



**COLORADO**

**Department of  
Regulatory Agencies**

Colorado Office of Policy, Research &  
Regulatory Reform

**2016 Sunset Review:  
Motor Vehicle Dealer Board and the Regulation  
of Powersports Vehicles**

*October 14, 2016*





**COLORADO**

**Department of  
Regulatory Agencies**

Executive Director's Office

October 14, 2016

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

This year, Colorado's sunset review process celebrates its 40<sup>th</sup> anniversary with the publication of the 2016 sunset reports. The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. To emphasize the statewide nature and impact of this endeavor, COPRRR recently launched a series of initiatives aimed at encouraging greater public participation in the regulatory reform process, including publication of a new "Citizen's Guide to Rulemaking" (available online at [www.dora.colorado.gov/opr](http://www.dora.colorado.gov/opr)).

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies (DORA) to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- Submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination.

Accordingly, COPRRR has completed the evaluation of the Motor Vehicle Dealer Board (Board), powersports vehicle regulation and the Department of Revenue (DOR). I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2017 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 6 of Title 12, C.R.S. The report also discusses the effectiveness of the Board and DOR staff, in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joe Neguse  
Executive Director





# COLORADO

## Department of Regulatory Agencies

Colorado Office of Policy, Research &  
Regulatory Reform

### 2016 Sunset Review Motor Vehicle Dealer Board and Powersports Vehicles

#### SUMMARY

##### ***What Is Regulated?***

The statute provides regulatory oversight of motor and powersports vehicle salespersons, dealers (new and used), wholesalers, wholesale auction dealers (motor vehicle only), manufacturers/distributors, manufacturer representatives and buyer agents (motor vehicle only). Generally, road-worthy vehicles (automobiles and motorcycles) are considered motor vehicles, and non-road vehicles (off-highway, personal watercraft and snowmobiles) are powersports vehicles.

##### ***Why Is It Regulated?***

The purpose of the statute is to, among other things, provide protection to consumers who purchase motor and powersports vehicles from dealers and salespersons. Additionally, regulation provides increased protection to consumers by establishing and enforcing standards for licensees to enter the various motor and powersports vehicle fields, such as passage of the Mastery Examination.

##### ***Who Is Regulated?***

All of the entities highlighted above are required to obtain a license prior to practicing or operating in Colorado. Requirements for licensure vary, but as an example, motor and powersports vehicle salespersons are required to complete a licensing application, submit to a background examination, secure employment at a new or used dealership, pass the Mastery Examination and obtain a \$15,000 surety bond.

##### ***How Is It Regulated?***

Motor and powersports vehicles are regulated under a bifurcated regulatory structure, where the Motor Vehicle Dealer Board (Board) is responsible for, among other things, regulatory oversight of motor and powersports vehicle salespersons, new and used dealers, wholesalers and wholesale auction dealers (motor vehicle only).

The Executive Director of the Department of Revenue (Executive Director and DOR, respectively) is responsible for regulatory oversight of motor and powersports vehicle manufacturers, distributors, manufacturer representatives and buyer's agents (motor vehicle only).

##### ***What Does It Cost?***

In fiscal year 14-15, the total expenditures for the oversight of the aforementioned regulated entities were \$3,355,116. There were 28.2 full-time equivalent employees to provide professional support to the Board and Executive Director.

##### ***What Disciplinary Activity Is There?***

In fiscal year 14-15, 13 dealer licenses were denied, 2 dealer licenses were revoked, 50 salespersons licenses were denied, 2 salespersons licenses were suspended and 1 salesperson license was revoked.

## KEY RECOMMENDATIONS

### ***Continue the Board for seven years, until 2024.***

There are more than 19,000 licensees in the motor and powersports vehicle industry in Colorado. The Board provides regulatory oversight, including enforcing licensing standards and imposing discipline, on motor and powersports vehicle salespersons, new and used dealers, wholesalers and wholesale auction dealers (motor vehicle only). Meanwhile, the Executive Director is responsible for regulatory oversight of manufacturers, distributors, manufacturer dealers and buyer's agents (motor vehicle only).

One of the main functions of the Board and the Executive Director is to impose discipline on licensed entities for violations of the statute or applicable rules. This sunset report revealed that the Board has, in fact, imposed several disciplinary actions on licensees, including imposing fines. Although DOR staff was unable to disaggregate the discipline by license type, anecdotally, the majority of discipline was on motor vehicle dealer's licenses. In order to ensure that the Board and Executive Director continue to provide protection to consumers through regulatory oversight, the General Assembly should continue the Board for seven years, until 2024.

### ***Repeal the prohibition on Sunday sales.***

Currently, the statute, in section 12-6-302, Colorado Revised Statutes, prohibits the sale of motor vehicles on Sunday. The same section of the statute expressly exempts boats, boat trailers, snowmobile and snowmobile trailers from the prohibition of sales on Sunday, which is an inconsistent application of the law between different products offered to the public. The second sunset criterion asks if current regulations are the least restrictive form of regulation consistent with public protection. Restricting the sale of motor vehicles on Sunday does not provide the least restrictive form of regulation. In fact, this provision in the statute restricts a business's option to sell motor vehicles on Sundays, and it restricts consumer choice. Therefore, the General Assembly should repeal the prohibition on the sale of motor vehicles on Sunday.

## METHODOLOGY

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff attended Board meetings, interviewed DOR staff, reviewed Board records and minutes, interviewed officials with state and national professional associations, interviewed stakeholders, reviewed Colorado statutes and rules, and reviewed the laws of other states.

## MAJOR CONTACTS MADE DURING THIS REVIEW

Denver/Boulder Better Business Bureau  
Colorado Automobile Dealers Association  
Colorado Department of Law  
Colorado Independent Automobile Dealers Association  
Colorado Department of Revenue  
Motor Vehicle Dealer Board Members  
National Automobile Dealers Association  
Powersports Dealers Association of Colorado

### **What is a Sunset Review?**

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:  
Colorado Department of Regulatory Agencies  
Colorado Office of Policy, Research and Regulatory Reform  
1560 Broadway, Suite 1550, Denver, CO 80202  
[dora.www.colorado.gov/opr](http://dora.www.colorado.gov/opr)



# Table of Contents

Background .....	1
Introduction.....	1
Types of Regulation.....	2
Licensure .....	2
Certification.....	3
Registration .....	3
Title Protection.....	3
Regulation of Businesses .....	4
Sunset Process.....	4
Methodology .....	4
Profile of the Industry.....	5
Legal Framework.....	8
History of Regulation .....	8
State Law.....	8
Program Description and Administration .....	17
Licensing .....	18
Mastery Examination.....	25
Pre-Licensing Education.....	26
Complaints/Disciplinary Actions .....	26
Collateral Consequences - Criminal Convictions.....	30
Analysis and Recommendations.....	31
Recommendation 1 - Continue the Motor Vehicle Dealer Board and the regulation of the motor vehicles industry for seven years, until 2024. ....	31
Recommendation 2 - Continue Part 5 of the statute for seven years, until 2024, and remove the repealer in Part 5 of the statute. ....	33
Recommendation 3 - Amalgamate Parts 1 and 5 of the statute.....	34
Recommendation 4 - Repeal the prohibition on Sunday sales. ....	35
Recommendation 5 - Repeal the Board’s authority to propose adjustments to licensing fees.....	37
Recommendation 6 - Require a licensing application when an ownership change of a new or used motor or powersports vehicle dealer license occurs. ....	37
Recommendation 7 - Allow the Board to impose discipline on owners of motor or powersports vehicle dealerships and wholesalers for violations of the statute while working as a salesperson. ....	38

Recommendation 8 - Codify the Auto Industry Division in statute.....	39
Recommendation 9 - Remove the dependent nature of a salesperson’s license. ....	39
Recommendation 10 - Require a fingerprint-based criminal history background check for all applicants for licensure. ....	41
Recommendation 11 - Require motor and powersports licensees who have their licenses revoked or who surrender their licenses in lieu of discipline to wait two years before applying for a new license. ....	41
Recommendation 12 - Make technical changes to the statute. ....	42
Administrative Recommendation 1 - The AID should track license disqualifications based on criminal history. ....	43

---

# Background

## Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

---

<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.

- 
- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
  - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

## Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

### Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.



---

## Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

## Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

## Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

---

## Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

## **Sunset Process**

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at: [dora.colorado.gov/opr](http://dora.colorado.gov/opr).

The functions of the Motor Vehicle Dealer Board (Board) and the Department of Revenue (DOR) as enumerated in Article 6 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2017, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Board and DOR staff pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulatory oversight for the motor vehicle and powersports industries should be continued and to evaluate the performance of the Board and DOR staff. During this review, the Board and DOR staff must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

## **Methodology**

As part of this review, COPRRR staff attended Board meetings, interviewed DOR staff, reviewed Board records and minutes, interviewed officials with state and national professional associations, interviewed stakeholders, reviewed Colorado statutes and rules, and reviewed the laws of other states.

---

## Profile of the Industry

The Motor Dealer Vehicle Board and the regulation of powersports each contain separate repealers in the statute. A repealer is a requirement that the statute undergoes a sunset review to determine whether regulation should continue. Upon completion of a sunset review, the General Assembly may continue or sunset the regulatory program through legislation.

Since both the motor vehicle and powersports industries are regulated in the same manner and are in the same statute, this sunset review combined both sunsets into one report.

The automobile industry has a significant impact on Colorado's economy. For example, in 2014, Colorado's franchised new vehicle dealers experienced a total of \$15.24 billion in sales.<sup>2</sup> Also in 2014, the total state and local taxes collected or paid by franchised new motor vehicle dealers was approximately \$616 million, and the average dealership sales were \$58.6 million.<sup>3</sup>

Additionally, the total number of new cars and light trucks registered in Colorado in 2015 was more than 203,000, which was an increase of eight percent from the previous year. The auto industry also experienced an increase in the total number of registered used vehicles in 2015,<sup>4</sup> when more than 194,000 vehicles were registered.<sup>5</sup> This was an increase of approximately six percent from the previous year.<sup>6</sup>

Importantly, the motor vehicle (road worthy vehicles) and powersports (off-highway vehicles) industries include a variety of other products available to consumers, such as:

- Motorcycles,
- Personal watercraft,
- All-terrain vehicles, and
- Snowmobiles.

To provide adequate consumer protection to consumers, the Executive Director of the Department of Revenue (DOR), issues a variety of licenses related to the motor and powersports vehicle industries. In practice, the Auto Industry Division within the DOR issues motor and powersports vehicle licenses, which include the following:

- Salespersons,
- Dealers (new and used),
- Wholesalers,

---

<sup>2</sup> 2015 Colorado Automobile Dealers Association Colorado Economic Impact Report, Colorado Automobile Dealers Association (2015), p.3.

<sup>3</sup> 2015 Colorado Automobile Dealers Association Colorado Economic Impact Report, Colorado Automobile Dealers Association (2015), p.3.

<sup>4</sup> Used vehicles are defined as vehicles seven years old or newer.

<sup>5</sup> 2015 Colorado Automobile Dealers Association Colorado Auto Outlook, Colorado Automobile Dealers Association (2015), p.2.

<sup>6</sup> 2015 Colorado Automobile Dealers Association Colorado Auto Outlook, Colorado Automobile Dealers Association (2015), p.3.

- 
- Wholesaler auction dealers (motor vehicle only),
  - Manufacturers/distributors,
  - Manufacturer representatives, and
  - Buyer agents (motor vehicle only).

Motor vehicle and powersports salespersons, who typically work on commission, are responsible for interacting with customers who are attempting to purchase or lease motor vehicles such as, automobiles, trailers, boats or powersports vehicles (e.g., snowmobiles and all-terrain vehicles). Specifically, a salesperson is someone who is employed by a dealer to sell, lease purchase or exchange, or to negotiate the sale of vehicles or powersport vehicles.

New and used motor vehicle and powersports vehicle dealers offer the sale, lease or exchange of motor vehicles or powersports vehicles. Generally, dealers employ salespersons to offer assistance to consumers. New motor vehicle dealers enter into sales contracts with manufacturers, such as General Motors or Toyota, to sell their motor or powersports vehicles. This enables new motor and powersports vehicle dealers to utilize the manufacturer's name in their business. New motor and powersports vehicle dealers may also sell used vehicles, but their main source of sales originates from manufacturers' motor or powersports vehicles.

Used motor and powersports vehicle dealers do not possess a sales contract with manufacturers, and they typically sell a variety of brands.

Of note, any person who sells more than three motor or 10 powersports vehicles at the same location (e.g., their home) is required to obtain a motor or powersports vehicle dealer license.

Wholesalers are licensees who are prohibited from selling inventory directly to consumers. Instead, wholesalers buy and sell motor or powersports vehicles from one wholesaler to another or they may buy and sell inventory from a licensed dealer.

Wholesale motor vehicle auction dealers are licensees who facilitate the transactions between wholesalers or wholesalers and from licensed dealers. Wholesale auction dealer licenses are only available for motor vehicles. Powersports vehicles do not utilize auction dealers.

Manufacturers are entities that offer new motor vehicles to dealers (e.g., General Motors and Toyota). In fact, manufacturers are prohibited from selling vehicles directly to consumers.

Manufacturers who are located outside of the United States often enter into distributor agreements with companies located within the United States. Distributors are indemnified by the foreign manufacturer for things such as, lawsuits, recalls and warranty repair work. Distributors often enter into sales agreements with dealers who are enfranchised to sell the manufacturer's products.

---

Manufacturer representatives are individuals who are licensed and are employed by manufacturers to facilitate transactions with dealers.

Buyer agents are individuals who are retained by a consumer to represent the consumer related to the lease or purchase of a vehicle. Buyer agent licenses are only available for motor vehicle transactions—most typically automobiles. This license classification is not available for powersports vehicles.

---

## Legal Framework

### History of Regulation

Regulation of the auto industry was originally created by the General Assembly in 1945. The initial regulatory oversight included a five-member advisory board, and the board was comprised of auto industry members.

Throughout the years, both the industry and the regulatory structure have continually evolved. For example, in 1971, the General Assembly changed the advisory board to a nine-member Motor Vehicle Dealer Board (Board). The Board's membership was modified to include four members of new auto dealers, three members of used auto dealers and two public members.

The Department of Regulatory Agencies (DORA) facilitated a number of changes to the regulatory structure. In fact, DORA has completed numerous sunset reviews which contained recommended changes to the statute, including 1983, 1991, 1997, 2002 and 2006.

Some salient recommended changes to the auto industry statute are highlighted below.

The 1983 sunset review recommended the Board provide a greater focus on consumer protection.

The 1991 sunset review, among other things, recommended that the Board increase its enforcement of the industry. Specifically, the review recommended that the Board be given the authority to implement fines of up to \$10,000 for violations of the motor vehicle industry statute.

### State Law

The regulation of the motor vehicle industry is created in section 12-6-101, *et seq.*, Colorado Revised Statutes (C.R.S.), (statute) and contains parts 1 through 5. Part 1 highlights the general provisions of the statute related to, among other things, composition and responsibilities of the Board as well as the responsibilities of the Executive Director of the Department of Revenue (DOR). Part 2 contains antimonopoly provisions for the motor vehicle industry. Part 3 highlights the Sunday closing requirement for the motor vehicle industry. Part 4 outlines the event data requirements. Event data are the records of a variety of categories (e.g., whether the vehicle's air bag deployed) concerning a motor vehicle. Part 5 of the statute pertains to the regulation of powersports vehicles.

---

## Part1

### **Motor Vehicle Dealer Board**

The Board provides regulatory oversight to motor vehicle salespersons, new and used dealers, wholesalers and wholesale auction dealers. A motor vehicle is defined as,

every vehicle intended primarily for use and operation on public highways that is self-propelled and every vehicle intended primarily for operation on public highways that is not driven or propelled by its own power but is designed to be attached to or become a part of or to be drawn by a self-propelled vehicle, not including farm tractors and other machines or tools used in the production, harvesting and care of farm products.<sup>7</sup>

The Board is comprised of nine members and each member is appointed by the Governor.<sup>8</sup> The composition of the Board is as follows:<sup>9</sup>

- Three members are required to possess a motor vehicle dealer license,
- Three members must be licensed used motor vehicle dealers, and
- Three are members of the public.

The Board is authorized to promulgate, amend or repeal rules including the administration, enforcement, issuance and denial of licenses to new and used motor vehicle dealers, new and used motor vehicle salespersons, wholesalers and wholesale auction dealers.<sup>10</sup>

The Board also is authorized to delegate authority to the Board's executive secretary, who is currently and most typically, the Director of the Auto Industry Division (AID) within the DOR. Specifically, the Board may delegate all actions within the power of the Board to the executive secretary, who may carry out all directives of the Board and make recommendations to the Board.<sup>11</sup>

The statute enables the Board to delegate authority to the Executive Director of the DOR (Executive Director), or designee, to issue licenses to licensees.<sup>12</sup> In practice, AID staff issue the licenses.

---

<sup>7</sup> § 12-6-102(12), C.R.S.

<sup>8</sup> §§ 12-6-103(1) and (2), C.R.S.

<sup>9</sup> § 12-6-103(1), C.R.S.

<sup>10</sup> § 12-6-104(3)(a), C.R.S.

<sup>11</sup> § 12-6-104(3)(a.5), C.R.S.

<sup>12</sup> § 12-6-104(3)(d)(II), C.R.S.

---

The Board investigates, through the Executive Director, written and signed complaints of any person suspected of a violation of the statute or alleged violation of a new or used motor vehicle dealer, new or used motor vehicle salesperson, wholesaler or wholesale motor vehicle auction dealer.<sup>13</sup>

The Board may deny, revoke or suspend a motor vehicle salesperson's license for the following, including but not limited to:<sup>14</sup>

- Supplying material misstatements (past disciplinary action) in the application for licensure,
- Engaging in the business of selling motor vehicles without a valid license or required bond,
- Intentionally publishing or circulating any advertising that is misleading or inaccurate,
- Indulging in any fraudulent business practice, and
- Representing oneself as a salesperson for any motor vehicle dealer (new or used) when the salesperson is not employed or licensed.

The Board is also authorized to impose formal discipline on dealers, wholesalers and wholesale auction dealers. Specifically, the Board may revoke, suspend, fine or issue letters of reprimand to the aforementioned licensees for violations of the statute or applicable rules.<sup>15</sup>

The following grounds for discipline apply to motor vehicle dealers, wholesalers, wholesale auction dealers and buyer's agents and include, but are not limited to:<sup>16</sup>

- Presenting a material misstatement in an application for licensure;
- Having been convicted of or pled nolo contendere to any felony or any crime such as murder, sex assault, robbery, theft or fraud;
- Defrauding any buyer, seller, motor vehicle salesperson or financial institution;
- Failing or refusing to keep in force the required bond;
- Willfully misrepresenting, circumventing or concealing any material particulars (damage) to a potential buyer;
- Intentionally publishing or circulating any advertising which is misleading or inaccurate in any material particular which misrepresents any of the products sold or furnished by a licensed dealer;
- Knowingly purchasing, selling or otherwise acquiring or disposing of a stolen motor vehicle; and
- Engaging in business through employment of an unlicensed motor vehicle salesperson.

---

<sup>13</sup> § 12-6-104(3)(f)(I), C.R.S.

<sup>14</sup> §§ 12-6-118(5)(b),(d),(e),(f) and (h), C.R.S.

<sup>15</sup> §§ 12-6-104(3)(e)(I), 12-6-104(3)(m)(I)(A), 12-6-104(3)(o)(I), C.R.S.

<sup>16</sup> §§ 12-6-118(3)(b),(d),(e),(g),(i),(k),(l) and (n), C.R.S.



---

The Board can appoint an administrative law judge (ALJ) to conduct any hearing concerning the licensing or discipline of new or used motor vehicle dealers, wholesalers, wholesale auction dealers or buyer agents.<sup>17</sup> The Board may also, upon unanimous vote, conduct the hearing in lieu of appointing an ALJ.<sup>18</sup>

Sixty percent of hearings must be conducted by ALJs. If the Board conducts more than 40 percent of the hearings, the Executive Director is required to analyze the hearing procedures and issue a report to the General Assembly to include recommended changes to procedures.<sup>19</sup>

The Board, after a hearing held before an ALJ, may impose administrative fines on dealers of up to \$10,000 for each separate offense by the licensee.<sup>20</sup> However, dealers who sell vehicles that weigh less than 1,500 pounds cannot be fined more than \$1,000 for each separate offense.<sup>21</sup>

The Board assigns hearings concerning licensing or discipline of a motor vehicle salesperson to the Executive Director, and the Executive Director appoints a hearing officer to conduct the hearing.<sup>22</sup>

Hearing officers are limited to recommending to the Board denial or granting an unrestricted or restricted license. Also, a hearing officer may only recommend a probationary period for up to 12 months and may recommended fines of no more than \$500, or both.<sup>23</sup>

The Board is also authorized to issue cease and desist orders to licensees.<sup>24</sup>

## **Executive Director**

The Executive Director is responsible for regulatory oversight of motor vehicle manufacturers/distributors, manufacturer representatives and buyer agents.<sup>25</sup> As such, each application for licensure is required to be submitted to the Executive Director.

Applicants for a manufacturer/distributor license must:<sup>26</sup>

- File with the Executive Director a certified copy of their sales, service and parts agreements with all motor vehicle dealers; and
- File evidence of the appointment of an agent for service of process in the State of Colorado.

---

<sup>17</sup> § 12-6-119(2)(a)(I), C.R.S.

<sup>18</sup> § 12-6-119(2)(a)(I), C.R.S.

<sup>19</sup> § 12-6-119(2)(a)(II), C.R.S.

<sup>20</sup> § 12-6-104(3)(m)(I)(A), C.R.S.

<sup>21</sup> § 12-6-104(3)(m)(I)(A), C.R.S.

<sup>22</sup> § 12-6-119(2)(b), C.R.S.

<sup>23</sup> § 12-6-104(3)(m)(I)(A), C.R.S.

<sup>24</sup> § 12-6-104(3)(f.5), C.R.S.

<sup>25</sup> § 12-6-105(1), C.R.S.

<sup>26</sup> §§ 12-115(5)(a)(I), and (II), C.R.S.

---

The Executive Director, among other duties, is responsible for imposing formal discipline upon the aforementioned licensees. The Executive Director may deny, suspend or revoke a manufacturer's/distributor's license on the following grounds, including but not limited to:<sup>27</sup>

- Making a material misstatement in an application for licensure,
- Failing to comply with any provision in the statute, or
- Engaging in illegal business practices.

A manufacturer representative's license may be denied, suspended or revoked on the following grounds, including but not limited to:<sup>28</sup>

- Material misstatement in the application for licensure;
- Failing to comply with any provision in the statute;
- Having indulged in any unconscionable business practices related to Article 4, Title 18 (e.g., theft, burglary and robbery);
- Having coerced or attempted to coerce any motor vehicle dealer to accept delivery of any motor vehicle, parts or accessories or any other services which have not been ordered by the dealer;
- Having coerced or attempted to coerce any motor vehicle dealer into any unfair agreement by threatening to cause the cancellation of the franchise agreement;
- Having withheld, threatened to withhold, reduced, or delayed without just cause an order for motor vehicles, parts, accessories or any other commodities or services which have been ordered by a motor vehicle dealer; or
- Engaging in illegal business practices.

The Executive Director may also issue cease and desist orders to licensees.<sup>29</sup>

The Executive Director may impose fines of not more than \$1,000 per day, on licensees.<sup>30</sup> The Executive Director may fine manufacturer/distributors or manufacturer representatives for a variety of violations, including, but not limited to:<sup>31</sup>

- Failing to perform or cause to be performed any written warranties made with respect to motor vehicle parts;
- Attempting to coerce any motor vehicle dealer to perform or allow to be performed any act that could be financially detrimental to the dealer;
- Attempting to coerce any motor vehicle dealer to accept delivery of any motor vehicle, parts or accessories which have not been ordered; or
- Canceling, directly or indirectly, without just cause, the franchise of any motor vehicle dealer, and the nonrenewal of a franchise or selling agreement without just cause.

---

<sup>27</sup> §§ 12-6-118(1)(b),(c) and (d), C.R.S.

<sup>28</sup> §§ 12-6-118(2)(b-h), C.R.S.

<sup>29</sup> § 12-6-105(1)(f)(I), C.R.S.

<sup>30</sup> § 12-6-121, C.R.S.

<sup>31</sup> §§ 12-6-120(1)(a),(b),(c) and (d)(I), C.R.S.

---

Also, manufacturers are required to file with the Executive Director all written warranties and changes in warranties on any motor vehicle.<sup>32</sup>

## Licenses

The Executive Director issues a variety of licenses, including:

- Salespersons,
- New and used motor vehicle dealers,
- Wholesalers,
- Wholesale motor vehicle auction dealers,
- Manufacturer/distributors,
- Manufacturer representatives, and
- Buyer agents.

Applicants for a salesperson license must complete an application for licensure and complete the following:

- Secure employment at a dealership (new or used);
- Secure the required \$15,000-bond;<sup>33</sup> and
- Pass the Mastery Examination, which test's a candidate's knowledge of the motor vehicle laws and regulations of the State of Colorado.<sup>34</sup>

Once all of the aforementioned requirements are complete, the applicant is eligible for licensure.

Additionally, new and used motor vehicle dealers must submit an application for licensure to the AID, pass the Mastery Examination and the pre-licensing education program and secure a \$50,000-bond.

If a motor vehicle dealer is a corporation, the Mastery Examination is required to be completed by the managing officer, and if the dealership is a partnership, all of the general partners must take the examination.<sup>35</sup>

Applicants for a used motor vehicle dealer's license must complete an eight-hour pre-licensing education program.<sup>36</sup> The pre-licensing program focuses on applicable federal and state laws and rules governing the sale motor vehicles.<sup>37</sup>

---

<sup>32</sup> § 12-6-114, C.R.S.

<sup>33</sup> § 12-6-112(1), C.R.S.

<sup>34</sup> § 12-6-113, C.R.S.

<sup>35</sup> § 12-6-113, C.R.S.

<sup>36</sup> § 12-6-115(7)(b), C.R.S.

<sup>37</sup> § 12-6-115(7)(c), C.R.S.

---

If the used motor vehicle dealer is a corporation or limited liability company, the managing officer is responsible for completing the pre-licensing program.<sup>38</sup> In a partnership, the general partners must complete the requirement.<sup>39</sup> The owner or managing officer of a sole proprietorship must complete the training.<sup>40</sup>

If a licensed motor vehicle dealer sells the dealership, and the purchaser has been awarded a new motor vehicle dealership franchise, the Board may issue a temporary license to the purchaser.<sup>41</sup> The temporary license is valid for no more than 60 days from issuance.<sup>42</sup>

The Board may also issue temporary licenses to out-of-state dealers who are requesting to sell vehicles on a temporary basis (e.g., National Western Stock Show).<sup>43</sup> This temporary license is valid for 30 days or less.<sup>44</sup>

Prior to licensure, an applicant for a motor vehicle dealer license is required to secure a \$50,000-bond.

Additionally, motor vehicle wholesalers and wholesale auction dealers who seek to obtain licensure are also required to pass the Mastery Examination, complete the eight-hour pre-licensing education training program and secure a \$50,000-bond.

If the motor vehicle wholesaler or wholesale auction dealer is a corporation, the Mastery Examination is required to be completed by the managing officer, and if the dealership is a partnership, all of the general partners must take the examination.<sup>45</sup>

If the motor vehicle wholesaler or wholesale auction dealer is a corporation or limited liability company, the managing officer is responsible for completing the pre-licensing education program.<sup>46</sup> In a partnership, the general partners must complete the requirement.<sup>47</sup> The owner or managing officer of a sole proprietorship must complete the training.<sup>48</sup>

Motor vehicle wholesalers and wholesale auction dealers must secure a \$50,000-bond prior to receiving licenses, which enables them to provide services to consumers.<sup>49</sup>

Further, buyer agents must complete a licensing application to the AID. Prior to obtaining licensure as a buyer's agent, an applicant must secure a \$5,000-bond.<sup>50</sup>

---

<sup>38</sup> § 12-6-115(7)(b)(I), C.R.S.

<sup>39</sup> § 12-6-115(7)(b)(II), C.R.S.

<sup>40</sup> § 12-6-115(7)(b)(III), C.R.S.

<sup>41</sup> § 12-6-108.5(1), C.R.S.

<sup>42</sup> § 12-6-108.5(1), C.R.S.

<sup>43</sup> § 12-6-108.5(2), C.R.S.

<sup>44</sup> § 12-6-108.5(2), C.R.S.

<sup>45</sup> § 12-6-113, C.R.S.

<sup>46</sup> § 12-6-115(7)(b)(I), C.R.S.

<sup>47</sup> § 12-6-115(7)(b)(II), C.R.S.

<sup>48</sup> § 12-6-115(7)(b)(III), C.R.S.

<sup>49</sup> § 12-6-111(2)(a), C.R.S.

<sup>50</sup> § 12-6-112.2(1), C.R.S.

---

## Part 2

Part 2 of the statute outlines the provisions related to antimonopoly financing law. Specifically, Part 2 prohibits manufacturers/distributors from engaging in business with a licensee to reduce or eliminate competition or create a monopoly for the licensee.<sup>51</sup>

Part 2 also prohibits any threats made to licensees by manufacturers/distributors that they will discontinue or cease to sell, refuse to enter into a contract to sell or will terminate a contract unless the licensee finances the purchases of motor vehicles only through a designated person.<sup>52</sup>

Violations of Part 2 are a Class 6 felony.

## Part 3

Part 3 of the statute addresses the prohibition of selling or offering motor vehicles on Sunday. Currently, the statute states that motor vehicles cannot be sold, bartered or exchanged at any place, premise or residence on Sunday.<sup>53</sup> However, the statute exempts the sale, barter or exchange of any boat, boat trailer, snowmobile or snowmobile trailer on Sunday.<sup>54</sup>

A person, firm, partnership or corporation that violates the provisions in Part 3 is guilty of a misdemeanor and is subject to punishment of a minimum of \$75 up to \$1,000 and/or imprisonment in county jail for up to six months.<sup>55</sup>

A licensee who is convicted of selling motor vehicles on Sunday may also have his or her license suspended or revoked.<sup>56</sup>

## Part 4

A manufacturer of motor vehicles that are sold or leased with event data recorders are required to disclose, in the owner's manual, that the vehicle is equipped with one.<sup>57</sup> The disclosure must also include the type of data recorded.<sup>58</sup>

Event data includes:<sup>59</sup>

- Whether the vehicle's air bag deployed,
- Vehicle speed,

---

<sup>51</sup> § 12-6-202, C.R.S.

<sup>52</sup> § 12-6-203, C.R.S.

<sup>53</sup> § 12-6-302, C.R.S.

<sup>54</sup> § 12-6-302, C.R.S.

<sup>55</sup> § 12-6-303, C.R.S.

<sup>56</sup> § 12-6-303, C.R.S.

<sup>57</sup> § 12-6-402(1), C.R.S.

<sup>58</sup> § 12-6-402(1), C.R.S.

<sup>59</sup> §§ 12-6-401(1)(a-g), C.R.S.

- 
- Vehicle direction,
  - Vehicle location,
  - Vehicle steering performance or use,
  - Vehicle brake performance or use, and
  - Vehicle seatbelt status.

The event data that is recorded is the personal information of the motor vehicle's owner, and the information contained on the recorder cannot be retrieved by anyone other than the vehicle's owner, except in instances such as:<sup>60</sup>

- The owner has consented to the retrieval of the data within the past 30 days;
- The data is retrieved by a motor vehicle dealer or an automotive technician to diagnose, service or repair the vehicle at the request of the owner;
- The data is subject to discovery pursuant to rules of civil procedure in a claim arising from an accident; or
- A court or administrative agency having jurisdiction orders the retrieval of the data.

## Part 5

Part 5 highlights the regulatory oversight and requirements within the powersports industry. Some examples of powersports vehicles include: all-terrain vehicles, snowmobiles, personal water craft and off-highway vehicles.

The regulatory oversight structure in Part 5 mirrors Part 1. For example, the Board has regulatory oversight of powersports salespersons, new and used dealers and wholesalers. That is, the Board may, among other things, deny, suspend or revoke the licenses of these types of licensees.

Also, the Executive Director is responsible for regulating powersports vehicle manufacturers/distributors and manufacturer representatives.<sup>61</sup> This includes, when necessary, imposing discipline on licensees.

The requirements for licensure for powersports salesperson, new and used dealers and wholesalers are the same as delineated in Part 1. For example, powersports vehicle salespersons are required to pass the Mastery Examination prior to receiving a license to sell powerposts vehicles in Colorado. The bond requirements are also the same for powersports vehicle licensees.

Importantly, the powersports industry does not utilize wholesale auction dealer or buyer agents. So, Part 5 does not contain these license types.

---

<sup>60</sup> §§ 12-6-402(2)(a-d), C.R.S.

<sup>61</sup> § 12-6-505(1), C.R.S.

---

## Program Description and Administration

The regulation of the motor vehicle and powersports industries is created in section 12-6-101, *et seq.*, Colorado Revised Statutes (C.R.S.). Generally, road-worthy vehicles (automobiles and motorcycles) are considered motor vehicles, and non-road vehicles (off-highway, personal watercraft, and snowmobiles) are powersports vehicles.

Motor and powersports vehicles are regulated under a bifurcated regulatory structure. That is, the Motor Vehicle Dealer Board (Board) is responsible for, among other things, imposing discipline on motor vehicle and powersports salespersons, new and used dealers, wholesalers and wholesale auction dealers (motor vehicle only). The Board is comprised of nine members: three new motor vehicle dealers, three used motor vehicle dealers and three public members. All of the Board members are appointed by the Governor. Typically, the Board meets on a monthly basis.

The Board is authorized to delegate a number of regulatory functions to the Board's executive secretary, which is the Director of the Auto Industry Division (AID) within the Department of Revenue (DOR).

The Executive Director of the DOR (Executive Director) is responsible for providing regulatory oversight of motor and powersport manufacturers/distributors, manufacturer representatives and buyer's agents (motor vehicle only), as well as administrative functions, such as issuing licenses and initiating investigations on licensees' potential violations of the statute or applicable rules.

The AID has three offices: the main office in Lakewood, a field office in Colorado Springs and a field office in Grand Junction. In fiscal year 14-15, the DOR devoted 28.2 full-time equivalent (FTE) employees to provide professional support to the Board and Executive Director. The FTE are as follows:

- Agent in Charge,
- Assistant to the Director,
- Background Investigation Specialist,
- Business Analyst,
- Compliance Agent,
- Compliance Investigator II,
- Compliance Investigator,
- Criminal Investigator I (10 positions),
- Criminal Investigator II (2 positions),
- Chief of Investigations,
- Division Director,
- Division Legal Assistant,
- Intake Coordinator,
- Licensing Supervisor, and
- Licensing Specialist (five positions, one of which is a 0.20 FTE position).

---

Table 1 highlights the total expenditures for the regulation of the motor and powersports industry in fiscal years 10-11 through 14-15.

**Table 1**  
**Total Expenditures in Fiscal Years 10-11 through 14-15**

Fiscal Year	Total Program Expenditures
10-11	\$2,683,629
11-12	\$2,778,022
12-13	\$2,920,357
13-14	\$3,047,699
14-15	\$3,355,116

As Table 1 indicates, the total program expenditures have increased in each of the past five fiscal years. Generally, the increase is attributable to a variety of factors, including but not limited to, staffing increases and administrative functions associated with regulatory oversight, such as reviewing licensing applications, issuing licenses, and investigating complaints.

## Licensing

The Executive Director, through the AID, issues numerous motor and powersports vehicle licenses, including:

- Salespersons,
- New and used dealers,
- Wholesalers,
- Wholesale auction dealers (motor vehicle only),
- Manufacturers/distributors,
- Manufacturer representatives, and
- Buyer agents (motor vehicle only).

In order to function as a new or used motor or powersports vehicle salesperson, an applicant is required to secure a license from AID. Each candidate for licensure is required to complete a licensing application, submit to a background examination, secure employment at a new or used dealership, pass the Mastery Examination and obtain a \$15,000 surety bond.

If a licensed salesperson works at multiple dealerships, he or she is required to possess multiple licenses, including securing the required bond for each license. For example, if a salesperson works at two dealerships owned by the same company, he or she is required to have a license at each dealership and secure two separate bonds.



Importantly, a candidate is not eligible for a salesperson license if, in the past 10 years, he or she has been convicted, pled no contest or received a deferred judgment/sentence for a felony such as: murder, sexual assault, theft, burglary, robbery, fraud or forgery.<sup>62</sup>

A candidate is not eligible for a salesperson license if, in the past 10 years, he or she has been convicted, pled no contest or received a deferred judgment/sentence for any crime involving odometer, salvage, motor vehicle title fraud or the defrauding of a retail consumer in a sale or lease.<sup>63</sup>

If a candidate has not been the subject of disciplinary action by the Board in the past five years, the AID may also issue a temporary license to a candidate. The purpose of a temporary license is to allow the candidate to begin working at a dealership while the AID is completing its application review and background investigation. Once the application review and background investigation are complete, assuming there are no issues identified, the candidate is issued a permanent license.

Table 2 illustrates the total number of licensed salespersons (motor vehicle and powersports), as well as the total number of salespersons who have multiple licenses, in the past five fiscal years.

**Table 2**  
**Total Number of Salespersons (Motor and Powersports Vehicle) and Salespersons Who have Multiple Licenses in Fiscal Years 10-11 through 14-15**

Fiscal Year	Total Number of Licensed Salespersons	Total Number of Licensed Salespersons Who Have Multiple Licenses
10-11	10,049	934
11-12	10,575	914
12-13	10,863	1,157
13-14	11,481	879
14-15	11,954	1,014

As indicated in Table 2, the total number of licensed salespersons has increased in each of the past five fiscal years. The increase is attributable to the general growth of the motor and powersports vehicle industries.

Also, Table 2 shows that there are numerous salespersons who have multiple licenses. In fact, in fiscal year 14-15, approximately 10 percent of licensed salespersons had multiple licenses. Generally, salespersons who possess multiple licenses work in the motor vehicle industry.

The current original motor vehicle or powersports salesperson licensing fee is \$125, and the renewal fee is \$96.

<sup>62</sup> Colorado Department of Revenue. *Salesperson Application Information*. Retrieved June 19, 2016, from [https://www.colorado.gov/pacific/sites/default/files/Salesperson%20Application%20Information%20DR%202234\\_0.pdf](https://www.colorado.gov/pacific/sites/default/files/Salesperson%20Application%20Information%20DR%202234_0.pdf)

<sup>63</sup> Colorado Department of Revenue. *Salesperson Application Information*. Retrieved June 19, 2016, from [https://www.colorado.gov/pacific/sites/default/files/Salesperson%20Application%20Information%20DR%202234\\_0.pdf](https://www.colorado.gov/pacific/sites/default/files/Salesperson%20Application%20Information%20DR%202234_0.pdf)

---

To obtain a new or used motor vehicle or powersports dealer, wholesaler or a wholesale auction dealer (motor vehicle only) license, a candidate is required to have a net worth of at least \$100,000, and credit score of at least 701.<sup>64</sup> Candidates must also submit to a background check, complete the pre-licensing education program (excluding franchise motor and powersports vehicle dealers), pass the Mastery Examination,<sup>65</sup> and secure a \$50,000-bond. If a candidate for licensure has held a new or used motor or powersports vehicle dealer, wholesaler, wholesale auction dealer (motor vehicle only) license in the past three years, they are not required to participate in the pre-licensing education program.<sup>66</sup>

For a corporation, the managing officer must take the Mastery Examination.<sup>67</sup> For a partnership, all the general partners must pass the examination.<sup>68</sup>

A candidate for a motor or powersports vehicle dealer, wholesaler or wholesale auction dealer (motor vehicle only) license must secure a \$50,000-bond; however, small trailer (weighing less than 2,000 pounds) dealers are required to secure a \$5,000-bond.<sup>69</sup>

A candidate for licensure may also submit a business plan, which includes information such as:<sup>70</sup>

- Staffing,
- Hours of operation,
- Overhead costs,
- Sales projections,
- Inventory acquisition,
- Floor-plan,
- Financing, and
- Lines of credit.

---

<sup>64</sup> Colorado Department of Revenue. *Dealer and Wholesaler (Motor Vehicle & Powersports) - Auto Industry Division*. Retrieved July 31, 2016, from <https://www.colorado.gov/pacific/enforcement/dealer-and-wholesaler-motor-vehicle-powersports-auto-industry-division>

<sup>65</sup> Colorado Department of Revenue. *Dealer and Wholesaler (Motor Vehicle & Powersports) - Auto Industry Division*. Retrieved July 31, 2016, from <https://www.colorado.gov/pacific/enforcement/dealer-and-wholesaler-motor-vehicle-powersports-auto-industry-division>

<sup>66</sup> Colorado Department of Revenue. *Dealer and Wholesaler (Motor Vehicle & Powersports) - Auto Industry Division*. Retrieved July 31, 2016, from <https://www.colorado.gov/pacific/enforcement/dealer-and-wholesaler-motor-vehicle-powersports-auto-industry-division>

<sup>67</sup> Colorado Department of Revenue. *Dealer and Wholesaler (Motor Vehicle & Powersports) - Auto Industry Division*. Retrieved July 31, 2016, from <https://www.colorado.gov/pacific/enforcement/dealer-and-wholesaler-motor-vehicle-powersports-auto-industry-division>

<sup>68</sup> Colorado Department of Revenue. *Dealer and Wholesaler (Motor Vehicle & Powersports) - Auto Industry Division*. Retrieved July 31, 2016, from <https://www.colorado.gov/pacific/enforcement/dealer-and-wholesaler-motor-vehicle-powersports-auto-industry-division>

<sup>69</sup> Colorado Department of Revenue. *Dealer and Wholesaler (Motor Vehicle & Powersports) - Auto Industry Division*. Retrieved July 31, 2016, from <https://www.colorado.gov/pacific/enforcement/dealer-and-wholesaler-motor-vehicle-powersports-auto-industry-division>

<sup>70</sup> Colorado Department of Revenue. *Dealer and Wholesaler (Motor Vehicle & Powersports) - Auto Industry Division*. Retrieved July 31, 2016, from <https://www.colorado.gov/pacific/enforcement/dealer-and-wholesaler-motor-vehicle-powersports-auto-industry-division>

A candidate who has been convicted of a felony such as murder, sexual assault, theft, burglary, or fraud within the past 10 years, is not eligible for a motor vehicle or powersports vehicle dealer, wholesaler license or wholesale auction dealer license (motor vehicle only).<sup>71</sup>

A candidate who has been convicted of any crime, in the past 10 years, involving odometer, salvage, motor vehicle title fraud, or defrauding a retail consumer in a sale or lease transaction is also ineligible for a motor or powersports vehicle dealer, wholesaler license or wholesale auction dealer license (motor vehicle only).<sup>72</sup>

Table 3 delineates the total number of active new and used motor vehicle and powersports dealers in the past five fiscal years.

**Table 3**  
**Total Number of Active New and Used Motor and Powersports Dealers in Fiscal Years 10-11 through 14-15**

Fiscal Year	New Motor Vehicle Dealers	Used Motor Vehicle Dealers	New Powersports Dealers	Used Powersports Dealers
10-11	649	1,355	87	48
11-12	681	1,414	81	55
12-13	630	1,340	83	56
13-14	638	1,385	83	49
14-15	632	1,277	93	55

The total number of new and used motor and powersports vehicle dealers as well as used powersports dealers has remained fairly constant in the past five fiscal years. The total number of used motor vehicle dealers has decreased. AID staff was unable to articulate the reason(s) for the decrease in new and used motor vehicle licenses in the past five fiscal years.

The current fee for an original new or used motor or powersports dealer’s license is \$519, and the renewal license fee is \$423.

Table 4 highlights the total number of motor and powersports vehicle wholesalers in fiscal years 10-11 through 14-15.

<sup>71</sup> Colorado Department of Revenue. *Dealer and Wholesaler (Motor Vehicle & Powersports) - Auto Industry Division*. Retrieved July 31, 2016, from <https://www.colorado.gov/pacific/enforcement/dealer-and-wholesaler-motor-vehicle-powersports-auto-industry-division>

<sup>72</sup> Colorado Department of Revenue. *Dealer and Wholesaler (Motor Vehicle & Powersports) - Auto Industry Division*. Retrieved July 31, 2016, from <https://www.colorado.gov/pacific/enforcement/dealer-and-wholesaler-motor-vehicle-powersports-auto-industry-division>

**Table 4**  
**Total Number of Motor and Powersports Vehicles Wholesalers**  
**in Fiscal Years 10-11 through 14-15**

Fiscal Year	Motor Vehicle Wholesalers	Powersports Wholesalers
10-11	396	2
11-12	380	1
12-13	360	0
13-14	351	2
14-15	344	3

It is unclear why the total number of motor vehicle wholesalers has decreased in each of the past five fiscal years.

The current fee for a motor or powersports vehicle wholesaler license is \$519, and the renewal fee is \$423.

Table 5 shows the total number of motor vehicle wholesale auction dealers in fiscal years 10-11 through 14-15. As noted previously in this report, the wholesale auction dealer license type is not available for the powersports industry.

**Table 5**  
**Total Number of Motor Vehicle Wholesaler Auction Dealers**  
**in Fiscal Years 10-11 through 14-15**

Fiscal Year	Motor Vehicle Wholesaler Auction Dealers
10-11	8
11-12	9
12-13	6
13-14	6
14-15	5

As indicated in Table 5, the total number of motor vehicle auction dealers in Colorado is relatively small.

Additionally, manufacturers are authorized to sell new motor and powersport vehicles to licensed dealers. In order for manufacturers to conduct business in Colorado, they are also required to secure a license, which includes submitting to a background check. Requirements for licensure include providing the following to the AID:<sup>73</sup>

- A list of all dealers franchised to sell the manufacturer’s motor or powersport vehicles and their dealer number and address,
- A copy of all written warranties or a statement that none are provided,
- A copy of the standard written agreement with dealers,

<sup>73</sup> Colorado Department of Revenue. *Manufacturers and Distributors - Auto Industry Division*. Retrieved August 4, 2016, from <https://www.colorado.gov/pacific/enforcement/manufacturers-and-distributors-auto-industry-division>

- A copy of all delivery and preparation obligations of dealers or a statement that none are required, and
- A copy of Colorado Secretary of State Statement of Foreign Authority (if applicable).

Additionally, a candidate who has been convicted of a felony such as murder, sexual assault, theft, burglary, or fraud within the past 10 years is not eligible for a motor or powersports vehicle manufacture’s license.<sup>74</sup>

Distributors sell or distribute the manufacturer’s new motor or powersports vehicles to dealers. Distributors’ licensing requirements are identical to the requirements of manufacturers. However, distributors must also provide with their licensing application a copy of the distributor agreement with the manufacturer and the name and license number of the manufacturer.<sup>75</sup>

Table 6 illustrates the total number of motor vehicle and powersports manufacturers and distributors in fiscal years 10-11 through 14-15.

**Table 6**  
**Total Number of Manufacturers and Distributors in Fiscal Years 10-11 through 14-15**

Fiscal Year	Motor Vehicle Manufacturers	Powersports Manufacturers	Motor Vehicle Distributors	Powersports Distributors
10-11	235	5	49	2
11-12	252	5	53	3
12-13	247	5	45	2
13-14	257	3	45	1
14-15	241	7	42	3

As delineated in Table 6, the number of motor vehicle and powersports manufacturers and distributors has remained fairly constant in the past five fiscal years.

The fee for a motor or powersport vehicle manufacturer and distributor license is \$519, and the renewal fee is \$423.

Manufacturer representatives are employed by manufacturers. To obtain a manufacturer representative license, a candidate is required to complete a licensing application and include information such as whether he or she has ever been convicted of, received a deferred judgment/sentence or pled no contest to any felony.<sup>76</sup>

<sup>74</sup> Colorado Department of Revenue. *Manufacturers and Distributors - Auto Industry Division*. Retrieved August 4, 2016, from <https://www.colorado.gov/pacific/enforcement/manufacturers-and-distributors-auto-industry-division>

<sup>75</sup> Colorado Department of Revenue. *Manufacturers and Distributors - Auto Industry Division*. Retrieved August 4, 2016, from <https://www.colorado.gov/pacific/enforcement/manufacturers-and-distributors-auto-industry-division>

<sup>76</sup> Colorado Department of Revenue. *Manufacturer Representative - Auto Industry Division*. Retrieved August 4, 2016, from <https://www.colorado.gov/pacific/enforcement/manufacturer-representative-auto-industry-division>

A candidate who has been convicted of a felony such as murder, sexual assault, theft, burglary, or fraud within the past 10 years is not eligible for a manufacturer's license.<sup>77</sup> Table 7 shows the total number of motor vehicle and powersports manufacturer representatives in fiscal years 10-11 through 14-15.

**Table 7**  
**Total Number of Manufacturer Representatives in Fiscal Years 10-11 through 14-15**

Fiscal Year	Motor Vehicle Manufacturer Representatives	Powersports Manufacturer Representatives
10-11	388	0
11-12	424	4
12-13	445	0
13-14	477	1
14-15	473	0

As indicated in Table 7, the total number of motor vehicle manufacturer representatives has increased from 388 in fiscal year 10-11 to 473 in fiscal year 14-15. The growth, at least in part, is attributable to the general increase in the motor vehicle industry.

The current fee for a motor or powersports vehicle manufacturer representative license is \$125, and the renewal fee is \$96.

A candidate who has been convicted of a felony such as murder, sexual assault, theft, burglary, or fraud within the past 10 years is not eligible for a motor or powersports vehicle manufacturer's license.<sup>78</sup>

Buyer agents (motor vehicle only), who work on behalf of consumers, must also secure a license prior to working in Colorado. In order to obtain a license, candidates must, among other requirements, complete a licensing application, submit to a background check and secure a \$5,000-bond.<sup>79</sup>

Table 8 includes the total number of motor vehicle buyer agents in fiscal years 10-11 through 14-15.

<sup>77</sup> Colorado Department of Revenue. *Manufacturer Representative - Auto Industry Division*. Retrieved August 4, 2016, from <https://www.colorado.gov/pacific/enforcement/manufacturer-representative-auto-industry-division>

<sup>78</sup> Colorado Department of Revenue. *Buyer Agent - Auto Industry Division*. Retrieved August 4, 2016, from <https://www.colorado.gov/pacific/enforcement/buyer-agent-auto-industry-division>

<sup>79</sup> Colorado Department of Revenue. *Buyer Agent - Auto Industry Division*. Retrieved August 4, 2016, from <https://www.colorado.gov/pacific/enforcement/buyer-agent-auto-industry-division>

**Table 8**  
**Total Number of Buyer Agents in Fiscal Years 10-11 through 14-15**

Fiscal Year	Motor Vehicle Buyer Agents
10-11	11
11-12	11
12-13	9
13-14	13
14-15	3

AID staff was unable to provide an explanation for the decrease in buyer agents. One possible explanation is that consumers now have numerous resources available to research information on a vehicle they wish to purchase. As a result, the demand for buyer agents' services has decreased.

The fee for a buyer agent license is \$519, and the renewal fee is \$423.

## **Mastery Examination**

New and used motor and powersport vehicle salespersons are required to pass the Mastery Examination prior to working. New and used motor and powersports dealers, wholesalers and wholesale auction dealers (motor vehicle only) are also required to pass the Mastery Examination. If the business is a corporation, the managing officer must take the Mastery Examination.<sup>80</sup> For a partnership, all the general partners must pass the examination.<sup>81</sup> Buyer's agents must pass the examination as well.

The Mastery Examination is an "open book" examination that tests a candidate's knowledge (competency) on a variety of laws and regulations related to the motor vehicle industry.

The Mastery Examination is a computer-based test, unless a request is submitted in writing to the AID requesting a paper test. The examination consists of 60 multiple-choice questions and must be completed within 90 minutes.<sup>82</sup>

In order to pass the Mastery Examination, a candidate must score at least 85 percent.<sup>83</sup> If a candidate does not pass the examination, he or she may take the test a maximum of two times in one day. There is no limitation on the number of times a candidate may take the examination.

<sup>80</sup> Colorado Department of Revenue. *Dealer and Wholesaler (Motor Vehicle & Powersports) - Auto Industry Division*. Retrieved July 31, 2016, from <https://www.colorado.gov/pacific/enforcement/dealer-and-wholesaler-motor-vehicle-powersports-auto-industry-division>

<sup>81</sup> Colorado Department of Revenue. *Dealer and Wholesaler (Motor Vehicle & Powersports) - Auto Industry Division*. Retrieved July 31, 2016, from <https://www.colorado.gov/pacific/enforcement/dealer-and-wholesaler-motor-vehicle-powersports-auto-industry-division>

<sup>82</sup> Colorado Department of Revenue. *Mastery Exam - Auto Industry Division*. Retrieved August 4, 2016, from <https://www.colorado.gov/pacific/enforcement/mastery-exam-auto-industry-division>

<sup>83</sup> Colorado Department of Revenue. *Mastery Exam - Auto Industry Division*. Retrieved August 4, 2016, from <https://www.colorado.gov/pacific/enforcement/mastery-exam-auto-industry-division>

---

Generally, the Mastery Examination is administered at the dealership where the candidate is going to work. However, there are third-party administrators, who are approved by the Board, and also administer the examination.<sup>84</sup>

The Mastery Examination is psychometrically valid.

## Pre-Licensing Education

The statute requires an owner, managing officer and all general partners of a used motor or powersports vehicle, wholesaler or wholesale auction dealer (motor vehicle only) license to complete an eight-hour pre-licensing education program.<sup>85</sup> Applicants are exempt from the aforementioned requirement if they have held a new or used motor or powersports vehicle dealer, wholesaler, wholesale auction dealer (motor vehicle only) license in the past three years.<sup>86</sup>

The purpose of the pre-licensing education program is to provide a comprehensive overview of the applicable federal and state laws and regulations concerning the motor vehicle industry. The pre-licensing education program is administered by a variety of third-party administrators, such as the Colorado Independent Automobile Dealers Association.

Upon completion of the pre-licensing program, a participant receives a certificate of completion.

## Complaints/Disciplinary Actions

AID staff receives many complaints from a variety of sources, such as consumers, dealers, and wholesalers, concerning licensees potentially violating the statute. When AID staff receives a complaint, it is assigned to an investigator who begins researching the allegations. AID staff assigned to the complaint will contact the complainant and the licensee. If, after the investigation, it is determined a violation of the statute or applicable rules did not occur, the licensee and complainant are both notified, and the complaint is dismissed.

If, however, the investigation determines that a violation occurred, AID staff will complete an affidavit of probable cause, which is a document highlighting the alleged violations of the statute or applicable rules. The affidavit of probable cause is presented to the Board.

---

<sup>84</sup> Colorado Department of Revenue. *Mastery Exam - Auto Industry Division*. Retrieved August 4, 2016, from <https://www.colorado.gov/pacific/enforcement/mastery-exam-auto-industry-division>

<sup>85</sup> Colorado Department of Revenue. *Pre-Licensing Education Certificate for Dealers - Auto Industry Division*. Retrieved August 4, 2016, from <https://www.colorado.gov/pacific/enforcement/pre-licensing-education-certificate-dealers-auto-industry-division>

<sup>86</sup> Colorado Department of Revenue. *Pre-Licensing Education Certificate for Dealers - Auto Industry Division*. Retrieved August 4, 2016, from <https://www.colorado.gov/pacific/enforcement/pre-licensing-education-certificate-dealers-auto-industry-division>



---

Table 9 illustrates the total number of complaints received, including motor and powersports vehicles licenses, in fiscal years 10-11 through 14-15.

**Table 9**  
**Total Number of Complaints Received in Fiscal Years 10-11 through 14-15**

Fiscal Year	Complaints Received
10-11	1,525
11-12	1,377
12-13	1,234
13-14	1,228
14-15	1,262

AID staff does not keep statistical data on complaints received by license type. Therefore, it is not practical to differentiate the complaints received in Table 9 by license type. Anecdotally, motor vehicle dealers received the most complaints in the past five fiscal years. AID staff indicated that the most common types of complaints received are:

- Title delivery,
- Unlicensed activity,
- Contract dispute, and
- Misrepresentation.

In Colorado, dealers are required to deliver the title of the vehicle to the consumer within 30 days of the date of purchase. Failing to do so often results in a complaint filed to the AID.

Essentially, unlicensed activity occurs when a licensee, including a salesperson, does not have a valid license in Colorado. Specifically, unlicensed activity may include dealers employing an unlicensed salesperson and unlicensed sales, commonly known as “curbstoning.” Unlicensed dealers or salespersons may engage in activities such as, selling salvaged vehicles or rolling back odometers so that vehicles appear to have fewer miles on them than they actually do.

Typically, contract disputes arise when issues such as the terms of the contract (payments, interest rate, term of loan, etc.) are different than what was agreed upon at the time of sale.

Generally, misrepresentation complaints are related to dealers not informing consumers about prior damage to the vehicle.

The Board and the Executive Director have the authority to impose formal discipline on licensees. Specifically, the Board may impose discipline on motor and powersports salespersons, new and used dealers, wholesalers, and wholesale auction dealers (motor vehicle only).

---

The Executive Director has the authority to impose discipline on motor and powersports manufacturers, distributors, and buyer agents (motor vehicle only).

According to AID staff, motor vehicle dealers (new and used) and salespersons receive the vast majority of formal discipline. The AID computer system used to compile complaints and disciplinary actions does not differentiate discipline by license type. As a result, a manual count of discipline was completed by AID staff to determine which license types received discipline, including the type of action (denial, revocation or suspension). Table 10 illustrates the Final Agency Actions related to license denials, revocations, and suspensions for dealers and salespersons in fiscal year 14-15.

**Table 10**  
**Final Agency Actions for Denials, Revocations and Suspensions in Fiscal Year 14-15**

Type of Action	Number of Actions
Dealer Licenses Denied	13
Dealer Licenses Revoked	2
Salesperson Licenses Denied	50
Salespersons Licenses Suspended	2
Salespersons Licenses Revoked	1

As highlighted in Table 10, 13 dealer licenses were denied in fiscal year 14-15. Generally, dealers were denied a license by the Board for unfitness of financial character, which occurs when a candidate for a dealer license fails to meet the guideline threshold of \$100,000 in net worth and/or having a credit score of less than 701.

The highest number of Final Agency Actions (50) in fiscal year 14-15 was the denial of salespersons licenses. Generally, license denials for a salesperson license occurred as a result of unfitness of criminal character/record and/or unfitness of financial record for failing to pay federal or state income tax.

The Board, primarily, issues “Stipulation - Final Agency Orders” to licensed dealers when enforcing discipline. When it is determined that a violation of the statute or applicable rules has occurred, an affidavit of probable cause is prepared by AID staff and presented to the Board.

If the Board approves the affidavit of probable cause, the case moves to the executive secretary of the Board, the Director of AID, and the executive secretary negotiates a settlement with the licensee.

Stipulations almost always involve a fine, but they can occasionally involve an alternative requirement in an attempt to assist the licensee with long-term education and compliance. Alternatives may include audits by third-party providers and additional training from industry associations.

The most common types of violations resulting in Board discipline include:

- Dealers employing unlicensed salespersons,
- Failure to honor a written agreement,
- Failure to facilitate initial registration of the purchased vehicle,
- Failure to disclose required damage, and
- Various types of advertising violations.

Table 11 shows the total number of Stipulations - Final Agency Orders in fiscal years 10-11 through 14-15.

**Table 11**  
**Total Number of Stipulations - Final Agency Orders for Dealers in Fiscal Years 10-11 through 14-15**

Board Discipline for Dealers	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Stipulations - Final Agency Actions	15	24	26	42	41

Table 11 demonstrates that the total number of Stipulations - Final agency Orders has increased in each of the past five fiscal years. This increase is attributable to the Board’s desire to focus on advertising violations and failure to disclose prior damage to vehicles.

Additionally, the Board has the authority to impose fines on licensees for violations of the statute and applicable rules. Typically, dealers receive the majority of fines imposed by the Board; however, there are instances where salespersons are fined as well. The most common violations of the statute where fines are imposed are related to the following:

- Failure to deliver title within 30 days,
- Misrepresentation of the history of a vehicle (prior damage),
- Dealers employing unlicensed salespersons, and
- Advertising violations.

Table 12 highlights the total fines ordered, the amount held in abeyance and amount imposed.

**Table 12**  
**Total Fines Ordered, Amount Held in Abeyance and Imposed in Fiscal Years 10-11 through 14-15**

Fiscal Year	Fines Ordered	Fines Held in Abeyance	Fines Imposed	Actual Payments
10-11	\$299,500	\$190,000	\$109,500	\$30,650
11-12	\$2,244,500	\$615,700	\$1,625,800	\$79,450
12-13	\$451,000	\$316,000	\$135,000	\$88,525
13-14	\$691,500	\$469,500	\$222,000	\$217,834
14-15	\$712,500	\$518,950	\$193,550	\$176,566

---

As indicated in Table 12, the highest dollar amount of fines imposed was in fiscal year 11-12. Several fines were imposed by the Board. For example, an automotive group, which included eight dealerships, was defrauding consumers by not paying off trade-in vehicles and failing to deliver title on vehicles that consumers purchased from them. The Board levied fines, as part of a Stipulation - Final Agency Order.

Also, in fiscal year 11-12, a large portion of the fines ordered by the Board were imposed on defunct dealerships. As a result, a fraction of the actual fines was collected.

### **Collateral Consequences – Criminal Convictions**

Section 24-34-104(6)(b)(IX), C.R.S., requires Colorado Office of Policy, Research and Regulatory Reform to determine whether the agency under review, through its licensing processes, imposes any disqualifications on applicants or licensees based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

The AID computer system used to track licensing applications, denials, revocations and suspensions does not disaggregate this information by license type. Therefore, AID was unable to provide this information.

However, there are a variety of past criminal actions that disqualify applicants for licensure, such as murder, sexual assault and fraud.

---

## Analysis and Recommendations

### **Recommendation 1 – Continue the Motor Vehicle Dealer Board and the regulation of the motor vehicles industry for seven years, until 2024.**

The auto industry has a significant impact on the state's economy. For example, in 2014, Colorado's franchised new vehicle dealers experienced a total of \$15.24 billion in sales.<sup>87</sup> Also in 2014, the total state and local taxes collected or paid by new franchised motor vehicle dealers was approximately \$616 million, and the average dealership sales were \$58.6 million.<sup>88</sup>

There are a variety of licenses issued in the motor and powersports vehicles industry in Colorado, including:

- Salespersons,
- New and used dealers,
- Wholesalers,
- Wholesale auction dealers (motor vehicle only),
- Manufacturers/distributors,
- Manufacturer representatives, and
- Buyer agents (motor vehicle only).

Currently, there are more than 19,000 motor and powersports vehicle licensees in Colorado.

Motor and powersports vehicle licensees are regulated under a bifurcated regulatory structure, where the Motor Vehicle Dealer Board (Board) provides oversight for motor and powersports vehicle salespersons, dealers, wholesalers and wholesale auction dealers (powersports does not involve this type of license). Further, the Board is authorized to, among other duties, impose discipline, which includes suspension, revocation and denial of licenses. The Board is also authorized to impose fines on licensees for violations of the statute and applicable rules.

The Board, through its delegation authority, enlists the board secretary, the Director of the Auto Industry Division (AID) to carry out all directives and make recommendations to the Board. In practice, the board secretary, among other duties, negotiates stipulated agreements with licensees who have violated the statute or applicable rules and provides stipulation recommendations to the Board.

The Board delegates authority to issue licenses to the Executive Director of the Department of Revenue (Executive Director and DOR, respectively). AID staff are tasked with fulfilling this duty.

---

<sup>87</sup> 2015 Colorado Automobile Dealers Association Colorado Economic Impact Report, Colorado Automobile Dealers Association (2015), p.3.

<sup>88</sup> 2015 Colorado Automobile Dealers Association Colorado Economic Impact Report, Colorado Automobile Dealers Association (2015), p.3.

---

The Board provides protection to consumers by establishing and enforcing standards for licensees to enter the various motor and powersports vehicle fields, such as passage of the Mastery Examination, which tests a candidate's knowledge of the current Colorado laws and regulations related to the motor and powersports vehicle industry. Regulatory oversight, such as establishing minimum standards of competency for licensees, is a crucial component of insulating consumers from harm.

Additionally, the statute requires licensees to secure a bond prior to practicing. Bonds are rarely opened for violations of the statute. This can perhaps be explained because the statute only authorizes bonds to be opened for discipline related to fraud, which is a standard that is difficult to prove. Regardless, bonds, in theory, provide a certain level of financial protection to consumers by allowing them to access a bond if they have been harmed financially through fraudulent activity.

The Board, as highlighted in the Final Agency Actions section of this sunset review, has also imposed several disciplinary actions on licensees, including imposing fines in the past five fiscal years. Although AID staff was not able to disaggregate the discipline by license type, anecdotally, the majority of the disciplinary actions imposed were on motor vehicle dealer's licenses. The most common disciplinary actions were for the following:

- Failure of a motor vehicle dealer to deliver a title within 30 days,
- Misrepresentation of a vehicle's history (prior damages),
- Employing an unlicensed salesperson, and
- Advertising violations.

Motor vehicle dealers also received the majority of fines imposed by the Board. Some examples where motor vehicle dealers were fined include instances where motor vehicle dealers were failing to pay off the trade-in vehicle of consumers.

Additionally, motor and powersports vehicle manufacturers/distributors, manufacturer representatives and buyer agents (motor vehicle only) are regulated by the Executive Director. The Executive Director has the authority to formally discipline the referenced licensees, including imposing fines.

Information provided for this sunset review indicates that the Executive Director rarely imposes discipline on manufacturers/distributors, manufacturer representatives or buyer agents. Several factors may contribute to the limited discipline imposed on these licensees, including the comparatively small number of licensees compared to licensed salespersons and dealers in Colorado. These licensees also, for the most part, have limited interaction directly with the consumer, which may offer a possible explanation for the limited number of cases of discipline.

All applicants for original licensure are required to submit to a background check. Background checks provide protection to consumers by eliminating individuals who have committed serious crimes, such as murder, sexual assault or fraud, from securing a license in Colorado.

---

Also, the pre-licensing education program and passage of the Mastery Examination requirements ensure that licensees are equipped with baseline knowledge of current laws and regulations concerning the motor and powersports industry.

The Board also contributes to overall consumer protections related to the motor vehicle industry by imposing discipline on licensees for violations of the statute and applicable rules. This ensures that licensees are accountable for actions that compromise consumer protection.

Licensees are required to complete a background check, achieve a minimum level of competency completing pre-licensing education and pass the Mastery Examination.

To date, there are more than 19,000 licensees in the motor and powersports vehicle industry in Colorado. Regulation ensures licensees have completed a background check and achieved a minimum level of competency by requiring pre-licensing education and the passage of the Mastery Examination. In order to provide protection from harm to consumers through regulatory oversight, the General Assembly should continue the Board for seven years, until 2024.

**Recommendation 2 – Continue Part 5 of the statute for seven years, until 2024, and remove the repealer in Part 5 of the statute.**

The regulation of powerports vehicles, Part 5 of the statute, is vested with the Board and the Executive Director. Powersports vehicles are off-highway vehicles such as, snowmobiles, jet skis and all-terrain vehicles.

The regulation of the powersport industry mirrors the Board’s and Executive Director’s oversight responsibilities with respect to motor vehicles. For instance, the Board is responsible for, among other duties, imposing formal discipline on powersports salespersons, new and used dealers and wholesalers. The Board may revoke, suspend, deny and/or impose fines on licensees for violations of the statute or applicable rules.

The Executive Director is responsible for, among other things, issuing licenses and imposing discipline on powersports manufacturers/distributors and manufacturer representatives. The Executive Director may revoke, suspend, deny and/or impose fines on licensees.

Essentially, Part 5 of the statute concerning regulation standards (Mastery Examination and pre-licensing education and bond requirements) and oversight of licensees (imposing discipline) mirrors Part 1.

However, Part 5 of the statute contains its own, separate repealer. A repealer is a requirement that the statute undergoes a sunset review to determine whether regulation should continue. Upon completion of a sunset review, the General Assembly may continue or sunset the regulatory program through legislation.

---

It is unclear why the General Assembly created Part 5 of the statute via House Bill 07-1081 (HB 1081) instead of simply incorporating the various powersports vehicle license types into the existing statute.

It is unnecessary for Part 5 to contain its own repealer. When the Colorado Office of Policy, Research and Regulatory Reform staff conducts a sunset review of practice acts, it typically reviews the entire statute, under one repealer.

As such, the General Assembly should continue the regulation of the powersports vehicle industry for seven years, until 2024, and remove the separate repealer from the statute. Doing so does not compromise consumer protection since the entire statute is subject to a sunset review, and any recommended changes to the statute are included in future sunset reviews.

### **Recommendation 3 – Amalgamate Parts 1 and 5 of the statute.**

Part 1 of the statute highlights the regulatory oversight of the motor vehicle industry. Part 1, among other stipulations, creates the various license types that are under the jurisdiction of the Board and Executive Director.

Meanwhile, Part 5 of the statute, which was created by the General Assembly via HB 1081, details the regulatory oversight of the powersports industry, which includes the same license types, except the wholesale auction dealers and buyer agents, as motor vehicle licenses. Wholesale auction dealers and buyer agents are not typical professions in the powersports vehicle sector. Consequently, these licenses are not available.

The responsibility of the Board and Executive Director concerning the regulation of powersports licensees is identical to motor vehicle licensees. It is not clear why the legislature created Part 5 in the statute instead of simply creating a new class of license for powersports-related sales within Part 1 of the statute.

There are a few differences between Parts 1 and 5. For example, HB 1081 did not include a definition for “advertisement,” and this is an important component for consumer protection. Clearly defining what constitutes the advertisement of powersports vehicles establishes what is considered an advertisement. Currently, Part 5 does not contain a definition of advertisement; amalgamating Part 5 into Part 1 will ensure that the same advertising requirements are included for motor and powersports vehicles.

In order to streamline the statute, the General Assembly should amalgamate Part 5 of the statute into Part 1. Doing so will not compromise consumer protection. Instead, it will remove the unnecessary stand-alone portion of the statute for the regulation of powersports licensees. All of the current license types for the powersports industry, except wholesale auction dealers and buyer agents, are identical to that of the motor vehicle industry that could be highlighted in Part 1 of the statute.



---

Powersports licensees have the same requirements for licensure as motor vehicle licensees. For example, powersports salespersons are required to submit to a background check, pass the Mastery Examination and secure a \$15,000 bond prior to practicing. If Part 5 is amalgamated into Party 1 of the statute, all of the requirements for powersports licensure will remain the same.

Also, the current regulatory structure will remain in place, including oversight responsibilities and types of discipline.

Therefore, the General Assembly should amalgamate Parts 1 and 5 of the statute.

#### **Recommendation 4 – Repeal the prohibition on Sunday sales.**

Motor vehicle dealers are authorized to sell automobiles on Sunday in a majority of states. In fact, there are currently 34 states that allow Sunday sales of motor vehicles.<sup>89</sup> The states are not uniform in their application of Sunday sales. For example, Rhode Island allows the sale of motor vehicles on Sunday from noon to 6:00 p.m., and in Maryland, four separate counties allow Sunday sales. However, many of the 34 states allow these businesses to operate with minimal government interference.

Currently, section 12-6-302, Colorado Revised Statutes (C.R.S.), prohibits the sale of motor vehicles on the first day of the week (Sunday). However, section 12-6-302, C.R.S., expressly exempts boats, boat trailers, snowmobiles and snowmobile trailers from the Sunday sales prohibition.

Additionally, Part 5 of the statute, which highlights the regulatory structure for powersports vehicles, including snowmobiles, does not contain a prohibition on the sale of powersports vehicles on Sunday. It is unclear why there are two separate standards concerning Sunday sales in the statute.

The origins of the Sunday sale prohibition stem from what is commonly referred to as “Blue Laws.” Generally, Blue Laws are laws that prohibit certain activities, such as purchasing alcohol or motor vehicles on Sunday. Historically, Sunday is viewed as a day of “rest,” including observing the Sabbath. As such, Blue Laws mandated that certain industries remained closed on Sunday.

In 2008, the State of Colorado repealed the Blue Law on the sale of alcohol on Sunday. This enables consumers to purchase alcohol seven days a week.

---

<sup>89</sup> Automotive News. *Never on Sunday. The Battle Over Sunday Sales.* Retrieved March 25, 2016, from <http://www.autonews.com/article/20150503/RETAIL07/304279869?template=print>

---

Additionally, the second sunset criterion asks if the current regulations are the least restrictive form of regulation consistent with public protection. Restricting the sale of motor vehicles on Sunday does not provide the least restrictive form of regulation consistent with public protection. In fact, this provision in the statute restricts a business's option to sell motor vehicles on Sundays, and it restricts consumer choice. Businesses should have the option to provide the sale of motor vehicles on Sunday to consumers. Consumers should also have the option to purchase a motor vehicle on Sunday.

The prohibition on Sunday sales does not enhance consumer protection; instead, it creates an unnecessary barrier for businesses to sell their motor vehicles. It also limits consumer options to purchase a motor vehicle on Sunday.

Research for this sunset review did not identify other prohibitions against Sunday sales for any other industry in Colorado. For example, there is not a federal or state law prohibiting banks or credit unions from operating on Sunday. Many banks and credit unions, however, choose to remain closed on Sunday. This is a business choice, not a mandate by the government.

During the course of this sunset review, some stakeholders maintained that consumers prefer that motor vehicle dealers are closed on Sunday, so they are free to "roam" the lot to look at vehicles without being bothered by salespersons. However, consumers may inform salespersons that they are only "looking" at vehicles and wish to be left alone on Sunday, just like they can on any other day of the week.

Also, many consumers' work schedules limit their ability to shop for motor vehicles. Since a conventional work schedule typically entails consumers working Monday through Friday, this leaves only evenings and one day on the weekend (Saturday) to purchase a motor vehicle. Repealing the prohibition on Sunday sales increases consumer options to allow them to purchase a motor vehicle on either Saturday or Sunday. Regardless, businesses and consumers should have the option to purchase a motor vehicle on Sunday, which would be the least restrictive form of regulation consistent with public protection.

As referenced earlier, statute allows powersports vehicles to be sold on Sunday and prohibits motor vehicle sales on Sunday. These two standards represent inconsistent provisions of law in the same statute. The motor vehicle industry is, therefore, not afforded the same opportunities to operate their business as they see fit.

The General Assembly should repeal the prohibition on the sale of motor vehicles on Sunday in Colorado. Doing so will remove the unnecessary governmental barrier for businesses to operate on any day they wish to sell to consumers. This repeal will also remove the unnecessary restriction for consumers, and allow them to purchase a motor vehicle on Sunday. Repealing this outdated prohibition will not compromise consumer protection; instead, it will enable the statute to operate with the least restrictive form of regulation consistent with public protection.

---

**Recommendation 5 – Repeal the Board’s authority to propose adjustments to licensing fees.**

Currently, sections 12-6-110(5)(a) and 12-6-511(5)(a), C.R.S., state that the Board proposes, as part of its annual budget request, an adjustment in the amount of each fee which the Board is authorized by law to collect. The budget request and the adjusted fees for the Board must reflect both direct and indirect costs.

Also, sections 12-6-110(5)(b) and 12-6-511(5)(b), C.R.S., state that based on the appropriation made and subject to the approval of the Executive Director, the Board must adjust the fees collected by the Executive Director so that the revenue generated from the fees covers the direct and indirect costs of administering the statute.

Although the Board has the authority to provide input on the fees licensees are required to pay to the AID, the ultimate authority for approval of the fees is vested with the Executive Director. Fee setting is an administrative process that involves many members of the AID staff.

The Board’s involvement in the fee setting process is unnecessary and inefficient. The Board consists of volunteers who meet on a monthly basis to, among other duties, impose discipline on licensees. Board members are not members of the AID staff, and are not involved in day-to-day operations of the DOR. As a result, their involvement in the fee-setting process should be repealed.

Since the statute articulates the ultimate authority in the approval of the fees licensees are charged is vested with the Executive Director, allowing the Board to provide input is an additional process that is unnecessary and an inefficient use of the Board’s time.

As such, the General Assembly should repeal the Board’s authority to propose an adjustment in the fees the AID collects for licenses. Doing so will not compromise the Board’s duties in providing regulatory oversight of the motor and powersports vehicle industries. Instead, it will remove the unnecessary requirement of the Board’s involvement in the fee-setting process. This will lead to an increase in efficiency in the AID process in establishing fees for licensees.

**Recommendation 6 – Require a licensing application when an ownership change of a new or used motor or powersports vehicle dealer license occurs.**

New and used motor or powersports vehicle dealers who request a change of ownership are only required to inform the AID through a letter on the dealership’s letterhead. A change in ownership may include transferring a certain percentage of the ownership between existing owners.

---

However, a change in ownership may also include a new person, who may or may not, have experience in the motor or powersports industry. A new person to an ownership structure is not required, via statute or rule, to complete a licensing application, complete the required pre-licensing education program, pass the Mastery Examination or submit to a background investigation.

The absence of a requirement that a new person who applies for an ownership stake in an existing dealership complete a licensing application, complete the pre-licensing education program, pass the Mastery Examination and complete a criminal background investigation could compromise public protection.

The pre-licensing education program provides a comprehensive overview of existing federal and state laws concerning the motor and powersports vehicle industry. New members of an existing ownership group are not required to complete this program, which may compromise consumer protection.

The Mastery Examination tests a candidate's knowledge of the current laws and regulations related to the motor vehicle and powersports industries. Passage of the Mastery Examination ensures that a candidate for license has baseline knowledge of existing laws and regulations that govern the motor and powersports industries.

Also, new members to an ownership group of a dealership could have past violations of the statute at other dealerships or could have felony convictions that render them ineligible for a license.

Implementation of these requirements will ensure that a new owner of a new or used dealership have met the minimum standards for licensure, which may assist with insulating consumers from harm.

In order to ensure that all potential licensees are compliant with the existing standards for a new or used motor or powersports vehicle dealer license, the General Assembly should require that any new person who aspires to become a member of an ownership team of a new or used motor or powersports vehicle dealership be required to complete a licensing application, including a background check. Prior to the issuance of a license, the new person should also be required to complete the pre-licensing education program.

**Recommendation 7 – Allow the Board to impose discipline on owners of motor or powersports vehicle dealerships and wholesalers for violations of the statute while working as a salesperson.**

Sections 12-6-108 and 12-6-508, C.R.S., allow up to two owners of a motor or powersports vehicle business to act as salespersons. However, the statute does not require the owners to obtain an additional license to function as a salesperson.

---

AID has experienced instances where an owner has violated the statute while acting as a salesperson. When this occurs, the only disciplinary action available to the Board is outlined in sections 12-6-104(3)(o)(I) and 12-6-504(4)(a), C.R.S., which allows the Board to issue a fine for unlicensed activity.

Perhaps the intent of the statute was to reduce the regulatory burden on owners by not requiring them to possess two separate licenses.

However, allowing them to function as salespersons without obtaining a proper license has had unintended consequences concerning the Board's lack of jurisdiction.

As such, the General Assembly should amend the statute to grant the Board jurisdiction over owners who are practicing as salespersons. In other words, since the owners have a dealer license, their license should be subject to disciplinary actions by the Board for violations of the statute while they are practicing as salespersons. Doing so will prevent the owners from having to obtain multiple licenses, and it will ensure that the owners are under the jurisdiction of the Board when they are acting as salespersons.

### **Recommendation 8 – Codify the Auto Industry Division in statute.**

The AID was created in 1997 and 2005 via Executive Orders D 0021 97 and D 007 05, respectively. Although the AID is referenced in various regulations, it is not currently a statutorily created division.

An Executive Order is subject to revision or repeal by the Governor who issued the Executive Order or any of his or her successors. A revision or repeal of the Executive Order does not require legislative action.

Although the repeal of the AID is unlikely, codifying it in statute provides a consistency within the DOR, where a variety of divisions are codified in statute, such as the Division of Gaming, Liquor and Tobacco Enforcement Division, the Marijuana Enforcement Division and the Division of Racing Events.

The General Assembly should codify the AID in statute. Doing so will provide the stability and consistency with other divisions within the DOR.

### **Recommendation 9 – Remove the dependent nature of a salesperson's license.**

In order to function as a motor or powersports vehicle salesperson in Colorado, a candidate must secure employment at a motor or powersports vehicle dealership, secure a \$15,000-bond and pass the Mastery Examination, which is an open-book examination of federal and state laws and regulations concerning motor and powersports vehicle industries.

---

Section 12-6-116(3), C.R.S., states,

If a motor vehicle salesperson is discharged, leaves an employer or changes a place of employment, the motor vehicle dealer or used motor vehicle dealer who last employed the salesperson shall confiscate and return the salesperson's license to the Board.

Similarly, section 12-6-502(15), C.R.S., states,

Powersports vehicle salesperson means a natural person who, for a salary, commission or compensation of any kind, is employed either directly or indirectly, regularly or occasionally, by a powersports vehicle dealer to sell, lease, purchase or exchange or to negotiate for the sale, lease, purchase or exchange of powersports vehicles.

The above referenced sections in the statute imply that a salesperson's license is "dependent" on the licensee's employment at a dealership. In fact, if the person secures employment at a different dealership, he or she is required to obtain an additional license from the AID. Securing separate licenses necessitates that the salesperson obtain a \$15,000-bond for each license.

The requirement that the salesperson's license is "dependent" on the dealership for which he or she works does not enhance consumer protection. Instead, it creates an unnecessary burden for the salesperson and it is an unnecessary administrative burden for AID staff to continually issue new licenses to licensees who move to other dealerships.

The "dependent" license is also inconsistent with other types of occupational licenses. For example, physicians, nurses, and plumbers do not have licenses that are dependent on their employer. Rather, the referenced occupations have completed the requirements for licensure and are able to practice with their current license regardless of the employer.

The purpose of occupational licensing is to, among other things, ensure that licensees possess the required minimal competencies to practice, and to allow a regulatory body (e.g., the Board or Executive Director) to impose discipline for violations of laws or rules. Removing the dependent nature of a salesperson's license will not impact regulatory oversight of the Board on licensees.

Therefore, the General Assembly should remove this unnecessary requirement. Doing so will not compromise consumer protection, but rather, it will remove the unnecessary requirement for the practitioner, which will also remove the laborious administrative duties of AID staff to continually re-issue licenses to salespersons.

---

**Recommendation 10 – Require a fingerprint-based criminal history background check for all applicants for licensure.**

Board Regulation 12-6-104(3)(g)(11), states, “The Board will conduct a criminal history inquiry of all applicants (motor vehicle licensure) for a license issued by the Board.” Additionally, Board Regulation 12-6-504(1)(c)(2), states, “All original applicants (powersports licensure) must have a criminal history background investigation conducted prior to the issuance of a permanent license.”

Although the AID performs the above referenced background checks, the statute does not authorize them to conduct a thorough criminal history check included in a fingerprint-based system. The current requirements for a background check limit the AID to conducting inquiries that could identify crimes that were convicted, for instance, in other states. AID staff performs inquiries by utilizing online resources and rely upon truthful disclosures from the applicants to compile a criminal history of the applicant.

To alleviate the potential issues associated with the limited authority of background checks authorized by the statute, the General Assembly should amend the statute to allow the AID to conduct comprehensive fingerprint-based record checks through the Federal Bureau of Investigations and Colorado Bureau of Investigation. Doing so will provide a more thorough and detailed examination into the past criminal history of all applicants for licensure for both motor and powersports vehicle licensure; thus, providing enhanced consumer protection to consumers.

**Recommendation 11 – Require motor and powersports licensees who have their licenses revoked or who surrender their licenses in lieu of discipline to wait two years before applying for a new license.**

The statute authorizes the Board to revoke motor and powersports vehicle salespersons, new and used dealers, wholesalers and wholesale auction dealer’s (motor vehicle only) licenses for violations of the statute or applicable rules.

The statute also authorizes the Executive Director to revoke motor and powersports vehicle manufacturers, distributors and buyer agent’s (motor vehicle only) licenses for violations of the statute or applicable rules.

Revocation proceedings can be lengthy and expensive and are typically undertaken only when the alleged conduct is so egregious that the licensee must be removed from practice in order to protect the public.

Similarly, many licensees, when forced with the prospect of revocation proceedings, will voluntarily surrender their license.

---

However, the statute makes no provision for a licensee who has their license revoked to wait to apply for a new license. As a result, a licensee could apply for a new license the very day that a revocation order becomes effective. This not only poses a risk to the public, but also requires the AID to incur additional expenses in processing the new application and, if it is denied and appealed, additional legal expenses.

Many other statutes regulating various professions and occupations in Colorado provide for a waiting, or “cooling off” period. Typically, licensees who have their license revoked are required to wait two years before applying for a new license.

The same concerns apply to licensees who surrender their license rather than face revocation proceedings. These individuals should not be allowed to immediately apply for a license.

Since it is a waste of state resources to revoke a license only to have the same licensee immediately apply for a new license, and since such a loophole is a risk to the public and because many other regulatory programs impose a waiting period, a licensee who has had a license revoked or who surrenders his or her license in lieu of discipline should be required to wait two years before applying for a new license.

### **Recommendation 12 – Make technical changes to the statute.**

Several references in the statute need to be updated and clarified to reflect current practices and, when necessary, to remove unnecessary language. While recommendations of this nature generally do not rise to the level of protecting the health, safety, and welfare of the public, unambiguous laws make for more efficient implementation.

Consequently, the General Assembly should make the following technical changes to the statute:

- In section 12-6-102(17), C.R.S., remove the term “new” from the definition of used motor vehicle dealer.
- In section 12-6-120.3(4)(a), C.R.S., remove the term “or a court,” and remove “part 1” and replace it with “under this section.”



---

**Administrative Recommendation 1 – The AID should track license disqualifications based on criminal history.**

During the 2013 legislative session, the General Assembly added a criterion to those that govern the research and reporting in sunset reviews. Criterion IX asks,

Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to paragraph (a) of subsection (5) of this section shall include data on the number of licenses or certifications that the agency denied, revoked, or suspended based on a disqualification and the basis for the disqualification.<sup>90</sup>

Because it is a newer reporting requirement, some programs and organizations, do not track this information. Because the General Assembly finds this information to be an important function of a sunset review, the AID should track disqualifications for licenses based on past criminal history.

---

<sup>90</sup> § 24-34-104(6)(b)(IX), C.R.S.