

## CHAPTER 32

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**PROFESSIONS AND OCCUPATIONS**

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**HOUSE BILL 10-1049**

BY REPRESENTATIVE(S) Rice and Looper, Balmer, Court, Hullinghorst, King S., May, McNulty, Nikkel, Scanlan, Sonnenberg, Stephens, Summers, Primavera, Apuan, Baumgardner, Casso, Fischer, Gardner B., Gerou, Kagan, Kerr J., Lambert, Liston, Massey, Middleton, Priola, Ryden, Schafer S., Tipton, Todd, Waller, Carroll T., DelGrosso, Peniston, Soper, Vaad, Vigil; also SENATOR(S) Romer and Mitchell, Foster, Hodge, Lundberg, Penry, Shaffer B., Bacon, Boyd, Brophy, Cadman, Gibbs, Harvey, Heath, Johnston, Kester, King K., Kopp, Morse, Newell, Renfro, Sandoval, Scheffel, Schultheis, Schwartz, Spence, White, Whitehead, Williams.

**AN ACT****CONCERNING THE FRANCHISE RIGHTS OF MOTOR VEHICLE DEALERS.**

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

**SECTION 1.** 12-6-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

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

(9.7) "FRANCHISE" MEANS THE AUTHORITY TO SELL OR SERVICE AND REPAIR MOTOR VEHICLES OF A DESIGNATED LINE-MAKE GRANTED THROUGH A SALES, SERVICE, AND PARTS AGREEMENT WITH A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE.

**SECTION 2.** 12-6-120 (1) (r) (II) and (1) (s), Colorado Revised Statutes, are amended, and the said 12-6-120 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

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

(r) To fail to pay to a motor vehicle dealer:

(II) Within ninety days after the termination, elimination, or cessation of a

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

line-make OR THE TERMINATION OF A FRANCHISE DUE TO THE INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR, the fair market value of the motor vehicle dealer's goodwill for the line-make as of the date the manufacturer or distributor announces the action that results in the termination, elimination, or cessation, not including any amounts paid under sub-subparagraphs (A) to (E) of subparagraph (I) of paragraph (I) of this subsection (1);

(s) To condition a franchise agreement on improvements to a facility unless reasonably required by the technology of a motor vehicle being sold at the facility; ~~and~~

(u) TO CHARGE BACK, DENY MOTOR VEHICLE ALLOCATION, WITHHOLD PAYMENTS, OR TAKE OTHER ACTIONS AGAINST A MOTOR VEHICLE DEALER IF A MOTOR VEHICLE SOLD BY THE MOTOR VEHICLE DEALER IS EXPORTED FROM COLORADO UNLESS THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE PROVES THAT THE MOTOR VEHICLE DEALER KNEW OR REASONABLY SHOULD HAVE KNOWN A MOTOR VEHICLE WAS INTENDED TO BE EXPORTED, WHICH SHALL OPERATE AS A REBUTTABLE PRESUMPTION THAT THE MOTOR VEHICLE DEALER DID NOT HAVE SUCH KNOWLEDGE; AND

(v) WITHIN NINETY DAYS AFTER THE TERMINATION, ELIMINATION, OR CESSATION OF A LINE-MAKE OR THE TERMINATION, CANCELLATION, OR NONRENEWAL OF A FRANCHISE BY THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, FOR ANY REASON OTHER THAN THAT THE MOTOR VEHICLE DEALER COMMITS FRAUD, MAKES A MISREPRESENTATION, OR COMMITS ANY OTHER CRIME WITHIN THE SCOPE OF THE FRANCHISE AGREEMENT OR IN THE OPERATION OF THE DEALERSHIP, TO FAIL TO REIMBURSE A MOTOR VEHICLE DEALER FOR THE COST DEPRECIATED BY FIVE PERCENT PER YEAR OF ANY UPGRADES OR ALTERATIONS TO THE MOTOR VEHICLE DEALER'S FACILITIES REQUIRED BY THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE WITHIN THE PREVIOUS FIVE YEARS.

**SECTION 3.** 12-6-120.3 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**12-6-120.3. New, reopened, or relocated dealer - notice required - grounds for refusal of dealer license - definitions - rules.** (3) As used in this section:

(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.

**SECTION 4.** The introductory portion to 12-6-120.3 (1), 12-6-120.3 (1.5), and the introductory portion to 12-6-120.3 (4) (a), Colorado Revised Statutes, are amended, and the said 12-6-120.3 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**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 an existing motor 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. ~~Such~~ THE notice shall state:

(1.5) A manufacturer shall reasonably approve or disapprove of a motor vehicle dealer facility initial site location or relocation 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.

(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:

(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'S 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 COMMERCIALY 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, AWARDED 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.

**SECTION 5.** 12-6-120.5 (2) (d), Colorado Revised Statutes, is amended, and the said 12-6-120.5 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

**12-6-120.5. Independent control of dealer - definitions.** (2) Notwithstanding subsection (1) of this section, the following activities are not prohibited:

(d) Operation of a motor vehicle dealer if the manufacturer has no other ~~franchised~~ dealers of the same line-make in this state; and

(f) OPERATION OF A MOTOR VEHICLE DEALER IF THE MANUFACTURER WAS OPERATING THE DEALER ON JANUARY 1, 2009, SO LONG AS THE DEALER IS IN CONTINUOUS OPERATION AFTER JANUARY 1, 2009.

**SECTION 6.** 12-6-126 (1) and (2), Colorado Revised Statutes, are amended to read:

**12-6-126. Audit reimbursement limitations - dealer claims.** (1) (a) A manufacturer, distributor, or manufacturer representative shall have the right to audit warranty, sales, or incentive claims of a motor vehicle dealer for ~~fifteen months~~ NINE MONTHS after the date the claim was submitted.

(b) A manufacturer, distributor, or manufacturer representative shall not require documentation for warranty, sales, or incentive claims or audit warranty, sales, or incentive claims of a motor vehicle dealer more than ~~twenty-four~~ FIFTEEN months after the date the claim was submitted, nor shall the manufacturer require a charge back, reimbursement, or credit against a future transaction arising out of an audit or request for documentation arising more than ~~fifteen months~~ NINE MONTHS after the date the claim was submitted.

(2) The motor vehicle dealer shall have ~~fifteen months~~ NINE MONTHS after making a sale or providing service to submit warranty, sales, or incentive claims to the manufacturer, distributor, or manufacturer representative.

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

**12-6-128. Payout exemption to execution.** A MOTOR VEHICLE DEALER'S RIGHT TO RECEIVE PAYMENTS FROM A MANUFACTURER OR DISTRIBUTOR REQUIRED BY SECTION 12-6-120 (1) (l) AND (1) (r) IS NOT LIABLE TO ATTACHMENT OR EXECUTION AND MAY NOT OTHERWISE BE SEIZED, TAKEN, APPROPRIATED, OR APPLIED IN A LEGAL OR EQUITABLE PROCESS OR BY OPERATION OF LAW TO PAY THE DEBTS OR LIABILITIES OF THE MANUFACTURER OR DISTRIBUTOR. THIS SECTION SHALL NOT PROHIBIT A SECURED CREDITOR FROM EXERCISING RIGHTS ACCRUED PURSUANT TO A SECURITY AGREEMENT IF THE RIGHT AROSE AS A RESULT OF THE MANUFACTURER OR DISTRIBUTOR VOLUNTARILY CREATING A SECURITY INTEREST BEFORE PAYING EXISTING DEBTS OR LIABILITIES OF THE MANUFACTURER OR DISTRIBUTOR. THIS SECTION SHALL NOT PROHIBIT A MANUFACTURER OR DISTRIBUTOR FROM WITHHOLDING A PORTION OF SUCH PAYMENTS NECESSARY TO COVER AN AMOUNT OF MONEY OWED TO THE MANUFACTURER OR DISTRIBUTOR AS AN OFFSET TO SUCH PAYMENTS IF THE MANUFACTURER OR DISTRIBUTOR PROVIDES THE MOTOR VEHICLE DEALER WRITTEN NOTICE THEREOF.

**SECTION 8.** 12-6-502, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**12-6-502. Definitions.** As used in this part 5, unless the context otherwise requires:

(9.7) "FRANCHISE" MEANS THE AUTHORITY TO SELL OR SERVICE AND REPAIR POWERSPORTS VEHICLES OF A DESIGNATED LINE-MAKE GRANTED THROUGH A SALES, SERVICE, AND PARTS AGREEMENT WITH A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE.

**SECTION 9.** 12-6-523 (1) (r) (II), Colorado Revised Statutes, is amended, and the said 12-6-523 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

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

(r) To fail to pay to a powersports vehicle dealer:

(II) Within ninety days after the termination, elimination, or cessation of a line-make OR THE TERMINATION OF A FRANCHISE DUE TO THE INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR, the fair market value of the powersports vehicle dealer's goodwill for the line-make as of the date the manufacturer or distributor announces the action that results in the termination, elimination, or cessation, not including any amounts paid under subparagraphs (I) to (V) of paragraph (I) of this subsection (1); ~~and~~

(t) TO CHARGE BACK, DENY POWERSPORTS VEHICLE ALLOCATION, WITHHOLD PAYMENTS, OR TAKE OTHER ACTIONS AGAINST A POWERSPORTS VEHICLE DEALER IF A POWERSPORTS VEHICLE SOLD BY THE POWERSPORTS VEHICLE DEALER IS EXPORTED FROM COLORADO UNLESS THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE PROVES THAT THE POWERSPORTS VEHICLE DEALER KNEW OR REASONABLY SHOULD HAVE KNOWN A POWERSPORTS VEHICLE WAS INTENDED TO BE EXPORTED, WHICH SHALL OPERATE AS A REBUTTABLE PRESUMPTION THAT THE POWERSPORTS VEHICLE DEALER DID NOT HAVE SUCH KNOWLEDGE; AND

(u) WITHIN NINETY DAYS AFTER THE TERMINATION, ELIMINATION, OR CESSATION OF A LINE-MAKE OR THE TERMINATION, CANCELLATION, OR NONRENEWAL OF A FRANCHISE BY THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, FOR ANY REASON OTHER THAN THAT THE POWERSPORTS VEHICLE DEALER COMMITS FRAUD, MAKES A MISREPRESENTATION, OR COMMITS ANY OTHER CRIME WITHIN THE SCOPE OF THE FRANCHISE AGREEMENT OR IN THE OPERATION OF THE DEALERSHIP, TO FAIL TO REIMBURSE A POWERSPORTS VEHICLE DEALER FOR THE COST DEPRECIATED BY FIVE PERCENT PER YEAR OF ANY UPGRADES OR ALTERATIONS TO THE POWERSPORTS VEHICLE DEALER'S FACILITIES REQUIRED BY THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE WITHIN THE PREVIOUS FIVE YEARS.

**SECTION 10.** 12-6-524 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**12-6-524. New, reopened, or relocated dealer - notice required - grounds for refusal of dealer license - definitions - rules.** (3) As used in this section:

(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.

**SECTION 11.** The introductory portion to 12-6-524 (1), 12-6-524 (1.5), and the introductory portion to 12-6-524 (4) (a), Colorado Revised Statutes, are amended, and the said 12-6-524 is further amended BY THE ADDITION OF A NEW

SUBSECTION, to read:

**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 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 state:

(1.5) A powersports vehicle manufacturer shall reasonably approve or disapprove of a powersports vehicle dealer facility initial site location or relocation 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.

(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:

(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'S 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 COMMERCIALY 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) (I) THE RIGHT OF FIRST REFUSAL SURVIVES A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, OR PREDECESSOR THEREOF, AWARDED 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.

(II) 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.

**SECTION 12.** 12-6-526.5 (1) and (2), Colorado Revised Statutes, are amended to read:

**12-6-526.5. Audit reimbursement limitations - dealer claims.** (1) (a) A manufacturer, distributor, or manufacturer representative shall have the right to audit warranty, sales, or incentive claims of a powersports vehicle dealer for ~~fifteen months~~ NINE MONTHS after the date the claim was submitted.

(b) A manufacturer, distributor, or manufacturer representative shall not require documentation for warranty, sales, or incentive claims or audit warranty, sales, or



incentive claims of a powersports vehicle dealer more than ~~twenty-four~~ FIFTEEN months after the date the claim was submitted, nor shall the manufacturer require a charge back, reimbursement, or credit against a future transaction arising out of an audit or request for documentation arising more than ~~fifteen months~~ NINE MONTHS after the date the claim was submitted.

(2) The powersports vehicle dealer shall have ~~fifteen months~~ NINE MONTHS after making a sale or providing service to submit warranty, sales, or incentive claims to the manufacturer, distributor, or manufacturer's representative.

**SECTION 13.** Part 5 of article 6 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**12-6-534. Payout exemption to execution.** A POWERSPORTS VEHICLE DEALER'S RIGHT TO RECEIVE PAYMENTS FROM A MANUFACTURER OR DISTRIBUTOR REQUIRED BY SECTION 12-6-523 (1) (l) AND (1) (r) IS NOT LIABLE TO ATTACHMENT OR EXECUTION AND MAY NOT OTHERWISE BE SEIZED, TAKEN, APPROPRIATED, OR APPLIED IN A LEGAL OR EQUITABLE PROCESS OR BY OPERATION OF LAW TO PAY THE DEBTS OR LIABILITIES OF THE MANUFACTURER OR DISTRIBUTOR. THIS SECTION SHALL NOT PROHIBIT A SECURED CREDITOR FROM EXERCISING RIGHTS ACCRUED PURSUANT TO A SECURITY AGREEMENT IF THE RIGHT AROSE AS A RESULT OF THE MANUFACTURER OR DISTRIBUTOR VOLUNTARILY CREATING A SECURITY INTEREST BEFORE PAYING EXISTING DEBTS OR LIABILITIES OF THE MANUFACTURER OR DISTRIBUTOR. THIS SECTION SHALL NOT PROHIBIT A MANUFACTURER OR DISTRIBUTOR FROM WITHHOLDING A PORTION OF THE PAYMENTS NECESSARY TO COVER AN AMOUNT OF MONEY OWED TO THE MANUFACTURER OR DISTRIBUTOR AS AN OFFSET TO THE PAYMENTS IF THE MANUFACTURER OR DISTRIBUTOR PROVIDES THE MOTOR VEHICLE DEALER WRITTEN NOTICE THEREOF.

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

Approved: March 22, 2010