

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

May 4, 2017
Date

Committee on Business Affairs and Labor.

After consideration on the merits, the Committee recommends the following:

SB17-298 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend reengrossed bill, page 5, strike line 20 and substitute "(1)
2 introductory portion, (1)(b), (1)(c), (1.5), and (3)(b); **repeal** (1)(d), (3)(c),
3 (4), and (5); and".

4 Page 6, after line 6 insert:

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

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

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

15 Page 11, lines 25 and 26, strike "INTEREST, THE CONSUMERS, OR EXISTING
16 SAME LINE-MAKE DEALERS" and substitute "INTEREST OR THE
17 CONSUMERS".

18 Page 17, line 23, strike "WHOLESALE" and substitute "TRADE-IN".

1 Page 18, after line 4 insert:

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

4 **12-6-523. Unlawful acts.** (1) It is unlawful and a violation of this
5 part 5 for any powersports vehicle manufacturer, distributor, or
6 manufacturer representative:

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

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

23 (A) RESALE TO ANY GOVERNMENT;

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

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

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

35 (y) TO REQUIRE A POWERSPORTS VEHICLE DEALER TO GRANT A
36 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE THE
37 FOLLOWING OR TO ENFORCE THE FOLLOWING IF THE EXERCISE OF THE
38 CONTRACTUAL RIGHT WOULD STOP THE TRANSFER OF THE POWERSPORTS
39 VEHICLE DEALER OWNERSHIP FROM AN OWNER TO AN IMMEDIATE FAMILY
40 MEMBER OF THE OWNER:

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

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

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

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

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

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

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

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

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

37 (1.5) A powersports vehicle manufacturer shall ~~reasonably~~
38 approve or disapprove of a powersports vehicle dealer facility initial site
39 location, ~~or~~ relocation, OR REOPENING request within sixty days after the
40 request or after sending the notice required by subsection (1) of this
41 section to all of its franchised powersports vehicle dealers ~~and former~~

1 ~~dealers whose franchises were terminated, cancelled, or not renewed in~~
2 ~~the previous five years due to the insolvency of the manufacturer or~~
3 ~~distributor, whichever is later, but not to exceed one hundred days~~
4 ~~WHICHEVER IS LATER.~~

5 (3) As used in this section:

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

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

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

20 (4) (a) ~~If a licensee or former licensee whose franchise was~~
21 ~~terminated, cancelled, or not renewed by the manufacturer, distributor, or~~
22 ~~manufacturer representative in the previous five years due to the~~
23 ~~insolvency of the manufacturer or distributor brings an action or~~
24 ~~proceeding before the executive director or a court pursuant to this part~~
25 ~~5, the powersports vehicle manufacturer shall have the burden of proof~~
26 ~~on the following issues:~~

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

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

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

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

40 (b) (I) ~~In addition to the powers specified in section 12-6-505, the~~
41 ~~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
28 or distributor that was held by the powersports vehicle dealer immediately
29 prior to the franchise being terminated, cancelled, or not renewed within
30 the amount of time the right of first refusal is granted under paragraph (c)
31 of this subsection (5), the manufacturer, distributor, or manufacturer
32 representative, or the successor thereof, shall offer the former
33 powersports vehicle dealer whose franchise was terminated, cancelled, or
34 not renewed a franchise within the same first refusal area prior to making
35 the offer to any other person for the same line-make unless the former
36 powersports vehicle dealer elects to receive the payments required by
37 section 12-6-523 (1)(l) and (1)(r) in lieu of the right of first refusal or the
38 powersports vehicle dealer has accepted compensation from the
39 manufacturer, distributor, or manufacturer representative for the
40 termination, cancellation, or nonrenewal of the franchise agreement.

41 (c) The duration of the right of first refusal granted in paragraph

1 ~~(b) of this subsection (5) is equal to five years after the franchise is~~
2 ~~terminated, cancelled, or not renewed.~~

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

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

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

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

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

41 ~~(I) THE DEALER IS LOCATED WITHIN THE RELEVANT MARKET AREA~~

1 OF THE PROPOSED RELOCATED, REOPENED, OR ADDITIONAL DEALERSHIP
2 DESCRIBED IN THE NOTICE REQUIRED IN SUBSECTION (1); OR

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

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

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

17 (I) THE CHANGE IN POPULATION;

18 (II) THE RELEVANT VEHICLE BUYER PROFILES;

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

23 (IV) WHETHER THE OPENING OF THE PROPOSED REOPENED,
24 RELOCATED, OR ADDITIONAL POWERSPORTS VEHICLE DEALER IS
25 MATERIALLY BENEFICIAL TO THE PUBLIC INTEREST, THE CONSUMERS, OR
26 EXISTING SAME LINE-MAKE DEALERS IN THE RELEVANT MARKET AREA;

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

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

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

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

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

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

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

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

21 (A) IN THE PUBLIC INTEREST; AND

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

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

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

36 **12-6-537. Termination appeal.** (1) A powersports vehicle dealer
37 who has reason to believe that a manufacturer, distributor, or
38 manufacturer representative has violated section 12-6-523 (1)(d) or (1)(v)
39 may appeal to the board by filing a complaint with:

40 (a) The executive director; OR

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

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

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

22 (3) ~~The cease-and-desist order remains in effect until the hearing~~
23 ~~required by section 12-6-505 (1)(h) is held. If a determination is made at~~
24 ~~the hearing required by section 12-6-505 (1)(h) that a violation occurred,~~
25 ~~the executive director shall make the cease-and-desist order permanent~~
26 ~~and take any actions authorized by section 12-6-504 (1). A motor vehicle~~
27 ~~dealer who appeals to the executive director maintains all rights under the~~
28 ~~franchise agreement until the later of the executive director issuing a~~
29 ~~decision or ninety days after the manufacturer, distributor, or~~
30 ~~manufacturer's representative provides the notice of termination unless~~
31 ~~the executive director finds that the termination, cancellation, or~~
32 ~~nonrenewal was for fraud, a misrepresentation, or committing a crime~~
33 ~~within the scope of the franchise agreement or in the operation of the~~
34 ~~dealership, in which case the franchise rights terminate immediately~~ IF A
35 VERIFIED COMPLAINT IS FILED WITH THE EXECUTIVE DIRECTOR, THE
36 EXECUTIVE DIRECTOR SHALL REFER THE COMPLAINT TO AN
37 ADMINISTRATIVE LAW JUDGE WITH THE OFFICE OF ADMINISTRATIVE
38 COURTS FOR FINAL AGENCY ACTION.

39 (4) IN RESOLVING A TERMINATION COMPLAINT, THE
40 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE HAS
41 THE BURDEN OF PROVING ANY CLAIM MADE THAT THE FACTORS LISTED IN

1 SECTION 12-6-523 (1)(d)(II) APPLY TO THE TERMINATION, CANCELLATION,
2 OR NONRENEWAL.

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

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

9 **12-6-538. Stop-sale directives - used powersports vehicles -**
10 **definition.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
11 OTHERWISE REQUIRES:

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

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

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

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

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

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

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

39 (3) IF THE CONDITIONS IN SUBSECTION (2) OF THIS SECTION ARE
40 MET, THE MANUFACTURER OR DISTRIBUTOR SHALL, UPON APPLICATION BY
41 THE POWERSPORTS VEHICLE DEALER, PAY OR CREDIT THE DEALER ONE AND

1 ONE-HALF PERCENT PER MONTH OF THE AVERAGE TRADE-IN VALUE OF
2 EACH USED POWERSPORTS VEHICLE'S MODEL AFFECTED BY THE STOP-SALE
3 DIRECTIVE PRORATED FROM THIRTY DAYS AFTER THE STOP-SALE
4 DIRECTIVE WAS ISSUED TO THE EARLIER OF:

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

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

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

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

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

22 (c) THIS SECTION DOES NOT REQUIRE A MANUFACTURER OR
23 DISTRIBUTOR TO PROVIDE TOTAL COMPENSATION TO A POWERSPORTS
24 VEHICLE DEALER THAT WOULD EXCEED THE TOTAL AVERAGE WHOLESALE
25 VALUATION OF THE AFFECTED USED POWERSPORTS VEHICLE.

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

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

33 Renumber succeeding section accordingly.

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