

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

INTRODUCED

LLS NO. 09-0076.01 Jery Payne

SENATE BILL 09-091

SENATE SPONSORSHIP

Romer,

HOUSE SPONSORSHIP

(None),

Senate Committees
Business, Labor and Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING MOTOR VEHICLE DEALER FRANCHISE AGREEMENTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires a motor vehicle manufacturer or distributor to pay to a motor vehicle dealer, upon terminating a franchise agreement, the cost of the remaining lease or one year's rental value of the facility used for the dealership and the fair market value of the dealer's goodwill. Requires a manufacturer or distributor to notify the motor vehicle dealer within 30 days of the following disapprovals:

- ! Denial of a location or relocation for a franchise;
- ! Denial of the approval of the sale of a dealership; or
- ! Denial of the approval to change management.

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.

Prohibits a manufacturer or distributor from:

- ! Conditioning the sale, transfer, or relocation or the renewal of a franchise agreement upon site control;
- ! Refusing to offer its same line-make to franchised dealers based upon unreasonable sales and service standards;
- ! Failing to offer an incentive or sales program to a motor vehicle dealer that is offered to another motor vehicle dealer;
- ! Requiring a motor vehicle dealer to devote facilities, personnel, or display space exclusively to a single line-make;
- ! Conditioning a franchise agreement on improvements to a facility;
- ! Owning or operating a used motor vehicle dealership; and
- ! Operating a dealership during the transition between owners or operators for more than 12 months.

Gives manufacturers and distributors the right to audit motor vehicle dealer claims, but limits the right to one year and prohibits reimbursement beyond that year. Gives motor vehicle dealers the right to audit manufacturer and distributor claims, but limits the right to one year and prohibits reimbursement beyond that year. Authorizes a motor vehicle dealer to request a determination that an audit violates the one-year rule.

Requires a manufacturer or distributor who disapproves of a sale or transfer of a franchise to reimburse the prospective purchaser and seller for any actual costs incurred in attempting to sell or transfer the franchise.

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

2 **SECTION 1.** 12-6-120 (1) (I), Colorado Revised Statutes, is
3 amended BY THE ADDITION OF THE FOLLOWING NEW
4 SUB-SUBPARAGRAPHS to read:

5 **12-6-120. Unlawful acts.** (1) It shall be unlawful and a violation
6 of this part 1 for any manufacturer, distributor, or manufacturer
7 representative:

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

1 (F) THE COST OF THE LEASE FOR THE FACILITIES USED FOR THE
2 FRANCHISE AGREEMENT FOR THE UNEXPIRED TERM OF THE LEASE, NOT TO
3 EXCEED ONE YEAR; EXCEPT THAT, IF THE MOTOR VEHICLE DEALER OWNS
4 THE FACILITIES, THE VALUE OF RENTING SUCH FACILITIES FOR ONE YEAR,
5 PRORATED FOR EACH LINE-MAKE BASED UPON TOTAL SALES VOLUME FOR
6 THE LAST TWELVE MONTHS BEFORE THE INVOLUNTARY TERMINATION; AND

7 (G) THE FAIR MARKET VALUE OF THE MOTOR VEHICLE DEALER'S
8 GOODWILL PRIOR TO TERMINATION AS DETERMINED BY AN INDEPENDENT
9 CERTIFIED PUBLIC ACCOUNTANT, NOT INCLUDING ANY AMOUNTS PAID
10 UNDER SUB-SUBPARAGRAPHS (A) TO (E) OF THIS SUBPARAGRAPH (I).

11 **SECTION 2.** 12-6-120 (1) (i) and (1) (k), 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 (i) (I) To refuse to approve, unreasonably, the sale or transfer of
19 the ownership of a dealership by sale of the business or by stock transfer
20 WITHIN THIRTY DAYS, or to refuse to approve, unreasonably, the change
21 in executive management of the dealership WITHIN THIRTY DAYS; except
22 that nothing in this part 1 shall authorize the sale, transfer, or assignment
23 of a franchise or a change of the principal operator without the approval
24 of the manufacturer or distributor UNLESS THE MANUFACTURER OR
25 DISTRIBUTOR FAILS TO SEND NOTICE OF THE DISAPPROVAL WITHIN THIRTY
26 DAYS AFTER RECEIVING THE REQUEST; OR

27 (II) TO CONDITION THE SALE, TRANSFER, RELOCATION, OR THE

1 RENEWAL OF A FRANCHISE AGREEMENT UPON SITE CONTROL;

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

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

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

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

18 (q) TO FAIL TO OFFER ANY INCENTIVE OR SALES PROGRAM TO A
19 MOTOR VEHICLE DEALER THAT IS OFFERED TO ANOTHER MOTOR VEHICLE
20 DEALER, REGARDLESS OF WHETHER THE OFFER IS MADE IN THIS STATE OR
21 ANOTHER STATE;

22 (r) TO REQUIRE, COERCE, OR ATTEMPT TO COERCE A MOTOR
23 VEHICLE DEALER TO DEVOTE FACILITIES, PERSONNEL, OR DISPLAY SPACE
24 EXCLUSIVELY TO A SINGLE LINE-MAKE;

25 (s) TO CONDITION A FRANCHISE AGREEMENT ON IMPROVEMENTS
26 TO A FACILITY.

27 **SECTION 3.** 12-6-120.3, Colorado Revised Statutes, is amended

1 BY THE ADDITION OF A NEW SUBSECTION to read:

2 **12-6-120.3. New, reopened, or relocated dealer - notice**
3 **required - grounds for refusal of dealer license - definitions - rules.**

4 (1.5) A MANUFACTURER SHALL APPROVE OR DISAPPROVE OF A MOTOR
5 VEHICLE DEALER FACILITY INITIAL SITE LOCATION OR RELOCATION
6 REQUEST WITHIN THIRTY DAYS AFTER THE REQUEST OR AFTER SENDING
7 THE NOTICE REQUIRED BY SUBSECTION (1) OF THIS SECTION TO ALL OF ITS
8 FRANCHISED DEALERS, WHICHEVER IS LATER.

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

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

13 (1) Except as otherwise provided in this section, no manufacturer shall
14 own, operate, or control any motor vehicle dealer OR USED MOTOR
15 VEHICLE DEALER in Colorado.

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

18 (a) Operation of a dealer for a temporary period, not to exceed ~~two~~
19 ~~years~~ TWELVE MONTHS, during the transition from one owner or operator
20 to another;

21 (e) OWNERSHIP, OPERATION, OR CONTROL OF A USED MOTOR
22 VEHICLE DEALER IF THE MANUFACTURER OWNED, OPERATED, OR
23 CONTROLLED THE USED MOTOR VEHICLE DEALER PRIOR TO JULY 1, 2009.

24 **SECTION 5.** Part 1 of article 6 of title 12, Colorado Revised
25 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
26 SECTIONS to read:

27 **12-6-126. Audit reimbursement limitations.** (1) (a) A

1 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
2 SHALL HAVE THE RIGHT TO AUDIT WARRANTEE, SALES, OR INCENTIVE
3 CLAIMS OF A MOTOR VEHICLE DEALER FOR TWELVE MONTHS FOLLOWING
4 THE DATE THE CLAIM WAS MADE.

5 (b) A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
6 REPRESENTATIVE SHALL NOT REQUIRE DOCUMENTATION FOR WARRANTEE,
7 SALES, OR INCENTIVE CLAIMS OR AUDIT WARRANTEE, SALES, OR INCENTIVE
8 CLAIMS OF A MOTOR VEHICLE DEALER MORE THAN TWELVE MONTHS
9 FOLLOWING THE DATE THE CLAIM WAS MADE, NOR SHALL THE
10 MANUFACTURER REQUIRE A CHARGE BACK, REIMBURSEMENT, OR CREDIT
11 AGAINST A FUTURE TRANSACTION ARISING OUT OF AN AUDIT OR REQUEST
12 FOR DOCUMENTATION ARISING MORE THAN TWELVE MONTHS FOLLOWING
13 THE DATE THE CLAIM WAS MADE.

14 (2) (a) A MOTOR VEHICLE DEALER SHALL HAVE THE RIGHT TO
15 AUDIT THE WARRANTEE, SALES, OR INCENTIVE CLAIMS OF A
16 MANUFACTURER OR DISTRIBUTOR FOR TWELVE MONTHS FOLLOWING THE
17 DATE THE CLAIM WAS MADE.

18 (b) A MOTOR VEHICLE DEALER SHALL NOT REQUIRE
19 DOCUMENTATION FOR WARRANTEE, SALES, OR INCENTIVE CLAIMS OR
20 AUDIT THE WARRANTEE, SALES, OR INCENTIVE CLAIMS OF A
21 MANUFACTURER OR DISTRIBUTOR MORE THAN TWELVE MONTHS
22 FOLLOWING THE DATE THE CLAIM WAS MADE, NOR SHALL THE MOTOR
23 VEHICLE DEALER REQUIRE A CHARGE BACK, REIMBURSEMENT, OR CREDIT
24 AGAINST A FUTURE TRANSACTION ARISING OUT OF AN AUDIT OR REQUEST
25 FOR DOCUMENTATION ARISING MORE THAN TWELVE MONTHS FOLLOWING
26 THE DATE THE CLAIM WAS MADE.

27 (3) SUBSECTIONS (1) AND (2) OF THIS SECTION SHALL NOT LIMIT

1 ANY ACTION FOR FRAUD INSTITUTED IN A COURT OF COMPETENT
2 JURISDICTION.

3 (4) A MOTOR VEHICLE DEALER MAY REQUEST A DETERMINATION
4 THAT A CHARGE BACK, REIMBURSEMENT, OR CREDIT REQUIRED VIOLATES
5 SUBSECTION (1) OF THIS SECTION FROM THE BOARD. IF THE BOARD
6 DETERMINES AFTER A HEARING THAT THE CHARGE BACK,
7 REIMBURSEMENT, OR CREDIT VIOLATES SUBSECTION (1) OF THIS SECTION,
8 THE CHARGE BACK, REIMBURSEMENT, OR CREDIT SHALL BE VOID.

9 **12-6-127. Reimbursement for disapproving sale.** A
10 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER'S AGENT WHO
11 DISAPPROVES OF A SALE OR TRANSFER OF A FRANCHISE SHALL REIMBURSE
12 THE PROSPECTIVE PURCHASER AND SELLER FOR ANY ACTUAL COSTS
13 INCURRED IN ATTEMPTING TO SELL OR TRANSFER THE FRANCHISE.

14 **SECTION 6. Effective date.** This act shall take effect July 1,
15 2009.

16 **SECTION 7. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.