

Colorado Automobile Dealers Association
End of Session Report

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CADA Legislative Victories

The 2010 Legislative Session marked another year of success for Colorado's new franchised automobile dealers. HB 1049, CADA's franchise legislation, passed out of the Colorado General Assembly with the support of 95 percent of the legislature. Additionally, HB 1049 had 63 co-sponsors, which demonstrates an amazing level of legislative support. This bill was signed into law by Governor Bill Ritter on March 22, 2010 and took effect immediately. Below is a comprehensive summary of the protections for Colorado dealers under HB 1049.

Provisions applicable to ALL Colorado dealers:

1. **Exporting of motor vehicles:** If a dealer sells a vehicle that is ultimately exported outside dealership AOR, the manufacturer must prove that the dealer knew the vehicle was going to be exported prior to imposing any penalties, including but not limited to, imposing fines and penalties or withholding inventory. Additionally, there is now a presumption in the statute that the dealer did not have knowledge that the vehicle might be exported, which the manufacturer is burdened to disprove.
2. **Warranty and sales incentive audits:** Last year SB 91 provided a 15 month submission period for dealers on warranty and sales incentive claims. It also limited the manufacturer's ability to audit those claims to 15 months. Under HB 1049, we have **reduced** the submission period AND the audit period to 9 months.
3. **Facility upgrades:** Within 90 days of a manufacturer terminating a dealer's franchise agreement for any reason other than fraud, misrepresentation or other crimes, a manufacturer must reimburse a dealer for all manufacturer required upgrades to the dealer's facility made within the previous five (5) years.
4. **Manufacturer operation of a dealership:** An existing provision in Colorado law already prevented a manufacturer from operating a dealership so long as they were not franchised dealerships. This statute narrows provision so a manufacturer that has *any* dealerships in Colorado, whether franchised or not, is prohibited from operating a dealership.
5. **Future manufacturer bankruptcy:** In the event of a future manufacturer bankruptcy in federal court, the manufacturer may not discharge its obligation to pay terminated Colorado dealers the termination assistance and payment provisions provided in Colorado law.
6. **Definition of the word "franchise":** As a clarifying provision, Colorado law now defines the word franchise to include "the authority to sell or service and repair motor vehicles of a designated line-make granted through a sales, service, and parts agreement with the manufacturer, distributor, or manufacturer representative."

Provisions applicable to dealers terminated in GM and/or Chrysler bankruptcies:

1. **Right of First Refusal:** All dealers who were terminated in the GM and Chrysler bankruptcies have a right of first refusal in the event that the manufacturer wishes to re-enter the market previously held by the terminated dealer. The right of first refusal is for five (5) years from the date of the termination of the franchise.
2. **Optional cash payout:** In the event that a manufacturer wishes to re-enter the market previously held by a terminated dealer, the dealer has the option to either (1) take back the franchise under the right of first refusal OR (2) instead accept the termination payments required under Colorado law that the manufacturers did not have to honor during their federal bankruptcies.
3. **Mandatory notice to terminated dealers:** In the event a manufacturer wishes to re-enter the markets previously held by a terminated dealer, they must give notice to all dealers, including the terminated dealer, within a five (5) mile radius of the point they wish to open. This is a critical provision of the bill as it gives terminated dealers standing to challenge the reassignment of their franchise to other dealers. This will limit Chrysler and GM from reallocating franchises of terminated dealers to other dealers. This notice provision is for five (5) years and it mirrors the right of first refusal time frame.
4. **Definition of “right of first refusal area”:** In an effort to establish the physical boundaries under which a manufacturer must offer the right of first refusal, Colorado law has defined a new term, “right of first refusal area” which means “a five-mile radius extending from the location of where a motor vehicle dealer had a franchise terminated, cancelled or not renewed if the franchise was in a county with a population of more than one hundred fifty thousand or a ten-mile radius if the franchise was in a county with a population of one hundred fifty thousand or less.”
5. **For dealers whose franchises were already reassigned prior to Federal arbitration and the implementation of HB 1049:** The right of first refusal survives the manufacturer reallocating those franchises prior to the implementation of HB 1049. This section of the bill is retroactive. If a dealer does not want the franchise back, they have the option to seek the cash payout indicated in section 2 above.

** Shortly after Gov. Bill Ritter signed HB 1049, Chrysler, LLC filed a lawsuit against the Department of Revenue and the Attorney General of the State of Colorado alleging that HB 1049 was unconstitutional and in violation of the Chrysler’s federal bankruptcy proceedings. The outcome of this case has not yet been determined.

Other Legislative Victories

Employment Litigation: HB1269 would have allowed employees to sue employers for pain and suffering damages, punitive damages and attorney’s fees in state employment lawsuits. The bill also exempted state and local employees in order to eliminate the high cost to the State of having to defend itself against more lawsuits. This bill would have increased job-related litigation risk to every private-sector employer. CADA joined the Colorado Association of Commerce and Industry (CACI) and the Colorado Civil Justice League (CCJL) and other business groups to oppose this harmful bill. ***This legislation was killed on the floor of the House during Second Reading.***

Paid Sick Leave: HB 1397 would have required companies to provide specific amounts of sick leave based on the size of the business. Under this measure, all employers would have been

required to provide each worker at least 1 hour of paid sick leave for every 30 hours worked. For companies with over 10 employees the maximum is 72 hours per year. For companies with 10 or less employees, the maximum is 40 hrs per year. The bill also required an employer to allow a roll-over of paid sick leave to subsequent years. ***This bill died in the first committee of reference.***

State Tax Deductions: HB 1263 would have limited the amount of state income tax deduction for salary or other compensation paid to an individual for personal services to \$250,000 when computing taxable income. HB 1263 included “other compensation for personal services,” which encompasses all benefits including accident and health insurance benefits, retirement plans, and other income received as “compensation” which are currently excluded from taxable income. The bill received significant opposition from CACI, several local chambers of commerce and other business organizations and companies throughout the state. ***The sponsor killed his bill in the first committee of reference.***

Tax Credits for Business: HB 1429 bill would have required the finance committees of the House of Representatives and the Senate to jointly conduct meetings on an annual basis to review specified state tax benefits and determine whether they should be continued, repealed, or modified. The bill received significant opposition from CACI, several local chambers of commerce and other business organizations and companies throughout the state. ***The bill was defeated on the floor of the House during Second Reading.***

Debit Card fees: SB 188 would have imposed increased fees on retailers who accept debit cards from consumers. The bill attempted to regulate debit cards in the same manner as credit cards, thereby preventing retailers from passing any costs associated with accepting this form of payment to the consumer. The inherent problem with the bill was that it did not prevent the card issuing banks from arbitrarily raising fees on retailers. As such, the bill would have squeezed the retailer, requiring them to absorb any credit card fees with no recourse to offset their expenses. ***CADA joined the Colorado Retail Counsel in defeating this legislation on the floor of the Senate during Third Reading.***

Workers’ Compensation / Pinnacol Assurance: HB 1012 would have limited the ability to use public surveillance to detect fraud in workers' compensation claims. The measure would have also required the destruction of all materials collected during surveillance no later than 5 years after resolution of the claim. CADA joined CACI, CCJL and Pinnacol in opposing this legislation. ***This bill was defeated in the first committee of reference.***

Health Insurance Wellness Incentives: HB 1160 allows small-group and individual insurance plans to offer wellness incentives similar to programs that large businesses with self-insured plans currently offer to their employees by removing the restrictions based on outcomes. This bill was amended to address the opposition concerns that incentives may be discriminatory. CADA and member dealers testified in support of this bill.

The bill provides that an employer may create a wellness plan for workers who want to quit smoking, lose weight or improve their health through other similar programs. By creating a wellness program, an employer will receive a discount on its insurance premiums. Employees who join a wellness program also will receive a discount on their insurance premium by participating in the program or satisfying a standard related to a health-risk factor. The bill, as amended, allows for persons who are unable to participate in such a program due to medical inability to file a waiver. ***This bill is awaiting signature by Gov. Bill Ritter.***

Portions of this legislative summary were compiled through the use of documents provided by the Colorado Association of Commerce and Industry (CACI), of which CADA is a member.