

SB298_L.030

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Business Affairs and Labor.

SB17-298 be amended as follows:

1 Amend reengrossed bill, page 5, strike line 20 and substitute "(1)
2 introductory portion, (1)(b), (1)(c), (1.5), and (3)(b); **repeal** (1)(d), (3)(c),
3 (4), and (5); and".

4 Page 6, after line 6 insert:

5 " (b) The date on or after which the manufacturer intends to be
6 engaged in business with the additional, reopened, or relocated motor
7 vehicle dealer at the proposed location; AND

8 (c) The identity of all motor vehicle dealers who are franchised to
9 sell the same line-make of vehicles with licensed locations in the relevant
10 market area where the additional, reopened, or relocated motor vehicle
11 dealer is proposed to be located. and

12 ~~(d) The names and addresses of the dealer-operator and principal~~
13 ~~investors in the proposed additional, reopened, or relocated motor vehicle~~
14 ~~dealer."~~

15 Page 18, after line 4 insert:

16 "SECTION 5. In Colorado Revised Statutes, 12-6-523, **amend**
17 (1)(w); and **add** (1)(x), (1)(y), and (1)(z) as follows:

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

21 (w) To require, coerce, or attempt to coerce a powersports dealer
22 to substantially alter a facility or premises if the facility or premises has
23 been altered within the last seven TEN years at a cost of more than
24 twenty-five thousand dollars, and the alteration was required and
25 approved by the manufacturer, distributor, or manufacturer representative;
26 except that this paragraph ~~(w)~~ SUBSECTION (1)(w) does not apply to
27 improvements made to comply with health or safety laws or to
28 accommodate the technology requirements necessary to sell or service a
29 line-make;

30 (x) (I) TO SELL OR OFFER TO SELL NEW POWERSPORTS VEHICLES TO
31 A FRANCHISED MOTOR VEHICLE DEALER WITH WHOM THE MANUFACTURER
32 HAS A FRANCHISE AGREEMENT AT A LOWER ACTUAL PRICE THAN THE
33 ACTUAL PRICE OFFERED TO ANY OTHER POWERSPORTS VEHICLE DEALER
34 WITH WHOM THE MANUFACTURER HAS A FRANCHISE AGREEMENT FOR THE



1 SAME MOTOR VEHICLE SIMILARLY EQUIPPED; EXCEPT THAT THIS
2 SUBSECTION (1)(x) DOES NOT APPLY TO:

3 (A) RESALE TO ANY GOVERNMENT;

4 (B) DONATION OR USE BY THE DEALER IN A DRIVER EDUCATION
5 COURSE; OR

6 (C) A PRICE CHANGE MADE IN THE ORDINARY COURSE OF BUSINESS
7 IF MADE AVAILABLE TO ALL POWERSPORTS VEHICLE DEALERS WHEN THE
8 PRICE CHANGES.

9 (II) THIS SUBSECTION (1)(x) DOES NOT PROHIBIT A
10 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
11 FROM OFFERING INCENTIVE PROGRAMS, SALES-PROMOTION PLANS, OR
12 OTHER DISCOUNTS IF THE INCENTIVES OR DISCOUNTS ARE REASONABLY
13 AVAILABLE TO ALL POWERSPORTS VEHICLE DEALERS WITH WHOM THE
14 MANUFACTURER HAS A FRANCHISE AGREEMENT.

15 (y) TO REQUIRE A POWERSPORTS VEHICLE DEALER TO GRANT A
16 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE THE
17 FOLLOWING OR TO ENFORCE THE FOLLOWING IF THE EXERCISE OF THE
18 CONTRACTUAL RIGHT WOULD STOP THE TRANSFER OF THE POWERSPORTS
19 VEHICLE DEALER OWNERSHIP FROM AN OWNER TO AN IMMEDIATE FAMILY
20 MEMBER OF THE OWNER:

21 (I) A RIGHT OF FIRST REFUSAL TO PURCHASE THE POWERSPORTS
22 VEHICLE DEALER; OR

23 (II) AN OPTION TO PURCHASE THE POWERSPORTS VEHICLE DEALER;

24 (z) (I) TO USE AN UNREASONABLE, ARBITRARY, OR UNFAIR
25 PERFORMANCE STANDARD IN DETERMINING A POWERSPORTS VEHICLE
26 DEALER'S COMPLIANCE WITH A FRANCHISE AGREEMENT; OR

27 (II) TO FAIL TO COMMUNICATE, UPON THE REQUEST OF THE
28 DEALER, ANY PERFORMANCE STANDARD IN A CLEAR AND CONCISE WRITING
29 TO A POWERSPORTS VEHICLE DEALER BEFORE APPLYING THE STANDARD TO
30 THE POWERSPORTS VEHICLE DEALER.

31 **SECTION 6.** In Colorado Revised Statutes, 12-6-524, amend (1)
32 introductory portion, (1)(b), (1)(c), (1.5), and (3)(b)(II); repeal (1)(d),
33 (3)(c), (4), and (5); and add (6) as follows:

34 **12-6-524. New, reopened, or relocated dealer - notice required**
35 **- grounds for refusal of dealer license - definitions - rules.** (1) No
36 powersports vehicle manufacturer or distributor shall establish an
37 additional new powersports vehicle dealer, reopen a previously existing
38 powersports vehicle dealer, or relocate AUTHORIZE an existing
39 powersports vehicle dealer without first providing at least sixty days'
40 notice to all of its franchised dealers and former dealers whose franchises
41 were terminated, cancelled, or not renewed by a manufacturer, distributor,



1 ~~or manufacturer representative in the previous five years due to the~~
2 ~~insolvency of the manufacturer or distributor within whose relevant~~
3 ~~market area the new, reopened, or relocated dealer would be located. The~~
4 ~~notice shall~~ MUST state:

5 (b) The date on or after which the powersports vehicle
6 manufacturer intends to be engaged in business with the additional,
7 reopened, or relocated powersports vehicle dealer at the proposed
8 location; AND

9 (c) The identity of all powersports vehicle dealers who are
10 franchised to sell the same line-make of vehicles with licensed locations
11 in the relevant market area where the additional, reopened, or relocated
12 powersports vehicle dealer is proposed to be located. and

13 (d) ~~The names and addresses of the dealer and principal investors~~
14 ~~in the proposed additional, reopened, or relocated powersports vehicle~~
15 ~~dealer.~~

16 (1.5) A powersports vehicle manufacturer shall reasonably
17 approve or disapprove of a powersports vehicle dealer facility initial site
18 location, or relocation, OR REOPENING request within sixty days after the
19 request or after sending the notice required by subsection (1) of this
20 section to all of its franchised powersports vehicle dealers and former
21 dealers whose franchises were terminated, cancelled, or not renewed in
22 the previous five years due to the insolvency of the manufacturer or
23 distributor, whichever is later, but not to exceed one hundred days
24 WHICHEVER IS LATER.

25 (3) As used in this section:

26 (b) "Relevant market area" means the greater of the following:

27 (II) The geographic area within a radius of ~~five~~ TEN miles of any
28 existing dealer of the same line-make of powersports vehicle that is
29 located in a county with a population of more than one hundred fifty
30 thousand or within a radius of ten miles of an existing dealer of the same
31 line-make of vehicles that is located in a county with a population of one
32 hundred fifty thousand or less AS THE PROPOSED ADDITIONAL MOTOR
33 VEHICLE DEALER.

34 (c) "Right of first refusal area" means a five-mile radius extending
35 from the location of where a powersports vehicle dealer had a franchise
36 terminated, cancelled, or not renewed if the franchise was in a county
37 with a population of more than one hundred fifty thousand or a ten-mile
38 radius if the franchise was in a county with a population of one hundred
39 fifty thousand or less.

40 (4) (a) ~~If a licensee or former licensee whose franchise was~~
41 ~~terminated, cancelled, or not renewed by the manufacturer, distributor, or~~

1 manufacturer representative in the previous five years due to the
2 insolvency of the manufacturer or distributor brings an action or
3 proceeding before the executive director or a court pursuant to this part
4 5, the powersports vehicle manufacturer shall have the burden of proof
5 on the following issues:

6 (I) ~~The size and permanency of investment and obligations~~
7 ~~incurred by the existing powersports vehicle dealers of the same~~
8 ~~line-make located in the relevant market area;~~

9 (II) ~~Growth or decline in population in the relevant market area;~~

10 (III) ~~The effect on the consuming public in the relevant market~~
11 ~~area and whether the opening of the proposed additional, reopened, or~~
12 ~~relocated dealer is injurious or beneficial to the public welfare; and~~

13 (IV) ~~Whether the powersports vehicle dealers of the same~~
14 ~~line-make in the relevant market area are providing adequate and~~
15 ~~convenient customer care for powersports vehicles of the same line-make~~
16 ~~in the relevant market area, including but not limited to the adequacy of~~
17 ~~sales and service facilities, equipment, parts, and qualified service~~
18 ~~personnel.~~

19 (b) (I) ~~In addition to the powers specified in section 12-6-505, the~~
20 ~~executive director has jurisdiction to resolve actions or proceedings~~
21 ~~brought before the executive director pursuant to this part 5 that allege a~~
22 ~~violation of this part 5 or rules promulgated pursuant to this part 5. The~~
23 ~~executive director may promulgate rules to facilitate the administration~~
24 ~~of the actions or proceedings, including provisions specifying procedures~~
25 ~~for the executive director or the executive director's designee to:~~

26 (A) ~~Conduct an investigation pursuant to section 12-6-505 (1)(e)~~
27 ~~and (1)(f) of an alleged violation of this part 5 or rules promulgated~~
28 ~~pursuant to this part 5, including issuance of a notice of violation;~~

29 (B) ~~Hold a hearing regarding the alleged violation to be held~~
30 ~~pursuant to section 24-4-105, C.R.S.;~~

31 (C) ~~Issue an order, including a cease-and-desist order issued~~
32 ~~pursuant to section 12-6-505 (1)(h), to resolve the notice of violation; and~~

33 (D) ~~Impose a fine pursuant to section 12-6-505 (1)(h)(III).~~

34 (II) ~~The court of appeals has initial jurisdiction to review all final~~
35 ~~actions and orders that are subject to judicial review of the executive~~
36 ~~director made pursuant to this subsection (4). The proceedings shall be~~
37 ~~conducted in accordance with section 24-4-106, C.R.S.~~

38 (5) (a) ~~No manufacturer, distributor, or manufacturer~~
39 ~~representative shall offer or award a person a franchise or permit the~~
40 ~~relocation of an existing franchise to the relevant right of first refusal area~~
41 ~~unless the manufacturer, distributor, or manufacturer representative has~~

1 complied with paragraph (b) of this subsection (5) or unless paragraph (b)
2 of this subsection (5) does not apply:

3 ~~(b) If a manufacturer, distributor, or manufacturer representative,
4 or the predecessor thereof, has terminated, cancelled, or not renewed a
5 powersports vehicle dealer's franchise for a line-make within the relevant
6 right of first refusal area on account of the insolvency of the manufacturer
7 or distributor that was held by the powersports vehicle dealer immediately
8 prior to the franchise being terminated, cancelled, or not renewed within
9 the amount of time the right of first refusal is granted under paragraph (c)
10 of this subsection (5), the manufacturer, distributor, or manufacturer
11 representative, or the successor thereof, shall offer the former
12 powersports vehicle dealer whose franchise was terminated, cancelled, or
13 not renewed a franchise within the same first refusal area prior to making
14 the offer to any other person for the same line-make unless the former
15 powersports vehicle dealer elects to receive the payments required by
16 section 12-6-523 (1)(i) and (1)(r) in lieu of the right of first refusal or the
17 powersports vehicle dealer has accepted compensation from the
18 manufacturer, distributor, or manufacturer representative for the
19 termination, cancellation, or nonrenewal of the franchise agreement.~~

20 ~~(c) The duration of the right of first refusal granted in paragraph
21 (b) of this subsection (5) is equal to five years after the franchise is
22 terminated, cancelled, or not renewed.~~

23 ~~(d) If a manufacturer, distributor, or manufacturer representative,
24 or the predecessor thereof, has made any payment to the powersports
25 vehicle dealer in consideration for the termination, cancellation, or
26 nonrenewal of a franchise agreement and the powersports vehicle dealer
27 obtains a new franchise agreement through this subsection (5), the
28 powersports vehicle dealer shall reimburse the manufacturer, distributor,
29 or manufacturer representative for such payments. The powersports
30 vehicle dealer may reimburse the manufacturer, distributor, or
31 manufacturer representative with a commercially reasonable repayment
32 installment plan.~~

33 ~~(e) The right of first refusal survives a court voiding the payments
34 required by section 12-6-523 (1)(i) and (1)(r).~~

35 ~~(f) (I) The right of first refusal survives a manufacturer,
36 distributor, or manufacturer representative, or predecessor thereof,
37 awarding a franchise within the same right of first refusal area for the
38 same line-make to a person or entity other than the former powersports
39 vehicle dealer whose franchise was terminated, cancelled, or not renewed.~~

40 ~~(II) If a manufacturer, distributor, or manufacturer representative,
41 or predecessor thereof, has awarded the franchise to another powersports~~

1 vehicle dealer in the same right of first refusal area without granting the
2 right of first refusal under this section; the former powersports vehicle
3 dealer may elect to either receive a franchise agreement in the same area
4 or the payments required by section 12-6-523 (1)(l) and (1)(r) from the
5 manufacturer, distributor, or manufacturer representative unless the
6 manufacturer, distributor, or manufacturer representative, or predecessor
7 thereof, has paid compensation in consideration of the initial termination,
8 cancellation, or nonrenewal of the franchise agreement.

9 (6) (a) AN EXISTING POWERSPORTS VEHICLE DEALER ADVERSELY
10 AFFECTED BY THE REOPENING OR RELOCATION OF AN EXISTING SAME
11 LINE-MAKE POWERSPORTS VEHICLE DEALER OR THE ADDITION OF A SAME
12 LINE-MAKE POWERSPORTS VEHICLE DEALER MAY, WITHIN NINETY DAYS
13 AFTER RECEIPT OF THE NOTICE REQUIRED IN SUBSECTION (1) OF THIS
14 SECTION, FILE A LEGAL ACTION IN A DISTRICT COURT OF COMPETENT
15 JURISDICTION OR FILE AN ADMINISTRATIVE COMPLAINT WITH THE
16 EXECUTIVE DIRECTOR TO PREVENT OR ENJOIN THE RELOCATION,
17 REOPENING, OR ADDITION OF THE PROPOSED POWERSPORTS VEHICLE
18 DEALER. AN EXISTING POWERSPORTS VEHICLE DEALER IS ADVERSELY
19 AFFECTED IF:

20 (I) THE DEALER IS LOCATED WITHIN THE RELEVANT MARKET AREA
21 OF THE PROPOSED RELOCATED, REOPENED, OR ADDITIONAL DEALERSHIP
22 DESCRIBED IN THE NOTICE REQUIRED IN SUBSECTION (1); OR

23 (II) THE EXISTING DEALER OR DEALERS OF THE SAME LINE-MAKE
24 SHOW THAT, DURING ANY TWELVE-MONTH PERIOD WITHIN THE THIRTY-SIX
25 MONTHS PRECEDING THE RECEIPT OF THE NOTICE REQUIRED IN SUBSECTION
26 (1), THE DEALER OR DEALERS, OR A DEALER'S PREDECESSOR, MADE AT
27 LEAST TWENTY-FIVE PERCENT OF THE DEALER'S RETAIL SALES OF NEW
28 POWERSPORTS VEHICLES TO PERSONS WHOSE ADDRESSES ARE LOCATED
29 WITHIN TEN MILES OF THE LOCATION OF THE PROPOSED RELOCATED,
30 REOPENED, OR ADDITIONAL DEALERSHIP.

31 (b) THE EXECUTIVE DIRECTOR SHALL REFER A COMPLAINT FILED
32 UNDER THIS SECTION TO AN ADMINISTRATIVE LAW JUDGE IN THE OFFICE OF
33 ADMINISTRATIVE COURTS FOR FINAL AGENCY ACTION.

34 (c) IN ANY COURT OR ADMINISTRATIVE ACTION, THE
35 MANUFACTURER HAS THE BURDEN OF PROOF ON EACH OF THE FOLLOWING
36 ISSUES:

37 (I) THE CHANGE IN POPULATION;

38 (II) THE RELEVANT VEHICLE BUYER PROFILES;

39 (III) THE RELEVANT HISTORICAL NEW POWERSPORTS VEHICLE
40 REGISTRATIONS FOR THE LINE-MAKE OF VEHICLES VERSUS THE
41 MANUFACTURER'S ACTUAL COMPETITORS IN THE RELEVANT MARKET

1 AREA;

2 (IV) WHETHER THE OPENING OF THE PROPOSED REOPENED,
3 RELOCATED, OR ADDITIONAL POWERSPORTS VEHICLE DEALER IS
4 MATERIALLY BENEFICIAL TO THE PUBLIC INTEREST, THE CONSUMERS, OR
5 EXISTING SAME LINE-MAKE DEALERS IN THE RELEVANT MARKET AREA;

6 (V) WHETHER THE POWERSPORTS VEHICLE DEALERS OF THE SAME
7 LINE-MAKE IN THE RELEVANT MARKET AREA ARE PROVIDING ADEQUATE
8 REPRESENTATION AND CONVENIENT CUSTOMER CARE, INCLUDING THE
9 ADEQUACY OF SALES AND SERVICE FACILITIES, EQUIPMENT, PARTS, AND
10 QUALIFIED SERVICE PERSONNEL, FOR POWERSPORTS VEHICLES OF THE
11 SAME LINE-MAKE IN THE RELEVANT MARKET AREA;

12 (VI) THE REASONABLY EXPECTED MARKET PENETRATION OF THE
13 LINE-MAKE, GIVEN THE FACTORS AFFECTING PENETRATION; AND

14 (VII) WHETHER THE REOPENED, RELOCATED, OR ADDITIONAL
15 DEALERSHIP IS REASONABLE AND JUSTIFIABLE BASED ON EXPECTED
16 ECONOMIC AND MARKET CONDITIONS WITHIN THE RELEVANT MARKET
17 AREA.

18 (d) IN ANY COURT OR ADMINISTRATIVE ACTION, THE POWERSPORTS
19 VEHICLE DEALER HAS THE BURDEN OF PROOF ON EACH OF THE FOLLOWING
20 ISSUES:

21 (I) WHETHER THE MANUFACTURER ENGAGED IN ANY ACTION OR
22 OMISSION THAT, DIRECTLY OR INDIRECTLY, DENIED THE EXISTING
23 POWERSPORTS VEHICLE DEALER OF THE SAME LINE-MAKE THE
24 OPPORTUNITY FOR REASONABLE GROWTH OR MARKET EXPANSION;

25 (II) WHETHER THE MANUFACTURER HAS COERCED OR ATTEMPTED
26 TO COERCE ANY EXISTING POWERSPORTS VEHICLE DEALER INTO
27 CONSENTING TO ADDITIONAL OR RELOCATED FRANCHISES OF THE SAME
28 LINE-MAKE IN THE COMMUNITY OR TERRITORY OR RELEVANT MARKET
29 AREA; AND

30 (III) THE SIZE AND PERMANENCY OF THE INVESTMENT OF, AND THE
31 OBLIGATIONS INCURRED BY, THE EXISTING POWERSPORTS VEHICLE
32 DEALERS OF THE SAME LINE-MAKE LOCATED IN THE RELEVANT MARKET
33 AREA.

34 (e) (I) IN A LEGAL OR ADMINISTRATIVE ACTION CHALLENGING THE
35 RELOCATION, REOPENING, OR ADDITION OF A POWERSPORTS VEHICLE
36 DEALER, THE DISTRICT COURT OR ADMINISTRATIVE LAW JUDGE SHALL
37 MAKE A DETERMINATION, BASED ON THE FACTORS IDENTIFIED IN
38 SUBSECTIONS (6)(c) AND (6)(d) OF THIS SECTION, OF WHETHER THE
39 RELOCATION, REOPENING, OR ADDITION OF A POWERSPORTS VEHICLE
40 DEALER IS:

41 (A) IN THE PUBLIC INTEREST; AND

1 (B) FAIR AND EQUITABLE TO THE EXISTING POWERSPORTS VEHICLE
2 DEALERS.

3 (II) THE DISTRICT COURT OR THE EXECUTIVE DIRECTOR SHALL
4 DENY ANY PROPOSED RELOCATION, REOPENING, OR ADDITION OF A
5 POWERSPORTS VEHICLE DEALER UNLESS THE MANUFACTURER SHOWS BY
6 A PREPONDERANCE OF THE EVIDENCE THAT THE EXISTING POWERSPORTS
7 VEHICLE DEALER OR DEALERS OF THE SAME LINE-MAKE IN THE RELEVANT
8 MARKET AREA OF THE PROPOSED DEALERSHIP ARE NOT PROVIDING
9 ADEQUATE REPRESENTATION OF THE LINE-MAKE POWERSPORTS VEHICLES.
10 A DETERMINATION TO DENY, PREVENT, OR ENJOIN THE RELOCATION,
11 REOPENING, OR ADDITION OF A POWERSPORTS VEHICLE DEALER IS
12 EFFECTIVE FOR AT LEAST EIGHTEEN MONTHS.

13 SECTION 7. In Colorado Revised Statutes, amend 12-6-537 as
14 follows:

15 12-6-537. Termination appeal. (1) A powersports vehicle dealer
16 who has reason to believe that a manufacturer, distributor, or
17 manufacturer representative has violated section 12-6-523 (1)(d) or (1)(v)
18 may appeal to the board by filing a complaint with:

- 19 (a) The executive director; OR
20 (b) A DISTRICT COURT IF NEITHER THE EXECUTIVE DIRECTOR NOR
21 THE ADMINISTRATIVE LAW JUDGE, APPOINTED IN ACCORDANCE WITH THIS
22 SECTION, HOLDS A HEARING CONCERNING THE COMPLAINT WITHIN SIXTY
23 DAYS AFTER THE COMPLAINT WAS FILED.

24 (2) Upon receiving the FILING A VERIFIED complaint and upon a
25 showing of specific facts that a violation has occurred, the executive
26 director shall summarily issue a cease-and-desist order under section
27 ~~12-6-505 (1)(h)~~ ALLEGING WITH SPECIFIC FACTS THAT A
28 VIOLATION HAS OCCURRED UNDER THIS SECTION, the termination,
29 elimination, modification, or nonrenewal of the franchise agreement IS
30 AUTOMATICALLY STAYED, WITHOUT THE MOTOR VEHICLE DEALER POSTING
31 A BOND, UNTIL A FINAL DETERMINATION IS MADE ON EACH ISSUE RAISED
32 IN THE COMPLAINT; EXCEPT THAT THE EXECUTIVE DIRECTOR,
33 ADMINISTRATIVE LAW JUDGE, OR COURT MAY CANCEL THE STAY UPON
34 FINDING THAT THE CANCELLATION, TERMINATION, OR NONRENEWAL OF
35 THE FRANCHISE AGREEMENT WAS FOR ANY OF THE REASONS SPECIFIED IN
36 SECTION 12-6-120 (1)(d)(III). THE AUTOMATIC STAY MAINTAINS ALL
37 RIGHTS UNDER THE FRANCHISE AGREEMENT UNTIL THE FINAL
38 DETERMINATION OF THE ISSUES RAISED IN THE VERIFIED COMPLAINT. THE
39 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
40 SHALL NOT NAME A REPLACEMENT MOTOR VEHICLE DEALER FOR THE
41 MARKET OR LOCATION UNTIL A FINAL ORDER IS ENTERED.



1 (3) ~~The cease-and-desist order remains in effect until the hearing~~
2 ~~required by section 12-6-505 (1)(h) is held. If a determination is made at~~
3 ~~the hearing required by section 12-6-505 (1)(h) that a violation occurred,~~
4 ~~the executive director shall make the cease-and-desist order permanent~~
5 ~~and take any actions authorized by section 12-6-504 (1). A motor vehicle~~
6 ~~dealer who appeals to the executive director maintains all rights under the~~
7 ~~franchise agreement until the later of the executive director issuing a~~
8 ~~decision or ninety days after the manufacturer, distributor, or~~
9 ~~manufacturer's representative provides the notice of termination unless~~
10 ~~the executive director finds that the termination, cancellation, or~~
11 ~~nonrenewal was for fraud, a misrepresentation, or committing a crime~~
12 ~~within the scope of the franchise agreement or in the operation of the~~
13 ~~dealership, in which case the franchise rights terminate immediately~~ IF A
14 VERIFIED COMPLAINT IS FILED WITH THE EXECUTIVE DIRECTOR, THE
15 EXECUTIVE DIRECTOR SHALL REFER THE COMPLAINT TO AN
16 ADMINISTRATIVE LAW JUDGE WITH THE OFFICE OF ADMINISTRATIVE
17 COURTS FOR FINAL AGENCY ACTION.

18 (4) IN RESOLVING A TERMINATION COMPLAINT, THE
19 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE HAS
20 THE BURDEN OF PROVING ANY CLAIM MADE THAT THE FACTORS LISTED IN
21 SECTION 12-6-523 (1)(d)(II) APPLY TO THE TERMINATION, CANCELLATION,
22 OR NONRENEWAL.

23 (5) THE PREVAILING PARTY IN A CLAIM THAT A TERMINATION,
24 CANCELLATION, OR NONRENEWAL VIOLATES SECTION 12-6-523 (1)(d) OR
25 (1)(v) IS ENTITLED TO RECOVER ATTORNEY FEES AND COSTS, INCLUDING
26 EXPERT WITNESS FEES, INCURRED IN THE TERMINATION PROTEST.

27 **SECTION 8.** In Colorado Revised Statutes, add 12-6-538 as
28 follows:

29 **12-6-538. Stop-sale directives - used powersports vehicles -**
30 **definition.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
31 OTHERWISE REQUIRES:

32 (a) "AVERAGE TRADE-IN VALUE" MEANS THE VALUE OF A USED
33 POWERSPORTS VEHICLE AS ESTABLISHED BY A GENERALLY ACCEPTED,
34 PUBLISHED, THIRD-PARTY USED VEHICLE RESOURCE.

35 (b) "STOP-SALE DIRECTIVE" MEANS AN UNCONDITIONAL DIRECTIVE
36 FROM A MANUFACTURER OR DISTRIBUTOR TO A POWERSPORTS VEHICLE
37 DEALER TO STOP SELLING A TYPE OF POWERSPORTS VEHICLE
38 MANUFACTURED BY THE MANUFACTURER OR DISTRIBUTED BY THE
39 DISTRIBUTOR BECAUSE OF A SAFETY DEFECT.

40 (2) THE MANUFACTURER OR DISTRIBUTOR SHALL REIMBURSE A
41 POWERSPORTS VEHICLE DEALER IN ACCORDANCE WITH SUBSECTION (3) OF



1 THIS SECTION IF:

2 (a) THE MANUFACTURER OR DISTRIBUTOR ISSUES A STOP-SALE
3 DIRECTIVE FOR A POWERSPORTS VEHICLE MANUFACTURED OR
4 DISTRIBUTED BY THE ISSUER OF THE STOP-SALE DIRECTIVE;

5 (b) THE POWERSPORTS VEHICLE DEALER HOLDS AN ACTIVE SALES,
6 SERVICE, AND PARTS AGREEMENT WITH THE MANUFACTURER OR
7 DISTRIBUTOR FOR THE LINE-MAKE OF THE USED POWERSPORTS VEHICLE
8 COVERED BY THE STOP-SALE DIRECTIVE;

9 (c) THE USED POWERSPORTS VEHICLE COVERED BY THE STOP-SALE
10 DIRECTIVE IS HELD IN THE INVENTORY OF THE POWERSPORTS VEHICLE
11 DEALER ON THE DATE THE STOP-SALE DIRECTIVE IS ISSUED OR TAKEN BY
12 THE DEALER AS A TRADE-IN VEHICLE ON A CONSUMER PURCHASE OF THE
13 SAME LINE-MAKE; AND

14 (d) THE MANUFACTURER OR DISTRIBUTOR HAS NOT PROVIDED A
15 REMEDY PROCEDURE OR MADE PARTS AVAILABLE TO REPAIR THE USED
16 POWERSPORTS VEHICLE FOR MORE THAN THIRTY DAYS AFTER THE
17 STOP-SALE DIRECTIVE WAS ISSUED.

18 (3) IF THE CONDITIONS IN SUBSECTION (2) OF THIS SECTION ARE
19 MET, THE MANUFACTURER OR DISTRIBUTOR SHALL, UPON APPLICATION BY
20 THE POWERSPORTS VEHICLE DEALER, PAY OR CREDIT THE DEALER ONE AND
21 ONE-HALF PERCENT PER MONTH OF THE AVERAGE TRADE-IN VALUE OF
22 EACH USED POWERSPORTS VEHICLE'S MODEL AFFECTED BY THE STOP-SALE
23 DIRECTIVE PRORATED FROM THIRTY DAYS AFTER THE STOP-SALE
24 DIRECTIVE WAS ISSUED TO THE EARLIER OF:

25 (a) THE DATE WHEN THE MANUFACTURER OR DISTRIBUTOR
26 PROVIDES THE POWERSPORTS VEHICLE DEALER WITH A REMEDY
27 PROCEDURE AND ANY NECESSARY PARTS FOR ORDERING TO REPAIR THE
28 USED POWERSPORTS VEHICLE; OR

29 (b) THE DATE THE POWERSPORTS VEHICLE DEALER TRANSFERS THE
30 POWERSPORTS VEHICLE.

31 (4) A MANUFACTURER OR DISTRIBUTOR MAY DETERMINE THE
32 REASONABLE MANNER AND METHOD REQUIRED FOR A POWERSPORTS
33 VEHICLE DEALER TO DEMONSTRATE THE INVENTORY STATUS OF A USED
34 POWERSPORTS VEHICLE TO DETERMINE ELIGIBILITY FOR REIMBURSEMENT.

35 (5) (a) THIS SECTION APPLIES ONLY TO USED POWERSPORTS
36 VEHICLES.

37 (b) THIS SECTION IS NOT INTENDED TO PREVENT A MANUFACTURER
38 OR DISTRIBUTOR FROM REQUIRING THAT A POWERSPORTS VEHICLE NOT BE
39 SUBJECT TO AN OPEN RECALL OR STOP-SALE DIRECTIVE AS A CONDITION
40 FOR THE POWERSPORTS VEHICLE TO BE QUALIFIED OR SOLD AS A CERTIFIED
41 PREOWNED VEHICLE OR SUBSTANTIALLY SIMILAR DESIGNATION.



1 (c) THIS SECTION DOES NOT REQUIRE A MANUFACTURER OR
2 DISTRIBUTOR TO PROVIDE TOTAL COMPENSATION TO A POWERSPORTS
3 VEHICLE DEALER THAT WOULD EXCEED THE TOTAL AVERAGE WHOLESAL
4 VALUATION OF THE AFFECTED USED POWERSPORTS VEHICLE.

5 (d) THIS SECTION DOES NOT PRECLUDE A POWERSPORTS VEHICLE
6 DEALER AND A MANUFACTURER OR DISTRIBUTOR FROM AGREEING TO
7 REIMBURSEMENT TERMS THAT DIFFER FROM THOSE SPECIFIED IN THIS
8 SECTION.

9 (e) COMPENSATION PROVIDED TO A POWERSPORTS VEHICLE
10 DEALER UNDER THIS SECTION IS EXCLUSIVE AND MAY NOT BE COMBINED
11 WITH ANY OTHER REMEDY UNDER STATE OR FEDERAL LAW.”.

12 Renumber succeeding section accordingly.

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