

CHAPTER 170

PROFESSIONS AND OCCUPATIONS

SENATE BILL 03-241

BY SENATOR(S) May R. and Jones;
also REPRESENTATIVE(S) Rippy, Coleman, and Stafford.

AN ACT

CONCERNING THE CONTINUATION OF THE REGULATION OF CERTAIN PERSONS IN THE BUSINESS OF AUTOMOTIVE SALES, AND, IN CONNECTION THEREWITH, CONTINUING THE REGULATORY FUNCTIONS OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE RELATED TO MOTOR VEHICLE SALES.

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

SECTION 1. 12-6-102 (6), (7), (7.5), (8), and (9), Colorado Revised Statutes, are amended, and the said 12-6-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

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

(6) ~~"Distributor branch" means a branch office maintained by a distributor or wholesaler for the same purposes as a factory branch is maintained.~~

(7) ~~"Distributor representative" means a representative employed by a distributor, distributor branch, or wholesaler.~~

(7.5) "Executive director" means the executive director of the department of revenue charged with the administration, enforcement, and issuance or denial of the licensing of buyer agents, distributors, ~~distributor branches, distributor representatives, factory branches, factory~~ MANUFACTURER representatives, and manufacturers.

(8) ~~"Factory branch" means a branch office maintained by a person who manufactures or assembles motor vehicles for the sale of motor vehicles to distributors, for the sale of motor vehicles to motor vehicle dealers, or for directing~~

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

~~or supervising in whole or in part its representatives.~~

~~(9) "Factory representative" means a representative employed by a person who manufactures or assembles motor vehicles or by a factory branch for the purpose of making or promoting the sale of its motor vehicles or for supervising or contacting its dealers or prospective dealers.~~

~~(11.5) "MANUFACTURER REPRESENTATIVE" MEANS A REPRESENTATIVE EMPLOYED BY A PERSON WHO MANUFACTURES OR ASSEMBLES MOTOR VEHICLES FOR THE PURPOSE OF MAKING OR PROMOTING THE SALE OF ITS MOTOR VEHICLES OR FOR SUPERVISING OR CONTACTING ITS DEALERS OR PROSPECTIVE DEALERS.~~

SECTION 2. The introductory portion to 12-6-105 (1) and 12-6-105 (1) (f), Colorado Revised Statutes, are amended to read:

12-6-105. Powers and duties of executive director. (1) The executive director is hereby charged with the administration, enforcement, and issuance or denial of the licensing of buyer agents, distributors, ~~distributor branches, distributor representatives, factory branches, factory~~ MANUFACTURER representatives, and motor vehicle manufacturers, and shall have the following powers and duties:

(f) (I) To summarily issue cease and desist orders on such terms and conditions and for such period of time as to the executive director appears fair and just to any person who is licensed by the executive director pursuant to this part 1 if such orders are followed by notice and a hearing pursuant to section 12-6-104 (3) (e) (I).

(II) TO ISSUE CEASE AND DESIST ORDERS TO PERSONS ACTING AS MOTOR VEHICLE MANUFACTURERS WITHOUT THE MANUFACTURER'S LICENSE REQUIRED BY THIS PART 1.

(III) TO IMPOSE A FINE, NOT TO EXCEED ONE THOUSAND DOLLARS PER DAY, FOR EACH VIOLATION OF SECTION 12-6-120 (1) AFTER A NOTICE AND HEARING SUBJECT TO SECTION 24-4-105, C.R.S.

SECTION 3. 12-6-108 (1) (d) and (1) (f), Colorado Revised Statutes, are amended to read:

12-6-108. Classes of licenses. (1) Licenses issued under the provisions of this part 1 shall be of the following classes:

(d) Manufacturer's OR distributor's ~~factory branch's, or distributor branch's~~ license shall permit the ~~aforsaid~~ LICENSEE to engage in the activities of a manufacturer, distributor, factory branch, or distributor branch and to sell fire trucks.

(f) ~~Factory representative's or distributor~~ MANUFACTURER representative's license shall permit the ~~aforsaid~~ LICENSEE to engage in the activities of a ~~factory representative or a distributor~~ MANUFACTURER representative.

SECTION 4. 12-6-109, Colorado Revised Statutes, is amended to read:

12-6-109. Display, form, custody, and use of licenses. The board and the

executive director shall prescribe the form of the license to be issued by the executive director, and each license shall have imprinted thereon the seal of their offices. The license of each motor vehicle salesperson shall be delivered or mailed to the salesperson's home address and shall be kept by the salesperson at such salesperson's place of employment for inspection by employers, consumers, the executive director, or the board. It is the duty of each motor vehicle dealer, manufacturer, distributor, wholesaler, ~~factory branch, distributor branch, factory representative, distributor~~ MANUFACTURER representative, wholesale motor vehicle auction dealer, or used motor vehicle dealer to display conspicuously such person's own license in such person's place of business. Each license issued pursuant to this part 1 is separate and distinct. It shall be a violation of this part 1 for any person to exercise any of the privileges granted under a license ~~which~~ THAT such person does not hold, or for any licensee to knowingly allow such an exercise of privileges.

SECTION 5. 12-6-110 (1) (e) and (1) (f), Colorado Revised Statutes, are amended to read:

12-6-110. Fees - disposition - expenses - expiration of licenses. (1) There shall be collected with each application the fee established pursuant to subsection (5) of this section for each of the following licenses:

- (e) ~~Factory branch's or distributor branch's license;~~
- (f) ~~Factory representative's or distributor~~ MANUFACTURER representative's license;

SECTION 6. 12-6-115 (2), Colorado Revised Statutes, is amended to read:

12-6-115. Application. (2) Application for distributor's, ~~distributor branch's, distributor representative's, factory branch's, factory~~ MANUFACTURER representative's, or manufacturer's licenses shall be made to the executive director.

SECTION 7. The introductory portions to 12-6-118 (1) and (2), Colorado Revised Statutes, are amended to read:

12-6-118. Licenses - grounds for denial, suspension, or revocation. (1) A manufacturer's OR distributor's ~~factory branch's, or distributor branch's~~ license may be denied, suspended, or revoked on the following grounds:

(2) A ~~factory representative's or distributor~~ MANUFACTURER representative's license may be denied, suspended, or revoked on the following grounds:

SECTION 8. The introductory portion to 12-6-120 (1), 12-6-120 (1) (b), (1) (i), and (2), and the introductory portion to 12-6-120 (3), Colorado Revised Statutes, are amended 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~~ OR MANUFACTURER representative:

(b) To coerce or attempt to coerce any motor vehicle dealer to perform or allow to be performed any act ~~which~~ THAT could be financially detrimental to the dealer or

~~which~~ THAT would impair the dealer's goodwill or to enter into any agreement with a manufacturer ~~factory branch, distributor,~~ or distributor ~~branch~~ ~~which~~ THAT would be financially detrimental to the dealer or impair the dealer's goodwill, by threatening to cancel or not renew any franchise between a manufacturer ~~distributor, factory branch,~~ or distributor ~~branch~~ and said dealer;

(i) To refuse to approve, unreasonably, the sale or transfer of the ownership of a dealership by sale of the business or by stock transfer or to refuse to approve, unreasonably, the change in executive management of the dealership; ~~but~~ EXCEPT THAT nothing in this part 1 shall authorize the sale, transfer, or assignment of a franchise or a change of the principal operator without the approval of the manufacturer or distributor; ~~which approval shall not be unreasonably withheld;~~

(2) It is unlawful for any person to act as a motor vehicle dealer, manufacturer, distributor, wholesaler, ~~factory branch, distributor branch, factory representative,~~ ~~distributor~~ MANUFACTURER representative, used motor vehicle dealer, buyer agent, wholesale motor vehicle auction dealer, or motor vehicle salesperson unless such person has been duly licensed under the provisions of this part 1, except for persons exempt from licensure as a manufacturer pursuant to section 12-6-102 (11); however, such persons shall ~~be required to~~ comply with all other applicable requirements for manufacturers, including, but not limited to, those pertaining to vehicle identification numbers and manufacturers' statements of origin.

(3) It is unlawful and a violation of this part 1 for a ~~buyer~~ BUYER'S agent to engage in the following:

SECTION 9. 12-6-120.3 (3) (a), Colorado Revised Statutes, is amended to read:

12-6-120.3. New, reopened, or relocated dealer - notice required - grounds for refusal of dealer license - definitions. (3) As used in this section:

(a) "Manufacturer" means ~~and includes any~~ A motor vehicle manufacturer, distributor, ~~factory branch, distributor branch, factory representative, or distributor~~ OR MANUFACTURER representative.

SECTION 10. 12-6-120.5 (3)(b), Colorado Revised Statutes, is amended to read:

12-6-120.5. Independent control of dealer - definitions. (3) As used in this section:

(b) "Manufacturer" means ~~and includes any~~ A motor vehicle manufacturer, distributor, ~~factory branch, distributor branch, factory representative, or distributor~~ MANUFACTURER representative.

SECTION 11. 12-6-122 (2) and (3), Colorado Revised Statutes, are amended to read:

12-6-122. Right of action for loss. (2) If any person suffers any loss or damage by reason of any unlawful act as provided in section 12-6-120 (1) (a), such person shall have a right of action against the manufacturer, distributor, ~~factory branch, distributor branch, factory representative,~~ or ~~distributor~~ MANUFACTURER

representative. In any court action wherein a manufacturer, distributor, ~~factory branch, distributor branch, factory representative,~~ or ~~distributor~~ MANUFACTURER representative has been found liable in damages to any person under this part 1, the amount of damages so determined shall be trebled and shall be recoverable by the person so damaged. Any person so damaged shall also be entitled to recover reasonable attorney fees as part of his OR HER damages.

(3) If any licensee suffers any loss or damage by reason of any unlawful act as provided in section 12-6-120 (1), such licensee shall have a right of action against such manufacturer, distributor, ~~factory branch, distributor branch, factory representative,~~ or ~~distributor~~ MANUFACTURER representative. In any court action wherein a manufacturer, distributor, ~~factory branch, distributor branch, factory representative,~~ or ~~distributor~~ MANUFACTURER representative has been found liable in damages to any licensee under this part 1, any licensee so damaged shall also be entitled to recover reasonable attorney fees as part of his OR HER damages.

SECTION 12. 12-6-124, Colorado Revised Statutes, is amended to read:

12-6-124. Repeal of article. This article is repealed, effective July 1, ~~2003~~ 2013. Prior to such repeal, the motor vehicle dealer board and the functions of the executive director, including licensing, shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 13. Repeal. 24-34-104 (32.5) (c), Colorado Revised Statutes, is repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (32.5) The following agencies, functions, or both, shall terminate on July 1, 2003:

(c) ~~The functions of the executive director of the department of revenue, including licensing, in accordance with part 1 of article 6 of title 12, C.R.S.;~~

SECTION 14. 24-34-104 (44), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (44) The following agencies, functions, or both, shall terminate on July 1, 2013:

(c) THE FUNCTIONS OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE, INCLUDING LICENSING, IN ACCORDANCE WITH PART 1 OF ARTICLE 6 OF TITLE 12, C.R.S.

SECTION 15. 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: April 22, 2003