

CHAPTER 29

**PROFESSIONS AND OCCUPATIONS**

SENATE BILL 02-005

BY SENATOR(S) Evans and Fitz-Gerald;  
also REPRESENTATIVE(S) Larson.

**AN ACT**

**CONCERNING THE REGULATION OF MOTOR VEHICLE DEALERS, AND, IN CONNECTION THEREWITH, ENHANCING THE PENALTIES FOR UNAUTHORIZED PERFORMANCE OF ACTS FOR WHICH A LICENSE IS REQUIRED AND INCREASING THE AUTHORITY OF INVESTIGATORS WORKING FOR THE MOTOR VEHICLE DEALER BOARD.**

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

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

**12-6-119.5. Sales activity following license denial, suspension, or revocation - unlawful act - penalty.** (1) (a) IT SHALL BE UNLAWFUL AND A VIOLATION OF THIS PART 1 FOR ANY PERSON WHOSE MOTOR VEHICLE DEALER'S, USED MOTOR VEHICLE DEALER'S, MOTOR VEHICLE WHOLESALER'S, OR MOTOR VEHICLE SALESPERSON'S LICENSE HAS BEEN DENIED, SUSPENDED, OR REVOKED TO EXERCISE ANY OF THE PRIVILEGES OF THE LICENSE THAT WAS DENIED, SUSPENDED, OR REVOKED.

(b) A VIOLATION OF PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL BE PUNISHABLE IN ACCORDANCE WITH SECTION 12-6-121; EXCEPT THAT A SECOND OR SUBSEQUENT VIOLATION OF SAID PARAGRAPH (a) SHALL BE A CLASS 6 FELONY.

(c) IN ANY TRIAL FOR A VIOLATION OF PARAGRAPH (a) OF THIS SUBSECTION (1):

(I) A DULY AUTHENTICATED COPY OF THE BOARD'S ORDER OF DENIAL, SUSPENSION, OR REVOCATION SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF SUCH DENIAL, SUSPENSION, OR REVOCATION;

(II) A DULY AUTHENTICATED INVOICE, BUYER'S ORDER, OR OTHER CUSTOMARY, WRITTEN SALES OR PURCHASE DOCUMENT OR INSTRUMENT PROVEN TO BE SIGNED BY

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

THE DEFENDANT AND INDICATING THE DEFENDANT'S ROLE IN THE PURCHASE OR SALE OF A MOTOR VEHICLE AT ANY MOTOR VEHICLE AUCTION, WHOLESALE MOTOR VEHICLE SALES LOCATION, OR RETAIL MOTOR VEHICLE SALES LOCATION, AS APPLICABLE, SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF THE DEFENDANT'S EXERCISE OF A PRIVILEGE OF LICENSURE;

(III) IT SHALL BE AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT BOUGHT OR SOLD A MOTOR VEHICLE THAT WAS, AT ALL RELEVANT TIMES, INTENDED FOR THE DEFENDANT'S OWN USE AND NOT BOUGHT OR SOLD FOR THE PURPOSE OF PROFIT OR GAIN; AND

(IV) THE FACT THAT THE DEFENDANT HAS A MOTOR VEHICLE DEALER'S, USED MOTOR VEHICLE DEALER'S, MOTOR VEHICLE WHOLESALER'S, OR MOTOR VEHICLE SALESPERSON'S LICENSE, OR ANY OTHER LICENSE TO BUY AND SELL MOTOR VEHICLES, THAT IS ISSUED BY A STATE OR JURISDICTION OTHER THAN COLORADO SHALL NOT CONSTITUTE A DEFENSE.

(2) UPON THE DEFENDANT'S CONVICTION BY ENTRY OF A PLEA OF GUILTY OR NOLO CONTENDERE OR JUDGMENT OR VERDICT OF GUILT IN CONNECTION WITH A VIOLATION OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION OR OF SECTION 12-6-120 (2) OR 42-6-142 (1), C.R.S., THE COURT SHALL IMMEDIATELY GIVE THE EXECUTIVE DIRECTOR WRITTEN NOTICE OF SUCH CONVICTION. IN ADDITION, THE COURT SHALL FORWARD TO THE EXECUTIVE DIRECTOR COPIES OF DOCUMENTATION OF ANY CONVICTION ON A LESSER INCLUDED OFFENSE AND ANY AMENDED CHARGE, PLEA BARGAIN, DEFERRED PROSECUTION, DEFERRED SENTENCE, OR DEFERRED JUDGMENT IN CONNECTION WITH THE ORIGINAL CHARGE.

(3) UPON RECEIVING NOTICE OF A CONVICTION OR OTHER DISPOSITION PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE SHALL FORWARD SUCH NOTICE TO THE MOTOR VEHICLE DEALER BOARD, WHICH SHALL IMMEDIATELY EXAMINE ITS FILES TO DETERMINE WHETHER IN FACT THE DEFENDANT'S LICENSE WAS DENIED, SUSPENDED, OR REVOKED AT THE TIME OF THE OFFENSE TO WHICH THE CONVICTION OR OTHER DISPOSITION RELATES. IF IN FACT THE DEFENDANT'S LICENSE WAS DENIED, SUSPENDED, OR REVOKED AT THE TIME OF SUCH OFFENSE, THE BOARD:

(a) SHALL NOT ISSUE OR REINSTATE ANY LICENSE TO THE DEFENDANT UNTIL ONE YEAR AFTER THE TIME THE DEFENDANT WOULD OTHERWISE HAVE BEEN ELIGIBLE TO RECEIVE A NEW OR REINSTATED LICENSE; AND

(b) SHALL REVOKE OR SUSPEND ANY OTHER LICENSES HELD BY THE DEFENDANT UNTIL AT LEAST ONE YEAR AFTER THE DATE OF THE CONVICTION OR OTHER DISPOSITION.

**SECTION 2.** 12-6-105 (1) (d) (II), Colorado Revised Statutes, is amended to read:

**12-6-105. Powers and duties of executive director.** (1) (d) (II) The investigators and their supervisors utilized by the executive director, pursuant to subparagraph (I) of this paragraph (d), while actually engaged in performing their duties, shall have the authority as delegated by the executive director to issue

subpoenas in relation to performance of their duties relating to licensees who are under the jurisdiction of the executive director and the authority as delegated by the executive director to issue summonses for violations of sections 12-6-120 (2) and 42-6-142, C.R.S., TO ISSUE MISDEMEANOR SUMMONSES FOR VIOLATIONS OF SECTION 12-6-119.5 (1) (a), and to procure criminal records during an investigation.

**SECTION 3.** 12-6-118 (3) (o) and (5) (q), Colorado Revised Statutes, are amended to read:

**12-6-118. Licenses - grounds for denial, suspension, or revocation.** (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds:

(o) To willfully violate any state or federal law respecting commerce or motor vehicles, or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles, UNDER CIRCUMSTANCES IN WHICH THE ACT CONSTITUTING THE VIOLATION DIRECTLY AND NECESSARILY INVOLVES COMMERCE OR MOTOR VEHICLES;

(5) The license of a motor vehicle salesperson may be denied, revoked, or suspended on the following grounds:

(q) Willfully violating any state or federal law respecting commerce or motor vehicles, or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles, UNDER CIRCUMSTANCES IN WHICH THE ACT CONSTITUTING THE VIOLATION DIRECTLY AND NECESSARILY INVOLVES COMMERCE OR MOTOR VEHICLES;

**SECTION 4.** 18-1-901 (3) (I) (III), Colorado Revised Statutes, is amended to read:

**18-1-901. Definitions.** (3) (I) (III) "Peace officer, level II," means an inspector of the state licensing authority under the "Colorado Beer Code" or the liquor enforcement division under section 12-47-904, C.R.S., or part 5 of article 35 of title 24, C.R.S.; an authorized investigator of the state lottery division pursuant to section 24-35-205 (3) or 24-35-206 (7), C.R.S.; AN INVESTIGATOR FOR THE DEPARTMENT OF REVENUE OR A PERSON APPOINTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE PURSUANT TO SECTION 12-6-104 OR 12-6-105, C.R.S., FOR THE LIMITED PURPOSE OF ISSUING CRIMINAL SUMMONSES FOR VIOLATIONS OF SECTIONS 12-6-119.5 (1) (a), 12-6-120 (2), AND 42-6-142, C.R.S., AND FOR NO OTHER PURPOSE; any authorized investigator and the director of the division of gaming and the executive director of the department of revenue pursuant to section 12-47.1-204, C.R.S.; any fire arson investigator appointed by the chief of any fire department and approved by the sheriff or the chief of police of the jurisdiction in which such fire arson investigator performs duties; any officer, guard, or supervisory employee within the department of corrections, except the inspector general and any investigators appointed pursuant to section 17-1-103.8, C.R.S., employed by the department of corrections; a security guard employed by the state of Colorado; a security officer as defined in section 24-7-101, C.R.S.; a district wildlife manager, special district wildlife manager, or parks and recreation officer defined as a peace officer pursuant

to section 33-1-102, C.R.S., and acting under the authority of a peace officer pursuant to sections 33-6-101 and 33-15-101, C.R.S.; an investigator for the division of racing events and the investigator's supervisors, including the director of the division of racing events pursuant to section 12-60-203, C.R.S., or a railroad employee defined as a peace officer pursuant to section 40-32-104.5, C.R.S., who shall have access to Colorado bureau of investigation fugitive and stolen property records. "Peace officer, level II," has the authority to enforce all the laws of the state of Colorado while acting within the scope of his OR HER authority and in the performance of his OR HER duties, and section 18-1-106 (1.5) and section 18-3-107 shall apply to "peace officer, level II".

**SECTION 5. Effective date - applicability.** (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to acts committed on or after the applicable effective date of this act.

Approved: March 22, 2002