

First Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

REVISED

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

LLS NO. 17-1208.01 Jery Payne x2157

SENATE BILL 17-298

SENATE SPONSORSHIP

Tate,

HOUSE SPONSORSHIP

Kraft-Tharp,

Senate Committees

Business, Labor, & Technology

House Committees

Business Affairs and Labor

A BILL FOR AN ACT

101 CONCERNING THE RELATIONSHIP BETWEEN A MOTOR VEHICLE  
102 MANUFACTURER AND THE MOTOR VEHICLE DEALERS THAT HAVE  
103 FRANCHISE AGREEMENTS WITH THE MANUFACTURER.

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://leg.colorado.gov>.)*

Current law prohibits a motor vehicle manufacturer (manufacturer) from requiring a motor vehicle dealer (dealer) to substantially alter a facility or premises if the manufacturer required it within the last 7 years at a cost set in statute based on the type of dealer. **Section 1** of the bill extends this prohibition to 15 years. Section 1 also prohibits a

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  
May 5, 2017

SENATE  
Amended 3rd Reading  
May 2, 2017

SENATE  
Amended 2nd Reading  
May 1, 2017

manufacturer from:

- ! Selling a similarly equipped motor vehicle to one dealer at a lower price than to another dealer;
- ! Requiring or enforcing a contract giving the manufacturer a right of first refusal or an option to purchase the dealership;
- ! Using an unreasonable, arbitrary, unfair, or surprise performance standard in determining a dealer's compliance with a franchise agreement; and
- ! Failing, when a manufacturer requires the dealer to stop selling a used motor vehicle due to a technical mechanical issue, to provide parts and a solution within 7 days or to provide compensation to the dealer.

**Section 2** repeals a provision that gives a dealer a right of first refusal for new franchises when the dealer was terminated due to the insolvency of the manufacturer. Section 2 also authorizes a dealer to sue in court to contest a manufacturer adding or moving a dealership to a market with a current dealer when this action would materially and adversely affect the dealer or the public. Such an action may currently be done administratively. Procedures are set for the civil action and an administrative hearing. Standards are set for determining the outcome. A prevailing dealer may get attorney fees and costs.

**Section 3** authorizes a dealer to sue a manufacturer in court to contest whether a termination was for just cause or for failing to provide notice of a termination. Such an action may currently be done administratively. The current process for staying the termination is strengthened. The manufacturer has the burden of proof. A prevailing dealer may get attorney fees and costs.

**Section 4** requires a manufacturer to fulfill warranty, recall, and similar obligations to repair a motor vehicle. Section 4 also requires a manufacturer to timely compensate a dealer at the prevailing retail value the dealer charges for similar work. Standards are set for calculating this value. Procedures are set for the dealer to communicate the dealer's calculations and for the manufacturer to contest the dealer's calculations. The manufacturer has the burden of proving that the calculations are incorrect. The manufacturer is prohibited from requiring the dealer to use different calculations than those provided in the bill.

Section 4 prohibits a manufacturer from:

- ! Establishing a special part or component number for parts used if the change results in lower compensation to the motor vehicle dealer than as calculated in the bill;
- ! Requiring a dealer to implement or change the prices for which it sells parts or labor in nonwarranty repairs;
- ! Taking adverse action against a dealer who seeks to obtain compensation in accordance with the bill or dissuading a

- dealer from doing so;
- ! Implementing a policy affecting a dealer that violates the bill; and
- ! Eliminating flat-rate times, or establishing an unfair or unreasonable flat-rate time.

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

2           **SECTION 1.** In Colorado Revised Statutes, 12-6-120, **amend**  
3 (1)(x); and **add** (1)(y), (1)(z), and (1)(aa) as follows:

4           **12-6-120. Unlawful acts.** (1) It is unlawful and a violation of this  
5 part 1 for any manufacturer, distributor, or manufacturer representative:

6           (x) To require, coerce, or attempt to coerce a motor vehicle dealer  
7 to substantially alter a facility or premises if:

8           (I) The facility or premises has been altered within the last ~~seven~~  
9 TEN years at a cost of more than two hundred fifty thousand dollars and  
10 the alteration was required and approved by the manufacturer, distributor,  
11 or manufacturer representative unless ~~the motor vehicle dealer sells only~~  
12 ~~motorcycles or motorcycles and powersports vehicles~~ SUBSECTION  
13 (1)(X)(II) APPLIES TO THE DEALER; except that this ~~paragraph (x)~~  
14 SUBSECTION (1)(x) does not apply to improvements made to comply with  
15 health or safety laws, or to IMPROVEMENTS MADE TO accommodate the  
16 technology requirements necessary to sell or service a line-make, TO  
17 TECHNOLOGICAL IMPROVEMENTS RELATED TO ELECTRIC, AUTOMATED,  
18 COMPRESSED NATURAL GAS, AND FUEL-CELL MOTOR VEHICLES, OR TO  
19 IMPROVEMENTS MADE TO INSTALL OR UPGRADE ELECTRIC VEHICLE  
20 CHARGING EQUIPMENT; or

21           (II) The motor vehicle dealer sells only motorcycles or  
22 motorcycles and powersports vehicles, the facility or premises has been  
23 altered within the last ~~seven~~ TEN years at a cost of more than twenty-five

1 thousand dollars, and the alteration was required and approved by the  
2 manufacturer, distributor, or manufacturer representative; except that this  
3 ~~paragraph (x)~~ SUBSECTION (1)(x) does not apply to improvements made  
4 to comply with health or safety laws, or to IMPROVEMENTS MADE TO  
5 accommodate the technology requirements necessary to sell or service a  
6 line-make, TO TECHNOLOGICAL IMPROVEMENTS RELATED TO ELECTRIC,  
7 AUTOMATED, COMPRESSED NATURAL GAS, AND FUEL-CELL MOTOR  
8 MOTORCYCLES AND POWERSPORTS VEHICLES, OR TO IMPROVEMENTS MADE  
9 TO INSTALL OR UPGRADE ELECTRIC VEHICLE CHARGING EQUIPMENT.

10 (y) (I) TO SELL OR OFFER TO SELL NEW MOTOR VEHICLES TO A  
11 FRANCHISED MOTOR VEHICLE DEALER WITH WHOM THE MANUFACTURER  
12 HAS A FRANCHISE AGREEMENT AT A LOWER ACTUAL PRICE THAN THE  
13 ACTUAL PRICE OFFERED TO ANY OTHER MOTOR VEHICLE DEALER WITH  
14 WHOM THE MANUFACTURER HAS A FRANCHISE AGREEMENT FOR THE SAME  
15 MOTOR VEHICLE SIMILARLY EQUIPPED; EXCEPT THAT THIS SUBSECTION  
16 (1)(y) DOES NOT APPLY TO A:

17 (A) RESALE TO ANY GOVERNMENT;     

18 (B) DONATION OR USE BY THE DEALER IN A DRIVER EDUCATION  
19 PROGRAM; OR

20 (C) A PRICE CHANGE MADE IN THE ORDINARY COURSE OF BUSINESS  
21 IF MADE AVAILABLE TO ALL MOTOR VEHICLE DEALERS WHEN THE PRICE  
22 CHANGES.

23 (II) THIS SUBSECTION (1)(y) DOES NOT PROHIBIT A  
24 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE  
25 FROM OFFERING INCENTIVE PROGRAMS, SALES-PROMOTION PLANS, OR  
26 OTHER DISCOUNTS IF THE INCENTIVES OR DISCOUNTS ARE REASONABLY  
27 AVAILABLE TO ALL MOTOR VEHICLE DEALERS WITH WHOM THE

1 MANUFACTURER HAS A FRANCHISE AGREEMENT:

2 (z) TO REQUIRE A MOTOR VEHICLE DEALER TO GRANT A  
3 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE THE  
4 FOLLOWING OR TO ENFORCE THE FOLLOWING IF THE EXERCISE OF THE  
5 CONTRACTUAL RIGHT WOULD STOP THE TRANSFER OF THE MOTOR VEHICLE  
6 DEALER OWNERSHIP FROM AN OWNER TO AN IMMEDIATE FAMILY MEMBER  
7 OF THE OWNER:

8 (I) A RIGHT OF FIRST REFUSAL TO PURCHASE THE MOTOR VEHICLE  
9 DEALER; OR

10 (II) AN OPTION TO PURCHASE THE MOTOR VEHICLE DEALER;

11 (aa) (I) TO USE AN UNREASONABLE, ARBITRARY, OR UNFAIR  
12 PERFORMANCE STANDARD IN DETERMINING A MOTOR VEHICLE DEALER'S  
13 COMPLIANCE WITH A FRANCHISE AGREEMENT.

14 (II) TO FAIL TO COMMUNICATE, UPON THE REQUEST OF THE  
15 DEALER, ANY PERFORMANCE STANDARD IN A CLEAR AND CONCISE WRITING  
16 TO A MOTOR VEHICLE DEALER BEFORE APPLYING THE STANDARD TO THE  
17 MOTOR VEHICLE DEALER.

18 == == ==

19 **SECTION 2.** In Colorado Revised Statutes, 12-6-120.3, **amend**  
20 (1) introductory portion, (1)(b), (1)(c), (1.5), and (3)(b); **repeal** (1)(d),  
21 (3)(c), (4), and (5); and **add** (6) as follows:

22 **12-6-120.3. New, reopened, or relocated dealer - notice**  
23 **required - grounds for refusal of dealer license - definitions - rules.**

24 (1) No manufacturer ~~or distributor~~ shall   establish an additional ~~new~~  
25 motor vehicle dealer, reopen a previously existing motor vehicle dealer,  
26 or ~~relocate~~ **AUTHORIZE** an existing motor vehicle dealer TO RELOCATE  
27 without first providing at least sixty days' notice to all of its franchised

1 ~~dealers and former dealers whose franchises were terminated, cancelled,~~  
2 ~~or not renewed by a manufacturer distributor, or manufacturer~~  
3 ~~representative in the previous five years due to the insolvency of the~~  
4 ~~manufacturer or distributor~~ within whose relevant market area the new,  
5 reopened, or relocated dealer would be located. The notice shall MUST  
6 state:

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

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

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

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

25 (3) As used in this section:

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

27 (I) The geographic area of responsibility defined in the franchise

1 agreement of an existing dealer; or

2 (II) The geographic area within a radius of ~~five~~ TEN miles of any  
3 existing dealer of the same line-make of vehicle ~~that is located in a county~~  
4 ~~with a population of more than one hundred fifty thousand or within a~~  
5 ~~radius of ten miles of an existing dealer of the same line-make of vehicles~~  
6 ~~that is located in a county with a population of one hundred fifty thousand~~  
7 ~~or less.~~ AS THE PROPOSED ADDITIONAL MOTOR VEHICLE DEALER.

8 ==  
9 (c) "~~Right of first refusal area~~" means a ~~five-mile radius extending~~  
10 ~~from the location of where a motor vehicle dealer had a franchise~~  
11 ~~terminated, cancelled, or not renewed if the franchise was in a county~~  
12 ~~with a population of more than one hundred fifty thousand or a ten-mile~~  
13 ~~radius if the franchise was in a county with a population of one hundred~~  
14 ~~fifty thousand or less.~~

15 (4) (a) ~~If a licensee or former licensee whose franchise was~~  
16 ~~terminated, cancelled, or not renewed by the manufacturer, distributor, or~~  
17 ~~manufacturer representative in the previous five years due to the~~  
18 ~~insolvency of the manufacturer or distributor brings an action or~~  
19 ~~proceeding before the executive director or a court pursuant to this part~~  
20 ~~1, the manufacturer shall have the burden of proof on the following~~  
21 ~~issues:~~

22 (I) ~~The size and permanency of investment and obligations~~  
23 ~~incurred by the existing motor vehicle dealers of the same line-make~~  
24 ~~located in the relevant market area;~~

25 (II) ~~Growth or decline in population and new motor vehicle~~  
26 ~~registrations in the relevant market area;~~

27 (III) ~~The effect on the consuming public in the relevant market~~

1 area and whether the opening of the proposed additional, reopened, or  
2 relocated dealer is injurious or beneficial to the public welfare; and

3 (IV) Whether the motor vehicle dealers of the same line-make in  
4 the relevant market area are providing adequate and convenient customer  
5 care for motor vehicles of the same line-make in the relevant market area,  
6 including but not limited to the adequacy of sales and service facilities,  
7 equipment, parts, and qualified service personnel.

8 (b) (I) In addition to the powers specified in section 12-6-105, the  
9 executive director has jurisdiction to resolve actions or proceedings  
10 brought before the executive director pursuant to this part 1 that allege a  
11 violation of this part 1 or rules promulgated pursuant to this part 1. The  
12 executive director may promulgate rules to facilitate the administration  
13 of such actions or proceedings, including provisions specifying  
14 procedures for the executive director or the executive director's designee  
15 to:

16 (A) Conduct an investigation pursuant to section 12-6-105 (1)(d)  
17 of an alleged violation of this part 1 or rules promulgated pursuant to this  
18 part 1, including issuance of a notice of violation;

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

21 (C) Issue an order, including a cease-and-desist order issued  
22 pursuant to section 12-6-105 (1)(f), to resolve the notice of violation; and

23 (D) Impose a fine pursuant to section 12-6-105 (1)(f)(III).

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



1           ~~(5) (a) No manufacturer, distributor, or manufacturer~~  
2 ~~representative shall offer or award a person a franchise or permit the~~  
3 ~~relocation of an existing franchise to the right of first refusal area unless~~  
4 ~~the manufacturer, distributor, or manufacturer representative has~~  
5 ~~complied with paragraph (b) of this subsection (5) or unless paragraph (b)~~  
6 ~~of this subsection (5) does not apply.~~

7           ~~(b) If a manufacturer, distributor, or manufacturer representative,~~  
8 ~~or the predecessor thereof, has terminated, cancelled, or not renewed a~~  
9 ~~motor vehicle dealer's franchise for a line-make within the right of first~~  
10 ~~refusal area due to the insolvency of the manufacturer or distributor that~~  
11 ~~was held by the motor vehicle dealer immediately prior to the franchise~~  
12 ~~being terminated, cancelled, or not renewed within the amount of time the~~  
13 ~~right of first refusal is granted under paragraph (c) of this subsection (5);~~  
14 ~~the manufacturer, distributor, or manufacturer representative, or the~~  
15 ~~successor thereof, shall offer the former motor vehicle dealer whose~~  
16 ~~franchise was terminated, cancelled, or not renewed a franchise within the~~  
17 ~~first refusal area prior to making the offer to any other person for the~~  
18 ~~same line-make unless the former motor vehicle dealer elects to receive~~  
19 ~~the payments required by section 12-6-120 (1)(l) and (1)(r) in lieu of the~~  
20 ~~right of first refusal or the motor vehicle dealer has accepted~~  
21 ~~compensation from the manufacturer, distributor, or manufacturer~~  
22 ~~representative for the termination, cancellation, or nonrenewal of the~~  
23 ~~franchise agreement.~~

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

27           ~~(d) If a manufacturer, distributor, or manufacturer representative,~~

1 or the predecessor thereof, has made any payment to the motor vehicle  
2 dealer in consideration for the termination, cancellation, or nonrenewal  
3 of a franchise agreement and the motor vehicle dealer obtains a new  
4 franchise agreement through this subsection (5), the motor vehicle dealer  
5 shall reimburse the manufacturer, distributor, or manufacturer  
6 representative for such payments. The motor vehicle dealer may  
7 reimburse the manufacturer, distributor, or manufacturer representative  
8 with a commercially reasonable repayment installment plan.

9 (e) The right of first refusal survives a court voiding the payments  
10 required by section 12-6-120 (1)(l) and (1)(r).

11 (f) (I) The right of first refusal survives a manufacturer,  
12 distributor, or manufacturer representative, or predecessor thereof,  
13 awarding a franchise within the same right of first refusal for the same  
14 line-make to a person or entity other than the former motor vehicle dealer  
15 whose franchise was terminated, cancelled, or not renewed.

16 (H) If a manufacturer, distributor, or manufacturer representative,  
17 or predecessor thereof, has awarded the franchise to another motor  
18 vehicle dealer in the same right of first refusal area without granting the  
19 right of first refusal under this section, the former motor vehicle dealer  
20 may elect to either receive a franchise agreement in the same area or the  
21 payments required by section 12-6-120 (1)(l) and (1)(r) from the  
22 manufacturer, distributor, or manufacturer representative unless the  
23 manufacturer, distributor, or manufacturer representative, or predecessor  
24 thereof, has paid compensation in consideration of the initial termination,  
25 cancellation, or nonrenewal of the franchise agreement.

26 (6) (a) AN EXISTING MOTOR VEHICLE DEALER ADVERSELY  
27 AFFECTED BY A REOPENING OR RELOCATION OF AN EXISTING SAME

1 LINE-MAKE MOTOR VEHICLE DEALER OR THE ADDITION OF A SAME  
2 LINE-MAKE MOTOR VEHICLE DEALER MAY, WITHIN NINETY DAYS AFTER  
3 RECEIPT OF THE NOTICE REQUIRED IN SUBSECTION (1) OF THIS SECTION,  
4 FILE A LEGAL ACTION IN A DISTRICT COURT OF COMPETENT JURISDICTION  
5 OR FILE AN ADMINISTRATIVE COMPLAINT WITH THE EXECUTIVE DIRECTOR  
6 TO PREVENT OR ENJOIN THE RELOCATION, REOPENING, OR ADDITION OF  
7 THE PROPOSED MOTOR VEHICLE DEALER. AN EXISTING MOTOR VEHICLE  
8 DEALER IS ADVERSELY IMPACTED IF:

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

12 (II) THE EXISTING DEALER OR DEALERS OF THE SAME LINE-MAKE  
13 SHOW THAT, DURING ANY TWELVE-MONTH PERIOD OF THE THIRTY-SIX  
14 MONTHS PRECEDING THE RECEIPT OF THE NOTICE REQUIRED IN SUBSECTION  
15 (1), THE DEALER OR DEALERS, OR A DEALER'S PREDECESSOR, MADE AT  
16 LEAST TWENTY-FIVE PERCENT OF THE DEALER'S RETAIL SALES OF NEW  
17 MOTOR VEHICLES TO PERSONS WHOSE ADDRESSES ARE LOCATED WITHIN  
18 TEN MILES OF THE LOCATION OF THE PROPOSED RELOCATED, REOPENED, OR  
19 ADDITIONAL DEALERSHIP.

20 (b) THE EXECUTIVE DIRECTOR SHALL REFER A COMPLAINT FILED  
21 UNDER THIS SECTION TO AN ADMINISTRATIVE LAW JUDGE WITH THE OFFICE  
22 OF ADMINISTRATIVE COURTS FOR FINAL AGENCY ACTION.

23 (c) IN ANY COURT OR ADMINISTRATIVE ACTION, THE  
24 MANUFACTURER HAS THE BURDEN OF PROOF ON EACH OF THE FOLLOWING  
25 ISSUES:

26 ==  
27 (I) THE CHANGE IN POPULATION;

1           (II) THE RELEVANT VEHICLE BUYER PROFILES;

2           (III) THE RELEVANT HISTORICAL \_\_\_\_\_ NEW MOTOR VEHICLE  
3 REGISTRATIONS FOR THE LINE-MAKE OF VEHICLES VERSUS THE  
4 MANUFACTURER'S ACTUAL COMPETITORS IN THE RELEVANT MARKET  
5 AREA;

6           (IV) WHETHER THE OPENING OF THE PROPOSED ADDITIONAL,  
7 REOPENED, OR RELOCATED MOTOR VEHICLE DEALER IS MATERIALLY  
8 BENEFICIAL TO THE PUBLIC INTEREST OR THE CONSUMERS IN THE  
9 RELEVANT MARKET AREA;

10          (V) WHETHER THE MOTOR VEHICLE DEALERS OF THE SAME  
11 LINE-MAKE IN THE RELEVANT MARKET AREA ARE PROVIDING ADEQUATE  
12 REPRESENTATION AND CONVENIENT CUSTOMER CARE, INCLUDING THE  
13 ADEQUACY OF SALES AND SERVICE FACILITIES, EQUIPMENT, PARTS, AND  
14 QUALIFIED SERVICE PERSONNEL, FOR MOTOR VEHICLES OF THE SAME  
15 LINE-MAKE IN THE RELEVANT MARKET AREA; AND

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

18          (VII) WHETHER THE ADDITIONAL, REOPENED, OR RELOCATED  
19 DEALERSHIP IS REASONABLE AND JUSTIFIABLE BASED ON EXPECTED  
20 ECONOMIC AND MARKET CONDITIONS WITHIN THE RELEVANT MARKET  
21 AREA.

22          (d) IN ANY COURT OR ADMINISTRATIVE ACTION, THE MOTOR  
23 VEHICLE DEALER HAS THE BURDEN OF PROOF ON EACH OF THE FOLLOWING  
24 ISSUES:

25           (I) WHETHER THE MANUFACTURER HAS ENGAGED IN ANY ACTION  
26 OR OMISSION THAT, DIRECTLY OR INDIRECTLY, DENIED THE EXISTING  
27 MOTOR VEHICLE DEALER OF THE SAME LINE-MAKE THE OPPORTUNITY FOR

1 REASONABLE GROWTH OR MARKET EXPANSION;

2 (II) WHETHER THE MANUFACTURER HAS COERCED OR ATTEMPTED  
3 TO COERCE ANY EXISTING MOTOR VEHICLE DEALER OR DEALERS INTO  
4 CONSENTING TO ADDITIONAL OR RELOCATED FRANCHISES OF THE SAME  
5 LINE-MAKE IN THE COMMUNITY OR TERRITORY OR RELEVANT MARKET  
6 AREA; AND

7 (III) THE SIZE AND PERMANENCY OF THE INVESTMENT OF AND  
8 OBLIGATIONS INCURRED BY THE EXISTING MOTOR VEHICLE DEALERS OF  
9 THE SAME LINE-MAKE LOCATED IN THE RELEVANT MARKET AREA.

10 (e) (I) IN A LEGAL OR ADMINISTRATIVE ACTION CHALLENGING THE  
11 RELOCATING, REOPENING, OR ADDITION OF A MOTOR VEHICLE DEALER, THE  
12 DISTRICT COURT OR ADMINISTRATIVE LAW JUDGE SHALL MAKE A  
13 DETERMINATION OF WHETHER THE RELOCATION, REOPENING, OR ADDITION  
14 OF A MOTOR VEHICLE DEALER IS, BASED ON THE FACTORS IDENTIFIED IN  
15 SUBSECTIONS (6)(c) AND (6)(d) OF THIS SECTION:

16 (A) IN THE PUBLIC INTEREST; AND

17 (B) FAIR AND EQUITABLE TO THE EXISTING MOTOR VEHICLE  
18 DEALERS.

19 (II) THE DISTRICT COURT OR THE EXECUTIVE DIRECTOR SHALL  
20 DENY ANY PROPOSED RELOCATING, REOPENING, OR ADDITION OF A MOTOR  
21 VEHICLE DEALER UNLESS THE MANUFACTURER SHOWS BY A  
22 PREPONDERANCE OF THE EVIDENCE THAT THE EXISTING MOTOR VEHICLE  
23 DEALER OR DEALERS OF THE SAME LINE-MAKE IN THE RELEVANT MARKET  
24 AREA OF THE PROPOSED DEALERSHIP ARE NOT PROVIDING ADEQUATE  
25 REPRESENTATION OF THE LINE-MAKE MOTOR VEHICLES. A DETERMINATION  
26 TO DENY, PREVENT, OR ENJOIN THE RELOCATING, REOPENING, OR ADDITION  
27 OF A MOTOR VEHICLE DEALER IS EFFECTIVE FOR AT LEAST EIGHTEEN

1 MONTHS.

2 **SECTION 3.** In Colorado Revised Statutes, **amend** 12-6-131 as  
3 follows:

4 **12-6-131. Termination appeal.** (1) A motor vehicle dealer who  
5 has reason to believe that a manufacturer, distributor, or manufacturer  
6 representative has violated section 12-6-120 (1)(d) or (1)(w) may appeal  
7 to the board by filing a complaint with:

8 (a) The executive director; OR

9 (b) A DISTRICT COURT IF NEITHER THE EXECUTIVE DIRECTOR NOR  
10 THE ADMINISTRATIVE LAW JUDGE, APPOINTED IN ACCORDANCE WITH THIS  
11 SECTION, HOLDS A HEARING CONCERNING THE COMPLAINT WITHIN SIXTY  
12 DAYS AFTER THE COMPLAINT WAS FILED.

13 (2) Upon ~~receiving the~~ FILING OF A VERIFIED complaint ~~and upon~~  
14 ~~a showing of specific facts that a violation has occurred, the executive~~  
15 ~~director shall summarily issue a cease-and-desist order under section~~  
16 ~~12-6-105 (1)(f) staying~~ ALLEGING WITH SPECIFIC FACTS THAT A VIOLATION  
17 HAS OCCURRED UNDER THIS SECTION, the termination, elimination,  
18 modification, or nonrenewal of the franchise agreement IS  
19 AUTOMATICALLY STAYED, WITHOUT THE MOTOR VEHICLE DEALER POSTING  
20 A BOND, UNTIL A FINAL DETERMINATION IS MADE ON EACH ISSUE RAISED  
21 IN THE COMPLAINT; EXCEPT THAT THE EXECUTIVE DIRECTOR,  
22 ADMINISTRATIVE LAW JUDGE, OR COURT MAY CANCEL THE STAY UPON  
23 FINDING THAT THE CANCELLATION, TERMINATION, OR NONRENEWAL OF  
24 THE FRANCHISE AGREEMENT WAS FOR ANY OF THE REASONS SPECIFIED IN  
25 SECTION 12-6-120 (1)(d)(III). THE AUTOMATIC STAY MAINTAINS ALL  
26 RIGHTS UNDER THE FRANCHISE AGREEMENT UNTIL THE FINAL  
27 DETERMINATION OF THE ISSUES RAISED IN THE VERIFIED COMPLAINT. THE

1 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE  
2 SHALL NOT NAME A REPLACEMENT MOTOR VEHICLE DEALER FOR THE  
3 MARKET OR LOCATION UNTIL A FINAL,      ORDER IS ENTERED.

4 (3) ~~The cease-and-desist order remains in effect until the hearing~~  
5 ~~required by section 12-6-105 (1)(f) is held. If a determination is made at~~  
6 ~~the hearing required by section 12-6-105 (1)(f) that a violation occurred,~~  
7 ~~the executive director shall make the cease-and-desist order permanent~~  
8 ~~and take any actions authorized by section 12-6-104 (3). A motor vehicle~~  
9 ~~dealer who appeals to the executive director maintains all rights under the~~  
10 ~~franchise agreement until the later of the executive director issuing a~~  
11 ~~decision or ninety days after the manufacturer, distributor, or~~  
12 ~~manufacturer's representative provides the notice of termination unless~~  
13 ~~the executive director finds that the termination, cancellation, or~~  
14 ~~nonrenewal was for fraud, a misrepresentation, or committing a crime~~  
15 ~~within the scope of the franchise agreement or in the operation of the~~  
16 ~~dealership, in which case the franchise rights terminate immediately~~ IF A  
17 VERIFIED COMPLAINT IS FILED WITH THE EXECUTIVE DIRECTOR, THE  
18 EXECUTIVE DIRECTOR SHALL REFER THE COMPLAINT TO AN  
19 ADMINISTRATIVE LAW JUDGE WITH THE OFFICE OF ADMINISTRATIVE  
20 COURTS FOR FINAL AGENCY ACTION.

21 (4) IN RESOLVING A TERMINATION COMPLAINT, THE  
22 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE HAS  
23 THE BURDEN OF PROVING ANY CLAIM MADE THAT THE FACTORS LISTED IN  
24 SECTION 12-6-120 (1)(d)(II) APPLY TO THE TERMINATION, CANCELLATION,  
25 OR NONRENEWAL.

26 (5) THE PREVAILING PARTY IN A CLAIM THAT A TERMINATION,  
27 CANCELLATION, OR NONRENEWAL VIOLATES SECTION 12-6-120 (1)(d) OR

1 (1)(w) IS ENTITLED TO RECOVER ATTORNEY FEES AND COSTS, INCLUDING  
2 EXPERT WITNESS FEES, INCURRED IN THE TERMINATION PROTEST.

3 =====

4 **SECTION 4. In Colorado Revised Statutes, add 12-6-132 as**  
5 **follows:**

6 **12-6-132. Stop-sale directives - used motor vehicles -**  
7 **definition. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT**  
8 **OTHERWISE REQUIRES:**

9 (a) "AVERAGE TRADE-IN VALUE" MEANS THE VALUE OF A USED  
10 MOTOR VEHICLE AS ESTABLISHED BY A GENERALLY ACCEPTED, PUBLISHED,  
11 THIRD-PARTY USED VEHICLE RESOURCE.

12 (b) "STOP-SALE DIRECTIVE" MEANS AN UNCONDITIONAL DIRECTIVE  
13 FROM A MANUFACTURER OR DISTRIBUTOR TO A MOTOR VEHICLE DEALER  
14 TO STOP SELLING A TYPE OF MOTOR VEHICLE MANUFACTURED BY THE  
15 MANUFACTURER OR DISTRIBUTED BY THE DISTRIBUTOR BECAUSE OF A  
16 SAFETY DEFECT.

17 (2) A MANUFACTURER OR DISTRIBUTOR SHALL REIMBURSE A  
18 MOTOR VEHICLE DEALER IN ACCORDANCE WITH SUBSECTION (3) OF THIS  
19 SECTION IF:

20 (a) THE MANUFACTURER OR DISTRIBUTOR ISSUES A STOP-SALE  
21 DIRECTIVE FOR A MOTOR VEHICLE MANUFACTURED OR DISTRIBUTED BY  
22 THE ISSUER OF THE STOP-SALE DIRECTIVE;

23 (b) THE MOTOR VEHICLE DEALER HOLDS AN ACTIVE SALES,  
24 SERVICE, AND PARTS AGREEMENT WITH THE MANUFACTURER OR  
25 DISTRIBUTOR FOR THE LINE-MAKE OF THE USED MOTOR VEHICLE COVERED  
26 BY THE STOP-SALE DIRECTIVE;

27 (c) THE USED MOTOR VEHICLE COVERED BY THE STOP-SALE



1 DIRECTIVE IS HELD IN THE INVENTORY OF THE MOTOR VEHICLE DEALER ON  
2 THE DATE THE STOP-SALE DIRECTIVE IS ISSUED OR TAKEN BY THE DEALER  
3 AS A TRADE-IN VEHICLE ON A CONSUMER PURCHASE OF THE SAME  
4 LINE-MAKE; AND

5 (d) THE MANUFACTURER OR DISTRIBUTOR HAS NOT PROVIDED A  
6 REMEDY PROCEDURE OR MADE PARTS AVAILABLE TO REPAIR THE USED  
7 MOTOR VEHICLE FOR MORE THAN THIRTY DAYS AFTER THE STOP-SALE  
8 DIRECTIVE IS ISSUED.

9 (3) IF THE CONDITIONS IN SUBSECTION (2) OF THIS SECTION ARE  
10 MET, THE MANUFACTURER OR DISTRIBUTOR SHALL, UPON APPLICATION BY  
11 THE MOTOR VEHICLE DEALER, PAY OR CREDIT THE DEALER ONE AND  
12 ONE-HALF PERCENT PER MONTH OF THE AVERAGE TRADE-IN VALUE OF THE  
13 USED MOTOR VEHICLE'S MODEL PRORATED FROM THIRTY DAYS AFTER THE  
14 STOP-SALE DIRECTIVE WAS ISSUED TO THE EARLIER OF:

15 (a) THE DATE WHEN THE MANUFACTURER OR DISTRIBUTOR  
16 PROVIDES THE MOTOR VEHICLE DEALER WITH A REMEDY PROCEDURE AND  
17 ANY NECESSARY PARTS FOR ORDERING TO REPAIR THE USED MOTOR  
18 VEHICLE; OR

19 (b) THE DATE THE MOTOR VEHICLE DEALER TRANSFERS THE  
20 MOTOR VEHICLE.

21 (4) A MANUFACTURER OR DISTRIBUTOR MAY DETERMINE A  
22 REASONABLE MANNER AND METHOD REQUIRED FOR A MOTOR VEHICLE  
23 DEALER TO DEMONSTRATE THE INVENTORY STATUS OF A USED MOTOR  
24 VEHICLE TO DETERMINE ELIGIBILITY FOR REIMBURSEMENT.

25 (5) (a) THIS SECTION APPLIES ONLY TO USED MOTOR VEHICLES.

26 (b) THIS SECTION IS NOT INTENDED TO PREVENT A MANUFACTURER  
27 OR DISTRIBUTOR FROM REQUIRING THAT A MOTOR VEHICLE NOT BE

1 SUBJECT TO AN OPEN RECALL OR STOP-SALE DIRECTIVE FOR THE MOTOR  
2 VEHICLE TO BE QUALIFIED OR SOLD AS A CERTIFIED PREOWNED VEHICLE OR  
3 SUBSTANTIALLY SIMILAR DESIGNATION.

4 (c) THIS SECTION DOES NOT REQUIRE A MANUFACTURER OR  
5 DISTRIBUTOR TO PROVIDE TOTAL COMPENSATION TO A MOTOR VEHICLE  
6 DEALER THAT WOULD EXCEED THE TOTAL AVERAGE TRADE-IN VALUATION  
7 OF THE AFFECTED USED MOTOR VEHICLE.

8 (d) THIS SECTION DOES NOT PRECLUDE A MOTOR VEHICLE DEALER  
9 AND A MANUFACTURER OR DISTRIBUTOR FROM AGREEING TO  
10 REIMBURSEMENT TERMS THAT DIFFER FROM THOSE SPECIFIED IN THIS  
11 SECTION.

12 (e) COMPENSATION PROVIDED TO A MOTOR VEHICLE DEALER  
13 UNDER THIS SECTION IS EXCLUSIVE AND MAY NOT BE COMBINED WITH ANY  
14 OTHER REMEDY UNDER STATE OR FEDERAL LAW.

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

17 **12-6-523. Unlawful acts.** (1) It is unlawful and a violation of this  
18 part 5 for any powersports vehicle manufacturer, distributor, or  
19 manufacturer representative:

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

1 line-make;

2 (x) (I) TO SELL OR OFFER TO SELL NEW POWERSPORTS VEHICLES TO

3 A FRANCHISED MOTOR VEHICLE DEALER WITH WHOM THE MANUFACTURER

4 HAS A FRANCHISE AGREEMENT AT A LOWER ACTUAL PRICE THAN THE

5 ACTUAL PRICE OFFERED TO ANY OTHER POWERSPORTS VEHICLE DEALER

6 WITH WHOM THE MANUFACTURER HAS A FRANCHISE AGREEMENT FOR THE

7 SAME MOTOR VEHICLE SIMILARLY EQUIPPED; EXCEPT THAT THIS

8 SUBSECTION (1)(x) DOES NOT APPLY TO:

9 (A) RESALE TO ANY GOVERNMENT;

10 (B) DONATION OR USE BY THE DEALER IN A DRIVER EDUCATION

11 COURSE; OR

12 (C) A PRICE CHANGE MADE IN THE ORDINARY COURSE OF BUSINESS

13 IF MADE AVAILABLE TO ALL POWERSPORTS VEHICLE DEALERS WHEN THE

14 PRICE CHANGES.

15 (II) THIS SUBSECTION (1)(x) DOES NOT PROHIBIT A

16 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE

17 FROM OFFERING INCENTIVE PROGRAMS, SALES-PROMOTION PLANS, OR

18 OTHER DISCOUNTS IF THE INCENTIVES OR DISCOUNTS ARE REASONABLY

19 AVAILABLE TO ALL POWERSPORTS VEHICLE DEALERS WITH WHOM THE

20 MANUFACTURER HAS A FRANCHISE AGREEMENT.

21 (y) TO REQUIRE A POWERSPORTS VEHICLE DEALER TO GRANT A

22 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE THE

23 FOLLOWING OR TO ENFORCE THE FOLLOWING IF THE EXERCISE OF THE

24 CONTRACTUAL RIGHT WOULD STOP THE TRANSFER OF THE POWERSPORTS

25 VEHICLE DEALER OWNERSHIP FROM AN OWNER TO AN IMMEDIATE FAMILY

26 MEMBER OF THE OWNER:

27 (I) A RIGHT OF FIRST REFUSAL TO PURCHASE THE POWERSPORTS

1 VEHICLE DEALER; OR  
2 (II) AN OPTION TO PURCHASE THE POWERSPORTS VEHICLE DEALER;  
3 (z) (I) TO USE AN UNREASONABLE, ARBITRARY, OR UNFAIR  
4 PERFORMANCE STANDARD IN DETERMINING A POWERSPORTS VEHICLE  
5 DEALER'S COMPLIANCE WITH A FRANCHISE AGREEMENT; OR  
6 (II) TO FAIL TO COMMUNICATE, UPON THE REQUEST OF THE  
7 DEALER, ANY PERFORMANCE STANDARD IN A CLEAR AND CONCISE WRITING  
8 TO A POWERSPORTS VEHICLE DEALER BEFORE APPLYING THE STANDARD TO  
9 THE POWERSPORTS VEHICLE DEALER.

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

13 **12-6-524. New, reopened, or relocated dealer - notice required**  
14 **- grounds for refusal of dealer license - definitions - rules.** (1) No  
15 powersports vehicle manufacturer or distributor shall establish an  
16 additional ~~new~~ powersports vehicle dealer, reopen a previously existing  
17 powersports vehicle dealer, or ~~relocate~~ AUTHORIZE an existing  
18 powersports vehicle dealer without first providing at least sixty days'  
19 notice to all of its franchised dealers ~~and former dealers whose franchises~~  
20 ~~were terminated, cancelled, or not renewed by a manufacturer, distributor,~~  
21 ~~or manufacturer representative in the previous five years due to the~~  
22 ~~insolvency of the manufacturer or distributor~~ within whose relevant  
23 market area the new, reopened, or relocated dealer would be located. The  
24 notice ~~shall~~ MUST state:

25 (b) The date on or after which the powersports vehicle  
26 manufacturer intends to be engaged in business with the additional,  
27 reopened, or relocated powersports vehicle dealer at the proposed

1 location; AND

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

6 (d) ~~The names and addresses of the dealer and principal investors~~  
7 ~~in the proposed additional, reopened, or relocated powersports vehicle~~  
8 ~~dealer.~~

9 (1.5) A powersports vehicle manufacturer shall reasonably  
10 approve or disapprove of a powersports vehicle dealer facility initial site  
11 location, ~~or relocation, OR REOPENING~~ request within sixty days after the  
12 request or after sending the notice required by subsection (1) of this  
13 section to all of its franchised powersports vehicle dealers and former  
14 ~~dealers whose franchises were terminated, cancelled, or not renewed in~~  
15 ~~the previous five years due to the insolvency of the manufacturer or~~  
16 ~~distributor, whichever is later, but not to exceed one hundred days~~  
17 ~~WHICHEVER IS LATER.~~

18 (3) As used in this section:

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

20 (II) The geographic area within a radius of ~~five~~ TEN miles of any  
21 existing dealer of the same line-make of powersports vehicle ~~that is~~  
22 ~~located in a county with a population of more than one hundred fifty~~  
23 ~~thousand or within a radius of ten miles of an existing dealer of the same~~  
24 ~~line-make of vehicles that is located in a county with a population of one~~  
25 ~~hundred fifty thousand or less~~ AS THE PROPOSED ADDITIONAL MOTOR  
26 VEHICLE DEALER.

27 (c) "Right of first refusal area" means a five-mile radius extending

1 from the location of where a powersports vehicle dealer had a franchise  
2 terminated, cancelled, or not renewed if the franchise was in a county  
3 with a population of more than one hundred fifty thousand or a ten-mile  
4 radius if the franchise was in a county with a population of one hundred  
5 fifty thousand or less.

6 (4) (a) If a licensee or former licensee whose franchise was  
7 terminated, cancelled, or not renewed by the manufacturer, distributor, or  
8 manufacturer representative in the previous five years due to the  
9 insolvency of the manufacturer or distributor brings an action or  
10 proceeding before the executive director or a court pursuant to this part  
11 5, the powersports vehicle manufacturer shall have the burden of proof  
12 on the following issues:

13 (I) The size and permanency of investment and obligations  
14 incurred by the existing powersports vehicle dealers of the same  
15 line-make located in the relevant market area;

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

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

20 (IV) Whether the powersports vehicle dealers of the same  
21 line-make in the relevant market area are providing adequate and  
22 convenient customer care for powersports vehicles of the same line-make  
23 in the relevant market area, including but not limited to the adequacy of  
24 sales and service facilities, equipment, parts, and qualified service  
25 personnel.

26 (b) (I) In addition to the powers specified in section 12-6-505, the  
27 executive director has jurisdiction to resolve actions or proceedings

1 brought before the executive director pursuant to this part 5 that allege a  
2 violation of this part 5 or rules promulgated pursuant to this part 5. The  
3 executive director may promulgate rules to facilitate the administration  
4 of the actions or proceedings, including provisions specifying procedures  
5 for the executive director or the executive director's designee to:

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

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

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

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

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

18 (5) (a) No manufacturer, distributor, or manufacturer  
19 representative shall offer or award a person a franchise or permit the  
20 relocation of an existing franchise to the relevant right of first refusal area  
21 unless the manufacturer, distributor, or manufacturer representative has  
22 complied with paragraph (b) of this subsection (5) or unless paragraph (b)  
23 of this subsection (5) does not apply.

24 (b) If a manufacturer, distributor, or manufacturer representative,  
25 or the predecessor thereof, has terminated, cancelled, or not renewed a  
26 powersports vehicle dealer's franchise for a line-make within the relevant  
27 right of first refusal area on account of the insolvency of the manufacturer

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

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

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

27 (e) The right of first refusal survives a court voiding the payments



1 required by section 12-6-523 (1)(l) and (1)(r).

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

7 (H) If a manufacturer, distributor, or manufacturer representative,  
8 or predecessor thereof, has awarded the franchise to another powersports  
9 vehicle dealer in the same right of first refusal area without granting the  
10 right of first refusal under this section, the former powersports vehicle  
11 dealer may elect to either receive a franchise agreement in the same area  
12 or the payments required by section 12-6-523 (1)(l) and (1)(r) from the  
13 manufacturer, distributor, or manufacturer representative unless the  
14 manufacturer, distributor, or manufacturer representative, or predecessor  
15 thereof, has paid compensation in consideration of the initial termination,  
16 cancellation, or nonrenewal of the franchise agreement.

17 (6) (a) AN EXISTING POWERSPORTS VEHICLE DEALER ADVERSELY  
18 AFFECTED BY THE REOPENING OR RELOCATION OF AN EXISTING SAME  
19 LINE-MAKE POWERSPORTS VEHICLE DEALER OR THE ADDITION OF A SAME  
20 LINE-MAKE POWERSPORTS VEHICLE DEALER MAY, WITHIN NINETY DAYS  
21 AFTER RECEIPT OF THE NOTICE REQUIRED IN SUBSECTION (1) OF THIS  
22 SECTION, FILE A LEGAL ACTION IN A DISTRICT COURT OF COMPETENT  
23 JURISDICTION OR FILE AN ADMINISTRATIVE COMPLAINT WITH THE  
24 EXECUTIVE DIRECTOR TO PREVENT OR ENJOIN THE RELOCATION,  
25 REOPENING, OR ADDITION OF THE PROPOSED POWERSPORTS VEHICLE  
26 DEALER. AN EXISTING POWERSPORTS VEHICLE DEALER IS ADVERSELY  
27 AFFECTED IF:

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

4 (II) THE EXISTING DEALER OR DEALERS OF THE SAME LINE-MAKE  
5 SHOW THAT, DURING ANY TWELVE-MONTH PERIOD WITHIN THE THIRTY-SIX  
6 MONTHS PRECEDING THE RECEIPT OF THE NOTICE REQUIRED IN SUBSECTION  
7 (1), THE DEALER OR DEALERS, OR A DEALER'S PREDECESSOR, MADE AT  
8 LEAST TWENTY-FIVE PERCENT OF THE DEALER'S RETAIL SALES OF NEW  
9 POWERSPORTS VEHICLES TO PERSONS WHOSE ADDRESSES ARE LOCATED  
10 WITHIN TEN MILES OF THE LOCATION OF THE PROPOSED RELOCATED,  
11 REOPENED, OR ADDITIONAL DEALERSHIP.

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

15 (c) IN ANY COURT OR ADMINISTRATIVE ACTION, THE  
16 MANUFACTURER HAS THE BURDEN OF PROOF ON EACH OF THE FOLLOWING  
17 ISSUES:

18 (I) THE CHANGE IN POPULATION;

19 (II) THE RELEVANT VEHICLE BUYER PROFILES;

20 (III) THE RELEVANT HISTORICAL NEW POWERSPORTS VEHICLE  
21 REGISTRATIONS FOR THE LINE-MAKE OF VEHICLES VERSUS THE  
22 MANUFACTURER'S ACTUAL COMPETITORS IN THE RELEVANT MARKET  
23 AREA;

24 (IV) WHETHER THE OPENING OF THE PROPOSED REOPENED,  
25 RELOCATED, OR ADDITIONAL POWERSPORTS VEHICLE DEALER IS  
26 MATERIALLY BENEFICIAL TO THE PUBLIC INTEREST OR THE CONSUMERS IN  
27 THE RELEVANT MARKET AREA;

1 (V) WHETHER THE POWERSPORTS VEHICLE DEALERS OF THE SAME  
2 LINE-MAKE IN THE RELEVANT MARKET AREA ARE PROVIDING ADEQUATE  
3 REPRESENTATION AND CONVENIENT CUSTOMER CARE, INCLUDING THE  
4 ADEQUACY OF SALES AND SERVICE FACILITIES, EQUIPMENT, PARTS, AND  
5 QUALIFIED SERVICE PERSONNEL, FOR POWERSPORTS VEHICLES OF THE  
6 SAME LINE-MAKE IN THE RELEVANT MARKET AREA;

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

9 (VII) WHETHER THE REOPENED, RELOCATED, OR ADDITIONAL  
10 DEALERSHIP IS REASONABLE AND JUSTIFIABLE BASED ON EXPECTED  
11 ECONOMIC AND MARKET CONDITIONS WITHIN THE RELEVANT MARKET  
12 AREA.

13 (d) IN ANY COURT OR ADMINISTRATIVE ACTION, THE POWERSPORTS  
14 VEHICLE DEALER HAS THE BURDEN OF PROOF ON EACH OF THE FOLLOWING  
15 ISSUES:

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

20 (II) WHETHER THE MANUFACTURER HAS COERCED OR ATTEMPTED  
21 TO COERCE ANY EXISTING POWERSPORTS VEHICLE DEALER INTO  
22 CONSENTING TO ADDITIONAL OR RELOCATED FRANCHISES OF THE SAME  
23 LINE-MAKE IN THE COMMUNITY OR TERRITORY OR RELEVANT MARKET  
24 AREA; AND

25 (III) THE SIZE AND PERMANENCY OF THE INVESTMENT OF, AND THE  
26 OBLIGATIONS INCURRED BY, THE EXISTING POWERSPORTS VEHICLE  
27 DEALERS OF THE SAME LINE-MAKE LOCATED IN THE RELEVANT MARKET

1 AREA.

2 (e) (I) IN A LEGAL OR ADMINISTRATIVE ACTION CHALLENGING THE  
3 RELOCATION, REOPENING, OR ADDITION OF A POWERSPORTS VEHICLE  
4 DEALER, THE DISTRICT COURT OR ADMINISTRATIVE LAW JUDGE SHALL  
5 MAKE A DETERMINATION, BASED ON THE FACTORS IDENTIFIED IN  
6 SUBSECTIONS (6)(c) AND (6)(d) OF THIS SECTION, OF WHETHER THE  
7 RELOCATION, REOPENING, OR ADDITION OF A POWERSPORTS VEHICLE  
8 DEALER IS:

9 (A) IN THE PUBLIC INTEREST; AND

10 (B) FAIR AND EQUITABLE TO THE EXISTING POWERSPORTS VEHICLE  
11 DEALERS.

12 (II) THE DISTRICT COURT OR THE EXECUTIVE DIRECTOR SHALL  
13 DENY ANY PROPOSED RELOCATION, REOPENING, OR ADDITION OF A  
14 POWERSPORTS VEHICLE DEALER UNLESS THE MANUFACTURER SHOWS BY  
15 A PREPONDERANCE OF THE EVIDENCE THAT THE EXISTING POWERSPORTS  
16 VEHICLE DEALER OR DEALERS OF THE SAME LINE-MAKE IN THE RELEVANT  
17 MARKET AREA OF THE PROPOSED DEALERSHIP ARE NOT PROVIDING  
18 ADEQUATE REPRESENTATION OF THE LINE-MAKE POWERSPORTS VEHICLES.  
19 A DETERMINATION TO DENY, PREVENT, OR ENJOIN THE RELOCATION,  
20 REOPENING, OR ADDITION OF A POWERSPORTS VEHICLE DEALER IS  
21 EFFECTIVE FOR AT LEAST EIGHTEEN MONTHS.

22 **SECTION 7.** In Colorado Revised Statutes, **amend** 12-6-537 as  
23 follows:

24 **12-6-537. Termination appeal.** (1) A powersports vehicle dealer  
25 who has reason to believe that a manufacturer, distributor, or  
26 manufacturer representative has violated section 12-6-523 (1)(d) or (1)(v)  
27 may appeal to the board by filing a complaint with:

1 (a) The executive director; OR

2 (b) A DISTRICT COURT IF NEITHER THE EXECUTIVE DIRECTOR NOR  
3 THE ADMINISTRATIVE LAW JUDGE, APPOINTED IN ACCORDANCE WITH THIS  
4 SECTION, HOLDS A HEARING CONCERNING THE COMPLAINT WITHIN SIXTY  
5 DAYS AFTER THE COMPLAINT WAS FILED.

6 (2) Upon ~~receiving the~~ FILING A VERIFIED complaint ~~and upon a~~  
7 ~~showing of specific facts that a violation has occurred, the executive~~  
8 ~~director shall summarily issue a cease-and-desist order under section~~  
9 ~~12-6-505 (1)(h) staying~~ ALLEGING WITH SPECIFIC FACTS THAT A  
10 VIOLATION HAS OCCURRED UNDER THIS SECTION, the termination,  
11 elimination, modification, or nonrenewal of the franchise agreement IS  
12 AUTOMATICALLY STAYED, WITHOUT THE MOTOR VEHICLE DEALER POSTING  
13 A BOND, UNTIL A FINAL DETERMINATION IS MADE ON EACH ISSUE RAISED  
14 IN THE COMPLAINT; EXCEPT THAT THE EXECUTIVE DIRECTOR,  
15 ADMINISTRATIVE LAW JUDGE, OR COURT MAY CANCEL THE STAY UPON  
16 FINDING THAT THE CANCELLATION, TERMINATION, OR NONRENEWAL OF  
17 THE FRANCHISE AGREEMENT WAS FOR ANY OF THE REASONS SPECIFIED IN  
18 SECTION 12-6-120 (1)(d)(III). THE AUTOMATIC STAY MAINTAINS ALL  
19 RIGHTS UNDER THE FRANCHISE AGREEMENT UNTIL THE FINAL  
20 DETERMINATION OF THE ISSUES RAISED IN THE VERIFIED COMPLAINT. THE  
21 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE  
22 SHALL NOT NAME A REPLACEMENT MOTOR VEHICLE DEALER FOR THE  
23 MARKET OR LOCATION UNTIL A FINAL ORDER IS ENTERED.

24 (3) ~~The cease-and-desist order remains in effect until the hearing~~  
25 ~~required by section 12-6-505 (1)(h) is held. If a determination is made at~~  
26 ~~the hearing required by section 12-6-505 (1)(h) that a violation occurred,~~  
27 ~~the executive director shall make the cease-and-desist order permanent~~

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

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

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

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

25 **12-6-538. Stop-sale directives - used powersports vehicles -**  
26 **definition.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT  
27 OTHERWISE REQUIRES:

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

4 (b) "STOP-SALE DIRECTIVE" MEANS AN UNCONDITIONAL DIRECTIVE  
5 FROM A MANUFACTURER OR DISTRIBUTOR TO A POWERSPORTS VEHICLE  
6 DEALER TO STOP SELLING A TYPE OF POWERSPORTS VEHICLE  
7 MANUFACTURED BY THE MANUFACTURER OR DISTRIBUTED BY THE  
8 DISTRIBUTOR BECAUSE OF A SAFETY DEFECT.

9 (2) THE MANUFACTURER OR DISTRIBUTOR SHALL REIMBURSE A  
10 POWERSPORTS VEHICLE DEALER IN ACCORDANCE WITH SUBSECTION (3) OF  
11 THIS SECTION IF:

12 (a) THE MANUFACTURER OR DISTRIBUTOR ISSUES A STOP-SALE  
13 DIRECTIVE FOR A POWERSPORTS VEHICLE MANUFACTURED OR  
14 DISTRIBUTED BY THE ISSUER OF THE STOP-SALE DIRECTIVE;

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

19 (c) THE USED POWERSPORTS VEHICLE COVERED BY THE STOP-SALE  
20 DIRECTIVE IS HELD IN THE INVENTORY OF THE POWERSPORTS VEHICLE  
21 DEALER ON THE DATE THE STOP-SALE DIRECTIVE IS ISSUED OR TAKEN BY  
22 THE DEALER AS A TRADE-IN VEHICLE ON A CONSUMER PURCHASE OF THE  
23 SAME LINE-MAKE; AND

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

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

8 (a) THE DATE WHEN THE MANUFACTURER OR DISTRIBUTOR  
9 PROVIDES THE POWERSPORTS VEHICLE DEALER WITH A REMEDY  
10 PROCEDURE AND ANY NECESSARY PARTS FOR ORDERING TO REPAIR THE  
11 USED POWERSPORTS VEHICLE; OR

12 (b) THE DATE THE POWERSPORTS VEHICLE DEALER TRANSFERS THE  
13 POWERSPORTS VEHICLE.

14 (4) A MANUFACTURER OR DISTRIBUTOR MAY DETERMINE THE  
15 REASONABLE MANNER AND METHOD REQUIRED FOR A POWERSPORTS  
16 VEHICLE DEALER TO DEMONSTRATE THE INVENTORY STATUS OF A USED  
17 POWERSPORTS VEHICLE TO DETERMINE ELIGIBILITY FOR REIMBURSEMENT.

18 (5) (a) THIS SECTION APPLIES ONLY TO USED POWERSPORTS  
19 VEHICLES.

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

25 (c) THIS SECTION DOES NOT REQUIRE A MANUFACTURER OR  
26 DISTRIBUTOR TO PROVIDE TOTAL COMPENSATION TO A POWERSPORTS  
27 VEHICLE DEALER THAT WOULD EXCEED THE TOTAL AVERAGE TRADE-IN



1 VALUATION OF THE AFFECTED USED POWERSPORTS VEHICLE.

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

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

9 **SECTION 9.** In Colorado Revised Statutes, 12-6-105, **repeal** (3)  
10 as follows:

11 **12-6-105. Powers and duties of executive director.** (3) ~~The~~  
12 ~~executive director may impose a civil fine of not less than ten thousand~~  
13 ~~dollars and not more than twenty-five thousand dollars on a motor vehicle~~  
14 ~~manufacturer, distributor, or manufacturer representative who knowingly~~  
15 ~~violates section 12-6-120.3 (5). Each day that a manufacturer, distributor,~~  
16 ~~or manufacturer representative violates section 12-6-120.3 (5) by failing~~  
17 ~~to offer the right of first refusal or failing to make a payment required by~~  
18 ~~section 12-6-120.3 (5) is a separate offense.~~

19 **SECTION 10.** In Colorado Revised Statutes, 12-6-118, **amend**  
20 (1)(c) as follows:

21 **12-6-118. Licenses - grounds for denial, suspension, or**  
22 **revocation.** (1) A manufacturer's or distributor's license may be denied,  
23 suspended, or revoked on the following grounds:

24 (c) Willful failure to comply with this part 1 ~~including the right of~~  
25 ~~first refusal created in section 12-6-120.3 (5); or any rule or regulation~~  
26 ~~promulgated by the executive director;~~

27 **SECTION 11.** In Colorado Revised Statutes, 12-6-122, **amend**

1 (3) as follows:

2 **12-6-122. Right of action for loss.** (3) If any licensee suffers any  
3 loss or damage because of a violation of section 12-6-120 (1), or  
4 ~~12-6-120.3 (5)~~, the licensee shall have a right of action against the  
5 manufacturer, distributor, or manufacturer representative. In any court  
6 action wherein a manufacturer, distributor, or manufacturer representative  
7 has been found liable in damages to any licensee under this part 1, any  
8 licensee so damaged shall also be entitled to recover reasonable attorney  
9 fees and costs as part of his or her damages.

10 **SECTION 12. Act subject to petition - effective date -**  
11 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
12 the expiration of the ninety-day period after final adjournment of the  
13 general assembly (August 9, 2017, if adjournment sine die is on May 10,  
14 2017); except that, if a referendum petition is filed pursuant to section 1  
15 (3) of article V of the state constitution against this act or an item, section,  
16 or part of this act within such period, then the act, item, section, or part  
17 will not take effect unless approved by the people at the general election  
18 to be held in November 2018 and, in such case, will take effect on the  
19 date of the official declaration of the vote thereon by the governor.

20 (2) This act applies to acts committed on or after the applicable  
21 effective date of this act.