



Colorado Automobile Dealers Association

The voice of franchised new automobile dealers in Colorado.

BETTER BY ASSOCIATION

Executive Memo

*A timely message from
CADA's president,
Tim Jackson*



Dealers Win Significant Victories

July 8, 2010

Dear Colorado Dealer,

Monumental Federal-Issue Victory

Auto dealers have prevailed at remaining exempt from the reach of the proposed Consumer Financial Protection Bureau. This monumental victory came largely against the odds and counter to powerful adversaries such as big banks, community bankers, credit unions, military and veteran groups and cranky consumer advocates. Additionally, President Barack Obama strongly advocated to Members of Congress that auto dealers be *included* in the legislation.

The monetary value of this historic victory to consumers and to dealers is difficult to assess. Clearly, dealers having been included in the reach of CFPB would have cost financing choices to millions of consumers resulting in much more costly auto financing and would have netted a measurable drop in the number of consumers able to obtain financing arrangements. For dealers, compliance costs would have easily reached billions of dollars collectively across the country. Being frozen out of auto financing would have cost each dealership as much as 10 to 20 percent of revenues, and arguably, much more.

NADA, and in particular NADA's Legislative staff, deserve a huge "thank you" for their months-long effort to exclude dealers from compliance oversight by the new CFPB. The NADA Legislative Office is lead by David Regan and includes Ivette Rivera-Hays, Michael Harrington, Patrick Calpin, Joshua Heit, and Bailey Wood.

Several Colorado dealers and dealership groups went above and beyond historic efforts of the past, while engaging members of Congress and the U.S. Senate. These include, but were not limited to Jeff Carlson, Don Hicks, Mike Shaw, John Medved, Rod Buscher, Steve Strader, Mike Faricy, Mike Dellenbach, Jay Cimino, John Schenden, Don Gerbaz, and many others.

Together, we had a significant impact on the process, even while our two U.S. Senators opposed our efforts.

Significant Colorado Victories

In the State Capitol, the value of Colorado's dealer franchise protections has ramped up exponentially over the past two legislative sessions. Through passage of HB-1049, we created meaningful and valuable protections for dealers. Details, as reported by CADA Vice President Melissa Kuipers, are as follows:

Dealer penalties for vehicles which are exported by consumers

If a dealer sells a vehicle that is ultimately exported outside the dealerships area of responsibility, 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.

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 further reduced the submission period and the audit period to nine (9) months.

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Facility upgrades

Within 90 days of a manufacturer terminating a dealership 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.

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.

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.

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 and service agreement with the manufacturer, distributor, or manufacturer representative."

Compound Victories

Due to improvements and updates in our state's new car dealer franchise protections in 2009, along with those in 2010, Colorado has moved close to the front of the pack with regard to vitally important and timely dealership franchise investment safeguards. The warranty audit look-back limitations have been estimated by some as saving each dealership as much as \$100,000 to \$200,000 each time an audit is conducted. Although it is difficult to quantify the overall value of these improvements, without any doubt Colorado dealers collectively will save tens of millions of dollars, or more.

As a result of the passage of this franchise protection legislation, Colorado dealers are definitely Better by Association with CADA statewide and NADA nationally.

Sincerely,

Tim Jackson, CMP, CAE, President ~ Colorado Auto Dealers Association | tim.jackson@coloradodealers.org | 303.282.1448

P.S. CADA plans to host education sessions across Colorado in November that will cover dealer franchise protections recently enacted in Colorado law as well as existing protections.