

CHAPTER 355

PROFESSIONS AND OCCUPATIONS

SENATE BILL 17-298

BY SENATOR(S) Tate, Aguilar, Cooke, Crowder, Garcia, Gardner, Guzman, Holbert, Jahn, Kefalas, Lambert, Lundberg, Marble, Merrifield, Neville T., Scott, Smallwood, Todd, Williams A., Grantham;
 also REPRESENTATIVE(S) Kraft-Tharp, Covarrubias, Esgar, Ginal, Gray, Herod, Jackson, Kennedy, Landgraf, Lawrence, McKean, Melton, Michaelson Jenet, Mitsch Bush, Valdez, Van Winkle, Duran.

AN ACT

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

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

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

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

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

(I) The facility or premises has been altered within the last ~~seven~~ TEN years at a cost of more than two hundred fifty thousand dollars and the alteration was required and approved by the manufacturer, distributor, or manufacturer representative ~~unless the motor vehicle dealer sells only motorcycles or motorcycles and powersports vehicles~~ SUBSECTION (1)(x)(II) OF THIS SECTION APPLIES TO THE DEALER; ~~except that this paragraph (x) SUBSECTION (1)(x) does not apply to improvements made to comply with health or safety laws, or to improvements made to accommodate the technology requirements necessary to sell or service a line-make, to technological improvements related to electric, automated, compressed natural gas, and fuel-cell motor vehicles, or to improvements made to install or upgrade electric vehicle charging equipment; or~~

(II) The motor vehicle dealer sells only motorcycles or motorcycles and

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

powersports vehicles, the facility or premises has been altered within the last ~~seven~~ TEN years at a cost of more than twenty-five thousand dollars, and the alteration was required and approved by the manufacturer, distributor, or manufacturer representative; except that this ~~paragraph (x)~~ SUBSECTION (1)(x) does not apply to improvements made to comply with health or safety laws, ~~or~~ to IMPROVEMENTS MADE TO ACCOMMODATE THE TECHNOLOGY REQUIREMENTS NECESSARY TO SELL OR SERVICE A ~~line-make~~, TO TECHNOLOGICAL IMPROVEMENTS RELATED TO ELECTRIC, AUTOMATED, COMPRESSED NATURAL GAS, AND FUEL-CELL MOTOR MOTORCYCLES AND POWERSPORTS VEHICLES, OR TO IMPROVEMENTS MADE TO INSTALL OR UPGRADE ELECTRIC VEHICLE CHARGING EQUIPMENT.

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

(A) RESALE TO ANY GOVERNMENT;

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

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

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

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

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

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

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

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

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

(6) as follows:

12-6-120.3. New, reopened, or relocated dealer - notice required - grounds for refusal of dealer license - definitions - rules. (1) No manufacturer or distributor shall establish an additional new motor vehicle dealer, reopen a previously existing motor vehicle dealer, or ~~relocate~~ AUTHORIZE an existing motor vehicle dealer TO RELOCATE without first providing at least sixty days' notice to all of its franchised dealers and former dealers whose franchises were terminated, cancelled, or not renewed by a manufacturer distributor, or manufacturer representative in the previous five years due to the insolvency of the manufacturer or distributor within whose relevant market area the new, reopened, or relocated dealer would be located. The notice shall MUST state:

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

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

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

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

(3) As used in this section:

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

(I) The geographic area of responsibility defined in the franchise agreement of an existing dealer; or

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

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

population of one hundred fifty thousand or less:

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

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

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

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

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

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

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

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

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

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

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

(5) (a) No manufacturer, distributor, or manufacturer representative shall offer

or award a person a franchise or permit the relocation of an existing franchise to the right of first refusal area unless the manufacturer, distributor, or manufacturer representative has complied with paragraph (b) of this subsection (5) or unless paragraph (b) of this subsection (5) does not apply.

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

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

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

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

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

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

of the franchise agreement.

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

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

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

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

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

(I) THE CHANGE IN POPULATION;

(II) THE RELEVANT VEHICLE BUYER PROFILES;

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

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

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

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

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

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

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

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

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

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

(A) IN THE PUBLIC INTEREST; AND

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

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

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

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

(a) The executive director; OR

(b) A DISTRICT COURT IF NEITHER THE EXECUTIVE DIRECTOR NOR THE

ADMINISTRATIVE LAW JUDGE, APPOINTED IN ACCORDANCE WITH THIS SECTION, HOLDS A HEARING CONCERNING THE COMPLAINT WITHIN SIXTY DAYS AFTER THE COMPLAINT WAS FILED.

(2) ~~Upon receiving the filing of a verified complaint and upon a showing of specific facts that a violation has occurred, the executive director shall summarily issue a cease-and-desist order under section 12-6-105 (1)(f) staying~~ ALLEGING WITH SPECIFIC FACTS THAT A VIOLATION HAS OCCURRED UNDER THIS SECTION, the termination, elimination, modification, or nonrenewal of the franchise agreement IS AUTOMATICALLY STAYED, WITHOUT THE MOTOR VEHICLE DEALER POSTING A BOND, UNTIL A FINAL DETERMINATION IS MADE ON EACH ISSUE RAISED IN THE COMPLAINT; EXCEPT THAT THE EXECUTIVE DIRECTOR, ADMINISTRATIVE LAW JUDGE, OR COURT MAY CANCEL THE STAY UPON FINDING THAT THE CANCELLATION, TERMINATION, OR NONRENEWAL OF THE FRANCHISE AGREEMENT WAS FOR ANY OF THE REASONS SPECIFIED IN SECTION 12-6-120 (1)(d)(III). THE AUTOMATIC STAY MAINTAINS ALL RIGHTS UNDER THE FRANCHISE AGREEMENT UNTIL THE FINAL DETERMINATION OF THE ISSUES RAISED IN THE VERIFIED COMPLAINT. THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE SHALL NOT NAME A REPLACEMENT MOTOR VEHICLE DEALER FOR THE MARKET OR LOCATION UNTIL A FINAL ORDER IS ENTERED.

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

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

(5) THE PREVAILING PARTY IN A CLAIM THAT A TERMINATION, CANCELLATION, OR NONRENEWAL VIOLATES SECTION 12-6-120 (1)(d) OR (1)(w) IS ENTITLED TO RECOVER ATTORNEY FEES AND COSTS, INCLUDING EXPERT WITNESS FEES, INCURRED IN THE TERMINATION PROTEST.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RECALL OR STOP-SALE DIRECTIVE FOR THE MOTOR VEHICLE TO BE QUALIFIED OR SOLD AS A CERTIFIED PREOWNED VEHICLE OR SUBSTANTIALLY SIMILAR DESIGNATION.

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

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

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

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

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

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

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

(A) RE SALE TO ANY GOVERNMENT;

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

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

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

(y) TO REQUIRE A POWERSPORTS VEHICLE DEALER TO GRANT A MANUFACTURER,

DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE THE FOLLOWING OR TO ENFORCE THE FOLLOWING IF THE EXERCISE OF THE CONTRACTUAL RIGHT WOULD STOP THE TRANSFER OF THE POWERSPORTS VEHICLE DEALER OWNERSHIP FROM AN OWNER TO AN IMMEDIATE FAMILY MEMBER OF THE OWNER:

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

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

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

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

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

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

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

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

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

(1.5) A powersports vehicle manufacturer shall ~~reasonably~~ approve or disapprove of a powersports vehicle dealer facility initial site location, ~~or~~ relocation, OR REOPENING request within sixty days after the request or after sending the notice required by subsection (1) of this section to all of its franchised powersports vehicle dealers, ~~and former dealers whose franchises were terminated, cancelled, or not~~

~~renewed in the previous five years due to the insolvency of the manufacturer or distributor, whichever is later, but not to exceed one hundred days~~ WHICHEVER IS LATER.

(3) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

plan:

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

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

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

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

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

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

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

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

(I) THE CHANGE IN POPULATION;

(II) THE RELEVANT VEHICLE BUYER PROFILES;

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

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

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

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

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

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

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

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

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

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

(A) IN THE PUBLIC INTEREST; AND

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

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

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

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

(a) The executive director; OR

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

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

(3) ~~The cease-and-desist order remains in effect until the hearing required by section 12-6-505 (1)(h) is held. If a determination is made at the hearing required by section 12-6-505 (1)(h) that a violation occurred, the executive director shall make the cease-and-desist order permanent and take any actions authorized by section 12-6-504 (1). A motor vehicle dealer who appeals to the executive director maintains all rights under the franchise agreement until the later of the executive director issuing a decision or ninety days after the manufacturer, distributor, or manufacturer's representative provides the notice of termination unless the executive director finds that the termination, cancellation, or nonrenewal was for fraud, a misrepresentation, or committing a crime within the scope of the franchise~~

~~agreement or in the operation of the dealership, in which case the franchise rights terminate immediately~~ If a VERIFIED COMPLAINT IS FILED WITH THE EXECUTIVE DIRECTOR, THE EXECUTIVE DIRECTOR SHALL REFER THE COMPLAINT TO AN ADMINISTRATIVE LAW JUDGE WITH THE OFFICE OF ADMINISTRATIVE COURTS FOR FINAL AGENCY ACTION.

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

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

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

12-6-538. Stop-sale directives - used powersports vehicles - definitions.

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 11. In Colorado Revised Statutes, 12-6-122, **amend** (3) as follows:

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

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

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

Approved: June 5, 2017