NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 09-091

BY SENATOR(S) Romer, Cadman, Foster, Gibbs, Groff, Harvey, Heath, Hodge, Isgar, Kester, King K., Morse, Newell, Spence, White, Williams; also REPRESENTATIVE(S) Rice, Acree, Casso, Fischer, Frangas, Hullinghorst, Kerr A., Liston, Marostica, Middleton, Ryden, Scanlan, Schafer S., Todd.

CONCERNING MOTOR VEHICLE DEALER FRANCHISE AGREEMENTS.

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

SECTION 1. 12-6-120 (1) (l) (I) (A), Colorado Revised Statutes, is amended to read:

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

(l) (I) To fail to pay to a motor vehicle dealer, within ninety days after the termination, cancellation, or nonrenewal of a franchise, all of the following:

(A) The dealer cost, plus any charges made by the manufacturer for distribution, delivery, and taxes, less all allowances paid or credited to the

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

motor vehicle dealer by the manufacturer, of unused, undamaged, and unsold motor vehicles in the motor vehicle dealer's inventory that were acquired from the manufacturer or from another motor vehicle dealer of the same line-make IN THE ORDINARY COURSE OF BUSINESS within the previous twelve months;

SECTION 2. 12-6-120 (1) (i) and (1) (k), Colorado Revised Statutes, are amended, and the said 12-6-120 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

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

(i) (I) TO FAIL TO PROVIDE TO THE MOTOR VEHICLE DEALER, WITHIN TWENTY DAYS AFTER RECEIPT OF A NOTICE OF INTENT FROM A MOTOR VEHICLE DEALER, THE LIST OF DOCUMENTS AND INFORMATION NECESSARY TO APPROVE THE SALE OR TRANSFER OF THE OWNERSHIP OF A DEALERSHIP BY SALE OF THE BUSINESS OR BY STOCK TRANSFER OR THE CHANGE IN EXECUTIVE MANAGEMENT OF THE DEALERSHIP;

(II) TO FAIL TO CONFIRM WITHIN TWENTY DAYS AFTER RECEIPT OF ALL DOCUMENTS AND INFORMATION LISTED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (i) THAT SUCH DOCUMENTATION AND INFORMATION HAS BEEN RECEIVED;

(III) To refuse to approve, unreasonably, the sale or transfer of the ownership of a dealership by sale of the business or by stock transfer WITHIN SIXTY DAYS AFTER THE MANUFACTURER HAS RECEIVED ALL DOCUMENTS AND INFORMATION NECESSARY TO APPROVE THE SALE OR TRANSFER OF OWNERSHIP, or to refuse to approve, unreasonably, the change in executive management of the dealership WITHIN SIXTY DAYS AFTER THE MANUFACTURER HAS RECEIVED ALL INFORMATION NECESSARY TO APPROVE THE CHANGE IN MANAGEMENT; except that nothing in this part 1 shall authorize the sale, transfer, or assignment of a franchise or a change of the principal operator without the approval of the manufacturer or distributor UNLESS THE MANUFACTURER OR DISTRIBUTOR FAILS TO SEND NOTICE OF THE DISAPPROVAL WITHIN SIXTY DAYS AFTER RECEIVING ALL DOCUMENTS AND INFORMATION NECESSARY TO APPROVE THE SALE OR TRANSFER OF OWNERSHIP; OR

(IV) TO CONDITION THE SALE, TRANSFER, RELOCATION, OR RENEWAL OF A FRANCHISE AGREEMENT, OR TO CONDITION SALES, SERVICES, PARTS, OR FINANCE INCENTIVES, UPON SITE CONTROL OR AN AGREEMENT TO RENOVATE OR MAKE IMPROVEMENTS TO A FACILITY; EXCEPT THAT VOLUNTARY ACCEPTANCE OF SUCH CONDITIONS BY THE DEALER SHALL NOT CONSTITUTE A VIOLATION;

(k) To require, coerce, or attempt to coerce any motor vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other line-make of new motor vehicles or related products; except that this paragraph (k) shall not apply unless the motor vehicle dealer:

(I) Maintains a reasonable line of credit for each make or line of new motor vehicle; ~~and~~

(II) Remains in compliance with reasonable capital standards and reasonable facilities requirements specified by the manufacturer; EXCEPT THAT "reasonable facilities requirements" shall not include ~~any~~ A requirement that a motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space; ~~unless such a requirement is justified by reasonable business considerations.~~ AND

(III) PROVIDES WRITTEN NOTICE TO THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER'S REPRESENTATIVE, NO LESS THAN NINETY DAYS PRIOR TO THE DEALER'S INTENT TO PARTICIPATE IN THE MANAGEMENT OF, INVESTMENT IN, OR ACQUISITION OF ANOTHER LINE-MAKE OF NEW MOTOR VEHICLES OR RELATED PRODUCTS;

(p) TO DISCRIMINATE BETWEEN OR REFUSE TO OFFER TO ITS SAME LINE-MAKE FRANCHISED DEALERS ALL MODELS MANUFACTURED FOR THAT LINE-MAKE BASED UPON UNREASONABLE SALES AND SERVICE STANDARDS;

(q) TO FAIL TO MAKE PRACTICALLY AVAILABLE ANY INCENTIVE, REBATE, BONUS, OR OTHER SIMILAR BENEFIT TO A MOTOR VEHICLE DEALER THAT IS OFFERED TO ANOTHER MOTOR VEHICLE DEALER OF THE SAME LINE-MAKE WITHIN THIS STATE;

(r) TO FAIL TO PAY TO A MOTOR VEHICLE DEALER:

(I) WITHIN NINETY DAYS AFTER THE TERMINATION, CANCELLATION, OR NONRENEWAL OF A FRANCHISE FOR THE FAILURE OF A DEALER TO MEET PERFORMANCE SALES AND SERVICE OBLIGATIONS OR AFTER THE TERMINATION, ELIMINATION, OR CESSATION OF A LINE-MAKE, THE COST OF THE LEASE FOR THE FACILITIES USED FOR THE FRANCHISE OR LINE-MAKE FOR THE UNEXPIRED TERM OF THE LEASE, NOT TO EXCEED ONE YEAR; EXCEPT THAT:

(A) IF THE MOTOR VEHICLE DEALER OWNS THE FACILITIES, THE VALUE OF RENTING SUCH FACILITIES FOR ONE YEAR, PRORATED FOR EACH LINE-MAKE BASED UPON TOTAL SALES VOLUME FOR THE PREVIOUS TWELVE MONTHS BEFORE THE INVOLUNTARY TERMINATION;

(B) IF THE DEALER SELLS RECREATIONAL VEHICLES AND A SUBSEQUENT MANUFACTURER OR DISTRIBUTOR THAT MANUFACTURES OR DISTRIBUTES RECREATIONAL VEHICLES REPLACES ANY PORTION OF THE VACATED FACILITIES, THE LEASE OR RENTAL VALUE SHALL BE PRORATED ON A MONTHLY BASIS UNLESS THE DEALER SELLS MOTOR VEHICLES THAT ARE NOT RECREATIONAL VEHICLES;

(C) NOTHING IN THIS SUBPARAGRAPH (I) SHALL BE CONSTRUED TO LIMIT THE APPLICATION OF PARAGRAPH (d) OF THIS SUBSECTION (1);

(II) WITHIN NINETY DAYS AFTER THE TERMINATION, ELIMINATION, OR CESSATION OF A LINE-MAKE, THE FAIR MARKET VALUE OF THE MOTOR VEHICLE DEALER'S GOODWILL FOR THE LINE-MAKE AS OF THE DATE THE MANUFACTURER OR DISTRIBUTOR ANNOUNCES THE ACTION THAT RESULTS IN THE TERMINATION, ELIMINATION, OR CESSATION, NOT INCLUDING ANY AMOUNTS PAID UNDER SUB-SUBPARAGRAPHS (A) TO (E) OF SUBPARAGRAPH (I) OF PARAGRAPH (l) OF THIS SUBSECTION (1); AND

(s) TO CONDITION A FRANCHISE AGREEMENT ON IMPROVEMENTS TO A FACILITY UNLESS REASONABLY REQUIRED BY THE TECHNOLOGY OF A MOTOR VEHICLE BEING SOLD AT THE FACILITY.

SECTION 3. 12-6-120.3, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-6-120.3. New, reopened, or relocated dealer - notice required - grounds for refusal of dealer license - definitions - rules. (1.5) A

MANUFACTURER SHALL REASONABLY APPROVE OR DISAPPROVE OF A MOTOR VEHICLE DEALER FACILITY INITIAL SITE LOCATION OR RELOCATION REQUEST WITHIN SIXTY DAYS AFTER THE REQUEST OR AFTER SENDING THE NOTICE REQUIRED BY SUBSECTION (1) OF THIS SECTION TO ALL OF ITS FRANCHISED DEALERS, WHICHEVER IS LATER, BUT NOT TO EXCEED ONE HUNDRED DAYS.

SECTION 4. 12-6-120.5 (1) and (2) (a), Colorado Revised Statutes, are amended, and the said 12-6-120.5 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12-6-120.5. Independent control of dealer - definitions. (1) Except as otherwise provided in this section, no manufacturer shall own, operate, or control any motor vehicle dealer OR USED MOTOR VEHICLE DEALER in Colorado.

(2) Notwithstanding subsection (1) of this section, the following activities are not prohibited:

(a) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), operation of a dealer for a temporary period, not to exceed ~~two years~~ TWELVE MONTHS, during the transition from one owner or operator to another INDEPENDENT OWNER OR OPERATOR; EXCEPT THAT THE EXECUTIVE DIRECTOR MAY EXTEND THE PERIOD, NOT TO EXCEED TWENTY-FOUR MONTHS, UPON SHOWING THE MANUFACTURER OR DISTRIBUTOR OF THE NEED TO OPERATE THE DEALERSHIP FOR SUCH TIME TO ACHIEVE A TRANSITION FROM AN OWNER OR OPERATOR TO ANOTHER INDEPENDENT THIRD-PARTY OWNER OR OPERATOR;

(II) OPERATION OF A DEALERSHIP THAT SELLS RECREATIONAL VEHICLES FOR NOT MORE THAN EIGHTEEN MONTHS DURING THE TRANSITION FROM ONE OWNER OR OPERATOR TO ANOTHER INDEPENDENT OWNER OR OPERATOR;

(e) OWNERSHIP, OPERATION, OR CONTROL OF A USED MOTOR VEHICLE DEALER IF THE MANUFACTURER OWNED, OPERATED, OR CONTROLLED THE USED MOTOR VEHICLE DEALER ON JANUARY 1, 2009, AND HAS CONTINUOUSLY OPERATED OR CONTROLLED THE USED MOTOR VEHICLE FACILITIES AFTER JANUARY 1, 2009.

SECTION 5. Part 1 of article 6 of title 12, Colorado Revised

Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

12-6-126. Audit reimbursement limitations - dealer claims. (1) (a) A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE SHALL HAVE THE RIGHT TO AUDIT WARRANTY, SALES, OR INCENTIVE CLAIMS OF A MOTOR VEHICLE DEALER FOR FIFTEEN MONTHS AFTER THE DATE THE CLAIM WAS SUBMITTED.

(b) A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE SHALL NOT REQUIRE DOCUMENTATION FOR WARRANTY, SALES, OR INCENTIVE CLAIMS OR AUDIT WARRANTY, SALES, OR INCENTIVE CLAIMS OF A MOTOR VEHICLE DEALER MORE THAN TWENTY-FOUR MONTHS AFTER THE DATE THE CLAIM WAS SUBMITTED, NOR SHALL THE MANUFACTURER REQUIRE A CHARGE BACK, REIMBURSEMENT, OR CREDIT AGAINST A FUTURE TRANSACTION ARISING OUT OF AN AUDIT OR REQUEST FOR DOCUMENTATION ARISING MORE THAN FIFTEEN MONTHS AFTER THE DATE THE CLAIM WAS SUBMITTED.

(2) THE MOTOR VEHICLE DEALER SHALL HAVE FIFTEEN MONTHS AFTER MAKING A SALE OR PROVIDING SERVICE TO SUBMIT WARRANTY, SALES, OR INCENTIVE CLAIMS TO THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER'S REPRESENTATIVE.

(3) SUBSECTION (1) OF THIS SECTION SHALL NOT LIMIT ANY ACTION FOR FRAUD INSTITUTED IN A COURT OF COMPETENT JURISDICTION.

(4) A MOTOR VEHICLE DEALER MAY REQUEST A DETERMINATION FROM THE EXECUTIVE DIRECTOR, WITHIN THIRTY DAYS, THAT A CHARGE BACK, REIMBURSEMENT, OR CREDIT REQUIRED VIOLATES SUBSECTION (1) OF THIS SECTION. IF A DETERMINATION IS REQUESTED WITHIN THE THIRTY-DAY PERIOD, THEN THE CHARGE BACK, REIMBURSEMENT, OR CREDIT SHALL BE STAYED PENDING THE DECISION OF THE EXECUTIVE DIRECTOR. IF THE EXECUTIVE DIRECTOR DETERMINES AFTER A HEARING THAT THE CHARGE BACK, REIMBURSEMENT, OR CREDIT VIOLATES SUBSECTION (1) OF THIS SECTION, THE CHARGE BACK, REIMBURSEMENT, OR CREDIT SHALL BE VOID.

12-6-127. Reimbursement for right of first refusal. A MANUFACTURER OR DISTRIBUTOR SHALL PAY REASONABLE ATTORNEY FEES, NOT TO EXCEED THE USUAL AND CUSTOMARY FEES CHARGED FOR THE

TRANSFER OF A FRANCHISE, AND REASONABLE EXPENSES THAT ARE INCURRED BY THE PROPOSED OWNER OR TRANSFEREE BEFORE THE MANUFACTURER OR DISTRIBUTOR EXERCISED ITS RIGHT OF FIRST REFUSAL IN NEGOTIATING AND IMPLEMENTING THE CONTRACT FOR THE PROPOSED CHANGE OF OWNERSHIP OR THE TRANSFER OF ASSETS. PAYMENT OF ATTORNEY FEES AND EXPENSES IS NOT REQUIRED IF THE CLAIMANT HAS FAILED TO SUBMIT AN ACCOUNTING OF ATTORNEY FEES AND EXPENSES WITHIN TWENTY DAYS AFTER THE RECEIPT OF THE MANUFACTURER'S OR DEALER'S WRITTEN REQUEST FOR AN ACCOUNTING. AN EXPENSE ACCOUNTING MAY BE REQUESTED BY THE MANUFACTURER OR DISTRIBUTOR BEFORE EXERCISING ITS RIGHT OF FIRST REFUSAL.

SECTION 6. 12-6-523 (1) (l) (I), Colorado Revised Statutes, is amended to read:

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

(l) To fail to pay to a powersports vehicle dealer, within ninety days after the termination, cancellation, or nonrenewal of a franchise, all of the following:

(I) The dealer cost, plus any charges made by the powersports vehicle manufacturer for distribution, delivery, and taxes, less all allowances paid or credited to the powersports vehicle dealer by the powersports vehicle manufacturer, of unused, undamaged, and unsold powersports vehicles in the powersports vehicle dealer's inventory that were acquired from the powersports vehicle manufacturer or from another powersports vehicle dealer of the same line-make IN THE ORDINARY COURSE OF BUSINESS within the previous twelve months;

SECTION 7. 12-6-523 (1) (i) and (1) (k), Colorado Revised Statutes, are amended, and the said 12-6-523 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

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

(i) (I) TO FAIL TO PROVIDE TO THE POWERSPORTS VEHICLE DEALER, WITHIN TWENTY DAYS AFTER RECEIPT OF A NOTICE OF INTENT FROM A POWERSPORTS VEHICLE DEALER, THE LIST OF DOCUMENTS AND INFORMATION NECESSARY TO APPROVE THE SALE OR TRANSFER OF THE OWNERSHIP OF A DEALERSHIP BY SALE OF THE BUSINESS OR BY STOCK TRANSFER OR THE CHANGE IN EXECUTIVE MANAGEMENT OF THE DEALERSHIP;

(II) TO FAIL TO CONFIRM WITHIN TWENTY DAYS AFTER RECEIPT OF ALL DOCUMENTS AND INFORMATION LISTED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (i) THAT SUCH DOCUMENTATION AND INFORMATION HAS BEEN RECEIVED;

(III) To refuse to approve, unreasonably, the sale or transfer of the ownership of a dealership by sale of the business or by stock transfer WITHIN SIXTY DAYS AFTER THE MANUFACTURER HAS RECEIVED ALL DOCUMENTS AND INFORMATION NECESSARY TO APPROVE THE SALE OR TRANSFER OF OWNERSHIP, or to refuse to approve, unreasonably, the change in executive management of the dealership WITHIN SIXTY DAYS AFTER THE MANUFACTURER HAS RECEIVED ALL INFORMATION NECESSARY TO APPROVE THE CHANGE IN MANAGEMENT; except that nothing in this part 5 shall authorize the sale, transfer, or assignment of a franchise or a change of the principal operator without the approval of the powersports vehicle manufacturer or distributor UNLESS THE MANUFACTURER OR DISTRIBUTOR FAILS TO SEND NOTICE OF THE DISAPPROVAL WITHIN SIXTY DAYS AFTER RECEIVING ALL DOCUMENTS AND INFORMATION NECESSARY TO APPROVE THE SALE OR TRANSFER OF OWNERSHIP; OR

(IV) TO CONDITION THE SALE, TRANSFER, RELOCATION, OR RENEWAL OF A FRANCHISE AGREEMENT OR TO CONDITION SALES, SERVICES, PARTS, OR FINANCE INCENTIVES UPON SITE CONTROL OR AN AGREEMENT TO RENOVATE OR MAKE IMPROVEMENTS TO A FACILITY; EXCEPT THAT VOLUNTARY ACCEPTANCE OF SUCH CONDITIONS BY THE DEALER SHALL NOT CONSTITUTE A VIOLATION;

(k) To require, coerce, or attempt to coerce any powersports vehicle dealer to refrain from participation in the management of, investment in, or acquisition of another line-make of new powersports vehicles or related products; except that this paragraph (k) shall not apply unless the powersports vehicle dealer:

(I) Maintains a reasonable line of credit for each make or line of new powersports vehicle; ~~and~~

(II) Remains in compliance with reasonable capital standards and reasonable facilities requirements specified by the powersports vehicle manufacturer; but "reasonable facilities requirements" shall not include a requirement that a powersports vehicle dealer establish or maintain exclusive facilities, personnel, or display space; ~~unless the requirement is justified by reasonable business considerations;~~ AND

(III) PROVIDES WRITTEN NOTICE TO THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER'S REPRESENTATIVE, NO LESS THAN NINETY DAYS PRIOR TO THE DEALER'S INTENT TO PARTICIPATE IN THE MANAGEMENT OF, INVESTMENT IN, OR ACQUISITION OF ANOTHER LINE-MAKE OF NEW POWERSPORTS VEHICLES OR RELATED PRODUCTS;

(p) TO DISCRIMINATE BETWEEN OR REFUSE TO OFFER TO ITS SAME LINE-MAKE FRANCHISED DEALERS ALL MODELS MANUFACTURED FOR THAT LINE-MAKE BASED UPON UNREASONABLE SALES AND SERVICE STANDARDS;

(q) TO FAIL TO MAKE PRACTICALLY AVAILABLE AN INCENTIVE, REBATE, BONUS, OR OTHER SIMILAR BENEFIT TO A POWERSPORTS VEHICLE DEALER THAT IS OFFERED TO ANOTHER POWERSPORTS VEHICLE DEALER OF THE SAME LINE-MAKE WITHIN THIS STATE;

(r) TO FAIL TO PAY TO A POWERSPORTS VEHICLE DEALER:

(I) WITHIN NINETY DAYS AFTER THE TERMINATION, CANCELLATION, OR NONRENEWAL OF A FRANCHISE FOR THE FAILURE OF A DEALER TO MEET PERFORMANCE SALES AND SERVICE OBLIGATIONS OR AFTER THE TERMINATION, ELIMINATION, OR CESSATION OF A LINE-MAKE, THE COST OF THE LEASE FOR THE FACILITIES USED FOR THE FRANCHISE OR LINE-MAKE FOR THE UNEXPIRED TERM OF THE LEASE, NOT TO EXCEED ONE YEAR; EXCEPT THAT:

(A) IF THE POWERSPORTS VEHICLE DEALER OWNS THE FACILITIES, THE VALUE OF RENTING SUCH FACILITIES FOR ONE YEAR, PRORATED FOR EACH LINE-MAKE BASED UPON TOTAL SALES VOLUME FOR THE PREVIOUS TWELVE MONTHS BEFORE THE INVOLUNTARY TERMINATION;

(B) NOTHING IN THIS SUBPARAGRAPH (I) SHALL BE CONSTRUED TO LIMIT THE APPLICATION OF PARAGRAPH (d) OF THIS SUBSECTION (1);

(II) WITHIN NINETY DAYS AFTER THE TERMINATION, ELIMINATION, OR CESSATION OF A LINE-MAKE, THE FAIR MARKET VALUE OF THE POWERSPORTS VEHICLE DEALER'S GOODWILL FOR THE LINE-MAKE AS OF THE DATE THE MANUFACTURER OR DISTRIBUTOR ANNOUNCES THE ACTION THAT RESULTS IN THE TERMINATION, ELIMINATION, OR CESSATION, NOT INCLUDING ANY AMOUNTS PAID UNDER SUBPARAGRAPHS (I) TO (V) OF PARAGRAPH (l) OF THIS SUBSECTION (1); AND

(s) TO CONDITION A FRANCHISE AGREEMENT ON IMPROVEMENTS TO A FACILITY UNLESS REASONABLY REQUIRED BY THE TECHNOLOGY OF A POWERSPORTS VEHICLE BEING SOLD AT THE FACILITY.

SECTION 8. 12-6-524, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-6-524. New, reopened, or relocated dealer - notice required - grounds for refusal of dealer license - definitions - rules. (1.5) A POWERSPORTS VEHICLE MANUFACTURER SHALL REASONABLY APPROVE OR DISAPPROVE OF A POWERSPORTS VEHICLE DEALER FACILITY INITIAL SITE LOCATION OR RELOCATION REQUEST WITHIN SIXTY DAYS AFTER THE REQUEST OR AFTER SENDING THE NOTICE REQUIRED BY SUBSECTION (1) OF THIS SECTION TO ALL OF ITS FRANCHISED POWERSPORTS VEHICLE DEALERS, WHICHEVER IS LATER, BUT NOT TO EXCEED ONE HUNDRED DAYS.

SECTION 9. 12-6-525 (1) and (2) (a), Colorado Revised Statutes, are amended to read:

12-6-525. Independent control of dealer - definitions. (1) Except as otherwise provided in this section, no powersports vehicle manufacturer shall own, operate, or control ~~a~~ ANY powersports vehicle dealer OR USED POWERSPORTS VEHICLE DEALER in Colorado.

(2) Notwithstanding subsection (1) of this section, the following activities are not prohibited:

(a) Operation of a powersports vehicle dealer for a temporary period, not to exceed ~~two years~~ TWELVE MONTHS, during the transition from

one owner or operator to another INDEPENDENT OWNER OR OPERATOR; EXCEPT THAT THE EXECUTIVE DIRECTOR MAY EXTEND THE PERIOD, NOT TO EXCEED TWENTY-FOUR MONTHS, UPON SHOWING THE MANUFACTURER OR DISTRIBUTOR OF THE NEED TO OPERATE THE DEALERSHIP FOR SUCH TIME TO ACHIEVE A TRANSITION FROM AN OWNER OR OPERATOR TO ANOTHER INDEPENDENT THIRD-PARTY OWNER OR OPERATOR;

SECTION 10. Part 5 of article 6 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

12-6-526.5. Audit reimbursement limitations - dealer claims. (1) (a) A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE SHALL HAVE THE RIGHT TO AUDIT WARRANTY, SALES, OR INCENTIVE CLAIMS OF A POWERSPORTS VEHICLE DEALER FOR FIFTEEN MONTHS AFTER THE DATE THE CLAIM WAS SUBMITTED.

(b) A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE SHALL NOT REQUIRE DOCUMENTATION FOR WARRANTY, SALES, OR INCENTIVE CLAIMS OR AUDIT WARRANTY, SALES, OR INCENTIVE CLAIMS OF A POWERSPORTS VEHICLE DEALER MORE THAN TWENTY-FOUR MONTHS AFTER THE DATE THE CLAIM WAS SUBMITTED, NOR SHALL THE MANUFACTURER REQUIRE A CHARGE BACK, REIMBURSEMENT, OR CREDIT AGAINST A FUTURE TRANSACTION ARISING OUT OF AN AUDIT OR REQUEST FOR DOCUMENTATION ARISING MORE THAN FIFTEEN MONTHS AFTER THE DATE THE CLAIM WAS SUBMITTED.

(2) THE POWERSPORTS VEHICLE DEALER SHALL HAVE FIFTEEN MONTHS AFTER MAKING A SALE OR PROVIDING SERVICE TO SUBMIT WARRANTY, SALES, OR INCENTIVE CLAIMS TO THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER'S REPRESENTATIVE.

(3) SUBSECTION (1) OF THIS SECTION SHALL NOT LIMIT ANY ACTION FOR FRAUD INSTITUTED IN A COURT OF COMPETENT JURISDICTION.

(4) A POWERSPORTS VEHICLE DEALER MAY REQUEST A DETERMINATION FROM THE EXECUTIVE DIRECTOR, WITHIN THIRTY DAYS, THAT A CHARGE BACK, REIMBURSEMENT, OR CREDIT REQUIRED VIOLATES SUBSECTION (1) OF THIS SECTION. IF A DETERMINATION IS REQUESTED WITHIN THE THIRTY-DAY PERIOD, THEN THE CHARGE BACK,

REIMBURSEMENT, OR CREDIT SHALL BE STAYED PENDING THE DECISION OF THE EXECUTIVE DIRECTOR. IF THE EXECUTIVE DIRECTOR DETERMINES AFTER A HEARING THAT THE CHARGE BACK, REIMBURSEMENT, OR CREDIT VIOLATES SUBSECTION (1) OF THIS SECTION, THE CHARGE BACK, REIMBURSEMENT, OR CREDIT SHALL BE VOID.

12-6-526.7. Reimbursement for disapproving sale. A MANUFACTURER OR DISTRIBUTOR SHALL PAY REASONABLE ATTORNEY FEES, NOT TO EXCEED THE USUAL AND CUSTOMARY FEES CHARGED FOR THE TRANSFER OF A FRANCHISE, AND REASONABLE EXPENSES THAT ARE INCURRED BY THE PROPOSED OWNER OR TRANSFEREE BEFORE THE MANUFACTURER OR DISTRIBUTOR EXERCISED ITS RIGHT OF FIRST REFUSAL IN NEGOTIATING AND IMPLEMENTING THE CONTRACT FOR THE PROPOSED CHANGE OF OWNERSHIP OR THE TRANSFER OF ASSETS. PAYMENT OF ATTORNEY FEES AND EXPENSES IS NOT REQUIRED IF THE CLAIMANT HAS FAILED TO SUBMIT AN ACCOUNTING OF ATTORNEY FEES AND EXPENSES WITHIN TWENTY DAYS AFTER THE RECEIPT OF THE MANUFACTURER'S OR DEALER'S WRITTEN REQUEST FOR AN ACCOUNTING. AN EXPENSE ACCOUNTING MAY BE REQUESTED BY THE MANUFACTURER OR DISTRIBUTOR BEFORE EXERCISING ITS RIGHT OF FIRST REFUSAL.

SECTION 11. Effective date. This act shall take effect July 1, 2009.

SECTION 12. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Peter C. Groff PRESIDENT OF THE SENATE	Terrance D. Carroll SPEAKER OF THE HOUSE OF REPRESENTATIVES
Karen Goldman SECRETARY OF THE SENATE	Marilyn Eddins CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES

APPROVED_____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO