

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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.

HOUSE
3rd Reading Unamended
February 1, 2010

HOUSE
Amended 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:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds that:

4 (a) Most motor vehicle dealerships are independent, locally owned
5 small businesses. The average dealer invests twelve to fifteen million
6 dollars per franchise. Most motor vehicle dealers, not motor vehicle
7 manufacturers, own the land, buildings, service facilities, and inventory
8 necessary to run a motor vehicle dealership. The sale and service of
9 motor vehicles accounts for approximately twenty percent of Colorado's
10 sales tax revenues.

1 (b) As part of their federal bankruptcy reorganization, General
2 Motors and Chrysler collectively terminated approximately two thousand
3 eighty-nine locally owned motor vehicle dealer franchises in the United
4 States, of which thirty-nine were in Colorado;

5 (c) As part of their bankruptcy proceedings, General Motors and
6 Chrysler sought federal bridge loans from Congress to assist in their
7 reorganization;

8 (d) On account of Chrysler and General Motors being in
9 bankruptcy when they stripped dealers of their franchises, the
10 manufacturers did not have to abide by Colorado law concerning the
11 termination of a dealer franchise. As a result, dealers were denied the
12 dealer termination protections afforded by Colorado law.

13 (e) General Motors and Chrysler appear to be attempting to
14 reallocate the franchises formerly held by Colorado dealers to new or
15 out-of-state investors without first giving the option to the terminated
16 Colorado dealers to resume operating the franchises that were taken away
17 from them by the manufacturers.

18 (2) The general assembly hereby declares that protecting Colorado
19 consumers of motor vehicles and motor vehicle dealers from unfair,
20 arbitrary, and capricious conduct by motor vehicle manufacturers is in the
21 public interest. A robust motor vehicle dealer network is critical to
22 maintaining a free market in Colorado that lowers prices and gives
23 consumers alternatives.

24 (3) Therefore, the general assembly determines that the policy of
25 Colorado is to provide additional remedies for dealers and to ensure that
26 previously terminated dealers have the right of first refusal within a
27 specified amount of time, or be adequately compensated for their

1 investment, should the manufacturer decide to reestablish the same
2 line-make in the same market area after terminating the dealer.

3 **SECTION 2.** 12-6-102, Colorado Revised Statutes, is amended
4 BY THE ADDITION OF A NEW SUBSECTION to read:

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

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

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

15 **12-6-120. Unlawful acts.** (1) It shall be unlawful and a violation
16 of this part 1 for any manufacturer, distributor, or manufacturer
17 representative:

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

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

27 (s) To condition a franchise agreement on improvements to a

1 facility unless reasonably required by the technology of a motor vehicle
2 being sold at the facility; and

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

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

24 SECTION 4. 12-6-120.3 (3), Colorado Revised Statutes, is
25 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

26 12-6-120.3. New, reopened, or relocated dealer - notice
27 required - grounds for refusal of dealer license - definitions - rules.

1 (3) As used in this section:

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

9 **SECTION 5.** 12-6-120.3, Colorado Revised Statutes, is amended
10 BY THE ADDITION OF A NEW SUBSECTION to read:

11 **12-6-120.3. New, reopened, or relocated dealer - notice**
12 **required - grounds for refusal of dealer license - definitions - rules.**

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

20 (b) IF A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
21 REPRESENTATIVE, OR THE PREDECESSOR THEREOF, HAS TERMINATED,
22 CANCELLED, OR NOT RENEWED A MOTOR VEHICLE DEALER'S FRANCHISE
23 FOR A LINE-MAKE WITHIN THE RIGHT OF FIRST REFUSAL AREA DUE TO THE
24 INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR THAT WAS HELD BY
25 THE MOTOR VEHICLE DEALER IMMEDIATELY PRIOR TO THE FRANCHISE
26 BEING TERMINATED, CANCELLED, OR NOT RENEWED WITHIN THE AMOUNT
27 OF TIME THE RIGHT OF FIRST REFUSAL IS GRANTED UNDER PARAGRAPH (c)

1 OF THIS SUBSECTION (5), THE MANUFACTURER, DISTRIBUTOR, OR
2 MANUFACTURER REPRESENTATIVE, OR THE SUCCESSOR THEREOF, SHALL
3 OFFER THE FORMER MOTOR VEHICLE DEALER WHOSE FRANCHISE WAS
4 TERMINATED, CANCELLED, OR NOT RENEWED A FRANCHISE WITHIN THE
5 SAME FIRST REFUSAL AREA PRIOR TO MAKING SUCH OFFER TO ANY OTHER
6 PERSON. FOR THE SAME LINE-MAKE UNLESS THE MANUFACTURER,
7 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, OR THE PREDECESSOR
8 THEREOF, HAS ACTUALLY MADE THE PAYMENTS REQUIRED BY SECTION
9 12-6-120 (1) (l) AND (1) (r) TO THE MOTOR VEHICLE DEALER.

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

13 (d) WHEN A MANUFACTURER OR DISTRIBUTOR OFFERS IN WRITING
14 TO A MOTOR VEHICLE DEALER A FRANCHISE AGREEMENT PURSUANT TO
15 THIS SUBSECTION (5), THE FORMER MOTOR VEHICLE DEALER SHALL EITHER
16 ACCEPT OR REJECT THE OFFER WITHIN SIXTY DAYS AFTER THE MOTOR
17 VEHICLE DEALER RECEIVES THE OFFER. IF THE FORMER MOTOR VEHICLE
18 DEALER FAILS TO ACCEPT THE OFFER WITHIN SIXTY DAYS, THE OFFER IS
19 DEEMED REJECTED BY THE MOTOR VEHICLE DEALER.

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

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

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

4 **12-6-120.5. Independent control of dealer - definitions.**

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

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

9 (f) OPERATION OF A MOTOR VEHICLE DEALER IF THE
10 MANUFACTURER WAS OPERATING THE DEALER ON JANUARY 1, 2009, SO
11 LONG AS THE DEALER IS IN CONTINUOUS OPERATION AFTER JANUARY 1,
12 2009.

13 **SECTION 7.** 12-6-126 (1) and (2), Colorado Revised Statutes,
14 are amended to read:

15 **12-6-126. Audit reimbursement limitations - dealer claims.**

16 (1) (a) A manufacturer, distributor, or manufacturer representative shall
17 have the right to audit warranty, sales, or incentive claims of a motor
18 vehicle dealer for ~~fifteen months~~ ONE HUNDRED EIGHTY DAYS after the
19 date the claim was submitted.

20 (b) A manufacturer, distributor, or manufacturer representative
21 shall not require documentation for warranty, sales, or incentive claims
22 or audit warranty, sales, or incentive claims of a motor vehicle dealer
23 more than ~~twenty-four~~ TWELVE months after the date the claim was
24 submitted, nor shall the manufacturer require a charge back,
25 reimbursement, or credit against a future transaction arising out of an
26 audit or request for documentation arising more than ~~fifteen months~~ ONE
27 HUNDRED EIGHTY DAYS after the date the claim was submitted.

1 (2) The motor vehicle dealer shall have ~~fifteen months~~ ONE
2 HUNDREDEIGHTY DAYS after making a sale or providing service to submit
3 warranty, sales, or incentive claims to the manufacturer, distributor, or
4 manufacturer representative.

5 **SECTION 8.** Part 1 of article 6 of title 12, Colorado Revised
6 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
7 SECTIONS to read:

8 **12-6-128. Payout exemption to execution.** A MOTOR VEHICLE
9 DEALER'S RIGHT TO RECEIVE PAYMENTS FROM A MANUFACTURER OR
10 DISTRIBUTOR REQUIRED BY SECTION 12-6-120 (1) (l) AND (1) (r) IS NOT
11 LIABLE TO ATTACHMENT OR EXECUTION AND MAY NOT OTHERWISE BE
12 SEIZED, TAKEN, APPROPRIATED, OR APPLIED IN A LEGAL OR EQUITABLE
13 PROCESS OR BY OPERATION OF LAW TO PAY THE DEBTS OR LIABILITIES OF
14 THE MANUFACTURER OR DISTRIBUTOR. THIS SECTION SHALL NOT PROHIBIT
15 A SECURED CREDITOR FROM EXERCISING RIGHTS ACCRUED PURSUANT TO
16 A SECURITY AGREEMENT IF THE RIGHT AROSE AS A RESULT OF THE
17 MANUFACTURER OR DISTRIBUTOR VOLUNTARILY CREATING A SECURITY
18 INTEREST BEFORE PAYING EXISTING DEBTS OR LIABILITIES OF THE
19 MANUFACTURER OR DISTRIBUTOR. THIS SECTION SHALL NOT PROHIBIT A
20 MANUFACTURER OR DISTRIBUTOR FROM WITHHOLDING A PORTION OF SUCH
21 PAYMENTS NECESSARY TO COVER AN AMOUNT OF MONEY OWED TO THE
22 MANUFACTURER OR DISTRIBUTOR AS AN OFFSET TO SUCH PAYMENTS IF
23 THE MANUFACTURER OR DISTRIBUTOR PROVIDES THE MOTOR VEHICLE
24 DEALER WRITTEN NOTICE THEREOF.

25 **12-6-129. Reinstatement following insolvency.** (1) IF A
26 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, OR
27 THE PREDECESSOR THEREOF, HAS TERMINATED, CANCELLED, OR NOT

1 RENEWED A MOTOR VEHICLE DEALER'S FRANCHISE FOR A LINE-MAKE DUE
2 TO THE INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR BETWEEN
3 MAY 1, 2009, AND THE EFFECTIVE DATE OF THIS SECTION, THE
4 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
5 SHALL OFFER THE MOTOR VEHICLE DEALER A FRANCHISE WITHIN THE SAME
6 RELEVANT MARKET AREA WITHIN THIRTY DAYS AFTER THE EFFECTIVE
7 DATE OF THIS SECTION, NOTWITHSTANDING ANY OTHER PROVISION OF LAW
8 TO THE CONTRARY. THE FRANCHISE AGREEMENT SHALL GIVE THE MOTOR
9 VEHICLE DEALER THE RIGHT TO SELL ALL VEHICLES WITHIN THE
10 LINE-MAKE.

11 (2) A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER'S
12 REPRESENTATIVE THAT VIOLATES THIS SECTION COMMITS A
13 MISDEMEANOR, PUNISHABLE BY A FINE OF ONE THOUSAND DOLLARS.
14 EACH DAY FOLLOWING THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS
15 SECTION THAT THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER'S
16 REPRESENTATIVE FAILS TO ENTER INTO A FRANCHISE AGREEMENT IN
17 VIOLATION OF THIS SECTION SHALL CONSTITUTE A SEPARATE VIOLATION
18 OF THIS SECTION.

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

21 **12-6-502. Definitions.** As used in this part 5, unless the context
22 otherwise requires:

23 (9.7) "FRANCHISE" MEANS THE AUTHORITY TO SELL OR SERVICE
24 AND REPAIR POWERSPORTS VEHICLES OF A DESIGNATED LINE-MAKE
25 GRANTED THROUGH A SALES, SERVICE, AND PARTS AGREEMENT WITH A
26 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE.

27 **SECTION 10.** 12-6-523 (1) (r) (II), Colorado Revised Statutes,

1 is amended, and the said 12-6-523 (1) is further amended BY THE
2 ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

3 **12-6-523. Unlawful acts.** (1) It shall be unlawful and a violation
4 of this part 5 for any powersports vehicle manufacturer, distributor, or
5 manufacturer representative:

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

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

15 (t) TO CHARGE BACK, DENY POWERSPORTS VEHICLE ALLOCATION,
16 WITHHOLD PAYMENTS, OR TAKE OTHER ACTIONS AGAINST A POWERSPORTS
17 VEHICLE DEALER IF A POWERSPORTS VEHICLE SOLD BY THE POWERSPORTS
18 VEHICLE DEALER IS EXPORTED FROM COLORADO UNLESS THE
19 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
20 PROVES THAT THE POWERSPORTS VEHICLE DEALER KNEW OR REASONABLY
21 SHOULD HAVE KNOWN A POWERSPORTS VEHICLE WAS INTENDED TO BE
22 EXPORTED, WHICH SHALL OPERATE AS A REBUTTABLE PRESUMPTION THAT
23 THE POWERSPORTS VEHICLE DEALER DID NOT HAVE SUCH KNOWLEDGE;
24 AND

25 (u) TO FAIL TO REIMBURSE A POWERSPORTS VEHICLE DEALER
26 WITHIN NINETY DAYS AFTER THE TERMINATION, CANCELLATION, OR
27 NONRENEWAL OF A FRANCHISE FOR THE COST OF ANY UPGRADES OR

1 ALTERATIONS TO THE POWERSPORTS VEHICLE DEALER'S FACILITIES
2 REQUIRED BY THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
3 REPRESENTATIVE WITHIN THE PREVIOUS FIVE YEARS.

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

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

15 (b) IF A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
16 REPRESENTATIVE, OR THE PREDECESSOR THEREOF, HAS TERMINATED,
17 CANCELLED, OR NOT RENEWED A POWERSPORTS VEHICLE DEALER'S
18 FRANCHISE FOR A LINE-MAKE WITHIN THE RELEVANT MARKET AREA ON
19 ACCOUNT OF THE INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR
20 THAT WAS HELD BY THE POWERSPORTS VEHICLE DEALER IMMEDIATELY
21 PRIOR TO THE FRANCHISE BEING TERMINATED, CANCELLED, OR NOT
22 RENEWED WITHIN THE AMOUNT OF TIME THE RIGHT OF FIRST REFUSAL IS
23 GRANTED UNDER PARAGRAPH (c) OF THIS SUBSECTION (5), THE
24 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, OR
25 THE SUCCESSOR THEREOF, SHALL OFFER THE FORMER POWERSPORTS
26 VEHICLE DEALER WHOSE FRANCHISE WAS TERMINATED, CANCELLED, OR
27 NOT RENEWED A FRANCHISE WITHIN THE SAME MARKET AREA FOR THE

1 SAME LINE-MAKE UNLESS THE MANUFACTURER, DISTRIBUTOR, OR
2 MANUFACTURER REPRESENTATIVE, OR THE PREDECESSOR THEREOF, HAS
3 ACTUALLY MADE THE PAYMENTS REQUIRED BY SECTION 12-6-523 (1) (l)
4 AND (1) (r) TO THE POWERSPORTS VEHICLE DEALER.

5 (c) THE DURATION OF THE RIGHT OF FIRST REFUSAL GRANTED IN
6 PARAGRAPH (b) OF THIS SUBSECTION (5) IS EQUAL TO THE GREATER OF TEN
7 YEARS OR THE AMOUNT OF TIME BETWEEN THE FRANCHISE BEING
8 AWARDED AND THE FRANCHISE BEING TERMINATED, CANCELLED, OR NOT
9 RENEWED. THE RIGHT OF FIRST REFUSAL BEGINS WHEN THE FRANCHISE IS
10 TERMINATED, CANCELLED, OR NOT RENEWED.

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

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

15 **12-6-526.5. Audit reimbursement limitations - dealer claims.**

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

20 (b) A manufacturer, distributor, or manufacturer representative
21 shall not require documentation for warranty, sales, or incentive claims
22 or audit warranty, sales, or incentive claims of a powersports vehicle
23 dealer more than ~~twenty-four~~ TWELVE months after the date the claim was
24 submitted, nor shall the manufacturer require a charge back,
25 reimbursement, or credit against a future transaction arising out of an
26 audit or request for documentation arising more than ~~fifteen months~~ ONE
27 HUNDRED EIGHTY DAYS after the date the claim was submitted.

1 (2) The powersports vehicle dealer shall have ~~fifteen months~~ ONE
2 HUNDREDEIGHTY DAYS after making a sale or providing service to submit
3 warranty, sales, or incentive claims to the manufacturer, distributor, or
4 manufacturer's representative.

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

8 **12-6-534. Payout exemption to execution.** A POWERSPORTS
9 VEHICLE DEALER'S RIGHT TO RECEIVE PAYMENTS FROM A MANUFACTURER
10 OR DISTRIBUTOR REQUIRED BY SECTION 12-6-523 (1) (l) AND (1) (r) IS NOT
11 LIABLE TO ATTACHMENT OR EXECUTION AND MAY NOT OTHERWISE BE
12 SEIZED, TAKEN, APPROPRIATED, OR APPLIED IN A LEGAL OR EQUITABLE
13 PROCESS OR BY OPERATION OF LAW TO PAY THE DEBTS OR LIABILITIES OF
14 THE MANUFACTURER OR DISTRIBUTOR. THIS SECTION SHALL NOT PROHIBIT
15 A SECURED CREDITOR FROM EXERCISING RIGHTS ACCRUED PURSUANT TO
16 A SECURITY AGREEMENT IF THE RIGHT AROSE AS A RESULT OF THE
17 MANUFACTURER OR DISTRIBUTOR VOLUNTARILY CREATING A SECURITY
18 INTEREST BEFORE PAYING EXISTING DEBTS OR LIABILITIES OF THE
19 MANUFACTURER OR DISTRIBUTOR.

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