

## Colorado Automobile Dealers Association 2009 Legislative Review

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### Dealers Experience Extraordinary Legislative Success in 2009 Session

Despite a down economy, manufacturer bankruptcy and dealer consolidation, the Colorado Auto Dealers made significant, if not historic, progress at the State Capitol this year. Among the several victories experienced by dealers, the largest was the passage of CADA's 7 point franchise bill, SB 91. This bill, sponsored by Sen. Chris Romer (D-Denver) and Rep. Joe Rice (D-Littleton), passed out of the House and Senate with significant bipartisan support and was signed into law by Governor Ritter on April 2<sup>nd</sup>, 2009. The bill has an implementation date of July 1, 2009 and accomplishes seven main objectives, as indicated below.

The success of SB 91 was not accomplished without significant political opposition. At one point in time, there were over 14 lobbyists working to kill this bill. These lobbyists were hired by the Alliance of Automobile Manufacturers, General Motors, Chrysler, Mazda, Honda, Harley Davidson, and the Motorcycle Industry Council, to name a few. Despite the efforts of these groups, the sponsors of the bill and several key legislators including Senate President Peter Groff (D-Denver) stood strong with CADA and understood the importance of this bill to our local dealers and Colorado's economy. The bill passed out of the Senate with 15 co-sponsors and out of the House with 13 co-sponsors. Most impressive was the fact that over 90% of the legislature voted in favor of SB 91, with only a handful of House members and one Senator voting against it. Governor Ritter commemorated the significance of the passage of SB 91 with a special bill signing ceremony in the Governor's office, attended by CADA dealers, staff, and the legislative sponsors of the bill.

The following is a summary of SB 91:

***Warranty and Sales Incentives Audits.*** Requires dealers to submit warranty and sales incentive claims within 15 months of making sale or providing service. Manufacturer will then have 15 months from the date these claims were submitted to audit the dealer on those claims.

***Dualing.*** Protects dealers from manufacturer mandates to build and maintain facilities exclusive to one line-make. Requires dealers to provide 90 day written notice to manufacturers of their intent to acquire additional automobile brands in an existing facility. This 90 day time frame is not an authorization period for the manufacturer to approve or disapprove the addition of a line-make. It is strictly a notice period whereby the dealer informs the manufacturer of its intent to dual.

***Incentives tied to facilities upgrades.*** Protects dealers from manufacturer mandates to upgrade existing dealer facilities. If manufacturer offers incentive programs to dealers to

upgrade facilities, these programs must be offered to all dealers equally in Colorado and participation in these programs on the part of the dealer is entirely voluntary.

***Pricing variances:*** Requires manufacturers to offer price incentives to all dealers equally in Colorado. The dealer in rural Colorado would be provided with the same pricing and/or sales incentives offered by the manufacturer that are offered to a dealer in urban Colorado.

***Termination & Market Withdrawal:*** If a manufacturer discontinues production of certain lines motor vehicles, they must provide the dealer with payment for 12 months of rent for their facility and the goodwill value of the dealership on the date the announcement is made to terminate the brand.

***Buy/Sell/Transfer/Change of Management/Relocation:*** Manufacturers must provide their approval or disapproval within 80 days, with an inclusionary timeline of 20 days to tell the dealer specifically what documentation it needs to render a decision. In no event shall this process take more than 100 days.

***“Grandfather-in” existing manufacturer, but prohibit future licenses:*** There is one truck manufacturer currently selling used trucks in Colorado, and this law “grandfathers” them in, but prohibits any manufacturer from selling used vehicles in the future. The sale of new vehicles by manufacturers is already prohibited.

It is important to note that these state franchise protections do not apply in the event that a manufacturer files for federal bankruptcy protection. Unfortunately many manufacturers would prefer to file bankruptcy in order to avoid having to comply with the above-referenced protections for dealers under state franchise laws.

CADA also succeeded this year in making Colorado’s laws more favorable to dealers relative to sales tax collection, consumer bankruptcy, and providing consumers with tax incentives for purchasing fuel efficient vehicles. The following is a brief summary of our other legislative successes this Session:

HB 1230 by Rep. Ken Summers (R-Lakewood) and Sen. Abel Tapia (D-Pueblo). This bill provides a hold harmless for dealers who collect taxes based on erroneous primary address information provided by purchaser. In order to receive protections of this bill, dealer must inform the purchaser that providing false address information is illegal and must obtain an affidavit from the purchaser that the address they have provided is true and correct. In the event of a future audit on that sale, dealers would simply produce the consumer affidavit and they will be held harmless for any fees, penalties or taxes due based on the consumer’s false information. Keep in mind that this bill does not extend to home rule jurisdictions (including Denver) but we will be working this summer to have home rule jurisdictions adopt a similar ordinance. Additionally, the bill directs the TRLC (Transportation Legislation Review Committee) to study the accuracy and availability of state approved sales tax databases, how often these databases are updated, the efficiency of the collection of sales tax on the sale of motor vehicles by home rule counties and municipalities, and the number of occurrences in which motor vehicle registrations and titles are returned to the dealer due to sales tax discrepancies. The first TRLC meeting for the summer is scheduled for Wednesday, June 24<sup>th</sup> at 8:00 a.m.

SB 150 by Sen. Rollie Heath (D-Boulder) and Rep. Claire Levy (D-Boulder). This bill prevents consumers from taking advantage of the bankruptcy laws to the detriment of dealers and lien holders. Prior to the passage of this bill, consumers would purchase a vehicle only to declare bankruptcy days later before the dealer was able to file and perfect the lien. CADA successfully lobbied the proponents of the bill and the bill sponsors to provide a 30 day perfection deadline (instead of the 20 days that was in the original bill), while still keeping all of the benefits for creditors under the UCC, which was the original intent of the bill. Since Governor Ritter signed the bill and it is now law, should the consumer bankruptcy scenario indicated above ever occur, dealers and lien holders now have a super priority interest in a bankruptcy proceeding as the perfection of the lien, presuming it is done within 30 days of the sale, relates back to the date of purchase.

HB 1331 by Rep. Sara Gagliardi (D-Arvada) and Sen. Betty Boyd (D-Lakewood). The bill provides tax incentives for efficient motor vehicles. Vehicles covered by this bill include light-duty passenger, truck and medium duty truck diesel-electric hybrids, hybrid conversions, CNG, and vehicles that have had the installation of idling reduction technology. The bill originally attempted to tie these incentives to the CAL-LEV standard, but CADA successful stripped that language out of the bill. This bill passed out of the legislature on the last day of Session and is expected to be signed by Governor Ritter shortly.

### **Pinnacol Assurance**

There were several bills introduced throughout the session that were bad for business and ultimately died or were severely watered down. The most controversial of these bills were SB 273, sponsored by Sen. Al White (R-Hayden) and Rep. Don Marostica (R-Loveland), and SB 281, sponsored by incoming Senate President Brandon Shaffer (D-Longmont) and House Majority Leader Paul Weissmann (D-Louisville), relating to Pinnacol Assurance. Both of these bills intended to raid Pinnacol's reserve funds and restructure the company so it fell clearly under state control.

SB 273 would have taken \$500 million from Pinnacol's reserves to help plug a \$1.4 billion shortfall in the state budget and would have allowed legislators to avoid making the hard cuts to higher education, estimated at \$300 million. SB 281 would have effectively made Pinnacol a state agency again, giving the State tighter control of the insurer's finances.

Pinnacol is a privately run mutual insurance company with over 58,000 policy holders and has operated semi-autonomously since the 1990's. A large majority of Colorado Auto Dealers use Pinnacol for their workers' compensation coverage. According to the sponsors of these bills, Pinnacol is a political subdivision of the state and therefore its reserve funds were subject to state control.

SB 273 and SB 281 both passed out of the Senate, despite a massive rally held by Pinnacol on the West steps of the Capitol urging lawmakers to oppose these bills just minutes before the Senate floor vote. However, the political landscape in the House was quite different. Just seconds before SB 273 was set to be heard in the House Appropriations committee, Governor Ritter called key Democrats into his office where he specifically said that the \$500

million raid on Pinnacol – or any amount raided from Pinnacol’s reserves – was off the table. Though it never officially saw a vote, SB 273 effectively died on the calendar as it was never brought up again after that meeting.

SB 281, however, was the bill that simply would not die. CADA, along with the Pinnacol lobbyists, killed this bill on the floor of the House with strategically effective lobbying efforts and the support of a few key business-minded Democrats. But, through a procedural move and the flexing of his political muscle, the bill sponsor, House Majority Leader Paul Weissmann (D-Louisville), was able to revive it by twisting the arms these same key Democrats that were opposed to the measure.

Shortly thereafter, Rep. Weissmann offered a strike-below amendment that gutted the entire bill and turned it into an interim study and ongoing audit of Pinnacol. This new version of the bill did not change Pinnacol from a private company to a public company, as was the original intent of the sponsors. The failure of this key change is a significant victory for Pinnacol and its policyholders as Pinnacol still remains in its current legal status and has not become subject to state control. The new version of the bill passed out of the House and the Senate ultimately concurred with this revised bill. As of the drafting of this memo, Governor Ritter has yet to sign the bill, but he is expected to do so. Pinnacol, along with several business groups, have asked Governor Ritter to veto SB 281. However, given the fact that the bill is now simply a study and an audit of Pinnacol, the Governor will likely sign it into law.

### **Vendor Fee**

Colorado is unique in its sales tax collection process. Unlike other states, Colorado expects (requires) its retailers to collect state sales taxes on its behalf. In return, Colorado has historically provided these retailers, including all automobile dealers, with a vendor fee – 3.3% of the transaction – as payment for the costs associated with the sales tax collection. Given Colorado’s budget shortfall for the current fiscal year and the fiscal year for next year, lawmakers thought it wise to eliminate this vendor fee in an effort to shore up the state’s budget.

Halfway through the Legislative Session, SB 212 was introduced with the intention of eliminating the vendor fee. This measure was sponsored by Sen. Al White (R-Hayden) and Rep. Jack Pommer (D-Boulder), both of whom are members of the Joint Budget Committee (JBC). After this bill was met with staunch opposition by the businesses community, including CADA, the Colorado Association of Commerce and Industry (CACI), Colorado Retail Council, Qwest, and the Colorado Competitive Council (C3), among others, the bill was significantly amended to allow small businesses to keep the full 3.3% fee, but reduced the amount of the fee provided to larger retailers, including automobile dealers, to 1.35%. This change went into effect for all filings made on or after March 1, 2009.

Despite this compromise, the JBC later determined it could not honor the agreement it had made with the business community. As such, they urged the introduction of second bill very late in the session, SB 275, which would eliminate the vendor fee to retailers entirely. SB 275 was sponsored by Sen. Abel Tapia (D-Pueblo) and Rep. Mark Ferrandino (D-Denver).

Under intense pressure from the JBC, a segment of the business community that did not include CADA, agreed not to fight this bill if it could be amended to move the sunset date of the fee elimination up from December 31, 2011 to July 1, 2011. Under these terms, a new deal was struck.

However, as is often the case at the Capitol, not everyone was happy with this deal – namely Democratic Representative Jerry Frangas (D-Denver), who has been a champion for business this year. Without any prodding by the business community, Rep. Frangas ran an amendment on the floor of the House to SB 275 that would bump up the sunset by another year to July 1, 2010, thereby eliminating the vendor fee from retailers for just one year instead of two. With the support of Rep. Frangas and some strategic lobbying efforts by CADA, we were able to get this amendment adopted on the floor and made part of the bill. Since this was a Senate bill, it then had to go back to the Senate for them to vote to concur on the House amendment.

We were able to secure enough votes in the Senate to concur with the good amendment offered by Rep. Frangas. However, the bill was heard on a day it was not on the published calendar, at approximately 11:30 p.m., when literally no other lobbyist was at the Capitol except for CADA. Despite us having the votes, one Senator was genuinely confused about whether he was to vote yes or no (based on the way the vote was characterized), accidentally voted the wrong way, and the good amendment failed to capture enough votes for concurrence by the Senate.

Though an outcome such as this is very frustrating, it is encouraging to know that we did have the support of all Senate Republicans, except for Sen. Al White (R-Hayden), and a few key Senate Democrats that have been sympathetic to business issues throughout the entire Session.

With the failure of the Frangas amendment, the bill passed out of the Senate and was signed by Governor Ritter on May 19, 2009. The current state of the law on this issue allows vendors to collect the 1.35% vendor fee through June 30, 2009. Thereafter and continuing through June 30, 2011, vendors shall not collect any vendor fee. There is language in the bill that says if the September 2010 revenue forecast meets certain criteria, then the full vendor fee will be reinstated by January 1, 2011 (instead of June 30, 2011).

CADA, along with several other business groups, will likely seek a bill during the 2010 Session that reinstates the vendor fee by July 1, 2010. However, it is too early to measure the political and economic viability of such an effort at this point in time.

**Other bills of interest:**

SB 296, sponsored by Sen. Betty Boyd (D-Lakewood) and Rep. Su Ryden (D-Aurora), would have changed the traffic infraction of failure to use a seatbelt from a secondary offense to a primary offense. Under current law, drivers may only be pulled over by law enforcement for reasons other than their failure to wear a seatbelt. While the bill passed out of the Senate, despite all Republicans and Sen. Morgan Carroll (D-Aurora) voting against it, the bill was killed in the House Appropriations committee by a single vote, cast by Rep. Don Marostica

(R-Loveland). Had this measure passed, Colorado would have been given \$12M-\$14.4M in federal grants for the Colorado Department of Transportation.

SB 3, sponsored by Sen. Bob Bacon (D-Ft. Collins) and Rep. Randy Fischer (D-Ft. Collins), requires many vehicles in Weld and Larimer counties to get emissions tests with the intent of reducing Front Range ozone pollution. Under the bill, drivers in these counties are required to get their tailpipe tested every other year, and fix their vehicles if they violate the standards. The fee for the test is \$25. Despite opposition by Weld county, the bill passed out of the legislature and is awaiting signature by Governor Ritter.

HB 1094, sponsored by Rep. Claire Levy (D-Boulder) and Sen. Bob Bacon (D-Ft. Collins), was originally intended to totally prohibit the use of cellular phones while driving. However, when that measure was met with strong political opposition, the bill was significantly watered down to become a ban on all cell-phone use by motorists under the age of 18 and a ban on text messaging by drivers of all ages. The new law will impose a \$50 fine for a first offense and a \$100 fine for a second offense. Once signed by Governor Ritter, the new law will take effect on December 1, 2009.

SB 108, sponsored by Sen. Dan Gibbs (D-Summit) and Rep. Joe Rice (D-Littleton), was the substantial transportation bill passed this year. The bill was part of the Governor's transportation agenda, and was often referred to as FASTER (Funding Advancements for Surface Transportation & Economic Recovery). The main intent of the bill is to fix the 125 structurally deficient bridges in Colorado. FASTER has two primary funding components. The first is a \$2 daily rental car fee and the second is an increase in vehicle registration fees. FASTER is expected to generate \$252M annually for transportation improvements. The new registration fees begin July 1, 2009 and will, on average, be an increase of \$41 per new vehicle registration when the program is fully implemented over the next three years.

HB 1344, sponsored by Rep. Christine Scanlan (D-Summit) and Sen. Betty Boyd (D-Lakewood), was supported by the Colorado Trial Lawyers Association and attempted to raise the caps on non-economic damage awards in medical malpractice cases. The bill would have also required the Colorado Division of Insurance to approve any rate increase over 5% for physician liability insurance. The bill was gutted at the last minute by Rep. Scanlan in the House Judiciary committee, where she voluntarily struck the cap increase, the main crux of the bill, for fear that she did not have the votes to get the bill out of committee. The bill successfully passed out of committee by a vote of 7-5, but was killed on the House floor the next day by a vote of 39-26, despite a plea by House Speaker Terrance Carroll (D-Denver) for members to support it.

HB 1273, sponsored by Rep. John Kefalas (D-Fort Collins) and Sen. Joyce Foster (D-Denver) would have created a single payer health care system in Colorado. The bill died on the House floor at the request of its sponsor, Rep. Kefalas, because he did not have the votes to pass it. It is anticipated, though, that this bill will reappear next year. There was a second bill, HB 1358, filed very late in the Session by Rep. Joe Rice (D-Littleton) that was a hybrid of HB 1273. However, at its first hearing before the Business Affairs & Labor Committee, Rep. Rice procedurally killed the bill by asking the committee to postpone it indefinitely. There will be ongoing conversations with legislative leaders over the summer

about these bills with Health Care for All Colorado, the group pushing for single payer healthcare.

SB 148, sponsored by Rep. Mike Merrifield (D-Colorado Springs) and Sen. Greg Brophy (R-Wray), requires drivers to provide at least three feet of clearance when passing a bicyclist and sets penalties for motorists who endanger cyclists. On a two-lane highway with a double yellow line, the bill authorizes motorists to safely cross the double yellow line in order to meet the three foot clearance requirement for cyclists.

HB 1192, sponsored by Rep. Buffie McFadyen (D-Pueblo) and Sen. Jennifer Veiga (D-Denver), would have allowed grocery and convenience stores to sell full strength beer. This has been an ongoing battle waged by the grocery and convenience stores, as they claim to be losing substantial revenue to liquor stores, who not only sell full strength beer, but after legislation passed in 2008, can now operate on Sundays. After 8 hours of testimony, the bill was killed in the House Business Affairs and Labor committee by a 7-4 vote. It is expected that this bill will be filed again during the 2010 session.

The 2010 General Assembly is scheduled to convene on Wednesday, January 6, 2010. CADA's Legislative Policy Committee will be meeting over the summer to discuss ideas and suggestions for next year's legislative agenda.

If you have any questions on these bills, or would like information on other legislation not referenced here, please contact Melissa L. Kuipers, Esq., CADA Vice President of Government Relations & Communications, at 303-457-5115 or [melissa.kuipers@coloradodealers.org](mailto:melissa.kuipers@coloradodealers.org)