


Colorado Legislative Council Staff Fiscal Note
STATE
FISCAL IMPACT

Drafting Number: LLS 11-0275
Prime Sponsor(s): Rep. Liston
 Sen. Newell

Date: February 14, 2011
Bill Status: House Economic and Business Development
Fiscal Analyst: Harry Zeid (303-866-4753)

TITLE: CONCERNING FRANCHISE AGREEMENTS FOR A DEALER TO SELL VEHICLES.

Fiscal Impact Summary	FY 2011-2012	FY 2012-2013
State Revenue		
State Expenditures	See the State Expenditures section.	
FTE Position Change		
Effective Date: Upon signature of the Governor, or upon becoming law without his signature, and applies to offenses committed on or after that date.		
Appropriation Summary for FY 2011-2012: None required*		
Local Government Impact: None.		

* *The bill does not require an appropriation for FY 2011-12. However, if legal expenses are incurred by the Department of Revenue to defend the bill, a supplemental General Fund appropriation may be requested.*

Summary of Legislation

The bill affects franchise agreements between motor vehicle and powersports vehicle manufacturers and distributors, and their Colorado dealers. Specifically, the bill:

- requires a manufacturer or distributor to notify a dealer at least 90 days before ending a franchise agreement or modifying a franchise agreement if the modification is detrimental to the dealer; and
- prohibits a manufacturer or distributor from requiring or coercing a dealer to upgrade a facility if the facility has been upgraded within the last 15 years at the manufacturer's or distributor's request and the upgrade costs more than \$500,000 for a motor vehicle dealer or \$100,000 for a powersports dealer.

The Executive Director of the Department of Revenue must issue a cease-and-desist order when a dealer complains that a manufacturer or distributor is illegally ending a franchise agreement. The bill also voids a site control provision of a franchise agreement if a manufacturer or distributor ends the agreement. The dealer may void a modification to a franchise agreement if the manufacturer or distributor fails to provide the required notice.

Background

The Auto Industry Division of the Department of Revenue acts as the administrative arm of the Motor Vehicle Dealer Board in the licensing and regulation of motor vehicle and powersports vehicle dealers, wholesalers, wholesale auto auctions, and salespersons. The division licenses and regulates motor vehicle manufacturers, distributors, manufacturer representatives and buyer agents. The Attorney General advises and represents the Motor Vehicle Dealer Board in legal matters and is authorized to bring civil suits to enforce the functions of the board.

House Bill 10-1049 and Senate Bill 10-201 were signed into law by the Governor last year. These bills provided legal and monetary remedies to motor vehicle dealers in instances where a franchise was terminated by a motor vehicle manufacturer. Chrysler Group LLC filed suit against the State of Colorado on April 23, 2010, in U.S. Bankruptcy Court in the southern district of New York asserting that the bills violate a previous order from the bankruptcy court and the contract clauses of the U.S. and Colorado constitutions. To date, the Department of Law has billed the Department of Revenue \$18,463 for legal fees to defend the department in the lawsuit. Including expenses already incurred, the Department of Law estimates that the lawsuit will require a total of \$30,000 for legal fees in FY 2011-12

State Expenditures

This bill could increase state expenditures, but the actual cost is unknown. Based on the experience with last year's motor vehicle franchise bills, there is a high probability that House Bill 11-1188 will be challenged in court. If legal expenses are incurred by the Department of Revenue, a supplemental appropriation will be necessary to pay for the cost of defending the state. The Department of Law charges its client agencies for its services at the current hourly rate of \$73.37.

State Appropriations

The bill does not require an appropriation for FY 2011-12. However, if legal expenses are incurred by the Department of Revenue to defend the bill, a supplemental General Fund appropriation may be requested.

Departments Contacted

Revenue Law Judicial