

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

INTRODUCED

LLS NO. 10-0137.01 Jery Payne

HOUSE BILL 10-1049

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House Committees

Business Affairs and Labor

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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.

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

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

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

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

19 (s) To condition a franchise agreement on improvements to a
20 facility unless reasonably required by the technology of a motor vehicle
21 being sold at the facility; ~~and~~

22 (u) TO CHARGE BACK, DENY MOTOR VEHICLE ALLOCATION,
23 WITHHOLD PAYMENTS, OR TAKE OTHER ACTIONS AGAINST A MOTOR
24 VEHICLE DEALER IF A MOTOR VEHICLE SOLD BY THE MOTOR VEHICLE
25 DEALER IS EXPORTED FROM COLORADO UNLESS THE MANUFACTURER,
26 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE PROVES THAT THE
27 MOTOR VEHICLE DEALER KNEW OR REASONABLY SHOULD HAVE KNOWN A

1 MOTOR VEHICLE WAS INTENDED TO BE EXPORTED, WHICH SHALL OPERATE
2 AS A REBUTTABLE PRESUMPTION THAT THE MOTOR VEHICLE DEALER DID
3 NOT HAVE SUCH KNOWLEDGE; AND

4 (v) TO FAIL TO REIMBURSE A MOTOR VEHICLE DEALER WITHIN
5 NINETY DAYS AFTER THE TERMINATION, CANCELLATION, OR NONRENEWAL
6 OF A FRANCHISE FOR THE COST OF ANY UPGRADES OR ALTERATIONS TO THE
7 MOTOR VEHICLE DEALER'S FACILITIES REQUIRED BY THE MANUFACTURER,
8 DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE WITHIN THE PREVIOUS
9 FIVE YEARS.

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

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

14 (5) (a) NO MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
15 REPRESENTATIVE SHALL OFFER OR AWARD A PERSON A FRANCHISE OR
16 PERMIT THE RELOCATION OF AN EXISTING FRANCHISE TO THE RELEVANT
17 MARKET AREA UNLESS THE MANUFACTURER, DISTRIBUTOR, OR
18 MANUFACTURER REPRESENTATIVE HAS COMPLIED WITH PARAGRAPH (b)
19 OF THIS SUBSECTION (5) OR UNLESS PARAGRAPH (b) OF THIS SUBSECTION
20 (5) DOES NOT APPLY.

21 (b) IF A MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
22 REPRESENTATIVE, OR THE PREDECESSOR THEREOF, HAS TERMINATED,
23 CANCELLED, OR NOT RENEWED A MOTOR VEHICLE DEALER'S FRANCHISE
24 FOR A LINE-MAKE WITHIN THE RELEVANT MARKET AREA THAT WAS HELD
25 BY THE MOTOR VEHICLE DEALER IMMEDIATELY PRIOR TO THE FRANCHISE
26 BEING TERMINATED, CANCELLED, OR NOT RENEWED WITHIN THE AMOUNT
27 OF TIME THE RIGHT OF FIRST REFUSAL IS GRANTED UNDER PARAGRAPH (c)

1 OF THIS SUBSECTION (5), THE MANUFACTURER, DISTRIBUTOR, OR
2 MANUFACTURER REPRESENTATIVE, OR THE SUCCESSOR THEREOF, SHALL
3 OFFER THE FORMER MOTOR VEHICLE DEALER WHOSE FRANCHISE WAS
4 TERMINATED, CANCELLED, OR NOT RENEWED A FRANCHISE WITHIN THE
5 SAME MARKET AREA FOR THE SAME LINE-MAKE UNLESS THE
6 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE, OR
7 THE PREDECESSOR THEREOF, HAS ACTUALLY MADE THE PAYMENTS
8 REQUIRED BY SECTION 12-6-120 (1) (l) AND (1) (r) TO THE MOTOR VEHICLE
9 DEALER.

10 (c) THE DURATION OF THE RIGHT OF FIRST REFUSAL GRANTED IN
11 PARAGRAPH (b) OF THIS SUBSECTION (5) IS EQUAL TO THE GREATER OF TEN
12 YEARS OR THE AMOUNT OF TIME BETWEEN THE FRANCHISE BEING
13 AWARDED AND THE FRANCHISE BEING TERMINATED, CANCELLED, OR NOT
14 RENEWED. THE RIGHT OF FIRST REFUSAL BEGINS WHEN THE FRANCHISE IS
15 TERMINATED, CANCELLED, OR NOT RENEWED.

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

18 **SECTION 4.** 12-6-120.5 (2) (d), Colorado Revised Statutes, is
19 amended to read:

20 **12-6-120.5. Independent control of dealer - definitions.**

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

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

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

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

12 **SECTION 6. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, and safety.