

WE—VIEW—THE—SOUTH—SUNSHINE—6002

Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform

Colorado Motor Vehicle Dealer Board



October 12, 2006

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
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Bill Owens
Governor

October 12, 2006

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

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Colorado Motor Vehicle Dealer Board (Board). I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2007 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Part 1 of Article 6 of Title 12, C.R.S. The report also discusses the effectiveness of the Board and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,



Tambor Williams
Executive Director

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Executive Summary

Quick Facts

What is Regulated? New and used motor vehicle dealers and salespersons, motor vehicle wholesalers, and wholesale motor vehicle auction dealers.

Who is Regulated? In fiscal year 05-06 there were approximately 19,000 licenses issued and renewed by the Board:

Motor vehicle salespersons: 16,459
New motor vehicle dealers: 677
Used motor vehicle dealers: 1,525
Motor vehicle wholesalers/wholesale motor vehicle auction dealers: 7

How is it Regulated? The Board is a Type II board located in the Auto Industry Division of the Department of Revenue. In practice, the Board licenses motor vehicle dealers, salespersons, and motor vehicle wholesalers and wholesale motor vehicle auction dealers. This involves processing and evaluating applications from prospective licensees, enforcing minimum standards of sales and practice as defined by law, and disciplining those in violation of the law.

What Does it Cost? The fiscal year 04-05 Auto Industry Division expenditures, including oversight and support of this program were \$1,377,301, and there were 21.2 FTE associated with this program. The direct costs associated with the Board's meeting schedule in fiscal year 04-05 was \$5,936.

In fiscal year 05-06, license fees for motor vehicle dealers, wholesalers, and wholesale motor vehicle auction dealers was \$325 for initial licensure, and \$270 for renewal. Licensure fees for salespersons consisted of \$75 for an initial license, and \$55 for license renewal.

What Disciplinary Activity is There? During the five-year period of fiscal year 01-02 to fiscal year 05-06, the Board's disciplinary proceedings consisted of:

Revocations	77
Suspensions	41
Probation	152
Fines	72
Other	70

Where Do I Get the Full Report? The full sunset review can be found on the internet at:
<http://www.dora.state.co.us/opr/oprpublications.htm>

Key Recommendations

Continue the Board until 2012.

The licensing and oversight of motor vehicle dealers, salespersons, wholesalers, and wholesale motor vehicle auction dealers benefits the citizens of Colorado. The intent of the motor vehicle statutes is to protect the consumer and to create a feeling of confidence and trust in the dealer by the public. The complicated nature of the industry, the potential for consumer harm, and the actual consumer harm substantiate the need for continuing oversight of the industry. Consequently, as an essential component of the existing regulatory scheme, the Board should be continued until 2012.

Increase the surety bond required of motor vehicle dealers to \$50,000.

Every Colorado new and used motor vehicle dealer is currently required to maintain a \$30,000-surety bond, which is available for consumer reimbursement for loss or damage as a result of a dealer's misrepresentations or fraudulent activities. The cost of this surety bond is generally one-percent of the bond amount (currently \$300). An important factor relating to this surety bond is the escalating price of motor vehicles. In many instances, the amount of damages or loss to the consumer has exceeded the current surety bond amount of \$30,000. The financial protection provided to the public is enhanced with a larger bond requirement.

Alter the composition of the Board.

The general purpose of including industry members on the Board is to include a degree of industry-related knowledge and expertise to assist the Board in the performance of its statutory functions. Although it is critical for the Board composition to contain individuals with an understanding of the industry, and share that necessary expertise, it is also important to have balanced representation on the Board of consumers and other professionals that interact and transact business with the motor vehicle industry. The existing composition of the Board should be modified to more accurately reflect the expertise necessary to evaluate and resolve complaints and disciplinary matters. The Board membership should be modified by replacing one new and one used motor vehicle dealer with a Colorado county clerk, and an individual employed in the motor vehicle financing sector.

Key Recommendations Continued

Require the Board to utilize administrative law judges and hearing officers in disciplinary hearings.

Individual Board members cite their heavy caseload for the Board's inability to allocate time to address public policy and regulatory issues. The Board currently spends the majority of its meetings hearing testimony in appeals of license denial matters and routine disciplinary cases. The Board would be the recipient of numerous benefits by utilizing the services of judges and professional hearing officers in the disciplinary hearing process. In addition to giving the Board time to address important issues, other benefits include enhanced due process protection, a reduction of conflicts, consistency of decisions, and fewer appeals.

Major Contacts Made In Researching the 2006 Sunset Review of the Board

Colorado Automobile Dealers Association
Colorado Independent Automobile Dealers Association
National Automobile Dealers Association
National Independent Automobile Dealers Association
American Association of Motor Vehicle Administrators
Denver Auto Auction
Board and Auto Industry Division staff

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with the public interest. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the rights of businesses to exist and thrive in a highly competitive market, free from unfair, costly or unnecessary regulation.

Sunset Reviews are Prepared By:
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Background

The Sunset Process

The regulatory functions of the Colorado Motor Vehicle Dealer Board (Board) in accordance with Part 1 of Article 6 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2007, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the Board should be continued for the protection of the public and to evaluate the performance of the Board and the Board's staff. During this review, the Board must demonstrate that there is still a need for the Board and that the regulation is the least restrictive regulation consistent with the public interest. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 54.

This report does not contain a review of the licensing functions of the Executive Director of the Department of Revenue related to motor vehicle manufacturers and related functions. These licensing and disciplinary functions, contained in Part 2 of Article 6 of Title 12, C.R.S., were the subject of a sunset report in 2002 pursuant to the General Assembly separating these functions from the Board's sunset review.

Methodology

As part of this review, DORA staff attended numerous Board meetings, interviewed the Department of Revenue (DOR), Auto Industry Division (AID) staff, reviewed Board and AID records and minutes including complaint and disciplinary actions, interviewed officials with state and national professional associations, interviewed members of the industry and public, reviewed Colorado statutes and Board rules and regulations, and reviewed the laws of other states.

Profile of the Profession

The motor vehicle industry in Colorado is a vital, thriving industry that has generated significant revenue for Colorado and its citizens. The following statistics, generated by the Colorado Automobile Dealers Association (CADA), demonstrate and highlight the importance of the motor vehicle industry to Colorado's economy.¹

- In 2004, the automotive retailing industry generated a total of over 33,300 jobs in Colorado.
- In 2004, state residents earned over \$1.67 billion as a result of automobile dealership operations in Colorado.
- The average new motor vehicle dealership had over \$4 million in payroll expense during 2004.
- Automobile dealers (through taxes collected or paid) generated more than \$465 million in revenue for the state and local governments in 2004.
- Sales at new vehicle dealerships in Colorado exceeded \$12.7 billion in 2004.
- Colorado new vehicle dealerships sold over 461,000 new and used vehicles during 2004.
- Total annual new vehicle retail sales in Colorado exceeded 190,000 units during each of the six years from 1999 through 2004.

The Board is statutorily responsible for administering motor vehicle dealer licensing laws, and promulgating rules and regulations relating to the licensure of motor vehicle dealers, wholesalers, salespersons, and wholesale motor vehicle auction dealers. The Board has the statutory authority to investigate complaints against new and used motor vehicle dealers, salespersons, wholesalers, and wholesale motor vehicle auction dealers, and to impose sanctions and discipline against licensees who violate state statutes and Board rules and regulations.

The Board meets this responsibility through the assistance of the compliance, licensing, and investigations sections of the AID. The AID acts as the administrative arm for the Board in the licensing and regulation of new motor vehicle dealers, used motor vehicle dealers, wholesalers, wholesale motor vehicle auction dealers, and salespersons.

¹ The Economic Impact of Franchised New Vehicle Dealers on the Colorado Economy, 2005, p. 3, available at <http://cadaonline.org/shared/IndustryStatistics/default.asp>, accessed March 21, 2006 and August 14, 2006.

Activities of the AID include processing of license applications and fees, administering written examinations to applicants, providing educational services to licensees and the public, conducting compliance audits, working with consumers and dealers to resolve complaints, and investigating motor vehicle and criminal complaints.

The Investigations Section of the AID also provides training seminars to the public and industry in an attempt to prevent title, odometer, and salvage fraud and provides training to licensees in proper title assignments, proper completion of required documents and advertising.

Generally, the nine-member Board meets twice monthly to make policy decisions, consider licensing matters, review complaints, hold administrative disciplinary hearings, and take disciplinary action against licensees when appropriate.

The Board members are appointed by the Governor to serve three-year terms. The Board is currently comprised of three new motor vehicle dealers; three used motor vehicle dealers, and three public members.

History of Regulation

The Colorado Motor Vehicle Dealer Advisory Board (Advisory Board) was originally created in 1945 as a five-member advisory board made up exclusively of automobile dealers. Two members of the Advisory Board were appointed by the Governor and three by the Executive Director of the DOR (Executive Director).

The Advisory Board was required to meet quarterly and advise the Executive Director on issues related to motor vehicle sales. The Executive Director conducted all disciplinary hearings. Advisory Board members were included at the discretion of the Executive Director. The Executive Director could delegate hearing functions to the Advisory Board. 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.

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 the specific matters referred to it by the Executive Director.

In 1971, House Bill 71-1378 expanded the duties of the Advisory Board. This bill created the Motor Vehicle Dealer Licensing Board (Board).

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

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:

- Increased the public representation on the Board;
- Authorized the Board to implement fines of up to \$10,000 for violations;
- Deregulated non-wholesale auctioneers; and
- Revised the examination process.

An administrative recommendation made in the sunset report resulted in the reorganization of the Division of Motor Vehicles that separated the supervision of complaint investigation functions from the administrative hearing process.

In 1998, mandatory license disqualifiers were enacted by the General Assembly. The disqualifiers generally consisted of denying licensure to any applicant with a felony conviction under Title 18, Articles 3, 4, and 5, C.R.S., within 10 years from the date of conviction.²

The Department of Revenue's Dealer Service Section (DSS) was reorganized, and became the Auto Industry Division in 1999.

In 2000, the General Assembly enacted Senate Bill 00-17, which allowed motor vehicle dealers to maintain books and records at locations other than their principal place of business.

² § 12-6-118(7)(a)(I), C.R.S.

Senate Bill 02-05, enacted by the General Assembly in 2002, allowed AID investigators to issue misdemeanor summons for unlicensed sales activity, and classified investigators as Level II Peace Officers. In 2002, the AID also implemented on-line access to motor vehicle dealer information for county clerks, bond companies, and wholesale motor vehicle auction dealers.

The AID developed specialized training seminars in 2003, in the areas of motor vehicle advertising, title and odometer fraud, and document requirements for motor vehicle sales transactions.

In 2004, pursuant to the General Assembly enacting House Bill 04-1053, the Board was authorized to discipline a licensee if said licensee failed to give timely notice to a prospective buyer regarding the acceptance or rejection of a motor vehicle purchase order agreement on a finance or consignment sale. In 2004, the AID additionally implemented a plan to stagger the issuance of license renewals over 12 months. This project distributes the AID's workload throughout the year, instead of dealing with the majority of license renewals during a one-month period.

Legal Framework

The regulation of the sale of motor vehicles, and the entities and individuals that sell them, is found in Article 6 of Title 12 of the Colorado Revised Statutes (C.R.S.). The legislative declaration indicates reasons for the regulation of motor vehicle dealers.³ These reasons include: the public expects that a dealer will remain in business to provide service for purchased motor vehicles; to promote highway safety, consumer protection, and to promote consumer education. The declaration also indicates that the sale of motor vehicles by unlicensed dealers, or by licensed dealers or salespersons who have demonstrated unfitness, should be prevented.

Section 12-6-102, C.R.S., provides definitions for 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," "Used motor vehicle dealer," and "Wholesaler."

Farm tractors and other machines and tools used in the production, harvesting and care of farm products are not considered motor vehicles.⁴ 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;⁵
- (b) Public officers while performing their official duties;⁶
- (c) Employees of persons enumerated in the definition of "motor vehicle dealer" when engaged in the specific performance of their duties as such employees;⁷
- (d) A wholesaler or anyone selling motor vehicles solely to wholesalers;⁸
- (e) Mortgagees or secured parties as to sales in any one year of not more than 12 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;⁹

³ § 12-6-101(1), C.R.S.

⁴ § 12-6-102(12), C.R.S.

⁵ §§ 12-6-102(13)(a) and (17)(a), C.R.S.

⁶ §§ 12-6-102(13)(b) and (17)(b), C.R.S.

⁷ §§ 12-6-102(13)(c) and (17)(c), C.R.S.

⁸ §§ 12-6-102(13)(d) and (17)(d), C.R.S.

⁹ § 12-6-102(17)(e), C.R.S.

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- (f) Any person who only sells or exchanges no more than four motor vehicles which are collectors' items pursuant to section 42-3-219, C.R.S., or pursuant to Article 12 of Title 42, C.R.S.;¹⁰
 - (g) A motor vehicle auctioneer;¹¹ and
 - (h) An operator, as defined in section 42-4-2102(5), C.R.S., who sells a motor vehicle pursuant to section 42-4-2104, C.R.S.¹²

Section 103 creates the Motor Vehicle Dealer Board (Board). The Board consists of nine members, appointed by the Governor, serving three-year terms.¹³ The membership of the Board is equally divided statutorily between new motor vehicle dealers, used motor vehicle dealers and consumer members. Board members serve without compensation but are reimbursed for actual and necessary expenses while engaged in official duties.¹⁴

The Board is required by section 104 to annually elect a president, first vice-president and a second vice-president. The Board establishes its own meeting schedule, and a majority of the Board constitutes a quorum at any meeting or hearing.

The Board has broad regulatory responsibilities to promulgate, amend, and repeal 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.¹⁵

The Board has the statutory authority to delegate to the Board's Executive Secretary the authority to execute all actions within the power of the Board, including the issuance of licenses pursuant to the rules and regulations adopted by the Board.¹⁶

The Board may issue subpoenas and conduct investigations through the Executive Director of the Department of Revenue (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. The Board has the authority to resolve disputes before requesting an investigation or hearing through its own action or by direction to the Executive Director.¹⁷

¹⁰ § 12-6-102(17)(f), C.R.S.

¹¹ §§ 12-6-102(13)(f) and (17)(g), C.R.S.

¹² § 12-6-102(17)(h), C.R.S.

¹³ §§ 12-6-103(1) and (2), C.R.S.

¹⁴ § 12-6-103(3), C.R.S.

¹⁵ § 12-6-104(3), C.R.S.

¹⁶ § 12-6-104(3)(a.5), C.R.S.

¹⁷ § 12-6-104(3)(f)(l), C.R.S.

Upon a finding of probable cause, the Board may conduct a hearing in accordance with the Administrative Procedure Act (APA). The Board may conduct hearings, delegate hearings to an administrative law judge (ALJ), or the Board may designate one of the Board's members as a hearing officer to conduct a hearing in accordance with the APA.¹⁸ The Board is authorized to summarily issue cease and desist orders, if such orders are followed by compliance with notice and hearing requirements.¹⁹ After due notice and hearing, the Board may revoke, suspend, or order the Executive Director to issue or reinstate any license issued by the Board.²⁰

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.²¹ The Board is required to promulgate guidelines to ensure that administrative penalties are equitable and relative to the seriousness of the offense.²²

The Board must prescribe forms to be utilized in the application process, and may request information of said applicants regarding their fitness to become licensed, as the Board considers appropriate and necessary. The statute defines the minimum standards for license applications. However, the Board may, by regulation, develop additional requirements.²³

The Board is to conduct an examination to test the competency of applicants for various dealer and salesperson licenses and to develop forms to be used as sales contracts for motor vehicles.²⁴ The statute defines the minimum standards for 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, including financing approval and conflicting oral representations.²⁵

¹⁸ § 12-6-104(3)(f)(II), C.R.S.

¹⁹ § 12-6-104(3)(f.5), C.R.S.

²⁰ § 12-6-104(3)(e)(I), C.R.S.

²¹ § 12-6-104(3)(m)(I)(A), C.R.S.

²² § 12-6-104(3)(n), C.R.S.

²³ § 12-6-104(3)(g), C.R.S.

²⁴ § 12-6-104(j)(I), C.R.S.

²⁵ § 12-6-104(k)(I), C.R.S.

The statute defines the various classes of licenses and authorizes the activities permitted under specific licenses.²⁶ The Board and Executive Director are required to issue licenses on a form to be prescribed by the Board, and licensees are required to display licenses at the licensee's place of business.²⁷ The Board and Executive Director are required by section 12-6-110, C.R.S., to establish fees for each class of license. Fees are to be set at a level that covers 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 (License Fund) established in section 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 file with the Board proof of a corporate surety bond issued by a company authorized in the state in the amount of \$30,000.²⁸ 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.²⁹ Licensees who sell only small utility trailers are required to carry a \$5,000-bond for the same purpose.³⁰ Both new and used motor vehicle salespersons are required to obtain a bond in the amount of \$5,000.³¹

All bonds must be renewed annually. This may be accomplished by the issuance of a continuation certificate by the surety.³² These surety bonds can only be released after a finding of fraud by the Board or a court of competent jurisdiction.³³ All corporate surety companies are required by section 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.

All applicable 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 Executive Secretary to the Board as their agent for service of process for claims arising from any acts related to licensure violations.³⁴

²⁶ § 12-6-108, C.R.S.

²⁷ § 12-6-109, C.R.S.

²⁸ §§ 12-6-111(1) and (2), C.R.S.

²⁹ § 12-6-111(2)(a), C.R.S.

³⁰ § 12-6-111(2)(a), C.R.S.

³¹ § 12-6-112(1), C.R.S.

³² §§ 12-6-111(3) and 12-6-112(3), C.R.S.

³³ §§ 12-6-111(2)(b) and 12-6-112(2), C.R.S.

³⁴ § 12-6-115(6), C.R.S.

New motor vehicle dealers and used motor vehicle dealers are required to obtain and maintain a principle place of business that meets the guidelines outlined in sections 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 motor vehicle dealer at the discretion of the Board. All dealers are required to confiscate and return to the Board the salesperson license of any salesperson that changes a place of employment or terminates employment for any reason.

Grounds for denial, suspension, or revocation of all licenses issued by the Board are detailed in section 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.³⁵ Under section 12-6-119, C.R.S., the Colorado Court of Appeals has initial jurisdiction to review all final actions of the Board that are subject to judicial review.

Pursuant to section 12-6-121, C.R.S., violations of the statute are considered Class 1 misdemeanors except for unlicensed activities, which are considered Class 3 misdemeanors. Fines collected for unlicensed activity are awarded to the law enforcement agency investigating and issuing the citation for the violation, under the provisions of section 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 that could result in a disciplinary action.³⁶ 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.³⁷ 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.³⁸

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.³⁹ The Board has promulgated numerous additional advertising regulations.

³⁵ § 12-6-104(3)(m)(II), C.R.S.

³⁶ § 12-6-118(3)(e), C.R.S.

³⁷ § 12-6-121.6(2), C.R.S.

³⁸ §§ 12-6-111(2)(b) and 12-6-112(2), C.R.S.

³⁹ § 12-6-125, C.R.S.

Related Statutes

Provisions of the Colorado Certificate of Title Act, contained in Article 6 of Title 42, C.R.S., and other laws also contained in Title 42, C.R.S., additionally regulate motor vehicle dealers and motor vehicles. 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 motor vehicle dealerships.

Section 6-1-708, C.R.S., provides consumer protection relating to the sale of a new or used motor vehicle. Specifically, the Colorado Consumer Protection Act, prevents dealers from selling or leasing a trade-in vehicle until the consumer credit financing has been approved, and requires that a dealer disclose in writing when a vehicle is a salvage vehicle.

Regulations

The AID 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 Auto Industry Division. The booklet was last updated in 2004.

Program Description and Administration

Responsibilities

A primary function of the Colorado Motor Vehicle Dealer Board (Board), as delineated in the section of the act setting forth the Board's powers and duties, is:

To promulgate, amend, and repeal reasonable rules and regulations relating to those functions the [B]oard is mandated to carry out pursuant to this [P]art 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 [S]tate of [C]olorado as it deems necessary.⁴⁰

The Board is created in section 12-6-103, Colorado Revised Statutes (C.R.S.). The Board's authority is derived from section 12-6-104, C.R.S., and from the Colorado Administrative Procedure Act. The Board is an entity created by statute; therefore the Board's powers are limited to those expressly conferred by the legislature. The Board's express powers are to administer, enforce, issue, and deny licenses to motor vehicle dealers and salespersons (new and used), in addition to wholesale motor vehicle auction dealers and wholesalers. The Board is also authorized to issue a temporary license to any person who submits a completed application. An applicant may operate under such a license for no more than 120 days while the Board investigates and determines all facts relevant to the background and qualifications as set forth in the application. This temporary license is terminated when the applicant's license is granted or denied.

The Board is statutorily empowered to order an administrative hearing if it determines that an investigation results in probable cause to believe a violation of the statute or regulations has occurred. If an administrative hearing is held, the Board possesses exclusive authority to review the findings of an administrative law judge or hearing officer from within the Board's membership. The Board also possesses exclusive authority to determine whether to revoke, suspend, fine, or order the issuance or reinstatement of any license under the Board's authority. Pursuant to section 12-6-104(3)(e)(II), C.R.S., the Board's decisions are final and not subject to review by the Department of Revenue, Auto Industry Division (AID).

⁴⁰ § 12-6-104(3)(a), C.R.S.

Pursuant to section 12-6-110(5), C.R.S., the Board also has the advisory function of proposing, as part of its annual budget request, adjustments to the licensure fees that the Board is authorized by law to collect. The budget request and the adjusted fees for the Board include direct and indirect costs. Adjustments to the fees are subject to the approval of the Executive Director of the Department of Revenue, and remain in effect for the fiscal year for which the appropriation is made.

The Board generally meets twice each month to fulfill its statutory functions and responsibilities. A typical meeting consists of a morning session devoted to reports from the Investigations Section, 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 AID. If the Board deems it necessary, a general or specific discussion of issues involving motor vehicle sales and regulation takes place before the lunch break. Hearings are generally conducted during the afternoon portion of the meeting. Due to a large docket of cases set for hearing, the Board generally spends the entire second meeting of each month hearing disciplinary cases. Possible changes in the hearing process, and delegation by the Board of certain functions may 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 numbers 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 AID 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 AID recommendations.

Applications that do not meet all the licensing criteria are presented to the Board individually. The most common grounds for denial are having a low net worth, a poor credit rating from a major credit bureau, or a 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 occasionally issues licenses to applicants that do not meet all of the standards for licensure.

The Board has delegated authority to the Board's Executive Secretary (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 an applicant's prior criminal record. While the Board occasionally denies a license based on a criminal history, applicants are allowed to appeal the denial.

The Investigations Section presents approximately 10 complaint investigations per month for review and a determination of probable cause for a hearing. The Board schedules approximately eight disciplinary actions each month. Many of the hearings scheduled for disciplinary action are resolved via stipulated agreement prior to a hearing.

Agency Fiscal Information – Auto Industry Division

Chart 1 sets forth the total program expenditures for the AID, which provides administrative support for the Board. The AID’s total program expenditures have remained relatively consistent over the past five years, although the increase in total expenditures reflects the increase in individual salaries, not an increase in the number of employees. These full-time equivalent (FTE) employee figures include the Compliance, Investigations, and Licensing sections of the AID, which are discussed in more detail below.

**Chart 1
AID Program Expenditures**

Fiscal Year	Total Program Expenditure	FTE
00-01	\$1,214,578	22.2
01-02	\$1,191,846	21.2
02-03	\$1,266,209	21.2
03-04	\$1,280,004	21.2
04-05	\$1,377,301	21.2

Compiled by the Colorado Department of Revenue’s Auto Industry Division.

Chart 2 consists of the total Board costs and expenses attributable to the meetings held either once or twice a month, and single Board member licensure hearings held once a month when needed. The individual Board members are compensated at the rate of \$50 per day regardless of the actual time spent in the meetings. In addition, any costs or expenses that are directly related to attending the meetings are included in this chart.

**Chart 2
Motor Vehicle Dealer Board Costs**

	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04	FY 04-05
Board Per Diems	\$5,900	\$6,750	\$6,650	\$6,150	\$8,000	\$5,150
Board Meetings	\$2,312	\$1,572	\$1,453	\$1,414	\$1,524	\$786
Total	\$8,212	\$8,322	\$8,103	\$7,564	\$9,524	\$5,936

Compiled by the Colorado Department of Revenue’s Auto Industry Division.

Licensing

The Licensing Section of the AID processes all licensing applications and fees and maintains all records for new motor vehicle dealers, used motor vehicle dealers, wholesalers, wholesale motor vehicle auction dealers, and salespersons.

The Licensing Section of the AID currently employs 6.2 FTE positions. This includes an individual licensing supervisor for both the licensing of dealers and salespersons.

The Board sets licensing fees each year, in June, based upon the previous year's statistics and the projected financial requirements for the upcoming fiscal year.

Licensing Fees for Fiscal Year 05-06

Dealers/Wholesalers/Wholesale Auction Dealers

\$325 - Original

\$270 - Renewal

Salespersons

\$75 - Original

\$55 - Renewal

\$55 - Multiple (additional license for multiple dealerships)

\$55 - Reissue

\$25 - Late Fee - All License Types

Miscellaneous

\$75 - Change of Class

\$75 - Change of Dealer Location

\$135 - Additional Dealer Location

\$75 - Change of Name

\$75 - Stock Transfer/Ownership Change

\$55 - Off-Premise Permit

\$145 - Temporary Dealer's License For Out-of-State Dealers (per event)

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

The Board, through its delegation authority, and utilizing the administrative services of the AID, issues licenses to many different classes and types of business entities involved in the sale and transfer of motor vehicles to the public, or to other businesses (wholesalers, wholesale motor vehicle auction dealers, etc.) Chart 3 below sets forth the total number of licenses issued during fiscal years 01-02 through 05-06, to five different classes of entities required to maintain a license with the Board as a condition to conducting business in Colorado.

**Chart 3
Licensing Activity**

Licensing Activity Statistics		FY01-02	FY02-03	FY03-04	FY04-05	FY05-06
Wholesale Motor Vehicle Auction Dealers	Original	0	0	0	1	0
	Renewal	2	7	8	6	7
Dealers - New	Original	52	47	57	54	46
	Renewal	639	584	695	338	631
Dealers - Used	Original	186	216	169	144	134
	Renewal	1,374	1,487	1,536	1,180	1,391
Wholesalers	Original	89	118	108	92	93
	Renewal	322	355	348	254	362
Salespersons	Original	5,350	4,523	4,912	5,072	4,767
	Renewal	6,622	8,715	7,018	5,877	7,059
	Reissue	2,478	2,982	2,965	2,615	2,663
	Multiple	1,556	1,739	1,479	1,619	1,970
Total Licenses Issued & Renewed		18,670	20,773	19,295	17,252	19,123

Compiled by the Colorado Department of Revenue's Auto Industry Division.

Applications for licensure are processed by the AID. In fiscal year 04-05, the AID processed 54 original and 338 renewal applications for new motor vehicle dealers. This is down from 695 renewals in fiscal year 03-04, and 584 renewals in fiscal year 02-03, although the number of original applications has remained relatively constant. The number of new motor vehicle dealer renewals rebounded to 631 in fiscal year 05-06, thereby creating the inference that the number of renewals reported by the AID for fiscal year 04-05 is an abnormality or inaccurate.

In fiscal year 04-05, 144 original and 1,180 renewal applications for used motor vehicle dealers were processed by the AID. This is somewhat lower than previous years. In fiscal year 03-04, the AID processed 169 original applications and 1,536 renewals. In fiscal year 02-03, the AID processed 216 original applications, and 1,487 renewals for used motor vehicle dealers.

In fiscal year 04-05, the AID processed in excess of 2,000 applications for dealer-related licenses. This data, reflected in Chart 3, indicates minor fluctuations in the number of new and used motor vehicle dealers over the past several years.

There is relatively low turnover in the ownership of new motor vehicle dealerships as not many new motor vehicle dealers go out of business. This may be, in part, because manufacturers have fairly stringent requirements for new car franchises, including significant capital investments and substantial business experience.

The Board has established licensing criteria based upon its statutory authority. However, used motor vehicle 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 dealer application requires information about the applicant's experience in the automotive industry, financial information, and legal and employment history. All dealers are required to obtain a corporate surety bond in the amount of \$30,000, or in the alternative, file with the Board a certificate of deposit in that amount. No dealer currently is using the certificate of deposit alternative.

The Board reviews and approves all applications for dealer licensure at its regular meetings. To expedite the licensing process, the AID divides the applications into two categories. The first category consists of 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 consists of those applications that fail to meet any or all of the licensing criteria. These applicants may show a low net worth, have a criminal history disclosed on the application, or have a credit rating below the standard established by the Board. The AID 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 motor vehicle dealers.

The Licensing Section is also responsible for processing change of class, change of location, additional location, change of name, stock transfer/ownership change, and off-premise permits for dealerships. Applicants for licensure as motor vehicle dealers must submit the following minimum information to become licensed in Colorado:

Motor Vehicle Dealer Licensing

Application: Owner, corporate officer or Limited Liability Company (LLC) member must sign the application.

Financial statement: Current, accurate information is required. The Board requires a net worth of at least \$50,000.

Credit bureau report: A credit bureau report will be obtained on every applicant. This report is an indicator of an applicant's financial fitness. The Board requires an Empirica score of at least 600.

Background check: A background check will be done on every applicant. If the applicant has ever been arrested, charged with, convicted of or pled no contest to any felony or misdemeanor crime in the past 10 years, excluding traffic violations, supporting court documents must be included with the application.

Place of business affidavit: Dealers must satisfy the following place-of-business requirements:

1. Permanent enclosed office with electrical service and restroom.
2. Space to display one or more vehicles.
3. Open to public a minimum of 12 hours a week.
4. In compliance with local zoning.
5. Used exclusively for the dealer business or incidental businesses, such as parts, repair, etc.
6. A permanent sign displaying business name, clearly visible from the street.
7. Premises owned or leased by dealer.

Dealers are not allowed to share their business site with a business owned by another person. Wholesalers are not required to meet the place-of-business requirements, but must maintain an office in which all vehicle records are maintained.

Mastery examination: All applicants must score 100 percent on the open-book, computer-generated exam. Each owner or corporate member must have completed and submitted the "Mastery Test," or be currently licensed as a dealer or salesperson. The exam consists of 41 multiple-choice and 10 fill-in-the-blank questions.

Business documents: If filing as a corporation or an LLC, a copy of the stamped articles of incorporation filed with the Colorado Secretary of State must be submitted. If the corporation is out-of-state, a copy of their certificate of authority is required. If filing as a partnership, a signed copy of the partnership agreement is required.

Franchise agreement: If applying as a franchised dealer, the manufacturer must be licensed to do business in Colorado. If the manufacturer is so licensed, an applicant must produce a letter from the manufacturer stating that the applicant is authorized to sell that product line.

Dealer plate affidavit: An application for dealer demonstration and full-use plates must be completed, signed, and submitted.

Colorado sales tax license: (Colorado Business Form) - A copy of the sales tax license or a copy of the sales tax application stamped with the Department of Revenue's received stamp, as well as proof of trade name registration, must be submitted.

Fee: The appropriate fee must be submitted for the application to be considered.

Bond: The business entity must secure a \$30,000-surety bond or certificate of deposit in its legal name and the name under which it conducts business.

Salesperson Licensing

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 and 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 as the applicant's authorized agent for service of process.

The application packet contains a study guide for the salesperson examination. The AID also offers an optional license law seminar that applicants may attend prior to taking the examination. The examination must be taken at the dealership that intends to employ the applicant upon licensure.

The application requires detailed information about the applicant including criminal background and employment history. Pursuant to section 12-6-104(3)(a.7), C.R.S., the Board is authorized to investigate and determine all facts relative to the qualifications of licensure applicants. The final portion of the application package is proof of a \$5,000 surety bond that must be obtained by all applicants for a salesperson license.

Once the completed application package has been submitted to AID, and a passing score on the examination has been achieved, the prospective salesperson is issued a temporary license and may begin work at the dealership. There is no statutory or regulatory deadline for the Board to issue or deny the applicant's license. Most complete application packages are acted upon within seven days, although an investigation into an applicant's background can take several months. The temporary license lasts for a maximum of four months.

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 motor vehicles during the appeals process.

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

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 salespersons licensed for more than one location. However, a separate fee, application, and bond must be submitted by the salesperson for each license.

Criteria for Used Motor Vehicle Dealer License

Although it is somewhat confusing, the Board has clarified the types of conduct that would require an individual or company to obtain a used motor vehicle dealer license. These criteria include performing or arranging any of the following transactions:

- Completing, arranging or assisting with the completion of motor vehicle purchase or lease contracts.
- Assisting with, negotiating, or arranging motor vehicle financing.
- Assisting with, arranging or negotiating the price or terms of purchase of a motor vehicle.
- Assisting with, arranging or providing delivery of the purchased or leased motor vehicle within Colorado.
- Accepting a down payment or deposit for a motor vehicle from a consumer.
- Offering, negotiating for the sale, purchase, lease or exchange of motor vehicles whether or not such motor vehicles are owned by such person. (Negotiation is defined as transacting business; discussing or arranging a sale; arranging the preliminaries of a business transaction; bargaining with another respecting a transaction; conducting communications with a view to reaching a settlement or agreement; that which passes between parties in the course of making a contract or arranging terms of a contract).

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- Receiving compensation of any kind from a Colorado dealer based on a per transaction, per vehicle or per referral basis. (Compensation is defined as a fee or other thing of value paid for transacting a piece of business or performing a service).

A club, service, organization, or other entity that takes ownership of motor vehicles and sells them to Colorado citizens falls under the definition of used motor vehicle dealer.

Examinations

The AID maintains the examination questions for the Salesperson Mastery Examination and the Dealer and Wholesaler Mastery Examination. A score of 100 percent is necessary to pass the exam. No pre-licensure education is required for the examination. However, AID does offer an optional license law seminar once each month in Denver, Fort Collins, and Colorado Springs.

License Law Seminar

The AID periodically presents an educational seminar for motor vehicle salespersons and dealers.

This seminar provides an overview of the laws and regulations governing the sale of motor vehicles. The seminar lasts approximately two hours. The seminar is offered at the following times, dates and locations:

- Colorado Springs --- 4420 Austin Bluffs Parkway, 1st Tuesday of month, 10 a.m. - noon.
- Fort Collins --- 1121 W. Prospect Road, (Revenue Building), 2nd Wednesday of month, 10 a.m. - noon (by appointment only).
- Lakewood (Denver) --- 1881 Pierce Street, (Revenue Building), 3rd Tuesday of month, 9 a.m. - 11:00 a.m.

Colorado Motor Vehicle Dealer Board Salesperson Mastery Examination

Prior to licensure, motor vehicle salesperson applicants are required to score 100 percent on the Salesperson Mastery Examination. The examination is administered by licensed motor vehicle dealers to their own salesperson applicants. Examination administrators may be owners, managers, or other employees authorized by the individual dealers. The applicant must take the exam at the dealership.

It is the exam administrator's responsibility to make sure the applicant is the person that derives the answers and completes the examination. The administrator is not initially allowed to provide any answers to the applicant. If more than one person is taking the exam at one time, the applicants may not share answers. An interpreter may help the applicant read and understand the questions but may not give the answers to the applicant.

After the applicant has completed the exam, the administrator grades and scores the examination. The administrator informs the applicant which questions were answered incorrectly. The administrator then instructs the applicant to search the Motor Vehicle Industry License Law Manual and the Motor Vehicle Industry License Law and Regulations to find the correct answer, and instructs the applicant to write the correct answer next to the incorrect response.

After the applicant has made the corrections, the administrator grades it again. If the applicant is not able to answer a question correctly after two attempts, the administrator may assist the applicant in locating the answer in the Motor Vehicle Industry License Law Manual or the Motor Vehicle Industry License Law and Regulations, and thereby "mastering" the information in the exam.

The administrator makes a copy of the Examination Affidavit and keeps the copy along with the original Salesperson Mastery Examination in the dealer's Salesperson Mastery Examination File. The original Examination Affidavit must be submitted to the AID with the salesperson's complete application, bond and fee.

Salesperson Mastery Examination Files are subject to audit by the Board or its agents.

Colorado Motor Vehicle Dealer Board Dealer and Wholesaler Mastery Examination

The Dealer and Wholesaler Mastery Examination is required of all applicants for a new or used motor vehicle dealer, or a wholesaler license.

Prior to licensure, motor vehicle dealer and wholesaler applicants are required to score 100 percent on the Dealer and Wholesaler Mastery Examination. The following steps apply when a dealer or wholesaler applicant self-administers the exam. If a third party administers the exam, the applicant follows the steps given by the administrator.

The applicant must take the exam him or herself. No one is allowed to provide any answers to the applicant. If more than one person is taking the exam at one time, the applicants may not share answers. An interpreter may help the applicant read and understand the questions but may not give the answers to the applicant.

After the applicant has finished the examination, the applicant must fill out the required information on the Examination Affidavit, and mail the exam and affidavit to the AID along with the dealer's completed application, surety bond information, and the licensure fee.

The Licensing Section grades the exam. The applicant is then contacted regarding any questions that were answered incorrectly, and is given the opportunity to verbally amend and correct any questions that were answered incorrectly on the examination. Communications with the applicant continue until the applicant's score is deemed to be 100 percent. This examination confirms that the applicant has "mastered" the knowledge of the motor vehicle dealer laws and regulations covered in the examination.

Compliance and Investigations

Compliance

The AID's Compliance Section consists of 5.0 FTE employees; one compliance supervisor, one compliance investigator, two compliance agents, and one administrative assistant.

The Compliance Section mediates non-complex complaints between complainants (both public and industry) and licensees through negotiation or education, with the goal of securing voluntary compliance by licensees.

This procedure enables AID staff to resolve complaints and educate licensees and consumers about Colorado's motor vehicle statutes, and the Board's rules and regulations. In many cases, the initial contact will resolve the problem and prevent additional consumer harm from occurring. For example, if a consumer files a complaint because he has not received title to his motor vehicle, a compliance officer could gather all necessary documents, contact the dealer, and resolve the problem by obtaining the title with a minimum of time and trouble for the consumer. It is the general policy of the AID to resolve complaints without Board involvement whenever possible. It is apparent from the data collected that most complaints are resolved without Board action.

Examples of complaints processed by the Compliance Section include but are not limited to:

- Failure to deliver title within 30 days;
- Failure to meet terms and conditions of a written contract;
- Failure to comply with laws and regulations governing advertising;
- Sale of unsafe vehicles; and
- Misunderstandings related to contracts or financing.

Chart 4 summarizes the types of complaints, both regulatory and criminal, that the AID's Compliance Section receives and works to resolve. This chart also demonstrates that the complaints and problems related to motor vehicle titles, contracts, and financing, account for the majority of complaints received by this section.

**Chart 4
Compliance Summary**

Type	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06	TOTAL
Advertising	31	58	35	20	55	199
Contract/Financing	191	138	147	252	261	989
Deposit	33	16	14	22	23	108
Equipment	100	66	73	102	146	487
False Statement/Application	1	0	0	0	0	1
General Licensing Requirements	0	0	1	1	1	3
Housing/Location Requirements	0	0	1	0	0	1
Lease Contract	4	1	2	1	2	10
Misrepresentation	86	65	60	44	81	336
Odometer	2	0	0	2	2	6
Dealer Plates/Temporary Registrations	30	29	22	35	7	123
Repossession	11	9	14	19	17	70
Titles	443	288	350	375	310	1,766
Unlicensed Dealer/Salesman	0	2	0	0	1	3
Miscellaneous	126	140	156	90	23	535
Warranty	46	35	29	89	50	249
Check/Draft	17	10	11	28	4	70
Insufficient Information	60	23	36	50	13	182
Unfounded	416	373	373	395	134	1,691
TOTAL	1,121	857	915	1,080	983	4,956

Compiled by the Colorado Department of Revenue's Auto Industry Division.

Investigations

The AID's Investigations Section consists of 11 investigators and a supervising investigator (Agent in Charge). Investigators are stationed in Denver, Colorado Springs, Fort Collins and Grand Junction. Complaints are assigned to investigators who frequently make contact with the complaining party and the dealer. Often, the investigator resolves complaints by facilitating communication between the parties. Investigation and compliance data indicate that no actionable violation (unfounded complaints) occurred in approximately 20 percent of the complaints filed with AID. A common underlying cause of the "unfounded" complaint is a form of buyer's remorse. This generally consists of a consumer having a change of mind or second thoughts about the transaction, and consequently wanting to unwind the deal after executing all necessary documents and contracts to complete the sale. Another example of a common unfounded complaint is a motor vehicle buyer who incorrectly believes that there is a three-day right of rescission.

The Board devotes time during each meeting to review and consider the investigation reports forwarded to it by the Investigations Section. After a briefing by the investigative officer, the Board discusses whether to initiate disciplinary action, request further investigation, or dismiss the complaint. The Board may also decide to offer a settlement to the respondent licensee. When settlement is offered, the licensee may either accept the settlement, make a counter offer, or request a hearing, which is currently held before the full Board.

The Investigations Section investigates complex regulatory and criminal complaints filed against licensees. The Investigations Section also investigates sales of motor vehicles offered by those who are not licensed. Investigators can pursue prosecution of criminal complaints or through administrative sanctions, through the issuance of a summons, or through direct filing with the local district attorney. The Investigations Section also investigates fraudulent titles, title documents, and permits and forgery of the aforementioned documents.

Examples of investigations include but are not limited to:

- Odometer fraud;
- Salvage fraud;
- Title fraud;
- Sale of a stolen vehicle;
- Failure to disclose material information; and
- Unlicensed vehicle sales.

The Investigations Section also provides training seminars to the public and industry in an attempt to prevent title, odometer, and salvage fraud; and provides training to licensees in proper title assignments, proper completion of required documents and advertising.

Chart 5 below, sets forth the types and numbers of actions and cases that the Investigations Section has handled in the past five fiscal years. The figures in this chart indicate that the number of cases handled by the Investigations Section is generally declining, although this is not true for all types and categories included in this data. Nonetheless, the total number of investigative actions in fiscal year 05-06 (934) is almost one-half of the total number of investigative actions taken in fiscal year 02-03 (1,759).

Chart 5 Investigation Summary

Type	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06	TOTAL
Advertising	0	1	3	3	5	12
Background/Record Check	0	0	0	0	0	0
Contract/Financing	66	80	61	33	38	278
Deposit	22	9	7	3	2	43
Equipment	6	1	1	0	5	13
False Statement/Application	8	5	7	5	2	27
Lease Contract	31	11	2	0	0	44
Misrepresentation	174	122	117	121	49	583
Odometer	79	68	54	51	22	274
Dealer Plates/Temporary Registrations	8	6	25	38	38	115
Repossession	1	3	9	2	0	15
Service of Process	38	28	36	13	8	123
Titles	542	267	364	175	259	1,607
Unlicensed Dealer/Salesman	405	350	336	315	207	1,613
Miscellaneous	35	50	38	13	15	151
Warranty	85	32	19	16	16	168
Check/Draft	41	38	31	22	21	153
Special Investigation	216	231	322	342	244	1,355
Other	2	5	1	6	3	17
Insufficient Information	386	303	305	313	128	1,435
Unfounded	146	122	144	97	87	596
TOTAL	1,759	1,307	1,433	1,158	934	6,591

Compiled by the Colorado Department of Revenue's Auto Industry Division.

Complaints/Disciplinary Actions

Complaint Process

The AID reports that prior to a complaint being filed with the Board, complainants frequently contact the dealership in question and try to resolve the problem. If the general manager or owner does not satisfactorily resolve the problem, a complaint is often filed with the Board and the AID.

The AID receives all complaints regarding motor vehicle dealers in written form, and reviews each complaint to determine jurisdiction and whether it is a criminal, investigative, or compliance matter. A copy of the complaint and a letter requesting a response in 10 days are sent to the dealer. If the complaint is resolved, the case is closed. If it is not resolved, then the complaint is entered and assigned to an investigator. The complaint is then collated along with a screen print of the dealer's history and given to the investigator. At this time, the Agent in Charge is notified of the open investigation. The investigator conducts the investigation and issues a preliminary report that is reviewed by the Agent in Charge. The Agent in Charge can either accept the report or reject the report and send it back for further investigation. Once accepted, the investigator issues the final written report, conclusion and recommendation.

Once the case is closed it is filed in a cabinet based on the case number, microfilmed to archives, and checked for accuracy and completeness. Finally, the documents are recycled and the film is filed. A chart highlighting this complaint process is attached in Appendix B on page 55.

**Chart 6
Complaint, Compliance Action and Disciplinary Action Summary**

Year	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06	TOTAL
Regulatory and Criminal Complaints Investigated and Completed	1,759	1,307	1,433	1,158	934	6,591
Founded Regulatory Complaints	1,228	881	987	752	721	4,569
Compliance Completed	1,121	857	915	1,080	983	4,956
Investigations Referred to Board	408	165	159	84	140	956
Disciplinary Actions by Board	200	144	212	67	187	810
Suspensions	8	6	14	0	13	41
Revocations	23	12	21	9	12	77
Probations	20	33	64	18	17	152
Stipulations	15	24	11	8	12	70
Fines	12	7	16	26	11	72

Compiled by the Colorado Department of Revenue's Auto Industry Division.

Chart 6 summarizes the total number of complaints received, both criminal and regulatory, the total number of compliance actions taken, the total number of investigations referred to the Board and the number of disciplinary actions taken by the Board. The AID notes that although some criminal complaints were handled by the AID, many of the criminal complaints investigated and completed were referred to local district attorneys for criminal prosecution. These criminal prosecutions are not included in the totals reflected in this chart. This chart also summarizes the sanctions imposed by the Board after referral from AID.

Investigation Process

After a full investigation, the investigator issues a final written report, conclusion and recommendation. If the investigator finds no violation, the case is closed and approved for closure by the Agent in Charge. If the investigator determines that a violation has occurred, one of five actions can be taken. First, the complaint can be referred to another agency that has proper jurisdiction over the matter, or if it is a criminal matter, the complaint can be directly filed with the appropriate district attorney. Second, a verbal warning may be given to the dealer for minor infractions. Once given, the case is closed upon approval by the Agent in Charge. Third, a written warning may be issued if the complaint has been resolved. This generally occurs when a dealer has had a pattern of similar violations. Once issued, a copy of the disposition is sent to the dealer and to the complainant, and the case is closed upon approval by the Agent in Charge. Fourth, the investigator can

recommend review by the Board. Once approved by the Agent in Charge, a probable cause affidavit is sent to the Board for a vote. If the Board votes negatively, staff closes the case. If the Board votes affirmatively, the matter is referred to the Attorney General's Office for prosecution, adjudicated, and closed by staff upon vote of the Board. Lastly, the complaint can be resolved by the dealer and dismissed by the Agent in Charge. A chart setting forth this process can be found in Appendix C on page 56.

Adjudication Process

Once the Board receives a probable cause affidavit from the AID, a copy is sent to the Board's Executive Secretary and Assistant Attorney General. The Board then reviews and discusses the complaint at the next monthly meeting. At the meeting, investigative staff will present and answer questions, and on occasion the Assistant Attorney General will give input or legal advice to the Board. After discussion, the Board takes action by "motion and resolution." The Board has four disposition options. First, if the Board needs more information, it will order further investigation by the AID. Second, the Board can make a finding of no probable cause, and the complaint will be dismissed. Third, the Board can find probable cause but choose to take no further action. Lastly, the Board can order a full hearing. In the event of hearing, the investigative report is sent to the Assistant Attorney General who drafts the charges and sends them to the Executive Secretary. The Executive Secretary then sends notice of the charges to the dealer and complainant. The dealer then generally has the option to settle or go to hearing. A settlement can be approved by the AID and then approved by motion and resolution by the Board, or the settlement can be directly approved by motion and resolution by the Board. If the dealer elects the hearing, a full hearing is conducted and the Board votes on the final outcome. The Board's decision is then binding on the parties. The case can be appealed to the Colorado Court of Appeals. If not appealed, the case is closed. A chart delineating this process can be found at Appendix D on page 57.

License Denials

Pursuant to section 12-6-118(3), C.R.S., a new or used motor vehicle dealer, a wholesale motor vehicle auction dealer, or a motor vehicle wholesaler's license may be denied, suspended or revoked based upon a violation of numerous specific statutory criteria. Some notable examples include:

- A material misstatement in a license application.
- Defrauding any buyer, seller, motor vehicle salesperson, or financial institution to that entity's detriment.
- The intentional or negligent failure to perform any written agreement with any buyer or seller.

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- Failure to furnish and keep in force any bond required for licensure.
 - Intentionally publishing or circulating any advertising which is misleading or inaccurate in any material particular, or which represents any of the products sold or furnished by a licensed dealer.
 - 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 regulatory authority pertaining to motor vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or motor vehicles.
 - 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 demonstrated purposes or which the dealer or salesperson knows is a used motor vehicle.

Pursuant to section 12-6-118(7)(a), C.R.S., any license issued by the Board, or a pending licensure application, must be revoked or denied if the licensee or applicant has been convicted of, or pleaded no contest to, a felony in violation of Article 3, 4 or 5, of Title 18 C.R.S., or a crime involving odometer fraud, salvage fraud, motor vehicle title fraud, or the defrauding of a retail consumer in a motor vehicle sale or lease transaction. These grounds for revocation or denial are called mandatory disqualifiers, due to the fact that the Board does not have the authority or discretion to override these statutory criteria.

Disciplinary Actions

Previous sunset reports were highly critical of the enforcement and disciplinary record of the Board. A review of enforcement and disciplinary actions indicates a substantial increase in the number of disciplinary actions taken. Between 1990 and 1996, the Board averaged approximately 46 disciplinary actions per year. Over the past five years, the Board has averaged over 180 actions per year, which encompasses all forms of actions including licensure matters such as license denials and probationary licenses.

Most regulatory agencies in Colorado refer disciplinary hearings to an administrative law judge (ALJ) or a hearing officer. The Board conducts all of the hearings itself, and does not refer hearings to ALJ's or hearing officers although the Board has the statutory authority to do so pursuant to section 12-6-119, C.R.S.

Section 12-6-118(5), C.R.S., delineates 16 specific grounds for discipline for licensed motor vehicle salespersons. Statutory offenses for which a license may be disciplined include fraudulent business practices, knowingly trafficking in stolen vehicles, odometer fraud, defrauding a retail buyer to such person's damage, or willfully violating any state or federal law respecting commerce or motor vehicles.

Section 12-6-118(3), C.R.S., establishes 18 individual grounds for discipline for licensed new, used and wholesale motor vehicle dealers. Statutory offenses for which a licensee may be disciplined (including license suspension or revocation) include fraud, misrepresentation, failure to perform, false or misleading advertising, illegal business practices, and violation of a Board rule or regulation. Individuals who act in the capacity of a licensee, but who are not licensed by the Board commit a violation of section 12-6-120(2), C.R.S., which is punishable as a Class 3 misdemeanor.

**Chart 7
Disciplinary Actions**

Fiscal Year	Number of Actions	Suspend	Revoke	Probation	Fine	Other	Fine \$ Collected
01-02	200	8	23	20	12	15	\$45,100
02-03	144	6	12	33	7	24	\$137,952
03-04	212	14	21	64	16	11	\$15,100
04-05	67	0	9	18	26	8	\$38,641
05-06	187	13	12	17	11	12	\$53,100

Compiled by the Colorado Department of Revenue's Auto industry Division.

Chart 7 delineates, by fiscal year, the number of total Board actions, and the amounts of fines actually collected. The figures and numbers in Charts 7 and 8, and numbers reflecting or dependent on the categories set forth in Board disciplinary actions are not considered reliable by the Department of Regulatory Agencies. The basis for this assertion is set forth in Administrative Recommendation 1. These charts were submitted by the AID as the best data that was available at the time requested, and consequently included in this report.

Only a small percentage of the "founded" complaints are referred to the Board for disciplinary action. When complaint investigations are referred to the Board, many are dismissed without a hearing. Chart 8 below, compares complaints, Board referrals, and disciplinary actions taken by the Board for a five fiscal-year period.

Chart 8
Complaint, Referral, and Discipline

Fiscal Year	Founded Complaints	Investigations Referred to Board	Disciplinary Actions By Board
01-02	1,228	408	200
02-03	881	165	144
03-04	987	159	212
04-05	752	84	67
05-06	721	140	187

Compiled by the Colorado Department of Revenue's Auto Industry Division.

An inquiry into a complaint is limited to alleged violations of motor vehicle laws. Examples of motor vehicle law violations could be:

- Failing to deliver title within 30 days of the sale.
- Failing to meet all terms and conditions contained in the written contract.
- Tampering with an odometer or giving a false odometer statement.
- Willfully misrepresenting or failing to disclose any information required by law.
- Intentionally publishing or circulating any advertising that is misleading or inaccurate.
- Selling vehicles that do not meet the safety and emission equipment requirements.
- Failing to give notice of approval or rejection on a finance deal to the customer within a reasonable time.
- Selling a salvage vehicle without proper disclosure.
- Selling a vehicle that is known to be stolen.
- Not maintaining a place of business and minimum operating hours.
- Selling a vehicle to a resident of the Automotive Inspection and Readjustment Program area without an emissions sticker.

Although many members of the public are uncertain of the scope of the Board's authority, there are certain circumstances that are not violations of the motor vehicle dealer law.

For example, the consumer does not have 72 hours to change his or her mind on a car deal. When the contract is signed, the vehicle is bought and sold as of the contract date. The dealer does not have to repair the vehicle after the sale when the vehicle is sold without a warranty and "AS IS," unless it is a specific safety item. However, a dealer must disclose known defects even if the vehicle is sold "AS IS." The Board cannot require a dealer to honor a verbal agreement. The consumer is provided a "State Disclosure Form" indicating that any verbal agreements are not enforceable.

Complaints concerning these issues will not be investigated. If any repair work was not part of a vehicle sales contract, it is outside the jurisdiction of the Board. The local district attorney does have jurisdiction over illegal actions by an automotive repair facility. A complaint concerning repair work may be filed with the appropriate district attorney's office. The Colorado Lemon Law applies only to new vehicles under one year old. It does not apply to used vehicles purchased by consumers who encounter repair problems.

The Board requires that complaints be in writing. A verbal complaint presented over the telephone, or in person cannot be accepted (unless reduced to written form).

The Board has jurisdiction to inquire into complaints in cases where a consumer has purchased a car, truck, trailer or motorcycle from a licensed Colorado dealer and a violation of the law has allegedly occurred. Also, the AID will investigate unlicensed sales activity. It does not have jurisdiction to inquire into a complaint between private parties.

When a complaint is received, it is assigned to a compliance specialist or investigator. During the course of the investigation, the AID may contact the complainant to discuss the issues raised and may also encourage the dealer to contact the complainant directly to resolve the complaint.

After receiving information from both parties, the AID or the Board determines if the facts support a violation of the law. The fact-gathering process generally takes about 30 days, depending on the complexity of the issue.

If it is determined that a violation of the law or Board rules and regulations did not occur, the complainant is notified.

If it is determined that a violation occurred, the dealer and complainant are notified. The AID often will attempt to mediate a fair resolution between the dealer and the complainant. The complainant is advised of the dealer's agreement and timetable to resolve the complaint.

Depending on the complaint, the AID may suggest pursuing civil remedies or recommend contacting another agency. Neither the AID nor the Board can order or direct a dealer to give a refund to a complainant. The dealer may make such an offer in an effort to resolve a complaint. The complainant may have to pursue a civil suit or claim against the dealer's bond to obtain a monetary resolution. A court judgment or the Board finding of a fraudulent conduct violation must normally support claims against a dealer's bond.

Upon conclusion of the process, the complainant is notified by telephone or in writing of the action taken. It typically takes approximately 30 days to complete the complaint resolution process. As previously indicated on page 27, Chart 6 indicates the number of complaints that were considered by AID to be founded, the number of those that were ultimately referred to the Board, and the number of complaints that resulted in a Board-ordered disciplinary action.

Analysis and Recommendations

Recommendation 1 – Continue the Colorado Motor Vehicle Dealer Board for five years, until 2012.

The legislative intent of the motor vehicle statutes is to protect the consumer and to create a feeling of confidence and trust in the dealer by the public. The complicated nature of the industry, the potential for consumer harm, and the actuality of consumer harm, substantiate the need for continuing oversight of the industry.

The structure of the motor vehicle industry is conducive to attracting a somewhat transient group of salespersons. The motor vehicle retail industry directly and indirectly generates over 33,000 jobs in Colorado, and Colorado residents earned in excess of \$1.6 billion in 2004 as a result of motor vehicle dealership operations. Each month, approximately 300 applicants are granted temporary licenses enabling these applicants to work as salespersons for up to 120 days prior to being actually approved or denied for licensure. The compensation package generally offered to salespersons includes a relatively small salary, coupled with commission income based upon sales. This type of pay structure pressures the salesperson to maximize sales in order to earn reasonable compensation. This increases the potential for salespersons to defraud or take advantage of consumers.

Without regulation, the consumer would be in a less equitable position and would have no way of resolving complaints except through an expensive and time consuming civil action. Although the significant number of complaints that are resolved prior to action by the Colorado Motor Vehicle Dealer Board (Board) indicates the importance of the Department of Revenue, Auto Industry Division's (AID's) Compliance and Investigations Sections in mitigating complaints, the Board also handles a large number of disciplinary actions yearly. Since the purchase of a motor vehicle is a major investment for a consumer that requires participation in a complicated contractual transaction (between the dealer and consumer), the need for Board oversight of the industry is well substantiated.

In order to promulgate effective regulations that cover specific practices in the industry, regulators must understand the day-to-day operations of new and used motor vehicle dealerships. This is important to ensure that regulations are written with clearly defined standards capable of consistent enforcement.

The purchase of a motor vehicle is one of the largest expenses that consumers incur, and motor vehicle dealers, and especially salespersons, are not held in high regard by the public. The questionable business practices of a minority of individuals can reflect negatively on the occupation as a whole. Although the general public may be largely unaware of the Board and its oversight of the motor vehicle industry, the Board provides a certain degree of protection for all consumers in Colorado involved in the purchase of a motor vehicle.

The recommendation to continue this Board until 2012 is based on the quality of data submitted by the AID, and the thought that this will improve over the next few years, thereby making the next sunset review more meaningful.

Recommendation 2 – Increase the surety bond required of new and used motor vehicle dealers to \$50,000.

There are some transactions that cannot be resolved between the consumer and the motor vehicle dealer (e.g., the dealer may not agree to settle a dispute with a consumer, or the dealer may be out of business). Consequently, every Colorado new and used motor vehicle dealer is required to be covered by a \$30,000-surety bond, which is available for consumer reimbursement of any loss or damage suffered as a result of a dealer's misrepresentations or fraudulent activities. The cost of the dealer bond is generally \$300 per year (or one percent of the bond amount) for a \$30,000-bond.

Generally, most states require that motor vehicle dealers secure a surety bond to offer financial protection to consumers in the event that the licensed motor vehicle dealer (new or used) has financial difficulties, or is unable to produce title or fulfill other requirements necessary to complete a transaction. In Colorado, this bond requirement is governed by section 12-6-111, Colorado Revised Statutes (C.R.S.).

The following is a summary highlighting the bonding requirements of the states located in Colorado's general Rocky Mountain/Western United States geographic area.

Arizona

A surety bond of not more than \$50,000 for each type of license for each county where dealer has established business; required for each location.

California

A \$10,000-bond is required.

Idaho

A \$10,000-bond is required for motorcycle, all-terrain vehicles and snow machine dealers; \$20,000 for all others.

Iowa

A \$50,000-surety bond must be filed.

Kansas

A \$30,000-bond is required.

Missouri

A \$25,000-corporate surety bond is required.

Montana

Franchised dealers, used motor vehicle dealers, recreational vehicle dealers, auto auctions, wholesalers and trailer dealers who sell mobile homes, house trailers and commercial trailers exceeding 6,000 pounds gross vehicle weight are required to post a \$25,000-bond. Wholesaler and trailer dealers selling trailers under 6,000 pounds gross vehicle weight and motorcycle dealers must post a \$10,000-bond.

Nebraska

A \$25,000-bond is required.

Nevada

A \$50,000-surety bond is required.

New Mexico

A \$20,000-corporate surety bond is required for auto dealers, salvage dealers, manufacturers, mobile home dealers and motorcycle dealers. A \$12,500-bond is required for motorcycle dealers; no bond for boat dealers.

North Dakota

All motor vehicle dealers are required to maintain a \$25,000-surety bond. All mobile home trailer and motorcycle dealers must maintain a \$10,000-surety bond.

Oklahoma

A \$15,000-bond is required for used motor vehicle dealers.

A \$25,000-bond is required for wholesale dealers.

Oklahoma-licensed salesmen are required to maintain a \$1,000-bond.

Oregon

A \$40,000-bond is required.

First \$20,000 of bond is available for claims by business entities and consumers. Any value over \$20,000 is only available for claims by consumers.

South Dakota

Motorcycle Dealers– A \$5,000-bond is required.

Trailer Dealers – A \$10,000-bond is required.

Mobile/Manufactured Home Dealers – A \$25,000-bond is required.

Snowmobile Dealers – A \$5,000-bond is required.

Boat Dealers – A \$20,000-bond is required.

New and Used Car Dealers – A \$25,000-bond is required.

Texas

A \$25,000-surety bond is required for motor vehicle, motorcycle, wholesale, and wholesale auction dealers for the licensed period unless the dealer is a franchised dealer or trailer dealer.

Utah

A \$75,000-corporate surety bond is required for new or used vehicle dealers. A \$1,000-corporate surety bond is required for new or used motorcycle or small trailer (750 pounds unladen weight or less) dealers.

Washington

A \$30,000-bond is required for motor vehicle dealers.

Wyoming

A \$25,000-dealer bond is required.

Increasing the Colorado bond requirement to \$50,000 would make Colorado's bond one of the higher bonds required in the surveyed area. However, Colorado would not be the only state to require a bond in this amount. Utah now requires a bond in the amount of \$75,000. Nevada, Arizona, and Iowa currently require a \$50,000-bond. The financial protection provided to the public is enhanced with a higher bond amount.

The AID has indicated that, in many instances, the amount of damages or loss to consumers has far exceeded the current surety bond of \$30,000. Chart 9 below consists of a summary of eight individual dealerships over the past two years whose surety bonds were insufficient to cover the financial losses of their retail customers. The worst of these situations was a dealership that was unable to provide either the purchased vehicle, or title to said vehicle in 22 individual transactions. The total deficiency to consumers amounted to \$381,042.28, with this dealer also defrauding its financial lender in the amount of \$182,431.98.

**Chart 9
Bond Deficiencies**

Dealership	Number of Vehicles (Defaulted)	Damages	Deficiency
1	2	\$42,751.00	\$12,751.00
2	1	\$44,284.88 ⁴¹	\$14,284.88
3	9	\$239,712.97	\$209,712.97
4	10	\$107,429.69 ⁴²	\$77,429.69
5	8	\$43,178.83	\$13,178.83
6	12	\$123,929.00 ⁴³	\$93,929.00
7	22	\$563,474.26 ⁴⁴	\$533,474.26
8	6	\$45,191.79	\$15,191.79
Total	70	\$1,209,952.42	\$969,952.42

Compiled by DORA based on data received from the Colorado Department of Revenue.

An important factor relating to the surety bond is the escalating price of motor vehicles, both new and used. As the prices of motor vehicles rise, so must the surety bond amount increase to maintain a fair and reasonable reserve to compensate innocent consumers who have lost money due to a dealer's misrepresentation or fraudulent activities.

Nationally, franchised new motor vehicle dealers sold almost 20 million used cars in 2005. The average retail price of a used motor vehicle was \$14,925. The average retail-selling price of new vehicles nationally increased approximately \$8,000 between 1995 and 2005. The average retail-selling price for new cars in 1995 was \$20,450, and in 2000 the amount rose to \$24,900. The 2005 average retail-selling price of new vehicles was \$28,400, (only \$1,600 below the current motor vehicle dealer bond requirement), demonstrating a steady and consistent increase in new vehicle prices over the past 10 years. The average selling price of a new vehicle increased by 1.8 percent between 2003 and 2004, and 1.1 percent between 2004 and 2005.⁴⁵

Although this increase in the bond amount will not prevent consumer harm in many of the situations noted above, it will afford an increased degree of protection to most Colorado consumers.

⁴¹ Includes approximately \$30,000 deficiency relating to tax owed.

⁴² Includes approximately \$23,000 deficiency for failure to make pay-off.

⁴³ Includes \$56,312.53 deficiency for defrauding floorplanner (lender), etc.

⁴⁴ Includes approximately \$183,000 deficiency for defrauding floorplanner.

⁴⁵ Economic Impact of America's New-Car and New-Truck Dealers, DADA Data, 2006, p. 11, available at www.nada.org/Content/NavigationMenu/Newsroom/NADADData/20062/Nada_Data_2006.pdf. Viewed August 23 and September 29, 2006.

Recommendation 3 – Delete the \$5,000-surety bond required for new and used motor vehicle salespersons.

The current surety bond for new and used motor vehicle salespersons is \$5,000, as set forth in section 12-6-112(1), C.R.S. The fee for this bond is approximately \$50, or one percent of the bond amount. With the price of new and used cars escalating yearly, it is apparent that a \$5,000-bond is not an adequate protective device for consumers. The motor vehicle dealers must maintain a bond in the minimum amount of \$30,000, which is accessible in a similar fashion to a salespersons bond, by a finding of misrepresentation or fraudulent activity.

The AID does not have records to indicate that a single salesperson's bond has been opened or accessed over the past five years. The two largest issuers of salesperson surety bonds in Colorado indicate that fewer than one salesperson bond was opened in each year during the past five years, and that almost every party seeking to open the salesperson's bond was an employer-dealer. One motor vehicle dealer member of the Board attempted to open and access an employee's bond several years ago. However, the process became too expensive and time-consuming to complete, and the attempt to open the bond was subsequently abandoned by the dealer. Consumers who have been the subject of a dealership's fraudulent activities generally try to open and access the dealer's \$30,000-bond, as the larger amount of the bond offers greater compensation to provide for the related expenses necessary to make the consumer whole.

Some new and used motor vehicle dealers are supportive of the salesperson's bond, as the bonding requirements for salespersons seem to shift the cost for questionable employment practices from the dealership to the bonded employee. However, retail consumers rarely receive any compensation from this bond. Even if a consumer did make a claim on a bond, the costs for recovery would possibly exceed the maximum amount of this bond.

However, eliminating this bond requirement for salespersons does not diminish public protection, nor does it prevent a dealer from requiring that salesperson employees obtain a bond as a condition of employment. This, in effect, may benefit those dealerships that have higher standards for their employees. Consequently, the recommendation is to delete this bond requirement, because it offers inadequate, unnecessary, and duplicative protection to consumers and the public.

Recommendation 4 - Modify the composition of the Board by replacing one new motor vehicle dealer member and one used motor vehicle dealer member with a Colorado county clerk and an individual employed as an executive in the financial lending sector.

The purpose of a board consisting of a mixture of public and industry members is to provide a balanced set of regulations to effectively protect the public without unnecessarily interfering with the business operations of the industry. Currently, two-thirds of the Board's membership is actively involved in the retail sales of motor vehicles, with one-third of the Board new motor vehicle dealers, and one-third used motor vehicle dealers. The general purpose of industry-based Board members is to include a degree of industry-related knowledge and expertise to assist the Board in its functions of licensing and discipline of licensees. In fact, many Board meetings in 2006 were opened by the president of the Board, a public member, expressing her appreciation to the Board's industry members for sharing their insights into the workings of the motor vehicle sales industry.

The current Board members are commendable in terms of their time commitment and sense of responsibility to the industry and public. They typically spend at least two full days a month responding to administrative issues and acting as hearing officers. The Board members appear to take their responsibility to oversee the motor vehicle industry very seriously, although many types of licensees are not represented on the Board, including wholesale motor vehicle auction dealers and wholesalers, and motor vehicle salespersons.

Industry representatives, particularly the new and used motor vehicle dealer associations, believe that the motor vehicle industry should have a majority of representation on the Board. This belief is based on the premise that it is their industry that is greatly impacted by Board decisions. Although this is true, the motor vehicle industry may sometimes lose sight of the underlying function of the Board, to protect the consumer and the public. Many states have boards that are dominated by public members, and one state, Texas, allows only public members on its board.

Although it is critical for the Board make-up to contain individuals with an understanding of the industry, and share that necessary expertise, it is also critical to have balanced representation on the Board of consumers and other professions that interact and transact business with the motor vehicle industry. Therefore, it is recommended that the Board membership be modified by replacing one new and one used motor vehicle dealer member with a Colorado county clerk, and an individual who is employed by and has expertise in the motor vehicle financing sector in Colorado.

The Board typically receives consumer complaints relating to many areas of the industry. The most common complaint involves problems dealing with the motor vehicle dealer failing to deliver title to a consumer after the contract for sale has been executed, and possession of the vehicle has been transferred to the consumer. There are a variety of reasons that a title could be delayed or not transferred expeditiously to a consumer. Dealers allege that often financial institutions do not release the title or lien on the title in a timely manner. Consumers themselves sometimes mislead dealers as to the accessibility of their titles when trading in a used car as part of the sales transaction. Another reason is that some titles must transfer from another state.

Although these reasons are all somewhat valid, the complaint that the Board experiences more than any other is the dealer who cannot, or will not, provide title to the consumer after the sales contract is in effect. Used motor vehicle dealers are almost always involved in these situations, and frequently harm the consumers financially by not providing good title after the consumer has taken possession of the vehicle in question. This prevents the consumer from acquiring license plates and registration documents, and does not allow the consumer to sell the vehicle in the future. The underlying obstacles in providing good title are often financial in nature, that is, the dealer does not have sufficient working capital to acquire the title from the financial lender. A typical situation that the Board encounters is a dealer that has financially overextended itself, and utilizes a current customer's payment to payoff and acquire title for a previous customer.

In general, penalties imposed on new motor vehicle dealers are more lenient than those imposed on used motor vehicle dealers. In some contexts this is an appropriate exercise of Board authority. When a new motor vehicle dealership is accused of violating Colorado motor vehicle laws, it often enters into a voluntary stipulation with the Board that will ultimately make the consumer whole, even though a low-level employee may have caused the transgression. However, in Board actions relating to used motor vehicle dealers, the transgressor is frequently the owner-dealer, who is also the salesperson. Although many used car complaints are resolved by stipulation, there are many instances where the used motor vehicle dealer does not have the financial ability to resolve the complaint by, among other things, making the consumer financially whole. The guiding principal is to protect the public now, and in the future.

Some Board members have expressed a general lack of understanding as to what occurs behind the scenes at lending institutions and the county clerk's office, where the title is actually issued to the consumer.

Consequently, this recommendation is to add the knowledge and expertise of these two institutions to the Board, without losing the expertise provided by industry members. Replacing one new and one used motor vehicle dealer Board member with a county clerk and financial lending expert increases the Board's areas of relevant expertise, while still retaining the knowledge of four members of the motor vehicle retail sales industry.

Recommendation 5 - Require the Board to utilize administrative law judges to conduct motor vehicle dealer licensure and disciplinary hearings, and Department of Revenue hearing officers to conduct salesperson licensure and disciplinary hearings.

A summary of the primary benefits associated with this recommendation is as follows:

- Better use of Board time to address regulatory and policy issues;
- Increased protection of licensees' due process rights;
- Increased consistency in Board disciplinary decisions; and
- Reduction in legal conflicts and fewer appeals.

Individual Board members frequently cite the Board's heavy caseload as their rationale for the Board's failure to allocate time to address public policy and regulatory issues. At most Board meetings, a policy or regulatory issue that needs to be considered and addressed is the subject of some degree of discussion, frequently without an adequate resolution. Nevertheless, the Board spends countless hours at each meeting hearing appeals of license denial matters and routine disciplinary cases.

Although care must be exercised so as not to adversely affect an applicant's due process rights, appeals of staff licensure decisions should be conducted by hearing officers experienced in interpreting regulatory statutes and standards. Disciplinary actions of current licensees should be addressed in a similar manner. Relatively simplistic dealer licensee cases, or cases dealing with salesperson licensure, should be referred to a Department of Revenue (DOR) hearing officer. Cases relating to an alleged, potentially serious, or complicated transgression of a licensed motor vehicle dealer should be referred to an Administrative Law Judge (ALJ), either at the Department of Administrative Hearings (DOAH), or an ALJ sitting at the DOR. To ensure fairness and lack of bias, all hearing officers and ALJ's should be randomly selected to hear individual cases.

Numerous benefits to the Board would occur by utilizing the services of professional hearing officers, despite the fact that the Board would still retain the ultimate authority for imposing discipline on licensees, and deciding on licensure issues of new applicants.

During the course of this sunset review, a representative of the Department of Regulatory Agencies (DORA) attended numerous Board meetings, and the Board held many disciplinary and licensing hearings at those meetings.

At every one of these hearings, the Assistant Attorney General (AAG) who normally advises the Board on legal matters represented the state at the hearing before the Board. While this is not unusual, what is unusual is the absence of conflicts counsel. Conflicts counsel is simply another AAG who assumes the role of advisor to the Board. This is necessary because of the inherent conflict that arises when the Board's customary counsel is prosecuting a case before the body that that AAG normally advises.

In such a case, conflicts counsel provides legal advice to the Board during the course of the hearing. Such advice may be substantive or procedural. Regardless of the type of advice given, it is essential to the due process rights of the licensee, that is the respondent in such a hearing, that the individual prosecuting the case against the licensee not be providing legal advice to the adjudicatory body.

In a proper hearing, then, the Board's customary AAG plays the role of prosecutor by representing the state (the AID), the licensee and the licensee's counsel play the role of defendant, the Board plays the role of adjudicator and conflicts counsel provides legal advice to the Board. The roles of the AAGs, the Board and the AID are separate, clear and distinct.

However, based on interviews conducted by a representative of DORA with various industry and Board members, and based upon this representative's own observations, conflicts counsel has generally not been present at Board hearings. From December 2005 through April 2006, conflicts counsel from the Attorney General's Office attended only two meetings. This created situations where the Board had to rule on complicated legal objections and issues without the benefit of independent legal counsel.

Some Board members do not appear to have a clear understanding of the legal role of the Board or related Colorado laws. For example, Board members have indicated that they do not understand when and how to declare and enter into an executive session, or when and what to do if a conflict develops during a session. Board members also unknowingly ask witnesses or respondents inappropriate questions. In at least one instance, a salesman who was initially denied a license for failure to include his past criminal convictions on his application for licensure was asked if he had children, and if he supported those children. The applicant answered affirmatively to both questions and was granted a license. Although this applicant may have been granted a license regardless of this query, the inference was that licensure was, at least partly, granted based on factors outside of the stated licensure criteria.

Indeed, the reason for conflicts counsel became apparent as a result of these observations. During the course of several hearings, Board members, who, with one exception are lay people, occasionally inquired of the Board's AAG, who was prosecuting the case, and AID's staff, who was sitting at the same table as the AAG, numerous legal questions. In general, these questions pertained to legal options available to the Board, procedural issues, and the legal consequences of various possible actions.

These types of behaviors and actions are unacceptable for a state board. The due process rights of the licensee involved are potentially compromised when the agency seeking to deny, revoke or otherwise discipline the licensee tells the adjudicator what to do. This does not constitute a fair hearing for due process purposes.

Additionally, it is unfair and unrealistic of the state to expect lay people, such as the Board members, to possess the knowledge and expertise to hold a legally sufficient hearing. Rulings pertaining to the examination of witnesses, discovery and other legal motions can be complicated even for well-versed lawyers and jurists.

While it is true that most policy autonomous boards and commissions in state government have the authority to hold hearings or to refer such hearings to an ALJ, the vast majority of those bodies refer the hearings to an ALJ because of the reasons cited herein.

Therefore, the Board should refer all hearings pertaining to licensing matters to a hearing officer or to an ALJ. Under such a system, the prosecuting AAG would represent the AID before the ALJ, and the ALJ makes and issues findings of fact, conclusions of law and recommended disciplinary sanctions. If either the AID or the licensee disagreed with the ALJ's decision, either party could file exceptions with the Board within the timeframes outlined in the Administrative Procedure Act. The Board could then uphold or alter the ALJ's decision, thus rendering a final agency action. If neither party filed exceptions, the ALJ's decision would become the final agency action by operation of law at the end of the specified time period. The final agency action could then be appealed to the Colorado Court of Appeals.

This process is more professional than the process currently utilized by the Board, and is entirely in line with other programs in state government.

Since the Board has the authority to hold hearings, and since the Board's hearings have raised serious concerns regarding due process, the Board should refer all licensure and disciplinary hearings to ALJs or hearing officers.

Another benefit of using ALJs and hearing officers is that the Board would have more time to consider important policy and regulatory matters since it would not spend most of the meetings listening to witness testimony in hearings. In fiscal year 05-06, the Board remained in the Board hearing room in the course of a regularly scheduled hearing until 3:00 a.m., deliberating a case whose testimony ended shortly before midnight. Several months later, the Board deliberated the facts of a case until after 10:00 p.m. This is obviously not a proper utilization of time and resources. One problem with the Board acting as adjudicator is that some cases, by necessity, get continued due to time constraints or witness schedules. However, because of considerations relating to quorum requirements and attendance continuity, continuing cases during the testimony portion could lead to undesirable allegations of due process violations, as individual Board members might have missed various portions of the hearing that contained important testimony. When Board members miss a portion of a hearing, they must either recuse themselves from the proceeding, or spend an unreasonable amount of time becoming familiar with the facts of the case, which could lead to an allegation of a violation of due process.

Board meetings are impacted by the attendance of Board members. A majority of the members is necessary to constitute a quorum. Although no Board meetings were cancelled during the past two years as a result of lack of a quorum, one lengthy hearing was potentially compromised when only five Board members attended, and one member indicated that a conflict existed after the hearing closed. The best attendance records for the past three years have been by the public members of the Board. The worst attendance record has been by the new motor vehicle dealer members, and one new motor vehicle dealer missed seven of 17 meetings in fiscal year 05-06.

Review of Board Actions

The Board has the statutory authority to investigate complaints through the Executive Director of the Department of Revenue, order an administrative hearing on the showing of probable cause, summarily issue cease and desist orders, conduct hearings, and issue fines. The Board also has the duty 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 pursuant to section 12-6-104(3)(n), C.R.S.

Over the past five years the Board has taken approximately 810 disciplinary actions. A sampling of these disciplinary actions reveals that the Board has not developed rules, regulations or guidelines to ensure that licensing criteria and administrative penalties are equitably assessed. As set forth in the cases below, the Board has been inconsistent in ruling on the disposition of cases.

Case 1: New vehicle dealer added dealer and handling costs to the advertised price of a vehicle, violated advertising rules, and defrauded a retail buyer. The dealer was ordered to return the dealer and handling costs, and fined \$1,000 with a one-day license suspension. However, \$750 and the suspension were held in abeyance for a three-month probationary period.

Case 2: New vehicle dealer entered into a buyer's contract and failed to pay the \$22,000 and \$26,000 contract amounts. The dealer was fined \$20,000 with a three-month suspension. However, \$19,500 and the suspension were held in abeyance for a three-month probationary period.

Case 3: New vehicle dealer sold a used vehicle with 600 miles as a new vehicle, thus defrauding the buyer. The dealer was fined \$5,000 with no issuance of reprimand. However, \$4,000 was held in abeyance for a 60-day probationary period.

Case 4: New vehicle dealer was found guilty of 16 counts of failing to properly advertise. The dealer was fined \$22,000 with a one-day suspension. However, \$16,500 was held in abeyance for a six-month probationary period.

Case 5: Used vehicle dealer failed to pay for six vehicles and failed to disclose a salvage vehicle. The dealer's license was revoked and fined \$50,000, with \$45,000 held in abeyance if restitution was made to sellers.

Case 6: Used vehicle dealer failed to deliver title on seven vehicles. The dealer's license was revoked and the dealer was fined \$80,000.

Case 7: Used vehicle dealer was found guilty of 20 counts of failure to deliver title and 52 counts of non-sufficient funds. The dealer's license was revoked and the dealer was fined \$720,000 after the company had declared bankruptcy.

Case 8: Used vehicle dealer - was found guilty of two counts of failure to deliver title, one count of failure to pay for a vehicle, and one count of failure to perform a contract. The dealer's license was revoked and the dealer was fined \$90,000.

Case 9: New vehicle dealer failed to disclose a salvaged vehicle, thus defrauding the buyer. The dealer was fined \$15,000. However, \$14,550 was held in abeyance for a six-month probationary period.

Case 10: New vehicle dealer was found guilty of four counts of failure to pay and deliver title. The dealer was fined \$40,000. However, \$38,000 was held in abeyance for a one-year probationary period.

Based on the above representative cases, it is arguable that the Board is not disposing of cases equitably in all situations. Used vehicle dealers are more likely to be subject to the maximum fine, with a small portion, if any of the fine held in abeyance. In a majority of the cases with large fines, the used vehicle dealers, if not already closed, are forced out of business by the amount of the fines. The Board's position has been that heavy fines are meant to keep problematic dealers out of the business.

In comparison, new vehicle dealers face high fines; however, a majority of the fine is held in abeyance for a short time period. In comparison, used motor vehicle dealer's who may have already gone out of business tend to be subject to license revocation and a hefty fine that the Board is likely to never recover. The utilization of impartial ALJ's and hearing officers would, at the least, ensure that disciplinary actions are fair and unbiased.

In summary, Board benefits for using ALJ's and hearing officers include a reduction in legal conflicts, consistency of decisions, fewer appeals, and appropriate utilization of allocated time parameters.

Recommendation 6 - Require that the Board prepare, and all licensed dealers in Colorado include in the sales contract packet, a brochure providing consumers with information on how to contact the Board, and the extent of the Board's authority.

Board members, AID staff, and industry representatives frequently commented that many consumers do not even 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 about the motor vehicle industry than the Board is now experiencing.

The AID 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. There is no active program in place to make consumer information widely available to the active consumer or the general 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, motor vehicle dealer obligations, and how to access the complaint process would go a long way in educating the public at the most opportune time, before the purchase is complete. The same educational materials should be available to the public at the county clerk (when renewing plates), and various driver's license offices statewide.

Recommendation 7 – Authorize the Board to deactivate a dealer license by mail, if a licensee fails to maintain a required bond.

Currently, licensees whose surety bond has lapsed or is cancelled must proceed through the Board's disciplinary process. This is an expensive and time-consuming use of Board resources. Since maintaining a statutorily required surety bond is a requirement of licensure, the appropriate sanction is the suspension of the license until such time as the bond is reinstated or renewed. The license suspension in such circumstances is the only way to financially protect motor vehicle purchasers.

This recommendation is to allow the Board to immediately and administratively suspend the license of a licensee until the required bond is back in effect. No motor vehicle sales would be allowed to occur during the suspension period.

Recommendation 8 – Repeal the requirement that dealers and salespersons pass the current mastery exams as a condition of licensure.

The current mastery examinations (Salespersons Mastery Examination and Dealer and Wholesaler Mastery Examination) consist of 41 multiple-choice and 10 fill-in-the-blank questions. The exams are open book exams. Nonetheless, the procedure allows the examination administrator⁴⁶ to provide the correct answers to the applicant in the event that the applicant is unable to correctly answer the question. Consequently, the pass rate is 100 percent. This procedure makes the exams fundamentally meaningless. The established licensure criteria does not require that an applicant have any education or experience in the industry as a prerequisite for licensure. The 100 percent passing score generates a false sense of security.

⁴⁶ The examination administrator is usually a designated employee of the hiring dealership.

One factor for requiring this type of examination is to ensure that the applicant has acquired the knowledge necessary to comply with state laws and regulations. This testing process is intended to heighten the applicant's abilities to provide quality services to the public. These examinations do not require that an applicant study written material, such as Board and industry rules and regulations, in order to pass the exam with the required 100 percent score. The general retention process to obtain and remember knowledge relating to the appropriate motor vehicle laws and regulations requires a degree of study and memorization, which is not necessary for these open-book examinations. This is especially evident in light of the authority of the examination administrator or AID employee to provide the correct answers to the applicant.

Recommendation 9 – Modify the statutory requirements of a licensed wholesale motor vehicle auction dealer to permit a licensee to provide auction services of government owned vehicles to the public.

In 1997, the federal government awarded a Colorado-licensed wholesale motor vehicle auction dealer with its contract to sell federal General Services Administration used vehicles at auction. The contract requires that the vehicles be offered for auction sale to the public. In Colorado, wholesale motor vehicle auction dealers may not sell vehicles to the public.

To facilitate this contractual agreement, the Colorado dealer obtained a used motor vehicle dealer license from the Board in addition to its wholesale motor vehicle auction dealer license. However, Colorado does not allow a licensee to maintain two separate licenses at the same location. If the wholesale motor vehicle auction dealer cannot fulfill the obligations set forth in the contract, because of this restriction, the federal government would have no alternative but to transfer the contract to an auctioneer in another state, thereby depriving Colorado of the associated tax revenue.

The statutory modification is recommended to allow a wholesale motor vehicle auction dealer to sell only government-owned vehicles to the general public separate and distinct from the regular auction sale to dealers and wholesalers. The statutes should be amended as follows:

Section 12-6-102(17.5) C.R.S.

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, **except that such license shall also permit a licensee to engage in the activities of an auction service solely in connection with the sale of government-owned vehicles to consumers at a time that is different from and does not conflict with the wholesale motor vehicle auction dealer's customary wholesale motor vehicle auction.**

Classes of Licenses, section 12-6-108(1)(h)(I), C.R.S.

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, **except that such license shall also permit a licensee to engage in the activities of an auction service solely in connection with the sale of government-owned vehicles to consumers at a time that is different from and does not conflict with the wholesale motor vehicle auction dealer's customary wholesale motor vehicle auction.** A wholesale motor vehicle auction dealer shall abide by all laws, rules, and regulations of the state of Colorado.

Recommendation 10 – The AID and the Board should develop and utilize a viable and consistent set of compliance and disciplinary standards by January 1, 2008.

Some industry representatives and Board members interviewed for this report indicated that AID investigators occasionally intimidate licensees into resolving disputes, and further suggest that investigators exceed their authority. Some Board members feel investigators do not provide them with all the information necessary about licensees to facilitate effective regulation of the industry. Some investigators interviewed for this report believe the Board does not support their regulatory efforts.

The Board is required by section 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.

The Board may not have had sufficient time to adequately address this mandate since so much of the Board's time is spent in the hearing process. Individual Board members have indicated that they would be more than willing to tackle the "big issues" if they had sufficient time.

Compliance with this recommendation should be accomplished no later than January 1, 2008. The guidelines developed as a result of this recommendation should be reviewed and evaluated at least every five years after their drafting and acceptance.

Recommendation 11 – Clarify section 12-6-104(3)(a), C.R.S., which inadvertently authorizes the Board to repeal reasonable rules and regulations.

A primary function of the Board, as delineated in section 12-6-104(3)(a), C.R.S., setting forth the Board's powers and duties, is:

To promulgate, amend, and repeal reasonable rules and regulations relating to those functions the [B]oard is mandated to carry out pursuant to this [P]art 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 [S]tate of [C]olorado as it deems necessary.

Although the Board has the authority to promulgate, amend or repeal rules and regulations, this statutory reference suggests that the Board's powers include repealing reasonable rules. However, this recommendation does not seek to prevent the Board from amending or repealing rules and regulations, rather it seeks to clarify that the Board is not expected or required to repeal reasonable rules and regulations. Consequently, this provision should be rephrased to clarify this apparent misstatement.

Administrative Recommendation 1 – Maintain computerized and accurate records of all Board actions, licensing and bond activity, statistics, and other information and data.

Sunset criteria direct that the sunset review evaluate complaint, investigation, and disciplinary procedures to determine if the public is adequately protected by the regulatory scheme and if complaint disposition and final agency actions are self-serving to the profession. This is an important area of evaluation because the Board is dominated by industry representatives and regulatory programs are often "captured" by the industry in such scenarios. When a regulatory program is captured by the industry that it is supposed to regulate, the public suffers because the government offers little or no recourse when statutes and regulations are violated. In some cases, competition can be stifled as the industry-driven regulatory authority uses the police power of the state to distort the market.

This sunset review of the Board cannot opine with reasonable surety on the Board's performance relative to the criteria mentioned above because of insufficient recordkeeping by the AID. During the course of this review, the AID was unable to provide accurate, consistent, and comprehensive data reflecting basic program measurements such as number of complaints, final dispositions, grounds for complaints and so forth. Numerous members of the AID's staff, including senior management, were dispatched to accumulate requested data manually by accessing hard copies of data through different sources. It appears that the data retrieval system, and not the AID staff, may have resulted in the inconsistency of the data provided.

As an example of the insufficient or inconsistent data supplied to DORA by the AID, the following two charts are presented below. This data was submitted to DORA by AID in response to requests for information and data relating to the Board's disciplinary actions. Chart 7, which appears on page 30 of this report and is recreated here, was submitted by AID on July 28, 2006, after a lengthy search, by a team of AID staff members, of hard copies of Board and AID data.

**Chart 7
Disciplinary Actions**

Fiscal Year	Number of Actions	Suspend	Revoke	Probation	Fine	Other	Fine \$ Collected
01-02	200	8	23	20	12	15	\$45,100
02-03	144	6	12	33	7	24	\$137,952
03-04	212	14	21	64	16	11	\$15,100
04-05	67	0	9	18	26	8	\$38,641
05-06	187	13	12	17	11	12	\$53,100

Compiled by the Department of Revenue's Auto Industry Division.

Due to the fact that the number of Board actions did not equal the total number of specific actions (revocation, suspension, etc.), DORA requested an explanation as to the inconsistencies of the submitted data. The response from the AID was received by DORA on August 23, 2006, in the form of Chart 10. Immediate concerns arose at DORA due to the apparent inconsistencies between the numerical figures contained in the two sets of submitted data.

**Chart 10
Disciplinary Actions**

Fiscal Year	Board Action Totals	Probationary License	Denials	Revocations	Suspensions	Admin. HR	Stipulation	Other
03-04	176	29	91	9	15	22	7	3
04-05	163	14	115	4	4	10	15	1
05-06	178	10	149	0	11	2	3	3

Compiled by the Department of Revenue's Auto Industry Division.

Such program measurements are fundamental to effective management of a regulatory board and should be available in a standardized, easily retrievable format. The data is subject to the state's open records laws and it is therefore imperative that the data be accurate and consistent.

This review recommends that the AID create and implement a data management system to track all aspects of the complaint, bonding, licensure, and disciplinary process.

In addition to this general administrative recommendation, it must be noted that the Board, the AID, and their administrative staff have failed to keep current and accurate documentation of the number, amount, and distribution of both the dealer and salesperson bonds that were opened, accessed, and distributed as a result of motor vehicle dealers' fraudulent conduct. Section 12-6-112.7, C.R.S., requires that all corporate surety companies providing a bond for a Board licensee must provide this information to the Board within 30-days of when the claim is honored. Again, this data should be maintained in an appropriate storage facility thereby facilitating swift and accurate retrieval upon demand.

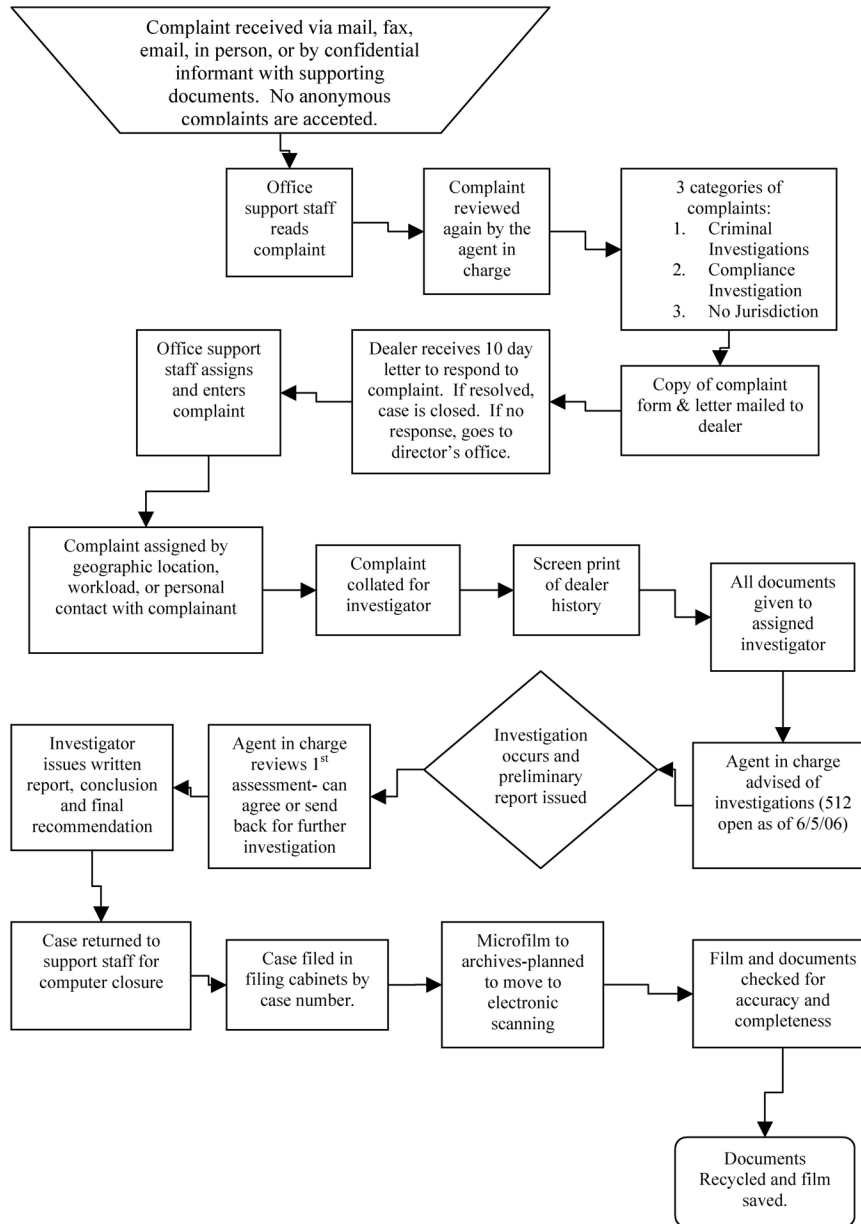
Appendix A – Sunset Statutory Evaluation Criteria

- (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 not 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 the public interest.

Appendix B – Complaint Process

Motor Vehicle Dealer Enforcement Process: Complaint

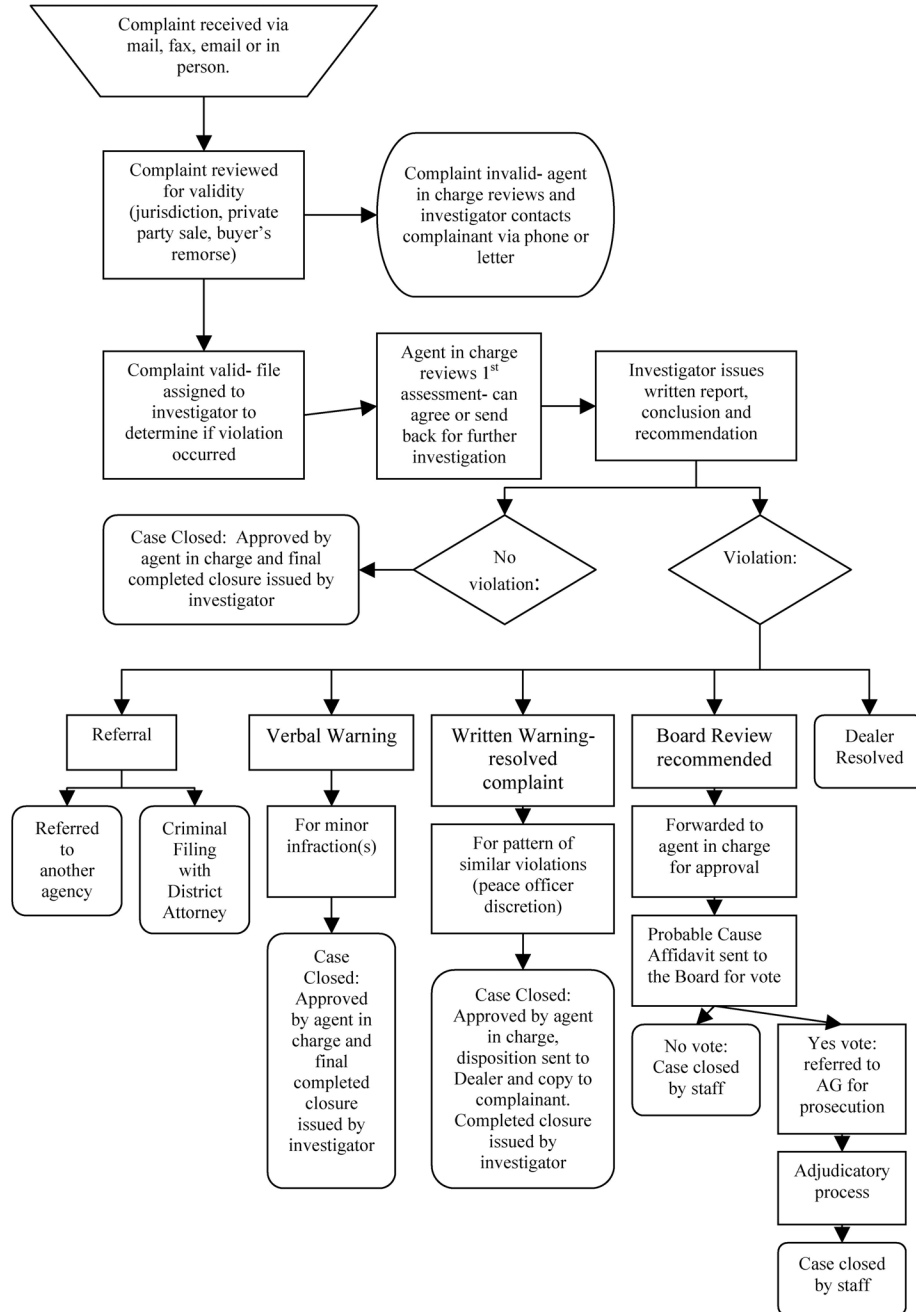
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Appendix C – Investigation Process

Motor Vehicle Dealer Enforcement Process: Investigation

2006



Appendix D – Adjudication Process

Motor Vehicle Dealer Enforcement Process: Adjudication

2006

