

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

PREAMENDED

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

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

Business, Labor and Technology

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
3rd Reading Unamended
February 23, 2011

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.

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

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SECTION 1. 12-6-102 (3), Colorado Revised Statutes, is amended, and the said 12-6-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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

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

(16.6) "SALES, SERVICE, AND PARTS AGREEMENT" MEANS AN AGREEMENT BETWEEN A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE AND A MOTOR VEHICLE OR POWERSPORTS DEALER AUTHORIZING THE DEALER TO SELL AND SERVICE

1 A LINE MAKE OF MOTOR OR POWERSPORTS VEHICLES OR IMPOSING ANY
2 DUTY ON THE DEALER IN CONSIDERATION FOR THE RIGHT TO HAVE OR
3 COMPETITIVELY OPERATE A FRANCHISE, INCLUDING ANY AMENDMENTS OR
4 ADDITIONAL RELATED AGREEMENTS THERETO.

5 (16.7) "SITE CONTROL PROVISION" MEANS AN AGREEMENT THAT
6 APPLIES TO REAL PROPERTY OWNED OR LEASED BY THE FRANCHISEE AND
7 THAT GIVES A MOTOR VEHICLE OR POWERSPORTS VEHICLE
8 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE THE
9 RIGHT TO:

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

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

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

15 **SECTION 2.** The introductory portion to 12-6-120 (1), Colorado
16 Revised Statutes, is amended, and the said 12-6-120 (1) is further
17 amended BY THE ADDITION OF THE FOLLOWING NEW
18 PARAGRAPHS, to read:

19 **12-6-120. Unlawful acts.** (1) It ~~shall be~~ IS unlawful and a
20 violation of this part 1 for any manufacturer, distributor, or manufacturer
21 representative:

22 (w) TO FAIL TO NOTIFY A MOTOR VEHICLE DEALER AT LEAST
23 NINETY DAYS BEFORE THE FOLLOWING AND TO PROVIDE THE SPECIFIC
24 REASONS FOR THE FOLLOWING:

25 (I) DIRECTLY OR INDIRECTLY TERMINATING, CANCELLING, OR NOT
26 RENEWING A FRANCHISE AGREEMENT; OR

27 (II) MODIFYING, REPLACING, OR ATTEMPTING TO MODIFY OR

1 REPLACE THE FRANCHISE OR SELLING AGREEMENT OF A MOTOR VEHICLE
2 DEALER, INCLUDING A CHANGE IN THE DEALER'S GEOGRAPHIC AREA UPON
3 WHICH SALES OR SERVICE PERFORMANCE IS MEASURED, IF THE
4 MODIFICATION WOULD SUBSTANTIALLY AND ADVERSELY ALTER THE
5 RIGHTS OR OBLIGATIONS OF THE DEALER UNDER THE CURRENT FRANCHISE
6 OR SELLING AGREEMENT OR WOULD SUBSTANTIALLY IMPAIR THE SALES OR
7 SERVICE OBLIGATIONS OR THE DEALER'S INVESTMENT; AND

8 (x) TO REQUIRE, COERCE, OR ATTEMPT TO COERCE A MOTOR
9 VEHICLE DEALER TO SUBSTANTIALLY ALTER A FACILITY OR PREMISES IF:

10 (I) THE FACILITY OR PREMISES HAS BEEN ALTERED WITHIN THE
11 LAST SEVEN YEARS AT A COST OF MORE THAN TWO HUNDRED FIFTY
12 THOUSAND DOLLARS AND THE ALTERATION WAS REQUIRED OR APPROVED
13 BY THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
14 REPRESENTATIVE UNLESS THE MOTOR VEHICLE DEALER SELLS ONLY
15 MOTORCYCLES OR MOTORCYCLES AND POWERSPORTS VEHICLES; EXCEPT
16 THAT THIS PARAGRAPH (x) DOES NOT APPLY TO IMPROVEMENTS MADE TO
17 COMPLY WITH HEALTH OR SAFETY LAWS OR TO ACCOMMODATE THE
18 TECHNOLOGY REQUIREMENTS NECESSARY TO SELL OR SERVICE A
19 LINE-MAKE; OR

20 (II) THE MOTOR VEHICLE DEALER SELLS ONLY MOTORCYCLES OR
21 MOTORCYCLES AND POWERSPORTS VEHICLES, THE FACILITY OR PREMISES
22 HAS BEEN ALTERED WITHIN THE LAST SEVEN YEARS AT A COST OF MORE
23 THAN TWENTY-FIVE THOUSAND DOLLARS, AND THE ALTERATION WAS
24 REQUIRED OR APPROVED BY THE MANUFACTURER, DISTRIBUTOR, OR
25 MANUFACTURER REPRESENTATIVE; EXCEPT THAT THIS PARAGRAPH (x)
26 DOES NOT APPLY TO IMPROVEMENTS MADE TO COMPLY WITH HEALTH OR
27 SAFETY LAWS OR TO ACCOMMODATE THE TECHNOLOGY REQUIREMENTS

1 NECESSARY TO SELL OR SERVICE A LINE-MAKE.

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

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6 **12-6-129. Site control extinguishes.** IF A MANUFACTURER,
7 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE HAS TERMINATED,
8 ELIMINATED, OR NOT RENEWED A FRANCHISE AGREEMENT CONTAINING A
9 SITE CONTROL PROVISION, THE MOTOR VEHICLE DEALER MAY VOID A SITE
10 CONTROL PROVISION OF A FRANCHISE AGREEMENT BY RETURNING ANY
11 MONEY THE DEALER HAS ACCEPTED IN EXCHANGE FOR SITE CONTROL
12 PRORATED BY THE TIME REMAINING BEFORE THE AGREEMENT EXPIRES
13 OVER THE TIME PERIOD BETWEEN THE AGREEMENT BEING SIGNED AND THE
14 AGREEMENT EXPIRING. THIS SECTION DOES NOT APPLY IF THE
15 TERMINATION, ELIMINATION, OR NONRENEWAL IS FOR JUST CAUSE IN
16 ACCORDANCE WITH SECTION 12-6-120 (1) (d).

17 **12-6-130. Modification voidable.** IF A MANUFACTURER,
18 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE FAILS TO COMPLY
19 WITH SECTION 12-6-120 (1) (w) (II), THE MOTOR VEHICLE DEALER MAY
20 VOID THE MODIFICATION OR REPLACEMENT OF THE FRANCHISE
21 AGREEMENT.

22 **12-6-131. Termination appeal.** A MOTOR VEHICLE DEALER WHO
23 HAS REASON TO BELIEVE THAT A MANUFACTURER, DISTRIBUTOR, OR
24 MANUFACTURER REPRESENTATIVE HAS VIOLATED SECTION 12-6-120 (1)
25 (d) OR (1) (w) MAY APPEAL TO THE BOARD BY FILING A COMPLAINT WITH
26 THE EXECUTIVE DIRECTOR. UPON RECEIVING THE COMPLAINT AND UPON
27 A SHOWING OF SPECIFIC FACTS THAT A VIOLATION HAS OCCURRED, THE

1 EXECUTIVE DIRECTOR SHALL SUMMARILY ISSUE A CEASE-AND-DESIST
2 ORDER UNDER SECTION 12-6-105 (1) (f) STAYING THE TERMINATION,
3 ELIMINATION, MODIFICATION, OR NONRENEWAL OF THE FRANCHISE
4 AGREEMENT. THE CEASE-AND-DESIST ORDER REMAINS IN EFFECT UNTIL
5 THE THE HEARING REQUIRED BY SECTION 12-6-105 (1) (f) IS HELD. IF A
6 DETERMINATION IS MADE AT THE HEARING REQUIRED BY SECTION
7 12-6-105 (1) (f) THAT A VIOLATION OCCURRED, THE EXECUTIVE DIRECTOR
8 SHALL MAKE THE CEASE-AND-DESIST ORDER PERMANENT AND TAKE ANY
9 ACTIONS AUTHORIZED BY SECTION 12-6-104 (3). A MOTOR VEHICLE
10 DEALER WHO APPEALS TO THE EXECUTIVE DIRECTOR MAINTAINS ALL
11 RIGHTS UNDER THE FRANCHISE AGREEMENT UNTIL THE LATER OF THE
12 EXECUTIVE DIRECTOR ISSUING A DECISION OR NINETY DAYS AFTER THE
13 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER'S REPRESENTATIVE
14 PROVIDES THE NOTICE OF TERMINATION UNLESS THE EXECUTIVE DIRECTOR
15 FINDS THAT THE TERMINATION, CANCELLATION, OR NONRENEWAL WAS FOR
16 FRAUD, A MISREPRESENTATION, OR COMMITTING A CRIME WITHIN THE
17 SCOPE OF THE FRANCHISE AGREEMENT OR IN THE OPERATION OF THE
18 DEALERSHIP, IN WHICH CASE THE FRANCHISE RIGHTS TERMINATE
19 IMMEDIATELY. _____

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

24 **12-6-523. Unlawful acts.** (1) It ~~shall be~~ is unlawful and a
25 violation of this part 5 for any powersports vehicle manufacturer,
26 distributor, or manufacturer representative:

27 (v) TO FAIL TO NOTIFY A POWERSPORTS 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 POWERSPORTS
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 (w) TO REQUIRE, COERCE, OR ATTEMPT TO COERCE A
14 POWERSPORTS DEALER TO SUBSTANTIALLY ALTER A FACILITY OR PREMISES
15 IF THE FACILITY OR PREMISES HAS BEEN ALTERED WITHIN THE LAST SEVEN
16 YEARS AT A COST OF MORE THAN TWENTY-FIVE THOUSAND DOLLARS, AND
17 THE ALTERATION WAS REQUIRED AND APPROVED BY THE MANUFACTURER,
18 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE; EXCEPT THAT THIS
19 PARAGRAPH (w) DOES NOT APPLY TO IMPROVEMENTS MADE TO COMPLY
20 WITH HEALTH OR SAFETY LAWS OR TO ACCOMMODATE THE TECHNOLOGY
21 REQUIREMENTS NECESSARY TO SELL OR SERVICE A LINE MAKE.

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

25 **12-6-535. Site control extinguishes.** IF A MANUFACTURER,
26 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE HAS TERMINATED,
27 ELIMINATED, OR NOT RENEWED A FRANCHISE AGREEMENT CONTAINING A

1 SITE CONTROL PROVISION, THE POWERSPORTS VEHICLE DEALER MAY VOID
2 A SITE CONTROL PROVISION OF A FRANCHISE AGREEMENT BY RETURNING
3 ANY MONEY THE DEALER HAS ACCEPTED IN EXCHANGE FOR SITE CONTROL
4 PRORATED BY THE TIME REMAINING BEFORE THE AGREEMENT EXPIRES
5 OVER THE TIME PERIOD BETWEEN THE AGREEMENT BEING SIGNED AND THE
6 AGREEMENT EXPIRING. THIS SECTION DOES NOT APPLY IF THE
7 TERMINATION, ELIMINATION, OR NONRENEWAL IS FOR JUST CAUSE IN
8 ACCORDANCE WITH SECTION 12-6-523 (1) (d).

9 **12-6-536. Modification voidable.** IF A MANUFACTURER,
10 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE FAILS TO COMPLY
11 WITH SECTION 12-6-120 (1) (v) (II), THE POWERSPORTS DEALER MAY VOID
12 THE MODIFICATION OR REPLACEMENT OF THE FRANCHISE AGREEMENT.

13 **12-6-537. Termination appeal.** A POWERSPORTS VEHICLE
14 DEALER WHO HAS REASON TO BELIEVE THAT A MANUFACTURER,
15 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE HAS VIOLATED
16 SECTION 12-6-523 (1) (d) OR (1) (v) MAY APPEAL TO THE BOARD BY FILING
17 A COMPLAINT WITH THE EXECUTIVE DIRECTOR. UPON RECEIVING THE
18 COMPLAINT AND UPON A SHOWING OF SPECIFIC FACTS THAT A VIOLATION
19 HAS OCCURRED, THE EXECUTIVE DIRECTOR SHALL SUMMARILY ISSUE A
20 CEASE-AND-DESIST ORDER UNDER SECTION 12-6-105 (1) (h) STAYING THE
21 TERMINATION, ELIMINATION, MODIFICATION, OR NONRENEWAL OF THE
22 FRANCHISE AGREEMENT. THE CEASE-AND-DESIST ORDER REMAINS IN
23 EFFECT UNTIL THE HEARING REQUIRED BY SECTION 12-6-105 (1) (h) IS
24 HELD. IF A DETERMINATION IS MADE AT THE HEARING REQUIRED BY
25 SECTION 12-6-105 (1) (h) THAT A VIOLATION OCCURRED, THE EXECUTIVE
26 DIRECTOR SHALL MAKE THE CEASE-AND-DESIST ORDER PERMANENT AND
27 TAKE ANY ACTIONS AUTHORIZED BY SECTION 12-6-504 (1). A MOTOR

1 VEHICLE DEALER WHO APPEALS TO THE EXECUTIVE DIRECTOR MAINTAINS
2 ALL RIGHTS UNDER THE FRANCHISE AGREEMENT UNTIL THE LATER OF THE
3 EXECUTIVE DIRECTOR ISSUING A DECISION OR NINETY DAYS AFTER THE
4 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER'S REPRESENTATIVE
5 PROVIDES THE NOTICE OF TERMINATION UNLESS THE EXECUTIVE DIRECTOR
6 FINDS THAT THE TERMINATION, CANCELLATION, OR NONRENEWAL WAS FOR
7 FRAUD, A MISREPRESENTATION, OR COMMITTING A CRIME WITHIN THE
8 SCOPE OF THE FRANCHISE AGREEMENT OR IN THE OPERATION OF THE
9 DEALERSHIP, IN WHICH CASE THE FRANCHISE RIGHTS TERMINATE
10 IMMEDIATELY.

11 **SECTION 6.** 42-1-102 (55), Colorado Revised Statutes, is
12 amended to read:

13 **42-1-102. Definitions.** As used in articles 1 to 4 of this title,
14 unless the context otherwise requires:

15 (55) "Motorcycle" means a motor vehicle that uses handlebars OR
16 ANY OTHER DEVICE CONNECTED TO THE FRONT WHEEL to steer and that is
17 designed to travel on not more than three wheels in contact with the
18 ground; except that the term does not include a farm tractor, LOW-SPEED
19 ELECTRIC VEHICLE, or low-power scooter.

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

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