

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 17-1208.01 Jery Payne x2157

SENATE BILL 17-298

SENATE SPONSORSHIP

Tate,

HOUSE SPONSORSHIP

Kraft-Tharp,

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE RELATIONSHIP BETWEEN A MOTOR VEHICLE**
102 **MANUFACTURER AND THE MOTOR VEHICLE DEALERS THAT HAVE**
103 **FRANCHISE AGREEMENTS WITH THE MANUFACTURER.**

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://leg.colorado.gov>.)

Current law prohibits a motor vehicle manufacturer (manufacturer) from requiring a motor vehicle dealer (dealer) to substantially alter a facility or premises if the manufacturer required it within the last 7 years at a cost set in statute based on the type of dealer. **Section 1** of the bill extends this prohibition to 15 years. Section 1 also prohibits a

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.*

manufacturer from:

- ! Selling a similarly equipped motor vehicle to one dealer at a lower price than to another dealer;
- ! Requiring or enforcing a contract giving the manufacturer a right of first refusal or an option to purchase the dealership;
- ! Using an unreasonable, arbitrary, unfair, or surprise performance standard in determining a dealer's compliance with a franchise agreement; and
- ! Failing, when a manufacturer requires the dealer to stop selling a used motor vehicle due to a technical mechanical issue, to provide parts and a solution within 7 days or to provide compensation to the dealer.

Section 2 repeals a provision that gives a dealer a right of first refusal for new franchises when the dealer was terminated due to the insolvency of the manufacturer. Section 2 also authorizes a dealer to sue in court to contest a manufacturer adding or moving a dealership to a market with a current dealer when this action would materially and adversely affect the dealer or the public. Such an action may currently be done administratively. Procedures are set for the civil action and an administrative hearing. Standards are set for determining the outcome. A prevailing dealer may get attorney fees and costs.

Section 3 authorizes a dealer to sue a manufacturer in court to contest whether a termination was for just cause or for failing to provide notice of a termination. Such an action may currently be done administratively. The current process for staying the termination is strengthened. The manufacturer has the burden of proof. A prevailing dealer may get attorney fees and costs.

Section 4 requires a manufacturer to fulfill warranty, recall, and similar obligations to repair a motor vehicle. Section 4 also requires a manufacturer to timely compensate a dealer at the prevailing retail value the dealer charges for similar work. Standards are set for calculating this value. Procedures are set for the dealer to communicate the dealer's calculations and for the manufacturer to contest the dealer's calculations. The manufacturer has the burden of proving that the calculations are incorrect. The manufacturer is prohibited from requiring the dealer to use different calculations than those provided in the bill.

Section 4 prohibits a manufacturer from:

- ! Establishing a special part or component number for parts used if the change results in lower compensation to the motor vehicle dealer than as calculated in the bill;
- ! Requiring a dealer to implement or change the prices for which it sells parts or labor in nonwarranty repairs;
- ! Taking adverse action against a dealer who seeks to obtain compensation in accordance with the bill or dissuading a

- dealer from doing so;
- ! Implementing a policy affecting a dealer that violates the bill; and
- ! Eliminating flat-rate times, or establishing an unfair or unreasonable flat-rate time.

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

2 **SECTION 1.** In Colorado Revised Statutes, 12-6-120, **amend**
3 (1)(x); and **add** (1)(y), (1)(z), (1)(aa), and (1)(bb) as follows:

4 **12-6-120. Unlawful acts.** (1) It is unlawful and a violation of this
5 part 1 for any manufacturer, distributor, or manufacturer representative:

6 (x) To require, coerce, or attempt to coerce a motor vehicle dealer
7 to substantially alter a facility or premises if:

8 (I) The facility or premises has been altered within the last ~~seven~~
9 TEN years at a cost of more than two hundred fifty thousand dollars and
10 the alteration was required and approved by the manufacturer, distributor,
11 or manufacturer representative unless ~~the motor vehicle dealer sells only~~
12 ~~motorcycles or motorcycles and powersports vehicles~~ SUBSECTION
13 (1)(X)(II) APPLIES TO THE DEALER; except that this ~~paragraph (x)~~
14 SUBSECTION (1)(x) does not apply to improvements made to comply with
15 health or safety laws or to accommodate the technology requirements
16 necessary to sell or service a line-make; or

17 (II) The motor vehicle dealer sells only motorcycles or
18 motorcycles and powersports vehicles, the facility or premises has been
19 altered within the last ~~seven~~ TEN years at a cost of more than twenty-five
20 thousand dollars, and the alteration was required and approved by the
21 manufacturer, distributor, or manufacturer representative; except that this
22 ~~paragraph (x)~~ SUBSECTION (1)(x) does not apply to improvements made
23 to comply with health or safety laws or to accommodate the technology

1 requirements necessary to sell or service a line-make.

2 (y) (I) TO SELL OR OFFER TO SELL NEW MOTOR VEHICLES TO A
3 FRANCHISED MOTOR VEHICLE DEALER WITH WHOM THE MANUFACTURER
4 HAS A FRANCHISE AGREEMENT AT A LOWER ACTUAL PRICE THAN THE
5 ACTUAL PRICE OFFERED TO ANY OTHER MOTOR VEHICLE DEALER WITH
6 WHOM THE MANUFACTURER HAS A FRANCHISE AGREEMENT FOR THE SAME
7 MOTOR VEHICLE SIMILARLY EQUIPPED; EXCEPT THAT THIS SUBSECTION
8 (1)(y) DOES NOT APPLY TO A:

9 (A) RE SALE TO ANY GOVERNMENT; OR

10 (B) DONATION OR USE BY THE DEALER IN A DRIVER EDUCATION
11 PROGRAM.

12 (II) THIS SUBSECTION (1)(y) DOES NOT PROHIBIT A
13 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
14 FROM OFFERING INCENTIVE PROGRAMS, SALES-PROMOTION PLANS, OR
15 OTHER DISCOUNTS IF THE INCENTIVES OR DISCOUNTS ARE REASONABLY
16 AVAILABLE TO ALL MOTOR VEHICLE DEALERS WITH WHOM THE
17 MANUFACTURER HAS A FRANCHISE AGREEMENT ON A PROPORTIONATELY
18 EQUAL BASIS;

19 (z) TO REQUIRE A MOTOR VEHICLE DEALER TO GRANT A
20 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE THE
21 FOLLOWING OR TO ENFORCE THE FOLLOWING IF THE EXERCISE OF THE
22 CONTRACTUAL RIGHT WOULD STOP THE TRANSFER OF THE MOTOR VEHICLE
23 DEALER OWNERSHIP FROM AN OWNER TO AN IMMEDIATE FAMILY MEMBER
24 OF THE OWNER:

25 (I) A RIGHT OF FIRST REFUSAL TO PURCHASE THE MOTOR VEHICLE
26 DEALER; OR

27 (II) AN OPTION TO PURCHASE THE MOTOR VEHICLE DEALER;

1 (aa) (I) TO USE AN UNREASONABLE, ARBITRARY, OR UNFAIR
2 PERFORMANCE STANDARD IN DETERMINING A MOTOR VEHICLE DEALER'S
3 COMPLIANCE WITH A FRANCHISE AGREEMENT.

4 (II) TO FAIL TO COMMUNICATE ANY PERFORMANCE STANDARD IN
5 A CLEAR AND CONCISE WRITING TO A MOTOR VEHICLE DEALER BEFORE
6 APPLYING THE STANDARD TO THE MOTOR VEHICLE DEALER.

7 (bb) (I) TO REQUIRE OR COERCE A MOTOR VEHICLE DEALER OF THE
8 SAME LINE-MAKE TO REFRAIN FROM SELLING A USED MOTOR VEHICLE
9 BECAUSE OF A RECALL, STOP-SALE DIRECTIVE, TECHNICAL SERVICE
10 BULLETIN, OR OTHER NOTIFICATION TO PERFORM WORK ON THE USED
11 MOTOR VEHICLE UNLESS THE MANUFACTURER, DISTRIBUTOR, OR
12 MANUFACTURER REPRESENTATIVE:

13 (A) HAS A REMEDY AND PARTS AVAILABLE WITHIN THIRTY DAYS
14 AFTER REQUIRING THE MOTOR VEHICLE DEALER TO REFRAIN FROM SELLING
15 THE USED MOTOR VEHICLE; OR

16 (B) COMPENSATES THE MOTOR VEHICLE DEALER FOR ANY
17 AFFECTED USED MOTOR VEHICLES AT A RATE OF AT LEAST FIFTEEN TENTHS
18 OF ONE PERCENT PER MONTH, PRORATED FOR ANY PARTIAL MONTH, OF THE
19 DEALER'S COST, INCLUDING REPAIRS AND RECONDITIONING EXPENSES, OF
20 THE USED MOTOR VEHICLE;

21 (II) TO FAIL TO TRANSMIT TO EVERY MOTOR VEHICLE DEALER WITH
22 WHOM THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
23 REPRESENTATIVE HAS A FRANCHISE AGREEMENT A WRITTEN PROCEDURE
24 TO COMPENSATE THE MOTOR VEHICLE DEALER IN ACCORDANCE WITH
25 SUBSECTION (1)(bb)(I) OF THIS SECTION;

26 (III) TO FAIL TO PAY THE CLAIM IN THE SAME MANNER AS A CLAIM
27 FOR WARRANTY REIMBURSEMENTS; EXCEPT THAT, TO BE ELIGIBLE FOR

1 REIMBURSEMENTS, A MOTOR VEHICLE DEALER MUST SUBMIT A CLAIM FOR
2 COMPENSATION UNDER THIS SUBSECTION (1)(bb) ON A MONTHLY BASIS;

3 (IV) (A) THIS SUBSECTION (1)(bb) DOES NOT PROHIBIT A
4 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
5 FROM REQUIRING THAT A MOTOR VEHICLE THAT IS SUBJECT TO AN OPEN
6 RECALL OR STOP-SALE ORDER BE REPAIRED TO BE QUALIFIED OR BE SOLD
7 AS A CERTIFIED PREOWNED VEHICLE OR UNDER A SIMILAR DESIGNATION;
8 FROM PAYING INCENTIVES FOR SELLING USED MOTOR VEHICLES WITH NO
9 UNREMEDIED RECALLS; OR FROM PAYING INCENTIVES FOR PERFORMING
10 RECALL REPAIRS ON A MOTOR VEHICLE IN THE MOTOR VEHICLE DEALER'S
11 INVENTORY.

12 (B) THIS SUBSECTION (1)(bb) DOES NOT PROHIBIT A
13 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE
14 FROM REQUIRING A MOTOR VEHICLE DEALER TO REPAIR USED MOTOR
15 VEHICLES WITH AN OPEN RECALL OF THE LINE-MAKE FOR WHICH THE
16 DEALER HOLDS A FRANCHISE IF THE INSTRUCTION DOES NOT INVOLVE
17 COERCION THAT IMPOSES A PENALTY OR LOSS OF BENEFITS ON THE
18 DEALER.

19 **SECTION 2.** In Colorado Revised Statutes, 12-6-120.3, **amend**
20 (1) introductory portion, (1.5), and (3)(b)(II); **repeal** (3)(c), (4), and (5);
21 and **add** (6) as follows:

22 **12-6-120.3. New, reopened, or relocated dealer - notice**
23 **required - grounds for refusal of dealer license - definitions - rules.**

24 (1) No manufacturer ~~or distributor~~ shall PROPOSE OR establish an
25 additional ~~new~~ motor vehicle dealer, reopen a previously existing motor
26 vehicle dealer, or ~~relocate~~ AUTHORIZE an existing motor vehicle dealer TO
27 RELOCATE without first providing at least sixty days' notice to all of its

1 franchised dealers and former dealers whose franchises were terminated,
2 cancelled, or not renewed by a manufacturer distributor, or manufacturer
3 representative in the previous five years due to the insolvency of the
4 manufacturer or distributor within whose relevant market area the new,
5 reopened, or relocated dealer would be located. The notice shall MUST
6 state:

7 (1.5) A manufacturer shall reasonably approve or disapprove of
8 a motor vehicle dealer facility initial site location, or relocation, OR
9 REOPENING request within sixty days after the request or after sending the
10 notice required by subsection (1) of this section to all of its franchised
11 dealers, and former dealers whose franchises were terminated, cancelled,
12 or not renewed in the previous five years due to the insolvency of the
13 manufacturer or distributor, whichever is later, but not to exceed one
14 hundred days WHICHEVER IS LATER.

15 (3) As used in this section:

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

17 ==

18 (II) The geographic area within a radius of five TEN miles of any
19 existing dealer of the same line-make of vehicle that is located in a county
20 with a population of more than one hundred fifty thousand or within a
21 radius of ten miles of an existing dealer of the same line-make of vehicles
22 that is located in a county with a population of one hundred fifty thousand
23 or less. AS THE PROPOSED ADDITIONAL MOTOR VEHICLE DEALER.

24 ==

25 (c) "Right of first refusal area" means a five-mile radius extending
26 from the location of where a motor vehicle dealer had a franchise
27 terminated, cancelled, or not renewed if the franchise was in a county

1 with a population of more than one hundred fifty thousand or a ten-mile
2 radius if the franchise was in a county with a population of one hundred
3 fifty thousand or less.

4 (4) (a) ~~If a licensee or former licensee whose franchise was~~
5 ~~terminated, cancelled, or not renewed by the manufacturer, distributor, or~~
6 ~~manufacturer representative in the previous five years due to the~~
7 ~~insolvency of the manufacturer or distributor brings an action or~~
8 ~~proceeding before the executive director or a court pursuant to this part~~
9 ~~1, the manufacturer shall have the burden of proof on the following~~
10 ~~issues:~~

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

14 (II) ~~Growth or decline in population and new motor vehicle~~
15 ~~registrations in the relevant market area;~~

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

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

24 (b) (I) ~~In addition to the powers specified in section 12-6-105, the~~
25 ~~executive director has jurisdiction to resolve actions or proceedings~~
26 ~~brought before the executive director pursuant to this part 1 that allege a~~
27 ~~violation of this part 1 or rules promulgated pursuant to this part 1. The~~

1 executive director may promulgate rules to facilitate the administration
2 of such actions or proceedings, including provisions specifying
3 procedures for the executive director or the executive director's designee
4 to:

5 (A) Conduct an investigation pursuant to section 12-6-105 (1)(d)
6 of an alleged violation of this part 1 or rules promulgated pursuant to this
7 part 1, including issuance of a notice of violation;

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

10 (C) Issue an order, including a cease-and-desist order issued
11 pursuant to section 12-6-105 (1)(f), to resolve the notice of violation; and

12 (D) Impose a fine pursuant to section 12-6-105 (1)(f)(III).

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

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

23 (b) If a manufacturer, distributor, or manufacturer representative,
24 or the predecessor thereof, has terminated, cancelled, or not renewed a
25 motor vehicle dealer's franchise for a line-make within the right of first
26 refusal area due to the insolvency of the manufacturer or distributor that
27 was held by the motor vehicle dealer immediately prior to the franchise

1 being terminated, cancelled, or not renewed within the amount of time the
2 right of first refusal is granted under paragraph (c) of this subsection (5);
3 the manufacturer, distributor, or manufacturer representative, or the
4 successor thereof, shall offer the former motor vehicle dealer whose
5 franchise was terminated, cancelled, or not renewed a franchise within the
6 first refusal area prior to making the offer to any other person for the
7 same line-make unless the former motor vehicle dealer elects to receive
8 the payments required by section 12-6-120 (1)(l) and (1)(r) in lieu of the
9 right of first refusal or the motor vehicle dealer has accepted
10 compensation from the manufacturer, distributor, or manufacturer
11 representative for the termination, cancellation, or nonrenewal of the
12 franchise agreement.

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

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

25 (e) The right of first refusal survives a court voiding the payments
26 required by section 12-6-120 (1)(l) and (1)(r).

27 (f) (1) The right of first refusal survives a manufacturer,

1 ~~distributor, or manufacturer representative, or predecessor thereof,~~
2 ~~awarding a franchise within the same right of first refusal for the same~~
3 ~~line-make to a person or entity other than the former motor vehicle dealer~~
4 ~~whose franchise was terminated, cancelled, or not renewed.~~

5 (H) ~~If a manufacturer, distributor, or manufacturer representative,~~
6 ~~or predecessor thereof, has awarded the franchise to another motor~~
7 ~~vehicle dealer in the same right of first refusal area without granting the~~
8 ~~right of first refusal under this section, the former motor vehicle dealer~~
9 ~~may elect to either receive a franchise agreement in the same area or the~~
10 ~~payments required by section 12-6-120 (1)(l) and (1)(r) from the~~
11 ~~manufacturer, distributor, or manufacturer representative unless the~~
12 ~~manufacturer, distributor, or manufacturer representative, or predecessor~~
13 ~~thereof, has paid compensation in consideration of the initial termination,~~
14 ~~cancellation, or nonrenewal of the franchise agreement.~~

15 (6) (a) AN EXISTING MOTOR VEHICLE DEALER ADVERSELY
16 AFFECTED BY A REOPENING OR RELOCATION OF AN EXISTING SAME
17 LINE-MAKE MOTOR VEHICLE DEALER OR THE ADDITION OF A SAME
18 LINE-MAKE MOTOR VEHICLE DEALER MAY, WITHIN NINETY DAYS AFTER
19 RECEIPT OF THE NOTICE REQUIRED IN SUBSECTION (1) OF THIS SECTION,
20 FILE A LEGAL ACTION IN A DISTRICT COURT OF COMPETENT JURISDICTION
21 OR FILE AN ADMINISTRATIVE COMPLAINT WITH THE EXECUTIVE DIRECTOR
22 TO PREVENT OR ENJOIN THE RELOCATION, REOPENING, OR ADDITION OF
23 THE PROPOSED MOTOR VEHICLE DEALER. AN EXISTING MOTOR VEHICLE
24 DEALER IS ADVERSELY IMPACTED IF:

25 (I) THE DEALER IS LOCATED WITHIN THE RELEVANT MARKET AREA
26 OF THE PROPOSED RELOCATED, REOPENED, OR ADDITIONAL DEALERSHIP
27 DESCRIBED IN THE NOTICE REQUIRED IN SUBSECTION (1); OR

1 (II) THE EXISTING DEALER OR DEALERS OF THE SAME LINE-MAKE
2 SHOW THAT, DURING ANY TWELVE-MONTH PERIOD OF THE THIRTY-SIX
3 MONTHS PRECEDING THE RECEIPT OF THE NOTICE REQUIRED IN SUBSECTION
4 (1), THE DEALER OR DEALERS, OR A DEALER'S PREDECESSOR, MADE AT
5 LEAST TWENTY PERCENT OF THE DEALER'S RETAIL SALES OF NEW MOTOR
6 VEHICLES TO PERSONS WHOSE ADDRESSES ARE LOCATED WITHIN FIFTEEN
7 MILES OF THE LOCATION OF THE PROPOSED RELOCATED, REOPENED, OR
8 ADDITIONAL DEALERSHIP.

9 (b) THE EXECUTIVE DIRECTOR SHALL REFER A COMPLAINT FILED
10 UNDER THIS SECTION TO AN ADMINISTRATIVE LAW JUDGE WITH THE OFFICE
11 OF ADMINISTRATIVE COURTS FOR FINAL AGENCY ACTION.

12 (c) IN ANY COURT OR ADMINISTRATIVE ACTION, THE
13 MANUFACTURER HAS THE BURDEN OF PROOF ON EACH OF THE FOLLOWING
14 ISSUES:

15 (I) THE SIZE AND PERMANENCY OF THE INVESTMENT OF AND
16 OBLIGATIONS INCURRED BY THE EXISTING MOTOR VEHICLE DEALERS OF
17 THE SAME LINE-MAKE LOCATED IN THE RELEVANT MARKET AREA;

18 (II) THE CHANGE IN POPULATION;

19 (III) ALL RELEVANT VEHICLE BUYER PROFILES;

20 (IV) THE RELEVANT HISTORICAL AND PROJECTED NEW MOTOR
21 VEHICLE REGISTRATIONS FOR THE LINE-MAKE OF VEHICLES VERSUS THE
22 MANUFACTURER'S ACTUAL COMPETITORS IN THE RELEVANT MARKET
23 AREA;

24 (V) WHETHER THE OPENING OF THE PROPOSED ADDITIONAL,
25 REOPENED, OR RELOCATED MOTOR VEHICLE DEALER IS MATERIALLY
26 INJURIOUS TO THE PUBLIC INTEREST, THE CONSUMERS, OR EXISTING SAME
27 LINE-MAKE DEALERS IN THE RELEVANT MARKET AREA;

1 (VI) WHETHER THE MOTOR VEHICLE DEALERS OF THE SAME
2 LINE-MAKE IN THE RELEVANT MARKET AREA ARE PROVIDING ADEQUATE
3 REPRESENTATION AND CONVENIENT CUSTOMER CARE, INCLUDING THE
4 ADEQUACY OF SALES AND SERVICE FACILITIES, EQUIPMENT, PARTS, AND
5 QUALIFIED SERVICE PERSONNEL, FOR MOTOR VEHICLES OF THE SAME
6 LINE-MAKE IN THE RELEVANT MARKET AREA; AND

7 (VII) THE REASONABLY EXPECTED MARKET PENETRATION OF THE
8 LINE-MAKE GIVEN THE FACTORS AFFECTING PENETRATION, INCLUDING THE
9 DEMOGRAPHICS AND ECONOMIC PROFILES OF THE BUYERS IN THE
10 RELEVANT MARKET AREA; THE PROMOTION AND ADVERTISING BY THE
11 MANUFACTURER; AVAILABLE FINANCING FOR THE LINE-MAKE AND
12 WHETHER SUCH FINANCING IS AND HAS BEEN COMPETITIVE WITH OTHER
13 COMPETING LINE-MAKE VEHICLES; THE POPULARITY AND ACCEPTANCE OF
14 THE LINE-MAKE VEHICLES WITHIN THE RELEVANT MARKET AREA; AND
15 WHETHER THE ADDITIONAL, REOPENED, OR RELOCATED DEALERSHIP IS
16 WARRANTED AND JUSTIFIABLE BASED ON EXPECTED ECONOMIC AND
17 MARKET CONDITIONS WITHIN THE RELEVANT MARKET AREA.

18 (d) IN ANY COURT OR ADMINISTRATIVE ACTION, THE MOTOR
19 VEHICLE DEALER HAS THE BURDEN OF PROOF ON EACH OF THE FOLLOWING
20 ISSUES:

21 (I) WHETHER THE MANUFACTURER HAS ENGAGED IN ANY ACTION
22 OR OMISSION THAT, DIRECTLY OR INDIRECTLY, DENIED THE EXISTING
23 MOTOR VEHICLE DEALER OF THE SAME LINE-MAKE THE OPPORTUNITY FOR
24 REASONABLE GROWTH, MARKET EXPANSION, OR RELOCATION, INCLUDING
25 THE AVAILABILITY OF LINE-MAKE VEHICLES IN KEEPING WITH THE
26 REASONABLE EXPECTATIONS OF THE MANUFACTURER IN PROVIDING AN
27 ADEQUATE NUMBER OF DEALERS IN THE COMMUNITY OR TERRITORY; AND

1 (II) WHETHER THE MANUFACTURER HAS COERCED OR ATTEMPTED
2 TO COERCE ANY EXISTING MOTOR VEHICLE DEALER OR DEALERS INTO
3 CONSENTING TO ADDITIONAL OR RELOCATED FRANCHISES OF THE SAME
4 LINE-MAKE IN THE COMMUNITY OR TERRITORY OR RELEVANT MARKET
5 AREA.

6 (e) (I) IN A LEGAL OR ADMINISTRATIVE ACTION CHALLENGING THE
7 RELOCATING, REOPENING, OR ADDITION OF A MOTOR VEHICLE DEALER, THE
8 DISTRICT COURT OR ADMINISTRATIVE LAW JUDGE SHALL MAKE A
9 DETERMINATION OF WHETHER THE RELOCATION, REOPENING, OR ADDITION
10 OF A MOTOR VEHICLE DEALER IS, BASED ON THE FACTORS IDENTIFIED IN
11 SUBSECTIONS (6)(c) AND (6)(d) OF THIS SECTION:

12 (A) IN THE PUBLIC INTEREST; AND

13 (B) FAIR AND EQUITABLE TO THE EXISTING MOTOR VEHICLE
14 DEALERS.

15 (II) THE DISTRICT COURT OR THE EXECUTIVE DIRECTOR SHALL
16 DENY ANY PROPOSED RELOCATING, REOPENING, OR ADDITION OF A MOTOR
17 VEHICLE DEALER UNLESS THE MANUFACTURER SHOWS BY CLEAR AND
18 CONVINCING EVIDENCE THAT THE EXISTING MOTOR VEHICLE DEALER OR
19 DEALERS OF THE SAME LINE-MAKE IN THE RELEVANT MARKET AREA OF
20 THE PROPOSED DEALERSHIP ARE NOT PROVIDING ADEQUATE
21 REPRESENTATION OF THE LINE-MAKE MOTOR VEHICLES. A DETERMINATION
22 TO DENY, PREVENT, OR ENJOIN THE RELOCATING, REOPENING, OR ADDITION
23 OF A MOTOR VEHICLE DEALER IS EFFECTIVE FOR AT LEAST EIGHTEEN
24 MONTHS.

25 **SECTION 3.** In Colorado Revised Statutes, **amend** 12-6-131 as
26 follows:

27 **12-6-131. Termination appeal.** (1) A motor vehicle dealer who

1 has reason to believe that a manufacturer, distributor, or manufacturer
2 representative has violated section 12-6-120 (1)(d) or (1)(w) may appeal
3 to the board by filing a complaint with:

4 (a) The executive director; OR

5 (b) A DISTRICT COURT IF BOTH THE EXECUTIVE DIRECTOR AND THE
6 ADMINISTRATIVE LAW JUDGE APPOINTED IN ACCORDANCE WITH THIS
7 SECTION DO NOT HOLD A HEARING CONCERNING THE COMPLAINT WITHIN
8 FORTY-FIVE DAYS AFTER THE COMPLAINT WAS FILED.

9 (2) Upon ~~receiving the~~ FILING OF A VERIFIED complaint ~~and upon~~
10 ~~a showing of specific facts that a violation has occurred, the executive~~
11 ~~director shall summarily issue a cease-and-desist order under section~~
12 ~~12-6-105(1)(f) staying~~ UNDER THIS SECTION, the termination, elimination,
13 modification, or nonrenewal of the franchise agreement IS
14 AUTOMATICALLY STAYED, WITHOUT THE MOTOR VEHICLE DEALER POSTING
15 A BOND, UNTIL A FINAL DETERMINATION IS MADE ON EACH ISSUE RAISED
16 IN THE COMPLAINT; EXCEPT THAT THE EXECUTIVE DIRECTOR,
17 ADMINISTRATIVE LAW JUDGE, OR COURT MAY CANCEL THE STAY UPON
18 FINDING THAT THE CANCELLATION, TERMINATION, OR NONRENEWAL OF
19 THE FRANCHISE AGREEMENT WAS FOR ANY OF THE REASONS SPECIFIED IN
20 SECTION 12-6-120 (1)(d)(III). THE AUTOMATIC STAY MAINTAINS ALL
21 RIGHTS UNDER THE FRANCHISE AGREEMENT UNTIL THE FINAL
22 DETERMINATION, INCLUDING ALL APPEALS, OF THE ISSUES RAISED IN THE
23 VERIFIABLE COMPLAINT. THE MANUFACTURER, DISTRIBUTOR, OR
24 MANUFACTURER REPRESENTATIVE SHALL NOT NAME A REPLACEMENT
25 MOTOR VEHICLE DEALER FOR THE MARKET OR LOCATION UNTIL A FINAL,
26 NONAPPEALABLE ORDER IS ENTERED.

27 (3) ~~The cease-and-desist order remains in effect until the hearing~~

1 required by section 12-6-105 (1)(f) is held. If a determination is made at
2 the hearing required by section 12-6-105 (1)(f) that a violation occurred,
3 the executive director shall make the cease-and-desist order permanent
4 and take any actions authorized by section 12-6-104 (3). A motor vehicle
5 dealer who appeals to the executive director maintains all rights under the
6 franchise agreement until the later of the executive director issuing a
7 decision or ninety days after the manufacturer, distributor, or
8 manufacturer's representative provides the notice of termination unless
9 the executive director finds that the termination, cancellation, or
10 nonrenewal was for fraud, a misrepresentation, or committing a crime
11 within the scope of the franchise agreement or in the operation of the
12 dealership, in which case the franchise rights terminate immediately IF A
13 VERIFIED COMPLAINT IS FILED WITH THE EXECUTIVE DIRECTOR, THE
14 EXECUTIVE DIRECTOR SHALL REFER THE COMPLAINT TO AN
15 ADMINISTRATIVE LAW JUDGE WITH THE OFFICE OF ADMINISTRATIVE
16 COURTS FOR FINAL AGENCY ACTION.

17 (4) IN RESOLVING A TERMINATION COMPLAINT, THE
18 MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER REPRESENTATIVE HAS
19 THE BURDEN OF PROVING ANY CLAIM MADE THAT THE FACTORS LISTED IN
20 SECTION 12-6-120 (1)(d)(II) APPLY TO THE TERMINATION, CANCELLATION,
21 OR NONRENEWAL.

22 (5) THE PREVAILING PARTY IN A CLAIM THAT A TERMINATION,
23 CANCELLATION, OR NONRENEWAL VIOLATES SECTION 12-6-120 (1)(d) OR
24 (1)(w) IS ENTITLED TO RECOVER ATTORNEY FEES AND COSTS, INCLUDING
25 EXPERT WITNESS FEES, INCURRED IN THE TERMINATION PROTEST.

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27 **SECTION 4. Act subject to petition - effective date -**

1 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
2 the expiration of the ninety-day period after final adjournment of the
3 general assembly (August 9, 2017, if adjournment sine die is on May 10,
4 2017); except that, if a referendum petition is filed pursuant to section 1
5 (3) of article V of the state constitution against this act or an item, section,
6 or part of this act within such period, then the act, item, section, or part
7 will not take effect unless approved by the people at the general election
8 to be held in November 2018 and, in such case, will take effect on the
9 date of the official declaration of the vote thereon by the governor.

10 (2) This act applies to acts committed on or after the applicable
11 effective date of this act.