

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 10-0137.01 Jery Payne

HOUSE BILL 10-1049

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A BILL FOR AN ACT

101 **CONCERNING THE FRANCHISE RIGHTS OF MOTOR VEHICLE DEALERS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Section 1 of the bill makes legislative findings.

Section 2 prohibits a manufacturer from charging a motor vehicle dealer for exporting a motor vehicle unless the manufacturer proves the dealer should have known the vehicle was intended for export. After a manufacturer has terminated a motor vehicle franchise, section 2 also requires the manufacturer to reimburse the dealer for any upgrades required by the manufacturer during the last 5 years and to pay the dealer

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
January 29, 2010

for the lost goodwill if the termination was due to the manufacturer's insolvency.

If the franchise of a motor vehicle dealer has been terminated by the manufacturer, **section 3** grants a right of first refusal when the manufacturer awards another franchise in the area. The right lasts for the greater of 10 years or the life of the dealership franchise. Section 3 also exempts a manufacturer from being required to offer the right if the manufacturer reimburses the dealer for investment and the value of the lost dealership as currently required by statute.

A manufacturer is currently prohibited from owning a motor vehicle dealer unless the manufacturer has no franchised dealers. **Section 4** narrows the exception to apply when the manufacturer has no dealers.

Section 5 prohibits judicial execution of the following payments currently required by statute:

- ! The motor vehicle dealer's cost of unsold motor vehicles, supplies, and parts;
- ! The fair market value of signs bearing trade names and trademarks required by the manufacturer;
- ! The fair market value of special tools and equipment acquired for the manufacturer;
- ! The cost of returning the motor vehicles, supplies, parts, signs, tools, and equipment to the manufacturer;
- ! The cost of the unexpired lease or the rental value of owned property for a period of up to 12 months; and
- ! The fair market value of the motor vehicle dealer's goodwill.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds that:

4 (a) Most motor vehicle dealerships are independent, locally owned
5 small businesses. The average dealer invests twelve to fifteen million
6 dollars per franchise. Most motor vehicle dealers, not motor vehicle
7 manufacturers, own the land, buildings, service facilities, and inventory
8 necessary to run a motor vehicle dealership. The sale and service of
9 motor vehicles accounts for approximately twenty percent of Colorado's
10 sales tax revenues.

1 (b) As part of their federal bankruptcy reorganization, General
2 Motors and Chrysler collectively terminated approximately two thousand
3 eighty-nine locally owned motor vehicle dealer franchises in the United
4 States, of which thirty-nine were in Colorado;

5 (c) As part of their bankruptcy proceedings, General Motors and
6 Chrysler sought federal bridge loans from Congress to assist in their
7 reorganization;

8 (d) On account of Chrysler and General Motors being in
9 bankruptcy when they stripped dealers of their franchises, the
10 manufacturers did not have to abide by Colorado law concerning the
11 termination of a dealer franchise. As a result, dealers were denied the
12 dealer termination protections afforded by Colorado law.

13 (e) General Motors and Chrysler appear to be attempting to
14 reallocate the franchises formerly held by Colorado dealers to new or
15 out-of-state investors without first giving the option to the terminated
16 Colorado dealers to resume operating the franchises that were taken away
17 from them by the manufacturers.

18 (2) The general assembly hereby declares that protecting Colorado
19 consumers of motor vehicles and motor vehicle dealers from unfair,
20 arbitrary, and capricious conduct by motor vehicle manufacturers is in the
21 public interest. A robust motor vehicle dealer network is critical to
22 maintaining a free market in Colorado that lowers prices and gives
23 consumers alternatives.

24 (3) Therefore, the general assembly determines that the policy of
25 Colorado is to provide additional remedies for dealers and to ensure that
26 previously terminated dealers have the right of first refusal within a
27 specified amount of time, or be adequately compensated for their

1 investment, should the manufacturer decide to reestablish the same
2 line-make in the same market area after terminating the dealer.

3 **SECTION 2.** 12-6-102, Colorado Revised Statutes, is amended
4 BY THE ADDITION OF A NEW SUBSECTION to read:

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

7 (9.7) "FRANCHISE" MEANS THE AUTHORITY TO SELL OR SERVICE
8 AND REPAIR MOTOR VEHICLES OF A DESIGNATED LINE-MAKE GRANTED
9 THROUGH A SALES, SERVICE, AND PARTS AGREEMENT WITH A
10 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE.

11 **SECTION 3.** 12-6-120 (1) (r) (II) and (1) (s), Colorado Revised
12 Statutes, are amended, and the said 12-6-120 (1) is further amended BY
13 THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to
14 read:

15 **12-6-120. Unlawful acts.** (1) It shall be unlawful and a violation
16 of this part 1 for any manufacturer, distributor, or manufacturer
17 representative:

18 (r) To fail to pay to a motor vehicle dealer:

19 (II) Within ninety days after the termination, elimination, or
20 cessation of a line-make OR THE TERMINATION OF A FRANCHISE DUE TO
21 THE INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR, the fair market
22 value of the motor vehicle dealer's goodwill for the line-make as of the
23 date the manufacturer or distributor announces the action that results in
24 the termination, elimination, or cessation, not including any amounts paid
25 under sub-subparagraphs (A) to (E) of subparagraph (I) of paragraph (I)
26 of this subsection (1);

27 (s) To condition a franchise agreement on improvements to a

1 facility unless reasonably required by the technology of a motor vehicle
2 being sold at the facility; and

3 (u) TO CHARGE BACK, DENY MOTOR VEHICLE ALLOCATION,
4 WITHHOLD PAYMENTS, OR TAKE OTHER ACTIONS AGAINST A MOTOR
5 VEHICLE DEALER IF A MOTOR VEHICLE SOLD BY THE MOTOR VEHICLE
6 DEALER IS EXPORTED FROM COLORADO UNLESS THE MANUFACTURER,
7 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE PROVES THAT THE
8 MOTOR VEHICLE DEALER KNEW OR REASONABLY SHOULD HAVE KNOWN A
9 MOTOR VEHICLE WAS INTENDED TO BE EXPORTED, WHICH SHALL OPERATE
10 AS A REBUTTABLE PRESUMPTION THAT THE MOTOR VEHICLE DEALER DID
11 NOT HAVE SUCH KNOWLEDGE; AND

12 (v) TO FAIL TO REIMBURSE A MOTOR VEHICLE DEALER WITHIN
13 NINETY DAYS AFTER THE TERMINATION, CANCELLATION, OR NONRENEWAL
14 OF A FRANCHISE FOR THE COST OF ANY UPGRADES OR ALTERATIONS TO THE
15 MOTOR VEHICLE DEALER'S FACILITIES REQUIRED BY THE MANUFACTURER,
16 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE WITHIN THE PREVIOUS
17 FIVE YEARS.

18 **SECTION 4.** 12-6-120.3, Colorado Revised Statutes, is amended
19 BY THE ADDITION OF A NEW SUBSECTION to read:

20 **12-6-120.3. New, reopened, or relocated dealer - notice**
21 **required - grounds for refusal of dealer license - definitions - rules.**

22 (5) (a) NO MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
23 REPRESENTATIVE SHALL OFFER OR AWARD A PERSON A FRANCHISE OR
24 PERMIT THE RELOCATION OF AN EXISTING FRANCHISE TO THE RELEVANT
25 MARKET AREA UNLESS THE MANUFACTURER, DISTRIBUTOR, OR
26 MANUFACTURER REPRESENTATIVE HAS COMPLIED WITH PARAGRAPH (b)
27 OF THIS SUBSECTION (5) OR UNLESS PARAGRAPH (b) OF THIS SUBSECTION

1 (5) DOES NOT APPLY.

2 (b) IF A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
3 REPRESENTATIVE, OR THE PREDECESSOR THEREOF, HAS TERMINATED,
4 CANCELLED, OR NOT RENEWED A MOTOR VEHICLE DEALER'S FRANCHISE
5 FOR A LINE-MAKE WITHIN THE RELEVANT MARKET AREA DUE TO THE
6 INSOLVENCY OF THE MANUFACTURER OR DISTRIBUTOR THAT WAS HELD BY
7 THE MOTOR VEHICLE DEALER IMMEDIATELY PRIOR TO THE FRANCHISE
8 BEING TERMINATED, CANCELLED, OR NOT RENEWED WITHIN THE AMOUNT
9 OF TIME THE RIGHT OF FIRST REFUSAL IS GRANTED UNDER PARAGRAPH (c)
10 OF THIS SUBSECTION (5), THE MANUFACTURER, DISTRIBUTOR, OR
11 MANUFACTURER REPRESENTATIVE, OR THE SUCCESSOR THEREOF, SHALL
12 OFFER THE FORMER MOTOR VEHICLE DEALER WHOSE FRANCHISE WAS
13 TERMINATED, CANCELLED, OR NOT RENEWED A FRANCHISE WITHIN THE
14 SAME MARKET AREA FOR THE SAME LINE-MAKE UNLESS THE
15 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, OR
16 THE PREDECESSOR THEREOF, HAS ACTUALLY MADE THE PAYMENTS
17 REQUIRED BY SECTION 12-6-120 (1) (l) AND (1) (r) TO THE MOTOR VEHICLE
18 DEALER.

19 (c) THE DURATION OF THE RIGHT OF FIRST REFUSAL GRANTED IN
20 PARAGRAPH (b) OF THIS SUBSECTION (5) IS EQUAL TO THE GREATER OF TEN
21 YEARS OR THE AMOUNT OF TIME BETWEEN THE FRANCHISE BEING
22 AWARDED AND THE FRANCHISE BEING TERMINATED, CANCELLED, OR NOT
23 RENEWED. THE RIGHT OF FIRST REFUSAL BEGINS WHEN THE FRANCHISE IS
24 TERMINATED, CANCELLED, OR NOT RENEWED.

25 (d) THE RIGHT OF FIRST REFUSAL SURVIVES A COURT VOIDING THE
26 PAYMENTS REQUIRED BY SECTION 12-6-120 (1) (l) AND (1) (r).

27 **SECTION 5.** 12-6-120.5 (2) (d), Colorado Revised Statutes, is

1 amended, and the said 12-6-120.5 (2) is further amended BY THE
2 ADDITION OF A NEW PARAGRAPH, to read:

3 **12-6-120.5. Independent control of dealer - definitions.**

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

6 (d) Operation of a motor vehicle dealer if the manufacturer has no
7 other franchised dealers of the same line-make in this state; and

8 (f) OPERATION OF A MOTOR VEHICLE DEALER IF THE
9 MANUFACTURER WAS OPERATING THE DEALER ON JANUARY 1, 2009, SO
10 LONG AS THE DEALER IS IN CONTINUOUS OPERATION AFTER JANUARY 1,
11 2009.

12 **SECTION 6.** 12-6-126 (1) and (2), Colorado Revised Statutes,
13 are amended to read:

14 **12-6-126. Audit reimbursement limitations - dealer claims.**

15 (1) (a) A manufacturer, distributor, or manufacturer representative shall
16 have the right to audit warranty, sales, or incentive claims of a motor
17 vehicle dealer for ~~fifteen months~~ ONE HUNDRED EIGHTY DAYS after the
18 date the claim was submitted.

19 (b) A manufacturer, distributor, or manufacturer representative
20 shall not require documentation for warranty, sales, or incentive claims
21 or audit warranty, sales, or incentive claims of a motor vehicle dealer
22 more than ~~twenty-four~~ TWELVE months after the date the claim was
23 submitted, nor shall the manufacturer require a charge back,
24 reimbursement, or credit against a future transaction arising out of an
25 audit or request for documentation arising more than ~~fifteen months~~ ONE
26 HUNDRED EIGHTY DAYS after the date the claim was submitted.

27 (2) The motor vehicle dealer shall have ~~fifteen months~~ ONE

1 HUNDREDEIGHTY DAYS after making a sale or providing service to submit
2 warranty, sales, or incentive claims to the manufacturer, distributor, or
3 manufacturer representative.

4 **SECTION 7.** Part 1 of article 6 of title 12, Colorado Revised
5 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
6 read:

7 **12-6-128. Payout exemption to execution.** A MOTOR VEHICLE
8 DEALER'S RIGHT TO RECEIVE PAYMENTS FROM A MANUFACTURER OR
9 DISTRIBUTOR REQUIRED BY SECTION 12-6-120 (1) (l) AND (1) (r) IS NOT
10 LIABLE TO ATTACHMENT OR EXECUTION AND MAY NOT OTHERWISE BE
11 SEIZED, TAKEN, APPROPRIATED, OR APPLIED IN A LEGAL OR EQUITABLE
12 PROCESS OR BY OPERATION OF LAW TO PAY THE DEBTS OR LIABILITIES OF
13 THE MANUFACTURER OR DISTRIBUTOR. THIS SECTION SHALL NOT PROHIBIT
14 A SECURED CREDITOR FROM EXERCISING RIGHTS ACCRUED PURSUANT TO
15 A SECURITY AGREEMENT IF THE RIGHT AROSE AS A RESULT OF THE
16 MANUFACTURER OR DISTRIBUTOR VOLUNTARILY CREATING A SECURITY
17 INTEREST BEFORE PAYING EXISTING DEBTS OR LIABILITIES OF THE
18 MANUFACTURER OR DISTRIBUTOR.

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