

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

INTRODUCED

LLS NO. 11-0275.01 Jery Payne

HOUSE BILL 11-1188

HOUSE SPONSORSHIP

Liston,

SENATE SPONSORSHIP

Newell,

House Committees
Economic and Business Development

Senate Committees

A BILL FOR AN ACT

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

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.

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 A PROVISION OF A
11 FRANCHISE AGREEMENT THAT APPLIES TO REAL PROPERTY OWNED OR
12 LEASED BY THE FRANCHISEE AND THAT GIVES A MOTOR VEHICLE OR
13 POWERSPORTS VEHICLE MANUFACTURER, DISTRIBUTOR, OR
14 MANUFACTURER REPRESENTATIVE THE 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 ADVERSELY ALTER THE RIGHTS OR OBLIGATIONS OF
10 THE DEALER UNDER THE CURRENT FRANCHISE OR SELLING AGREEMENT OR
11 WOULD SUBSTANTIALLY IMPAIR THE SALES OR SERVICE OBLIGATIONS OR
12 THE DEALER'S INVESTMENT; AND

13 (x) TO REQUIRE, COERCE, OR ATTEMPT TO COERCE, INCLUDING
14 WITHHOLDING A BENEFIT, A MOTOR VEHICLE DEALER TO SUBSTANTIALLY
15 ALTER A FACILITY OR PREMISES IF THE FACILITY OR PREMISES HAS BEEN
16 ALTERED WITHIN THE LAST FIFTEEN YEARS AT A COST OF MORE THAN FIVE
17 HUNDRED THOUSAND DOLLARS, AND THE ALTERATION WAS REQUIRED OR
18 APPROVED BY THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
19 REPRESENTATIVE.

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

23 **12-6-129. Site control extinguishes.** A SITE CONTROL PROVISION
24 OF A FRANCHISE AGREEMENT IS VOID UPON THE TERMINATION,
25 ELIMINATION, OR NONRENEWAL OF THE FRANCHISE AGREEMENT
26 CONTAINING THE SITE CONTROL PROVISION.

27 **12-6-130. Modification voidable.** IF A MANUFACTURER,

1 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE FAILS TO COMPLY
2 WITH SECTION 12-6-120 (1) (w) (II), THE MOTOR VEHICLE DEALER MAY
3 VOID THE MODIFICATION OR REPLACEMENT OF THE FRANCHISE
4 AGREEMENT.

5 **12-6-131. Termination appeal.** A MOTOR VEHICLE DEALER WHO
6 HAS REASON TO BELIEVE THAT A MANUFACTURER, DISTRIBUTOR, OR
7 MANUFACTURER REPRESENTATIVE HAS VIOLATED SECTION 12-6-120 (1)
8 (d) OR (1) (w) MAY APPEAL TO THE BOARD BY FILING A COMPLAINT WITH
9 THE EXECUTIVE DIRECTOR. UPON RECEIVING THE COMPLAINT, THE
10 EXECUTIVE DIRECTOR SHALL ISSUE A SUMMARY CEASE-AND-DESIST ORDER
11 UNDER SECTION 12-6-105 (1) (f) STAYING THE TERMINATION,
12 ELIMINATION, MODIFICATION, OR NONRENEWAL OF THE FRANCHISE
13 AGREEMENT UNLESS THE COMPLAINT IS WITHOUT MERIT. IF A
14 DETERMINATION IS MADE AT THE HEARING REQUIRED BY SECTION
15 12-6-105 (1) (f) THAT A VIOLATION OCCURRED, THE BOARD SHALL MAKE
16 THE CEASE-AND-DESIST ORDER PERMANENT AND TAKE ANY ACTIONS
17 AUTHORIZED BY SECTION 12-6-104 (3).

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

22 **12-6-523. Unlawful acts.** (1) It ~~shall be~~ IS unlawful and a
23 violation of this part 5 for any powersports vehicle manufacturer,
24 distributor, or manufacturer representative:

25 (v) TO FAIL TO NOTIFY A POWERSPORTS VEHICLE DEALER AT LEAST
26 NINETY DAYS BEFORE THE FOLLOWING AND TO PROVIDE THE SPECIFIC
27 REASONS FOR THE FOLLOWING:

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

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

11 (w) TO REQUIRE, COERCE, OR ATTEMPT TO COERCE, INCLUDING
12 WITHHOLDING A BENEFIT, A POWERSPORTS DEALER TO SUBSTANTIALLY
13 ALTER A FACILITY OR PREMISES IF THE FACILITY OR PREMISES HAS BEEN
14 ALTERED WITHIN THE LAST FIFTEEN YEARS AT A COST OF MORE THAN ONE
15 HUNDRED THOUSAND DOLLARS, AND THE ALTERATION WAS REQUIRED OR
16 APPROVED BY THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
17 REPRESENTATIVE.

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

21 **12-6-535. Site control extinguishes.** A SITE CONTROL PROVISION
22 OF A FRANCHISE AGREEMENT IS VOID UPON THE TERMINATION,
23 ELIMINATION, OR NONRENEWAL OF THE FRANCHISE AGREEMENT
24 CONTAINING THE SITE CONTROL PROVISION.

25 **12-6-536. Modification voidable.** IF A MANUFACTURER,
26 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE FAILS TO COMPLY
27 WITH SECTION 12-6-120 (1) (v) (II), THE POWERSPORTS DEALER MAY VOID

1 THE MODIFICATION OR REPLACEMENT OF THE FRANCHISE AGREEMENT.

2 **12-6-537. Termination appeal.** A POWERSPORTS VEHICLE
3 DEALER WHO HAS REASON TO BELIEVE THAT A MANUFACTURER,
4 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE HAS VIOLATED
5 SECTION 12-6-523 (1) (d) OR (1) (v) MAY APPEAL TO THE BOARD BY FILING
6 A COMPLAINT WITH THE EXECUTIVE DIRECTOR. UPON RECEIVING THE
7 COMPLAINT, THE EXECUTIVE DIRECTOR SHALL ISSUE A SUMMARY
8 CEASE-AND-DESIST ORDER UNDER SECTION 12-6-505 (1) (h) STAYING THE
9 TERMINATION, ELIMINATION, MODIFICATION, OR NONRENEWAL OF THE
10 FRANCHISE AGREEMENT UNLESS THE COMPLAINT IS WITHOUT MERIT. IF A
11 DETERMINATION IS MADE AT THE HEARING REQUIRED BY SECTION
12 12-6-505 (1) (h) THAT A VIOLATION OCCURRED, THE BOARD SHALL MAKE
13 THE CEASE-AND-DESIST ORDER PERMANENT AND TAKE ANY ACTIONS
14 AUTHORIZED BY SECTION 12-6-504 (1).

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

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