January 7, 2015

Colorado Statutes involving the sale of powersports vehicles. To view the source document, see: http://www.lexisnexis.com/hottopics/colorado/

12-6-501. Legislative declaration

(1) The general assembly hereby declares that:

(a) The sale and distribution of powersports vehicles affects the public interest, and a significant factor of inducement in making a sale of a powersports vehicle is the trust and confidence of the purchaser in the dealer from whom the purchase is made and the expectancy that the dealer will remain in business to provide service for the vehicle;

(b) The proper sale and service of a powersports vehicle are important to consumer safety, and the manufacturers and distributors of powersports vehicles have an obligation to the public not to terminate or refuse to continue their franchise agreements with retail powersports vehicle dealers unless the powersports vehicle manufacturer or distributor has first established good cause for termination of any such agreement, to the end that there shall be no diminution of locally available service;

(c) The licensing and supervision of powersports vehicle dealers by the motor vehicle dealer board are necessary for the protection of consumers, and, therefore, the sale of powersports vehicles by unlicensed dealers or salespersons, or by licensed dealers or salespersons who have demonstrated unfitness, should be prevented; and

(d) Consumer education concerning the rules and regulations of the powersports vehicle industry, the considerations when purchasing a powersports vehicle, and the role, functions, and actions of the motor vehicle dealer board are necessary for the protection of the public and for maintaining the trust and confidence of the public in the motor vehicle dealer board.

12-6-502. Definitions

As used in this part 5, unless the context otherwise requires:

(1) "ANSI/SVIA-1-2001" means the American national standards institute's, or its successor organization's, provisions for four-wheel all-terrain vehicles, equipment configuration, and performance requirements, developed by the specialty vehicle institute of America, or its successor organization.

(2) "Board" means the motor vehicle dealer board.

(3) "Consumer" means a purchaser, renter, or lessee of a powersports vehicle that is primarily used for business, personal, family, or household purposes. "Consumer" does not include a purchaser of powersports vehicles primarily for resale.

(4) "Custom trailer" means a vehicle that is not driven or propelled by its own power and is designed to be attached to, become a part of, or be drawn by a motor vehicle and that is uniquely designed and manufactured for a specific purpose or customer. "Custom trailer" does not include manufactured housing, farm tractors, and other machines and tools used in the production, harvest, and care of farm products.

(5) "Executive director" means the executive director of the department of revenue.

(5.5) "Franchise" means the authority to sell or service and repair powersports vehicles of a designated line-make granted through a sales, service, and parts agreement with a manufacturer, distributor, or manufacturer representative.

(6) "Line-make" means a group or series of powersports vehicles that have the same brand identification or brand name, based upon the powersports vehicle manufacturer's trademark, trade name, or logo.

(7) "New powersports vehicle" mean a powersports vehicle that has been transferred on a manufacturer's statement of origin and for which an ownership registration card has been submitted by the original owner to the powersports vehicle manufacturer.

(8) "Off-highway vehicle" means any self-propelled vehicle that is designed to travel on wheels or tracks in contact with the ground, designed primarily for use off of the public highways, and generally and commonly used to transport persons for recreational purposes. "Off-highway vehicle" does not include the following:

(a) Military vehicles;

(b) Golf carts;

(c) Vehicles designed and used to carry persons with disabilities; and

(d) Vehicles designed and used specifically for agricultural, logging, or mining purposes.

(9) "Personal watercraft" means a motorboat that is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel, and that is designed primarily for use off of the public highways, and that uses either of the following as the primary source of motive power:

(a) An inboard motor powering a water jet pump; or

(b) An outboard motor-driven propeller.

(10) "Powersports vehicle" means any of the following:

(a) An off-highway vehicle;

(b) A personal watercraft; or

(c) A snowmobile.

(11) "Powersports vehicle dealer" means a person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, leases, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale, lease, or exchange of an interest in new or new and used powersports vehicles or who is engaged wholly or in part in the business of selling or leasing new or new and used powersports vehicles, whether or not the powersports vehicles are owned by such person. The sale or lease of ten or more new or new and used powersports vehicles or the offering for sale or lease of more than ten new or new and used powersports vehicles at the same address or telephone number in any one calendar year shall be prima facie evidence that a person is engaged in the business of selling or leasing new or new and used powersports vehicles. "Powersports vehicle dealer" includes an owner of real property who allows more than ten new or new and used powersports vehicles to be offered for sale or lease on such property during one calendar year unless said property is leased to a licensed powersports vehicle dealer. "Powersports vehicle dealer" does not include:

(a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court;

(b) Public officers while performing their official duties;

(c) Employees of persons enumerated in the definition of "powersports vehicle dealer" when engaged in the specific performance of their duties as such employees;

(d) A wholesaler or anyone selling powersports vehicles solely to wholesalers; or

(e) A wholesale motor vehicle auctioneer.

(12) "Powersports vehicle distributor" means a person, resident or nonresident, who, in whole or in part, sells or distributes new powersports vehicles to powersports vehicle dealers or who maintains powersports vehicle distributor representatives.

(13) "Powersports vehicle manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new powersports vehicles.

(14) "Powersports vehicle manufacturer representative" means a representative employed by a person who manufactures or assembles powersports vehicles for the purpose of making or promoting the sale of the person's powersports vehicles or for supervising or contacting its dealers or prospective dealers.

(15) "Powersports vehicle salesperson" means a natural person who, for a salary, commission, or compensation of any kind, is employed either directly or indirectly, regularly or occasionally, by a powersports vehicle dealer to sell, lease, purchase, or exchange or to negotiate for the sale, lease, purchase, or exchange of powersports vehicles.

(16) "Principal place of business" means a site or location for which the powersports vehicle dealer is licensed, sufficiently designated to admit of definite description, with space thereon or contiguous thereto adequate to permit the display of one or more new or used powersports vehicles, and including a permanent enclosed building or structure to accommodate the office of the dealer and to provide a safe place to keep the books and other records of the business of such dealer, at which site or location the principal portion of such dealer's business shall be conducted and the books and records thereof kept and maintained; except that a dealer may keep its books and records at an off-site location in Colorado after notifying the board in writing of such location at least thirty days in advance. Motor vehicle and used motor vehicle dealers shall be authorized to offer both motor vehicles and powersports vehicles from the same principal place of business. In the case of motor vehicle dealers, such principal place of business shall be at the address set forth in the dealer's sales agreement.

(17) "Snowmobile" means a self-propelled vehicle primarily designed or altered for travel on snow or ice when supported in part by skis, belts, or cleats and designed primarily for use off of the public highways. "Snowmobile" shall not include machinery used strictly for the grooming of snowmobile trails or ski slopes.

(18) "Used powersports vehicle" means a powersports vehicle that is not a new powersports vehicle.

(19) "Used powersports vehicle dealer" means any person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, exchanges, leases, or offers an interest in used powersports vehicles, or attempts to negotiate a sale or lease of new and used powersports vehicles or who is engaged wholly or in part in the business of selling used powersports vehicles, whether or not such used powersports vehicles are owned by such person. The sale of ten or more used powersports vehicles or the offering for sale of more than ten used powersports vehicles at the same address or telephone number in any one calendar year shall be prima facie evidence that a person is engaged in the business of selling used powersports vehicles. "Used powersports vehicle dealer" includes an owner of real property who allows more than ten used powersports vehicles to be offered for sale on such property during one calendar year unless the property is leased to a licensed used powersports vehicle dealer. "Used powersports vehicle dealer" does not include:

(a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court;

(b) Public officers while performing their official duties;

(c) Employees of used powersports vehicle dealers when engaged in the specific performance of their duties;

(d) Anyone selling powersports vehicles solely to wholesalers;

(e) Mortgagees or secured parties as to powersports vehicles constituting collateral on a mortgage or security agreement, if such mortgagees or secured parties shall not realize for their own account from

such sales any moneys in excess of the outstanding balance secured by such mortgage or security agreement, plus costs of collection; or

(f) A motor vehicle auctioneer.

(20) "Wholesaler" means a person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, exchanges, or offers or attempts to negotiate a sale, lease, or exchange of an interest in a new or new and used powersports vehicle solely to powersports vehicle dealers or used powersports vehicle dealers.

12-6-503. Motor vehicle dealer board

Powersports vehicle dealers, used powersports vehicle dealers, powersports manufacturers, distributors, representatives, and powersports vehicle salespersons shall be subject to the jurisdiction of the motor vehicle dealer board.

12-6-504. Board - oath - meetings - powers and duties - rules

(1) In addition to the duties and powers of the board under section 12-6-104, the board may:

(a) Promulgate, amend, and repeal rules reasonably necessary to implement this part 5, including, without limitation, the administration, enforcement, issuance, and denial of licenses to wholesalers, powersports vehicle dealers, powersports vehicle salespersons, and used powersports vehicle dealers;

(b) Delegate to the board's executive secretary, employed pursuant to section 12-6-105 (1) (b), the authority to execute all actions within the power of the board, carry out the directives of the board, and make recommendations to the board on all matters within the authority of the board;

(c) Issue through the department of revenue a temporary license to an applicant seeking a license issued by the board, which temporary license shall permit the applicant to operate for not more than one hundred twenty days, during which time the board may complete its investigation and determination of all facts relative to the qualifications of the applicant for such license;

(d) (I) Issue through the department of revenue and, for reasonable cause shown or upon satisfactory proof of the unfitness of the applicant under this part 5, to refuse to issue to any applicant any license the board is authorized to issue by this part 5;

(II) Permit the executive director to issue licenses pursuant to rules adopted by the board under paragraph (a) of this subsection (1);

(e) (I) After due notice and a hearing:

(A) Review the findings of an administrative law judge or hearing officer from a hearing conducted pursuant to this part 5; or

(B) Revoke and suspend or order the executive director to issue or to reinstate, on such terms and conditions and for such period of time as the board deems fair and just, any license issued pursuant to this part 5;

(II) Issue a letter of admonition for a minor violation of this part 5 that does not become a part of the licensee's record with the board;

(III) Issue a letter of reprimand and a notice of the right to request formal disciplinary proceedings, in writing within twenty days, to a licensee for a violation of this part 5, which letter is a part of the licensee's record with the board for a period of two years after issuance and may be considered in aggravation of any subsequent violation by the licensee; except that the letter shall be vacated and a formal disciplinary proceeding shall be instituted upon a written request within twenty days after the letter is issued;

(f) (I) Investigate, with the assistance of the executive director, on its own motion or upon a written and signed complaint from any person, a suspected or alleged violation by a wholesaler, powersports vehicle dealer, used powersports vehicle dealer, or powersports vehicle salesperson of this part 5 or a rule promulgated by the board;

(II) Issue subpoenas or delegate the authority to issue subpoenas to the executive director;

(III) Require the executive director to investigate complaints transmitted by the board pursuant to section 12-6-505 (1) (e) and (1) (f);

(IV) Seek to resolve disputes before beginning an investigation or hearing through its own action or by direction of the executive director;

(V) If the board determines that there is probable cause to believe a violation of this article has occurred after an investigation by the executive director, order an administrative hearing be held pursuant to section 24-4-105, C.R.S., or designate one of the board's members as a hearing officer to conduct a hearing pursuant to section 24-4-105, C.R.S.;

(g) Summarily issue to any person who is licensed by the board pursuant to this part 5 cease-and-desist orders on such terms and conditions and for such time as the board deems fair and just, if such orders are followed by notice and a hearing pursuant to this section;

(h) (I) Prescribe the forms to be used for applications for persons licensed under this part 5;

(II) Require of an applicant, as a requisite to the issuance of a license, information concerning the applicant's fitness to be licensed under this part 5 as the board considers necessary;

(i) Adopt a seal with the words "motor vehicle dealer board" and such other devices as the board may desire engraved thereon by which it shall authenticate the acts of its office;

(j) Require that a powersports vehicle dealer's or used powersports vehicle dealer's principal place of business and such other sites or locations operated by the dealer have signs or devices giving notice of

the dealer's name, the location and address of the dealer's principal place of business, and the type and number of license held by the dealer, as the board considers necessary to notify any person doing business with the dealer to identify such dealer, and for this purpose to promulgate rules determining the size, shape, lettering, and location of such signs or devices;

(k) Cause to be conducted written examinations, as prescribed by the board, to test the competency of all first-time applicants for a wholesaler's license, powersports vehicle dealer's license, used powersports vehicle dealer's license, or powersports vehicle salesperson's license;

(l) Promulgate rules requiring off-highway vehicles sold by persons licensed under this part 5 to comply with ANSI/SVIA-1-2001 or a successor standard promulgated by the American national standards institute or its successor organization if such rules do not conflict with the ANSI standards or set standards more stringent than those set by ANSI;

(m) (I) Prescribe forms to be used as a part of a contract for the sale of a powersports vehicle by a powersports vehicle dealer or powersports vehicle salesperson, other than a retail installment sales contract subject to the provisions of the "Uniform Consumer Credit Code", articles 1 to 9 of title 5, C.R.S., that shall include the following information in addition to any other disclosures or information required by state or federal law:

(A) In twelve-point, bold-faced type, or at least three points larger than the smallest type appearing in the contract, an instruction that the form is a legal instrument and that, if the purchaser of the powersports vehicle does not understand the form, such purchaser should seek legal assistance;

(B) In the type and size specified in sub-subparagraph (A) of this subparagraph (I), an instruction that only those terms in written form embody the contract for sale of a powersports vehicle and that any conflicting oral representations made to the purchaser are void;

(C) In the type and size specified in sub-subparagraph (A) of this subparagraph (I), a notice that fraud or misrepresentation in the sale of a powersports vehicle is punishable under the laws of this state;

(D) In the type and size specified in sub-subparagraph (A) of this subparagraph (I), if the contract for the sale of a powersports vehicle requires a single, lump sum payment of the purchase price, a clear disclosure to the purchaser of this fact or, if the contract is contingent upon the approval of credit financing for the purchaser arranged by or through the powersports vehicle dealer, a statement that the purchaser shall agree to purchase the powersports vehicle that is the subject of the sale from the powersports vehicle dealer at not greater than a certain annual percentage rate of financing that shall be agreed upon by the parties and entered in writing on the contract;

(E) Except as otherwise provided under this part 5, if the purchase price of the powersports vehicle is not paid to the powersports vehicle dealer in full at the time of consummation of the sale and the vehicle dealer delivers and the purchaser takes possession of the vehicle at such time, a statement in bold-faced type that, if financing cannot be arranged in accordance with the contract and the sale is not consummated, the purchaser shall agree to pay a daily rate for use of the vehicle until financing of the

purchase price of the vehicle is arranged for the obligor by or through the authorized powersports vehicle dealer or until the purchase price is paid in full by or through the obligor, which daily rate shall be agreed upon in writing on the contract.

(II) The information required by subparagraph (I) of this paragraph (m) shall be read and initialed by both parties at the time of the consummation of the sale of a powersports vehicle.

(III) The use of the contract form required by subparagraph (I) of this paragraph (m) shall be mandatory for the sale of a powersports vehicle.

(n) After final action is taken on a hearing held before an administrative law judge or a hearing officer designated by the board from within the board's membership, review the findings of law and fact and the fairness of any fine imposed and to uphold such fine, impose an administrative fine upon its own initiative that shall not exceed ten thousand dollars for each separate offense by any licensee, or vacate the fine imposed by the judge or hearing officer; except that, for powersports vehicle dealers who sell primarily vehicles that weigh under one thousand five hundred pounds, the fine for each separate offense shall not exceed one thousand dollars; and

(o) Impose a fine of up to one thousand dollars per day per violation for any person found, after notice and hearing pursuant to section 24-4-105, C.R.S., to have violated the provisions of section 12-6-523 (2).

(2) The board shall:

(a) Order an investigation of all written and signed complaints;

(b) Require an application for a powersports vehicle dealer's license or used powersports vehicle dealer's license to contain, in addition to such information as the board may require, a statement of the following facts:

(I) The name and residence address of the applicant and any trade name under which the applicant intends to conduct business;

(II) If the applicant is a partnership, the name and residence address of each member, whether a limited or general partner, and the name under which the partnership business is to be conducted;

(III) If the applicant is a corporation, the name of the corporation and the name and address of each of its principal officers and directors;

(IV) A complete description, including the municipality, street, and number, if any, of the principal place of business, and any other additional places of business as shall be operated and maintained by the applicant;

(V) If the application is for a powersports vehicle dealer's license, the names of the new powersports vehicles that the applicant has been enfranchised to sell or exchange and the name and address of the powersports manufacturer or distributor who has enfranchised the applicant; and

(VI) The name and address of any person who will act as a salesperson under the authority of the license, if issued.

(3) The findings of the board under subsection (1) of this section shall be final.

(4) (a) For the purposes of paragraphs (e) and (g) of subsection (1) of this section, the address for the notice to be given under section 24-4-105, C.R.S., is the last-known address for the person as indicated in the state motor vehicle records; the last-known address for the owner of the real property upon which powersports vehicles are displayed in violation of section 12-6-523 (2), as indicated in the records of the county assessor's office; or any address for service of process in accordance with rule 4 of the Colorado rules of civil procedure.

(b) A person who fails to pay a fine ordered by the board for a violation of section 12-6-523 (2) under paragraph (o) of subsection (1) of this section shall be subject to enforcement proceedings, by the board through the attorney general, in the county or district court pursuant to the Colorado rules of civil procedure. Fines collected under this subsection (4) shall be disposed of pursuant to section 12-6-528.

(5) (a) If a hearing is conducted by an administrative law judge, the maximum fine that may be imposed is ten thousand dollars for each separate offense by any person licensed by the board pursuant to this part 5; except that, for a powersports vehicle dealer who sells primarily vehicles that weigh under one thousand five hundred pounds, the fine for each separate offense may not exceed one thousand dollars.

(b) (I) If a licensing hearing is conducted by a hearing officer, the sanctions that may be recommended by the hearing officer are limited to the denial or grant of an unrestricted license or a restricted license under such terms as the hearing officer deems appropriate.

(II) If a disciplinary hearing is conducted by a hearing officer, the hearing officer may only recommend a probationary period of no more than twelve months, a fine of no more than five hundred dollars, or both such probationary period and fine for each separate violation committed by a person licensed by the board.

<u>12-6-505. Powers and duties of executive director</u>

(1) The executive director is hereby charged with the administration, enforcement, and issuance or denial of the licensing of powersports vehicle distributors, powersports vehicle manufacturer representatives, and powersports vehicle manufacturers, and shall have the following powers and duties:

(a) To promulgate, amend, and repeal rules reasonably necessary to undertake the functions the executive director is mandated to carry out pursuant to this part 5 and to administer the laws of this state that the executive director deems necessary to carry out the duties of the office of the executive director pursuant to this part 5;

(b) To employ, subject to the laws of this state and after consultation with the board, an executive secretary for the board, who shall be accountable to the board and shall, pursuant to delegation by the board, discharge the responsibilities of the board under this part 5;

(c) To employ and assign duties to clerks, deputies, and assistants, which duties the executive director considers necessary to discharge the duties imposed upon the executive director by this part 5;

(d) To issue and, for reasonable cause shown or upon satisfactory proof of the unfitness of the applicant under this part 5, to refuse to issue to an applicant any license the executive director is authorized to issue by this part 5;

(e) To investigate, upon the executive director's own initiative, upon the written and signed complaint of any person, or upon request by the board pursuant to section 12-6-504 (1) (f) (I), any suspected or alleged violation of this part 5, or of any rule promulgated by the executive director under this section, by any person licensed by the executive director pursuant to this part 5;

(f) To delegate authority to persons for the purpose of investigating alleged or suspected violations of this part 5. The investigators and their supervisors utilized by the executive director, while actually engaged in performing their duties, shall have the authority as delegated by the executive director:

(I) To issue subpoenas, in accordance with the performance of their duties, to licensees who are under the jurisdiction of the executive director;

(II) To issue summonses for violations of section 12-6-523 (2);

(III) To issue misdemeanor summonses for violations of section 12-6-522 (1) (a); and

(IV) To procure criminal records during an investigation;

(g) To prescribe the forms to be used for applications for licenses to be issued by the executive director under this part 5 and to require of applicants, as a condition precedent to the issuance of a license, such information concerning the applicant's fitness to be licensed under this part 5 as the executive director considers necessary;

(h) (I) To summarily issue cease-and-desist orders on such terms and conditions, and for such period of time as the executive director deems fair and just, to any person who is licensed by the executive director pursuant to this part 5 if such orders are followed by notice and a hearing pursuant to section 12-6-504 (4) (a);

(II) To issue cease-and-desist orders to persons acting as powersports vehicle manufacturers without the powersports vehicle manufacturer's license required by this part 5; and

(III) To impose a fine, not to exceed one thousand dollars per day, for each violation of section 12-6-523 (1), after a notice and hearing subject to section 24-4-105, C.R.S.

(2) If a person fails to comply with a cease-and-desist order issued pursuant to this section, the executive director may bring a suit for injunction to prevent any further violation of such order. In any such suit, the final proceedings of the executive director, based upon evidence in record, shall be prima facie evidence of the facts found therein.

12-6-506. Records as evidence

Copies of all records and papers in the office of the board or the executive director, duly authenticated under the hand and seal of the board or executive director, shall be received in evidence in all cases equally and wit 12-6-507. Attorney general to advise and represent

12-6-507. Attorney general to advise and represent

(1) The attorney general shall represent the board and executive director and shall give opinions on questions of law relating to the interpretation of this part 5 or arising out of the administration thereof and shall appear for and on behalf of the board and executive director in all actions brought by or against them, whether under the provisions of this part 5 or otherwise.

(2) The board may request the attorney general to make civil investigations and enforce rules and regulations of the board in cases of civil violations and to bring and defend civil suits and proceedings for any of the purposes necessary and proper for carrying out the functions of the board.h like effect as the original.

12-6-508. Classes of licenses

(1) Licenses issued under this part 5 shall be of the following classes:

(a) A powersports vehicle dealer's license shall permit the licensee to engage in the business of selling, exchanging, leasing, or offering new and used powersports vehicles, which license shall not permit more than two persons named therein as owners of the business of the licensee to act as powersports vehicle salespersons.

(b) A used powersports vehicle dealer's license shall permit the licensee to engage in the business of selling, exchanging, leasing, or offering used powersports vehicles only. Such license shall also permit a licensee to negotiate for a consumer the sale, exchange, or lease of used and new powersports vehicles not owned by the licensee. Prior to completion of a sale, exchange, or lease of a powersports vehicle not owned by the licensee, the licensee shall disclose in writing to the consumer whether the licensee will receive compensation from the consumer or the owner of the powersports vehicle as a result of such transaction. If the licensee receives compensation from the owner of the powersports vehicle as a result of the transaction, the licensee shall include in the written disclosure the name of such owner from whom the licensee will receive compensation. This license shall not permit more than two persons named therein who shall be owners of the business of the licensee to act as powersports vehicle salespersons.

(c) A powersports vehicle salesperson's license shall permit the licensee to engage in the activities of a powersports vehicle salesperson.

(d) A powersports vehicle manufacturer's or distributor's license shall permit the licensee to engage in the activities of a powersports manufacturer or distributor.

(e) A powersports vehicle manufacturer representative's license shall permit the licensee to engage in the activities of a powersports vehicle manufacturer representative.

(f) A wholesaler's license shall permit the licensee to engage in the activities of a wholesaler.

(2) (a) A person who is licensed as a motor vehicle salesperson pursuant to part 1 of this article shall be deemed to be licensed as a powersports vehicle salesperson under this part 5.

(b) A person who is licensed as a motor vehicle manufacturer or distributor pursuant to part 1 of this article shall be deemed to be licensed as a powersports vehicle manufacturer or distributor under this part 5.

(c) A person who is licensed as a motor vehicle manufacturer pursuant to part 1 of this article shall be deemed to be licensed as a powersports vehicle manufacturer under this part 5.

12-6-509. Temporary powersports vehicle dealer license

(1) If a licensed powersports vehicle dealer has entered into a written agreement to sell a dealership to a purchaser and the purchaser has been awarded a new franchise, the board may issue a temporary powersports vehicle dealer's license to such purchaser or prospective purchaser. The executive director shall issue the temporary license only after the board has received the applications for both a temporary powersports vehicle dealer's license and a powersports vehicle dealer's license, the appropriate application fee for the powersports vehicle dealer's application, evidence of a passing score of the written examination described in section 12-6-515, and evidence that the franchise has been awarded to the applicant by the powersports vehicle manufacturer. A temporary powersports vehicle dealer's license shall authorize the licensee to act as a powersports vehicle dealer and subject the licensee to this article and to all rules adopted by the executive director or the board. A temporary powersports vehicle dealer's license shall be effective for up to sixty days or until the board acts on such licensee's application for a powersports vehicle dealer's license, whichever is sooner.

(2) For the purpose of enabling an out-of-state dealer to sell powersports vehicles on a temporary basis during specifically identified events, the executive director may issue, upon direction by the board, a temporary powersports vehicle dealer's license that shall be effective for thirty days. The temporary license shall subject the licensee to compliance with rules adopted by the executive director or the board.

12-6-510. Display, form, custody, and use of licenses

The board and the executive director shall prescribe the form of the license to be issued by the executive director, and each license shall have imprinted thereon the seal of their offices. The license of each powersports vehicle salesperson shall be mailed to the business address where the salesperson is licensed and shall be kept by the salesperson at such salesperson's place of employment for inspection by employers, consumers, the executive director, or the board. A powersports vehicle dealer or wholesaler shall display conspicuously the person's license in the person's place of business. Each license issued pursuant to this part 5 is separate and distinct. It shall be a violation of this part 5 for a person to exercise any of the privileges granted under a license that such person does not hold, or for a licensee to knowingly allow such an exercise of privileges.

12-6-511. Fees - disposition - expenses - expiration of licenses

(1) The fee established pursuant to subsection (5) of this section shall be collected with each application for each of the following:

(a) (I) Powersports vehicle dealer's license or used powersports vehicle dealer's license;

(II) Powersports vehicle dealer's or used powersports vehicle dealer's license for each place of business in addition to the principal place of business;

(III) Renewal or reissue of powersports vehicle dealer's license or used dealer's license after change in location or lapse in principal place of business;

(b) Powersports vehicle manufacturer's license;

(c) Powersports vehicle distributor's license;

(d) Powersports vehicle manufacturer representative's license;

(e) Powersports vehicle salesperson's license including, without limitation, reissuing a license;

(f) Wholesaler's license.

(2) Fees shall be paid to the state treasurer who shall credit the same to the auto dealers license fund created in section 12-6-123.

(3) If an application for a wholesaler's license, powersports vehicle dealer's, used powersports vehicle dealer's, or powersports salesperson's license is withdrawn by the applicant prior to issuance of the license, one-half of the license fee shall be refunded.

(4) (a) Licenses issued under this part 5, if not suspended or revoked, shall be valid until one year following the month of issuance thereof and shall then expire; except that any license issued under this part 5 shall expire upon the voluntary surrender thereof or upon the abandonment of the licensee's place of business for a period of more than thirty days.

(b) Thirty days prior to the expiration of a license, the executive director shall mail to the licensee's business address of record a notice stating when the person's license is due to expire and the fee

necessary to renew such license. For a powersports vehicle salesperson or powersports vehicle manufacturer representative, the notice shall be mailed to the address of the powersports vehicle dealer, used powersports vehicle dealer, or powersports vehicle manufacturer where the person is licensed.

(c) Upon the expiration of a license, unless suspended or revoked, it may be renewed upon the payment of the application fees specified in this section and renewal shall be made from year to year as a matter of right; except that, if a wholesaler or powersports vehicle dealer voluntarily surrenders its license or abandons its place of business for a period of more than thirty days, the licensee is required to file a new application to renew its license.

(d) Notwithstanding paragraph (a) of this subsection (4), a person has a thirty-day grace period after the license expires in which the license may be renewed pursuant to paragraph (c) of this subsection (4), so long as the person has a bond in full force and effect that complies with the applicable bonding requirements of section 12-6-512 or 12-6-513 during the thirty-day period. A person applying during the thirty-day grace period shall pay a late fee established pursuant to subsection (5) of this section.

(5) (a) The board shall propose, as part of its annual budget request, an adjustment in the amount of each fee that the board is authorized by law to collect. The budget request and the adjusted fees for the board shall reflect direct and indirect costs.

(b) Based upon any appropriation made and subject to the approval of the executive director, the board shall adjust the fees collected by the executive director so that the revenue generated from fees covers the direct and indirect costs of administering this part 5. Such fees shall remain in effect for the fiscal year for which the appropriation is made.

(c) In any year, if moneys appropriated by the general assembly to the board for its activities for the prior fiscal year are unexpended, the moneys shall be made a part of the appropriation to the board for the next fiscal year, and the amount shall not be raised from fees collected by the board or the executive director. If a supplemental appropriation is made by the general assembly to the board for its activities, the fees of the board and the executive director, when adjusted for the fiscal year next following that in which the supplemental appropriation was made, shall be adjusted by an additional amount that is sufficient to compensate for such supplemental appropriation. Moneys appropriated to the board in the annual general appropriation bill shall be from the fund provided in section 12-6-123.

<u>12-6-512. Bond of licensee</u>

(1) A wholesaler's license, powersports vehicle dealer's license, or used powersports vehicle dealer's license shall not be issued to any applicant unless the applicant procures and files with the board evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a good and sufficient bond with corporate surety thereon duly licensed to do business within the state, approved as to form by the attorney general, and conditioned that the applicant shall not make any fraudulent representation or violate any of the provisions of this part 5 or any rule promulgated by the board under this part 5. A powersports vehicle dealer or used powersports vehicle

dealer shall not be required to furnish an additional bond, savings account, deposit, or certificate of deposit under this section if such dealer furnishes a bond, savings account, deposit, or certificate of deposit under section 12-6-111.

(2) (a) The purpose of the bond procured by the applicant pursuant to subsection (1) of this section and section 12-6-513 is to provide for the reimbursement for any loss or damage suffered by any retail consumer caused by violation of this part 5 by a wholesaler, powersports vehicle dealer, or used powersports vehicle dealer. For a wholesale transaction, the bond is available to each party to the transaction; except that, if a retail consumer is involved, such consumer shall have priority to recover from the bond. The amount of the bond shall be fifty thousand dollars for each wholesaler applicant, powersports vehicle dealer applicant, and used powersports vehicle dealer applicant. The aggregate liability of the surety for all transactions shall not exceed the amount of the bond, regardless of the number of claims or claimants.

(b) No corporate surety shall be required to make a payment to any person making a claim under such bond until a final determination of fraud or fraudulent representation has been made by the board or by a court of competent jurisdiction.

(3) Bonds required pursuant to this section shall be renewed annually when the bondholder's license is renewed. Bonds may be renewed through a continuation certificate issued by the surety.

(4) Nothing in this part 5 shall interfere with the authority of the courts to administer and conduct an interpleader action for claims against a licensee's bond.

12-6-513. Powersports vehicle salesperson's bond

(1) A powersports vehicle salesperson's license shall not be issued unless the applicant has procured and filed with the board evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a good and sufficient bond in the amount of fifteen thousand dollars with corporate surety thereon duly licensed to do business within the state, approved as to form by the attorney general, and conditioned that the applicant shall perform in good faith as a powersports vehicle salesperson without fraud or fraudulent representation and without violating this part 5 or any rule promulgated by the board under this part 5. The board shall implement by January 1, 2008, a psychometrically valid and reliable salesperson exam that measures the minimum level of competence necessary to practice. A powersports vehicle salesperson shall not be required to furnish an additional bond, savings account, deposit, or certificate of deposit under this section if such salesperson furnishes a bond, savings account, deposit, or certificate of deposit under section 12-6-112.

(2) No corporate surety shall be required to make a payment to any person claiming under such bond until a final determination of fraud or fraudulent representation has been made by the board or by a court of competent jurisdiction.

(3) Bonds required under this section shall be renewed annually when the bondholder's license is renewed. Bonds may be renewed through a continuation certificate issued by the surety.

12-6-514. Notice of claims honored against bond

(1) A corporate surety that has provided a bond to a licensee pursuant to section 12-6-512 or 12-6-513 shall provide notice to the board and executive director of any claim that is honored against the bond. The notice shall be provided to the board and executive director within thirty days after a claim is honored.

(2) A notice provided by a corporate surety pursuant to subsection (1) of this section shall be in the form required by the executive director, subject to approval by the board, and shall include, without limitation, the name of the licensee, the name and address of the claimant, the amount of the honored claim, and the nature of the claim against the licensee.

12-6-515. Testing licensees

All persons applying for a wholesaler's, powersports vehicle dealer's, used powersports vehicle dealer's, or powersports vehicle salesperson's license under this part 5 shall be examined for their knowledge of the powersports vehicle laws of the state of Colorado and the rules promulgated pursuant to this part 5. If the applicant is a corporation, the managing officer shall take the examination, and, if the applicant is a partnership, all the general partners shall take such examination. No license shall be issued except upon successful passing of the examination. This section shall not apply to a motor vehicle dealer, used motor vehicle dealer, or motor vehicle salesperson licensed pursuant to part 1 of this article.

12-6-516. Filing of written warranties

A licensed powersports vehicle manufacturer shall file with the executive director all written warranties and changes in written warranties the manufacturer makes on powersports vehicle or parts thereof. A licensed powersports vehicle manufacturer shall file with the executive director a copy of the delivery and preparation obligations of a powersports vehicle manufacturer's dealer, and these warranties and obligations shall constitute the powersports vehicle dealer's only responsibility for product liability as between the powersports vehicle dealer and the powersports vehicle manufacturer. Any mechanical, body, or parts defects arising from express or implied warranties of the powersports vehicle manufacturer shall constitute the powersports vehicle manufacturer's product or warranty liability, and the powersports vehicle manufacturer shall reasonably compensate any authorized powersports vehicle dealer who performs work to rectify a powersports vehicle manufacturer's product or warranty defects.

12-6-517. Application - rules

(1) An application for a wholesaler's license, powersports vehicle dealer's license, used powersports vehicle dealer's license, or powersports vehicle salesperson's license shall be submitted to the board.

(2) An application for a powersports vehicle distributor, powersports vehicle manufacturer representative, or powersports vehicle manufacturer license shall be submitted to the executive director.

(3) Fees for licenses shall be paid at the time of the filing of application for license.

(4) Persons applying for a powersports vehicle dealer's license shall file with the board a certified copy of a certificate of appointment as a powersports vehicle dealer from a powersports vehicle manufacturer.

(5) (a) A person applying for a powersports vehicle manufacturer's or distributor's license shall:

(I) File with the executive director a certified copy of a typical sales, service, and parts agreement with all powersports vehicle dealers; and

(II) File evidence of the appointment of an agent for process in the state of Colorado.

(b) Within sixty days after amending or modifying or adding an addendum to the sales, service, or parts agreement of more than one powersports dealer, a licensed manufacturer or distributor shall file a certified copy of the new sales, service, and parts agreement, including the changes, with the executive director if the amendment, modification, or addendum materially alters the rights and obligations of the contracting parties.

(6) Persons applying for a wholesaler's, powersports vehicle dealer's, used powersports vehicle dealer's, or a powersports vehicle salesperson's license shall file with the board a written instrument in which the applicant shall appoint the secretary of the board as the agent of the applicant upon whom all process may be served in any action against the applicant arising out of a claim for damages suffered by a violation of this part 5, rules promulgated under this part 5, or any condition of the applicant's bond.

(7) (a) A person applying for a wholesaler's license or used powersports vehicle dealer's license shall file with the board a certification that the applicant has met the educational requirements for licensure under this subsection (7), unless the applicant is licensed as a motor vehicle dealer or a used motor vehicle dealer. This subsection (7) shall not apply to a person who has held a license, within the last three years, as a motor vehicle dealer, used motor vehicle dealer, wholesaler, wholesale motor vehicle auction dealer, powersports vehicle dealer, or used powersports vehicle dealer under this part 5 or part 1 of this article.

(b) An applicant for a wholesaler's license or used powersports vehicle dealer's license shall not be licensed unless one of the following persons has completed an eight-hour prelicensing education program:

(I) The managing officer if the applicant is a corporation or limited liability company;

(II) All of the general partners if the applicant is any form of partnership; or

(III) The owner or managing officer if the applicant is a sole proprietorship.

(c) The prelicensing education program shall include, without limitation, state and federal statutes and rules governing the sale of powersports vehicles.

(d) A prelicensing education program shall not fulfill the requirements of this section unless approved by the board. The board shall approve any program with a curriculum that reasonably covers the material required by this section within eight hours.

(e) The board may adopt rules establishing reasonable fees to be charged for the prelicensing education program.

(f) The board may adopt reasonable rules to implement this section, including, without limitation, rules that govern:

(I) The content and subject matter of education;

(II) The criteria, standards, and procedures for the approval of courses and course instructors;

(III) The training facility requirements; and

(IV) The methods of instruction.

(g) An approved prelicensing program provider shall issue a certificate to a person who successfully completes the approved prelicensing education program. The current certificate of completion, or a copy of the certificate, shall be posted conspicuously at the dealership's principal place of business.

(h) An approved prelicensing program provider shall submit a certificate to the executive director for each person who successfully completes the prelicensing education program. The certificate may be transmitted electronically.

12-6-518. Notice of change of address or status

(1) The board, through the executive director, shall not issue a powersports vehicle dealer's license or used powersports vehicle dealer's license to an applicant who has no principal place of business. If a powersports vehicle dealer or used powersports vehicle dealer changes the site or location of the dealer's principal place of business, the dealer shall immediately notify the board in writing, and thereupon, a new license shall be granted for the unexpired portion of the term of the existing license at a fee established pursuant to section 12-6-511. If a powersports vehicle dealer or used powersports vehicle dealer ceases to possess a principal place of business where the dealer conducts the business for which the dealer is licensed, the dealer shall immediately notify the board in writing and, upon demand by the board, shall deliver the dealer's license, which shall be held and retained until it appears to the board that the licensee possesses a principal place of business; whereupon, the dealer's license shall be reissued. Nothing in this part 5 shall be construed to prevent a powersports vehicle dealer or used powersports vehicle dealer from conducting the business for which the dealer is licensed at one or more sites or locations not contiguous to the dealer's principal place of business but operated and maintained in conjunction therewith.

(2) Should the powersports vehicle dealer change to a new line of powersports vehicles, add another franchise for the sale of new powersports vehicles, or cancel or otherwise lose a franchise for the sale of new powersports vehicles, the dealer shall immediately notify the board. If a franchise is canceled or lost, the board shall determine whether the dealer should be licensed as a used powersports vehicle dealer. If so, the board shall cancel and the powersports vehicle dealer shall deliver to it the dealer's license, and the board shall direct the executive director to issue to the dealer a used powersports

vehicle dealer's license. Upon the cancellation or loss of a franchise to sell new powersports vehicles and the relicensing of the dealer as a used powersports vehicle dealer, the dealer may continue in the business for which a powersports vehicle dealer is licensed for a time, not exceeding six months after the relicensing of the dealer, to enable the dealer to dispose of the stock of new powersports vehicles on hand at the time of the relicensing, but not otherwise.

(3) If a powersports vehicle salesperson is discharged, leaves an employer, or changes a place of employment, the powersports vehicle dealer who last employed the salesperson shall confiscate and return the salesperson's license to the board. Upon being reemployed as a powersports vehicle salesperson, the powersports vehicle salesperson shall notify the board. Upon receiving the notification, the board shall issue a new license for the unexpired portion of the returned license after collecting a fee set pursuant to section 12-6-511 (5). It shall be unlawful for the salesperson to act as a powersports vehicle salesperson until a new license is procured.

(4) Upon a change of place of business or business address, a wholesaler shall immediately notify the board of the change.

12-6-519. Principal place of business - requirements

(1) The building or structure required to be located on a principal place of business shall have electrical service and adequate sanitary facilities.

(2) A room in a hotel, rooming house, or apartment house building or a part of any single or multiple unit dwelling house shall not be used as a principal place of business unless the entire ground floor of the hotel, apartment house, or rooming house building or the dwelling house is devoted principally to and occupied for commercial purposes and the office of the dealer is located on the ground floor thereof.

(3) Nothing in this section shall be construed to exempt a powersports vehicle dealer or used powersports vehicle dealer from local zoning ordinances.

12-6-520. Licenses - grounds for denial, suspension, or revocation

(1) A powersports vehicle manufacturer's or distributor's license may be denied, suspended, or revoked on the following grounds:

(a) Material misstatement in an application for a license;

(b) Willful failure to comply with this part 5 or any rule promulgated by the executive director under this part 5;

(c) Engaging, in the past or present, in any illegal business practice.

(2) A powersports vehicle manufacturer representative's license may be denied, suspended, or revoked on the following grounds:

(a) Material misstatement in an application for a license;

(b) Willful failure to comply with this part 5 or any rules promulgated by the executive director under this part 5;

(c) Committing any unconscionable business practice under title 4, C.R.S.;

(d) Having coerced or attempted to coerce a powersports vehicle dealer to accept delivery of any powersports vehicle, parts or accessories therefore, or any other commodities or services that have not been ordered by the dealer;

(e) Having coerced or attempted to coerce a powersports vehicle dealer to enter into any agreement to do an act unfair to the dealer by threatening to cause the cancellation of the dealer's franchise;

(f) Having withheld, threatened to withhold, reduced, or delayed without just cause an order for powersports vehicles, parts or accessories therefore, or any other commodities or services that have been ordered by a powersports vehicle dealer; or

(g) Engaging, in the past or present, in any illegal business practice.

(3) A wholesaler's license, powersports vehicle dealer's license, or a used powersports vehicle dealer's license may be denied, suspended, or revoked on the following grounds:

(a) Material misstatement in an application for a license;

(b) Willful failure to comply with this part 5 or any rule promulgated by the executive director under this part 5;

(c) Having been convicted of or pled nolo contendere to any felony or crime pursuant to article 3, 4, or 5 of title 18, C.R.S., or any like crime pursuant to federal law or the law of another state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of the conviction in a hearing held pursuant to this article.

(d) Defrauding any buyer, seller, powersports vehicle salesperson, or financial institution to the person's damage;

(e) Intentionally or negligently failing to perform any written agreement with any buyer or seller;

(f) Failing or refusing to furnish and keep in force a bond required under this part 5;

(g) Making a fraudulent or illegal sale, transaction, or repossession;

(h) Willfully misrepresenting, circumventing, concealing, or failing to disclose, through subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to the buyer;

(i) Intentionally publishing or circulating advertising that is misleading or inaccurate in any material particular or that misrepresents a product sold or furnished by a licensed dealer;

(j) Knowingly purchasing, selling, or otherwise acquiring or disposing of a stolen powersports vehicle;

(k) Engaging in the business for which the dealer is licensed without at all times maintaining a principal place of business as required by this part 5 during reasonable business hours;

(l) Engaging in the business through employment of an unlicensed powersports vehicle salesperson;

(m) Willfully violating any state or federal law respecting commerce or powersports vehicles, or any lawful rule respecting commerce or powersports vehicles promulgated by any licensing or regulating authority pertaining to powersports vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or powersports vehicles;

(n) Representing or selling as a new and unused powersports vehicle any powersports vehicle that the dealer or salesperson knows is otherwise a used powersports vehicle;

(o) Committing a fraudulent insurance act pursuant to section 10-1-128, C.R.S.;

(p) Failing to give notice to a prospective buyer of the acceptance or rejection of a powersports vehicle purchase order agreement within a reasonable time period, as determined by the board, when the licensee is working with the prospective buyer on a finance sale or a consignment sale.

(3.5) A wholesaler's license may be denied, suspended, or revoked for the selling, leasing, or offering or attempting to negotiate the sale, lease, or exchange of an interest in motor vehicles to persons other than powersports vehicle dealers, used powersports vehicle dealers, or other wholesalers.

(4) The license of a powersports vehicle salesperson may be denied, revoked, or suspended on the following grounds:

(a) Material misstatement in an application for a license;

(b) Failure to comply with any provision of this part 5 or any rule promulgated by the board or executive director under this part 5;

(c) Engaging in the business for which the licensee is licensed without having in force and effect a good and sufficient bond with corporate surety as provided in this part 5;

(d) Intentionally publishing or circulating an advertisement that is misleading or inaccurate in any material particular or that misrepresents a powersports vehicle product sold or attempted to be sold by the salesperson;

(e) Having indulged in any fraudulent business practice;

(f) Selling, offering, or attempting to negotiate the sale, exchange, or lease of powersports vehicles for a powersports vehicle dealer or used powersports vehicle dealer for which the salesperson is not licensed;

except that negotiation with a powersports vehicle dealer or used powersports vehicle dealer for the sale, exchange, or lease of new and used powersports vehicles, by a salesperson compensated for the negotiation by a powersports vehicle dealer or used powersports vehicle dealer for which the salesperson is licensed shall not be grounds for denial, revocation, or suspension;

(g) Representing oneself as a salesperson for a powersports vehicle dealer when the salesperson is not so employed and licensed;

(h) Having been convicted of or pled nolo contendere to any felony or any crime pursuant to article 3, 4, or 5 of title 18, C.R.S., or any like crime pursuant to federal law or the law of another state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of the conviction in a hearing held pursuant to this article.

(i) Having knowingly purchased, sold, or otherwise acquired or disposed of a stolen powersports vehicle;

(j) Employing an unlicensed powersports vehicle salesperson;

(k) Defrauding any retail buyer to the person's damage;

(l) Representing or selling as a new and unused powersports vehicle a powersports vehicle that the salesperson knows is otherwise a used powersports vehicle;

(m) Willfully violating any state or federal law respecting commerce or powersports vehicles, or any lawful rule respecting commerce or powersports vehicles promulgated by any licensing or regulating authority pertaining to powersports vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or powersports vehicles;

(n) Improperly withholding, misappropriating, or converting to the salesperson's own use any money belonging to customers or other persons received in the course of employment as a powersports vehicle salesperson.

(5) A license issued pursuant to this part 5 may be denied, revoked, or suspended if unfitness of the licensee or licensee applicant is shown in the following:

(a) The licensing character or record of the licensee or licensee applicant;

(b) The criminal character or record of the licensee or licensee applicant;

(c) The financial character or record of the licensee or licensee applicant;

(d) A violation of any lawful order of the board.

(6) (a) A license issued or applied for pursuant to this part 5 shall be revoked or denied if the licensee or applicant has been convicted of or pleaded no contest to any of the following offenses in this state or another jurisdiction during the previous ten years:

(I) A felony in violation of article 3, 4, or 5 of title 18, C.R.S., or any similar crime under federal law or the law of another state; or

(II) A crime involving salvage fraud or the defrauding of a retail consumer in a powersports vehicle sale or lease transaction.

(b) A certified copy of a judgment of conviction by a court of competent jurisdiction of an offense under subparagraph (I) of paragraph (a) of this subsection (6) is conclusive evidence of the conviction in any hearing held pursuant to this article.

12-6-521. Procedure for denial, suspension, or revocation of license - judicial review

(1) The denial, suspension, or revocation of licenses issued under this part 5 shall be in accordance with the provisions of sections 24-4-104 and 24-4-105, C.R.S.; except that the discovery available under rule 26 (b) (2) of the Colorado rules of civil procedure is available in any proceeding.

(2) The board shall appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct any hearing concerning the licensing or discipline of a wholesaler, powersports vehicle dealer, used powersports vehicle dealer, powersports vehicle manufacturer, powersports vehicle manufacturer representative, or powersports vehicle distributor; except that the board may, upon a unanimous vote of the members present when the vote is taken, conduct the hearing in lieu of appointing an administrative law judge.

(3) (a) The board shall assign a hearing concerning the licensing or discipline of a powersports vehicle salesperson to the executive director, who shall appoint an officer to conduct a hearing.

(b) Hearings conducted before an administrative law judge shall be in accordance with the rules of procedure of the office of administrative courts. Hearings conducted before an officer appointed by the executive director shall be in accordance with the rules of procedure established by the executive director.

(4) The board may summarily suspend a licensee required to post a bond under this article if such licensee does not have a bond in full force and effect as required by this article. The suspension shall become effective upon the earlier of the licensee receiving notice of the suspension or within three days after the notice of suspension is mailed to a licensee's last-known address on file with the board. The notice may be effected by certified mail or personal delivery.

(5) The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. The proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

12-6-522. Sales activity following license denial, suspension, or revocation - unlawful act - penalty

(1) (a) It shall be unlawful and a violation of this part 5 for any person whose wholesaler's, powersports vehicle dealer's, used powersports vehicle dealer's, or powersports vehicle salesperson's license has

been denied, suspended, or revoked to exercise the privileges of the license that was denied, suspended, or revoked.

(b) A violation of paragraph (a) of this subsection (1) shall be punishable in accordance with section 12-6-527; except that a second or subsequent violation of said paragraph (a) shall be a class 6 felony.

(c) In any trial for a violation of paragraph (a) of this subsection (1):

(I) A duly authenticated copy of the board's order of denial, suspension, or revocation shall constitute prima facie evidence of the denial, suspension, or revocation;

(II) A duly authenticated invoice, buyer's order, or other customary, written sales or purchase document or instrument proven to be signed by the defendant and indicating the defendant's role in the purchase or sale of a powersports vehicle at a retail or wholesale powersports vehicle sales location shall constitute prima facie evidence of the defendant's exercise of a privilege of licensure;

(III) It shall be an affirmative defense that the defendant bought or sold a powersports vehicle that was, at all relevant times, intended for the defendant's own use and not bought or sold for the purpose of profit or gain; and

(IV) The fact that the defendant has a powersports vehicle dealer's, used powersports vehicle dealer's, or powersports vehicle salesperson's license, or another license to buy and sell powersports vehicles, that is issued by a state or jurisdiction other than Colorado, shall not constitute a defense.

(2) Upon the defendant's conviction by entry of a plea of guilty or nolo contendere or judgment or verdict of guilt in connection with a violation of paragraph (a) of subsection (1) of this section or of section 12-6-523 (2) or 42-6-142 (1), C.R.S., the court shall immediately give the executive director written notice of the conviction. In addition, the court shall forward to the executive director copies of documentation of any conviction on a lesser included offense and any amended charge, plea bargain, deferred prosecution, deferred sentence, or deferred judgment in connection with the original charge.

(3) Upon receiving notice of a conviction or other disposition pursuant to subsection (2) of this section, the executive director or his or her designee shall forward the notice to the motor vehicle dealer board, which shall immediately examine its files to determine whether the defendant's license was denied, suspended, or revoked at the time of the offense. If in fact the defendant's license was denied, suspended, or revoked at the time of the offense, the board shall:

(a) Not issue or reinstate any license to the defendant until one year after the time the defendant would otherwise have been eligible to receive a new or reinstated license; and

(b) Revoke or suspend any other licenses held by the defendant until at least one year after the date of the conviction or other disposition.

<u>12-6-523. Unlawful acts</u>

(1) It is unlawful and a violation of this part 5 for any powersports vehicle manufacturer, distributor, or manufacturer representative:

(a) To willfully fail to cause to not be performed any written warranties made with respect to a powersports vehicle or parts thereof;

(b) To coerce or attempt to coerce any powersports vehicle dealer to perform or allow to be performed an act that could be financially detrimental to the dealer or that would impair the dealer's goodwill or to enter into an agreement with a powersports vehicle manufacturer or distributor that would be financially detrimental to the dealer or impair the dealer's goodwill, by threatening to cancel or not renew a franchise between a powersports vehicle manufacturer or distributor and the dealer;

(c) To coerce or attempt to coerce any powersports vehicle dealer to accept delivery of a powersports vehicle, parts or accessories thereof, or any commodities or services that have not been ordered by the dealer;

(d) (I) To cancel or cause to be canceled, directly or indirectly, without just cause, the franchise of a powersports vehicle dealer, and the nonrenewal of a franchise or selling agreement without just cause is a violation of this paragraph (d) and shall constitute an unfair cancellation.

(II) As used in this paragraph (d), "just cause" shall be determined in the context of all circumstances surrounding the cancellation or nonrenewal, including but not limited to:

(A) The amount of business transacted by the powersports vehicle dealer;

(B) The investments necessarily made and obligations incurred by the powersports vehicle dealer, including but not limited to goodwill, in the performance of its duties under the franchise agreement, together with the duration and permanency of the investments and obligations;

(C) The potential for harm to consumers as a result of disruption of the business of the powersports vehicle dealer;

(D) The powersports vehicle dealer's failure to provide adequate service of facilities, equipment, parts, and qualified service personnel;

(E) The powersports vehicle dealer's failure to perform warranty work on behalf of the powersports vehicle manufacturer, subject to reimbursement by the powersports vehicle manufacturer; and

(F) The powersports vehicle dealer's failure to substantially comply, in good faith, with requirements of the franchise that are determined to be reasonable and material.

(III) The following conduct by a powersports vehicle dealer shall constitute just cause for termination without consideration of other factors:

(A) Conviction of, or a plea of guilty or nolo contendere to, a felony;

(B) A continuing pattern of fraudulent conduct against the powersports vehicle manufacturer or consumers; or

(C) Continuing failure to operate for ten days or longer.

(e) To withhold, reduce, or delay unreasonably or without just cause delivery of powersports vehicles, powersports vehicle parts and accessories, commodities, or moneys due powersports vehicle dealers for warranty work done by any powersports vehicle dealer;

(f) To withhold, reduce, or delay unreasonably or without just cause services contracted for by powersports vehicle dealers;

(g) To coerce any powersports vehicle dealer to provide installment financing with a specified financial institution;

(h) To violate any duty imposed by, or fail to comply with, any provision of section 12-6-524, 12-6-525, or 12-6-526;

(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;

(j) (I) To fail or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make except as a result of a strike or labor difficulty, lack of manufacturing capacity, shortage of materials, freight embargo, or other cause over which the powersports vehicle manufacturer has no control; or

(II) To require a dealer to pay an unreasonable fee, purchase unreasonable advertising displays or other materials, or comply with unreasonable training or facilities requirements as a prerequisite to receiving any particular model of that same line-make, which shall be judged based on the circumstances of the individual dealer and the conditions of the market served by the dealer;

(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;

(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; 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;

(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;

(II) The dealer cost, less all allowances paid or credited to the powersports vehicle dealer by the powersports vehicle manufacturer, for all unused, undamaged, and unsold supplies, parts, and accessories in original packaging and listed in the powersports vehicle manufacturer's current parts catalog;

(III) The fair market value of each undamaged sign owned by the powersports vehicle dealer and bearing a common name, trade name, or trademark of the powersports vehicle manufacturer if acquisition of the sign was required by the powersports vehicle manufacturer;

(IV) The fair market value of all special tools and equipment that were acquired from the powersports vehicle manufacturer or from sources approved and required by the powersports vehicle manufacturer and that are in good and usable condition, excluding normal wear and tear; and

(V) The cost of transporting, handling, packing, and loading the powersports vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings described in this paragraph (l).

(m) To require, coerce, or attempt to coerce a powersports vehicle dealer to close or change the location of the powersports vehicle dealer, or to make any substantial alterations to the dealer premises or facilities when doing so would be unreasonable or without written assurance of a sufficient supply of powersports vehicles so as to justify the changes, in light of the current market and economic conditions;

(n) To authorize or permit a person to perform warranty service repairs on powersports vehicles unless the person is:

(I) A powersports vehicle dealer with whom the powersports vehicle manufacturer has entered into a franchise agreement for the sale and service of the manufacturer's powersports vehicles; or

(II) A person or government entity that has purchased new powersports vehicles pursuant to a powersports vehicle manufacturer's fleet discount program and is performing the warranty service repairs only on vehicles owned by the person or entity;

(o) To require, coerce, or attempt to coerce a powersports vehicle dealer to prospectively agree to a release, assignment, novation, waiver, or estoppel that would relieve any person of a duty or liability imposed under this article except in settlement of a bona fide dispute;

(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 or the termination of a franchise due to the insolvency of the manufacturer or distributor, 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 (I) of this subsection (1);

(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;

(t) To charge back, deny powersports vehicle allocation, withhold payments, or take other actions against a powersports vehicle dealer if a powersports vehicle sold by the powersports vehicle dealer is exported from Colorado unless the manufacturer, distributor, or manufacturer representative proves that the powersports vehicle dealer knew or reasonably should have known a powersports vehicle was intended to be exported, which shall operate as a rebuttable presumption that the powersports vehicle dealer did not have such knowledge;

(u) Within ninety days after the termination, elimination, or cessation of a line-make or the termination, cancellation, or nonrenewal of a franchise by the manufacturer, distributor, or manufacturer representative, for any reason other than that the powersports vehicle dealer commits fraud, makes a misrepresentation, or commits any other crime within the scope of the franchise agreement or in the operation of the dealership, to fail to reimburse a powersports vehicle dealer for the cost depreciated by five percent per year of any upgrades or alterations to the powersports vehicle dealer's facilities required by the manufacturer, distributor, or manufacturer representative within the previous five years;

(v) To fail to notify a powersports vehicle dealer at least ninety days before the following and to provide the specific reasons for the following:

(I) Directly or indirectly terminating, cancelling, or not renewing a franchise agreement; or

(II) Modifying, replacing, or attempting to modify or replace the franchise or selling agreement of a powersports dealer, including a change in the dealer's geographic area upon which sales or service performance is measured, if the modification would substantially and adversely alter the rights or obligations of the dealer under the current franchise or selling agreement or would substantially impair the sales or service obligations or the dealer's investment; and

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

(2) It is unlawful for a person to act as a wholesaler, powersports vehicle dealer, used powersports vehicle dealer, powersports vehicle manufacturer, powersports vehicle distributor, powersports vehicle manufacturer representative, or powersports vehicle salesperson unless the person has been duly licensed under the provisions of this part 5.

January 7, 2015

12-6-524. New, reopened, or relocated dealer - notice required - grounds for refusal of dealer license - definitions - rules

(1) No powersports vehicle manufacturer or distributor shall establish an additional new powersports vehicle dealer, reopen a previously existing powersports vehicle dealer, or relocate an existing powersports vehicle dealer without first providing at least sixty days' notice to all of its franchised dealers and former dealers whose franchises were terminated, cancelled, or not renewed by a manufacturer, distributor, or manufacturer representative in the previous five years due to the insolvency of the manufacturer or distributor within whose relevant market area the new, reopened, or relocated dealer would be located. The notice shall state:

(a) The specific location at which the additional, reopened, or relocated powersports vehicle dealer will be established;

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

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

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

(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 and former dealers whose franchises were terminated, cancelled, or not renewed in the previous five years due to the insolvency of the manufacturer or distributor, whichever is later, but not to exceed one hundred days.

(2) Subsection (1) of this section shall not apply to:

(a) The relocation of an existing dealer within two miles of its current location; or

(b) The establishment of a replacement dealer, within two years, either at the former location or within two miles of the former location.

(3) As used in this section:

(a) "Powersports manufacturer" means a powersports vehicle manufacturer, distributor, or manufacturer representative.

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

(I) The geographic area of responsibility defined in the franchise agreement of an existing dealer; or

(II) The geographic area within a radius of five miles of any existing dealer of the same line-make of powersports vehicle that is located in a county with a population of more than one hundred fifty thousand or within a radius of ten miles of an existing dealer of the same line-make of vehicles that is located in a county with a population of one hundred fifty thousand or less.

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

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

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

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

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

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

(b) (I) In addition to the powers specified in section 12-6-505, the executive director has jurisdiction to resolve actions or proceedings brought before the executive director pursuant to this part 5 that allege a violation of this part 5 or rules promulgated pursuant to this part 5. The executive director may promulgate rules to facilitate the administration of the actions or proceedings, including provisions specifying procedures for the executive director or the executive director's designee to:

(A) Conduct an investigation pursuant to section 12-6-505 (1) (e) and (1) (f) of an alleged violation of this part 5 or rules promulgated pursuant to this part 5, including issuance of a notice of violation;

(B) Hold a hearing regarding the alleged violation to be held pursuant to section 24-4-105, C.R.S.;

(C) Issue an order, including a cease-and-desist order issued pursuant to section 12-6-505 (1) (h), to resolve the notice of violation; and

(D) Impose a fine pursuant to section 12-6-505 (1) (h) (III).

(II) The court of appeals has initial jurisdiction to review all final actions and orders that are subject to judicial review of the executive director made pursuant to this subsection (4). The proceedings shall be conducted in accordance with section 24-4-106, C.R.S.

(5) (a) No manufacturer, distributor, or manufacturer representative shall offer or award a person a franchise or permit the relocation of an existing franchise to the relevant right of first refusal area unless the manufacturer, distributor, or manufacturer representative has complied with paragraph (b) of this subsection (5) or unless paragraph (b) of this subsection (5) does not apply.

(b) If a manufacturer, distributor, or manufacturer representative, or the predecessor thereof, has terminated, cancelled, or not renewed a powersports vehicle dealer's franchise for a line-make within the relevant right of first refusal area on account of the insolvency of the manufacturer or distributor that was held by the powersports vehicle dealer immediately prior to the franchise being terminated, cancelled, or not renewed within the amount of time the right of first refusal is granted under paragraph (c) of this subsection (5), the manufacturer, distributor, or manufacturer representative, or the successor thereof, shall offer the former powersports vehicle dealer whose franchise was terminated, cancelled, or not renewed a franchise within the same first refusal area prior to making the offer to any other person for the same line-make unless the former powersports vehicle dealer elects to receive the payments required by section 12-6-523 (1) (l) and (1) (r) in lieu of the right of first refusal or the powersports vehicle dealer has accepted compensation from the manufacturer, distributor, or manufacturer representative for the termination, cancellation, or nonrenewal of the franchise agreement.

(c) The duration of the right of first refusal granted in paragraph (b) of this subsection (5) is equal to five years after the franchise is terminated, cancelled, or not renewed.

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

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

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

(II) If a manufacturer, distributor, or manufacturer representative, or predecessor thereof, has awarded the franchise to another powersports vehicle dealer in the same right of first refusal area without

granting the right of first refusal under this section, the former powersports vehicle dealer may elect to either receive a franchise agreement in the same area or the payments required by section 12-6-523 (1) (l) and (1) (r) from the manufacturer, distributor, or manufacturer representative unless the manufacturer, distributor, or manufacturer representative, or predecessor thereof, has paid compensation in consideration of the initial termination, cancellation, or nonrenewal of the franchise agreement.

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 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 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 a showing by 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;

(b) Ownership or control of a powersports vehicle dealer while the dealer is being sold under a bona fide contract or purchase option to the operator of the dealer;

(c) Participation in the ownership of the powersports vehicle dealer solely for the purpose of providing financing or a capital loan that will enable the dealer to become the majority owner of the dealer in less than seven years; and

(d) Operation of a powersports vehicle dealer if the powersports vehicle manufacturer has no other franchised dealers of the same line-make in this state.

(3) As used in this section:

(a) "Control" means to possess, directly, the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise; except that "control" does not include the relationship between a powersports vehicle manufacturer and a powersports vehicle dealer under a franchise agreement.

(b) "Operate" means to directly or indirectly manage a powersports vehicle dealer.

(c) "Own" means to hold any beneficial ownership interest of one percent or more class of equity interest in a powersports vehicle dealer, whether as a shareholder, partner, limited liability company member, or otherwise. To "hold" an ownership interest means to have possession of, title to, or control of the ownership interest, either directly or through a fiduciary or agent.

(d) "Powersports vehicle manufacturer" means a powersports vehicle manufacturer, distributor, or manufacturer representative.

January 7, 2015

12-6-526. Successor under existing franchise agreement - duties of powersports vehicle manufacturer

(1) If a licensed powersports vehicle dealer under franchise by a powersports vehicle manufacturer dies or becomes incapacitated, the powersports vehicle manufacturer shall act in good faith to allow a successor, which may include a family member, designated by the deceased or incapacitated powersports vehicle dealer to succeed to ownership and operation of the dealer under the existing franchise agreement if:

(a) Within ninety days after the powersports vehicle dealer's death or incapacity, the designated successor gives the powersports vehicle manufacturer written notice of an intent to succeed to the rights of the deceased or incapacitated powersports vehicle dealer in the franchise agreement;

(b) The designated successor agrees to be bound by all of the terms and conditions of the existing franchise agreement; and

(c) The designated successor meets the criteria generally applied by the powersports vehicle manufacturer in qualifying powersports vehicle dealers.

(2) A powersports vehicle manufacturer may refuse to honor the existing franchise agreement with the designated successor only for good cause. The powersports vehicle manufacturer may request in writing from a designated successor the personal and financial data that is reasonably necessary to determine whether the existing franchise agreement should be honored, and the designated successor shall supply the data promptly upon request.

(3) (a) If a powersports vehicle manufacturer believes that good cause exists for refusing to honor the requested succession, the powersports vehicle manufacturer shall send the designated successor, by certified or overnight mail, notice of its refusal to approve the succession within sixty days after the later of:

(I) Receipt of the notice of the designated successor's intent to succeed the powersports vehicle dealer in the ownership and operation of the dealer; or

(II) The receipt of the requested personal and financial data.

(b) Failure to serve the notice pursuant to paragraph (a) of this subsection (3) shall be considered approval of the designated successor, and the franchise agreement is considered amended to reflect the approval of the succession the day following the last day of the notice period specified in said paragraph (a).

(c) If the powersports vehicle manufacturer gives notice of refusal to approve the succession, the notice shall state the specific grounds for the refusal and shall state that the franchise agreement shall be discontinued not less than ninety days after the date the notice of refusal is served unless the proposed successor files an action in the district court to enjoin the action.

(4) This section shall not be construed to prohibit a powersports vehicle dealer from designating a person as the successor in advance, by written instrument filed with the powersports vehicle manufacturer. If the powersports vehicle dealer files the instrument, that instrument governs the succession rights to the management and operation of the dealer subject to the designated successor satisfying the powersports vehicle manufacturer's qualification requirements as described in this section.

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 nine 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 fifteen 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 nine months after the date the claim was submitted.

(2) The powersports vehicle dealer shall have nine months after making a sale or providing service to submit warranty, sales, or incentive claims to the manufacturer, distributor, or manufacturer 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.

12-6-527. Penalty

A person who willfully violates this part 5 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.; except that a person who violates section 12-6-523 (2) commits a class 3 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars for each separate offense, or if the violator is a corporation, the fine shall be not less than five hundred dollars nor more than two thousand five hundred dollars for each separate offense. A second conviction shall be punished by a fine of two thousand five hundred dollars.

12-6-528. Fines - disposition - unlicensed sales

Any fine collected for a violation of section 12-6-523 (2) shall be awarded to the law enforcement agency that investigated and issued the citation for the violation.

12-6-529. Drafts or checks not honored for payment - penalties

(1) If a wholesaler, powersports vehicle dealer, or used powersports vehicle dealer issues a draft or check to a wholesaler, powersports vehicle dealer, or used powersports vehicle dealer and fails to honor the draft or check, then the license of the licensee shall be subject to suspension pursuant to section 12-6-520. The license suspension shall be effective upon the date of a final decision against the licensee. A licensee whose license has been suspended pursuant to this subsection (1) shall not be eligible for reinstatement of the license and shall not be eligible to apply for another license issued under this part 5 unless it is demonstrated to the board that the unpaid draft or check has been paid in full and that any fine imposed on the licensee pursuant to subsection (2) of this section has been paid in full.

(2) A wholesaler, powersports vehicle dealer, or used powersports vehicle dealer that issues a draft or check to a wholesaler, powersports vehicle dealer, or used powersports vehicle dealer and who fails to honor the draft or check, causing loss to a third party, commits a misdemeanor and shall be punished by a fine of two thousand five hundred dollars. Any fine collected for a violation of this subsection (2) shall be awarded to the law enforcement agency that investigated and issued the citation for the violation.

12-6-530. Right of action for loss

(1) A person shall have a right of action against the dealer, the dealer's salespersons, and the sureties upon their respective bonds if the person suffers loss or damage by reason of fraud practiced on the person or fraudulent representation made to the person by a licensed powersports vehicle dealer or a licensed used powersports vehicle dealer, or one of the dealer's salespersons acting on the dealer's behalf or within the scope of the employment, or suffers loss or damage by reason of the violation by the dealer or salesperson of any of the provisions of this part 5 that are designated by the board by rule, whether or not the violation is the basis for denial, suspension, or revocation of a license. The right of a person to recover for loss or damage as provided in this subsection (1) against the dealer or salesperson shall not be limited to the amount of their respective bonds.

(2) If a person suffers any loss or damage by reason of any unlawful act under section 12-6-523 (1) (a), the person shall have a right of action against the powersports vehicle manufacturer, distributor, or

manufacturer representative. In a court action wherein a powersports vehicle manufacturer, distributor, or manufacturer representative has been found liable in damages to any person under this part 5, the amount of damages so determined shall be trebled and shall be recoverable by the person so damaged. Any person so damaged shall also be entitled to recover reasonable attorney fees.

(3) If a licensee suffers loss or damage by reason of an unlawful act under section 12-6-523 (1), the licensee shall have a right of action against the powersports vehicle manufacturer, distributor, or manufacturer representative. In a court action wherein a powersports vehicle manufacturer, distributor, or manufacturer representative has been found liable in damages to a licensee under this part 5, the licensee so damaged shall also be entitled to recover reasonable attorney fees.

12-6-531. Contract disputes - venue - choice of law

(1) In the event of a dispute between a powersports vehicle dealer and a powersports vehicle manufacturer under a franchise agreement, notwithstanding any provision of the agreement to the contrary:

(a) At the option of the powersports vehicle dealer, venue shall be proper in the county or judicial district where the dealer resides or has its principal place of business; and

(b) Colorado law shall govern, both substantively and procedurally.

12-6-532. Advertisement - inclusion of dealer name

No powersports vehicle dealer or used powersports vehicle dealer or an agent of a dealer shall advertise an offer for the sale, lease, or purchase of a powersports vehicle that creates the false impression that the vehicle is being offered by a private party or that does not contain the name of the dealer or the word "dealer" or, if the name is contained in the offer and does not clearly reflect that the business is a dealer, both the name of the dealer and the word "dealer".

12-6-533. Repeal of part

This part 5 is repealed, effective July 1, 2017. Prior to the repeal, the functions of the motor vehicle dealer board and the executive director under this part 5, including licensing, shall be reviewed as provided for in section 24-34-104, C.R.S.

12-6-534. Payout exemption to execution

A powersports vehicle dealer's right to receive payments from a manufacturer or distributor required by section 12-6-523 (1) (l) and (1) (r) is not liable to attachment or execution and may not otherwise be seized, taken, appropriated, or applied in a legal or equitable process or by operation of law to pay the debts or liabilities of the manufacturer or distributor. This section shall not prohibit a secured creditor from exercising rights accrued pursuant to a security agreement if the right arose as a result of the manufacturer or distributor voluntarily creating a security interest before paying existing debts or liabilities of the manufacturer or distributor. This section shall not prohibit a manufacturer or distributor

from withholding a portion of the payments necessary to cover an amount of money owed to the manufacturer or distributor as an offset to the payments if the manufacturer or distributor provides the motor vehicle dealer written notice thereof.

12-6-535. Site control extinguishes

If a manufacturer, distributor, or manufacturer representative has terminated, eliminated, or not renewed a franchise agreement containing a site control provision, the powersports vehicle dealer may void a site control provision of a franchise agreement by returning any money the dealer has accepted in exchange for site control prorated by the time remaining before the agreement expires over the time period between the agreement being signed and the agreement expiring. This section does not apply if the termination, elimination, or nonrenewal is for just cause in accordance with section 12-6-523 (1) (d).

12-6-536. Modification voidable

If a manufacturer, distributor, or manufacturer representative fails to comply with section 12-6-120 (1) (v) (II), the powersports dealer may void the modification or replacement of the franchise agreement.

12-6-537. Termination appeal

A powersports vehicle dealer who has reason to believe that a manufacturer, distributor, or manufacturer representative has violated section 12-6-523 (1) (d) or (1) (v) may appeal to the board by filing a complaint with the executive director. Upon receiving the complaint and upon a showing of specific facts that a violation has occurred, the executive director shall summarily issue a cease-and-desist order under section 12-6-505 (1) (h) staying the termination, elimination, modification, or nonrenewal of the franchise agreement. The cease-and-desist order remains in effect until the hearing required by section 12-6-505 (1) (h) is held. If a determination is made at the hearing required by section 12-6-505 (1) (h) that a violation occurred, the executive director shall make the cease-and-desist order permanent and take any actions authorized by section 12-6-504 (1). A motor vehicle dealer who appeals to the executive director maintains all rights under the franchise agreement until the later of the executive director issuing a decision or ninety days after the manufacturer, distributor, or manufacturer's representative provides the notice of termination unless the executive director finds that the termination, cancellation, or nonrenewal was for fraud, a misrepresentation, or committing a crime within the scope of the franchise agreement or in the operation of the dealership, in which case the franchise rights terminate immediately.