

CHAPTER 175

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 11-1188

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also SENATOR(S) Newell, Jahn.

AN ACT**CONCERNING FRANCHISE AGREEMENTS FOR A DEALER TO SELL VEHICLES.**

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

SECTION 1. 12-6-102 (3), Colorado Revised Statutes, is amended, and the said 12-6-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, 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:

(3) "Coerce" means ~~the failure to act in good faith in~~ TO COMPEL OR ATTEMPT TO COMPEL BY THREATENING, RETALIATING, ECONOMIC FORCE, OR BY NOT performing or complying with any terms or provisions of the franchise or agreement; except that recommendation, exposition, persuasion, urging, or argument shall not be deemed to constitute ~~a lack of good faith~~ COERCION.

(16.6) "SALES, SERVICE, AND PARTS AGREEMENT" MEANS AN AGREEMENT BETWEEN A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE AND A MOTOR VEHICLE OR POWERSPORTS DEALER AUTHORIZING THE DEALER TO SELL AND SERVICE A LINE MAKE OF MOTOR OR POWERSPORTS VEHICLES OR IMPOSING ANY DUTY ON THE DEALER IN CONSIDERATION FOR THE RIGHT TO HAVE OR COMPETITIVELY OPERATE A FRANCHISE, INCLUDING ANY AMENDMENTS OR ADDITIONAL RELATED AGREEMENTS THERETO.

(16.7) "SITE CONTROL PROVISION" MEANS AN AGREEMENT THAT APPLIES TO REAL PROPERTY OWNED OR LEASED BY THE FRANCHISEE AND THAT GIVES A MOTOR VEHICLE OR POWERSPORTS VEHICLE MANUFACTURER, DISTRIBUTOR, OR

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

MANUFACTURER REPRESENTATIVE THE RIGHT TO:

- (a) CONTROL THE USE AND DEVELOPMENT OF THE REAL PROPERTY;
- (b) REQUIRE THE FRANCHISEE TO ESTABLISH OR MAINTAIN AN EXCLUSIVE DEALERSHIP FACILITY AT THE REAL PROPERTY; OR
- (c) RESTRICT THE FRANCHISEE FROM TRANSFERRING, SELLING, LEASING, DEVELOPING, OR CHANGING THE USE OF THE REAL PROPERTY.

SECTION 2. The introductory portion to 12-6-120 (1), Colorado Revised Statutes, is 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~~ IS unlawful and a violation of this part 1 for any manufacturer, distributor, or manufacturer representative:

(w) TO FAIL TO NOTIFY A MOTOR VEHICLE DEALER AT LEAST NINETY DAYS BEFORE THE FOLLOWING AND TO PROVIDE THE SPECIFIC REASONS FOR THE FOLLOWING:

(I) DIRECTLY OR INDIRECTLY TERMINATING, CANCELLING, OR NOT RENEWING A FRANCHISE AGREEMENT; OR

(II) MODIFYING, REPLACING, OR ATTEMPTING TO MODIFY OR REPLACE THE FRANCHISE OR SELLING AGREEMENT OF A MOTOR VEHICLE DEALER, INCLUDING A CHANGE IN THE DEALER'S GEOGRAPHIC AREA UPON WHICH SALES OR SERVICE PERFORMANCE IS MEASURED, IF THE MODIFICATION WOULD SUBSTANTIALLY AND ADVERSELY ALTER THE RIGHTS OR OBLIGATIONS OF THE DEALER UNDER THE CURRENT FRANCHISE OR SELLING AGREEMENT OR WOULD SUBSTANTIALLY IMPAIR THE SALES OR SERVICE OBLIGATIONS OR THE DEALER'S INVESTMENT; AND

(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 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; EXCEPT THAT THIS PARAGRAPH (x) 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; OR

(II) THE MOTOR VEHICLE DEALER SELLS ONLY MOTORCYCLES OR MOTORCYCLES AND POWERSPORTS VEHICLES, THE FACILITY OR PREMISES HAS BEEN ALTERED WITHIN THE LAST SEVEN 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) 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.

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

12-6-129. Site control extinguishes. IF A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE HAS TERMINATED, ELIMINATED, OR NOT RENEWED A FRANCHISE AGREEMENT CONTAINING A SITE CONTROL PROVISION, THE MOTOR VEHICLE DEALER MAY VOID A SITE CONTROL PROVISION OF A FRANCHISE AGREEMENT BY RETURNING ANY MONEY THE DEALER HAS ACCEPTED IN EXCHANGE FOR SITE CONTROL PRORATED BY THE TIME REMAINING BEFORE THE AGREEMENT EXPIRES OVER THE TIME PERIOD BETWEEN THE AGREEMENT BEING SIGNED AND THE AGREEMENT EXPIRING. THIS SECTION DOES NOT APPLY IF THE TERMINATION, ELIMINATION, OR NONRENEWAL IS FOR JUST CAUSE IN ACCORDANCE WITH SECTION 12-6-120 (1) (d).

12-6-130. Modification voidable. IF A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE FAILS TO COMPLY WITH SECTION 12-6-120 (1) (w) (II), THE MOTOR VEHICLE DEALER MAY VOID THE MODIFICATION OR REPLACEMENT OF THE FRANCHISE AGREEMENT.

12-6-131. Termination appeal. 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 THE EXECUTIVE DIRECTOR. UPON RECEIVING THE 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 THE TERMINATION, ELIMINATION, MODIFICATION, OR NONRENEWAL OF THE FRANCHISE AGREEMENT. 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.

SECTION 4. The introductory portion to 12-6-523 (1), 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~~ IS unlawful and a violation of this part 5 for any powersports vehicle manufacturer, distributor, or manufacturer representative:

(v) TO FAIL TO NOTIFY A POWERSPORTS VEHICLE DEALER AT LEAST NINETY DAYS

BEFORE THE FOLLOWING AND TO PROVIDE THE SPECIFIC REASONS FOR THE FOLLOWING:

(I) DIRECTLY OR INDIRECTLY TERMINATING, CANCELLING, OR NOT RENEWING A FRANCHISE AGREEMENT; OR

(II) MODIFYING, REPLACING, OR ATTEMPTING TO MODIFY OR REPLACE THE FRANCHISE OR SELLING AGREEMENT OF A POWERSPORTS DEALER, INCLUDING A CHANGE IN THE DEALER'S GEOGRAPHIC AREA UPON WHICH SALES OR SERVICE PERFORMANCE IS MEASURED, IF THE MODIFICATION WOULD SUBSTANTIALLY AND ADVERSELY ALTER THE RIGHTS OR OBLIGATIONS OF THE DEALER UNDER THE CURRENT FRANCHISE OR SELLING AGREEMENT OR WOULD SUBSTANTIALLY IMPAIR THE SALES OR SERVICE OBLIGATIONS OR THE DEALER'S INVESTMENT; AND

(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 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) 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.

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

12-6-535. Site control extinguishes. If a MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE HAS TERMINATED, ELIMINATED, OR NOT RENEWED A FRANCHISE AGREEMENT CONTAINING A SITE CONTROL PROVISION, THE POWERSPORTS VEHICLE DEALER MAY VOID A SITE CONTROL PROVISION OF A FRANCHISE AGREEMENT BY RETURNING ANY MONEY THE DEALER HAS ACCEPTED IN EXCHANGE FOR SITE CONTROL PRORATED BY THE TIME REMAINING BEFORE THE AGREEMENT EXPIRES OVER THE TIME PERIOD BETWEEN THE AGREEMENT BEING SIGNED AND THE AGREEMENT EXPIRING. THIS SECTION DOES NOT APPLY IF THE TERMINATION, ELIMINATION, OR NONRENEWAL IS FOR JUST CAUSE IN ACCORDANCE WITH SECTION 12-6-523 (1) (d).

12-6-536. Modification voidable. If a MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE FAILS TO COMPLY WITH SECTION 12-6-120 (1) (v) (II), THE POWERSPORTS DEALER MAY VOID THE MODIFICATION OR REPLACEMENT OF THE FRANCHISE AGREEMENT.

12-6-537. Termination appeal. 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 THE EXECUTIVE DIRECTOR. UPON RECEIVING THE 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) (h) STAYING THE TERMINATION, ELIMINATION, MODIFICATION, OR NONRENEWAL OF THE FRANCHISE

AGREEMENT. THE CEASE-AND-DESIST ORDER REMAINS IN EFFECT UNTIL THE HEARING REQUIRED BY SECTION 12-6-105 (1) (h) IS HELD. IF A DETERMINATION IS MADE AT THE HEARING REQUIRED BY SECTION 12-6-105 (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.

SECTION 6. 42-1-102 (55), Colorado Revised Statutes, is amended to read:

42-1-102. Definitions. As used in articles 1 to 4 of this title, unless the context otherwise requires:

(55) "Motorcycle" means a motor vehicle that uses handlebars OR ANY OTHER DEVICE CONNECTED TO THE FRONT WHEEL to steer and that is designed to travel on not more than three wheels in contact with the ground; except that the term does not include a farm tractor, LOW-SPEED ELECTRIC VEHICLE, or low-power scooter.

SECTION 7. Applicability. This act shall apply to offenses committed on or after the effective date of this act.

SECTION 8. 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: May 13, 2011