

CHAPTER 334

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 00-1186

BY REPRESENTATIVES George, May, Kester, Alexander, Allen, Dean, Decker, Gotlieb, Hoppe, Kaufman, King, Larson, Lawrence, McElhany, McKay, Miller, Smith, Swenson, Taylor, Tool, Williams T., Coleman, Gagliardi, Hefley, Mace, Sinclair, Spence, Stengel, Tapia, and Webster;
also SENATORS Anderson, Chlouber, Dennis, Dyer, Epps, Powers, Reeves, Teck, Wattenberg, Hernandez, and Nichol.

AN ACT

CONCERNING THE RELATIONSHIP BETWEEN MOTOR VEHICLE DEALERS AND MANUFACTURERS.

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

SECTION 1. 12-6-120 (l) (d) and (1) (h), Colorado Revised Statutes, are amended, and the said 12-6-120 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

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

(d) (I) To cancel or cause to be canceled, directly or indirectly, without just cause, the franchise of any motor vehicle dealer, and the nonrenewal of a franchise or selling agreement without just ~~provocation~~ or cause is a violation of this paragraph (d) and shall constitute an unfair cancellation.

(II) AS USED IN THIS PARAGRAPH (d), "JUST CAUSE" SHALL BE DETERMINED IN THE CONTEXT OF ALL CIRCUMSTANCES SURROUNDING THE CANCELLATION OR NONRENEWAL, INCLUDING BUT NOT LIMITED TO:

(A) THE AMOUNT OF BUSINESS TRANSACTED BY THE MOTOR VEHICLE DEALER;

(B) THE INVESTMENTS NECESSARILY MADE AND OBLIGATIONS INCURRED BY THE MOTOR VEHICLE DEALER, INCLUDING BUT NOT LIMITED TO GOODWILL, IN THE PERFORMANCE OF ITS DUTIES UNDER THE FRANCHISE AGREEMENT, TOGETHER WITH THE DURATION AND PERMANENCY OF SUCH INVESTMENTS AND OBLIGATIONS;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(C) THE POTENTIAL FOR HARM TO CONSUMERS AS A RESULT OF DISRUPTION OF THE BUSINESS OF THE MOTOR VEHICLE DEALER;

(D) THE MOTOR VEHICLE DEALER'S FAILURE TO PROVIDE ADEQUATE SERVICE OF FACILITIES, EQUIPMENT, PARTS, AND QUALIFIED SERVICE PERSONNEL;

(E) THE MOTOR VEHICLE DEALER'S FAILURE TO PERFORM WARRANTY WORK ON BEHALF OF THE MANUFACTURER, SUBJECT TO REIMBURSEMENT BY THE MANUFACTURER; AND

(F) THE MOTOR VEHICLE DEALER'S FAILURE TO SUBSTANTIALLY COMPLY, IN GOOD FAITH, WITH REQUIREMENTS OF THE FRANCHISE THAT ARE DETERMINED TO BE REASONABLE AND MATERIAL.

(III) THE FOLLOWING CONDUCT BY A MOTOR VEHICLE DEALER SHALL CONSTITUTE JUST CAUSE FOR TERMINATION WITHOUT CONSIDERATION OF OTHER FACTORS:

(A) CONVICTION OF, OR A PLEA OF GUILTY OR NOLO CONTENDERE TO, A FELONY;

(B) A CONTINUING PATTERN OF FRAUDULENT CONDUCT AGAINST THE MANUFACTURER OR CONSUMERS; OR

(C) CONTINUING FAILURE TO OPERATE FOR TEN DAYS OR LONGER.

~~(h) To establish an additional franchise for the same line-make in a community where the same line-make is presently being served by an existing motor vehicle dealer if such addition would be inequitable to the existing dealer, but the sales and service needs of the public shall be given due consideration in determining the equities of the existing dealer;~~ TO VIOLATE ANY DUTY IMPOSED BY, OR FAIL TO COMPLY WITH, ANY PROVISION OF SECTION 12-6-120.3, 12-6-120.5, OR 12-6-120.7;

(j) (I) TO FAIL OR REFUSE TO OFFER TO ITS SAME LINE-MAKE FRANCHISED DEALERS ALL MODELS MANUFACTURED FOR THAT LINE-MAKE EXCEPT AS A RESULT OF A STRIKE OR LABOR DIFFICULTY, LACK OF MANUFACTURING CAPACITY, SHORTAGE OF MATERIALS, FREIGHT EMBARGO, OR OTHER CAUSE OVER WHICH THE MANUFACTURER HAS NO CONTROL; OR

(II) TO REQUIRE A DEALER TO PAY AN UNREASONABLE FEE, PURCHASE UNREASONABLE ADVERTISING DISPLAYS OR OTHER MATERIALS, OR COMPLY WITH UNREASONABLE TRAINING OR FACILITIES REQUIREMENTS AS A PREREQUISITE TO RECEIVING ANY PARTICULAR MODEL OF THAT SAME LINE-MAKE. FOR PURPOSES OF THIS SUBPARAGRAPH (II), REASONABLENESS SHALL BE JUDGED BASED ON THE CIRCUMSTANCES OF THE INDIVIDUAL DEALER AND THE CONDITIONS OF THE MARKET SERVED BY THE DEALER.

(III) THIS PARAGRAPH (j) SHALL NOT APPLY TO MANUFACTURERS OF RECREATIONAL VEHICLES NOR TO MANUFACTURERS OF VEHICLES WITH A PASSENGER CAPACITY OF THIRTY-TWO OR MORE.

(k) TO REQUIRE, COERCE, OR ATTEMPT TO COERCE ANY MOTOR VEHICLE DEALER

TO REFRAIN FROM PARTICIPATION IN THE MANAGEMENT OF, INVESTMENT IN, OR ACQUISITION OF ANY OTHER LINE-MAKE OF NEW MOTOR VEHICLES OR RELATED PRODUCTS; EXCEPT THAT THIS PARAGRAPH (k) SHALL NOT APPLY UNLESS THE MOTOR VEHICLE DEALER:

(I) MAINTAINS A REASONABLE LINE OF CREDIT FOR EACH MAKE OR LINE OF NEW MOTOR VEHICLE; AND

(II) REMAINS IN COMPLIANCE WITH REASONABLE CAPITAL STANDARDS AND REASONABLE FACILITIES REQUIREMENTS SPECIFIED BY THE MANUFACTURER. "REASONABLE FACILITIES REQUIREMENTS" SHALL NOT INCLUDE ANY REQUIREMENT THAT A MOTOR VEHICLE DEALER ESTABLISH OR MAINTAIN EXCLUSIVE FACILITIES, PERSONNEL, OR DISPLAY SPACE UNLESS SUCH A REQUIREMENT IS JUSTIFIED BY REASONABLE BUSINESS CONSIDERATIONS.

(1) (I) TO FAIL TO PAY TO A MOTOR VEHICLE DEALER, WITHIN NINETY DAYS AFTER THE TERMINATION, CANCELLATION, OR NONRENEWAL OF A FRANCHISE, ALL OF THE FOLLOWING:

(A) THE DEALER COST, PLUS ANY CHARGES MADE BY THE MANUFACTURER FOR DISTRIBUTION, DELIVERY, AND TAXES, LESS ALL ALLOWANCES PAID OR CREDITED TO THE MOTOR VEHICLE DEALER BY THE MANUFACTURER, OF UNUSED, UNDAMAGED, AND UNSOLD MOTOR VEHICLES IN THE MOTOR VEHICLE DEALER'S INVENTORY THAT WERE ACQUIRED FROM THE MANUFACTURER OR FROM ANOTHER MOTOR VEHICLE DEALER OF THE SAME LINE-MAKE WITHIN THE PREVIOUS TWELVE MONTHS;

(B) THE DEALER COST, LESS ALL ALLOWANCES PAID OR CREDITED TO THE MOTOR VEHICLE DEALER BY THE MANUFACTURER, FOR ALL UNUSED, UNDAMAGED, AND UNSOLD SUPPLIES, PARTS, AND ACCESSORIES IN ORIGINAL PACKAGING AND LISTED IN THE MANUFACTURER'S CURRENT PARTS CATALOG;

(C) THE FAIR MARKET VALUE OF EACH UNDAMAGED SIGN OWNED BY THE MOTOR VEHICLE DEALER AND BEARING A COMMON NAME, TRADE NAME, OR TRADEMARK OF THE MANUFACTURER IF ACQUISITION OF SUCH SIGN WAS REQUIRED BY THE MANUFACTURER;

(D) THE FAIR MARKET VALUE OF ALL SPECIAL TOOLS AND EQUIPMENT THAT WERE ACQUIRED FROM THE MANUFACTURER OR FROM SOURCES APPROVED AND REQUIRED BY THE MANUFACTURER AND THAT ARE IN GOOD AND USABLE CONDITION, EXCLUDING NORMAL WEAR AND TEAR; AND

(E) THE COST OF TRANSPORTING, HANDLING, PACKING, AND LOADING THE MOTOR VEHICLES, SUPPLIES, PARTS, ACCESSORIES, SIGNS, SPECIAL TOOLS, EQUIPMENT, AND FURNISHINGS DESCRIBED IN THIS PARAGRAPH (I).

(II) THIS PARAGRAPH (I) SHALL ONLY APPLY TO MANUFACTURERS OF RECREATIONAL VEHICLES IN CASES WHERE THE MANUFACTURER TERMINATES, CANCELS, OR FAILS TO RENEW THE RECREATIONAL VEHICLE DEALER FRANCHISE; AND THIS PARAGRAPH (I) SHALL NOT APPLY TO MANUFACTURERS OF VEHICLES WITH A PASSENGER CAPACITY OF THIRTY-TWO OR MORE.

(m) TO REQUIRE, COERCE, OR ATTEMPT TO COERCE ANY MOTOR VEHICLE DEALER TO CLOSE OR CHANGE THE LOCATION OF THE MOTOR VEHICLE DEALER, OR TO MAKE ANY SUBSTANTIAL ALTERATIONS TO THE DEALER PREMISES OR FACILITIES WHEN DOING SO WOULD BE UNREASONABLE OR WITHOUT WRITTEN ASSURANCE OF A SUFFICIENT SUPPLY OF MOTOR VEHICLES SO AS TO JUSTIFY SUCH CHANGES, IN LIGHT OF THE CURRENT MARKET AND ECONOMIC CONDITIONS;

(n) (I) TO AUTHORIZE OR PERMIT A PERSON TO PERFORM WARRANTY SERVICE REPAIRS ON MOTOR VEHICLES UNLESS THE PERSON IS:

(A) A MOTOR VEHICLE DEALER WITH WHOM THE MANUFACTURER HAS ENTERED INTO A FRANCHISE AGREEMENT FOR THE SALE AND SERVICE OF THE MANUFACTURER'S MOTOR VEHICLES; OR

(B) A PERSON OR GOVERNMENT ENTITY THAT HAS PURCHASED NEW MOTOR VEHICLES PURSUANT TO A MANUFACTURER'S FLEET DISCOUNT PROGRAM AND IS PERFORMING THE WARRANTY SERVICE REPAIRS ONLY ON VEHICLES OWNED BY SUCH PERSON OR ENTITY.

(II) THIS PARAGRAPH (n) SHALL NOT APPLY TO MANUFACTURERS OF RECREATIONAL VEHICLES NOR TO MANUFACTURERS OF VEHICLES WITH A PASSENGER CAPACITY OF THIRTY-TWO OR MORE.

(o) TO REQUIRE, COERCE, OR ATTEMPT TO COERCE ANY MOTOR VEHICLE DEALER TO PROSPECTIVELY AGREE TO A RELEASE, ASSIGNMENT, NOVATION, WAIVER, OR ESTOPPEL THAT WOULD RELIEVE ANY PERSON OF A DUTY OR LIABILITY IMPOSED UNDER THIS ARTICLE EXCEPT IN SETTLEMENT OF A BONA FIDE DISPUTE.

SECTION 2. Part 1 of article 6 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

12-6-120.3. New, reopened, or relocated dealer - notice required - grounds for refusal of dealer license - definitions. (1) NO MANUFACTURER SHALL ESTABLISH AN ADDITIONAL NEW MOTOR VEHICLE DEALER, REOPEN A PREVIOUSLY EXISTING MOTOR VEHICLE DEALER, OR RELOCATE AN EXISTING MOTOR VEHICLE DEALER WITHOUT FIRST PROVIDING AT LEAST SIXTY DAYS' NOTICE TO ALL OF ITS FRANCHISED DEALERS WITHIN WHOSE RELEVANT MARKET AREA THE NEW, REOPENED, OR RELOCATED DEALER WOULD BE LOCATED. SUCH NOTICE SHALL STATE:

(a) THE SPECIFIC LOCATION AT WHICH THE ADDITIONAL, REOPENED, OR RELOCATED MOTOR VEHICLE DEALER WILL BE ESTABLISHED;

(b) THE DATE ON OR AFTER WHICH THE MANUFACTURER INTENDS TO BE ENGAGED IN BUSINESS WITH THE ADDITIONAL, REOPENED, OR RELOCATED MOTOR VEHICLE DEALER AT THE PROPOSED LOCATION;

(c) THE IDENTITY OF ALL MOTOR VEHICLE DEALERS WHO ARE FRANCHISED TO SELL THE SAME LINE-MAKE OF VEHICLES WITH LICENSED LOCATIONS IN THE RELEVANT MARKET AREA WHERE THE ADDITIONAL, REOPENED, OR RELOCATED MOTOR VEHICLE DEALER IS PROPOSED TO BE LOCATED; AND

(d) THE NAMES AND ADDRESSES OF THE DEALER-OPERATOR AND PRINCIPAL INVESTORS IN THE PROPOSED ADDITIONAL, REOPENED, OR RELOCATED MOTOR VEHICLE DEALER.

(2) SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO:

(a) THE RELOCATION OF AN EXISTING DEALER WITHIN TWO MILES OF ITS CURRENT LOCATION; OR

(b) THE ESTABLISHMENT OF A REPLACEMENT DEALER, WITHIN TWO YEARS, EITHER AT THE FORMER LOCATION OR WITHIN TWO MILES OF THE FORMER LOCATION.

(3) AS USED IN THIS SECTION:

(a) "MANUFACTURER" MEANS AND INCLUDES ANY MOTOR VEHICLE MANUFACTURER, DISTRIBUTOR, FACTORY BRANCH, DISTRIBUTOR BRANCH, FACTORY REPRESENTATIVE, OR DISTRIBUTOR REPRESENTATIVE.

(b) "RELEVANT MARKET AREA" MEANS THE GREATER OF THE FOLLOWING:

(I) THE GEOGRAPHIC AREA OF RESPONSIBILITY DEFINED IN THE FRANCHISE AGREEMENT OF AN EXISTING DEALER; OR

(II) THE GEOGRAPHIC AREA WITHIN A RADIUS OF FIVE MILES OF ANY EXISTING DEALER OF THE SAME LINE-MAKE OF VEHICLE THAT IS LOCATED IN A COUNTY WITH A POPULATION OF MORE THAN ONE HUNDRED FIFTY THOUSAND OR WITHIN A RADIUS OF TEN MILES OF AN EXISTING DEALER OF THE SAME LINE-MAKE OF VEHICLES THAT IS LOCATED IN A COUNTY WITH A POPULATION OF ONE HUNDRED FIFTY THOUSAND OR LESS.

(4) IF A LICENSEE BRINGS AN ACTION OR PROCEEDING BEFORE THE EXECUTIVE DIRECTOR OR A COURT PURSUANT TO THIS PART 1, THE MANUFACTURER SHALL HAVE THE BURDEN OF PROOF ON THE FOLLOWING ISSUES:

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

(b) GROWTH OR DECLINE IN POPULATION AND NEW MOTOR VEHICLE REGISTRATIONS IN THE RELEVANT MARKET AREA;

(c) THE EFFECT ON THE CONSUMING PUBLIC IN THE RELEVANT MARKET AREA AND WHETHER THE OPENING OF THE PROPOSED ADDITIONAL, REOPENED, OR RELOCATED DEALER IS INJURIOUS OR BENEFICIAL TO THE PUBLIC WELFARE; AND

(d) WHETHER THE MOTOR VEHICLE DEALERS OF THE SAME LINE-MAKE IN THE RELEVANT MARKET AREA ARE PROVIDING ADEQUATE AND CONVENIENT CUSTOMER CARE FOR MOTOR VEHICLES OF THE SAME LINE-MAKE IN THE RELEVANT MARKET AREA, INCLUDING BUT NOT LIMITED TO THE ADEQUACY OF SALES AND SERVICE FACILITIES, EQUIPMENT, PARTS, AND QUALIFIED SERVICE PERSONNEL.

12-6-120.5. Independent control of dealer - definitions. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, NO MANUFACTURER SHALL OWN, OPERATE, OR CONTROL ANY MOTOR VEHICLE DEALER IN COLORADO.

(2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, THE FOLLOWING ACTIVITIES ARE NOT PROHIBITED:

(a) OPERATION OF A DEALER FOR A TEMPORARY PERIOD, NOT TO EXCEED TWO YEARS, DURING THE TRANSITION FROM ONE OWNER OR OPERATOR TO ANOTHER;

(b) OWNERSHIP OR CONTROL OF A DEALER WHILE THE DEALER IS BEING SOLD UNDER A BONA FIDE CONTRACT OR PURCHASE OPTION TO THE OPERATOR OF THE DEALER;

(c) PARTICIPATION IN THE OWNERSHIP OF THE DEALER SOLELY FOR THE PURPOSE OF PROVIDING FINANCING OR A CAPITAL LOAN THAT WILL ENABLE THE DEALER TO BECOME THE MAJORITY OWNER OF THE DEALER IN LESS THAN SEVEN YEARS; AND

(d) OPERATION OF A MOTOR VEHICLE DEALER IF THE MANUFACTURER HAS NO OTHER FRANCHISED DEALERS OF THE SAME LINE-MAKE IN THIS STATE.

(3) AS USED IN THIS SECTION:

(a) "CONTROL" MEANS TO POSSESS, DIRECTLY, THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT OR POLICIES OF A PERSON, WHETHER THROUGH THE OWNERSHIP OF VOTING SECURITIES, BY CONTRACT, OR OTHERWISE; EXCEPT THAT "CONTROL" DOES NOT INCLUDE THE RELATIONSHIP BETWEEN A MANUFACTURER AND A MOTOR VEHICLE DEALER UNDER A FRANCHISE AGREEMENT.

(b) "MANUFACTURER" MEANS AND INCLUDES ANY MOTOR VEHICLE MANUFACTURER, DISTRIBUTOR, FACTORY BRANCH, DISTRIBUTOR BRANCH, FACTORY REPRESENTATIVE, OR DISTRIBUTOR REPRESENTATIVE.

(c) "OPERATE" MEANS TO DIRECTLY OR INDIRECTLY MANAGE A MOTOR VEHICLE DEALER.

(d) "OWN" MEANS TO HOLD ANY BENEFICIAL OWNERSHIP INTEREST OF ONE PERCENT OR MORE OF ANY CLASS OF EQUITY INTEREST IN A DEALER, WHETHER AS A SHAREHOLDER, PARTNER, LIMITED LIABILITY COMPANY MEMBER, OR OTHERWISE. TO "HOLD" AN OWNERSHIP INTEREST MEANS TO HAVE POSSESSION OF, TITLE TO, OR CONTROL OF THE OWNERSHIP INTEREST, EITHER DIRECTLY OR THROUGH A FIDUCIARY OR AGENT.

(4) THIS SECTION SHALL NOT APPLY TO MANUFACTURERS OF VEHICLES WITH A PASSENGER CAPACITY OF THIRTY-TWO OR MORE.

12-6-120.7. Successor under existing franchise agreement - duties of manufacturer. (1) IF A LICENSED MOTOR VEHICLE DEALER UNDER FRANCHISE BY A MANUFACTURER DIES OR BECOMES INCAPACITATED, THE MANUFACTURER SHALL ACT IN GOOD FAITH TO ALLOW A SUCCESSOR, WHICH MAY INCLUDE A FAMILY MEMBER, DESIGNATED BY THE DECEASED OR INCAPACITATED MOTOR VEHICLE DEALER TO

SUCCEED TO OWNERSHIP AND OPERATION OF THE DEALER UNDER THE EXISTING FRANCHISE AGREEMENT IF:

(a) WITHIN NINETY DAYS AFTER THE MOTOR VEHICLE DEALER'S DEATH OR INCAPACITY, THE DESIGNATED SUCCESSOR GIVES THE MANUFACTURER WRITTEN NOTICE OF AN INTENT TO SUCCEED TO THE RIGHTS OF THE DECEASED OR INCAPACITATED MOTOR VEHICLE DEALER IN THE FRANCHISE AGREEMENT;

(b) THE DESIGNATED SUCCESSOR AGREES TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THE EXISTING FRANCHISE AGREEMENT; AND

(c) THE DESIGNATED SUCCESSOR MEETS THE CRITERIA GENERALLY APPLIED BY THE MANUFACTURER IN QUALIFYING MOTOR VEHICLE DEALERS.

(2) A MANUFACTURER MAY REFUSE TO HONOR THE EXISTING FRANCHISE AGREEMENT WITH THE DESIGNATED SUCCESSOR ONLY FOR GOOD CAUSE. THE MANUFACTURER MAY REQUEST IN WRITING FROM A DESIGNATED SUCCESSOR THE PERSONAL AND FINANCIAL DATA THAT IS REASONABLY NECESSARY TO DETERMINE WHETHER THE EXISTING FRANCHISE AGREEMENT SHOULD BE HONORED, AND THE DESIGNATED SUCCESSOR SHALL SUPPLY SUCH DATA PROMPTLY UPON REQUEST.

(3) (a) IF A MANUFACTURER BELIEVES THAT GOOD CAUSE EXISTS FOR REFUSING TO HONOR THE REQUESTED SUCCESSION, THE MANUFACTURER SHALL SEND THE DESIGNATED SUCCESSOR, BY CERTIFIED OR OVERNIGHT MAIL, NOTICE OF ITS REFUSAL TO APPROVE THE SUCCESSION WITHIN SIXTY DAYS AFTER THE LATER OF:

(I) RECEIPT OF THE NOTICE OF THE DESIGNATED SUCCESSOR'S INTENT TO SUCCEED THE MOTOR VEHICLE DEALER IN THE OWNERSHIP AND OPERATION OF THE DEALER; OR

(II) THE RECEIPT OF THE REQUESTED PERSONAL AND FINANCIAL DATA.

(b) FAILURE TO SERVE THE NOTICE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL BE CONSIDERED APPROVAL OF THE DESIGNATED SUCCESSOR, AND THE FRANCHISE AGREEMENT IS CONSIDERED AMENDED TO REFLECT THE APPROVAL OF THE SUCCESSION THE DAY FOLLOWING THE LAST DAY OF THE NOTICE PERIOD SPECIFIED IN SAID PARAGRAPH (a).

(c) IF THE MANUFACTURER GIVES NOTICE OF REFUSAL TO APPROVE THE SUCCESSION, SUCH NOTICE SHALL STATE THE SPECIFIC GROUNDS FOR THE REFUSAL AND SHALL STATE THAT THE FRANCHISE AGREEMENT SHALL BE DISCONTINUED NOT LESS THAN NINETY DAYS AFTER THE DATE THE NOTICE OF REFUSAL IS SERVED UNLESS THE PROPOSED SUCCESSOR FILES AN ACTION IN THE DISTRICT COURT TO ENJOIN SUCH ACTION.

(4) THIS SECTION SHALL NOT BE CONSTRUED TO PROHIBIT A MOTOR VEHICLE DEALER FROM DESIGNATING A PERSON AS THE SUCCESSOR IN ADVANCE, BY WRITTEN INSTRUMENT FILED WITH THE MANUFACTURER. IF THE MOTOR VEHICLE DEALER FILES SUCH AN INSTRUMENT, THAT INSTRUMENT GOVERNS THE SUCCESSION RIGHTS TO THE MANAGEMENT AND OPERATION OF THE DEALER SUBJECT TO THE DESIGNATED SUCCESSOR SATISFYING THE MANUFACTURER'S QUALIFICATION REQUIREMENTS AS DESCRIBED IN THIS SECTION.

(5) THIS SECTION SHALL NOT APPLY TO MANUFACTURERS OF VEHICLES WITH A PASSENGER CAPACITY OF THIRTY-TWO OR MORE.

12-6-122.5. Contract disputes - venue - choice of law. (1) IN THE EVENT OF A DISPUTE BETWEEN A MOTOR VEHICLE DEALER AND A MANUFACTURER UNDER A FRANCHISE AGREEMENT, NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY:

(a) AT THE OPTION OF THE MOTOR VEHICLE DEALER, VENUE SHALL BE PROPER IN THE COUNTY OR JUDICIAL DISTRICT WHERE THE DEALER RESIDES OR HAS ITS PRINCIPAL PLACE OF BUSINESS; AND

(b) COLORADO LAW SHALL GOVERN, BOTH SUBSTANTIVELY AND PROCEDURALLY.

SECTION 3. 12-6-102 (11), Colorado Revised Statutes, is amended, and the said 12-6-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

12-6-102. Definitions. As used in this part 1, unless the context otherwise requires:

(10.5) "LINE-MAKE" MEANS A GROUP OR SERIES OF MOTOR VEHICLES THAT HAVE THE SAME BRAND IDENTIFICATION OR BRAND NAME, BASED UPON THE MANUFACTURER'S TRADEMARK, TRADE NAME, OR LOGO.

(11) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused motor vehicles; except that "manufacturer" shall not include:

(a) Any person who only manufactures utility trailers ~~which~~ THAT weigh less than two thousand pounds and does not manufacture any other type of motor vehicle; and

(b) Any person, OTHER THAN A MANUFACTURER OPERATING A DEALER PURSUANT TO SECTION 12-6-120.5, who is a licensed dealer selling motor vehicles ~~which he~~ THAT SUCH PERSON has manufactured.

(16.5) "RECREATIONAL VEHICLE" MEANS A CAMPING TRAILER, FIFTH WHEEL TRAILER, MOTOR HOME, RECREATIONAL PARK TRAILER, TRAVEL TRAILER, OR TRUCK CAMPER, ALL AS DEFINED IN SECTION 24-32-902, C.R.S.

SECTION 4. Effective date. This act shall take effect upon passage.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 2000