

CHAPTER 309

REVENUE - ACTIVITIES REGULATION

SENATE BILL 19-249

BY SENATOR(S) Gonzales and Scott, Cooke, Fenberg, Gardner, Hisey, Holbert, Marble, Tate, Todd, Woodward;
also REPRESENTATIVE(S) Benavidez and Bockenfeld, Duran, Gray, Becker.

AN ACT

**CONCERNING THE LICENSING OF A BUSINESS SELLING USED MOTOR VEHICLES THAT THE BUSINESS
USED FOR ITS PURPOSES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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

SECTION 1. In Colorado Revised Statutes, 44-20-104, **amend** (3)(a), (3)(f)(I), (3)(h) introductory portion, and (3)(l)(I) introductory portion as follows:

44-20-104. Board - oath - meetings - powers and duties - rules. (3) The board is authorized and empowered:

(a) To promulgate, amend, and repeal rules reasonably necessary to implement this part 1, including the administration, enforcement, issuance, and denial of licenses to motor vehicle dealers, motor vehicle salespersons, used motor vehicle dealers, wholesale motor vehicle auction dealers, BUSINESS DISPOSERS, and wholesalers, and the laws of the state of Colorado;

(f) (I) To investigate through the director, on its own motion or upon the written and signed complaint of any person, any suspected or alleged violation by a motor vehicle dealer, motor vehicle salesperson, used motor vehicle dealer, wholesale motor vehicle auction dealer, BUSINESS DISPOSER, or wholesaler of any of the terms and provisions of this part 1 or of any rule promulgated by the board under the authority conferred upon it in this section. The board shall order an investigation of all written and signed complaints, may issue subpoenas, and may delegate the authority to issue subpoenas to the director, and the director shall make an investigation of all complaints transmitted by the board pursuant to section 44-20-105 (3). The board may seek to resolve disputes before beginning an investigation or hearing through its own action or by direction to the director.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(h) To prescribe the forms to be used for applications for motor vehicle dealers', motor vehicle salespersons', used motor vehicle dealers', wholesale motor vehicle auction dealers', BUSINESS DISPOSAL, and wholesalers' licenses to be issued and to require of the applicants, as a condition precedent to the issuance of the licenses, such information concerning their fitness to be licensed under this part 1 as it may consider necessary. Every application for a motor vehicle dealer's license or used motor vehicle dealer's license ~~shall~~ MUST contain, in addition to such information as the board may require, a statement of the following facts:

(l) (I) To prescribe a form or forms to be used as a part of a contract for the sale of a motor vehicle by any motor vehicle dealer, BUSINESS DISPOSER, or motor vehicle salesperson, other than a retail installment sales contract subject to the provisions of the "Uniform Consumer Credit Code", articles 1 to 9 of title 5, which shall include the following information in addition to any other disclosures or information required by state or federal law:

SECTION 2. In Colorado Revised Statutes, 44-20-108, **add** (1)(i) as follows:

44-20-108. Classes of licenses. (1) The following classes of licenses are issued under this part 1:

(i) IF THE SALES VALUE OF ALL THE MOTOR VEHICLES SOLD DOES NOT EXCEED TWENTY PERCENT OF THE BUSINESS'S GROSS REVENUE, THE BUSINESS DISPOSAL LICENSE PERMITS A BUSINESS TO SELL USED MOTOR VEHICLES THAT:

(I) HAVE BEEN OWNED FOR MORE THAN ONE YEAR;

(II) HAVE BEEN USED EXCLUSIVELY FOR BUSINESS PURPOSES;

(III) ARE TITLED IN THE NAME OF THE BUSINESS;

(IV) FOR WHICH ALL RELATED TAXES HAVE BEEN PAID; AND

(V) ARE NOT DESIGNED OR USED PRIMARILY TO CARRY PASSENGERS, NOT INCLUDING:

(A) A VEHICLE DESIGNED PRIMARILY FOR TRANSPORTING MORE THAN TEN INDIVIDUALS; OR

(B) A TRUCK HAVING AN ENCLOSED CAB AND AN OPEN CARGO AREA.

SECTION 3. In Colorado Revised Statutes, 44-20-111, **amend** (1) introductory portion, (1)(h), (3), and (4)(c); and **add** (1)(i) as follows:

44-20-111. Fees - disposition - expenses - expiration of licenses. (1) ~~There shall be collected with~~ Each application MUST BE ACCOMPANIED BY the fee established pursuant to IN subsection (5) of this section for each of the following licenses:

(h) Wholesale motor vehicle auction dealer's license; OR

(i) BUSINESS DISPOSAL LICENSE.

(3) If an application for a buyer agent's, motor vehicle dealer's, used motor vehicle dealer's, wholesaler's, BUSINESS DISPOSER'S, or motor vehicle salesperson's license is withdrawn by the applicant prior to issuance of the license, the director shall refund one-half of the license fee.

(4)(c) Upon the expiration of the license, unless suspended or revoked, the same may be renewed upon the payment of the fees specified in this section ~~which shall~~ THAT accompany applications, and the renewal ~~shall~~ MAY be made from year to year as a matter of right; except that, if a motor vehicle dealer, used motor vehicle dealer, BUSINESS DISPOSER, or wholesaler voluntarily surrenders its license or abandons its place of business for a period of more than thirty days, the licensee is required to file a new application to renew its license.

SECTION 4. In Colorado Revised Statutes, 44-20-112, **amend** (1) and (2)(a) as follows:

44-20-112. Bond of licensee. (1) Before any motor vehicle dealer's, wholesaler's, wholesale motor vehicle auction dealer's, BUSINESS DISPOSAL, or used motor vehicle dealer's license ~~shall be~~ IS issued by the board through the executive director to ~~any~~ AN applicant, ~~therefor,~~ the applicant ~~shall~~ MUST procure and file with the board evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101 or a good and sufficient bond with corporate surety thereon duly licensed to do business within the state, approved as to form by the attorney general of the state, and conditioned that the applicant ~~shall~~ MUST not practice fraud, make any fraudulent representation, or violate any of the provisions of this part 1 that are designated by the board by rule in the conduct of the business for which the applicant is licensed. A motor vehicle dealer, BUSINESS DISPOSER, or used motor vehicle dealer ~~shall not be required to~~ NEED NOT furnish an additional bond, savings account, deposit, or certificate of deposit under this section if the dealer furnishes a bond, savings account, deposit, or certificate of deposit under section 44-20-412.

(2)(a) The purpose of the bond procured by the applicant pursuant to subsection (1) of this section and section 44-20-114 (1) is to provide for the reimbursement for any loss or damage suffered by any retail consumer caused by violation of this part 1 by a motor vehicle dealer, used motor vehicle dealer, wholesale motor vehicle auction dealer, BUSINESS DISPOSER, or wholesaler. For a wholesale transaction, the bond is available to each party to the transaction; except that, if a retail consumer is involved, the consumer shall have priority to recover from the bond. The amount of the bond shall be fifty thousand dollars for a motor vehicle dealer applicant, used motor vehicle dealer applicant, wholesale motor vehicle auction dealer applicant, BUSINESS DISPOSAL APPLICANT, or wholesaler applicant except the amount of the bond shall be five thousand dollars for those dealers who sell only small utility trailers that weigh less than two thousand pounds. The aggregate liability of the surety for all transactions shall not exceed the amount of the bond, regardless of the number of claims or claimants.

SECTION 5. In Colorado Revised Statutes, 44-20-118, **amend** (1) and (6) as follows:

44-20-118. Application - preclicensing education - fingerprint-based background check - rules. (1) Application for a motor vehicle dealer's, motor vehicle salesperson's, used motor vehicle dealer's, wholesale motor vehicle auction dealer's, ~~or wholesaler's~~, OR BUSINESS DISPOSAL license ~~shall~~ MUST be made to the board.

(6) All persons applying for a motor vehicle dealer's license, a used motor vehicle dealer's license, a wholesaler's license, a motor vehicle auctioneer's license, ~~or a motor vehicle salesperson's license~~, ~~shall~~ OR A BUSINESS DISPOSAL LICENSE MUST file with the board a good and sufficient instrument in writing in which the applicant ~~shall appoint~~ APPOINTS the secretary of the board as the true and lawful agent of the applicant upon whom all process may be served in any action ~~which may thereafter be commenced against the applicant arising out of any claim for damages suffered by any firm, a person association, or corporation by reason of the~~ A violation of ~~BY~~ the applicant of any of the terms and provisions of this part 1 or any condition of the applicant's bond.

SECTION 6. In Colorado Revised Statutes, 44-20-121, **add** (6.5) as follows:

44-20-121. Licenses - grounds for denial, suspension, or revocation. (6.5) A BUSINESS DISPOSAL LICENSE MAY BE DENIED, SUSPENDED, OR REVOKED ON THE FOLLOWING GROUNDS:

- (a) MAKING A MATERIAL MISSTATEMENT IN AN APPLICATION FOR A LICENSE;
- (b) VIOLATING THIS PART 1 OR A RULE PROMULGATED BY THE BOARD UNDER THIS PART 1;
- (c) HAVING BEEN CONVICTED OF OR PLED NOLO CONTENDERE TO A FELONY, A CRIME UNDER ARTICLE 3, 4, OR 5 OF TITLE 18, OR ANY LIKE CRIME UNDER FEDERAL LAW OR THE LAW OF ANOTHER STATE. A CERTIFIED COPY OF THE JUDGMENT OF CONVICTION BY A COURT OF COMPETENT JURISDICTION IS CONCLUSIVE EVIDENCE OF THE CONVICTION IN A HEARING HELD UNDER THIS ARTICLE 20.
- (d) DEFRAUDING A BUYER, SELLER, MOTOR VEHICLE SALESPERSON, OR FINANCIAL INSTITUTION TO THE PERSON'S DAMAGE;
- (e) INTENTIONAL OR NEGLIGENT FAILURE TO PERFORM ANY WRITTEN AGREEMENT WITH A BUYER OR SELLER;
- (f) MAKING A FRAUDULENT OR ILLEGAL SALE, TRANSACTION, OR REPOSSESSION;
- (g) WILLFUL MISREPRESENTATION OR CIRCUMVENTION OF, CONCEALMENT OF, OR FAILURE TO DISCLOSE ANY OF THE MATERIAL PARTICULARS REQUIRED TO OR THE NATURE OF ANY OF THE MATERIAL PARTICULARS REQUIRED TO BE STATED OR FURNISHED TO THE BUYER;
- (h) INTENTIONALLY PUBLISHING OR CIRCULATING AN ADVERTISEMENT THAT IS MISLEADING OR INACCURATE IN ANY MATERIAL PARTICULAR OR THAT MISREPRESENTS A PRODUCT SOLD BY OR FURNISHED BY A LICENSED DEALER;

(i) KNOWINGLY SELLING, ACQUIRING, OR DISPOSING OF A STOLEN MOTOR VEHICLE;

(j) WILLFULLY VIOLATING A STATE OR FEDERAL LAW GOVERNING COMMERCE OR MOTOR VEHICLES OR A RULE GOVERNING COMMERCE OR MOTOR VEHICLES PROMULGATED BY ANY LICENSING OR REGULATING AUTHORITY GOVERNING MOTOR VEHICLES IF THE ACT CONSTITUTING THE VIOLATION DIRECTLY AND NECESSARILY INVOLVES COMMERCE OR MOTOR VEHICLES;

(k) REPRESENTING OR SELLING AS NEW A MOTOR VEHICLE THAT THE DEALER OR SALESPERSON KNOWS:

(I) HAS BEEN USED FOR AND OPERATED FOR DEMONSTRATION PURPOSES; OR

(II) IS A USED MOTOR VEHICLE;

(l) VIOLATING A STATE OR FEDERAL STATUTE, RULE, OR REGULATION DEALING WITH ODOMETERS;

(m) SELLING TO A RETAIL CUSTOMER A MOTOR VEHICLE THAT IS NOT EQUIPPED AS REQUIRED BY OR IN PROPER CONDITION AND ADJUSTMENT AS REQUIRED BY PART 2 OF ARTICLE 4 OF TITLE 42 UNLESS THE VEHICLE IS SOLD AS A TOW-AWAY AND NOT TO BE DRIVEN;

(n) COMMITTING A FRAUDULENT INSURANCE ACT UNDER SECTION 10-1-128;

(o) FAILING TO NOTIFY A PROSPECTIVE BUYER OF THE ACCEPTANCE OR REJECTION OF A MOTOR VEHICLE PURCHASE ORDER AGREEMENT WITHIN A REASONABLE PERIOD, AS DETERMINED BY THE BOARD, WHEN THE LICENSEE IS WORKING WITH THE PROSPECTIVE BUYER ON A FINANCE SALE OR A CONSIGNMENT SALE;

(p) FAILING TO MAINTAIN IN COLORADO, WHEN THE BUSINESS DISPOSER IS LICENSED, A PLACE OF BUSINESS THAT:

(I) IS MAINTAINED BY THE BUSINESS DISPOSER AND IS LOCATED AT A FIXED ADDRESS, OTHER THAN SOLELY A POST OFFICE BOX OR AN ELECTRONIC ADDRESS; AND

(II) EMPLOYS ONE OR MORE INDIVIDUALS ON A FULL-TIME BASIS.

SECTION 7. In Colorado Revised Statutes, 44-20-122, **amend** (2)(a)(I) as follows:

44-20-122. Procedure for denial, suspension, or revocation of license - judicial review. (2) (a) (I) The board shall appoint an administrative law judge pursuant to part 10 of article 30 of title 24 to conduct any hearing concerning the licensing or discipline of a motor vehicle dealer, used motor vehicle dealer, wholesaler, buyer's agent, BUSINESS DISPOSER, or wholesale motor vehicle auction dealer; except that the board may, upon a unanimous vote of the members present when the vote is taken, conduct the hearing in lieu of appointing an administrative law judge.

SECTION 8. In Colorado Revised Statutes, 44-20-123, **amend** (1)(a) as follows:

44-20-123. Sales activity following license denial, suspension, or revocation - unlawful act - penalty. (1) (a) It ~~shall be~~ IS 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, BUSINESS DISPOSER'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.

SECTION 9. In Colorado Revised Statutes, 44-20-124, **amend** (2) introductory portion as follows:

44-20-124. Unlawful acts. (2) It is unlawful for any person to act as a motor vehicle dealer, manufacturer, distributor, wholesaler, manufacturer representative, used motor vehicle dealer, buyer agent, wholesale motor vehicle auction dealer, BUSINESS DISPOSER, or motor vehicle salesperson unless the person has been duly licensed under this part 1, except for:

SECTION 10. In Colorado Revised Statutes, 44-20-128, **amend** (2)(b) as follows:

44-20-128. Penalty. (2) (b) Any person who willfully violates section 44-20-124 (2) by acting as a motor vehicle dealer, wholesaler, used motor vehicle dealer, buyer agent, wholesale motor vehicle auction dealer, BUSINESS DISPOSER, or motor vehicle salesperson without proper authorization commits a class 3 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars and a penalty of twenty-five hours of useful public service, neither of which the court may suspend, for each separate offense; except that, if the violator is a corporation, the corporation shall be punished by a fine of not less than five thousand dollars nor more than twenty-five thousand dollars for each separate offense. A second conviction for an individual shall be punished by a fine of not less than five thousand dollars nor more than twenty-five thousand dollars for each separate offense, which the court may not suspend.

SECTION 11. In Colorado Revised Statutes, 44-20-131, **amend** (1) as follows:

44-20-131. Right of action for loss. (1) (a) If ~~any~~ A person suffers loss or damage by reason of ~~any~~ fraud practiced on the person or fraudulent representation made to the person by a licensed dealer or one of the dealer's salespersons acting ~~for the dealer~~ on the dealer's behalf or within the scope of the employment of the salesperson or suffers any loss or damage by reason of the violation by the dealer or salesperson of ~~any of the provisions of this part 1 that are designated by the board by rule, whether or not the violation is the basis for denial, suspension, or revocation of a license, the person shall have~~ SUFFERING LOSS OR DAMAGES HAS a right of action against the dealer, the dealer's motor vehicle salespersons, and the sureties upon their respective bonds. The right of a person to recover for loss or damage as provided in this subsection (1) against the dealer or salesperson ~~shall~~ IS not be limited to the amount of their respective bonds.

(b) A PERSON SUFFERING LOSS OR DAMAGES HAS A RIGHT OF ACTION AGAINST A LICENSED BUSINESS DISPOSER AND THE SURETY UPON THE DISPOSER'S BOND IF:

(I) THE LOSS OR DAMAGE IS CAUSED BY FRAUD PRACTICED ON THE PERSON OR A FRAUDULENT REPRESENTATION MADE TO THE PERSON BY THE DISPOSER OR THE DISPOSER'S AGENT WITHIN THE SCOPE OF EMPLOYMENT; OR

(II) THE LOSS OR DAMAGE IS CAUSED BY THE DISPOSER VIOLATING THIS PART 1 AND THE VIOLATION IS DESIGNATED BY THE BOARD BY RULE, WHETHER OR NOT THE VIOLATION IS THE BASIS FOR DENIAL, SUSPENSION, OR REVOCATION OF THE LICENSE.

SECTION 12. Appropriation. For the 2019-20 state fiscal year, \$14,000 is appropriated to the department of revenue for use by the motor vehicle dealer licensing board. This appropriation is from the auto dealers license fund created in section 44-20-133 (1), C.R.S. To implement this act, the board may use this appropriation for operating expenses.

SECTION 13. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 28, 2019