

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

ENGROSSED

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

LLS NO. 11-0275.01 Jery Payne

HOUSE BILL 11-1188

HOUSE SPONSORSHIP

Liston,

SENATE SPONSORSHIP

Newell,

House Committees

Economic and Business Development

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING FRANCHISE AGREEMENTS FOR A DEALER TO SELL**
102 **VEHICLES.**

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>.)

The bill prohibits a motor vehicle or powersports vehicle manufacturer or distributor from the following:

- ! Failing to notify a dealer at least 90 days before ending a franchise agreement;
- ! Failing to notify a dealer at least 90 days before modifying

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
Amended 2nd Reading
February 22, 2011

a franchise agreement if the modification is detrimental to the dealer; and

- ! Requiring or coercing a dealer to upgrade a facility if the facility has been upgraded within the last 15 years at the manufacturer's or distributor's request and the upgrade cost more than \$500,000 for a motor vehicle dealer or \$100,000 for a powersports dealer.

The bill requires the executive director of the department of revenue to issue a cease-and-desist order when a dealer complains that a manufacturer or distributor is illegally ending a franchise agreement. The bill also voids a site control provision of a franchise agreement if a manufacturer or distributor ends the agreement. The dealer may void a modification to a franchise agreement if the manufacturer or distributor fails to provide the required notice.

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

2 **SECTION 1.** Part 1 of article 6 of title 12, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **12-6-101.5. Applicability.** THIS ARTICLE, INCLUDING
6 AMENDMENTS THERETO, APPLIES TO ALL FRANCHISE AGREEMENTS IN
7 EFFECT REGARDLESS OF WHEN THE FRANCHISE AGREEMENT WAS ADOPTED.

8 **SECTION 2.** 12-6-102 (3), Colorado Revised Statutes, is
9 amended, and the said 12-6-102 is further amended BY THE ADDITION
10 OF THE FOLLOWING NEW SUBSECTIONS, to read:

11 **12-6-102. Definitions.** As used in this part 1 and in part 5 of this
12 article, unless the context or section 12-6-502 otherwise requires:

13 (3) "Coerce" means ~~the failure to act in good faith in~~ TO COMPEL
14 OR ATTEMPT TO COMPEL BY THREATENING, RETALIATING, ECONOMIC
15 FORCE, OR BY NOT performing or complying with any terms or provisions
16 of the franchise or agreement; except that recommendation, exposition,
17 persuasion, urging, or argument shall not be deemed to constitute a lack

1 ~~of good faith~~ COERCION.

2 (16.6) "SALES, SERVICE, AND PARTS AGREEMENT" MEANS AN
3 AGREEMENT BETWEEN A MANUFACTURER, DISTRIBUTOR, OR
4 MANUFACTURER REPRESENTATIVE AND A MOTOR VEHICLE OR
5 POWERSPORTS DEALER AUTHORIZING THE DEALER TO SELL AND SERVICE
6 A LINE MAKE OF MOTOR OR POWERSPORTS VEHICLES OR IMPOSING ANY
7 DUTY ON THE DEALER IN CONSIDERATION FOR THE RIGHT TO HAVE OR
8 OPERATE A FRANCHISE, INCLUDING ANY AMENDMENTS OR ADDITIONAL
9 RELATED AGREEMENTS.

10 (16.7) "SITE CONTROL PROVISION" MEANS AN AGREEMENT THAT
11 APPLIES TO REAL PROPERTY OWNED OR LEASED BY THE FRANCHISEE AND
12 THAT GIVES A MOTOR VEHICLE OR POWERSPORTS VEHICLE
13 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE THE
14 RIGHT TO:

15 (a) CONTROL THE USE AND DEVELOPMENT OF THE REAL PROPERTY;

16 (b) REQUIRE THE FRANCHISEE TO ESTABLISH OR MAINTAIN AN
17 EXCLUSIVE DEALERSHIP FACILITY AT THE REAL PROPERTY; OR

18 (c) RESTRICT THE FRANCHISEE FROM TRANSFERRING, SELLING,
19 LEASING, DEVELOPING, OR CHANGING THE USE OF THE REAL PROPERTY.

20 **SECTION 3.** The introductory portion to 12-6-120 (1), Colorado
21 Revised Statutes, is amended, and the said 12-6-120 (1) is further
22 amended BY THE ADDITION OF THE FOLLOWING NEW
23 PARAGRAPHS, to read:

24 **12-6-120. Unlawful acts.** (1) It ~~shall be~~ IS unlawful and a
25 violation of this part 1 for any manufacturer, distributor, or manufacturer
26 representative:

27 (w) TO FAIL TO NOTIFY A MOTOR VEHICLE DEALER AT LEAST

1 NINETY DAYS BEFORE THE FOLLOWING AND TO PROVIDE THE SPECIFIC
2 REASONS FOR THE FOLLOWING:

3 (I) DIRECTLY OR INDIRECTLY TERMINATING, CANCELLING, OR NOT
4 RENEWING A FRANCHISE AGREEMENT; OR

5 (II) MODIFYING, REPLACING, OR ATTEMPTING TO MODIFY OR
6 REPLACE THE FRANCHISE OR SELLING AGREEMENT OF A MOTOR VEHICLE
7 DEALER, INCLUDING A CHANGE IN THE DEALER'S GEOGRAPHIC AREA UPON
8 WHICH SALES OR SERVICE PERFORMANCE IS MEASURED, IF THE
9 MODIFICATION WOULD SUBSTANTIALLY AND ADVERSELY ALTER THE
10 RIGHTS OR OBLIGATIONS OF THE DEALER UNDER THE CURRENT FRANCHISE
11 OR SELLING AGREEMENT OR WOULD SUBSTANTIALLY IMPAIR THE SALES OR
12 SERVICE OBLIGATIONS OR THE DEALER'S INVESTMENT; AND

13 (x) TO REQUIRE, COERCE, OR ATTEMPT TO COERCE A MOTOR
14 VEHICLE DEALER TO SUBSTANTIALLY ALTER A FACILITY OR PREMISES IF
15 THE FACILITY OR PREMISES HAS BEEN ALTERED WITHIN THE LAST TEN
16 YEARS AT A COST OF MORE THAN TWO HUNDRED FIFTY THOUSAND
17 DOLLARS, AND THE ALTERATION WAS REQUIRED AND APPROVED BY THE
18 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE;
19 EXCEPT THAT THIS PARAGRAPH (x) DOES NOT APPLY TO IMPROVEMENTS
20 MADE TO COMPLY WITH HEALTH OR SAFETY LAWS OR TO ACCOMMODATE
21 THE TECHNOLOGY REQUIREMENTS NECESSARY TO SELL OR SERVICE A LINE
22 MAKE.

23 **SECTION 4.** Part 1 of article 6 of title 12, Colorado Revised
24 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
25 SECTIONS to read:

26 **12-6-129. Site control extinguishes.** A SITE CONTROL PROVISION
27 OF A FRANCHISE AGREEMENT IS VOID UPON THE MANUFACTURER,

1 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE TERMINATING,
2 ELIMINATING, OR NOT RENEWING THE FRANCHISE AGREEMENT
3 CONTAINING THE SITE CONTROL PROVISION UNLESS THE TERMINATION,
4 ELIMINATION, OR NONRENEWAL IS FOR JUST CAUSE IN ACCORDANCE WITH
5 SECTION 12-6-120 (1) (d).

6 **12-6-130. Modification voidable.** IF A MANUFACTURER,
7 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE FAILS TO COMPLY
8 WITH SECTION 12-6-120 (1) (w) (II), THE MOTOR VEHICLE DEALER MAY
9 VOID THE MODIFICATION OR REPLACEMENT OF THE FRANCHISE
10 AGREEMENT.

11 **12-6-131. Termination appeal.** A MOTOR VEHICLE DEALER WHO
12 HAS REASON TO BELIEVE THAT A MANUFACTURER, DISTRIBUTOR, OR
13 MANUFACTURER REPRESENTATIVE HAS VIOLATED SECTION 12-6-120 (1)
14 (d) OR (1) (w) MAY APPEAL TO THE BOARD BY FILING A COMPLAINT WITH
15 THE EXECUTIVE DIRECTOR. UPON RECEIVING THE COMPLAINT AND UPON
16 A SHOWING OF SPECIFIC FACTS THAT A VIOLATION HAS OCCURRED, THE
17 EXECUTIVE DIRECTOR SHALL SUMMARILY ISSUE A CEASE-AND-DESIST
18 ORDER UNDER SECTION 12-6-105 (1) (f) STAYING THE TERMINATION,
19 ELIMINATION, MODIFICATION, OR NONRENEWAL OF THE FRANCHISE
20 AGREEMENT. THE CEASE-AND-DESIST ORDER REMAINS IN EFFECT UNTIL
21 THE HEARING REQUIRED BY SECTION 12-6-105 (1) (f) IS HELD. IF A
22 DETERMINATION IS MADE AT THE HEARING REQUIRED BY SECTION
23 12-6-105 (1) (f) THAT A VIOLATION OCCURRED, THE BOARD SHALL MAKE
24 THE CEASE-AND-DESIST ORDER PERMANENT AND TAKE ANY ACTIONS
25 AUTHORIZED BY SECTION 12-6-104 (3). A MOTOR VEHICLE DEALER WHO
26 APPEALS TO THE BOARD MAINTAINS ALL RIGHTS UNDER THE FRANCHISE
27 AGREEMENT UNTIL THE LATER OF THE EFFECTIVE DATE OF THE

1 PERMANENT CEASE-AND-DESIST ORDER OR AN APPEAL OF A FINAL
2 DETERMINATION IS MADE UNDER SECTION 24-4-106, C.R.S.

3 **SECTION 5.** The introductory portion to 12-6-523 (1), Colorado
4 Revised Statutes, is amended, and the said 12-6-523 (1) is further
5 amended, BY THE ADDITION OF THE FOLLOWING NEW
6 PARAGRAPHS, to read:

7 **12-6-523. Unlawful acts.** (1) It ~~shall be~~ IS unlawful and a
8 violation of this part 5 for any powersports vehicle manufacturer,
9 distributor, or manufacturer representative:

10 (v) TO FAIL TO NOTIFY A POWERSPORTS VEHICLE DEALER AT LEAST
11 NINETY DAYS BEFORE THE FOLLOWING AND TO PROVIDE THE SPECIFIC
12 REASONS FOR THE FOLLOWING:

13 (I) DIRECTLY OR INDIRECTLY TERMINATING, CANCELLING, OR NOT
14 RENEWING A FRANCHISE AGREEMENT; OR

15 (II) MODIFYING, REPLACING, OR ATTEMPTING TO MODIFY OR
16 REPLACE THE FRANCHISE OR SELLING AGREEMENT OF A POWERSPORTS
17 DEALER, INCLUDING A CHANGE IN THE DEALER'S GEOGRAPHIC AREA UPON
18 WHICH SALES OR SERVICE PERFORMANCE IS MEASURED, IF THE
19 MODIFICATION WOULD SUBSTANTIALLY AND ADVERSELY ALTER THE
20 RIGHTS OR OBLIGATIONS OF THE DEALER UNDER THE CURRENT FRANCHISE
21 OR SELLING AGREEMENT OR WOULD SUBSTANTIALLY IMPAIR THE SALES OR
22 SERVICE OBLIGATIONS OR THE DEALER'S INVESTMENT; AND

23 (w) TO REQUIRE, COERCE, OR ATTEMPT TO COERCE A
24 POWERSPORTS DEALER TO SUBSTANTIALLY ALTER A FACILITY OR PREMISES
25 IF THE FACILITY OR PREMISES HAS BEEN ALTERED WITHIN THE LAST
26 FIFTEEN YEARS AT A COST OF MORE THAN ONE HUNDRED THOUSAND
27 DOLLARS, AND THE ALTERATION WAS REQUIRED AND APPROVED BY THE

1 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE;
2 EXCEPT THAT THIS PARAGRAPH (w) DOES NOT APPLY TO IMPROVEMENTS
3 MADE TO COMPLY WITH HEALTH OR SAFETY LAWS OR TO ACCOMMODATE
4 THE TECHNOLOGY REQUIREMENTS NECESSARY TO SELL OR SERVICE A LINE
5 MAKE.

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

9 **12-6-535. Site control extinguishes.** A SITE CONTROL PROVISION
10 OF A FRANCHISE AGREEMENT IS VOID UPON THE MANUFACTURER,
11 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE TERMINATING,
12 ELIMINATING, OR NOT RENEWING THE FRANCHISE AGREEMENT
13 CONTAINING THE SITE CONTROL PROVISION UNLESS THE TERMINATION,
14 ELIMINATION, OR NONRENEWAL IS FOR JUST CAUSE IN ACCORDANCE WITH
15 SECTION 12-6-120 (1) (d).

16 **12-6-536. Modification voidable.** IF A MANUFACTURER,
17 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE FAILS TO COMPLY
18 WITH SECTION 12-6-120 (1) (v) (II), THE POWERSPORTS DEALER MAY VOID
19 THE MODIFICATION OR REPLACEMENT OF THE FRANCHISE AGREEMENT.

20 **12-6-537. Termination appeal.** A POWERSPORTS VEHICLE
21 DEALER WHO HAS REASON TO BELIEVE THAT A MANUFACTURER,
22 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE HAS VIOLATED
23 SECTION 12-6-523 (1) (d) OR (1) (v) MAY APPEAL TO THE BOARD BY FILING
24 A COMPLAINT WITH THE EXECUTIVE DIRECTOR. UPON RECEIVING THE
25 COMPLAINT AND UPON A SHOWING OF SPECIFIC FACTS THAT A VIOLATION
26 HAS OCCURRED, THE EXECUTIVE DIRECTOR SHALL SUMMARILY ISSUE A
27 CEASE-AND-DESIST ORDER UNDER SECTION 12-6-105 (1) (h) STAYING THE

1 TERMINATION, ELIMINATION, MODIFICATION, OR NONRENEWAL OF THE
2 FRANCHISE AGREEMENT. THE CEASE-AND-DESIST ORDER REMAINS IN
3 EFFECT UNTIL THE HEARING REQUIRED BY SECTION 12-6-105 (1) (h) IS
4 HELD. IF A DETERMINATION IS MADE AT THE HEARING REQUIRED BY
5 SECTION 12-6-105 (1) (h) THAT A VIOLATION OCCURRED, THE BOARD
6 SHALL MAKE THE CEASE-AND-DESIST ORDER PERMANENT AND TAKE ANY
7 ACTIONS AUTHORIZED BY SECTION 12-6-504 (1). A MOTOR VEHICLE
8 DEALER WHO APPEALS TO THE BOARD MAINTAINS ALL RIGHTS UNDER THE
9 FRANCHISE AGREEMENT UNTIL THE LATER OF THE EFFECTIVE DATE OF THE
10 PERMANENT CEASE-AND-DESIST ORDER OR AN APPEAL OF A FINAL
11 DETERMINATION IS MADE UNDER SECTION 24-4-106, C.R.S.

12 **SECTION 7. Applicability.** This act shall apply to offenses
13 committed on or after the effective date of this act.

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