

## CHAPTER 363

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**PROFESSIONS AND OCCUPATIONS**

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SENATE BILL 07-221

BY SENATOR(S) Veiga, Kester, May R., and Taylor;  
also REPRESENTATIVE(S) Rice.**AN ACT**

CONCERNING THE CONTINUATION OF THE MOTOR VEHICLE DEALER BOARD, AND, IN CONNECTION THEREWITH, CHANGING SURETY BOND REQUIREMENTS, MODIFYING THE COMPOSITION OF THE BOARD, REQUIRING THE USE OF ADMINISTRATIVE LAW JUDGES, REQUIRING THAT CONSUMERS RECEIVE CERTAIN INFORMATION, AUTHORIZING SUMMARY SUSPENSION FOR SURETY BOND VIOLATIONS, REPEALING EXAMINATION REQUIREMENTS, REQUIRING ENFORCEMENT AND COMPLIANCE RULES, EXEMPTING CERTAIN SALES FROM THE PROHIBITION ON WHOLESALERS SELLING TO CONSUMERS, REQUIRING THE BOARD TO ESTABLISH RULES FOR CONSISTENT AND EQUITABLE ENFORCEMENT, AND CLARIFYING THE BOARD'S RULE-MAKING AUTHORITY.

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

**SECTION 1. Repeal.** 24-34-104 (38) (e), Colorado Revised Statutes, is repealed as follows:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (38) The following agencies, functions, or both, shall terminate on July 1, 2007:

(e) ~~The motor vehicle dealer board, created by section 12-6-103, C.R.S.;~~

**SECTION 2.** 24-34-104, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (48) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, SHALL TERMINATE ON JULY 1, 2017: THE MOTOR VEHICLE DEALER BOARD, CREATED BY SECTION 12-6-103, C.R.S.

**SECTION 3.** 12-6-102 (17.5), Colorado Revised Statutes, is amended, and the

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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.*

said section 12-6-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**12-6-102. Definitions.** As used in this part 1, unless the context otherwise requires:

(2.4) "BUSINESS INCIDENTAL THERETO" MEANS A BUSINESS OWNED BY THE MOTOR VEHICLE DEALER OR USED MOTOR VEHICLE DEALER RELATED TO THE SALE OF MOTOR VEHICLES, INCLUDING, WITHOUT LIMITATION, MOTOR VEHICLE PART SALES, MOTOR VEHICLE REPAIR, MOTOR VEHICLE RECYCLING, MOTOR VEHICLE SECURITY INTEREST ASSIGNMENT, AND MOTOR VEHICLE TOWING.

(17.5) "Wholesale motor vehicle auction dealer" means any person or firm that provides auction services ~~solely~~ in wholesale transactions in which the purchasers are motor vehicle dealers licensed by this state or any other jurisdiction OR IN CONSUMER TRANSACTIONS OF GOVERNMENT VEHICLES AT A TIME AND PLACE THAT DOES NOT CONFLICT WITH A WHOLESALE MOTOR VEHICLE AUCTION CONDUCTED BY THAT LICENSEE.

**SECTION 4.** 12-6-104 (3) (a), (3) (e) (I), (3) (f.5), and (3) (n), Colorado Revised Statutes, are amended, and the said 12-6-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**12-6-104. Board - oath - meetings - powers and duties.** (3) The board is authorized and empowered:

(a) To promulgate, amend, and repeal ~~reasonable rules and regulations relating to those functions the board is mandated to carry out pursuant to~~ 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, and wholesalers, and the laws of the state of Colorado; ~~as it deems necessary;~~

(e) (I) After due notice and a hearing, to review the findings of ~~the judge if the hearing was conducted by an administrative law judge pursuant to section 24-4-105, C.R.S.; or a hearing officer from within the board's membership, or upon its own findings if the hearing was conducted by the board;~~ FROM A HEARING CONDUCTED PURSUANT TO THIS PART 1 to revoke and suspend or to order the executive director to issue or to reinstate, on such terms and conditions and for such period of time as to the board shall appear fair and just, any license issued under and pursuant to the terms and provisions of this part 1. The board may direct a letter of admonition for minor violations or may issue a letter of reprimand to any licensee for a violation of this part 1. A letter of admonition does not become a part of the licensee's record with the board. A letter of reprimand is a part of the licensee's record with the board for a period of two years after issuance and may be considered in aggravation of any subsequent violation by the licensee. When a letter of reprimand is sent to a licensee of the board, such licensee shall be notified in writing regarding the right to request in writing, within twenty days after receipt of such letter, that formal disciplinary proceedings be initiated against such licensee to adjudicate the propriety of the conduct upon which the letter of reprimand is based. If a request is made within such time period, the letter of reprimand is deemed vacated and the

matter shall be processed by means of formal disciplinary proceedings.

(f.5) To summarily issue cease and desist orders on such terms and conditions and for such period of time as to the board appears fair and just to any person who is licensed by the board pursuant to this part 1 if such orders are followed by notice and a hearing pursuant to ~~subparagraph (f) of paragraph (e) of this subsection (3)~~ SECTION 12-6-119;

~~(n) To promulgate guidelines in the form of rules and regulations to ensure that administrative penalties are equitably assessed and commensurate with the seriousness of the violation;~~

(4) THE BOARD SHALL PROMULGATE RULES BY JANUARY 1, 2008, ESTABLISHING ENFORCEMENT AND COMPLIANCE STANDARDS TO ENSURE THAT ADMINISTRATIVE PENALTIES ARE EQUITABLY ASSESSED AND COMMENSURATE WITH THE SERIOUSNESS OF THE VIOLATION.

**SECTION 5.** 12-6-104 (3) (k), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

**12-6-104. Board - oath - meetings - powers and duties.** (3) The board is authorized and empowered:

(k) (IV) TO REQUIRE A LICENSEE TO INCLUDE WITH A CONSUMER SALES CONTRACT A WRITTEN NOTICE THAT PROVIDES TO THE CONSUMER THE CONTACT INFORMATION OF THE BOARD AND INFORMATION ABOUT THE BOARD'S AUTHORITY OVER CONSUMER MOTOR VEHICLE SALES;

**SECTION 6.** 12-6-108 (1) (h) (I), Colorado Revised Statutes, is amended, and the said 12-6-108 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**12-6-108. Classes of licenses.** (1) Licenses issued under the provisions of this part 1 shall be of the following classes:

(h) (I) Wholesale motor vehicle auction dealer's license shall permit a licensee to engage in the activities of a wholesale motor vehicle auction dealer if the licensee provides auction services solely in connection with wholesale transactions in which the purchasers are motor vehicle dealers licensed by this state or any other jurisdiction OR IN CONNECTION WITH THE SALE OF GOVERNMENT VEHICLES TO CONSUMERS AT A TIME AND PLACE THAT DOES NOT CONFLICT WITH A WHOLESALE MOTOR VEHICLE AUCTION CONDUCTED BY THAT LICENSEE. A wholesale motor vehicle auction dealer shall abide by all laws AND rules ~~and regulations~~ of the state of Colorado.

(4) THE LICENSING REQUIREMENTS OF THIS PART 1 SHALL NOT APPLY TO AN INSURANCE COMPANY SELLING OR OFFERING TO SELL A MOTOR VEHICLE THROUGH A MOTOR VEHICLE DEALER OR USED MOTOR VEHICLE DEALER IF THE VEHICLE IS OBTAINED BY THE COMPANY AS A RESULT OF AN INSURANCE CLAIM.

**SECTION 7.** 12-6-108, Colorado Revised Statutes, is amended BY THE

ADDITION OF A NEW SUBSECTION to read:

**12-6-108. Classes of licenses.** (3) THE LICENSING REQUIREMENTS OF THIS PART 1 SHALL NOT APPLY TO BANKS, SAVINGS BANKS, SAVINGS AND LOAN ASSOCIATIONS, BUILDING AND LOAN ASSOCIATIONS, INDUSTRIAL BANKS, OR CREDIT UNIONS OR AN AFFILIATE OR SUBSIDIARY OF SUCH ENTITIES IN OFFERING TO SELL, OR IN THE SALE OF, A MOTOR VEHICLE THAT WAS SUBJECT TO A LEASE OR THAT HAS BEEN REPOSSESSED OR FORECLOSED UPON IF THE REPOSSESSION OR FORECLOSURE IS IN CONNECTION WITH A LOAN MADE OR ORIGINATED IN COLORADO.

**SECTION 8.** 12-6-111 (2) (a), Colorado Revised Statutes, is amended to read:

**12-6-111. Bond of licensee.** (2) (a) The purpose of the bond procured by the applicant pursuant to subsection (1) of this section and ~~sections 12-6-112 (1) and~~ SECTION 12-6-112.2 (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, or wholesaler. For a wholesale transaction, the bond is available to each party to the transaction; except that, if a retail consumer is involved, such consumer shall have priority to recover from the bond. The amount of the bond shall be ~~thirty thousand~~ FIFTY THOUSAND dollars for a motor vehicle dealer applicant, used motor vehicle dealer applicant, wholesale motor vehicle auction dealer applicant, or wholesaler applicant except the amount of the bond shall be five thousand dollars for those dealers who sell only small utility trailers ~~which~~ 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 9.** 12-6-112 (1), Colorado Revised Statutes, is amended to read:

**12-6-112. Motor vehicle salesperson's bond.** (1) Before any motor vehicle salesperson's license is issued by the board through the executive director to any applicant therefor, the ~~said~~ applicant shall procure and file with the board evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a good and sufficient bond in the amount of ~~five~~ FIFTEEN thousand dollars 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 said applicant shall perform in good faith as a motor vehicle salesperson without fraud or fraudulent representation and without the violation of any of the provisions of this part 1 that are designated by the board by rule.

**SECTION 10.** 12-6-113, Colorado Revised Statutes, is amended to read:

**12-6-113. Testing licensees.** ~~At~~ Persons applying for a motor vehicle dealer's, used motor vehicle dealer's, wholesaler's, wholesale motor vehicle auction dealer's, or motor vehicle salesperson's license under this part 1 shall be examined for their knowledge of the motor vehicle laws of the state of Colorado and the rules ~~and~~ ~~regulations~~ promulgated pursuant to this part 1. If the applicant is a corporation, the managing officer shall take such examination, and, if the applicant is a partnership, all the general partners shall take such examination. No license shall be issued except upon successful passing of the examination. THE BOARD SHALL IMPLEMENT BY JANUARY 1, 2008, A PSYCHOMETRICALLY VALID AND RELIABLE SALESPERSON

EXAM THAT MEASURES THE MINIMUM LEVEL OF COMPETENCE NECESSARY TO PRACTICE.

**SECTION 11.** 12-6-119, Colorado Revised Statutes, is amended to read:

**12-6-119. Procedure for denial, suspension, or revocation of license - judicial review.** (1) The denial, suspension, or revocation of licenses issued under this part 1 shall be in accordance with the provisions of sections 24-4-104 and 24-4-105, C.R.S.; except that the discovery available under rule 26 (b) (2) of the Colorado rules of civil procedure is available in any proceeding. ~~conducted by the board.~~

(2) (a) (I) The board ~~may~~ SHALL appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., ~~or a hearing officer from among its membership to conduct hearings for the board~~ ANY HEARING CONCERNING THE LICENSING OR DISCIPLINE OF A MOTOR VEHICLE DEALER, USED MOTOR VEHICLE DEALER, WHOLESALER, BUYER'S AGENT, 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.

(II) BEGINNING JULY 1, 2008, THE BOARD SHALL ISSUE AN ANNUAL REPORT TO THE EXECUTIVE DIRECTOR DETAILING THE NUMBER OF HEARINGS HELD PURSUANT TO THIS PARAGRAPH (a) AND THE NUMBER OF SUCH HEARINGS CONDUCTED BY THE BOARD. IF THE BOARD CONDUCTS GREATER THAN FORTY PERCENT OF THE HEARINGS, THE EXECUTIVE DIRECTOR SHALL ANALYZE THE HEARING PROCEDURES AND ACTS AND ISSUE A REPORT TO THE GENERAL ASSEMBLY, WHICH SHALL INCLUDE ANY RECOMMENDATIONS OF THE EXECUTIVE DIRECTOR.

(b) THE BOARD SHALL ASSIGN A HEARING CONCERNING THE LICENSING OR DISCIPLINE OF A MOTOR VEHICLE SALESPERSON TO THE EXECUTIVE DIRECTOR WHO SHALL APPOINT AN OFFICER TO CONDUCT A HEARING.

(3) ~~Hearings conducted by a hearing officer appointed from the board membership shall be in accordance with procedures established by the board.~~ Hearings conducted before an administrative law judge shall be in accordance with the rules of procedure of the office of administrative courts. HEARINGS CONDUCTED BEFORE AN OFFICER APPOINTED BY THE EXECUTIVE DIRECTOR SHALL BE IN ACCORDANCE WITH THE RULES OF PROCEDURE ESTABLISHED BY THE EXECUTIVE DIRECTOR.

(4) THE BOARD MAY SUMMARILY SUSPEND A LICENSEE REQUIRED TO POST A BOND UNDER THIS ARTICLE IF SUCH LICENSEE DOES NOT HAVE A BOND IN FULL FORCE AND EFFECT AS REQUIRED BY THIS ARTICLE. THE SUSPENSION SHALL BECOME EFFECTIVE UPON THE EARLIER OF THE LICENSEE RECEIVING NOTICE OF THE SUSPENSION OR WITHIN THREE DAYS AFTER THE NOTICE OF SUSPENSION IS MAILED TO A LICENSEE'S LAST-KNOWN ADDRESS ON FILE WITH THE BOARD. THE NOTICE MAY BE EFFECTED BY CERTIFIED MAIL OR PERSONAL DELIVERY.

(5) The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

**SECTION 12.** 12-6-124, Colorado Revised Statutes, is amended to read:

**12-6-124. Repeal of article.** This article is repealed, effective July 1, ~~2007~~ 2017. Prior to such repeal, the motor vehicle dealer board and the functions of the executive director, including licensing, shall be reviewed as provided for in section 24-34-104, C.R.S.

**SECTION 13. Effective date.** This act shall take effect July 1, 2007.

**SECTION 14. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 31, 2007