

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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>.)

SENATE
Amended 3rd Reading
May 2, 2017

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

SENATE
Amended 2nd Reading
May 1, 2017

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.

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.

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.

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 (II) 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 (II) 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, THE CONSUMERS, OR
27 EXISTING SAME LINE-MAKE DEALERS IN 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:

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:

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.

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.

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 WHOLESALE

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

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