

**First Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

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

LLS NO. 11-0275.01 Jery Payne

**HOUSE BILL 11-1188**

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**HOUSE SPONSORSHIP**

**Liston,**

**SENATE SPONSORSHIP**

**Newell,**

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**House Committees**

Economic and Business Development

**Senate Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING FRANCHISE AGREEMENTS FOR A DEALER TO SELL**  
102 **VEHICLES.**

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**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://www.leg.state.co.us/billsummaries>.)*

The bill prohibits a motor vehicle or powersports vehicle manufacturer or distributor from the following:

- ! Failing to notify a dealer at least 90 days before ending a franchise agreement;
- ! Failing to notify a dealer at least 90 days before modifying

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.*

a franchise agreement if the modification is detrimental to the dealer; and

- ! Requiring or coercing a dealer to upgrade a facility if the facility has been upgraded within the last 15 years at the manufacturer's or distributor's request and the upgrade cost more than \$500,000 for a motor vehicle dealer or \$100,000 for a powersports dealer.

The bill requires the executive director of the department of revenue to issue a cease-and-desist order when a dealer complains that a manufacturer or distributor is illegally ending a franchise agreement. The bill also voids a site control provision of a franchise agreement if a manufacturer or distributor ends the agreement. The dealer may void a modification to a franchise agreement if the manufacturer or distributor fails to provide the required notice.

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

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

5           **12-6-101.5. Applicability.** THIS ARTICLE, INCLUDING  
6 AMENDMENTS THERETO, APPLIES TO ALL FRANCHISE AGREEMENTS IN  
7 EFFECT REGARDLESS OF WHEN THE FRANCHISE AGREEMENT WAS ADOPTED.

8           **SECTION 2.** 12-6-102 (3), Colorado Revised Statutes, is  
9 amended, and the said 12-6-102 is further amended BY THE ADDITION  
10 OF THE FOLLOWING NEW SUBSECTIONS, to read:

11           **12-6-102. Definitions.** As used in this part 1 and in part 5 of this  
12 article, unless the context or section 12-6-502 otherwise requires:

13           (3) "Coerce" means the failure to act in good faith in performing  
14 or complying with any terms or provisions of the franchise or agreement,  
15 INCLUDING WITHHOLDING INVENTORY, IMPOSING FINANCIAL PENALTIES,  
16 OR OTHERWISE RETALIATING; except that recommendation, exposition,  
17 persuasion, urging, or argument shall not be deemed to constitute a lack

1 of good faith.

2 (16.6) "SALES, SERVICE, AND PARTS AGREEMENT" MEANS AN  
3 AGREEMENT BETWEEN A MANUFACTURER, DISTRIBUTOR, OR  
4 MANUFACTURER REPRESENTATIVE AND A MOTOR VEHICLE OR  
5 POWERSPORTS DEALER AUTHORIZING THE DEALER TO SELL AND SERVICE  
6 A LINE MAKE OF MOTOR OR POWERSPORTS VEHICLES OR IMPOSING ANY  
7 DUTY ON THE DEALER IN CONSIDERATION FOR THE RIGHT TO HAVE OR  
8 OPERATE A FRANCHISE, INCLUDING ANY AMENDMENTS OR ADDITIONAL  
9 RELATED AGREEMENTS.

10 (16.7) "SITE CONTROL PROVISION" MEANS AN AGREEMENT THAT  
11 APPLIES TO REAL PROPERTY OWNED OR LEASED BY THE FRANCHISEE AND  
12 THAT GIVES A MOTOR VEHICLE OR POWERSPORTS VEHICLE  
13 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE THE  
14 RIGHT TO:

15 (a) CONTROL THE USE AND DEVELOPMENT OF THE REAL PROPERTY;

16 (b) REQUIRE THE FRANCHISEE TO ESTABLISH OR MAINTAIN AN  
17 EXCLUSIVE DEALERSHIP FACILITY AT THE REAL PROPERTY; OR

18 (c) RESTRICT THE FRANCHISEE FROM TRANSFERRING, SELLING,  
19 LEASING, DEVELOPING, OR CHANGING THE USE OF THE REAL PROPERTY.

20 **SECTION 3.** The introductory portion to 12-6-120 (1), Colorado  
21 Revised Statutes, is amended, and the said 12-6-120 (1) is further  
22 amended BY THE ADDITION OF THE FOLLOWING NEW  
23 PARAGRAPHS, to read:

24 **12-6-120. Unlawful acts.** (1) It ~~shall be~~ IS unlawful and a  
25 violation of this part 1 for any manufacturer, distributor, or manufacturer  
26 representative:

27 (w) TO FAIL TO NOTIFY A MOTOR VEHICLE DEALER AT LEAST

1 NINETY DAYS BEFORE THE FOLLOWING AND TO PROVIDE THE SPECIFIC  
2 REASONS FOR THE FOLLOWING:

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

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

13 (x) TO REQUIRE, COERCE, OR ATTEMPT TO COERCE A MOTOR  
14 VEHICLE DEALER TO SUBSTANTIALLY ALTER A FACILITY OR PREMISES IF  
15 THE FACILITY OR PREMISES HAS BEEN ALTERED WITHIN THE LAST TEN  
16 YEARS AT A COST OF MORE THAN TWO HUNDRED FIFTY THOUSAND  
17 DOLLARS, AND THE ALTERATION WAS REQUIRED AND APPROVED BY THE  
18 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE;  
19 EXCEPT THAT THIS PARAGRAPH (x) DOES NOT APPLY TO IMPROVEMENTS  
20 MADE TO COMPLY WITH HEALTH OR SAFETY LAWS OR TO ACCOMMODATE  
21 THE TECHNOLOGY REQUIREMENTS NECESSARY TO SELL OR SERVICE A LINE  
22 MAKE.

23 **SECTION 4.** Part 1 of article 6 of title 12, Colorado Revised  
24 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW  
25 SECTIONS to read:

26 **12-6-129. Site control extinguishes.** A SITE CONTROL PROVISION  
27 OF A FRANCHISE AGREEMENT IS VOID UPON THE MANUFACTURER,

1 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE TERMINATING,  
2 ELIMINATING, OR NOT RENEWING THE FRANCHISE AGREEMENT  
3 CONTAINING THE SITE CONTROL PROVISION UNLESS THE TERMINATION,  
4 ELIMINATION, OR NONRENEWAL IS FOR JUST CAUSE IN ACCORDANCE WITH  
5 SECTION 12-6-120 (1) (d).

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

11 **12-6-131. Termination appeal.** A MOTOR VEHICLE DEALER WHO  
12 HAS REASON TO BELIEVE THAT A MANUFACTURER, DISTRIBUTOR, OR  
13 MANUFACTURER REPRESENTATIVE HAS VIOLATED SECTION 12-6-120 (1)  
14 (d) OR (1) (w) MAY APPEAL TO THE BOARD BY FILING A COMPLAINT WITH  
15 THE EXECUTIVE DIRECTOR. UPON RECEIVING THE COMPLAINT AND UPON  
16 A SHOWING OF SPECIFIC FACTS THAT A VIOLATION HAS OCCURRED, THE  
17 EXECUTIVE DIRECTOR SHALL SUMMARILY ISSUE A CEASE-AND-DESIST  
18 ORDER UNDER SECTION 12-6-105 (1) (f) STAYING THE TERMINATION,  
19 ELIMINATION, MODIFICATION, OR NONRENEWAL OF THE FRANCHISE  
20 AGREEMENT. THE CEASE-AND-DESIST ORDER REMAINS IN EFFECT UNTIL  
21 THE THE HEARING REQUIRED BY SECTION 12-6-105 (1) (f) IS HELD. IF A  
22 DETERMINATION IS MADE AT THE HEARING REQUIRED BY SECTION  
23 12-6-105 (1) (f) THAT A VIOLATION OCCURRED, THE BOARD SHALL MAKE  
24 THE CEASE-AND-DESIST ORDER PERMANENT AND TAKE ANY ACTIONS  
25 AUTHORIZED BY SECTION 12-6-104 (3). A MOTOR VEHICLE DEALER WHO  
26 APPEALS TO THE BOARD MAINTAINS ALL RIGHTS UNDER THE FRANCHISE  
27 AGREEMENT UNTIL THE LATER OF THE EFFECTIVE DATE OF THE

1 PERMANENT CEASE-AND-DESIST ORDER OR AN APPEAL OF A FINAL  
2 DETERMINATION IS MADE UNDER SECTION 24-4-106, C.R.S.

3 **SECTION 5.** The introductory portion to 12-6-523 (1), Colorado  
4 Revised Statutes, is amended, and the said 12-6-523 (1) is further  
5 amended, BY THE ADDITION OF THE FOLLOWING NEW  
6 PARAGRAPHS, to read:

7 **12-6-523. Unlawful acts.** (1) It ~~shall be~~ IS unlawful and a  
8 violation of this part 5 for any powersports vehicle manufacturer,  
9 distributor, or manufacturer representative:

10 (v) TO FAIL TO NOTIFY A POWERSPORTS VEHICLE DEALER AT LEAST  
11 NINETY DAYS BEFORE THE FOLLOWING AND TO PROVIDE THE SPECIFIC  
12 REASONS FOR THE FOLLOWING:

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

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

23 (w) TO REQUIRE, COERCE, OR ATTEMPT TO COERCE A  
24 POWERSPORTS DEALER TO SUBSTANTIALLY ALTER A FACILITY OR PREMISES  
25 IF THE FACILITY OR PREMISES HAS BEEN ALTERED WITHIN THE LAST  
26 FIFTEEN YEARS AT A COST OF MORE THAN ONE HUNDRED THOUSAND  
27 DOLLARS, AND THE ALTERATION WAS REQUIRED AND APPROVED BY THE

1 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE;  
2 EXCEPT THAT THIS PARAGRAPH (w) DOES NOT APPLY TO IMPROVEMENTS  
3 MADE TO COMPLY WITH HEALTH OR SAFETY LAWS OR TO ACCOMMODATE  
4 THE TECHNOLOGY REQUIREMENTS NECESSARY TO SELL OR SERVICE A LINE  
5 MAKE.

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

9 **12-6-535. Site control extinguishes.** A SITE CONTROL PROVISION  
10 OF A FRANCHISE AGREEMENT IS VOID UPON THE MANUFACTURER,  
11 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE TERMINATING,  
12 ELIMINATING, OR NOT RENEWING THE FRANCHISE AGREEMENT  
13 CONTAINING THE SITE CONTROL PROVISION UNLESS THE TERMINATION,  
14 ELIMINATION, OR NONRENEWAL IS FOR JUST CAUSE IN ACCORDANCE WITH  
15 SECTION 12-6-120 (1) (d).

16 **12-6-536. Modification voidable.** IF A MANUFACTURER,  
17 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE FAILS TO COMPLY  
18 WITH SECTION 12-6-120 (1) (v) (II), THE POWERSPORTS DEALER MAY VOID  
19 THE MODIFICATION OR REPLACEMENT OF THE FRANCHISE AGREEMENT.

20 **12-6-537. Termination appeal.** A POWERSPORTS VEHICLE  
21 DEALER WHO HAS REASON TO BELIEVE THAT A MANUFACTURER,  
22 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE HAS VIOLATED  
23 SECTION 12-6-523 (1) (d) OR (1) (v) MAY APPEAL TO THE BOARD BY FILING  
24 A COMPLAINT WITH THE EXECUTIVE DIRECTOR. UPON RECEIVING THE  
25 COMPLAINT AND UPON A SHOWING OF SPECIFIC FACTS THAT A VIOLATION  
26 HAS OCCURRED, THE EXECUTIVE DIRECTOR SHALL SUMMARILY ISSUE A  
27 CEASE-AND-DESIST ORDER UNDER SECTION 12-6-105 (1) (h) STAYING THE

1 TERMINATION, ELIMINATION, MODIFICATION, OR NONRENEWAL OF THE  
2 FRANCHISE AGREEMENT. THE CEASE-AND-DESIST ORDER REMAINS IN  
3 EFFECT UNTIL THE HEARING REQUIRED BY SECTION 12-6-105 (1) (h) IS  
4 HELD. IF A DETERMINATION IS MADE AT THE HEARING REQUIRED BY  
5 SECTION 12-6-105 (1) (h) THAT A VIOLATION OCCURRED, THE BOARD  
6 SHALL MAKE THE CEASE-AND-DESIST ORDER PERMANENT AND TAKE ANY  
7 ACTIONS AUTHORIZED BY SECTION 12-6-504 (1). A MOTOR VEHICLE  
8 DEALER WHO APPEALS TO THE BOARD MAINTAINS ALL RIGHTS UNDER THE  
9 FRANCHISE AGREEMENT UNTIL THE LATER OF THE EFFECTIVE DATE OF THE  
10 PERMANENT CEASE-AND-DESIST ORDER OR AN APPEAL OF A FINAL  
11 DETERMINATION IS MADE UNDER SECTION 24-4-106, C.R.S.

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

14           **SECTION 8. Safety clause.** The general assembly hereby finds,  
15 determines, and declares that this act is necessary for the immediate  
16 preservation of the public peace, health, and safety.