALER IMMEDIATELY
23 PRIOR TO THE FRANCHISE BEING TERMINATED, CANCELLED, OR NOT
24 RENEWED WITHIN THE AMOUNT OF TIME THE RIGHT OF FIRST REFUSAL IS
25 GRANTED UNDER PARAGRAPH (c) OF THIS SUBSECTION (5), THE
26 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, OR
27 THE SUCCESSOR THEREOF, SHALL OFFER THE FORMER POWERSPORTS
28 VEHICLE DEALER WHOSE FRANCHISE WAS TERMINATED, CANCELLED, OR
29 NOT RENEWED A FRANCHISE WITHIN THE SAME MARKET AREA FOR THE
30 SAME LINE-MAKE UNLESS THE MANUFACTURER, DISTRIBUTOR, OR
31 MANUFACTURER REPRESENTATIVE, OR THE PREDECESSOR THEREOF, HAS
32 ACTUALLY MADE THE PAYMENTS REQUIRED BY SECTION 12-6-523 (1) (l)
33 AND (1) (r) TO THE POWERSPORTS VEHICLE DEALER.

34 (c) THE DURATION OF THE RIGHT OF FIRST REFUSAL GRANTED IN
35 PARAGRAPH (b) OF THIS SUBSECTION (5) IS EQUAL TO THE GREATER OF TEN
36 YEARS OR THE AMOUNT OF TIME BETWEEN THE FRANCHISE BEING
37 AWARDED AND THE FRANCHISE BEING TERMINATED, CANCELLED, OR NOT

1 RENEWED. THE RIGHT OF FIRST REFUSAL BEGINS WHEN THE FRANCHISE IS
2 TERMINATED, CANCELLED, OR NOT RENEWED.

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

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

7 **12-6-526.5. Audit reimbursement limitations - dealer claims.**

8 (1) (a) A manufacturer, distributor, or manufacturer representative shall
9 have the right to audit warranty, sales, or incentive claims of a
10 powersports vehicle dealer for ~~fifteen months~~ ONE HUNDRED EIGHTY
11 DAYS after the date the claim was submitted.

12 (b) A manufacturer, distributor, or manufacturer representative
13 shall not require documentation for warranty, sales, or incentive claims
14 or audit warranty, sales, or incentive claims of a powersports vehicle
15 dealer more than ~~twenty-four~~ TWELVE months after the date the claim was
16 submitted, nor shall the manufacturer require a charge back,
17 reimbursement, or credit against a future transaction arising out of an
18 audit or request for documentation arising more than ~~fifteen months~~ ONE
19 HUNDRED EIGHTY DAYS after the date the claim was submitted.

20 (2) The powersports vehicle dealer shall have ~~fifteen months~~ ONE
21 HUNDRED EIGHTY DAYS after making a sale or providing service to submit
22 warranty, sales, or incentive claims to the manufacturer, distributor, or
23 manufacturer's representative.

24 **SECTION 13.** Part 5 of article 6 of title 12, Colorado Revised
25 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
26 read:

27 **12-6-534. Payout exemption to execution.** A POWERSPORTS
28 VEHICLE DEALER'S RIGHT TO RECEIVE PAYMENTS FROM A MANUFACTURER
29 OR DISTRIBUTOR REQUIRED BY SECTION 12-6-523 (1) (l) AND (1) (r) IS NOT
30 LIABLE TO ATTACHMENT OR EXECUTION AND MAY NOT OTHERWISE BE
31 SEIZED, TAKEN, APPROPRIATED, OR APPLIED IN A LEGAL OR EQUITABLE
32 PROCESS OR BY OPERATION OF LAW TO PAY THE DEBTS OR LIABILITIES OF
33 THE MANUFACTURER OR DISTRIBUTOR. THIS SECTION SHALL NOT PROHIBIT
34 A SECURED CREDITOR FROM EXERCISING RIGHTS ACCRUED PURSUANT TO

1 A SECURITY AGREEMENT IF THE RIGHT AROSE AS A RESULT OF THE
2 MANUFACTURER OR DISTRIBUTOR VOLUNTARILY CREATING A SECURITY
3 INTEREST BEFORE PAYING EXISTING DEBTS OR LIABILITIES OF THE
4 MANUFACTURER OR DISTRIBUTOR."

5 Renumber succeeding section accordingly.

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