

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

COLORADO MOTOR VEHICLE DEALER LICENSING BOARD

1997 SUNSET REVIEW



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EXECUTIVE SUMMARY

The Department of Regulatory Agencies (DORA) has concluded its 1997 Sunset Review of the regulation of the motor vehicle industry by the Department of Revenue (DOR) and the Motor Vehicle Dealer Licensing Board (Board). DORA found there is a need for continued regulation of the industry and recommends the Board continues to serve as the state regulatory agency. In evaluating the operation of the Board against the Sunset Evaluation Criteria in §24-34-104 (9)(b), C.R.S., DORA found several areas where statutory changes are necessary to remove impediments, or to enhance the Board's ability to operate in the public interest. The report contains a total of 13 statutory and 5 administrative recommendations.

Each recommendation is followed by a brief summary and an expanded discussion of the analysis and issues surrounding the recommendation. A single discussion section is used when several recommendations are on a single topic area. The recommendation section begins on page 35 of the report.

Industry representatives contacted for input on the report were supportive of continued regulation by the state and were generally supportive of the operation of the Board and DOR. Colorado is lacking an organized consumer group with an emphasis on motor vehicle issues. While the mission of Board and DOR (as it relates to motor vehicle issues) is consumer protection, this report finds that the Board does not devote adequate resources to the advocacy of consumer issues. Therefore, the focus of several recommendations is to enhance information distribution to consumers and adopt a more proactive approach to the regulation of motor vehicle sales.

Colorado is one of only three states that divides the regulation of motor vehicle sales between two entities. In Colorado, dealers and salespeople are licensed by the Board, while manufacturers and distributors are licensed by the Executive Director of DOR. The report recommends eliminating the licensing of manufacturers and related occupations. If this recommendation is not adopted, the report recommends consolidating all licensing functions under the Board.

Most states regulate motor vehicle sales administratively, without the use of a regulatory Board. Performance measure comparisons are difficult because of the different standards for licensure and disciplinary actions from state to state. It appears that states with administrative programs are as effective, if not more effective, at protecting the public. However, the report does not recommend elimination of the Board. It does recommend changing the composition of the Board to better represent both the industry and consumers.

The report makes a series of recommendations concerning the licensing of salespeople. One of the more controversial recommendations is the elimination of the licensing of salespeople. Little public protection is offered by the current licensing program. The licensing program, combined with the bonding requirement for salespeople serves to protect dealers more than the public. The Board recorded very few consumer complaints against salespeople. Even when consumers do have complaints, dealers liable for the actions of the salesperson through the legal theory of *Respondeat Superior*. If the General Assembly decides to continue licensing salespeople, the bonding requirement and the control the individual dealer has over the salesperson license should be eliminated.

All motor vehicle dealers are required to obtain a \$30,000 bond. This review, as well as the state auditor's report, found that the bond level is inadequate to resolve consumer claims. The auditor's report also found that most bond claims are paid to other dealers. The Sunset Report does not recommend increasing the bond amount, as it may unnecessarily restrict access to licensing. However, the report does recommend limiting access to the bond to retail consumers.

The hearing process by the Board is time consuming and inefficient. The Board has the ability to delegate the disciplinary hearing functions to an Administrative Law Judge (ALJ) or a hearing officer. However, the Board hears most cases itself. Industry representatives argue that hearing officers would be biased against dealers and that ALJ time is expensive. If the Board adopts clear guidelines for disciplinary actions and licensing standards, biases will not be an issue. Because of the complexity of many legal proceedings, ALJ administrative hearings reduce the likelihood of successful appeals on procedural grounds, and therefore, a more effective use of resources in the long term.

The report recommends eliminating or amending outdated statutory requirements. These provisions range from requiring the Board to elect a treasurer, who has no official duties, to requiring dealerships to be closed on Sundays, which serves no consumer protection purpose.

A major consumer protection recommendation deals with the largest single consumer complaint area in motor vehicle sales, delivery of title. Approximately one third of the consumer complaints received by the Board each year are for late delivery of title. The Board seldom takes disciplinary action against dealers unless several complaints are filed in a relatively short time. The report recommends closing loopholes in the title laws that permit the delay of title delivery.

The report makes administrative recommendations designed to increase the efficiency of the Board, and ensure strict compliance with the Administrative Procedure Act. These recommendations include promulgating regulations to implement statutory provisions and complying with the open meetings requirements.

BACKGROUND

Sunset Process/Methodology

The regulation of motor vehicle dealers, salespeople, manufacturers and distributors shall be terminated effective July 1, 1998 unless continued by the General Assembly. Pursuant to §24-34-104(9)(b), C.R.S., the Department of Regulatory Agencies is required to conduct a review of the Motor Vehicle Dealers Board (Board) and the Executive Director of the Department of Revenue's performance in the operation of this program. During the review, the Board must demonstrate there is a need for the program to continue, and that the regulation is the least restrictive form of regulation consistent with the public interest, in accordance with the Sunset Evaluation Criteria found in Appendix A.

The sunset review process includes an analysis of the statute and regulations promulgated under its authority, interviews with Board members, staff, other departments, and interested parties affected by the provision of the law. Research of current literature, related statutes, and the procedures in other states is also conducted.

History

The Motor Vehicle Dealer Board (the "Advisory Board") was originally created in 1945 as a five member advisory board made up exclusively of dealers. Two members of the Advisory Board were appointed by the Governor and three by the Executive Director of the DOR. The Advisory Board was required to meet quarterly and advise the Executive Director on issues related to motor vehicle sales.

All licensing and disciplinary functions were the responsibility of the Executive Director. The Executive Director could request an opinion from the Advisory Board prior to promulgating a regulation, at his or her discretion. The Executive Director could request that the Advisory Board attend a disciplinary hearing or delegate the hearing function to the Board, again, at his or her discretion.

In 1953, the Executive Director was given authority to issue fines of between \$75 and \$500 for any violation of the statute or regulations. Violators could also be subject to up to six months in the county jail. The Advisory Board function was reduced to meeting only when called by the Executive Director and only to review specific matters referred to it by the Director.

In 1971, the duties of the Advisory Board were expanded by HB 71-1378. This bill created the Motor Vehicle Dealer Licensing Board (the "Board"). The

Board's membership included representation from four new car dealers, 3 used car dealers and 2 public members. The licensing and disciplinary functions for dealers and salespeople were shifted from the Executive Director to the Board.

The 1991 sunset review of the of the Board resulted in SB 92-88. This bill, among other things, changed the makeup of the Board to its current three new car, three used car and three public member configuration. The Board name was also changed to the current Motor Vehicle Dealer Board. The Board's disciplinary options were expanded to include the ability to issue fines of up to \$10,000 per violation.

SUMMARY OF STATUTE

The regulation of the sale of motor vehicles is found in article 6 of title 12 of the Colorado Revised Statutes. The text of the statute is contained in appendix B of this report. The legislative declaration states reasons for the regulation of motor vehicle dealers. These reasons include: the public expects that a dealer will remain in business to provide service for purchased motor vehicles; to promote highway safety, and to promote consumer education. The declaration also states that the sale of motor vehicles by unlicensed dealers should be curtailed.

The statute defines several terms to be used in the regulation of motor vehicle sales. Key defined terms include: Consumer, Distributor, Motor vehicle, Motor vehicle dealer, Motor vehicle salesperson, and Used motor vehicle dealer.

Farm tractors and other machines and tools used in the production, harvesting and care of farm products are not considered motor vehicles. Exempt from the definition of motor vehicle dealer, or used motor vehicle dealer are:

- (a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court;
- (b) Public officers while performing their official duties;
- (c) Employees of persons enumerated in the definition of "used motor vehicle dealer" when engaged in the specific performance of their duties as such employees;
- (d) A wholesaler or anyone selling motor vehicles solely to wholesalers;
- (e) Mortgagees or secured parties as to sales in any one year of not more than twelve motor vehicles constituting collateral on a mortgage or security agreement, if such mortgagees or secured parties shall not realize for their own account from such sales any moneys in excess of the outstanding balance secured by such mortgage or security agreement, plus costs of collection;
- (f) Any person who only sells or exchanges no more than four motor vehicles which are collectors' items pursuant to section 42-3-138, C.R.S., or pursuant to article 12 of title 42, C.R.S.; and

(g) A motor vehicle auctioneer.

Section 103 creates the Motor Vehicle Dealer Board (Board). The Board consists of nine members, appointed by the Governor, serving staggered three year terms. The membership of the Board is equally divided between new car dealers, used car dealers and consumer members. Board members serve without compensation but are reimbursed for actual and necessary expenses while engaged in official duties.

The Board is required by section 104 to annually elect a president, vice-president and secretary/treasurer. The Board establishes its own meeting schedule. The Board has broad regulatory responsibilities to promulgate, amend, and repeal reasonable rules and regulations relating to those functions the Board is mandated to fulfill, including the administration, enforcement, issuance, and denial of licenses to motor vehicle dealers, motor vehicle salespeople, used motor vehicle dealers, wholesale motor vehicle auction dealers, and wholesalers, and the laws of the state of Colorado as it deems necessary.

The Board has the ability to delegate to the Executive Director of the Department of Revenue, or his or her designee, the authority to issue licenses pursuant to the rules and regulations adopted by the Board. The Board may conduct investigations through the Executive Director on its own motion, or upon a sworn complaint by any person, of any suspected violation of the licensing statute or the regulations promulgated by the Board.

Upon a finding of probable cause, the Board may conduct a hearing in accordance with the Administrative Procedure Act (APA). The Board may delegate hearings to an administrative law judge in accordance with the APA.

The Board is to develop and maintain an examination to test the competency of applicants for various dealer and salesman licenses and to develop forms to be used as sales contracts for motor vehicles. The statute defines the minimum standards for license application, and motor vehicle sales and lease forms. The Board may, by regulation, develop additional requirements. It is the intent of the statute to ensure that all sales documents used by dealers clearly disclose price and terms to the consumer.

The Board, or an ALJ designated by the Board, may, after a hearing in accordance with the APA, deny, suspend, or revoke any license issued by the Board. The Board may impose fines of up to \$10,000 for each violation of the statute or regulations by a licensee. The Board is required to promulgate guidelines to ensure that administrative penalties are equitable and relative to the seriousness of the offense.

Section 105 of the statute outlines the powers and duties of the Executive Director of DOR related to the sale of motor vehicles. The Executive Director is empowered with licensing buyer agents, distributors, distributor branches, distributor representatives, factory branches, factory representatives, and motor vehicle manufacturers. The duties of the Executive Director parallel those of the Board with respect to regulation and enforcement activities for the categories of licensees regulated by the Executive Director. The Executive Director is responsible for employing an executive secretary for the Board and any clerks, deputies or assistants the Executive Director considers necessary to fulfill the responsibilities of regulating motor vehicle sales under the statute.

The statute defines the various classes of licenses and authorizes the activities permitted under specific licenses. The Board and Executive Director are required to issue licenses on a form to be determined by them, and licensees are required to display licenses at the licensee's place of business. The Board and Executive Director are required by §12-6-110, C.R.S., to establish fees for each class of license. Fees are to be set at a level that cover the direct and indirect costs of administering the program. All fees are paid to the state treasurer and are credited to the Auto Dealers License Fund (the "License Fund") established in §12-6-123, C.R.S. The License Fund is subject to the normal appropriations process.

Motor vehicle dealers, wholesalers, wholesale motor vehicle auction dealers and used motor vehicle dealers are required to show proof of a surety bond issued by a company authorized in the state in the amount of \$30,000. The purpose of the bond is to reimburse retail consumers for damages suffered because of fraud, misrepresentation or violations of the motor vehicle statute or regulations. Licensees who sell only small utility trailers are required to carry a \$5,000 bond for the same purpose. All motor vehicle salespeople and buyer agents are required to obtain a bond in the amount of \$5,000.

All bonds must be renewed annually. This may be accomplished by the issuance of a continuation certificate by the surety. Most bonds can only be released after a finding of fraud by the Board or a court of competent jurisdiction. The buyer agent bond does not contain the same statutory requirement. All corporate surety companies are required by §12-6-112.7, C.R.S., to provide notice to the Board and Executive Director within 30 days after a claim is honored against a bond.

Manufacturers are required by §12-6-114, C.R.S., to file all written warranties for vehicles and parts with the Executive Director. Manufacturers are also required to file dealer delivery and preparation obligations with the Executive Director. Authorized dealers who perform warranty work are entitled to compensation from the manufacturer. Section 12-6-120, C.R.S., prohibits specific actions by manufacturers, distributors, factory branches, distributor branches, and factory or distributor representatives. These prohibitions are designed to protect dealers from coercion by manufacturers or their representatives. Activities such as withholding car allotments or forcing unwanted vehicles or parts on dealers are prohibited. Manufacturers are prohibited from establishing additional franchises of the same product line in a market area served by an existing dealer if such a franchise would unfairly impact the existing dealer.

All fees must be paid at the time the application is filed with either the Board or the Executive Director. Applicants licensed by the Board are required to appoint the Board their agent for service of process. Applicants licensed by the Executive Director must appoint an agent for service of process in the state. Manufacturers and distributors must submit a certified copy of their typical written agreement with motor vehicle dealers.

Motor vehicle dealers and used motor vehicle dealers are required to obtain and maintain a principle place of business that meets guidelines outlined in §§12-6-116 and 117, C.R.S. Dealers that change their address or lines of vehicles are required to notify the Board. A dealer losing a new car franchise for any reason may be licensed as a used car dealer at the discretion of the Board. All dealers are required to confiscate and return to the Board the salesperson license of any salesperson terminating employment for any reason.

Only dealers selling custom trailers and maintaining an inventory of less than four vehicles may use a residence as a principal place of business. New and used car dealers must either maintain repair facilities or contract with a licensed, reputable garage for repairs.

Grounds for denial, suspension, or revocation of all licenses issued by the Board are detailed in §12-6-118, C.R.S. Material misstatements on the

license application, willful failure to comply with the statute, coercion, engaging in illegal business practices and willful misrepresentation are among the grounds for disciplinary actions. All disciplinary actions are conducted according to the APA and are considered the final administrative action. The Colorado Court of Appeals has initial jurisdiction to review all final actions of the Board that are subject to judicial review under §12-6-119, C.R.S..

Violations of the statute are considered a class 1 misdemeanor except for unlicensed activities, which are considered a class 3 misdemeanor. Fines collected for violations of the statute are awarded to the law enforcement agency investigating and issuing the citation for the violation under the provisions of §12-6-121.5, C.R.S.

Failure to honor a draft or check in transactions between the various entities licensed by the Board is an offense against the licensee which could result in suspension. Failure to honor a draft or check which results in a loss to a third party is a misdemeanor resulting in a \$2,500 fine. Any person suffering a loss or damage because of fraud by a dealer or a salesperson acting for the dealer has a right of action against the bonds of the dealer and/or salesperson. Persons suffering losses resulting from unlawful acts of licensees of the Executive Director are entitled to recover treble damages and attorney fees.

In order to eliminate the impression that a vehicle is being offered for sale by a private party, all dealer advertisements must disclose that the vehicle offered for sale is being offered by a dealer. The Board has promulgated additional advertising regulations.

Related Statutes

Automobile dealers are also regulated by provisions of the Colorado Title Law, contained in article 6 of title 42 of the Colorado Revised Statutes, and the Motor Vehicle Code, also contained in title 42. In addition to specific advertising provisions contained in the statute creating the Board, all advertising by dealers must comply with state and federal truth in advertising laws. Most dealerships offer financing for vehicles; all credit transactions are subject to state and federal truth in lending and fair credit requirements. The Federal Trade Commission, National Highway Safety Administration, and the Internal Revenue Service all have specific regulatory programs impacting automobile dealerships.

Regulations

The Motor Vehicle Dealer Services Section (DSS) of the Division of Motor Vehicles (DMV) produces a booklet for licensees containing the regulations promulgated by the Board, as well as excerpts from the statute. This booklet is available to consumers and licensees upon request to the DSS. The booklet was last updated in 1994; the Board has held several rule making hearings since that time.

PROGRAM DESCRIPTION & ADMINISTRATION

Responsibilities

A primary function of the Board, as delineated in the act, is:

To promulgate, amend, and repeal reasonable rules and regulations relating to those functions the Board is mandated to carry out pursuant to this part 1, including the administration, enforcement, issuance, and denial of licenses to motor vehicle dealers, motor vehicle salespeople, used motor vehicle dealers, wholesale motor vehicle auction dealers, and wholesalers, and the laws of the State of Colorado as it deems necessary.

The Board meets twice each month to fulfill its functions. A typical meeting consists of a morning session devoted to reports from the investigation unit, a review of original dealer applications, a review of salesperson applications, and reviewing renewal or reissue applications that have been referred to it by the DSS. If time permits, a general discussion of issues involving motor vehicle sales and regulation may take place before the lunch break. Hearings are generally conducted during the afternoon portion of the meeting. Recent changes in the DMV and delegation by the Board of certain functions is expected to reduce the number of meetings.

The Board has reserved to itself the authority to grant dealer licenses. This means the Board must review each application package individually. As the number of applicants and the quality of the reviews have changed over time, this process has become very time consuming. To address this, the Board adopted a policy of allowing the DSS to prepare and present a list of applications that meet all Board criteria for licensure as one package and the Board approves the licenses based on the DSS recommendation.

Applications that do not meet all the licensing criteria are presented to the Board individually. The most common criteria for an applicant to fail to meet is either a low net worth, a poor credit rating from a major credit bureau, or a past criminal record. The Board occasionally denies a license based on failure to meet one or more of the regulatory standards it has established. However, the Board routinely issues licenses to applicants that do not meet all of the standards for licensure.

The Board has delegated authority to the executive secretary to issue salesperson licenses for applicants that meet all regulatory requirements for licensure. The executive secretary refers applications that fail to meet one or more criteria to the Board for review. The most common reason for an application to be referred to the Board is a criminal record. While the Board occasionally denies a license based on a criminal history, applicants are allowed to appeal the denial. The Board upholds a salesperson license denial in less than 1% of the appeals.

The Board typically reviews approximately 22 dealer applications and 10 - 15 salesperson applications each month. The investigations section presents approximately 6 - 7 complaint investigations per month for review and a determination of probable cause for a hearing. The Board schedules approximately 4 disciplinary actions each month. Many of the hearings scheduled for disciplinary action are resolved via stipulated agreement prior to a hearing.

General Observations

Board meetings are impacted by sporadic attendance by some members. At least one Board meeting was canceled in fiscal year 1997 because of a lack of a quorum. The best attendance records for the past two years have been by the public members of the Board. The worst record has been by the new car dealer members, one new car dealer missed 50% of the meetings over a two year period. Board members do not have a clear understanding of the jurisdiction and role of the Board. Board members also do not have a clear understanding of related Colorado laws. For example, during one meeting, the Board published on it's agenda an executive session to discuss personnel matters. The Colorado open meeting act clearly defines when and how a local public body may declare an executive session. The Board executive session in this case was inappropriate not only in content, but procedurally as well. No vote was taken to approve the executive session as required by §24-6-402 (3), C.R.S. In addition, the topic of discussion, "Personnel Issues," is not a topic the Board is authorized to go into executive session for, since the Board has no authority in personnel decisions.

The Board is represented at disciplinary hearings by an Assistant Attorney General (AAG). The AAG is also present to offer legal advice at all Board meetings. During the meetings and hearings observed for this report, the AAG rarely offered legal advice unless directly asked by a Board member. Board members interviewed for the review expressed dissatisfaction with the various AAGs representing the Board over the past several years.

The Board does not always make efficient use of time during hearings and meetings. It is common practice for regulatory Boards to maintain a sign-in sheet for public hearings and include it as part of the public record. The Board instead has all public and industry members introduce themselves for the record during each meeting. The Board also has all members of the public introduce themselves at the beginning of each hearing. This results in the same individuals, who are attending a hearing on an unrelated matter, introducing themselves for the public record four or five times in a single day.

Regulatory History

Colorado has been regulating motor vehicle sales since 1945. It is likely that the Motor Vehicle Division was located in the DOR because the primary function of regulation was insuring the state collected the appropriate taxes. As the regulatory function has changed over time to become more consumer protection oriented, the location in DOR becomes less significant.

The original Board consisted of five motor vehicle dealers to advise and assist the Executive Director in administering the act. The Executive Director conducted all disciplinary hearings. Advisory Board members were included at the discretion of the director. The Executive Director could delegate hearing functions to the Board.

In 1971, the Motor Vehicle Dealer Licensing Board was created as a regulatory entity. The nine member Board had regulatory responsibility for retail sales of motor vehicles including licensing of new and used motor vehicle dealers and salespeople. The Executive Director retained licensing authority over motor vehicle manufacturers, distributors and their representatives.

In 1983, the first sunset review of the program was conducted. The report recommended continuing the regulation of motor vehicle dealers with a greater emphasis on consumer protection issues. A bill continuing the functions of the Board until 1992 was passed by the General Assembly and became law.

The 1991 sunset review criticized the enforcement record of the Board. Recommendations implemented by the General Assembly as a result of the 1991 sunset review included:

- Increasing the public representation on the Board;
- Authorizing the Board to implement fines of up to \$10,000 for violations;
- Deregulate auctioneers; and
- Revise the examination process and report to the Sunrise/Sunset Committee.

An administrative recommendation made in the report resulted in the reorganization of the DMV to separate the supervision of complaint investigation functions from the administrative hearing process.

Administration

The Board is located in the Department of Revenue (DOR). Licensing, administration, investigations, and support for the Board and the licensing functions of the Executive Director related to motor vehicle dealer businesses are delegated to the DSS of the Division of Motor Vehicles (DMV) in DOR.

The Board delegates ministerial functions, such as routine license renewals, to the executive secretary of the Board, who is assisted by one full time administrative assistant. The executive secretary reports directly to the director of the DMV. At the time this review was conducted, the Executive Director of DOR was considering an organizational restructuring which will impact some reporting relationships. The reorganization plan has been put on hold and the status is unclear at the time this report was prepared. However, the reorganization is not expected to impact the number of full time employee(s) (FTE) or the overall responsibilities of the DSS.

The DSS is supervised by a Management Group Profile 10, assisted by a Program Assistant I. Two supervising compliance investigators and the administrator of the dealer services unit report to the DSS administrator. The investigations unit consists of two supervising investigators, eight FTE investigators and one FTE support staff. The licensing unit consists of the supervisor, an office manager, two professional level FTE program specialists and four FTE clerical support. An organizational chart for the DSS is included below. At the time this report was prepared, the DSS was undergoing a reorganization, some reporting relationships may change prior to this report being reviewed by the General Assembly.

Revenues, primarily from licensing, fees have averaged slightly over \$1.5 million for the past five years. These funds are allocated by the General Assembly to support the 22 FTE necessary to administer the licensing and regulatory functions of the DOR to regulate approximately 11,100 licensees. This translates to approximately one FTE for every 500 licenses.

INSERT DMV ORG CHART AND FTE

By comparison, the Division of Registrations in DORA has approximately 207,000 licensees with a staff of 144 FTE. This translates to 1 FTE for every 1,437 licensees. The Division of Real Estate has 39 FTE, 11 enforcement, 9 auditors, 14.5 licensing, 1.5 appraiser and 3 supervisory and support staff. With approximately 44,000 licensees, the ratio is 1 FTE for every 1,128 licensees.

The Board of Pharmacy investigates its own complaints for the 6,800 pharmacists, pharmacies, and drug outlets licensed in Colorado. It uses 7.6 FTE including 4 investigators, the investigators also conduct 1,000 inspections of pharmacy and drug outlets each year in addition to investigating complaints. This is slightly less than a 1/900 ratio.

The specific regulatory boards in DORA cited above are proactive in nature. While a significant amount of resources are devoted to complaint processing and investigation, the focus of regulatory efforts are on preventative and educational efforts. Regular inspections, or compliance audits, are conducted on licensed businesses. These audits serve two purposes, first, they are educational for licensees. The goal of the audits is to inform licensees about regulatory requirements.

The second purpose is to catch and remediate minor problems before they result in numerous consumer complaints. In most business licensing programs, regular inspections are used as a consumer protection measure. Generally speaking, regular inspections reduce consumer complaints, and the associated resources used to investigate complaints.

Motor Vehicle Licensing

All motor vehicle related licenses expire on July 1 of the year following original issue or renewal. Original licenses are issued on either a full year or half year basis. The statutory expiration date is supported by some in the industry because it simplifies the renewal process for licensees with multiple licenses. However, it is not always cost effective for new licensees obtaining an original license near the renewal date. The DSS is also forced to hire temporary clerks every year to process renewals in a timely manner. This compromises the review of renewal applications.

Colorado used to require all vehicle license plates to expire on the same date each year. This process was changed to allow license plates to expire one year from original issuance. This change smoothed out the work load and reduced administrative expenses for the renewal process. The concept of staggering license due dates has met with resistance from some industry representatives and Board members interviewed for this review.

The DSS employs 8.2 FTE to process all original and renewal application for licensure. This includes the temporary clerks employed each year to process renewals. One employee is designated as a compliance agent whose primary responsibility is inspecting new dealerships for compliance with requirements for initial licensure. One employee is designated a public information specialist. This position was vacant during the sunset review and the job functions were not clearly defined.

Manufacturers

According to a survey conducted by DORA, Colorado is one of only three states that separate regulatory authority for motor vehicle sales between different regulatory entities. The Executive Director licenses approximately 313 manufacturers/distributors and 617 manufacturer/distributor representatives. Slightly over half of the states responding to the DORA licensing survey license manufacturers. Less than half license manufacture or distributor representatives.

In order to be licensed in Colorado, a manufacturer must submit a copy of a standard franchise agreement, a copy of the manufacturer's warranty, and evidence of the appointment of and name of the agent for service of process in the state. The manufacturer licenses cost \$230 and all license renewals are processed by the DSS.

The DSS also processes the applications for brokers, distributors, factory branches, and distributor/factory representatives. Approximately 100 original and 600 renewals are processed annually by the DSS for the categories of licensees under the control of the Executive Director.

Members of the Board, new car dealer representatives in particular, believe the Board should have regulatory authority over manufacturers. There is no demonstrable benefit to consumers of dividing the licensing authority for the motor vehicle industry between the Board and the Executive Director.

It is questionable whether there is any public benefit of licensing manufacturers at all. According to the DSS, there has been one complaint against a manufacturer that has gone to hearing in the past 20 years, and that

complaint was dismissed as being without merit. The state has little role in the regulation or enforcement of safety standards for manufacturers. That function is fulfilled by the federal government. The main protection to the public in regulating manufacturers is in requiring manufacturers to honor warranties and in preventing deceptive trade practices. These functions can be accomplished under existing consumer protection laws without the licensing of manufacturers by the state.

New car dealers cite a need for stronger regulation of manufacturers to protect the dealers from unfair practices by manufacturers. Practices frequently mentioned by dealer representatives are unreasonable demands by manufacturers in the areas of: automobile allocations, facility upgrades, personnel training, and advertising cooperative efforts. The dealers maintain that manufacturers withhold automobile allocations or authorize new franchises that reduce sales for dealers who do not cooperate with the manufacturers.

Manufacturers are prohibited by law from coercing dealers into accepting vehicles they do not desire or cannot sell. Manufacturers are also prohibited from withholding allocations from dealers. In addition, dealers have civil remedies against manufacturers whose franchising practices violate a franchise agreement. This review found no complaints by dealers about manufacturer violations of current statutes. Dealer representatives cite fear of retribution as a chilling factor preventing dealers from complaining. However, it is difficult to recommend additional regulatory protections for dealers without being able to document that the existing protections are inadequate.

Dealer Licensing

Applicants for a motor vehicle dealers license obtain an application package from the dealer services section of the DMV. The package contains the application form and information on obtaining a salesperson license. Up to two partners or owners of the dealership may sell under the dealer license without obtaining a separate salesperson license.

Applications are processed by the DSS. The DSS processes approximately 50 original and 800 renewal applications for new car dealers each year. Approximately 150 original and 1800 renewal applications for used car dealers are processed annually. With the addition of auction and wholesale dealer licenses, the DSS process in excess of 3500 applications each year. The number of new car dealers has gradually increased over the past several years, while the number of used car dealers has remained fairly constant.

There is a relatively low turnover in new car dealerships, few new car dealers go out of business. This may be because manufacturers have fairly stiff requirements for new car franchises, including capital investments and substantial business experience.

The Board has established licensing criteria based upon its statutory authority. However, used car dealers do not have to meet the same strict financial and experience requirements as most franchise dealers. This results in higher turnover in this segment of the industry. The legislative declaration of the act creating the dealer licensing program states that consumers have an expectation that the dealer they purchase an automobile from will remain in business. If the basis for licensing used car dealers is an expectation that licensing will prevent business closures, the licensing program has been less than successful. However, if the purpose of licensure is the protection of the public, turnover of licensees may not be an appropriate evaluation factor.

The application requires information about the applicant's experience in the automotive industry, financial information, and employment history. All applicants for a dealer's license must submit a full set of fingerprints with the application. All dealers are required to obtain a bond in the amount of \$30,000, or file with the Board a certificate of deposit in that amount. No dealer currently is using the bond alternative. The owner or general manager of a dealership is required to pass the salesperson examination and submit fingerprints to the DSS.

The Board reviews and approves all applications for dealer licensure at its regular meetings. To expedite the licensing process, the Board has authorized the DSS to divide the applications into two categories. The first

category, the “short list,” are those applications that meet all statutory and regulatory requirements for licensure, and the applicants report no criminal history in their background. These applications are generally approved with a minimum of discussion.

The second application category, the “long list,” are those applications which fail to meet all of the licensing criteria. These applicants may show a low net worth, have criminal history disclosed on the application, or have a credit rating below the standard established by the Board. The DSS presents these applications individually for discussion and makes a recommendation for licensure, denial, or request for more information. The majority of the applicants on the long list are used car dealers. The Board rarely denies an application for licensure.

Salesperson Licensing

Only 12 of the 33 states responding to the DORA survey license salespeople. The most common reason for not licensing salespeople is the contention that dealers are responsible for the actions of their employees. Colorado not only licenses salespeople, but licenses them to a specific dealer. All application materials must be completed and the application signed by both the applicant and an authorized party from the employing dealership before it will be processed by the DSS.

The salesperson application consists of three basic components. The first part is basic information about the applicant, such as name, address, date of birth and social security number. The second part requests information regarding criminal convictions and disciplinary actions on any professional or occupational license. The third part requires employment or educational history for the previous five years. The applicant must then sign, under penalty of perjury, a statement that all information contained in the application is true and that appoints the executive secretary of the Board as the applicant’s authorized agent for service of process.

The applicant may obtain a licensing packet from a variety of locations: the employing dealership, one of the dealer association offices or the DMV. The application packet contains a study guide for the sales examination. The DOR also offers an optional licensing law seminar that applicants may attend prior to taking the examination. The examination may be taken at any full service driver licensing office. However, the examination must be mailed or hand delivered to the main DMV office for grading and processing.

The last sunset report recommended the examination process be reviewed and evaluated for validity. The DMV submitted a plan to the Joint Legislative Sunrise Sunset Committee detailing how the testing process should be revised. The plan consisted of regional test sites giving a computerized examination. All exams would be graded immediately, at the test site. Questions for the exam would be drawn from a large pool of questions that would be validated and updated regularly. However, the plan was never implemented. The DSS has proposed to the Board substantial revisions to the testing process. At the time this sunset report was drafted, no changes had been approved.

The application requires detailed information about the applicant including criminal background and employment history. Applicants must also submit a finger print card, usually obtained for a fee at local law enforcement offices. The final portion of the application package is the \$5,000 bond that must be obtained by all applicants for a salesperson license.

The largest salesperson bonding agents in the state are the two main dealer associations. Some dealers pay the bonding fees for salespeople, others do not. The State Auditor reviewed claims history from the two largest surety companies in Colorado. These two companies underwrite 90% of the salesperson bonds in Colorado. The fee for the bond is approximately \$30 each year. According to the claims histories of these companies, no salesperson bond has been paid to a consumer in the past two years. Information in the State Auditor's review of the licensing process revealed that over the past two fiscal years, only \$10,000 in claims have been paid on salesperson bonds. With 8,000 licensed salespeople paying \$30 each year, the bond companies are generating revenues of approximately \$240,000. Because of the high turnover in salespeople, this estimate is very conservative. The two major dealer associations are the primary sales agents for the bonds. If an 8% commission is assumed, the commissions collected by the associations totals approximately \$19,200 each year, almost double the amount of claims paid in the past two years.

Once the completed application package has been submitted to DSS and a passing score on the examination has been achieved, the prospective salesperson may begin work at the dealership. There is no statutory or regulatory deadline for the Board to issue or deny the applicant's license. However, most complete application packages are acted upon within seven days. All salesperson licenses expire on the fiscal year end of June 30; fees are not prorated. It is common for dealers to submit renewal applications with the dealer license renewal.

If the salesperson license is denied, the dealership and salesperson are notified. The salesperson must immediately stop all sales activities. Applicants may appeal the denial within 10 days of being notified. Applicants may not continue selling automobiles during the appeals process.

If a salesperson ceases employment with a dealer, the dealer is responsible for confiscating the salesperson's licenses and returning it to DSS. If a salesperson begins employment at another dealership, an application for license reissue must be completed and submitted to the DSS. Any license that is not renewed for a period of one year is not eligible for a reissue. Salespeople who fail to renew their license for one year must complete the entire original application package, including fingerprints and examination.

The initial salesperson licensing process is cumbersome for the applicant. The application is obtained in one location, the examination taken in a different location and graded at a third location. Bonding and fingerprinting are done at separate locations. Most law enforcement agencies will only fingerprint residents of their jurisdiction. Most operate with limited service hours and various fees apply, depending on the agency.

Fingerprinting, according to some members of the industry, acts as a deterrent to people with criminal backgrounds from obtaining a license. Obtaining a complete finger print card can be difficult for applicants. The most common location to obtain fingerprinting is a local law enforcement agency. Most agencies operate under limited hours. For example, the Arapahoe County Sheriff only processes fingerprint cards on Monday and Wednesday mornings and Friday afternoons; the fee for a complete set of fingerprints is \$25. The Denver Police Department processes cards on Wednesday and Thursday afternoons for a \$5 fee. When a license is issued by the Board, the fingerprint card is microfilmed then destroyed. The fingerprints are not used for identification purposes and are not submitted to law enforcement agencies as part of the background check.

Once a complete application package is received by DOR, the applicant may be issued a license. A survey by DOR revealed that 85% of the application

packages received by DOR were initially incomplete and had to be returned for additional information.

The current examination consists of 25 true/false and 25 multiple choice questions. The DSS maintains three sets of examination questions and rotates complete sets of examination questions periodically. A score of 70% is necessary to pass the exam. Approximately 70% of the applicants pass the test on the first attempt. No pre-licensure education is required for the examination. However, DOR does offer an optional license law seminar once each month in Denver and Colorado Springs. While the examination can be taken at any full service drivers license office statewide, it must be scored at the main office in Denver. Examinations are not offered at the main office, resulting in no location in the state providing complete, same day examination service for salesperson applicants.

All applicants must be employed by and licensed to a specific dealership and location. It is not uncommon for dealers with multiple franchises and locations to have salespeople licensed for more than one location. However, a separate fee, application, and bond must be submitted by the salesperson for each license. This additional licensing expense is usually paid by the dealer and passed on to the consumer. It is rare for an occupational license issued by a state board to be controlled by the employer. There are other licenses, such as a pharmacist, that require the licensee to report to the licensing authority their place of employment and when it changes. However, the salesperson is licensed to a specific dealership. The dealership is even required to confiscate the license of terminated employees and return it to the Board. If the salesperson license was truly an occupational or professional license, it should be issued to the salesperson and be the responsibility of the dealership to ensure the license is valid.

It is also interesting to note that automobile salespeople are the only professionals licensed by a state board that does not have that profession represented on the board. There are many professions that are licensed administratively, without the supervision of an oversight board. There are also licensing commissions made up completely of public members with no affiliation to the licensed profession. However, every profession that is licensed by a regulatory board, has a member of the profession or occupation on that oversight board.

The benefit to the public of licensing salespeople is negligible. The Board does not conduct background checks on applicants. Instead, it relies on self reporting of criminal history or disciplinary problems. A score of 70% on the examination is not difficult to obtain, especially in light of the fact that the examination may be taken up to three times in any 60 day period. The bond of \$5,000 covers less than half the average cost of a used car sold in Colorado. The Board denies less than 1% of the applicants for licensure.

The statute allows the Board to consider criminal convictions in the licensing application process. The salesperson application asks for information regarding felony or misdemeanor convictions in the past ten years. If the applicant admits to a conviction, the application requires details. The Board has not established any mandatory disqualification standards for obtaining a sales person license. However, the Board routinely reviews applications with felony convictions less than five years old.

If an application for a license is denied, the applicant may request a hearing. The Board rarely denies an applicant who shows up for a hearing a license, regardless of the criminal history involved. The basis for this, as revealed in Board discussions in open hearings, is that if the dealer knows about the background and chooses to employ the individual, it is the dealer's responsibility.

According to the state auditor's report, the Board held hearings on 26 applicants who self reported criminal violations in calendar year 1996. Only three of those applicants were denied a salesperson license. The Board granted licenses to individuals with a variety of criminal convictions, including: interstate transportation of stolen autos; intent to distribute large quantities of narcotics; sexual assault on a child; and aggravated auto theft.

Some Board members and industry representatives have individually indicated a desire for stricter licensing standards for salespeople. No rule making hearing to establish standards for criminal convictions has been held since the last sunset review. Board members have stated that they would prefer that the General Assembly mandate licensing standards in statute.

While some people may be uncomfortable knowing a convicted criminal can obtain a motor vehicle salesperson license, there is no evidence that there is harm to the public. There are a variety of occupations, unregulated by the state, that have a far higher potential for harm to the public. Carpet cleaners routinely enter homes to perform services, delivery drivers for every business from the local pizza parlor to United Parcel Service daily have contact with thousands of citizens, appliance repair people and house painters are routinely in homes.

When a consumer has a complaint involving the purchase of a motor vehicle, the investigations unit opens a complaint file on the dealership. The consumer holds the dealership responsible for the actions of its salespeople. If some form of restitution is going to be made, the dealership is generally in a position to make compensation, not the salesperson. During fiscal year 1996-97, the investigations unit referred 13 complaints involving salespeople to the Board for review. The majority of the complaints were filed by dealers. Four complaints involved misappropriation of dealer funds, three complaints related to salespeople acting as unlicensed dealers, three related to fitness for licensure, and two complaints involved the sale of private automobiles when the salesperson was not acting as a dealer. Only one complaint referred to the Board was as a result of an investigation into a consumer complaint about sales related activities at a dealership.

In automobile sales, as with any other retail operation, the owner of the business is always responsible for the actions of employees during the course of employment related activities. Insuring that people in the business of selling cars are ethical and honest is, and should be, the responsibility of the dealership hiring the salesperson, not the Board. However, the majority of the time devoted by the Board in both initial licensing and disciplinary actions involving salespeople are more related to employment decisions than public protection.

SUNSET ANALYSIS

The dealer licensing statute contains several provisions that are antiquated, ineffective, unnecessary, or unenforceable. The first two paragraphs of the legislative declaration indicate that an intention of the statute is to ensure that dealerships remain in business and provide service to consumers. Unless the state is extremely selective about issuing licenses, it is not capable of limiting business closures, nor should it be public policy to dictate a minimum standard to enter a business that cannot be sufficiently justified.

- Most manufacturers provide written warranties on new cars purchased. However, there is no statutory requirement for used cars to be sold with any type of warranty. In some cases, manufacturer warranties can be passed on to individuals who purchase the vehicle as a used car. All licensed manufacturers are required to file written warranties with the Executive Director of DOR pursuant to §12-6-114, C.R.S.
- Manufacturers generally require franchisees to maintain repair facilities with service technicians trained in a program approved by the manufacturer. This is a contractual agreement and is entered into by the new car dealer and manufacturer without state oversight.
- All automotive dealers, both new and used, are required by §12-6-117, (3)(a) C.R.S., to maintain facilities for reconditioning and repairing cars. The provision gives dealers the option of maintaining such facilities themselves or of contracting with a licensed and reputable garage for such facilities and services. The DSS requires evidence of repair facilities or a valid contract prior to issuing an original license. However, no effort is made to ensure a contract remains in force when renewals are processed. In addition, since Colorado does not license garages, it is technically impossible for dealers to comply with the letter of the law. Since the Board has no jurisdiction over garage facilities, it cannot require repairs to be made at such facilities. The provision for garage facilities should be repealed.
- Section 12-6-104 C.R.S. includes provisions for the Board to elect a president, vice president, and a secretary/ treasurer. The position of secretary/treasurer has no substantive duties and should be eliminated.

- The procedure for denial, suspension, or revocation of a license in §12-6-119 C.R.S., provides for hearings to be held by the Board or an ALJ. For minor violations, it would be cost effective to allow the Board to designate a hearing officer, from either its own membership, or from another source, such as the Motor Vehicle Hearings Section of the Office of the Executive Director of the DOR.
- The Board is required to prescribe forms to be used as part of the contract for the sale or lease of a motor vehicle. Section 12-6-104(3)(k)(l) C.R.S., specifies the information required to be in the forms. This restricts the ability of the Board to require relevant information, such as the actual purchase price of the vehicle, or monthly lease payments, to be prominently displayed on the contract. The authority for the Board to require additional information on contracts should be expanded.
- Perhaps one of the more antiquated provisions in the statute is the Sunday Closing Law, §12-6-301, C.R.S. The statute provides exceptions for the sale of boat and utility trailers. Sunday closing requirements are a long-standing tradition for many types of businesses. These closing requirements are based on religious traditions that many believe are a violation of the separation of church and state principles of the U.S. Constitution. A majority of the dealers contacted for this review expressed support for this provision.

However, many dealers desire an exemption to the Sunday closing law for special events, such as trade shows, travel shows, specific conventions and similar events. In fact, some dealers have sales representatives present at these events even on Sunday. Their interpretation of the law is that as long as sales transactions are not finalized on Sunday, it is not a violation. Allowing Sunday sales is not a mandate to dealers to open on this day. Therefore, dealers should be allowed the option of operating on Sundays.

A major concern of motor vehicle dealers is the sale of motor vehicles by unlicensed individuals, a process known as “curbstoning.” The statute defines a motor vehicle dealer as any person who sells a motor vehicle for profit. It also states that the sale of three or more vehicles from the same address or telephone number constitutes *prima facie* evidence that the person is engaged in the business of selling vehicles. The owner of property who allows three or more vehicles to be offered for sale during one calendar year is considered a dealer, unless the property is leased to a licensed motor vehicle dealer.

The legislative declaration clearly states that the sale of motor vehicles by unlicensed dealers should be curtailed. However, the Board has no jurisdiction to issue penalties to non licensed violators of the motor vehicle licensing statute. The sale of a motor vehicle by an unlicensed dealer is a class three misdemeanor, subject to fines ranging from \$100 to \$1,000 for the first conviction. A second conviction is subject to a \$2,500 fine. Fines collected for these violations are to be remitted to the law enforcement agency issuing the citation for the violation.

Dealers and DOR staff indicate it is not the intent of the licensing requirement to prevent individuals from selling their personal vehicles to obtain the best price possible. However they cite three factors which could cause harm to the public by the sale of automobiles by unlicensed dealers.

- The possibility of the purchaser not being able to obtain a “clean title.” A consumer has little recourse against an unscrupulous individual who sells a vehicle rebuilt from salvage, fails to disclose significant damage, or sells a stolen vehicle. These circumstances occasionally occur, even with licensees of the Board. However, with licensees, consumers have the ability to obtain relief through an administrative process.
- Unsafe or illegal vehicles being sold. Dealers are required to inspect all vehicles sold to ensure all required safety equipment, such as seatbelts, airbags, and emissions equipment are in working order. In the areas with mandatory vehicle emission tests, cars must be able to pass an emissions inspection before being sold.
- Lost tax revenue to the state and counties. Dealers claim it is common practice in private transactions for the seller to issue a bill of sale to the purchaser for less than the actual sales price. This practice, they claim, costs Colorado tax payers millions of dollars in lost tax revenues each year.

Each of these factors were probably considered in the debate to create the original dealer licensing law. However, interpretations of the existing statute, in its strictest sense, are unenforceable and may be overly protective of the dealer industry. For example, on any given weekend, vehicles can be found in parking lots all over the state with “for sale” signs on them. In most cases, these cars are being legitimately offered for sale by private parties. However, the owners of these parking lots could be issued a summons for acting as an unlicensed dealer. A high school student who buys a vehicle, replaces the fenders, repaints it, and gives the engine a tune up, then sells it for more than the purchase price is considered an unlicensed dealer.

Clearly there are differences between these examples and the activities that harm consumers and dealers. Members of the Board and the DMV staff believe the Board penalties for unlicensed sales should be stricter and that the Board should have jurisdiction over these cases.

The General Assembly should consider the increased protection offered by either of these options. However, the definitions of “dealer” and “unlicensed sales” should also be modified. Some states provide exemptions from the dealer statutes, such as allowing the sale of a specific number of motor vehicles for profit before requiring a dealer’s license. The General Assembly should also consider that virtually none of the complaints about unlicensed sales are from consumers. Complaints are usually generated from licensed dealers or law enforcement agencies.

Consumer Assistance

During the sunset review process, several Board members commented that the public knows very little about the Board or the licensing requirements for dealers. The DSS has one position titled “public information officer.” In the past, the public information officer contributed articles on car buying tips to local newspapers. This practice was discontinued several years ago. Currently, the duties of this position are primarily devoted to assisting the licensing administrator with processing dealer applications, assisting with the presentation of licensing law seminars for sales and dealer applicants, and the production of a newsletter for dealers. The position has little contact with the general public.

The DSS has produced several brochures designed to educate consumers about purchasing a motor vehicle, car buying rights, and the complaint process. DSS will send brochures to consumers who request them. Some county clerks and consumer protection divisions of local district attorneys have requested supplies of the brochures in the past. The brochures have not been updated in recent years and there is no formal distribution plan in place by the DSS.

The DSS does not, nor should it, recommend a particular dealership to a consumer making an inquiry to the DSS. The DSS will only supply complaint and disciplinary information about a particular dealership to a consumer upon written request and payment of a fee by the consumer.

Board and DSS activities emphasize service to the motor vehicle industry, not consumer assistance. The DMV recently formed a task force to review the dealer licensing program and make recommendations for improvements to the organization and operation of the DSS. The task force consisted of DOR staff and dealer representatives. No public members were involved.

There is no organized group to represent consumers in the motor vehicle industry. Consumers must rely on the Board and the DOR to fill this role. A task force or focus group of consumers could be brought together by the DMV or the Board to determine what types of improvements could be made in the consumer service operations and organization.

Complaints

Consumers who have an issue concerning a licensed dealer may contact the DMV or the DSS to file a complaint. Complaints must be in writing before they will be assigned to one of 10 investigators in the DMV.

Complaints are assigned to investigators who make contact with the complaining party and the dealer. Frequently, complaints are resolved by the investigator facilitating communication between the parties. Investigations reveal no violation of the statutes or regulations in approximately 20% of the complaints filed. According to DMV representatives, a common cause of an “unfounded” complaint is buyer’s remorse. This is a consumer having second thoughts about the transaction and wanting to “unwind” the deal.

TABLE A
MOTOR VEHICLE DEALERS' INVESTIGATIONS COMPLETED

Type of Complaint	1994	1995	1996
A - Advertising	83	121	132
B - Background/Record check	13	11	5
C - Contract/Financing	486	465	426
D - Deposit	45	41	40
E - Equipment	167	210	156
F - False statement/application	5	1	2
L - Lease Contract	7	53	73
M- Misrepresentation	236	223	183
O- Odometer	89	77	71
P - Dealer plates/Temp Reg	278	357	163
R - Repossession	41	47	23
S- Service of Process	124	26	62
T - Titles	692	573	661
U - Unlicensed Dealer/salesman	273	306	250
W - Warranty	65	60	47
X - Check/Draft	27	27	26
Z - Special Investigation	333	345	242
IE - Insufficient Evidence	252	522	505
UF - Unfounded	602	689	575
TOTAL	2964	2943	2562

IE - Investigation disclosed insufficient evidence to prove a violation by a dealer.

UF - Investigation found no violation by the dealer.

As part of a statewide evaluation of personnel job descriptions in 1993, most of the investigators in the division were reclassified from criminal investigators to compliance investigators. This resulted in a reduction in compensation for many of the investigators, and a corresponding decline in moral. Industry representatives contacted for this review repeatedly expressed the opinion that investigators continue to display a "cop mentality" and seem to be out to get dealers.

While the sentiments expressed by individual dealers may have validity from their point of view, complaint data does not support the contention. The table above indicates a significant volume of complaints where a licensee is found to be in violation of the statutes or regulations. However, only a small percentage of these "founded" complaints are referred to the Board for action. When complaint investigations are referred to the Board, many are dismissed without a hearing. Table B compares complaints, Board referrals, and disciplinary actions by the Board for a three year period.

TABLE B
DISCIPLINARY ACTION TO COMPLAINT COMPARISON

YEAR	FOUNDED COMPLAINTS	INVESTIGATIONS REFERRED TO BOARD	DISCIPLINARY ACTIONS BY BOARD
1994	1837	109	52
1995	1426	77	49
1996	1232	90	59

While the Board has recently made efforts to publicize disciplinary actions, consumers generally have little access to information about licensees. Most regulatory agencies consider complaint and disciplinary information about licensees to be public record. Many provide disciplinary information over the telephone. Some agencies, such as the Division of Insurance, periodically publish the complaint records of licensees. However, it is the policy of the DSS not to release complaint information about licensees without a written request. Consumers researching the record of a dealer they are considering purchasing a vehicle from have difficulty obtaining information. Requests for complaint and disciplinary information about a licensee must be in writing and are charged a search and copy fee to obtain the records.

The Board does not regularly notify the complaining consumer when a disciplinary hearing is going to be conducted. Input from the aggrieved party is not solicited prior to imposing disciplinary action. No surveys are conducted to determine the consumer satisfaction with the Board's disciplinary actions.

Compliance

Compared to other states, Colorado uses its state licensing authority very sparingly. Motor vehicle dealers are one of the few business entities specifically licensed by the state. Other business entities licensed by the state, such as banks, credit unions, insurance companies, restaurants, pharmacies, and nursing homes, are subject to periodic inspections, usually required by the statute or regulations.

These inspections are designed to insure compliance with the regulatory requirements for licensure. Presumably, all of these regulatory requirements are promulgated to protect the public, the primary justification for licensure. There are no statutory requirements for periodic inspections of dealers. The Board has discouraged the use of compliance inspections by refusing to discipline dealer violations discovered during these audits. Some members of the Board, in public meetings, have accused investigators of “fishing” for violations to harass dealers.

Historically, the DMV has conducted some compliance inspections on dealers prior to issuing an initial license. These inspections are conducted primarily to insure the facility conforms with the standards for licensure, such as rest rooms, repair facilities or a garage contract, signage and parking spaces. Routine inspections on existing dealers are rarely, if ever, conducted. The DSS cites lack of resources as one factor for the infrequency of inspections.

The most frequent justifiable consumer complaint involves problems obtaining a vehicle title within statutory timelines. There are a variety of reasons a title could be delayed. Dealers frequently claim financial institutions do not place a high priority on releasing title liens, creating an obstacle to generating the paperwork necessary to create a title. Occasionally, consumers trading-in an automobile mislead the dealer as to the accessibility of the title. However, it is clearly the responsibility of the dealer to deliver the title to the purchaser of an automobile.

The second most common consumer complaint involves contract and financing issues surrounding the transaction. Investigations into the two most common consumer complaints frequently reveal a lack of understanding or concern by the dealer on the paperwork requirements of a transaction. Regulatory programs that have regular compliance inspections have fewer consumer complaints resulting from improper business practices by licensees.

The third largest complaint investigation type is unlicensed sales activities. This area is a major concern of used car dealers. Individuals selling automobiles for a profit must be licensed as dealers. Approximately one third of the used cars sold in Colorado are transactions between unlicensed parties. Representatives of the used car industry maintain that a significant number of these transactions are actually being conducted by individuals “curbstoning” or selling automobiles for profit and avoiding licensing requirements.

There are some valid arguments regarding potential consumer harm from these transactions. An even stronger case can be made that the state general fund, counties, and municipalities are losing potential sales tax

revenue from these transactions. The Board and the DMV have no jurisdiction or recourse against these individuals, yet a significant amount of resources are devoted to investigating these complaints.

Resources used to investigate complaints that the Board has no jurisdiction over could be used to conduct compliance inspections. An increase in compliance inspections will result in a reduction in title and financing complaints, which will free up additional resources for proactive activities to protect consumers and educate dealers.

Twenty one of the 33 states responding to a survey by DORA indicated that regular compliance inspections are a part of their regulatory strategy. The most stringent is Minnesota, which requires two inspections per year. Some states require inspections no less than every two years. States with mandatory inspection programs have fewer consumer complaints, on the average, than states without regular inspections.

The DSS has a single position designated as a compliance officer. This position was vacant for much of the time the research and evaluation for the sunset review was being conducted. However, a review of the activities of the position over the past three years indicate a significant number of compliance inspections completed.

In fiscal year 1993-94, 432 inspections were completed; in fiscal year 1994-95, 596; and in fiscal year 1995-96, 496 inspections were completed. However, virtually all of the completed inspections were approval inspections for newly licensed dealerships. The DSS, because of resource allocations, did not conduct routine compliance inspections of established dealerships.

In May 1997, the compliance officer vacancy was filled. The new position description for the compliance officer includes a responsibility to audit established dealers. A copy of the Compliance Audit checklist is included in Appendix A. No criteria has been established to identify dealerships to be audited. No written policies or procedures have been developed to identify actions to be taken when regulatory violations are revealed in a compliance audit. Because of resource allocations, inspections are limited to the Denver Metro area.

Enforcement

Previous sunset and audit reports were highly critical of the enforcement record of the Board. A review of enforcement actions since the last sunset review indicates an increase in activity. Several factors have contributed to the increase in enforcement actions. The addition of another public member to the Board, and the ability to levy fines are the most significant changes since the last review. Table C details Board actions for the past seven years.

TABLE C
Motor Vehicle Dealer Board Disciplinary Actions

Fiscal Year	# Actions	Suspend	Revoke	Probation	Fine	Other	Fine \$ Collected
1990	27	13	10	2	0	2	0
1991	43	22	10	11	0	0	0
1992	49	18	19	11	0	1	0
1993	42	6	12	20	3	1	8,500
1994	52	9	10	11	30	2	44,000
1995	49	8	7	12	15	5	33,950
1996	59	9	14	10	19	7	21,975

Many regulatory agencies in Colorado, and other states, refer disciplinary hearings to an administrative law judge (ALJ). The Board conducts most hearings itself. One explanation given for this by the executive secretary of the Board is the expense of using ALJs. The increase in disciplinary actions by the Board has resulted in an exponential increase in legal service expenses, without a corresponding increase in the legal budget.

Traditionally, the Board has devoted a portion of time during each meeting to consider the investigations forwarded to it by the investigations unit. After each briefing, the Board would discuss whether to initiate disciplinary action, request further investigation, or dismiss the complaint. Recently, the Board initiated a pilot program which has the investigation unit forward cases that would normally be referred to the Board to a review panel. The review panel consists of the executive secretary of the Board, the Director of the DSS, and a Board member. Each Board member serves on the panel for one month rotating terms.

The review panel considers the facts presented by the investigations unit, and the response of the respondent. The panel may then dismiss the case, forward it to the full Board, or offer a settlement to the respondent. When a settlement is offered, the respondent may either accept, counter offer, or request a hearing before the full Board. The review panel reports all actions to the full Board at the regular meetings.

The pilot project has been moderately effective in expediting resolutions to disciplinary matters. It is expected that the review panel will reduce some of the legal expenses of the dealer licensing program. However, the process is still somewhat cumbersome and inefficient.

Board members interviewed for this report expressed frustration in the lack of money to pursue legally complex cases. Inadequate funding and the quality of legal representation by the Attorney General's Office were the two most frequent complaints of Board members when discussing disciplinary matters.

It is the policy of the DMV to resolve complaints without involving the Board whenever possible. It is apparent from the data collected that most complaints are resolved without Board action. However, opinions vary as to the appropriateness of this policy.

Some industry representatives interviewed for this report indicate that investigators frequently intimidate licensees into actions to resolve disputes, thereby exceeding their authority. Some Board members feel investigators do not provide them with all the information necessary about licensees to permit effective regulation of the industry. Some investigators interviewed for this report believe the Board does not support their regulatory efforts. A review of Board dispositions indicates inconsistency in disciplinary actions, despite a statutory requirement that the Board promulgate regulations to prevent inconsistencies.

Complaints are tracked by the DSS according to complaint type. It is the policy of the DSS to facilitate complaints between a consumer and a dealer and only notify the Board about those complaints that cannot be resolved or when a licensee has more than five complaints of the same type. This can result in a licensee having repeated violations of statutes and regulations, without the knowledge of the Board.

The Board is required by §12-6-104 (3) (n), C.R.S., “To promulgate guidelines in the form of rules and regulations to ensure that administrative penalties are equitably assessed and commensurate with the seriousness of the violation.” In implementing this statutory requirement, the Board promulgated regulation §12-6-104(3)(o), C.R.S.: “When considering whether to impose a fine and the amount of the fine, or other administrative penalty, the Board will consider aggravating and mitigating circumstances, the degree of harm to a motor vehicle purchaser, severity of offense, and whether there is a pattern of violations or repeat offenses.” (1-CCR-205-1). The regulation, on initial reading, does not appear to fulfill the statutory directive.

During disciplinary hearings, Board members have said, “You can’t penalize dealers for title violations, everybody loses title paperwork,” and “It is OK to fine a new car dealer, but you can’t close them down. They have too much of an investment and it could jeopardize their relationship with the manufacturer.” A review of the disciplinary actions by the Board shows inconsistencies in the application of administrative penalties. In some cases, it appears the Board ignores its own regulations. Some examples:

- Used car dealer, R.J.’s Cars: A district court found the owner of the dealership guilty of selling a car in a commercially unreasonable manner. The transaction involved a car impounded by another business owned by the dealer. The sale was made as a private party, not through the dealer license. The complaining party was a finance company, no consumer was harmed by the transaction or involved in the complaint. This was the first offense by the dealer.

The Board offered, a stipulation of a six month suspension of the dealer license, a fine, restitution, and payment of sales tax (something outside the jurisdiction of the Board). The stipulation was accepted by the dealer.

- New car dealer, Christopher Dodge: Investigations into consumer complaints revealed three cases of failure to deliver titles in a timely manner and one case of failure to disclose material damage to a used car (the vehicle had been rebuilt from salvage, the dealer claimed not to know). At the time of these incidents, the dealer was on probation for previous violations of Board regulations. Terms of the probation were a one day suspension of license and a \$5,000 fine held in abeyance providing no further violations of regulatory requirements.

The Board determined that a disciplinary hearing was not necessary because the dealer offered to unwind the salvaged vehicle sale and found and delivered the missing title paperwork.

- Used car dealer, Car City: Investigations into consumer complaints revealed three cases of failure to deliver titles in a timely manner and one case of improper repossession. The dealer had prior complaints regarding titles, but no disciplinary action by the Board.

The Board offered a stipulation requiring a \$1,000 fine, with \$500 held in abeyance on the condition that the dealer complete the license law seminar within 60 days of the stipulation. The dealer accepted the stipulation.

Dealers frequently claim that consumers fraudulently trade in used cars that have been rebuilt from salvage. When a dealer takes in a vehicle such as this, and sells it, the first time anyone is aware of the problem is when the consumer receives a title with a “salvage” indication on it. A separate issue is the fact that the “salvage” indication in Colorado is not prominently displayed. Therefore, some consumers operate a salvage vehicle for years without realizing they purchased an automobile rebuilt from salvage.

The Colorado Title Law, §42-6-108, C.R.S., clearly states “no person shall sell or otherwise transfer a motor vehicle to a purchaser or transferee thereof without delivering to such purchaser or transferee the certificate of title to such vehicle...” The Title Law contains provisions allowing a dealer no more than 30 days from the date of sale of a vehicle to deliver, or facilitate the delivery of the title to the purchaser or lien holder. However, §42-6-118(3), C.R.S., eliminates one loophole frequently exploited by dealers. This section requires the immediate delivery of title for any vehicle sold by a dealer that was previously licensed in another state. Violations of any provision of the Title Law rarely result in disciplinary action by the Board.

The Board has issued interpretive rules that can fairly be described as a Board policy. Interpretive Rule A states that the investigations unit should only notify the Board when a dealer has received five founded complaints of the same type. The rule makes exceptions for situations involving a pattern of abuse or significant harm to the public.

RECOMMENDATIONS

Recommendation 1: Continue the regulation of motor vehicle dealers.

Summary: An automobile is generally considered to be one of the most expensive purchases the average consumer makes. In most cases, it is a purchase that will happen repeatedly over the course of a consumer's lifetime. An automobile, at one time considered a luxury, is now viewed as a basic necessity for many people. Because of the clear potential for financial and physical harm, the regulation of motor vehicle dealers should continue.

Discussion: While public transportation is being advocated, and supported, by a diverse coalition of public and private organizations, the primary mode of transportation for adults is a private motor vehicle. There are approximately 1,000,000 motor vehicles sold in Colorado each year. Watching the advertising on television and stopping by a new car dealership will quickly verify that a new car today can cost as much as a new home 30 years ago. According to industry sources, the average used car retailed for over \$10,000 in 1995.

For many people, a motor vehicle is not only a necessity, it is the second largest regular monthly expense to be budgeted for. Motor vehicle dealers and salespeople in general, and those affiliated with the used car market in particular, are not held in high regard by consumers. This public perception of distrust (of salespeople) is largely unjustified. However, unethical business practices by a small percentage of motor vehicle dealers could financially devastate many families.

A survey of states revealed only one that did not license motor vehicle dealers. While the licensing standards and administration varied from state to state, virtually all maintain strong regulatory programs for what is considered the second largest consumer purchase. The same survey showed very few states with licensing responsibilities divided between regulatory programs.

This review found no evidence that the licensing of manufacturers, distributors, and representatives by the Executive Director enhanced public protection. If the General Assembly decides to continue licensing these occupations and businesses, the authority should be consolidated with the dealer licensing authority.

Most states license dealers through an administrative agency rather than a licensing board. Some have boards that function in an advisory capacity only. While some states' boards establish licensing standards, disciplinary functions are designated to a separate agency.

The current Board consists of six industry representatives and three public members. Attendance at board meetings by industry representatives has been sporadic at best, for the years since the last sunset review. Disciplinary hearings have resulted in inconsistent penalties despite a statutory requirement to promulgate regulations to prevent inconsistencies.

The industry representation on the Board is essential to formulating regulations that protect the public without unnecessarily restricting the business practices of the licensees. However, a lay board by its very nature is ill equipped to enforce disciplinary measures on members of its own industry. Therefore, the enforcement of the regulations promulgated by the Board should be administered in accordance with the Board's policy by the Executive Director of DOR.

Recommendation 2: Modify the composition of the Board to consist of four public members; three dealer members (new or used); one member who is either a motorcycle dealer, a wholesaler, or a licensed auctioneer; and one member from a district attorney consumer protection division. Allow the Executive Director of DOR to recommend to the Governor the removal of Board members for neglect of duty, misconduct, or incompetence.

Summary: Two thirds of the members of the Board are involved in the retail sales of motor vehicles. More diversity in backgrounds of Board members is necessary to better represent the interest of all parties impacted by Board regulations. Sporadic attendance by some Board members negatively impacts the efficiency and effectiveness of the Board.

Discussion: While it is argued that the Board represents three different constituencies, the fact is that six of the members are representatives of the retail automobile trade. Motorcycle dealers, salespeople, auto auctioneers and wholesalers are licensed by the Board, but not represented. If the recommendation to consolidate other motor vehicle industry licenses under the Board is adopted, the pool of candidates should be expanded to include these industry segments.

Industry representatives believe that the retail trade has the most significant impact on consumers and that effective regulation can only be accomplished by a board with a majority of its members involved in the retailing of

automobiles. The majority of states effectively regulate the motor vehicle industry administratively, without a regulatory board. Many of the states using boards have a majority public membership. One state, Texas, allows only individuals with no affiliation with the motor vehicle industry to be eligible for board membership.

The General Assembly has traditionally been reluctant to completely delegate licensing functions to administrative agencies. However, at the national and state levels, it is being recognized that stronger public representation on regulatory boards is necessary. Some of the strongest regulatory programs in the state, such as the Public Utilities Commission and the Gaming Commission, are comprised completely of public members. In addition, it is only equitable that a business regulated by an industry board have the opportunity to be truly represented on that board.

Industry representatives, particularly the dealer associations, argue that since the industry is greatly impacted by the Board, they should have a majority representation on the Board. However, attendance records for the past four years show that industry representatives in general, and new car dealers in particular, have less than average attendance records at Board meetings.

Low attendance, particularly in lengthy disciplinary hearings, can compromise the respondent's due process rights. When Board members miss a portion of a hearing, they must either exclude themselves from the proceeding or spend an unreasonable amount of time becoming familiar with the facts of the case. The Board frequently expends a significant amount of time during meetings explaining decisions made at previous meetings to Board members who were absent.

Recommendation 3: Eliminate the licensing requirement for motor vehicle salespeople.

Summary: Very little protection is afforded the public by the licensing of salespeople. As evidenced by the complaint information and substantiated by case law, salespeople are agents of the dealer for whom they work. Therefore, the dealer is responsible for the actions of any salespeople employed by the dealership.

Discussion: Industry representatives claim that salesperson licensing improves the public perception of the industry and serves as a deterrent to undesirable individuals entering the profession. A profession is generally described as an occupational pursuit requiring some combination of education and experience in order demonstrate a minimum level of competence. Professionals practice their vocation under the licensing authority of the state, usually within the parameters of some type of professional code.

No education or experience is required for a salesperson license. The examination required by the Board requires a minimum understanding of the laws concerning motor vehicle sales. However, no practical demonstration of implementing that understanding is necessary.

Typically, professional licensing allows the licensee to practice within the boundaries of the state. The current salesperson licensing scheme restricts the licensee to practice at a specific establishment. Professional licenses can only be restricted by the licensing authority. The motor vehicle statute not only allows, it requires, dealers to confiscate a salesperson's license upon termination of employment.

The Board has promulgated regulations to create a relatively reasonable standard for licensure as a salesperson. This standard is largely an illusion. Virtually anyone who applies to be a salesperson receives a license. Some dealers contacted for this review voluntarily require much higher standards for salespeople than those required by the Board licensing program.

Board members frequently justify overriding licensing standards by stating that if the employing dealer knows the history of the individual they are employing, it is their risk. In point of fact, it is the risk and responsibility of every employer to know the history and risk factors for any employee. It is not the responsibility of the government to ask standard employment questions and conduct a cursory review of all employees of a particular business classification in the state.

Industry representatives argue high standards are necessary to improve the image of car salespeople. However, they consistently encourage individuals with questionable backgrounds to enter the sales force. In fact, according to industry representatives, some dealers recruit recent parolees for sales positions. The current licensing scheme places these individuals in a position of owing their freedom to an individual that controls his right to work, by virtue of the dealers power over the salesperson's license.

The Board rejects less than one percent of the applicants for licensure. Such a lax standard for licensure provides a false sense of security for the public and a convenient shield for dealers. Since the state fingerprints and asks employment questions of salespeople, consumers could be misled into believing that the state is assuring that these individuals are qualified and ethical. However, this is not the case.

The private sector has the tools available to conduct background checks on prospective employees. As previously mentioned, some dealers utilize these tools. The bonding of salespeople primarily benefits the dealer. Dealers can require, or obtain for themselves, bonding for employees, without a state mandate.

The bottom line is that the current licensing process does not protect the public. It is a poor-quality employment screening service for dealers. The application asks for past employment history, even though no experience is required, and no effort is made to verify the information. Fingerprints are required even though nothing is done with them, and the examination is relatively simple to pass.

Any employer should ensure that employees are aware of laws and regulations impacting their business. Owners of liquor stores and bars are licensed by the state. There is a public responsibility in the sale of alcoholic beverages. However, the state does not license the individuals serving the public. The state holds the manager or owner accountable for the actions of employees. If an employer does not properly train and supervise employees, the license of the establishment is at risk. Banks are licensed by the state, not bank employees. It is up to individual bank managers to supervise employees and insure compliance with very complex regulatory programs. If these types of businesses can operate without government regulation of their employees, motor vehicle dealers should be able to do the same.

Recommendation 4: Discontinue the licensing of manufacturers by the Executive Director.

Summary: Federal regulatory programs for manufacturers are adequate to protect the public from harm in life safety issues. There are adequate civil remedies available to consumers and the state in the event that economic issues are raised.

Discussion: Representatives of the dealer industry claim that Colorado has one of the weakest manufacturer licensing laws in the country. They indicate a desire to place restrictions on manufacturers to allow the Board some regulatory oversight of manufacturers to limit new franchises, and reduce the power manufacturers have over franchisees.

The American public is changing the way it purchases just about every consumer product, and motor vehicles are no different in this regard. Large publicly held corporations are purchasing dealerships nationwide and could conceivably dominate major markets in the future. Manufacturers are experimenting with operating retail mega-dealerships in mid sized markets. Enterprising dealers are selling cars on the Internet.

The traditional dealer franchisees are threatened by the changing market and desire the police powers of the state to slow the changes and preserve the *status quo*. Restricting new franchises, making it more difficult to terminate franchise agreements and limiting the ability of manufacturers to dictate requirements to dealers will serve to maintain the motor vehicle market in its current condition for a short period of time.

Dealer advocates allege that because of weak regulation of manufacturers, Colorado dealers are subject to more abuse and pressure than dealers in other states. However, the survey conducted by DORA as part of the sunset review revealed that less than half the states even have a manufacturer license requirement. Therefore, it is unlikely that lack of manufacturer regulation results in a major amount of dealer abuse in Colorado.

Dealers also maintain that changes in the retail market for motor vehicles will force consumers to pay higher prices for automobiles. They are particularly concerned about large dealerships and Internet sellers that attract consumers from well out of their service areas. The arguments is that under some scenarios, aggressive or large dealers can obtain a competitive advantage.

For example, a consumer purchasing a car at a reduced price from Dealer A in Denver finds it inconvenient to take it to that dealer for service. Instead, the consumer takes the car to Dealer B in Rifle. Dealer B did not make any profit on the sale of the car, but because of the franchise agreement, service must be performed at a rate set by the manufacturer. Dealer A, who made the profit, does not maintain service facilities in proportion to cars sold, because most of the sales are to customers who will not be returning for service.

It is true that the large dealer (Dealer A in the example) has taken advantage of a situation allowing the dealer to operate with a lower overhead margin. However, in a free market economy, Dealer B has the opportunity to create a market niche, sell over the Internet, expand advertising and cut prices, or use other creative strategies to compete.

There is no empirical evidence to support the contention that large dealerships and Internet sales will drive up consumer prices. Advocates for more controls frequently point to airline deregulation as an example of a situation where prices have increased after deregulation. It is true that prices have increased in some markets for airline travel. However, the government does not currently regulate automobile prices, so a deregulation comparison is invalid. Also, in markets where competition exists, prices are relatively low. The very facts the advocates for government control cite as reason for more control, are the same reasons more control is not necessary. The changing marketplace will continue to require competitive prices to attract consumers. If the mega-dealership in Denver does not offer a competitive price, the consumer can purchase an automobile over the Internet, or travel to a dealer in Colorado Springs.

In reviewing the need for continuing regulation of an occupation or profession, one consideration is the volume of consumer complaints to the regulating authority. If a large volume of complaints is observed, then an analysis must be made of the resolution. If the complaints are being resolved in an equitable manner, only minor changes should be made to the program. On the other hand, if complaints are not being resolved, or are being resolved inequitably, the program needs major changes.

The sunset review attempted to analyze complaint data concerning manufacturers. However, very little complaint data is available. Dealer industry representatives claim that dealers do not file complaints against manufacturers out of fear of retribution. However, before a case can be made for increasing government regulation, it must be demonstrated that the current level of regulation is ineffective. A lack of complaints concerning manufacturers seems to demonstrate that the current level of regulation is not necessary.

Most new car dealers interviewed for this report indicated that they experience a low profit margin on new car sales. Almost all industry sources indicated that the most profitable segment of the retail motor vehicle trade is used car sales. Dealers want the franchise agreement for prestige and the traffic the manufacturer can generate. Dealers who do not want the restrictions a franchise agreement requires do not have to enter into the franchise agreement.

Dealers enter into franchise agreements with manufacturers on a voluntary basis, usually with the benefit of competent legal counsel. Dealers can usually terminate franchise agreements if they desire. There are both federal and state statutes that restrict manufacturers from forcing dealers to accept vehicles and parts they can't sell, or withhold vehicles they can sell. No evidence has been supplied or discovered that indicates these laws are ineffective.

If the license requirement were eliminated, dealers would still have civil remedies available in situations where a manufacturer fails to honor a franchise agreement. In the event a manufacture violates a statute in dealing with a licensed franchisee, charges can be brought in the appropriate court of competent jurisdiction.

Recommendation 5: Eliminate the salesperson bonding requirement if salesperson licensing is continued.

Summary: The bond is to protect the dealer. It has little value to the consumer. The \$240,000 each year in bond fees is eventually passed on to the consumer in the form of higher car prices. The only beneficiaries of the bond are the bond companies, the dealer associations and the dealers.

Discussion: The bond for salespeople is set in statute at \$5,000. The fee for a bond in this amount is approximately \$30. According to industry sources, the average retail price for a used car is \$10,000. These numbers alone reveal that the bond is not an inadequate protection for consumers.

However, the low value of the bond is not the issue. The state auditor's report clearly indicated that most claims against salesperson bonds were by dealers. From 1994 to 1996 the two largest issuers of salesman bonds paid out only four claims on salesperson bonds totaling \$10,000. Most claims involved some type of fraud or theft by the salesperson from the employing dealership.

Requiring in statute that salespeople maintain a bond is using the police powers of the state to protect dealerships from poor employment practices. Bonds and other forms of insurance are available in the free market for dealers to obtain protection against employee theft. However, many insurance companies base premium rates on loss prevention practices (including hiring and supervisory policies) of the business being insured.

Bonding requirements for salespeople shift the cost for questionable employment practices from the dealership to the bonded employees. Retail consumers rarely receive any compensation from the bond. Even if a consumer did make a claim on a bond, the amount of the recovery would likely be less than the damages incurred.

Another factor in this recommendation is the lack of enforcement by the Board against salespeople. Almost every complaint received by the Board involves the sale of an automobile. In almost every sale of an automobile, a licensed salesperson is involved. Yet, no tracking is done on salespeople involved in complaints. A salesperson is rarely disciplined by the Board unless a dealer files a complaint.

Eliminating the bonding requirement for salespeople does not diminish public protection, nor does it prevent a dealer from obtaining a bond for salespeople, or requiring a salesperson to obtain a bond as a condition of employment. Eliminating mandatory bonding will probably reduce the demand for the bonds, and subsequently cause an increase in the price of the bonds. However, the net effect of this will be to shift the cost of the bonds to those who truly use the bonds, and eliminate the subsidization of dealers with poor employment practices by those dealerships with higher standards.

Recommendation 6: Eliminate requirement that ties a salesperson's license to a specific dealership, if salesperson licensing is continued.

Summary: Requiring salespeople to be licensed to a particular dealership does not protect the public. All other professional licenses are portable.

Discussion: Professional licensing programs should be designed to protect the public, not to create barriers to the free market movement of professional talent. The current salesperson licensing program places a great deal of control over the license in the hands of the employing dealership. In fact, the dealer is required to confiscate the license upon termination of the salesperson's employment.

It is not accurate to categorize the licensing of salespeople as a professional licensing program. No education or experience is required for the license, although those questions are asked on the license application. An examination is administered. However, the validity of the test has never been established. In addition, the success rate on the examination, coupled with the fact that the exam can be repeated frequently and is rarely updated certainly gives credibility to charges the examination process is a sham.

If the General Assembly desires to continue some type of regulation of salespeople, a simple certification program will provide the same public protection. Applicants simply take a validated examination and receive a salesperson certificate. Once certified, the salesperson is free to obtain employment at any dealership desiring to enter into an employment agreement.

If a salesperson violates motor vehicle sales rules, the certification can be revoked. However, if past history is any indication, consumers will rarely complain about the actions of a salesperson.

Recommendation 7: Restrict access to the dealer bond.

Summary: Allowing dealers to recover against a bond does not protect consumers. Requiring a finding of fraud places an unnecessary burden on consumers to recover damages.

Discussion: Some auctioneers and wholesalers use the bond as a unofficial line of credit. In these situations, the bond gives these suppliers protection against bad business decisions. Dealerships having financial difficulties sometimes overextend themselves with suppliers. These suppliers are willing to extend additional credit because they know they can attach the dealers bond if the dealer does not pay.

By the time the dealership can no longer maintain the cash flow necessary to pay the minimum payments, the potential exists for several consumers to have legitimate claims on the bond. However, the suppliers are in a position to know sooner than the consumers that the dealer has gone out of business. By the time consumers know their only recourse is to attempt to attach the dealers bond, it has already been paid to another dealer.

Claims on bonds, as reported by the state auditor, amounted to approximately \$1.5 million in fiscal years 1994 to 1996. More than 50% of the claims were by dealers, wholesalers or auctioneers. Only 40% of the bonds were paid to consumers in the time period reviewed, and over \$550,000 in claims were not paid to consumers because bond funds were exhausted. Not all of the unpaid claims were because of other claimants being paid ahead of the consumer. However, this situation does occur.

In order to access a dealer's bond, a claimant must first obtain a judgment in a court of competent jurisdiction or file a complaint with the Board and have the Board find fraud or misrepresentation. This process is cumbersome and time consuming. The bond is essentially a performance bond. The sale of an automobile is a contract. If a consumer believes the contract has been breached, or performance has been incomplete, the consumer should be able to apply directly to the bonding company for relief.

Recommendation 7: Require dealers to provide customers with an informational brochure with complaint procedures.

Summary: Very little proactive consumer information is available to the public.

Discussion: Board members, DOR staff, and industry representatives frequently commented that most consumers do not know that the Board exists. Most individuals contacted for this review also expressed a belief that a public educated on motor vehicle sales issues would have fewer complaints than the Board is now experiencing.

The DSS has developed several brochures to educate consumers about issues such as what to look for when buying a car and how to file a complaint. However, the distribution of these brochures is inadequate and some of the information is outdated. Display racks at the DOR frequently are void of any consumer protection information. There is no active program in place to make consumer information widely available to the public.

Since the first point of contact for a retail motor vehicle consumer is a dealership, it is logical to provide information at that point. General information on the Board, car buying tips, dealer obligations, the “lemon law,” and the complaint process would educate the public at the most opportune time, before the purchase is complete.

RECOMMENDATION 8: Require the Board to use hearing officers and ALJs instead of holding all licensing appeals and disciplinary hearings itself.

Summary: The use of hearing officers for less complex cases, and ALJs for more complex cases, would speed up the hearing process and free the Board to evaluate public policy issues instead of day to day operations.

Discussion: The purpose of a Board consisting of a mixture of public and industry representatives is to provide a balanced set of regulations to effectively protect the public without unnecessarily interfering with the operations of the business. At virtually every meeting of the Board, some discussion takes place about a policy or regulatory issue that has been neglected or needs to be addressed.

The Board consistently cites a heavy workload as justification for not addressing public policy and regulatory issues. Yet the Board spends hours each meeting listening to appeals of license denials and reviewing routine disciplinary matters.

The Board should establish mandatory licensing standards and delegate the actual review of those standards to DMV staff. Appeals of the staff decisions should be conducted by hearing officers experienced in interpreting regulatory standards. Models of this practice exist in the driver's license section of the DMV, the Unemployment Insurance Division of the Department of Labor and Employment, and in most municipal traffic courts.

Care must be exercised so as not to impinge on an applicant's due process rights. However, if licensing regulations are properly promulgated, the interpretation by DMV staff and hearing officers will not be called into question.

Disciplinary actions can be addressed in a similar manner. The Board should direct simple cases to a designated hearing officer in the DMV. Complex cases should be referred to an ALJ.

In a recent disciplinary action against Northglenn Dodge, the Board elected to hear the case rather than refer it to an ALJ. Because the Board generally meets twice each month, and usually only conducts disciplinary hearings at one of the meetings, the hearing was conducted over a period of several months. During that time period, the terms of several Board members expired and they were replaced by new Board members. These new members properly recused themselves from the hearing process. However, some existing Board members missed portions of the hearing.

Since the hearing was being conducted by a lay board, additional legal counsel was necessary to advise the Board on the rules of civil procedure. This means that the Board was not only incurring expenses for the prosecution of the case, but doubled the expense because of the additional time for a second Assistant Attorney General. The protracted hearing, combined with the inexperience of a lay board in administering complex legal proceedings assists the defendant in building a case for an appeal.

Most professional licensing boards in DORA refer disciplinary actions to an ALJ, in accordance with the Administrative Procedure Act. Adopting this policy would enhance the consistency of disciplinary actions and reduce the probability of protracted hearings on complex issues.

An argument will be made that the Board cannot afford the additional legal expense associated with the use of an ALJ. It is true that, traditionally, the Board has overspent its legal budget and has traditionally requested and received a supplemental appropriation. However, the potential cost savings on complex hearings, combined with a reduced probability of an appeal, justify any additional up-front costs for the use of an ALJ.

RECOMMENDATION 9: Require the Board to establish licensing criteria and delegate licensing functions.

Summary: The Board spends a significant amount of time reviewing and approving individual applications for licensure. The Board has not reviewed or revised a regulation in over four years, citing workload as a major factor.

Discussion: The actual process for verifying qualifications and issuing a license is a routine administrative function. The Board recently adopted a policy of allowing the DSS to divide applications into two categories, those meeting all standards, the “short list,” and those with some variance from the standard, the “long list.” In practice, the Board has never questioned the licensing of an applicant on the “short list.” In fact, the Board rarely rejects an application recommended for approval by the DSS.

The Board should adopt fair and reasonable license qualifications and delegate the verification of the qualifications to staff. Applicants who meet the standards should be issued a license immediately, without having to wait until the next Board meeting. Those who do not meet the minimum qualifications should be denied a license.

Applicants who disagree with a decision of the DSS should be provided with an appeal to an administrative hearing officer. The hearing officer would only be allowed to rule on the applicant’s qualifications based on the objective standards set by the Board. Mitigating circumstances could not be considered.

Board members and industry representatives continually cite the need to revise antiquated and ineffective regulations. The advertising regulation is the most frequently mentioned regulation in need of review. However, the volunteer Board does not devote time to this activity. Instead the Board micro manages the licensing process.

Recommendation 10: The General Assembly should repeal §12-6-121.6, C.R.S.

Summary: There are adequate civil remedies available to dealers to collect on dishonored checks or drafts. The Board should not be involved in dealer to dealer disputes.

Discussion: Section 121.6 provides a mechanism for dealers, wholesalers, auction houses and consignors to compel dealers to honor checks written to them, or face disciplinary action by the Board. Dealers are subject to suspension of their license for issuing a check or draft to another dealer, wholesaler, auction house or co-signer, and failing to honor the draft. If a dealer's license is suspended, it may not be reinstated until the draft or check is paid in full, along with any associated penalties. This provision puts the Board in the position of serving as a collection agency for licensed entities.

There can be a variety of reasons a check is dishonored. It could be an accounting error on the part of the dealer, a bank error, a stop payment could have been executed because of a dispute regarding the merchandise paid for, the dealer in question could be experiencing cash flow difficulties, or the dealer could be attempting to defraud the seller out of merchandise. With the exception of a bank error, the dealer writing the check or draft has control over the payment of the instrument.

In all situations, the victim of the dishonored instrument has remedies available to recover for damages. Other business licenses granted by the state do not provide for administrative action by the regulatory agency to force payment of debts. This rare use of government powers in a private matter places the Board in a position of protecting licensees from bad business decisions, and avoiding expenses other business operators incur.

In most situations, this issue would involve a dealer purchasing merchandise from a wholesaler or auctioneer. In most business situations, if the purchaser was unfamiliar to the seller or had a known history of untimely payment, the seller would place restrictions on the sale or require certified funds. In the motor vehicle business, these standard business precautions are not necessary. This is because not only is the wholesaler or auctioneer allowed to attach the bond that all licensed dealers must maintain, the Board could order the dealer to pay or face disciplinary action against the dealer license.

Purchases of certain agricultural products on credit are required to obtain a bond to insure payment to the grower of the product. This statutory provision was passed by the General Assembly out of a desire to maintain a public policy to protect small farmers, who are likely to be at a disadvantage in financial knowledge, from suffering catastrophic losses. Other businesses regulated by the state, such as liquor establishments, do not have the same provisions included in their regulatory schemes. Dealers and wholesalers are in the same business and have relatively equal knowledge of financial and business practices. The Board does not need to be involved in financial disputes between two private entities.

Situations may occur where dishonored checks are a symptom of a significant problem that may impact the dealer's ability to remain in business. The Board always has the ability to administer disciplinary action against a dealer who negatively impacts consumers. The renewal process could include a review of the current credit report of a licensed dealer. If sufficient judgments are revealed, judgments relating to nonpayment of debts, the Board could consider action based on a substandard credit report, not on the dispute between two licensees.

Recommendation 11: Repeal outdated and unnecessary provisions in the motor vehicle dealers licensing statute.

Summary: The statute contains several unnecessary, outdated, and unenforceable provisions. These provisions do not establish the least restrictive form of regulation necessary to protect the public.

Discussion: The statute requires the Board to elect a president, vice president, and a secretary/treasurer. The president is to preside over Board meetings and hearings, the vice president assumes this responsibility in the absence of the president. There are no defined duties for the secretary/treasurer. The executive secretary of the Board takes the minutes, a court stenographer records all hearings. The Board collects no money, so there are no funds to act as the treasurer for. Other regulatory bodies, such as the General Assembly, select a chair and vice chair for committees, then follow a seniority system in the event of an absence. This process could be used effectively for the Board.

The requirement for repair facilities or a contract with a licensed garage, is based on an outdated concern about the reliability of motor vehicles and a lack of repair facilities. Dealers must ensure that all vehicles are equipped with required safety equipment prior to sale. Dealers must also ensure that vehicles obtain a valid emissions permit prior to sale. Safety inspections are no longer conducted.

Manufacturers require franchisees to maintain service facilities staffed by technicians trained to maintain the manufacturers vehicles, and supplied with the manufacturer's parts. This makes sense from two perspectives. First, it is a convenience to the consumer to have a vehicle serviced by technicians specifically trained on that vehicle and the manufacturer has the added benefit of profiting from the sale of factory parts. Secondly, new vehicles are sold with a manufacturer's warranty. It makes sense to both the consumer and the manufacturer to have warranty work performed under controlled conditions.

Used cars, on the other hand, are not generally sold with warranties. The dealer is under no obligation to perform any service work once the car is sold, provided it has a valid emissions permit and all required safety equipment. The Board has no ability, nor should it, to order other repairs to be made, or to evaluate the quality of any repairs.

Dealers that provide extra services, such as repairs, and perform them well, are rewarded by the free market. Consumers who choose to purchase vehicles from dealers without repair facilities should be able to do so.

The application process requires documentation of on-site repair facilities or a contract with a licensed garage. Municipalities have the option of regulating motor vehicle repair facilities. However, there is no state license for a garage or repair facility. The vehicle repair business is very competitive and subject to turnover and business closures. Little attempt is made in the renewal process to verify that a repair contract is still in force.

Some dealers will argue that the requirement should be continued in order to maintain a "level playing field." The concept of a level playing field does not exist in the repair business. Franchise dealer repair facilities will generally be better equipped, and technicians better trained, than independent dealers or garages. Manufacturers generally require "factory training" for dealer technicians and service managers. Many high quality independent dealers and garages also voluntarily require technicians and service managers to undergo formal training.

However, the state does not require or regulate the qualifications of repair technicians. There are no established standards for what is considered a

repair facility or licensed garage. Therefore, it is absurd to believe that by requiring a repair facility or a contract, all dealers are operating with the same expenses.

The Sunday closing requirement is even more outdated and unnecessary than the repair facility requirement. However, it may be more strongly supported by the dealer industry. Again, the issue is going to be the imaginary level playing field. Dealers will contend that most dealerships are small, family-run businesses and Sunday is the only day the owner takes off. Even large dealerships may argue they need to be closed on Sundays to give employees time with their families.

The important point of repealing the Sunday closing law is that it does not mandate a dealer to be open on Sunday. It provides dealers with an option. Most dealerships are open Monday through Thursday from 10:00 A.M. until 8:00 P.M., and Friday and Saturday from 10:00 A.M. to 7 P.M. These hours of operation are not dictated by statute or regulations. They are a business decision made by the owner. Owners frequently run dawn to dusk or midnight madness promotions. The point is, if dealers want to remain closed on Sundays, they should have that choice. However, if they desire to be open, they should have that choice also.

Recommendation 12: Require dealers to deliver vehicle titles within 30 days of the sale. Institute mandatory penalties for failure to comply.

Summary: The most common consumer complaint involves non delivery or late delivery of title. The current statute contains a loophole which allows dealers to delay delivery.

Discussion: The largest number of complaints received by the Board involves the issue of title delivery by dealers. The title law (§42-6-110.5, C.R.S.) requires motor vehicle dealers to deliver, or facilitate the delivery of the certificate of title to a purchaser within thirty days from the date of sale. The average length of time the purchaser had been without a title prior to filing a complaint was 140 days.

The term “facilitate delivery” has been interpreted broadly, allowing some dealers to claim they have sent information to an out of state financial institution to escape responsibility for title delivery. Regulations by the Board are very clear on requirements for delivery, but are rarely enforced. In fact, interpretive regulation A states that the Board should not even be notified until a dealer has five title complaints in a calendar year.

Title issues are predominately a used car problem. This is because there are usually more entities involved. Consider the following typical scenario:

A consumer brings a car in to trade for a new vehicle in Denver. The transaction is completed, and the consumer indicates the title to the trade will be delivered the next day. The dealer has excess inventory in the type of trade-in, so the vehicle is sold or consigned to a wholesaler or auction house. When the consumer delivers the title a week later, it is discovered the title has a lien by an out of state bank. The dealer sends payment to the bank, and contacts the wholesaler. The wholesaler has sold the car to a used car dealer in Durango. The wholesaler contacts the Durango dealer, who has already closed a deal to sell the car.

At any point in the above transaction a slight delay or mistake will cause the purchaser of the used car to have delivery of the title delayed. However, if the licensees had followed the title law and regulations, the purchase of the trade-in would never have taken place. Regulations clearly state that vehicles with incomplete or insufficient titles should be marked “not for sale” and should not be sold until proper title is secured.

Dealers, particularly used car dealers, assert that if they waited until they had the proper paperwork, they would lose sales to competitors. This is a situation where the mythical level playing field would work. As long as all dealers are held to the same standard, sales would not be impeded, or at least would be impeded by the same degree as every other dealer. Other states, (according to industry sources, Nevada is the most stringent) enforce title transfer laws. Dealers in those states are able to operate effectively.

There are several causes for non delivery of title. These causes can be broken down into three basic categories; inadequate or untimely recordkeeping by the dealership, untimely or improper recordkeeping by the title holder, and non-payment of the lien by the dealership. Dealers have complete control over two of the three main categories. In situations where the delay is caused by the title holder, if the dealer does not sell the vehicle until the problem is resolved, consumers will not be harmed.

A common practice in the retail sale of motor vehicles is for dealers to finance their inventory, a practice known as floorplanning. When a dealer floorplans inventory, the entity providing the financing holds the actual title to the vehicle. The dealer holds evidence of title from the bank, finance company, or other entity providing the financing.

When a vehicle is sold, the dealer should pay off the loan from the floorplanner, and forward the title to the purchaser. When a dealership is experiencing financial difficulty, proceeds from one sale are diverted to cover other expenses. When another vehicle is sold, the proceeds from the second sale are used to pay off the lien on the first vehicle.

If the financial problem of the dealership is a short term cash flow difficulty, this strategy sometimes works. However, in most cases, the scheme becomes a giant pyramid. When the number of cars needing to be paid off becomes too great, the dealer can be forced out of business or into bankruptcy. The real harm is to the financial institution floorplanning the dealer's automobiles. Presumably, the financial institution took the risk of financing the dealer into account and established an interest rate adequate to compensate for the risk.

Consumers are not directly harmed when a dealer goes out of business. However, if the dealer did not pay off a finance company, or did not process title paperwork, the consumer may have difficulty obtaining the title to the motor vehicle purchased. Without a title, the consumer may have difficulties registering the vehicle and obtaining license plates.

Reviewing title complaints promptly and addressing the cause of the problem will reduce the inconvenience to consumers. If the cause is a lack of understanding, or emphasis on paperwork processing, an educational seminar will benefit the dealer and future customers of the dealership. If the cause is financial instability or mismanagement, action can be taken before a large number of consumers own cars they cannot legally drive.

Recommendation 13: The General Assembly should change the dealer license renewal process. Licenses should expire every two years, on

the license anniversary date, and be subject to a mandatory compliance inspection prior to renewal.

Summary: Available resources do not allow for an adequate review of renewals when all licenses expire on the same date. States with active inspections programs have fewer complaints because the regulatory agency proactively reduces activities that result in complaints.

Discussion: Currently, all motor vehicle dealer related licenses expire on June 30 the year following the date of issue. This renewal cycle requires the DSS to process all renewals in a very compressed time frame. The DSS is consistently required to contract temporary staff in order to process the renewals. The compressed time frame, combined with the use of temporary staff, inhibits the ability of the DSS to adequately review renewal applications.

Annual license renewals, based on the state fiscal year end, have an advantage in fee calculations. The shorter time horizon budget analysts have to anticipate, the more accurate their forecasts can be expected to be. However, a two year renewal cycle is not unreasonable.

Because all licenses currently expire at the end of the fiscal year, it will take time for license renewals to spread out, unless the General Assembly allows the DSS to adjust the renewal date for current licensees. However, changing the renewal process, combined with a mandatory inspection program, will improve the regulatory oversight of dealers without a significant increase in resources.

Most entities that receive a state license are subject to compliance inspections. Proactive regulatory programs are cost effective because they prevent damage from occurring rather than taking disciplinary action after harm has occurred.

States with regular compliance inspections programs experience fewer consumer complaints than Colorado. The following table was extrapolated from the survey of state programs conducted by DORA. The ratio of complaints to licensees is based on licensed used and new car dealers only.

Numbers from several states that have regular inspection programs were not included because they do not track complaints by license type. Therefore, the numbers could be skewed. While the Board does not track complaints by license type, reported complaints do not include manufacturers or other entities licensed by the Executive Director. While the Colorado numbers include complaints against salespeople, the number of complaints is insignificant for purposes of this illustration.

STATE	LICENSE OVERSIGHT	INSPECTION FREQUENCY	COMPLAINTS	LICENSEES	COMPLAINT RATIO
Arizona	Commission	random	2200	2725	.80
Colorado	Board	none	2562	2700	.95
Florida	Administrative	annually	5000	9520	.52
Idaho	Administrative	every 3 years	125	828	.15
Kansas	Administrative	random	3000	3400	.88
Maine	Administrative	Random	400	1380	.28
Mississippi	Commission	annual	127	328	.39
Montana	Administrative	Random	250	804	.31
Nebraska	Board	annual	400	1500	.26
New Mexico	Administrative	random	700	2400	.29
New York	Administrative	random	3465	15000	.23
North Carolina	Administrative	annual	6000	17842	.34
South Carolina	Administrative	random	700	4331	.16
Utah	Administrative	annual	50	1159	.04
Virginia	Board	annual	575	4000	.14
West Virginia	Administrative	every 2 years	350	1402	.25
Wisconsin	Administrative	random	1850	2779	.67
Wyoming	Administrative	none	350	380	.92

*The Wyoming Attorney General office is responsible for investigating most types of consumer complaints.

**Virginia does not include violations found during inspections.

Industry representatives have expressed reluctance to endorse mandatory inspections. Reasons cited include: a negative attitude towards the investigation unit of the DSS, concerns about interrupting business operations, and the perception that inspectors would just be looking for violations. Resistance to compliance inspections by the dealer industry is expected.

Given the resource allocation in the DSS, the implementation of this recommendation could be delayed. However, a privatized audit program is a reasonable alternative. The Board would develop criteria for the approval of private compliance inspectors. The Board would also develop inspection rating forms and a scoring scheme. Private individuals, manufacturers, CPA's, and the trade associations could apply to become approved inspectors.

Under the mandatory inspection program, dealerships would be inspected every two years. Dealers could either pay the DSS a fee set in statute for an inspection, or pay an approved private inspector the market rate for an inspection. Major violations found during an inspection by the DSS could, be immediately referred to the investigations unit for possible disciplinary action. Quality control or follow-up audits would not require the payment of an additional fee.

The DSS would be required to re-inspect 10 percent of the dealerships inspected by a private inspector that receive satisfactory scores for quality control purposes. Dealers receiving less than satisfactory scores from a private inspector would receive a follow-up inspection from a DSS investigator within 30 days of the unsatisfactory audit. Any violations found during the follow-up inspection would be subject to disciplinary action.

This program has the benefit of a proactive compliance audit to protect the public. Because the industry does not trust the DSS to be reasonable in compliance audits, the incentive is present to develop a private market for inspections. The trade associations would benefit by offering inspections as a benefit of membership. Manufacturers could conduct compliance inspections as a service to franchisees. The fee charged by the DSS would offset costs associated with the additional resources necessary for the program.

Administrative Recommendation 1: The Board should follow requirements of the open meetings act.

Discussion: On several occasions, the board has gone into executive session without meeting the requirements of the open meetings act contained in §24-6-402, C.R.S. Several Board meetings have gone into executive session without a vote of two thirds of the members as required by the statute. In addition, it is questionable whether the purpose of the executive sessions met the criteria for closing a meeting to the public.

A specific example is the briefing of the board by the executive director regarding potential reorganization of the DSS. While some personnel matters were discussed, they did not involve appointments or disciplinary actions as required by §24-6-402(3), C.R.S. Since the Executive Director, not the Board, is responsible for all appointments and disciplinary actions, even if the discussion involved these issues, it is inappropriate to use executive sessions to exclude the public from the discussion.

The Board has also, on at least one occasion, gone into executive session to discuss political strategy, without the required vote. The minutes of the meeting did not reflect the content of the executive session as required by law.

Administrative Recommendation 2: The process for obtaining a license should be simplified.

There is no single point of contact in the state that an applicant for a dealer's license can go to in order to complete all the requirements for licensure. Fingerprints are obtained at one location, the examination is taken at a separate location and graded at a third location. The justification for fingerprinting, as previously discussed, is non existent.

The validity of the examination is questionable. In 1992, the Board submitted a report on the examination to the Joint Legislative Sunrise/Sunset Committee. The report detailed the intent of the DSS, in conjunction with the Board, to develop a psychometrically valid, computerized examination. The examination was to contain a pool of questions to be drawn randomly in order to ensure applicants did not receive the same examination twice. The test was to be designed to be taken and graded immediately at a variety of locations statewide. The proposed process was never implemented.

The current examination has three established examination question sets that are rotated randomly. The examination has not been updated in several years and has never been independently verified for validity.

Administrative Recommendation 3: The Board should promulgate a reasonable regulation for the deposit alternative to a dealer bond.

Discussion: The dealer licensing statute requires that a dealer obtain a bond in the amount of \$30,000, or deposit adequate funds with the Board. The Board has never adopted regulations to implement the deposit option. If the General Assembly maintains the provision in statute, the Board should adopt a method for dealers to avail themselves of the option.

Administrative Recommendation 4: The Board should cease the policy of requiring every person in the hearing room to identify themselves for the record.

Discussion: The requirement that every person in the room identify themselves for the record is time consuming and unnecessary. Individuals testifying or otherwise directly involved in the case need to be identified, not observers or individuals attending on unrelated matters. If the Board desires a record of individuals attending hearings, a sign-in sheet could be maintained and entered into the record.

Administrative Recommendation 5: The DSS should increase public information outreach.

Discussion: The DSS has a public information officer. However, the responsibilities of the position are focused on providing information and service to licensees, not the general public. Public information about licensees, such as disciplinary history, is difficult to obtain.

The Board, in conjunction with the staff of the DSS, should update the publications available to the public and establish a distribution plan. The Board should adopt a policy on which information on licensees should be available with no charge for consumer inquiries.

APPENDICES

Sunset Statutory Evaluation Criteria

- (I) 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;
- (II) 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;
- (III) 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;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) 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;
- (VI) The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- (VII) 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;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.

Statute

12-6-101. Legislative declaration. (1) The general assembly hereby declares that:

(a) The sale and distribution of motor vehicles is affected with a public interest and it is recognized that a significant factor of inducement in making a sale of a motor vehicle is the trust and confidence of the purchaser in the retail dealer from whom the purchase is made and the expectancy that such dealer will remain in business to provide service for the motor vehicle purchased;

(b) Proper motor vehicle service is important to highway safety and the manufacturers and distributors of motor vehicles have an obligation to the public not to terminate or refuse to continue their franchise agreements with retail dealers unless the manufacturer or distributor has first established good cause for termination or non-continuance of any such agreement, to the end that there shall be no diminution of locally available service; and

(c) The licensing and supervision of motor vehicle dealers by the motor vehicle dealer board are necessary for the protection of consumers and therefore the sale of motor vehicles by unlicensed dealers should be curtailed;

(d) Consumer education concerning the rules and regulations of the motor vehicle industry and the considerations when purchasing a motor vehicle is necessary for the protection of consumers due to the value of a motor vehicle.

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

(1) (Deleted by amendment, L. 92, p. 1841, 2, effective July 1, 1992.)

(1.5) "Advertisement" means any commercial message in any newspaper, magazine, leaflet, flyer, or catalog, on radio, television, or a public address system, in direct mail literature or other printed material, on any interior or exterior sign or display, in any window display, or in any point-of-transaction literature or price tag which is delivered or made available to a customer or prospective customer in any manner whatsoever.

(2) "Board" means the motor vehicle dealer board.

(2.5) (a) (I) "Buyer agent" means any person required to be licensed pursuant to this part 1 who is retained or hired by a consumer for a fee or other thing of value to assist, represent, or act on behalf of such consumer in connection with the purchase or lease of a motor vehicle.

(II) "Consumer", as used in this subsection (2.5), means a purchaser or lessee of a motor vehicle, which vehicle is primarily used for business, personal, family, or household purposes. "Consumer" does not include a purchaser of motor vehicles who purchases said motor vehicles primarily for resale.

(b) "Buyer agent" does not include a person whose business includes the purchase of motor vehicles primarily for resale or lease and a "buyer agent" licensed pursuant to this part 1 shall not be employed by or receive a fee from such a person, a motor vehicle manufacturer, motor vehicle dealer, or used motor vehicle dealer.

(3) "Coerce" means the failure to act in good faith in performing or complying with any terms or provisions of the franchise or agreement; except that recommendation, exposition, persuasion, urging, or argument shall not be deemed to constitute a lack of good faith.

(4) "Community" means a franchisee's area of responsibility as set out in the franchise.

(4.5) (a) "Custom trailer" means any motor vehicle which is not driven or propelled by its own power and is designed to be attached to, become a part of, or be drawn by a motor vehicle and which is uniquely designed and manufactured for a specific purpose or customer.

(b) "Custom trailer" does not include manufactured housing, farm tractors, and other machines and tools used in the production, harvest, and care of farm products.

(5) "Distributor" means a person, resident or nonresident, who, in whole or in part, sells or distributes new motor vehicles to motor vehicle dealers or who maintains distributor representatives.

(6) "Distributor branch" means a branch office maintained by a distributor or wholesaler for the same purposes as a factory branch is maintained.

(7) "Distributor representative" means a representative employed by a distributor, distributor branch, or wholesaler.

(7.5) "Executive director" means the executive director of the department of revenue charged with the administration, enforcement, and issuance or denial of the licensing of buyer agents, distributors, distributor branches, distributor representatives, factory branches, factory representatives, and manufacturers.

(8) "Factory branch" means a branch office maintained by a person who manufactures or assembles motor vehicles for the sale of motor vehicles to distributors, for the sale of motor vehicles to motor vehicle dealers, or for directing or supervising in whole or in part its representatives.

(9) "Factory representative" means a representative employed by a person who manufactures or assembles motor vehicles or by a factory branch for the purpose of making or promoting the sale of its motor vehicles or for supervising or contacting its dealers or prospective dealers.

(9.5) "Fire truck" means a vehicle intended for use in the extermination of fires, with features that may include, but shall not be limited to, a fire pump, a water tank, an aerial ladder, an elevated platform, or any combination thereof.

(10) "Good faith" means the duty of each party to any franchise and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party. Recommendation, endorsement, exposition, persuasion, urging, or argument shall not be deemed to constitute a lack of good faith.

(11) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused motor vehicles; except that "manufacturer" shall not include:

(a) Any person who only manufactures utility trailers which weigh less than two thousand pounds and does not manufacture any other type of motor vehicle; and

(b) Any person who is a licensed dealer selling motor vehicles which he has manufactured.

(12) "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways which is self-propelled and every vehicle intended primarily for operation on the public highways which is not driven or propelled by its own power but which 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 and tools used in the production, harvesting, and care of farm products.

(12.5) (Deleted by amendment, L. 92, p. 1841, 2, effective July 1, 1992.)

(12.6) "Motor vehicle auctioneer" means any person, not otherwise required to be licensed pursuant to this part 1, who is engaged in the business of offering to sell, or selling, used motor vehicles owned by persons other than the auctioneer at public auction only.

(13) "Motor vehicle dealer" means any person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale or exchange of an interest in new or new and used motor vehicles or who is engaged wholly or in part in the business of selling new or new and used motor vehicles, whether or not such motor vehicles are owned by such person. The sale of three or more new or new and used motor vehicles or the offering for sale of more than three new or new and used motor vehicles at the same address or telephone number in any one calendar year shall be prima facie evidence that a person is engaged in the business of selling new or new and used motor vehicles. "Motor vehicle dealer" includes any owner of real property who allows more than three new or new and used motor vehicles to be offered for sale on such property during one calendar year unless said property is leased to a licensed motor vehicle dealer. "Motor vehicle dealer" does not include:

(a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court;

(b) Public officers while performing their official duties;

(c) Employees of persons enumerated in the definition of "motor vehicle dealer" when engaged in the specific performance of their duties as such employees;

(d) A wholesaler, as defined in subsection (18) of this section, or anyone selling motor vehicles solely to wholesalers;

(e) Any person engaged in the selling of a fire truck;

(f) A motor vehicle auctioneer, as defined in subsection (12.6) of this section.

(14) "Motor vehicle salesperson" means any natural person who, for a salary, commission, or compensation of any kind, is employed either directly or indirectly, regularly or occasionally, by any motor vehicle dealer or used motor vehicle dealer to sell, purchase, or exchange or to negotiate for the sale, purchase, or exchange of motor vehicles.

(15) "Person" means any natural person, estate, trust, limited liability company, partnership, association, corporation, or other legal entity, including, without limitation, a registered limited liability partnership.

(16) "Principal place of business" means a site or location devoted exclusively to the business for which the motor vehicle dealer or used motor vehicle dealer is licensed and businesses incidental thereto, sufficiently designated to admit of definite description, with space thereon or contiguous thereto adequate to permit the display of one or more new or

used motor vehicles, and on which there shall be located or erected a permanent enclosed building or structure large enough to accommodate the office of the dealer and to provide a safe place to keep the books and other records of the business of such dealer, at which site or location the principal portion of such dealer's business shall be conducted and the books and records thereof kept and maintained.

(17) "Used motor vehicle dealer" means any person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, exchanges, leases, offers, or attempts to negotiate a sale or exchange of an interest in used motor vehicles or who is engaged wholly or in part in the business of selling used motor vehicles, whether or not such motor vehicles are owned by such person. The sale of three or more used motor vehicles or the offering for sale of more than three used motor vehicles at the same address or telephone number in any one calendar year shall be prima facie evidence that a person is engaged in the business of selling used motor vehicles. "Used motor vehicle dealer" includes any owner of real property who allows more than three used motor vehicles to be offered for sale on such property during one calendar year unless said property is leased to a licensed used motor vehicle dealer or a licensed motor vehicle auctioneer, as defined in subsection (12.6) of this section. "Used motor vehicle dealer" does not include:

(a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court;

(b) Public officers while performing their official duties;

(c) Employees of persons enumerated in the definition of "used motor vehicle dealer" when engaged in the specific performance of their duties as such employees;

(d) A wholesaler, as defined in subsection (18) of this section, or anyone selling motor vehicles solely to wholesalers;

(e) Mortgagees or secured parties as to sales in any one year of not more than twelve motor vehicles constituting collateral on a mortgage or security agreement, if such mortgagees or secured parties shall not realize for their own account from such sales any moneys in excess of the outstanding balance secured by such mortgage or security agreement, plus costs of collection;

(f) Any person who only sells or exchanges no more than four motor vehicles which are collectors' items pursuant to section 42-3-138, C.R.S., or pursuant to article 12 of title 42, C.R.S.;

(g) A motor vehicle auctioneer, as defined in subsection (12.6) of this section.

(17.5) "Wholesale motor vehicle auction dealer" means any person or firm that provides auction services solely in wholesale transactions in which the purchasers are motor vehicle dealers licensed by this state or any other jurisdiction.

(18) "Wholesaler" means a person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, exchanges, or offers or attempts to negotiate a sale or exchange of an interest in new or new and used motor vehicles solely to motor vehicle dealers or used motor vehicle dealers.

12-6-103. Motor vehicle dealer board. 1) There is hereby created and established the motor vehicle dealer board, consisting of nine members who have been residents of this state for at least five years, three of whom shall be licensed motor vehicle dealers, three of whom shall be licensed used motor vehicle dealers, and three of whom shall be members from the public at large. The members representing the public at large shall not have a present or past financial interest in a motor vehicle dealership. The board shall assume its duties July 1, 1992, and all terms of the board members shall commence on that date. The terms of office of the board members shall be three years; except that, of the members appointed to take office on July 1, 1992, three shall be appointed for a one-year term, three shall be appointed for a two-year term, and three shall be appointed for a three-year term. Any vacancies shall be filled by appointment for the unexpired term.

(2) All board members shall be appointed by the governor.

(3) Each board member shall be reimbursed for actual and necessary expenses incurred while engaged in the discharge of official duties.

12-6-104. Board - oath - meetings - powers and duties. (1) Each member of the board, before entering on the discharge of such member's duties and within thirty days after the effective date of such member's appointment, shall subscribe an oath for the faithful performance of such member's duties before any officer authorized to administer oaths in this state and shall file the same with the secretary of state.

(2) The board shall, within thirty days on or after July 1, 1992, and annually thereafter in the month of July, elect from the membership thereof a president, a vice-president, and a secretary who shall also serve as treasurer. The board shall meet at such times as it deems necessary. A majority of the board shall constitute a quorum at any meeting or hearing.

(3) The board is authorized and empowered:

(a) To promulgate, amend, and repeal reasonable rules and regulations relating to those functions the board is mandated to carry out pursuant to this part 1, including the administration, enforcement, issuance, and denial of licenses to motor vehicle dealers, motor vehicle salespeople, used motor vehicle dealers, wholesale motor vehicle auction dealers, and wholesalers, and the laws of the state of Colorado as it deems necessary;

(b) and (c) (Deleted by amendment, L. 92, p. 1842, 4, effective July 1, 1992.)

(d) (I) To issue through the department of revenue and, for reasonable cause shown or upon satisfactory proof of the unfitness of the applicant under standards established and set forth in this part 1, to refuse to issue to any applicant any license the board is authorized to issue by this part 1;

(II) To permit the executive director, or the executive director's designee, to issue licenses pursuant to rules and regulations adopted by the board pursuant to paragraph (a) of this subsection (3);

(e) (I) After due notice and a hearing, to review the findings of the judge if the hearing was conducted by an administrative law judge pursuant to section 24-4-105, C.R.S., or upon its own findings if the hearing was conducted by the board, to revoke and suspend or to order the executive director to issue or to reinstate, on such terms and conditions and for such period of time as to the board shall appear fair and just, any license issued under and pursuant to the terms and provisions of this part 1;

(II) The findings of the board pursuant to subparagraph (I) of this paragraph (e) shall be final.

(f) (I) To investigate through the executive director, on its own motion or upon the sworn complaint of any person, any suspected or alleged violation by any motor vehicle dealer, motor vehicle salesperson, used motor vehicle dealer, wholesale motor vehicle auction dealer, or wholesaler licensee of any of the terms and provisions of this part 1 or of any rule or regulation promulgated by the board under the authority conferred upon it in this section. The board shall order an investigation of all sworn complaints, shall have the authority to issue subpoenas and to delegate the authority to issue subpoenas to the executive director, and the executive director shall make an investigation of all such complaints transmitted by the board pursuant to section 12-6-105 (1) (d).

(II) After an investigation, if the board determines that there is probable cause to believe a violation of this article has occurred, it may order that an administrative hearing be held pursuant to section 24-4-105, C.R.S.

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

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

(I) The name and residence address of the applicant and the trade name, if any, under which such applicant intends to conduct such applicant's business and, if the applicant is a copartnership, the name and residence address of each member thereof, whether a limited or general partner, and the name under which the partnership business is to be conducted and, if the applicant is a corporation, the name of the corporation and the name and address of each of its principal officers and directors;

(II) A complete description, including the city, town, or village, the street and number, if any, of the principal place of business, and such other and additional places of business as shall be operated and maintained by the applicant in conjunction with the principal place of business;

(III) If the application is for a motor vehicle dealer's license, the names of the new motor vehicles that the applicant has been enfranchised to sell or exchange and the name and address of the manufacturer or distributor who has enfranchised the applicant;

(IV) The names and addresses of the persons who shall act as salespeople under the authority of the license, if issued;

(h) To adopt a seal with the words "motor vehicle dealer board" and such other devices as the board may desire engraved thereon by which it shall authenticate the acts of its office;

(i) To require that a motor vehicle dealer's or used motor vehicle dealer's principal place of business and such other sites or locations as may be operated and maintained by such dealers in conjunction with their principal place of business have erected or posted thereon such signs or devices providing information relating to the dealer's name, the location and address of such dealer's principal place of business, the type of license held by the dealer, and the number thereof, as the board shall consider necessary to enable any person doing business with such dealer to identify such dealer properly, and for this purpose to determine the size and shape of such signs or devices, the lettering thereon, and other details thereof and to prescribe rules and regulations for the location thereof;

(j) (I) To conduct or cause to be conducted written examinations as prescribed by the board testing the competency of all first-time applicants for a motor vehicle dealer's license, motor vehicle salesperson's license, used motor vehicle dealer's license, wholesale motor vehicle auction dealer's license, or wholesaler's license;

(II) The examination required in subparagraph (I) of this paragraph (j) shall be conducted by the department of revenue;

(III) The board and the executive director shall report to the sunrise and sunset review committee on their progress in developing an updated examination and procedure for conducting such examination by July 1, 1992.

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

(A) In twelve-point bold-faced type or a size at least three points larger than the smallest type appearing in the contract, an instruction that the form is a legal instrument and that, if the purchaser of the motor vehicle does not understand the form, such purchaser should seek legal assistance;

(B) In bold-faced type, of the size specified in sub-subparagraph (A) of this subparagraph (I), an instruction that only those terms in written form embody the contract for sale of a motor vehicle and that any conflicting oral representations made to the purchaser are void;

(C) In bold-faced type, of the size specified in sub-subparagraph (A) of this subparagraph (I), a notice that fraud or misrepresentation in the sale of a motor vehicle is punishable under the laws of this state;

(D) In bold-faced type, of the size specified in sub-subparagraph (A) of this subparagraph (I), if the contract for the sale of a motor vehicle requires a single lump sum payment of the purchase price, a clear disclosure to the purchaser of that fact or, if the contract is contingent upon the approval of credit financing for the purchaser arranged by or through the motor vehicle dealer, in bold-faced type, a statement that the purchaser shall agree to purchase the motor vehicle which is the subject of the sale from the motor vehicle

dealer at not greater than a certain annual percentage rate of financing, which annual percentage rate of financing shall be agreed upon by the parties and entered in writing on the contract;

(E) Except as otherwise provided under part 1 of article 1 of title 6, C.R.S., where the purchase price of the motor vehicle is not paid to the motor vehicle dealer in full at the time of consummation of the sale and the purchaser and motor vehicle dealer elect that the motor vehicle dealer shall deliver and the purchaser shall take possession of such motor vehicle at such time, in bold-faced type, a statement that in the event financing cannot be arranged in accordance with the provisions stated in the contract, and the sale is not consummated, the purchaser shall agree to pay a daily rate and a mileage rate for use of the motor vehicle until such time as financing of the purchase price of such motor vehicle is arranged for the obligor by or through the authorized motor vehicle dealer or until the purchase price is paid to the authorized motor vehicle dealer in full by or through the obligor, which daily rate and mileage rate shall be specified and agreed upon by the parties and entered in writing on the contract.

(II) The information required by subparagraph (I) of this paragraph (k) shall be read and initialed by both parties at the time of the consummation of the sale of a motor vehicle.

(III) The use of the contract form required by subparagraph (I) of this paragraph (k) shall be mandatory for the sale of any motor vehicle.

(I) (I) To prescribe a form or forms to be used as a part of a contract for the lease of a motor vehicle by any motor vehicle dealer or motor vehicle salesperson, which shall include the following information in addition to any other disclosures or information required by state or federal law:

(A) In twelve-point bold-faced type or a size of at least three points larger than the smallest type appearing in the contract, an instruction that the form is a legal instrument and that, if the lessee of the motor vehicle does not understand the form, such lessee should seek legal assistance;

(B) In bold-faced type, of the size specified in sub-subparagraph (A) of this subparagraph (I), an instruction that only those terms in written form embody the contract for the lease of a motor vehicle and that any conflicting oral representations made to the lessee are void;

(C) In bold-faced type, of the size specified in sub-subparagraph (A) of this subparagraph (I), a notice that fraud or misrepresentation in the lease of a motor vehicle is punishable under the laws of this state;

(D) A statement disclosing the dollar value of any trade-in or capital cost reduction made by the lessee, which value shall be agreed upon by the parties and entered in writing on the contract.

(II) The information required by subparagraph (I) of this paragraph (I) shall be read and initialed by both parties at the time of the consummation of the lease of a motor vehicle.

(III) The use of the contract form required by subparagraph (I) of this paragraph (m) shall be mandatory for the lease of any motor vehicle.

(m) (I) If a hearing is held before an administrative law judge, after due notice and a hearing by such judge pursuant to section 24-4-105, C.R.S., to review the findings of law and fact and the fairness of any fine imposed by such judge and to uphold such fine which shall not exceed ten thousand dollars for each separate offense by any person licensed by the board pursuant to this part 1, to impose an administrative fine upon its own initiative which shall not exceed ten thousand dollars for each separate offense by any licensee, or

to vacate the fine imposed by the judge; except that for motor vehicle dealers who sell primarily vehicles which weigh under one thousand five hundred pounds, the fine for each separate offense shall not exceed one thousand dollars.

(II) The findings of the board pursuant to subparagraph (I) of this paragraph (m) shall be final.

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

12-6-105. Powers and duties of executive director. (1) The executive director is hereby charged with the administration, enforcement, and issuance or denial of the licensing of buyer agents, distributors, distributor branches, distributor representatives, factory branches, factory representatives, and motor vehicle manufacturers, and shall have the following powers and duties:

(a) To promulgate, amend, and repeal reasonable rules and regulations relating to those functions the executive director is mandated to carry out pursuant to this part 1 and the laws of the state of Colorado that the executive director deems necessary to carry out the duties of the office of the executive director pursuant to this part 1;

(b) To employ, subject to the laws of the state of Colorado and after consultation with the board, an executive secretary for the board and, such clerks, deputies, and assistants as the executive director considers necessary to discharge the duties imposed upon the executive director by this part 1 and to designate the duties of such clerks, deputies, and assistants;

(c) To issue and, for reasonable cause shown or upon satisfactory proof of the unfitness of the applicant under standards established and set forth in this part 1, to refuse to issue to any applicant any license the executive director is authorized to issue by this part 1;

(d) (I) To investigate upon the executive director's own initiative, upon the sworn complaint of any person, or upon request by the board pursuant to section 12-6-104 (3) (f) (I), any suspected or alleged violation by any person licensed by the executive director pursuant to this part 1 of any of the terms and provisions of this part 1 or of any rule or regulation promulgated by the executive director under the authority conferred upon the executive director in this section;

(II) The investigators and their supervisors utilized by the executive director, pursuant to subparagraph (I) of this paragraph (d), while actually engaged in performing their duties, shall have the authority as delegated by the executive director to issue subpoenas in relation to performance of their duties relating to licensees who are under the jurisdiction of the executive director and the authority as delegated by the executive director to issue summonses for violations of sections 12-6-120 (2) and 42-6-142, C.R.S., and to procure criminal records during an investigation.

(e) To prescribe the forms to be used for applications for licenses to be issued by the executive director under the provisions of this part 1 and to require of such applicants, as a condition precedent to the issuance of such licenses, such information concerning the applicant's fitness to be licensed under this part 1 as the executive director considers necessary;

(f) To summarily issue cease and desist orders on such terms and conditions and for such period of time as to the executive director appears fair and just to any person who

is licensed by the executive director pursuant to this part 1 if such orders are followed by notice and a hearing pursuant to section 12-6-104 (3) (e) (I).

(g) (Deleted by amendment, L. 92, p. 1847, 5, effective July 1, 1992.)

(2) In the event any person fails to comply with a cease and desist order issued pursuant to this section, the executive director may bring a suit for injunction to prevent any further and continued violation of such order. In any such suit the final proceedings of the executive director, based upon evidence in record, shall be prima facie evidence of the facts found therein.

12-6-106. Records as evidence. Copies of all records and papers in the office of the board or executive director, duly authenticated under the hand and seal of the board or executive director, shall be received in evidence in all cases equally and with like effect as the original thereof.

12-6-107. Attorney general to advise and represent. The attorney general of this state shall represent the board and executive director and shall give opinions on all questions of law relating to the interpretation of this part 1 or arising out of the administration thereof and shall appear for and in behalf of the board and executive director in all actions brought by or against them, whether under the provisions of this part 1 or otherwise.

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

(a) Motor vehicle dealer's license shall permit the licensee to engage in the business of selling or exchanging new and used motor vehicles, or both, and this form of license shall permit not more than two persons named therein who shall be owners or part owners of the business of the licensee to act as motor vehicle salespeople.

(b) Used motor vehicle dealer's license shall permit the licensee to engage in the business of selling or exchanging used motor vehicles only, and this form of license shall permit not more than two persons named therein who shall be owners or part owners of the business of the licensee to act as motor vehicle salespeople.

(c) Motor vehicle salesperson's license shall permit the licensee to engage in the activities of a motor vehicle salesperson.

(c.1) (Deleted by amendment, L. 92, p. 1849, 8, effective July 1, 1992.)

(d) Manufacturer's, distributor's, factory branch's, or distributor branch's license shall permit the aforesaid to engage in the activities of a manufacturer, distributor, factory branch, or distributor branch and to sell fire trucks.

(e) Wholesaler's license shall permit the licensee to engage in the activities of a wholesaler.

(f) Factory representative's or distributor representative's license shall permit the aforesaid to engage in the activities of a factory representative or a distributor representative.

(g) Buyer agent's license shall permit the licensee to engage in the activities of a buyer agent.

(h) (l) Wholesale motor vehicle auction dealer's license shall permit a licensee to engage in the activities of a wholesale motor vehicle auction dealer if the licensee provides auction services solely in connection with wholesale transactions in which the purchasers are motor vehicle dealers licensed by this state or any other jurisdiction. A wholesale motor

vehicle auction dealer shall abide by all laws, rules, and regulations of the state of Colorado.

(II) A wholesale motor vehicle auction dealer shall maintain a check and title insurance policy for the benefit of such dealer's customers or, alternatively, a wholesale motor vehicle auction dealer shall provide written guarantees of title to such dealer's purchasing customers and written guarantees of payment to such dealer's selling dealers with coverage and exclusions that are customary in check and title insurance policies available to wholesale motor vehicle auction dealers.

(2) Any license issued by the executive director pursuant to law in effect prior to July 1, 1992, shall be valid for the period for which issued.

12-6-108.5. Temporary motor vehicle dealer license. (1) If a licensed vehicle dealer has entered into a written agreement to sell a dealership to a purchaser and the purchaser has been awarded a new dealership franchise, the board may issue a temporary motor vehicle dealer's license to such purchaser or prospective purchaser. The executive director shall issue the temporary license only after the board has received the applications for both a temporary motor vehicle dealer's license and a motor vehicle dealer's license, the appropriate application fee for the motor vehicle dealer's application, evidence of a passing test score, and evidence that the franchise has been awarded to the applicant by the manufacturer. Such temporary motor vehicle dealer's license shall authorize the licensee to act as a motor vehicle dealer. Such temporary licensees shall be subject to all the provisions of this article and to all applicable rules and regulations adopted by the executive director or the board. Such temporary motor vehicle dealer's license shall be effective for up to sixty days or until the board acts on such licensee's application for a motor vehicle dealer's license, whichever is sooner.

(2) For the purpose of enabling an out-of-state dealer to sell vehicles on a temporary basis during specifically identified events, the executive director may issue, upon direction by the board, a temporary dealer's license which shall be effective for thirty days. Such temporary license shall subject the licensee to compliance with rules and regulations adopted by the executive director or the board.

12-6-109. Display, form, custody, and use of licenses. The board and the executive director shall prescribe the form of the license to be issued by the executive director, and each license shall have imprinted thereon the seal of their offices. The license of each motor vehicle salesperson shall be delivered or mailed to the salesperson's home address and shall be kept by the salesperson at such salesperson's place of employment for inspection by employers, consumers, the executive director, or the board. It is the duty of each motor vehicle dealer, manufacturer, distributor, wholesaler, factory branch, distributor branch, factory representative, distributor representative, wholesale motor vehicle auction dealer, or used motor vehicle dealer to display conspicuously such person's own license in such person's place of business. Each license issued pursuant to this part 1 is separate and distinct. It shall be a violation of this part 1 for any person to exercise any of the privileges granted under a license which such person does not hold, or for any licensee to knowingly allow such an exercise of privileges.

12-6-110. Fees - disposition - expenses - expiration of licenses. (1) There shall be collected with each application the fee established pursuant to subsection (5) of this section for each of the following licenses:

- (a) (I) Motor vehicle dealer's or used motor vehicle dealer's license;
- (II) Motor vehicle dealer's or used motor vehicle dealer's license, for each place of business in addition to the principal place of business;
- (III) Renewal or reissue of motor vehicle dealer's or used motor vehicle dealer's license after change in location or lapse in principal place of business;
- (b) Manufacturer's license;
- (c) Distributor's license;
- (d) Wholesaler's license;
- (e) Factory branch's or distributor branch's license;
- (f) Factory representative's or distributor representative's license;
- (g) Motor vehicle salesperson's license;
- (h) (Deleted by amendment, L. 92, p. 1851, 11, effective July 1, 1992.)
- (i) Buyer agent's license;
- (j) Wholesale motor vehicle auction dealer's license.

(2) All such fees shall be paid to the state treasurer who shall credit the same to the auto dealers license fund.

(2.5) If an application for a buyer agent's, motor vehicle dealer's, used motor vehicle dealer's, wholesaler's, or salesperson's license is denied by the board or the executive director or withdrawn by the applicant prior to issuance of the license, one-half of the license fee shall be refunded.

(3) (a) Such licenses, if the same have not been suspended or revoked as provided in this part 1, shall be valid until July 1 next following the date of issuance thereof and shall then expire.

(b) Thirty days prior to the expiration of such licenses, the executive director shall mail to any such licensee's home address a notice stating when such person's license is due to expire and the fee necessary to renew such license.

(c) Upon the expiration of such license, unless suspended or revoked, the same may be renewed upon the payment of the fees specified in this section which shall accompany applications and such renewal shall be made from year to year as a matter of right.

(d) A transition procedure for licensees licensed prior to July 1, 1992, shall be established by the board or the executive director by rule and regulation.

(4) (Deleted by amendment, L. 92, p. 1851, 11, effective July 1, 1992.)

(5) (a) The board shall propose, 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 shall reflect direct and indirect costs.

(b) Based upon the appropriation made and subject to the approval of the executive director, the board shall adjust the fees collected by the executive director so that the revenue generated from said fees covers the direct and indirect costs of administering this article. Such fees shall remain in effect for the fiscal year for which the appropriation is made.

(c) Whenever moneys appropriated to the board for its activities for the prior fiscal year are unexpended, said moneys shall be made a part of the appropriation to the board for the next fiscal year, and such amount shall not be raised from fees collected by the board or the executive director. If a supplemental appropriation is made to the board for its activities, the fees of the board and the executive director, when adjusted for the fiscal year next following that in which the supplemental appropriation was made, shall be adjusted by an additional amount which is sufficient to compensate for such supplemental appropriation. Moneys appropriated to the board in the annual general appropriation bill shall be from the fund provided in section 12-6-123.

12-6-111. Bond of licensee. (1) Before any motor vehicle dealer's, wholesaler's, wholesale motor vehicle auction dealer's, or used motor vehicle dealer's license shall be issued by the board through the executive director to any applicant therefor, the said applicant shall procure and file with the board evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a good and sufficient bond with corporate surety thereon duly licensed to do business within the state, approved as to form by the attorney general of the state, and conditioned that said applicant shall not practice fraud, make any fraudulent representation, or violate any of the provisions of this part 1 in the conduct of the business for which such applicant is licensed.

(2) (a) The purpose of the bond procured by the applicant pursuant to subsection (1) of this section and sections 12-6-112 (1) and 12-6-112.2 (1) is to provide for the reimbursement for any loss or damage suffered by any retail consumer caused by violation of this part 1 by a motor vehicle dealer, used motor vehicle dealer, wholesale motor vehicle auction dealer, or wholesaler. For a wholesale transaction, the bond is available to each party to the transaction; except that, if a retail consumer is involved, such consumer shall have priority to recover from the bond. The amount of the bond shall be thirty thousand dollars for a motor vehicle dealer applicant, used motor vehicle dealer applicant, wholesale motor vehicle auction dealer applicant, or wholesaler applicant except the amount of the bond shall be five thousand dollars for those dealers who sell only small utility trailers which weigh less than two thousand pounds. The aggregate liability of the surety for all transactions shall not exceed the amount of the bond, regardless of the number of claims or claimants.

(b) No corporate surety shall be required to make any payment to any person claiming under such bond until a final determination of fraud or fraudulent representation has been made by the board or by a court of competent jurisdiction.

(3) All bonds required pursuant to this section shall be renewed annually at such time as the bondholder's license is renewed. Such renewal may be done through a continuation certificate issued by the surety.

(4) Nothing in this part 1 shall interfere with the authority of the courts to administer and conduct an interpleader action for claims against a licensee's bond.

12-6-112. Motor vehicle salesperson's bond. (1) Before any motor vehicle salesperson's license is issued by the board through the executive director to any applicant therefor, the said applicant shall procure and file with the board evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a good and sufficient bond in the amount of five thousand dollars with corporate surety thereon duly licensed to do business within the state, approved as to form by the attorney general of the state and conditioned that said applicant shall perform in good faith as a motor vehicle salesperson without fraud or fraudulent representation and without the violation of any of the provisions of this part 1.

(2) No corporate surety shall be required to make any payment to any person claiming under such bond until a final determination of fraud or fraudulent representation or the violation of any of the provisions of this part 1 has been made by the board or by a court of competent jurisdiction.

(3) All bonds required pursuant to this section shall be renewed annually at such time as the bondholder's license is renewed. Such renewal may be done through a continuation certificate issued by the surety.

12-6-112.2. Buyer agent bonds. (1) A buyer agent's license shall not be issued by the executive director to any applicant therefor until said applicant procures and files with the executive director evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a good and sufficient bond in the amount of five thousand dollars with a corporate surety duly licensed to do business within the state, approved as to form by the attorney general. The bond shall be available to ensure that said applicant shall perform in good faith as a buyer agent without fraud or fraudulent representation and without violating this part 1.

(2) All bonds required pursuant to this section shall be renewed annually at such time as the bondholder's license is renewed. Such renewal may be done through a continuation certificate issued by the surety.

12-6-112.7. Notice of claims honored against bond. (1) Any corporate surety which has provided a bond to a licensee pursuant to the requirements of section 12-6-111, 12-6-112, or 12-6-112.2 shall provide notice to the board and executive director of any claim which is honored against such bond. Such notice shall be provided to the board and executive director within thirty days after a claim is honored.

(2) A notice provided by a corporate surety pursuant to the requirement of subsection (1) of this section shall be in such form as required by the executive director subject to approval by the board and shall include, but shall not be limited to, the name of the licensee, the name and address of the claimant, the amount of the honored claim, and the nature of the claim against the licensee.

12-6-113. Testing licensees. All persons applying for a motor vehicle dealer's, used motor vehicle dealer's, wholesaler's, wholesale motor vehicle auction dealer's, or motor vehicle salesperson's license under this part 1 shall be examined for their knowledge of the motor vehicle laws of the state of Colorado and the rules and regulations promulgated pursuant to this part 1. If the applicant is a corporation, the managing officer shall take such examination, and, if the applicant is a partnership, all the general partners shall take such examination. No license shall be issued except upon successful passing of the examination.

12-6-114. Filing of written warranties. All licensed manufacturers shall file with the executive director all written warranties and changes in written warranties that such manufacturer makes on any motor vehicle or parts thereof. All licensed manufacturers shall file with the executive director a copy of the delivery and preparation obligations of a manufacturer's dealer, and these warranties and obligations shall constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from any express or implied warranties of the manufacturer shall constitute the manufacturer's product or warranty liability, and the manufacturer shall reasonably compensate any authorized dealer who performs work to rectify said manufacturer's product or warranty defects.

12-6-115. Application. (1) Application for a motor vehicle dealer's, motor vehicle salesperson's, used motor vehicle dealer's, wholesale motor vehicle auction dealer's, or wholesaler's license shall be made to the board.

(2) Application for distributor's, distributor branch's, distributor representative's, factory branch's, factory representative's, or manufacturer's licenses shall be made to the executive director.

(3) All fees for licenses shall be paid at the time of the filing of application for license.

(4) All persons applying for a motor vehicle dealer's license shall file with the board a certified copy of a certificate of appointment as a dealer from a manufacturer.

(5) All persons applying for a manufacturer's or distributor's license shall file with the executive director a certified copy of their typical written agreement with all motor vehicle dealers, and also evidence of the appointment of an agent for process in the state of Colorado shall be included with the application.

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

12-6-116. Notice of change of address or status. (1) The board, through the executive director, shall not issue a motor vehicle dealer's license or used motor vehicle dealer's license to any applicant therefor who has no principal place of business as is defined in this part 1. Should the motor vehicle dealer or used motor vehicle dealer change the site or location of such dealer's principal place of business, such dealer shall immediately upon making such change so notify the board in writing, and thereupon a new license shall be granted for the unexpired portion of the term of such license at a fee established pursuant to section 12-6-110. Should a motor vehicle dealer or used motor vehicle dealer, for any reason whatsoever, cease to possess a principal place of business, as defined in this part 1, from and on which such dealer conducts the business for which such dealer is licensed, such dealer shall immediately so notify in writing the board and, upon demand therefor by the board, shall deliver to it such dealer's license, which shall be held and retained until it appears to the board that such licensee again possesses a principal place of business; whereupon, such dealer's license shall be reissued. Nothing in this part 1 shall be construed to prevent a motor vehicle dealer or used motor vehicle dealer from conducting the business for which such dealer is licensed at one or more sites or locations not contiguous to such dealer's principal place of business but operated and maintained in conjunction therewith.

(2) Should the motor vehicle dealer change to a new line of motor vehicles, add another franchise for the sale of new motor vehicles, or cancel or, for any cause whatever, otherwise lose a franchise for the sale of new motor vehicles, such dealer shall immediately so notify the board. In the case of a cancellation or loss of franchise, the board shall determine whether or not by reason thereof such dealer should be licensed as a used motor vehicle dealer, in which case the board shall take up and the motor vehicle dealer shall deliver to it such dealer's license, and the board shall direct the executive director to thereupon issue to such dealer a used motor vehicle dealer's license. Upon the cancellation or loss of a franchise to sell new motor vehicles and the relicensing of such dealer as a used motor vehicle dealer, such dealer may continue in the business for which a motor vehicle dealer is licensed for a time, not exceeding six months from the date of the relicensing of such dealer, to enable such dealer to dispose of the stock of new motor vehicles on hand at the time of such relicensing, but not otherwise.

(3) Should any motor vehicle salesperson be discharged or leave an employer or change a place of employment, the motor vehicle dealer or used motor vehicle dealer who last employed said salesperson shall confiscate and forthwith return such salesperson's license to the board. The salesperson shall be notified by the board at such salesperson's last known place of residence that such salesperson's license has been returned to the board and that, upon obtaining employment again as a motor vehicle salesperson, the motor vehicle salesperson may notify the board, and thereupon a new license shall be issued for the unexpired portion of the term of the returned license at a fee established pursuant to section 12-6-110 (5). It shall be unlawful for such salesperson to act as a motor vehicle salesperson until a new license is procured.

(4) Should a wholesaler, for any reason whatsoever, change such wholesaler's place of business or business address during any license year, such wholesaler shall immediately so notify the board.

(5) Any wholesale motor vehicle auction dealer who changes a place of business or business address during any license year shall notify the board immediately of such dealer's new business address.

12-6-117. Principal place of business - requirements. (1) The building or structure required to be located on a principal place of business shall have electrical service and adequate sanitary facilities.

(2) (a) In no event shall a room in a hotel, rooming house, or apartment house building or a part of any single or multiple unit dwelling house be considered a "principal place of business" within the terms and provisions of this part 1, unless the entire ground floor of such hotel, apartment house, or rooming house building or such dwelling house is devoted principally to and occupied for commercial purposes and the office of the dealer is located on the ground floor thereof.

(b) A motor vehicle dealer who operates such motor vehicle dealer's business from his or her primary residence and who has been a resident of Colorado for the immediately preceding twelve-month period and is a motor vehicle dealer only because such dealer sells custom trailers for one or more manufacturers and maintains an inventory of fewer than four vehicles at all times shall be exempt from the requirements of paragraph (a) of this subsection (2). Any motor vehicle dealer who is issued dealer plates in accordance with this paragraph (b) pursuant to section 42-3-127, C.R.S., shall only use such plates on trailers.

(3) (a) On such site or location adequate facilities shall be maintained for reconditioning and repairing either new or used cars, but if the motor vehicle dealer or used motor vehicle dealer files, in the office of the board, a contract with a duly licensed and reputable garage with such facilities, such dealers shall not be required to maintain such reconditioning facilities at their principal place of business.

(b) If such contract is canceled or expires, then such motor vehicle dealer or used motor vehicle dealer shall notify the board within three days after the cancellation or expiration that such dealer no longer has a valid contract in existence for the reconditioning and repairing of either new or used cars.

(c) Such dealer shall file a valid contract with a duly licensed and reputable garage within ten days after any valid and existing contract with a duly licensed and reputable garage has been canceled or has expired.

(4) Nothing in this section shall be construed to exempt a motor vehicle dealer from local zoning ordinances.

12-6-118. Licenses - grounds for denial, suspension, or revocation. (1) A manufacturer's, distributor's, factory branch's, or distributor branch's license may be denied, suspended, or revoked on the following grounds:

(a) (Deleted by amendment, L. 92, p. 1857, 20, effective July 1, 1992.)

(b) Material misstatement in an application for a license;

(c) Willful failure to comply with any provisions of this part 1 or any rule or regulation promulgated by the executive director;

(d) Engaging, in the past or present, in any illegal business practice.

(2) A factory representative's or distributor representative's license may be denied, suspended, or revoked on the following grounds:

(a) (Deleted by amendment, L. 92, p. 1857, 20, effective July 1, 1992.)

(b) Material misstatement in an application for a license;

(c) Willful failure to comply with any provision of this part 1 or any rule or regulation promulgated by the executive director under this part 1;

(d) Having indulged in any unconscionable business practice pursuant to title 4, C.R.S.;

(e) Having coerced or attempted to coerce any motor vehicle dealer to accept delivery of any motor vehicle, parts or accessories therefor, or any other commodities or services which have not been ordered by said dealer;

(f) Having coerced or attempted to coerce any motor vehicle dealer to enter into any agreement to do any act unfair to said dealer by threatening to cause the cancellation of the franchise of said dealer;

(g) Having withheld, threatened to withhold, reduced, or delayed without just cause an order for motor vehicles, parts or accessories therefor, or any other commodities or services which have been ordered by a motor vehicle dealer;

- (h) Engaging, in the past or present, in any illegal business practice.
- (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds:
 - (a) (Deleted by amendment, L. 92, p. 1857, 20, effective July 1, 1992.)
 - (b) Material misstatement in an application for a license;
 - (c) Violation of any of the terms and provisions of this part 1 or any rule or regulation promulgated by the board under this part 1;
 - (d) Having been convicted of or pled nolo contendere to any felony, or any crime pursuant to article 3, 4, or 5 of title 18, C.R.S., or any like crime pursuant to federal law or the law of any other state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of such conviction in any hearing held pursuant to this article.
 - (e) Defrauding any buyer, seller, motor vehicle salesperson, or financial institution to such person's damage;
 - (f) Intentional or negligent failure to perform any written agreement with any buyer or seller;
 - (g) Failure or refusal to furnish and keep in force any bond required under this part 1;
 - (h) Having made a fraudulent or illegal sale, transaction, or repossession;
 - (i) Willful misrepresentation, circumvention, or concealment of or failure to disclose, through whatsoever subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to the buyer;
 - (j) Repealed.
 - (k) To intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products sold or furnished by a licensed dealer;
 - (l) To knowingly purchase, sell, or otherwise acquire or dispose of a stolen motor vehicle;
 - (m) For any licensed motor vehicle dealer or used motor vehicle dealer to engage in the business for which such dealer is licensed without at all times maintaining a principal place of business as required by this part 1 during reasonable business hours;
 - (n) Engaging in such business through employment of an unlicensed motor vehicle salesperson;
 - (o) To willfully violate any state or federal law respecting commerce or motor vehicles or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles;
 - (p) (Deleted by amendment, L. 92, p. 1857, 20, effective July 1, 1992.)
 - (q) Engaging in such business without having adequate service facilities for the reconditioning and servicing of motor vehicles or having a valid and existing contract with a duly licensed and reputable garage with such facilities;
 - (r) Representing or selling as a new and unused motor vehicle any motor vehicle which the dealer or salesperson knows has been used and operated for demonstration purposes or which the dealer or salesperson knows is otherwise a used motor vehicle;
 - (s) Violating any state or federal statute or regulation issued thereunder dealing with odometers;

(t) (I) Selling to a retail customer a motor vehicle which is not equipped or in proper condition and adjustment as required by part 2 of article 4 of title 42, C.R.S., unless such vehicle is sold as a tow away, not to be driven;

(II) Repealed.

(t.1) Repealed.

(u) Committing a fraudulent insurance act pursuant to section 10-1-127, C.R.S.

(4) A wholesaler's or wholesale motor vehicle auction dealer's license may be denied, suspended, or revoked for the selling or offering or attempting to negotiate the sale or exchange of an interest in motor vehicles by such wholesaler or wholesale motor vehicle auction dealer to persons other than motor vehicle dealers, used motor vehicle dealers, or other wholesalers or wholesale motor vehicle auction dealers.

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

(a) (Deleted by amendment, L. 92, p. 1857, 20, effective July 1, 1992.)

(b) Material misstatement in an application for a license;

(c) Failure to comply with any provision of this part 1 or any rule or regulation promulgated by the board or executive director under this part 1;

(d) To engage in the business for which such licensee is licensed without having in force and effect a good and sufficient bond with corporate surety as provided in this part 1;

(e) To intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any motor vehicle products sold or attempted to be sold by such salesperson;

(f) Having indulged in any fraudulent business practice;

(g) Selling, offering, or attempting to negotiate the sale or exchange of motor vehicles for any motor vehicle dealer or used motor vehicle dealer for which such salesperson is not licensed;

(h) Representing oneself as a salesperson for any motor vehicle dealer or used motor vehicle dealer when such salesperson is not so employed and licensed;

(i) (Deleted by amendment, L. 92, p. 1857, 20, effective July 1, 1992.)

(j) Having been convicted of or pled nolo contendere to any felony, or any crime pursuant to article 3, 4, or 5 of title 18, C.R.S., or any like crime pursuant to federal law or the law of any other state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of such conviction in any hearing held pursuant to this article.

(k) Having knowingly purchased, sold, or otherwise acquired or disposed of a stolen motor vehicle;

(l) Employing an unlicensed motor vehicle salesperson;

(m) Violating any state or federal statute or regulation issued thereunder dealing with odometers;

- (n) Defrauding any retail buyer to such person's damage;
 - (o) Representing or selling as a new and unused motor vehicle any motor vehicle which the salesperson knows has been used and operated for demonstration purposes or which the salesperson knows is otherwise a used motor vehicle;
 - (p) (I) Selling to a retail customer a motor vehicle which is not equipped or in proper condition and adjustment as required by part 2 of article 4 of title 42, C.R.S., unless such vehicle is sold as a tow away, not to be driven;
 - (II) Repealed.
 - (p.1) Repealed.
 - (q) Willfully violating any state or federal law respecting commerce or motor vehicles or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles;
 - (r) Improperly withholding, misappropriating, or converting to such salesperson's own use any money belonging to customers or other persons, received in the course of employment as a motor vehicle salesperson.
- (6) Any license issued pursuant to this part 1 may be denied, revoked, or suspended if unfitness of such licensee or licensee applicant is shown in the following:
- (a) The licensing character or record of the licensee or licensee applicant;
 - (b) The criminal character or record of the licensee or licensee applicant;
 - (c) The financial character or record of the licensee or licensee applicant.

12-6-119. Procedure for denial, suspension, or revocation of license - judicial review.

The denial, suspension, or revocation of licenses issued under this part 1 shall be in accordance with the provisions of sections 24-4-104 and 24-4-105, C.R.S. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings for the board. The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

12-6-120. Unlawful acts. (1) It shall be unlawful and a violation of this part 1 for any manufacturer, distributor, factory branch, distributor branch, factory representative, or distributor representative:

- (a) To willfully fail to perform or cause to be performed any written warranties made with respect to any motor vehicle or parts thereof;
- (b) To coerce or attempt to coerce any motor vehicle dealer to perform or allow to be performed any act which could be financially detrimental to the dealer or which would impair the dealer's goodwill or to enter into any agreement with a manufacturer, factory branch, distributor, or distributor branch which would be financially detrimental to the dealer or impair the dealer's goodwill, by threatening to cancel or not renew any franchise between a manufacturer, distributor, factory branch, or distributor branch and said dealer;

(c) To coerce or attempt to coerce any motor vehicle dealer to accept delivery of any motor vehicle, parts or accessories therefor, or any commodities or services which have not been ordered by said dealer; (d) To cancel or cause to be canceled, directly or indirectly, without just cause, the franchise of any motor vehicle dealer, and the nonrenewal of a franchise or selling agreement without just provocation or cause is a violation of this paragraph (d) and shall constitute an unfair cancellation;

(e) To withhold, reduce, or delay unreasonably or without just cause delivery of motor vehicles, motor vehicle parts and accessories, commodities, or moneys due motor vehicle dealers for warranty work done by any motor vehicle dealer;

(f) To withhold, reduce, or delay unreasonably or without just cause services contracted for by motor vehicle dealers;

(g) To coerce any motor vehicle dealer to provide installment financing with a specified financial institution;

(h) To establish an additional franchise for the same line-make in a community where the same line-make is presently being served by an existing motor vehicle dealer if such addition would be inequitable to the existing dealer, but the sales and service needs of the public shall be given due consideration in determining the equities of the existing dealer;

(i) To refuse to approve, unreasonably, the sale or transfer of the ownership of a dealership by sale of the business or by stock transfer or to refuse to approve, unreasonably, the change in executive management of the dealership, but nothing in this part 1 shall authorize the sale, transfer, or assignment of a franchise or a change of the principal operator without the approval of the manufacturer or distributor, which approval shall not be unreasonably withheld.

(2) It is unlawful for any person to act as a motor vehicle dealer, manufacturer, distributor, wholesaler, factory branch, distributor branch, factory representative, distributor representative, used motor vehicle dealer, buyer agent, wholesale motor vehicle auction dealer, or motor vehicle salesperson unless such person has been duly licensed under the provisions of this part 1, except for persons exempt from licensure as a manufacturer pursuant to section 12-6-102 (11); however, such persons shall be required to comply with all other applicable requirements for manufacturers, including, but not limited to, those pertaining to vehicle identification numbers and manufacturers' statements of origin.

(3) It is unlawful and a violation of this part 1 for a buyer agent to engage in the following:

(a) To make a material misstatement in an application for a license;

(b) To willfully fail to perform or cause to be performed any written agreement with respect to any motor vehicle or parts thereof;

(c) To defraud any buyer, seller, motor vehicle salesperson, or financial institution;

(d) To intentionally enter into a financial agreement with a seller of a motor vehicle for the buyer agent's own benefit;

(e) To coerce any motor vehicle dealer into providing installment financing with a specified financial institution.

12-6-121. Penalty. Any person who willfully violates any of the provisions of this part 1 or who willfully commits any offense in this part 1 declared to be unlawful commits a class 1 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.; except that any person who violates the provisions of section 12-6-120 (2) commits a class 3 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars or more than one thousand dollars for each separate offense; except that, if the violator is a corporation, the fine shall be not less than five hundred dollars or more than two thousand five hundred dollars for each separate offense. A second conviction shall be punished by a fine of two thousand five hundred dollars.

12-6-121.5. Fines - disposition - unlicensed sales. Any fine collected for a violation of section 12-6-120 (2) shall be awarded to the law enforcement agency which investigated and issued the citation for said violation.

12-6-121.6. Drafts not honored for payment - penalties. (1) If a motor vehicle dealer, wholesaler, or used motor vehicle dealer issues a draft or check to a motor vehicle dealer, wholesaler, used motor vehicle dealer, motor vehicle auction house, or consignor and fails to honor such draft or check, then the license of such licensee shall be subject to suspension pursuant to section 12-6-104 (3) (e) (I). The license suspension shall be effective upon the date of any final decision against such licensee based upon the unpaid draft or check. A licensee whose license has been suspended pursuant to the provisions of this subsection (1) shall not be eligible for reinstatement of such license and shall not be eligible to apply for any other license issued under this part 1 unless it is demonstrated to the board that the unpaid draft or check has been paid in full and that any fine imposed on the licensee pursuant to subsection (2) of this section has been paid in full.

(2) Any motor vehicle dealer, wholesaler, or used motor vehicle dealer which issues a draft or check to a motor vehicle dealer, wholesaler, used motor vehicle dealer, motor vehicle auction house, or consignor and who fails to honor such draft or check, causing loss to a third party, commits a misdemeanor and shall be punished by a fine of two thousand five hundred dollars. Any fine collected for a violation of this subsection (2) shall be awarded to the law enforcement agency which investigated and issued the citation for said violation.

12-6-122. Right of action for loss. (1) If any person suffers loss or damage by reason of any fraud practiced on such person or fraudulent representation made to such person by a licensed dealer or one of the dealer's salespeople acting for the dealer on such dealer's behalf or within the scope of the employment of the salesperson or suffers any loss or damage by reason of the violation by such dealer or salesperson of any of the provisions of this part 1, whether or not such violation is the basis for denial, suspension, or revocation of a license, such person shall have a right of action against the dealer, such dealer's motor vehicle salespeople, and the sureties upon their respective bonds. The right of a person to recover for loss or damage as provided in this subsection (1) against the dealer or salesperson shall not be limited to the amount of their respective bonds.

(2) If any person suffers any loss or damage by reason of any unlawful act as provided in section 12-6-120 (1) (a), such person shall have a right of action against the manufacturer, distributor, factory branch, distributor branch, factory representative, or distributor representative. In any court action wherein a manufacturer, distributor, factory

branch, distributor branch, factory representative, or distributor representative has been found liable in damages to any person under this part 1, the amount of damages so determined shall be trebled and shall be recoverable by the person so damaged. Any person so damaged shall also be entitled to recover reasonable attorney fees as part of his damages.

(3) If any licensee suffers any loss or damage by reason of any unlawful act as provided in section 12-6-120 (1), such licensee shall have a right of action against such manufacturer, distributor, factory branch, distributor branch, factory representative, or distributor representative. In any court action wherein a manufacturer, distributor, factory branch, distributor branch, factory representative, or distributor representative has been found liable in damages to any licensee under this part 1, any licensee so damaged shall also be entitled to recover reasonable attorney fees as part of his damages.

12-6-123. Disposition of fees - auto dealers license fund. (1) All moneys received under this part 1, except fines awarded pursuant to section 12-6-121.5, shall be deposited with the state treasurer by the department of revenue, subject to the provisions of section 24-35-101, C.R.S., together with a detailed statement of such receipts, and such funds deposited with the state treasurer shall constitute a fund to be known as the auto dealers license fund, which fund is hereby created and which shall be used under the direction of the board in the following manner:

(a) Repealed, L. 81, p. 674, 5, effective July 1, 1981.

(b) For the payment of the expenses of the administration of the board as the general assembly deems necessary by making an appropriation therefor on an annual fiscal-year basis commencing July 1, 1971, and thereafter;

(c) Any money remaining in said fund on December 31, 1971, and at the close of each calendar year thereafter, after costs of administration of the law as provided in this part 1 shall remain in the auto dealers license fund to be used for educational and enforcement purposes as appropriated by the general assembly.

12-6-124. Repeal of article. This article is repealed, effective July 1, 1998. Prior to such repeal, the motor vehicle dealer board and the licensing functions of the executive director shall be reviewed as provided for in section 24-34-104, C.R.S.

12-6-126. Advertisement - inclusion of dealer name. No motor vehicle dealer or used motor vehicle dealer or any agent of either of said dealers shall advertise any offer for the sale, lease, or purchase of a motor vehicle or a used motor vehicle which creates the false impression that the vehicle is being offered by a private party or by a motor vehicle agent or which does not contain the name of the dealer or the word "dealer" or, if the name is contained in the offer and does not clearly reflect that the business is a dealer, both the name of the dealer and the word "dealer".

12-6-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Person" means any individual, firm, corporation, partnership, association, trustee, receiver, or assignee for the benefit of creditors.

(2) "Sell", "sold", "buy", and "purchase" include exchange, barter, gift, and offer or contract to sell or buy.

12-6-202. Exclusive finance agreements void, when. It is unlawful for any person who is engaged, either directly or indirectly, in the manufacture or distribution of motor vehicles, to sell or enter into contract to sell motor vehicles, whether patented or unpatented, to any person who is engaged or intends to engage in the business of selling such motor vehicles at retail in this state, on the condition or with an agreement or understanding, either express or implied, that such person so engaged in selling motor vehicles at retail in any manner shall finance the purchase or sale of any one or number of motor vehicles only with or through a designated person or class of persons or shall sell and assign the conditional sales contracts, chattel mortgages, or leases arising from the sale of motor vehicles or any one or number thereof only to a designated person or class of persons, when the effect of the condition, agreement, or understanding so entered into may be to lessen or eliminate competition, or create or tend to create a monopoly in the person or class of persons who are designated, by virtue of such condition, agreement, or understanding to finance the purchase or sale of motor vehicles or to purchase such conditional sales contracts, chattel mortgages, or leases. Any such condition, agreement, or understanding is declared to be void and against the public policy of this state.

12-6-203. Threat prima facie evidence of violation. Any threat, expressed or implied, made directly or indirectly to any person engaged in the business of selling motor vehicles at retail in this state by any person engaged, either directly or indirectly, in the manufacture or distribution of motor vehicles, that such person will discontinue or cease to sell, or refuse to enter into a contract to sell, or will terminate a contract to sell motor vehicles, whether patented or unpatented, to such person who is so engaged in the business of selling motor vehicles at retail, unless such person finances the purchase or sale of any one or number of motor vehicles only with or through a designated person or class of persons or sells and assigns the conditional sales contracts, chattel mortgages, or leases arising from his retail sales of motor vehicles or any one or number thereof only to a designated person or class of persons shall be prima facie evidence of the fact that such person so engaged in the manufacture or distribution of motor vehicles has sold or intends to sell the same on the condition or with the agreement or understanding prohibited in section 12-6-202.

12-6-204. Threat by agent as evidence of violation. Any threat, expressed or implied, made directly or indirectly to any person engaged in the business of selling motor vehicles at retail in this state by any person, or any agent of any such person, who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages, or leases on motor vehicles in this state and is affiliated with or controlled by any person engaged, directly or indirectly, in the manufacture or distribution of motor vehicles, that such person so engaged in such manufacture or distribution shall terminate his contract with or cease to sell motor vehicles to such person engaged in the sale of motor vehicles at retail in this state unless such person finances the purchase or sale of any one or number of motor vehicles only or through a designated person or class of persons or sells and assigns the conditional sales contracts, chattel mortgages, or leases arising from his retail sale of motor vehicles or any one or any number thereof only to such person so engaged in financing the purchase or sale of motor vehicles or in buying conditional sales contracts, chattel mortgages, or leases on motor vehicles, shall be presumed to be made at the direction of and with the authority of such person so engaged in such manufacture or distribution of motor vehicles, and shall be prima facie evidence of the fact that such person so engaged in the manufacture or distribution of motor vehicles has sold or intends to sell the same on the condition or with the agreement or understanding prohibited in section 12-6-202.

12-6-205. Offering consideration to eliminate competition. It is unlawful for any person who is engaged, directly or indirectly, in the manufacture or wholesale distribution only of motor vehicles, whether patented or unpatented, to pay or give, or contract to pay or give, any thing or service of value to any person who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages, or leases on motor vehicles sold at retail within this state if the effect of any such payment or the giving of any such thing or service of value may be to lessen or eliminate competition, or tend to create or create a monopoly in the person or class of persons who receive or accept such thing or service of value.

12-6-206. Accepting consideration to eliminate competition. It is unlawful for any person who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages, or leases on motor vehicles sold at retail within this state to accept or receive, or contract or agree to accept or receive, either directly or indirectly, any payment, thing, or service of value from any person who is engaged, either directly or indirectly, in the manufacture of or wholesale distribution only of motor vehicles, whether patented or unpatented, if the effect of the acceptance or receipt of any such payment, thing, or service of value may be to lessen or eliminate competition, or to create or tend to create a monopoly in the person who accepts or receives such payment, thing, or service of value or contracts or agrees to accept or receive the same.

12-6-207. Recipient of consideration shall not buy mortgages. It is unlawful for any person who hereafter so accepts or receives, either directly or indirectly, any payment, thing, or service of value, as set forth in section 12-6-206, or contracts, either directly or indirectly, to receive any such payment, or thing, or service of value to thereafter finance or attempt to finance the purchase or sale of any motor vehicle or buy or attempt to buy any conditional sales contracts, chattel mortgages, or leases on motor vehicles sold at retail in this state.

12-6-208. Quo warranto action. For a violation of any of the provisions of this part 2 by any corporation or association mentioned in this part 2, it is the duty of the attorney general or the district attorney of the proper county to institute proper suits or an action in the nature of quo warranto in any court of competent jurisdiction for the forfeiture of its charter rights, franchises, or privileges and powers exercised by such corporation or association, and for the dissolution of the same under the general statutes of the state.

12-6-209. Violation by foreign corporation - penalty. Every foreign corporation and every foreign association exercising any of the powers, franchises, or functions of a corporation in this state violating any of the provisions of this part 2 is denied the right and prohibited from doing any business in this state, and it is the duty of the attorney general to enforce this provision by bringing proper proceedings by injunction or otherwise. The secretary of state is authorized to revoke the license of any such corporation or association heretofore authorized by him to do business in this state.

12-6-210. Penalty. Any person who violates any of the provisions of this part 2, any person who is a party to any agreement or understanding, or to any contract prescribing any condition, prohibited by this part 2, and any employee, agent, or officer of any such person who participates, in any manner, in making, executing, enforcing, or performing, or in urging, aiding, or abetting in the performance of, any such contract, condition, agreement, or understanding and any person who pays or gives or contracts to pay or give any thing or service of value prohibited by this part 2, and any person who receives or accepts or contracts to receive or accept any thing or service of value prohibited by this part 2 commits a class 6 felony and shall be punished as provided in section 18-1-105, C.R.S. Each day's violation of this provision shall constitute a separate offense.

12-6-211. Contract void. Any contract or agreement in violation of the provisions of this part 2 shall be absolutely void and shall not be enforceable either in law or equity.

12-6-212. Provisions cumulative. The provisions of this part 2 shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state.

12-6-213. Damages. In addition to the criminal and civil penalties provided in this part 2, any person who is injured in his business or property by any other person or corporation or association or partnership, by reason of any thing forbidden or declared to be unlawful by this part 2, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount of controversy, and to recover twofold the damages sustained by him, and the costs of suit. When it appears to the court before which any proceedings under this part 2 are pending that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending or not.

12-6-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Motor vehicle" means every self-propelled vehicle intended primarily for use and operation on the public highways and every vehicle intended primarily for operation on the public highways which is not driven or propelled by its own power, but which is designed either to be attached to or become a part of a self-propelled vehicle; it does not include farm tractors and other machines and tools used in the production, harvesting, and care of farm products.

12-6-302. Sunday closing. No person, firm, or corporation, whether owner, proprietor, agent, or employee, shall keep open, operate, or assist in keeping open or operating any place or premises or residences, whether open or closed, for the purpose of selling, bartering, or exchanging or offering for sale, barter, or exchange any motor vehicle, whether new, used, or secondhand, on the first day of the week commonly called Sunday. This part 3 shall not apply to the opening of an establishment or place of business on the said first day of the week for other purposes, such as the sale of petroleum products, tires, or automobile accessories, or for the purpose of operating and conducting a motor vehicle repair shop, or for the purpose of supplying such services as towing or wrecking. The provisions of this part 3 shall not apply to the opening of an establishment or place of business on the said first day of the week for the purpose of selling, bartering, or exchanging or offering for sale, barter, or exchange any boat, boat trailer, snowmobile, or snowmobile trailer.

12-6-303. Penalties. Any person, firm, partnership, or corporation who violates any of the provisions of this part 3 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than seventy-five dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or the court, in its discretion, may suspend or revoke the Colorado motor vehicle dealer's license issued under the provisions of part 1 of this article, or by such fine and imprisonment and suspension or revocation.