

SB091_L.014

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

Date

Committee on Business, Labor and Technology.

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

SB09-091 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute the following:

3 "SECTION 1. 12-6-120 (1) (I) (I) (A), Colorado Revised Statutes,
4 is amended to read:

5 12-6-120. Unlawful acts. (1) It shall be unlawful and a violation
6 of this part 1 for any manufacturer, distributor, or manufacturer
7 representative:

8 (I) (I) To fail to pay to a motor vehicle dealer, within ninety days
9 after the termination, cancellation, or nonrenewal of a franchise, all of the
10 following:

11 (A) The dealer cost, plus any charges made by the manufacturer
12 for distribution, delivery, and taxes, less all allowances paid or credited
13 to the motor vehicle dealer by the manufacturer, of unused, undamaged,
14 and unsold motor vehicles in the motor vehicle dealer's inventory that
15 were acquired from the manufacturer or from another motor vehicle
16 dealer of the same line-make IN THE ORDINARY COURSE OF BUSINESS
17 within the previous twelve months;

18 SECTION 2. 12-6-120 (1) (i) and (1) (k), Colorado Revised
19 Statutes, are amended, and the said 12-6-120 (1) is further amended BY
20 THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to
21 read:

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

4 (i) (I) To fail to provide within twenty days to a motor
5 vehicle dealer the list of documents and information necessary
6 to approve the sale or transfer of the ownership of a dealership
7 by sale of the business or by stock transfer or the change in
8 executive management of the dealership;

9 (II) To fail to confirm within twenty days after receipt of
10 all documents and information listed in subparagraph (I) of this
11 paragraph (i) that such documentation and information has been
12 received;

13 (III) To refuse to approve, unreasonably, the sale or transfer of the
14 ownership of a dealership by sale of the business or by stock transfer
15 within sixty days after the manufacturer confirms it has
16 received all documents and information necessary to approve
17 the sale or transfer of ownership, or to refuse to approve,
18 unreasonably, the change in executive management of the dealership
19 within sixty days after the manufacturer confirms it has
20 received all information necessary to approve the change in
21 management; except that nothing in this part 1 shall authorize the sale,
22 transfer, or assignment of a franchise or a change of the principal operator
23 without the approval of the manufacturer or distributor unless the
24 manufacturer or distributor fails to send notice of the
25 disapproval within sixty days after receiving the request; or

26 (IV) To condition the sale, transfer, relocation, or
27 renewal of a franchise agreement, or to condition sales,
28 services, parts, or finance incentives, upon site control or an
29 agreement to renovate or make improvements to a facility;
30 except that voluntary acceptance of such conditions by the
31 dealer shall not constitute a violation;

32 (k) To require, coerce, or attempt to coerce any motor vehicle
33 dealer to refrain from participation in the management of, investment in,
34 or acquisition of any other line-make of new motor vehicles or related
35 products; except that this paragraph (k) shall not apply unless the motor
36 vehicle dealer:

37 (I) Maintains a reasonable line of credit for each make or line of



1 new motor vehicle; and

2 (II) Remains in compliance with reasonable capital standards and
3 reasonable facilities requirements specified by the manufacturer; EXCEPT
4 THAT "reasonable facilities requirements" shall not include any A
5 requirement that a motor vehicle dealer establish or maintain exclusive
6 facilities, personnel, or display space; ~~unless such a requirement is~~
7 ~~justified by reasonable business considerations.~~ AND

8 (III) PROVIDES WRITTEN NOTICE TO THE MANUFACTURER,
9 DISTRIBUTOR, OR MANUFACTURER'S REPRESENTATIVE, NO LESS THAN
10 NINETY DAYS PRIOR TO THE DEALER'S INTENT TO PARTICIPATE IN THE
11 MANAGEMENT OF, INVESTMENT IN, OR ACQUISITION OF ANOTHER
12 LINE-MAKE OF NEW MOTOR VEHICLES OR RELATED PRODUCTS;

13 (p) TO DISCRIMINATE BETWEEN OR REFUSE TO OFFER TO ITS SAME
14 LINE-MAKE FRANCHISED DEALERS ALL MODELS MANUFACTURED FOR THAT
15 LINE-MAKE BASED UPON UNREASONABLE SALES AND SERVICE STANDARDS;

16 (q) (I) TO FAIL TO MAKE PRACTICALLY AVAILABLE ANY INCENTIVE,
17 REBATE, BONUS, OR OTHER SIMILAR BENEFIT TO A MOTOR VEHICLE DEALER
18 THAT IS OFFERED TO ANOTHER MOTOR VEHICLE DEALER OF THE SAME
19 LINE-MAKE WITHIN THIS STATE;

20 (II) TO FAIL TO MAKE PRACTICALLY AVAILABLE AN INCENTIVE,
21 REBATE, BONUS, OR OTHER SIMILAR BENEFIT TO A MOTOR VEHICLE DEALER
22 THAT IS MADE PRACTICALLY AVAILABLE TO ANOTHER MOTOR VEHICLE
23 DEALER OF THE SAME LINE-MAKE IN ANOTHER STATE;

24 (r) TO FAIL TO PAY TO A MOTOR VEHICLE DEALER, WITHIN NINETY
25 DAYS AFTER THE TERMINATION, CANCELLATION, OR NONRENEWAL OF A
26 FRANCHISE FOR A FAILURE OF A DEALER TO MEET PERFORMANCE SALES
27 AND SERVICE OBLIGATIONS OR AFTER THE TERMINATION, CANCELLATION,
28 OR NONRENEWAL OF A LINE-MAKE:

29 (I) THE COST OF THE LEASE FOR THE FACILITIES USED FOR THE
30 FRANCHISE FOR THE UNEXPIRED TERM OF THE LEASE, NOT TO EXCEED ONE
31 YEAR; EXCEPT THAT, IF THE MOTOR VEHICLE DEALER OWNS THE
32 FACILITIES, THE VALUE OF RENTING SUCH FACILITIES FOR ONE YEAR,
33 PRORATED FOR EACH LINE-MAKE BASED UPON TOTAL SALES VOLUME FOR
34 THE PREVIOUS TWELVE MONTHS BEFORE THE INVOLUNTARY TERMINATION;
35 AND



1 (II) THE FAIR MARKET VALUE OF THE MOTOR VEHICLE DEALER'S
2 GOODWILL PRIOR TO TERMINATION AS DETERMINED BY AN INDEPENDENT
3 CERTIFIED PUBLIC ACCOUNTANT, NOT INCLUDING ANY AMOUNTS PAID
4 UNDER SUB-SUBPARAGRAPHS (A) TO (E) OF SUBPARAGRAPH (I) OF
5 PARAGRAPH (I) OF THIS SUBSECTION (1); AND

6 (s) TO CONDITION A FRANCHISE AGREEMENT ON IMPROVEMENTS
7 TO A FACILITY UNLESS REASONABLY REQUIRED BY THE TECHNOLOGY OF
8 A MOTOR VEHICLE BEING SOLD AT THE FACILITY.

9 SECTION 3. 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 (1.5) A MANUFACTURER SHALL REASONABLY APPROVE OR DISAPPROVE
14 OF A MOTOR VEHICLE DEALER FACILITY INITIAL SITE LOCATION OR
15 RELOCATION REQUEST WITHIN SIXTY DAYS AFTER THE REQUEST OR AFTER
16 SENDING THE NOTICE REQUIRED BY SUBSECTION (1) OF THIS SECTION TO
17 ALL OF ITS FRANCHISED DEALERS, WHICHEVER IS LATER, BUT NOT TO
18 EXCEED ONE HUNDRED DAYS.

19 SECTION 4. 12-6-120.5 (1) and (2) (a), Colorado Revised
20 Statutes, are amended, and the said 12-6-120.5 (2) is further amended BY
21 THE ADDITION OF A NEW PARAGRAPH, to read:

22 **12-6-120.5. Independent control of dealer - definitions.**

23 (1) Except as otherwise provided in this section, no manufacturer shall
24 own, operate, or control any motor vehicle dealer OR USED MOTOR
25 VEHICLE DEALER in Colorado.

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

28 (a) Operation of a dealer for a temporary period, not to exceed two
29 years TWELVE MONTHS, during the transition from one owner or operator
30 to another, EXCEPT THAT THE EXECUTIVE DIRECTOR MAY EXTEND THE
31 PERIOD, NOT TO EXCEED TWENTY-FOUR MONTHS, UPON SHOWING THE
32 MANUFACTURER OR DISTRIBUTOR OF THE NEED TO OPERATE THE
33 DEALERSHIP FOR SUCH TIME TO ACHIEVE A TRANSITION FROM AN OWNER
34 OR OPERATOR TO ANOTHER INDEPENDENT THIRD-PARTY OWNER OR
35 OPERATOR;



1 (e) OWNERSHIP, OPERATION, OR CONTROL OF A USED MOTOR
2 VEHICLE DEALER IF THE MANUFACTURER OWNED, OPERATED, OR
3 CONTROLLED THE USED MOTOR VEHICLE DEALER ON JANUARY 1, 2009,
4 AND HAS CONTINUOUSLY OPERATED OR CONTROLLED THE USED MOTOR
5 VEHICLE FACILITIES AFTER JANUARY 1, 2009.

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

9 **12-6-126. Audit reimbursement limitations - dealer claims.**

10 (1) (a) A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
11 REPRESENTATIVE SHALL HAVE THE RIGHT TO AUDIT WARRANTY, SALES, OR
12 INCENTIVE CLAIMS OF A MOTOR VEHICLE DEALER FOR FIFTEEN MONTHS
13 AFTER THE DATE THE CLAIM WAS SUBMITTED.

14 (b) A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
15 REPRESENTATIVE SHALL NOT REQUIRE DOCUMENTATION FOR WARRANTY,
16 SALES, OR INCENTIVE CLAIMS OR AUDIT WARRANTY, SALES, OR INCENTIVE
17 CLAIMS OF A MOTOR VEHICLE DEALER MORE THAN TWENTY-FOUR MONTHS
18 AFTER THE DATE THE CLAIM WAS SUBMITTED, NOR SHALL THE
19 MANUFACTURER REQUIRE A CHARGE BACK, REIMBURSEMENT, OR CREDIT
20 AGAINST A FUTURE TRANSACTION ARISING OUT OF AN AUDIT OR REQUEST
21 FOR DOCUMENTATION ARISING MORE THAN FIFTEEN MONTHS AFTER THE
22 DATE THE CLAIM WAS SUBMITTED.

23 (2) THE MOTOR VEHICLE DEALER SHALL HAVE FIFTEEN MONTHS
24 AFTER MAKING A SALE OR PROVIDING SERVICE TO SUBMIT WARRANTY,
25 SALES, OR INCENTIVE CLAIMS TO THE MANUFACTURER, DISTRIBUTOR, OR
26 MANUFACTURER'S REPRESENTATIVE.

27 (3) SUBSECTION (1) OF THIS SECTION SHALL NOT LIMIT ANY ACTION
28 FOR FRAUD INSTITUTED IN A COURT OF COMPETENT JURISDICTION.

29 (4) A MOTOR VEHICLE DEALER MAY REQUEST A DETERMINATION
30 FROM THE EXECUTIVE DIRECTOR, WITHIN THIRTY DAYS, THAT A CHARGE
31 BACK, REIMBURSEMENT, OR CREDIT REQUIRED VIOLATES SUBSECTION (1)
32 OF THIS SECTION. IF A DETERMINATION IS REQUESTED WITHIN THE
33 THIRTY-DAY PERIOD THEN THE CHARGE BACK, REIMBURSEMENT, OR
34 CREDIT SHALL BE STAYED PENDING THE DECISION OF THE EXECUTIVE
35 DIRECTOR. IF THE EXECUTIVE DIRECTOR DETERMINES AFTER A HEARING
36 THAT THE CHARGE BACK, REIMBURSEMENT, OR CREDIT VIOLATES
37 SUBSECTION (1) OF THIS SECTION, THE CHARGE BACK, REIMBURSEMENT,



1 OR CREDIT SHALL BE VOID.

2 **12-6-127. Reimbursement for right of first refusal.** A
3 MANUFACTURER OR DISTRIBUTOR SHALL PAY REASONABLE ATTORNEY
4 FEES, NOT TO EXCEED THE USUAL AND CUSTOMARY FEES CHARGED FOR
5 THE TRANSFER OF A FRANCHISE, AND REASONABLE EXPENSES THAT ARE
6 INCURRED BY THE PROPOSED OWNER OR TRANSFEREE BEFORE THE
7 MANUFACTURER OR DISTRIBUTOR EXERCISED ITS RIGHT OF FIRST REFUSAL
8 IN NEGOTIATING AND IMPLEMENTING THE CONTRACT FOR THE PROPOSED
9 CHANGE OF OWNERSHIP OR THE TRANSFER OF ASSETS. PAYMENT OF
10 ATTORNEY FEES AND EXPENSES IS NOT REQUIRED IF THE CLAIMANT HAS
11 FAILED TO SUBMIT AN ACCOUNTING OF ATTORNEY FEES AND EXPENSES
12 WITHIN TWENTY DAYS AFTER THE RECEIPT OF THE MANUFACTURER'S OR
13 DEALER'S WRITTEN REQUEST FOR AN ACCOUNTING. AN EXPENSE
14 ACCOUNTING MAY BE REQUESTED BY THE MANUFACTURER OR
15 DISTRIBUTOR BEFORE EXERCISING ITS RIGHT OF FIRST REFUSAL.

16 **SECTION 6.** 12-6-523 (1) (I) (I), Colorado Revised Statutes, is
17 amended to read:

18 **12-6-523. Unlawful acts.** (1) It shall be unlawful and a violation
19 of this part 5 for any powersports vehicle manufacturer, distributor, or
20 manufacturer representative:

21 (1) To fail to pay to a powersports vehicle dealer, within ninety
22 days after the termination, cancellation, or nonrenewal of a franchise, all
23 of the following:

24 (I) The dealer cost, plus any charges made by the powersports
25 vehicle manufacturer for distribution, delivery, and taxes, less all
26 allowances paid or credited to the powersports vehicle dealer by the
27 powersports vehicle manufacturer, of unused, undamaged, and unsold
28 powersports vehicles in the powersports vehicle dealer's inventory that
29 were acquired from the powersports vehicle manufacturer or from another
30 powersports vehicle dealer of the same line-make IN THE ORDINARY
31 COURSE OF BUSINESS within the previous twelve months;

32 **SECTION 7.** 12-6-523 (1) (i) and (1) (k), Colorado Revised
33 Statutes, are amended, and the said 12-6-523 (1) is further amended BY
34 THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to
35 read:

36 **12-6-523. Unlawful acts.** (1) It shall be unlawful and a violation



1 of this part 5 for any powersports vehicle manufacturer, distributor, or
2 manufacturer representative:

3 (i) (I) To fail to provide within twenty days to a
4 powersports vehicle dealer the list of documents and
5 information necessary to approve the sale or transfer of the
6 ownership of a dealership by sale of the business or by stock
7 transfer or the change in executive management of the
8 dealership;

9 (II) To fail to confirm within twenty days after receipt of
10 all documents and information listed in subparagraph (I) of this
11 paragraph (i) that such documentation and information has been
12 received;

13 (III) To refuse to approve, unreasonably, the sale or transfer of the
14 ownership of a dealership by sale of the business or by stock transfer
15 within sixty days after the manufacturer confirms it has
16 received all documents and information necessary to approve
17 the sale or transfer of ownership, or to refuse to approve,
18 unreasonably, the change in executive management of the dealership
19 within sixty days after the manufacturer confirms it has
20 received all information necessary to approve the change in
21 management; except that nothing in this part 5 shall authorize the sale,
22 transfer, or assignment of a franchise or a change of the principal operator
23 without the approval of the powersports vehicle manufacturer or
24 distributor unless the manufacturer or distributor fails to send
25 notice of the disapproval within sixty days after receiving the
26 request; or

27 (IV) To condition the sale, transfer, relocation, or
28 renewal of a franchise agreement or to condition sales,
29 services, parts, or finance incentives upon site control or an
30 agreement to renovate or make improvements to a facility;
31 except that voluntary acceptance of such conditions by the
32 dealer shall not constitute a violation;

33 (k) To require, coerce, or attempt to coerce any powersports
34 vehicle dealer to refrain from participation in the management of,
35 investment in, or acquisition of another line-make of new powersports
36 vehicles or related products; except that this paragraph (k) shall not apply
37 unless the powersports vehicle dealer:



1 (I) Maintains a reasonable line of credit for each make or line of
2 new powersports vehicle; and

3 (II) Remains in compliance with reasonable capital standards and
4 reasonable facilities requirements specified by the powersports vehicle
5 manufacturer; but "reasonable facilities requirements" shall not include
6 a requirement that a powersports vehicle dealer establish or maintain
7 exclusive facilities, personnel, or display space; ~~unless the requirement is~~
8 ~~justified by reasonable business considerations~~; AND

9 (III) PROVIDES WRITTEN NOTICE TO THE MANUFACTURER,
10 DISTRIBUTOR, OR MANUFACTURER'S REPRESENTATIVE, NO LESS THAN
11 NINETY DAYS PRIOR TO THE DEALER'S INTENT TO PARTICIPATE IN THE
12 MANAGEMENT OF, INVESTMENT IN, OR ACQUISITION OF ANOTHER
13 LINE-MAKE OF NEW POWERSPORTS VEHICLES OR RELATED PRODUCTS;

14 (p) TO DISCRIMINATE BETWEEN OR REFUSE TO OFFER TO ITS SAME
15 LINE-MAKE FRANCHISED DEALERS ALL MODELS MANUFACTURED FOR THAT
16 LINE-MAKE BASED UPON UNREASONABLE SALES AND SERVICE STANDARDS;

17 (q) (I) TO FAIL TO MAKE PRACTICALLY AVAILABLE AN INCENTIVE,
18 REBATE, BONUS, OR OTHER SIMILAR BENEFIT TO A POWERSPORTS VEHICLE
19 DEALER THAT IS OFFERED TO ANOTHER POWERSPORTS VEHICLE DEALER OF
20 THE SAME LINE-MAKE WITHIN THIS STATE;

21 (II) TO FAIL TO MAKE PRACTICALLY AVAILABLE AN INCENTIVE,
22 REBATE, BONUS, OR OTHER SIMILAR BENEFIT TO A POWERSPORTS VEHICLE
23 DEALER THAT IS MADE PRACTICALLY AVAILABLE TO ANOTHER
24 POWERSPORTS VEHICLE DEALER OF THE SAME LINE-MAKE IN ANOTHER
25 STATE;

26 (r) TO FAIL TO PAY TO A POWERSPORTS VEHICLE DEALER, WITHIN
27 NINETY DAYS AFTER THE TERMINATION, CANCELLATION, OR NONRENEWAL
28 OF A FRANCHISE, FOR A FAILURE OF A DEALER TO MEET PERFORMANCE
29 SALES AND SERVICE OBLIGATIONS OR AFTER THE TERMINATION,
30 CANCELLATION, OR NONRENEWAL OF A LINE-MAKE:

31 (I) THE COST OF THE LEASE FOR THE FACILITIES USED FOR THE
32 FRANCHISE AGREEMENT FOR THE UNEXPIRED TERM OF THE LEASE, NOT TO
33 EXCEED ONE YEAR; EXCEPT THAT, IF THE POWERSPORTS VEHICLE DEALER
34 OWNS THE FACILITIES, THE VALUE OF RENTING SUCH FACILITIES FOR ONE
35 YEAR, PRORATED FOR EACH LINE-MAKE BASED UPON TOTAL SALES
36 VOLUME FOR THE PREVIOUS TWELVE MONTHS BEFORE THE INVOLUNTARY



1 TERMINATION; AND

2 (II) THE FAIR MARKET VALUE OF THE POWERSPORTS VEHICLE
3 DEALER'S GOODWILL PRIOR TO TERMINATION AS DETERMINED BY AN
4 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, NOT INCLUDING ANY
5 AMOUNTS PAID UNDER SUBPARAGRAPHS (I) TO (V) OF PARAGRAPH (I) OF
6 THIS SUBSECTION (1); AND

7 (s) TO CONDITION A FRANCHISE AGREEMENT ON IMPROVEMENTS
8 TO A FACILITY UNLESS REASONABLY REQUIRED BY THE TECHNOLOGY OF
9 A POWERSPORTS VEHICLE BEING SOLD AT THE FACILITY.

10 SECTION 8. 12-6-524, Colorado Revised Statutes, is amended
11 BY THE ADDITION OF A NEW SUBSECTION to read:

12 **12-6-524. New, reopened, or relocated dealer - notice required**
13 **- grounds for refusal of dealer license - definitions - rules. (1.5) A**
14 **POWERSPORTS VEHICLE MANUFACTURER SHALL REASONABLY APPROVE OR**
15 **DISAPPROVE OF A POWERSPORTS VEHICLE DEALER FACILITY INITIAL SITE**
16 **LOCATION OR RELOCATION REQUEST WITHIN SIXTY DAYS AFTER THE**
17 **REQUEST OR AFTER SENDING THE NOTICE REQUIRED BY SUBSECTION (1) OF**
18 **THIS SECTION TO ALL OF ITS FRANCHISED POWERSPORTS VEHICLE DEALERS,**
19 **WHICHEVER IS LATER, BUT NOT TO EXCEED ONE HUNDRED DAYS.**

20 SECTION 9. 12-6-525 (1) and (2) (a), Colorado Revised Statutes,
21 are amended to read:

22 **12-6-525. Independent control of dealer - definitions.**
23 (1) Except as otherwise provided in this section, no powersports vehicle
24 manufacturer shall own, operate, or control a ANY powersports vehicle
25 dealer OR USED POWERSPORTS VEHICLE DEALER in Colorado.

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

28 (a) Operation of a powersports vehicle dealer for a temporary
29 period, not to exceed ~~two years~~ TWELVE MONTHS, during the transition
30 from one owner or operator to another; EXCEPT THAT THE EXECUTIVE
31 DIRECTOR MAY EXTEND THE PERIOD, NOT TO EXCEED TWENTY-FOUR
32 MONTHS, UPON SHOWING THE MANUFACTURER OR DISTRIBUTOR OF THE
33 NEED TO OPERATE THE DEALERSHIP FOR SUCH TIME TO ACHIEVE A
34 TRANSITION FROM AN OWNER OR OPERATOR TO ANOTHER INDEPENDENT
35 THIRD-PARTY OWNER OR OPERATOR;



1 **SECTION 10.** Part 5 of article 6 of title 12, Colorado Revised
2 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
3 SECTIONS to read:

4 **12-6-526.5. Audit reimbursement limitations - dealer claims.**

5 (1) (a) A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
6 REPRESENTATIVE SHALL HAVE THE RIGHT TO AUDIT WARRANTY, SALES, OR
7 INCENTIVE CLAIMS OF A POWERSPORTS VEHICLE DEALER FOR FIFTEEN
8 MONTHS AFTER THE DATE THE CLAIM WAS SUBMITTED.

9 (b) A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
10 REPRESENTATIVE SHALL NOT REQUIRE DOCUMENTATION FOR WARRANTY,
11 SALES, OR INCENTIVE CLAIMS OR AUDIT WARRANTY, SALES, OR INCENTIVE
12 CLAIMS OF A POWERSPORTS VEHICLE DEALER MORE THAN TWENTY-FOUR
13 MONTHS AFTER THE DATE THE CLAIM WAS SUBMITTED, NOR SHALL THE
14 MANUFACTURER REQUIRE A CHARGE BACK, REIMBURSEMENT, OR CREDIT
15 AGAINST A FUTURE TRANSACTION ARISING OUT OF AN AUDIT OR REQUEST
16 FOR DOCUMENTATION ARISING MORE THAN FIFTEEN MONTHS AFTER THE
17 DATE THE CLAIM WAS SUBMITTED.

18 (2) THE POWERSPORTS VEHICLE DEALER SHALL HAVE FIFTEEN
19 MONTHS AFTER MAKING A SALE OR PROVIDING SERVICE TO SUBMIT
20 WARRANTY, SALES, OR INCENTIVE CLAIMS TO THE MANUFACTURER,
21 DISTRIBUTOR, OR MANUFACTURER'S REPRESENTATIVE.

22 (3) SUBSECTION (1) OF THIS SECTION SHALL NOT LIMIT ANY ACTION
23 FOR FRAUD INSTITUTED IN A COURT OF COMPETENT JURISDICTION.

24 (4) A POWERSPORTS VEHICLE DEALER MAY REQUEST A
25 DETERMINATION FROM THE EXECUTIVE DIRECTOR, WITHIN THIRTY DAYS,
26 THAT A CHARGE BACK, REIMBURSEMENT, OR CREDIT REQUIRED VIOLATES
27 SUBSECTION (1) OF THIS SECTION. IF A DETERMINATION IS REQUESTED
28 WITHIN THE THIRTY-DAY PERIOD THEN THE CHARGE BACK,
29 REIMBURSEMENT, OR CREDIT SHALL BE STAYED PENDING THE DECISION OF
30 THE EXECUTIVE DIRECTOR. IF THE EXECUTIVE DIRECTOR DETERMINES
31 AFTER A HEARING THAT THE CHARGE BACK, REIMBURSEMENT, OR CREDIT
32 VIOLATES SUBSECTION (1) OF THIS SECTION, THE CHARGE BACK,
33 REIMBURSEMENT, OR CREDIT SHALL BE VOID.

34 **12-6-526.7. Reimbursement for disapproving sale.** A
35 MANUFACTURER OR DISTRIBUTOR SHALL PAY REASONABLE ATTORNEY
36 FEES, NOT TO EXCEED THE USUAL AND CUSTOMARY FEES CHARGED FOR
37 THE TRANSFER OF A FRANCHISE, AND REASONABLE EXPENSES THAT ARE



1 INCURRED BY THE PROPOSED OWNER OR TRANSFEREE BEFORE THE
2 MANUFACTURER OR DISTRIBUTOR EXERCISED ITS RIGHT OF FIRST REFUSAL
3 IN NEGOTIATING AND IMPLEMENTING THE CONTRACT FOR THE PROPOSED
4 CHANGE OF OWNERSHIP OR THE TRANSFER OF ASSETS. PAYMENT OF
5 ATTORNEY FEES AND EXPENSES IS NOT REQUIRED IF THE CLAIMANT HAS
6 FAILED TO SUBMIT AN ACCOUNTING OF ATTORNEY FEES AND EXPENSES
7 WITHIN TWENTY DAYS AFTER THE RECEIPT OF THE MANUFACTURER'S OR
8 DEALER'S WRITTEN REQUEST FOR AN ACCOUNTING. AN EXPENSE
9 ACCOUNTING MAY BE REQUESTED BY THE MANUFACTURER OR
10 DISTRIBUTOR BEFORE EXERCISING ITS RIGHT OF FIRST REFUSAL.

11 **SECTION 11. Effective date.** This act shall take effect July 1,
12 2009.

13 **SECTION 12. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety."

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