

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

LICENSING FUNCTIONS OF THE
EXECUTIVE DIRECTOR OF THE
DEPARTMENT OF REVENUE
RELATED TO MOTOR VEHICLE
MANUFACTURERS AND
RELATED FUNCTIONS

2002 SUNSET REVIEW



STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
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Bill Owens
Governor

October 15, 2002

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 licensing functions of the Executive Director of the Department of Revenue related to motor vehicle manufacturers. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2003 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 Article 6 of Title 12, C.R.S. The report also discusses the effectiveness of the Executive Director and staff of the Department of Revenue in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

A handwritten signature in cursive script that reads "M. Michael Cooke".

M. Michael Cooke
Executive Director

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Background

The Sunset Process

The functions of the Executive Director (Director) of the Department of Revenue (DOR) related to the licensing of buyer agents, distributors, distributor branches, distributor representatives, factory branches, factory representatives, and motor vehicle manufacturers in accordance with Article 6 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2003 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 Director pursuant to section 24-34-104(9)(b), C.R.S.

The purpose of this review is to determine whether the licensing of motor vehicle manufacturers and related functions should be continued for the protection of the public and to evaluate the performance of the Director and staff of the DOR. During this review, the Director must demonstrate that there is still a need for the licensing program 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 33.

Methodology

The sunset review process includes an analysis of the statute, and interviews with program staff, professional trade association representatives, regulated entities, and other interested parties. Every effort is made to elicit information and comments from all interested parties.

Profile of the Profession

The Director has regulatory authority over those occupations and industries that primarily interact with businesses as opposed to the public. The purpose of this regulatory structure is to provide oversight of manufacturers and distributors of motor vehicles in their interaction with motor vehicle dealers, as opposed to the interaction between the consumer and the manufacturer. The exception is the regulation of buyer agents. Buyer agents represent consumers in transactions with motor vehicle dealers and are the only motor vehicle related occupation licensed by the Director that specifically interacts with the public on a regular basis.

The Director regulates approximately 300 manufacturers, 40 distributors, and 500 representatives. Any manufacturer of a motor vehicle sold new in Colorado is required to obtain a license. Manufacturers range in size from large international manufacturers such as Ford or Toyota, to the local manufacturers of horse or specialty trailers. Manufacturers of small utility trailers weighing less than 2,000 pounds are exempt from the manufacturer licensing provisions, however, they must obtain a motor vehicle dealer license to sell the trailers to consumers or other dealers in the state.

History of Regulation

The regulation of motor vehicle sales began in 1935 when “second hand dealers” were required to be licensed by the Secretary of State. By 1945, the licensing program was expanded to include new car dealers and the regulatory authority had been transferred to the DOR. At that time, a committee consisting of two dealers appointed by the Governor and three appointed by the Director was established to advise the Director on the administration of the program.

In 1955, the Director was authorized to license motor vehicle manufacturers, distributors and their representatives. This legislation was declared invalid by the court in 1956 (*General Motors Corporation v. Blevins*) but was reenacted in 1957.

Until 1971, all regulation of dealer and manufacturer related occupations was the responsibility of the Director. House Bill 71-1378 created the Motor Vehicle Dealer Licensing Board (Board) consisting of representatives from four new car dealers, three used car dealers and two public members. Regulation of new and used motor vehicle dealers and salespeople was transferred to the Board.

The Director retained the regulation of manufacturers' factory branches, factory representatives, distributors, distributor branches, and distributor representatives. In 1992, the regulation of buyer agents was added to the regulatory functions of the Director. Currently the Board consists of three new car dealer licensees, three used car dealer licensees and three public members.

Legal Framework

The regulatory authority of the Executive Director (Director) of the Department of Revenue (DOR) relating to motor vehicle licensing is contained in Article 6 of Title 12 of the Colorado Revised Statutes (C.R.S.), which is included in this report as Appendix B on page 34. Intertwined in this Article is the regulation of motor vehicle dealers and salespeople by the Motor Vehicle Dealer Board (Board) created by section 12-6-103, C.R.S. The organic statute, in section 12-6-124, C.R.S., contains language which implies that both the Board and the functions of the Director are subject to review at this time. However, sections 24-34-104(32.5)(c) and 24-34-104(39)(b)(IV), C.R.S., explicitly state that the functions of the Director are subject to sunset in 2003 and the Board in 2008. Therefore, this review is limited in scope to the functions of the Director as they relate to the regulation and enforcement of motor vehicle manufacturer related licensing and the licensing of buyer agents.

Section 102 of Article 6 contains the definitions of terms used throughout the Article and in this report, including:

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

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

(b)(I) "Buyer agent" does not include a person whose business includes the purchase of motor vehicles primarily for resale or lease; except that nothing in this subsection (2.5) shall be construed to prohibit a buyer agent from assisting a consumer regarding the disposal of a trade-in motor vehicle that is incident to the purchase or lease of a vehicle if the buyer agent does not advertise the sale of, or sell, such vehicle to the general public, directs interested dealers and wholesalers to communicate their offers directly to the consumer or to the consumer via the buyer agent, does not handle or transfer titles or funds

between the consumer and the purchaser, receives no compensation from a dealer or wholesaler purchasing a consumer's vehicle, and identifies himself or herself as a buyer agent to dealers and wholesalers interested in the consumer's vehicle.

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

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

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

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

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

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

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

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

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

(b) Any person, other than a manufacturer operating a dealer pursuant to section 12-6-120.5, who is a licensed dealer selling motor vehicles that such person has manufactured.

The powers and duties of the Director are enumerated in section 12-6-105, C.R.S. The Director is required to license and regulate buyer agents, distributors, distributor branches, distributor representatives, factory branches, factory representatives, and motor vehicle manufacturers. The Director has the authority to promulgate, amend, and repeal reasonable regulations the Director deems necessary to carry out these functions.

The Director is authorized to employ clerks, deputies, and assistants as necessary to carry out the functions of the Article. The Director is also required to employ an executive secretary for the Board. §12-6-105(1)(b), C.R.S.

The Director is responsible for investigating complaints against licensees regulated by the Director as well as those entities licensed by the Board. Investigators utilized by the Director may be delegated the authority to issue subpoenas in relation to an investigation. §12-6-105(1)(d), C.R.S.

The Director is authorized by sections 12-6-105(1)(f) and (2), C.R.S., to issue cease and desist orders to any person licensed by the Director and may pursue a suit for injunction against persons who fail to comply with such an order. The Attorney General is required to advise and represent the Director in legal matters. §12-6-107, C.R.S.

Section 108 of Article 6 defines the classes of licenses, including those issued by the Director. Licenses issued by the Director are valid for one year following the month of issuance. Fees for the licenses may, with the approval of the Director, be adjusted by the Board to offset the actual direct and indirect costs associated with administering the licensing program. All fees collected by the Director are subject to appropriation by the General Assembly.

Buyer agents are required to post a bond, or equivalent cash or securities, in the amount of five thousand dollars, with the Director to ensure that the applicant performs the functions of a buyer agent in good faith. §12-6-112.2, C.R.S. Surety companies are required to notify the Director of any claims honored against a bond. §12-6-112.7, C.R.S.

Manufacturers are not required by Colorado law to provide warranties. However, any manufacturer that does provide a warranty is required to file a copy of the warranty with the Director. §12-6-114, C.R.S.

Section 12-6-118, C.R.S., details the grounds for denial, suspension, or revocation of a manufacturer related license. Manufacturer, distributor and factory related licenses focus on protecting dealers. Coercing dealers into accepting unordered vehicles, failure to deliver vehicles, failure to perform warranty work, requiring unreasonable modifications to the dealers facility, and any attempt to coerce a dealer into performing actions which would be financially detrimental to the dealer are grounds for discipline.

Manufacturers also have prohibitions against granting new franchises in areas served by existing dealers, against withholding vehicle models in a product line, and failing to pay dealers within 90 days of the termination of a franchise agreement.

Manufacturers are required to provide 60 days notice to existing franchisees when establishing an additional dealer franchise, reopening a previously existing franchise or relocating an existing franchise. Manufacturers may not authorize new franchise dealerships in the same product line to be located within the geographic area of responsibility for existing franchises. §12-6-120.3, C.R.S. Manufacturers are prohibited from controlling a dealership. All dealerships must have independent management. Manufacturers do have the authority to approve sales of existing franchises to ensure the stability of the ownership but may not require unreasonable qualifications for new owners. If a manufacturer refuses to honor the transfer of an existing franchise, it must follow specific notification requirements. §12-6-120.7, C.R.S.

Any person who suffers damages or loss resulting from an unlawful action by a manufacturer related licensee may seek relief through the court and is entitled to treble damages as well as reasonable attorney fees. §12-6-122(2), C.R.S. The dealer has the option of selecting county or district court when adjudicating contract disputes between the dealer and manufacturer. §12-6-122.5, C.R.S.

All fees collected by the Director and the Board are deposited in the Auto Dealers License Fund with the State Treasurer and are subject to appropriation by the General Assembly for the administration of the program. Surpluses in the fund are to be used for educational and enforcement purposes as appropriated by the General Assembly. §12-6-123, C.R.S.

Section 124 contains the repeal provision for Article 6. The repeal language states that the entire Article shall be repealed effective July 1, 2003, unless the Board and the licensing functions of the Director are continued by the General Assembly following a review in accordance with the provisions of section 24-34-104, C.R.S. However, the provisions of section 24-34-104(32.5)(c), C.R.S., state that only the functions of the Director are subject to a review. The Board is subject to sunset in 2008, according to section 24-34-104(39)(b)(IV), C.R.S. It is for this reason that this sunset review is limited to a review of the licensing functions of the Director.

Part 2 of Article 6 concerns the financing of motor vehicles. Manufacturers and distributors are prohibited from making the use of a particular financing mechanism a condition of the sale of a motor vehicle. The statute prohibits the use of financing mechanisms to eliminate competition, and also prohibits threats by manufacturers, distributors or their representatives.

Part 3 of the Article prohibits the retail sale of motor vehicles on Sunday. This provision does not affect the manufacturer-related licenses, but does apply to the activities of buyer agents.

Other Statutory Requirements

In addition to the licensing requirements of the Director, motor vehicle manufacturers must comply with Colorado statutes regarding motor vehicle safety standards. The Motor Carrier Safety Section of the Colorado State Patrol administers these statutes.

Manufacturers may be subject to provisions of Title 42 related to odometer fraud and vehicle title requirements. Motor vehicle manufacturers are authorized by section 42-3-127(1), C.R.S., to obtain special manufacturer license plates, which may be used on manufacturers' vehicles in place of registering individual vehicles with the state. The fee for manufacturer license plates is established in section 42-3-134(9)(b), C.R.S., at \$25 for the first plate and \$7.50 each for the next five plates. Additional plates may be issued to eligible manufacturers for \$10 each.

All manufacturers must comply with requirements of the U.S. Department of Transportation National Highway Traffic Safety Administration. In addition to requiring safety equipment, national requirements include standards for Vehicle Identification Numbers (VIN), and the issuance of a Manufacturers Certificate of Origin (MCO).

Manufacturers and dealers are subject to the consumer protection provisions contained in section 6-1-708, C.R.S., regarding deceptive trade practices.

Motor vehicle manufacturers' products are covered under the state's version of a "lemon law." The lemon law requires a manufacturer to repurchase a vehicle from a consumer if the vehicle cannot be repaired to conform to the warranty after four attempts, or if the vehicle is out of service for more than 30 days during the first year of operation or the warranty period, whichever comes first. §42-10-103, C.R.S.

The Director has promulgated regulations to implement the Article. These regulations are contained in the Colorado Code of Regulations (CCR) at 1-CCR-205-1. This is the same section of the CCR that contains the Motor Vehicle Dealer Board regulations. The regulatory requirements for manufacturer related licenses are intermingled with those for dealers. Generally speaking, regulations implementing specific sections of the Article share corresponding numbers in the regulations for ease of reference.

Included in the regulations is Regulation 12-6-105(1)(c) which requires that all applications for licensure be complete and include the appropriate fee before being approved by the Director. The regulations also allow the Director to investigate any complaint related to the sale or distribution of a motor vehicle upon the receipt of a complaint or upon the Director's own motion.

Regulation 12-6-114 states that the Director, by accepting manufacturers' warranties, is not authorized to mediate disputes between manufacturers, dealers, wholesalers or consumers. This regulation also requires manufacturers that do not provide warranties to consumers to notify the Director of that fact in writing.

Regulation 12-6-115(5) requires manufacturers to immediately notify the Director of new franchise appointments or changes to existing franchise agreements including the termination of a franchise agreement.

Program Description and Administration

License/Registration

The regulation of motor vehicle manufacturers, dealers, and related occupations has been delegated by the Executive Director (Director) of the Colorado Department of Revenue (DOR), to the Enforcement Business Group, Auto Industry Division (AID). The AID consists of 21 full-time equivalent (FTE) employees: a director who also serves as the Executive Secretary to the Motor Vehicle Dealer Board (Board), an investigations manager, eight investigators with one support staff, three compliance specialists, one compliance auditor, a licensing manager supported by one FTE clerical staff, a public information officer, and one office manager supervising three clerical support staff. An organizational chart is included in this report as Appendix C on page 69.

The AID is cash funded by fees paid by licensees. The majority of the fees are paid by entities regulated by the Board. Regulating buyer agents and manufacturer related licensees is a relatively insignificant percentage of the AID workload. The Board is responsible for administering regulatory authority over approximately 18,300 motor vehicle dealers and salesperson licensees.

The Director is directly responsible for issuing approximately 900 licenses in the various categories related to this review. Until 1998, all licenses were valid from July 1 through June 30 of each year. Licenses issued during that time period were prorated to maintain a uniform expiration date. Since legislation passed in 1998, all licenses are valid for one year from the date of issue. Therefore, any license issued prior to July of 1998 still has a June 30 expiration date, causing some spiking of the licensing workload for the AID. Table 1 details the number of licensees for the categories regulated by the Director for fiscal year 01-02.

**Table 1
Executive Director Licensees - Fiscal Year 01-02**

License Category	Number of Licensees
Buyer Agents	7
Distributors	43
Distributor Branches	8
Distributor Representatives	192
Factory Branches	7
Factory Representatives	299
Motor Vehicle Manufacturers	339
TOTAL	895

Fees for licenses are adjusted annually by the Board to recover the direct and indirect expenses of the AID. Business entities pay higher fees than individuals since reviewing business applications is more resource intensive. Although buyer agents are not specifically identified in statute as a business entity, they are licensed as such by the AID. Fees in effect at the time of this review are listed below.

License Fees For License Year 2002/2003

Dealer/Wholesaler/Buyer Agent

\$360 - Original

\$300 - Renewal

Manufacturer/Distributor

\$360 - Original Dealer/Manufacturer/Distributor/Buyer Agent

\$300 - Renewal Dealer/Manufacturer/Distributor/Buyer Agent

Manufacturer/Distributor Representative

\$80 - Original

\$60 - Renewal

Salesperson

\$85 - Original

\$60 - Renewal

\$60 - Multiple (additional license for multiple dealerships)

Miscellaneous

\$85 - Change of Class

\$85 - Change of Dealer Location

\$150 -Additional Dealer Location

\$85 - Change of Name

\$85 - Stock Transfer/Ownership Change

\$60 - Off-Premise Permit

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

The AID does not separate the licensing functions of the Director from those of the Board for budgetary purposes. The Board is required by section 12-6-110(5)(a), Colorado Revised Statutes (C.R.S.), to annually propose levels for the fees it is authorized to collect. The proposal is required to reflect the direct and indirect costs of the Board.

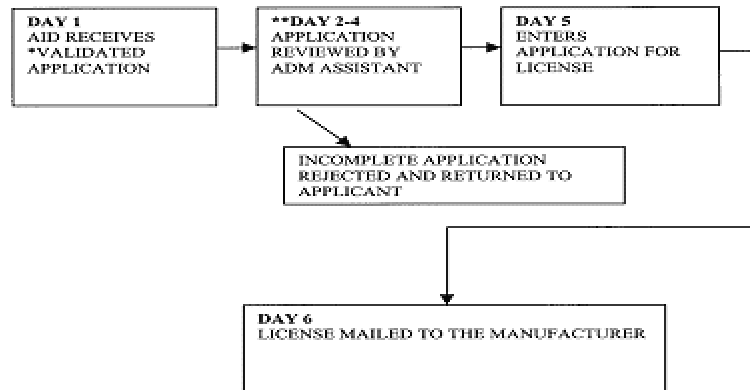
Section 12-6-110(5)(b), C.R.S., allows the Board, subject to the approval of the Director, to establish the fees for the Director's licensees. This provision also requires fees to reflect the direct and indirect costs associated with the Article. The statute provides that all fees collected are to be deposited in the Auto Dealers License Fund with the State Treasurer. Unexpended funds are to remain in the fund and may be utilized for educational and enforcement purposes as appropriated by the General Assembly. §12-6-123(1)(c), C.R.S.

New and used car dealer applications are time consuming to process. All applications require an evaluation of net worth, a credit check, and a non-fingerprint based criminal history record check. Salesperson licenses require a non-fingerprint based criminal record check and an evaluation of the required examination.

Evaluations of dealer applications usually take over a month to complete and must be approved by the Board before a license can be issued. Salesperson applications are not as complex. The statutes allow a salesperson to work for 120 days while the application is being reviewed. Board approval is only necessary for those applications that fall outside of standard guidelines. The most common reason an application requires Board approval is because of an applicant's criminal record.

Manufacturer related applications are *pro forma* in nature. Provided all the required information is completed, copies of sample manufacturers certificate of origin (MCO) and warranties are included, and the appropriate fee accompanies the application, the license is issued in five to seven days. There are no additional resources necessary to conduct background checks or evaluate the financial condition of the applicant. A sample application is attached to this report as Appendix D on page 70. A flow chart of the manufacturer licensing process follows to illustrate the licensing procedure:

MANUFACTURER REPRESENTATIVE LICENSING PROCESS/TIME FRAMES



* Validated - Licensing fees have been processed through DOR Cashiers (money is processed the same day that the money is received).

** Time frames for review depend on workload.

A manufacturer or distributor representative license is also simple to process. In fact, the license is more accurately categorized as an expensive registration. The only qualification to be a manufacturer or distributor representative is to have a licensed manufacturer or distributor verify employment. A sample of the representative licensing application is attached to this report as Appendix E on page 71.

The requirements for licensure as a buyer agent are similar to those for a dealer or salesperson. Although there is no evaluation of financial condition, the applicant must obtain a bond in the amount of \$5,000. The applicant must also disclose any criminal convictions occurring in the past 10 years.

Complaints/Disciplinary Actions

The General Assembly separated the regulation of motor vehicle dealer sales functions from that of manufacturers. Most dealer related complaints are from consumers against either a salesperson or a dealer. The Board reviews these complaints.

Manufacturer regulations are primarily focused on protecting the dealer from unfair practices by the manufacturer. According to DOR staff and industry sources, there would be at least the appearance of conflict if the Board were to have regulatory authority over manufacturers.

It was argued during the 1991 sunset hearing for the Motor Vehicle Dealer Licensing Board (Board) that direct regulatory control, through the mechanism of licensing, was necessary to protect the public. At that time, the statute provided guidelines for the practice of the profession and statutory prohibitions against buyer agents receiving compensation from dealers. However, the Director did not have direct regulatory authority over this occupation. According to program staff and industry representatives, it was believed that buyer agents acted in a similar capacity to salespersons without the same regulatory oversight. As a result, buyer agent licensing was passed by the General Assembly, including bonding requirements similar to those of salespersons. However, since the passage of the legislation, not a single complaint against a buyer agent has been filed with the Director.

Manufacturer/distributor representatives have been licensed since 1957. There is anecdotal information indicating that there were complaints against representatives in the early stages of the regulatory program. According to the DOR, there have been no complaints or disciplinary actions in the records dating to the mid 1980's.

The Director has investigated seven complaints against manufacturers since the 1997 sunset review, all filed by dealers against manufacturers. None of the complaints involved consumers directly. Most complaints were resolved during the investigation phase prior to a formal hearing. The complaints and results are summarized below:

CASE# 00-0207 January 2000

This case involved a complaint by Intermountain Coach Leasing Inc. (Intermountain) against Supreme Corporation of Texas (Supreme) alleging that Supreme terminated its lease with Intermountain without cause. The complaint also alleged Supreme failed to pay Intermountain for warranty work. This is the only complaint received by the Director that went to a hearing.

The hearing officer found that the franchise agreement was terminated with cause, and dismissed the case. The parties agreed that the disputed warranty work issue was best resolved in civil court.

CASE# 00-603 August 2000

This case resulted from an investigation into sales by an unlicensed dealer. The investigation found that Supreme Corporation of Texas (Supreme), after terminating the franchise of Intermountain Coach Leasing (Intermountain), sold vehicles to consumers in the state without having a licensed dealership in the state.

This case was resolved by allowing the sales manager for Supreme to apply for a dealership license.

CASE# 01-0072 January 2001

This case resulted from a complaint by Mountain State Truck Center (Mountain State) against Sterling Truck Corporation (Sterling) for failure to notify the DOR of the termination of the franchise agreement, for failure to repurchase unsold inventory, and for authorizing warranty work to be performed by non-franchised repair facilities. Mountain State also argued that the binding arbitration used by Sterling was contrary to Colorado law.

The investigation concluded that the franchise termination was processed properly, that all required inventory was repurchased and those charges were administratively dismissed. It must be noted that Mountain States appealed in District Court against the arbitration proceedings and both the District Court and the Appeals Court found the provision valid. The Director issued a warning letter for the warranty work performed by a non-franchised repair facility.

CASE# 01-0073 September 2001

In this case, dealer Transwest Trailers (Transwest) complained that manufacturer Vantage Trailers (Vantage) failed to repurchase unsold inventory after terminating the franchise agreement, failed to pay for completed warranty work, illegally sold motor vehicles through unauthorized dealers, and authorized warranty work by a non-franchised repair facility.

The investigation found that Vantage had failed to repurchase some inventory. There was conflicting evidence regarding the eligibility of the entire inventory for repurchase. The investigation also found that Vantage functioned as a manufacturer even though its license had expired and was not properly renewed. Vantage failed to pay for some warranty work performed by Transwest and authorized another repair facility to conduct warranty repairs in violation of the motor vehicle dealer statutes. It was also verified that Vantage authorized another dealer to offer Vantage trailers for sale without properly initiating a franchise agreement. A warning letter was sent to Vantage and the case was resolved without going to hearing.

CASE# 01-1559 November 2001

Dealer Dakota Pacific Industries (Dakota) complained that manufacturer Spartan Trailers (Spartan) failed to provide duplicate Manufacturers Certificate of Origin (MCO) when requested.

The investigation found that Spartan was withholding the MCO's, (which are necessary for dealers to begin the process of obtaining titles for the vehicles) in an effort to force Dakota to clear some outstanding bills unrelated to the sale of the units in question. The Department issued a warning letter and the issue was resolved.

CASE# 02-0730 March 2002

Intermountain Wholesale, a dealer, complained that Vantage was illegally rebuilding damaged trailers and selling them as new.

The investigation found that Vantage was complying with all requirements for the sale of the vehicles.

CASE# 02-1277 April 2002

Dealer Faricy Ford (Faricy) complained that manufacturer Ford Motor Company (Ford) refused to allow Faricy to sell the Navigator line of motor vehicles.

The investigation found that Ford had offered the line to Faricy but had never received a reply. The parties agreed to negotiate and the case was closed.

All of the complaints lodged against motor vehicle manufacturers were by dealers alleging activities that had the potential to negatively impact the dealer. Three of the investigations found that manufacturers had authorized warranty work to be performed by non-franchise dealers in violation of section 12-6-120(1)(n)(I)(A), C.R.S. In none of these cases was there any evidence that the work was performed in a substandard manner that could harm the public. In each case the Director issued warning letters to the manufacturers for violations of the statute.

As of the time of this review, the Director is aware of a situation involving Daewoo dealerships nationwide. The manufacturer is involved in a bankruptcy filing and has failed to compensate dealers and consumers for warranty repairs and other financial obligations. There have been numerous complaints filed as well as a class action lawsuit with estimated damages in excess of \$700 million nationally.

Some may consider this evidence that manufacturer licensing is an ineffective tool for consumer protection. While the Director may take action to revoke the manufacturer's license, this action will not make consumers whole. There is a possibility that another manufacturer will acquire the financially troubled dealership. If this occurs, the new owner may compensate consumers, it is uncertain the licensing requirement in Colorado will influence that decision.

Analysis and Recommendations

Recommendation 1 – Continue the licensing of motor vehicle manufacturers by the Executive Director of the Department of Revenue until 2008.

The first sunset criterion asks whether regulation by the agency is necessary to protect the public and whether the conditions that led to the initial regulation have changed. One issue to be discussed is what “public” means. Generally speaking, sunset reviews have focused on protecting the consumer. In the case of motor vehicle manufacturers, the question becomes who is the consumer.

The legislative declaration in section 12-6-101(1), Colorado Revised Statutes (C.R.S.), indicates that the regulation of manufacturers is necessary to ensure that dealers will remain in business to provide service to the public. Indeed, the focus of legislation related to manufacturers in Article 6 of Title 12 (Article) is the protection of dealers rather than consumers. Manufacturers are required by section 12-6-114, C.R.S., to file warranties with the Executive Director (Director) of the Department of Revenue (DOR). There are also statutory provisions to require manufacturers to compensate dealers for warranty work performed. In fact, there is no statutory requirement that manufacturers provide a product warranty to consumers. To this end, it could be argued that for the purposes of this review the public should be defined as motor vehicle dealers.

The focus of the legislative declaration is that dealers need to remain in business to provide service to the public. Neither service nor public is defined. Service could be anything from warranty repairs to oil changes to car washes while public clearly must be interpreted to mean consumer. This implies that dealers are required to provide service to the public. In fact, there is no specific statutory provision for dealers to provide service to the public.

There are requirements that manufacturers honor warranties and reimburse dealers for warranty work, and even a provision that prohibits manufacturers from contracting with non-dealers for warranty work. No state law requires manufacturers or dealers to offer a warranty or provide repair services; only contract law requires dealers to service vehicles for consumers. The statute does require manufacturers with a warranty to compensate dealers for completing covered repairs, however, the regulations (12-6-114CCR) clearly state that the Director does not have authority to mediate warranty disputes between consumers and manufacturers.

At one time, the state licensed service garages through the Secretary of State. In fact, there are still antiquated references to licensed garage facilities throughout the motor vehicle statutes. Until 1997, it was a requirement for licensure as a dealership that applicants either operate a service facility, or contract with a competent garage. The motor vehicle dealer industry supported the deletion of this provision during the 1997 sunset review as unenforceable, overly burdensome, and an unnecessary intrusion into the operation of their business.

Consumer protection related to product warranties is contained in Title 42. Section 42-10-101, C.R.S., defines consumer as:

(1) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle normally used for personal, family, or household purposes, any person to whom such motor vehicle is transferred for the same purposes during the duration of a manufacturer's express warranty for such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

Consumer is similarly defined in section 12-6-102(2.5)(a)(II), C.R.S. These two instances of a more traditional definition of the public indicate that the scope of the review should focus on whether the regulation of manufacturers is necessary for consumer protection.

Protection of the public in the case of motor vehicle manufacturers takes several forms including vehicle safety, competitive pricing, and the quality and availability of service. Motor vehicle dealers maintain that an independent network of dealers is necessary to provide these public protections. They also maintain that strict dealer protection statutes are necessary to maintain this independent network. Some dealer industry representatives argue that since a motor vehicle is the second largest single purchase most consumers make, it is incumbent on the government to maintain a dealer network to service consumers. It is interesting to note that the largest single purchase consumers make is generally a home and there are no state laws in effect to ensure that home builders or home repair contractors remain in business to service consumers after the sale of a new home.

The nexus between maintaining an independent dealership and protecting the public has not been demonstrated. Vehicle safety standards are addressed through federal regulation regardless of individual state dealer protections. According to a report issued by the Consumer Federation of America¹, state regulation relating to the relationship between manufacturers and dealers interferes with competition and increases costs to consumers. A Federal Trade Commission study² estimated that state regulation of the relationship between manufacturers and dealers adds an average of \$1,500 to the cost of a new motor vehicle.

Forty-eight states and the District of Columbia regulate, in varying degrees, motor vehicle manufacturers. Alaska and Hawaii reported that they did not have specific motor vehicle manufacturer licensing statutes at the time of this review. While it could be argued that licensing manufacturers has not been demonstrated as necessary to protect consumers, there is evidence that regulation is necessary to protect dealers.

¹ Cooper, Mark, A Roadblock on the Information Superhighway: Anticompetitive Restrictions on Automotive Markets, Consumer Federation of America February 2001.

² Rogers, Robert The Effect of State Entry Regulation on Retail Automobile Markets, Bureau of Economics Staff report to the Federal Trade Commission, January 1986.

According to the Alliance of Automobile Manufacturers, Colorado, along with approximately 20 other states, has mandated a tiered distribution system for motor vehicles. This regulatory structure is similar to that found only in liquor sales. In both liquor and motor vehicle manufacturing, with rare exceptions, Colorado prohibits the entity manufacturing the consumer product from selling the product to the end user directly.

It is questionable whether this is the least restrictive form of regulation consistent with the public interest. An evaluation of available research indicates that the economic impact of this level of regulation increases the overall cost of purchasing a motor vehicle. This appears to conflict with sunset evaluation criterion VI which questions the economic impact of regulation and whether the regulation restricts competition. The passage of House Bill 00-1186, which increased dealer protections, is evidence that the public policy of the General Assembly has been to maintain and protect the tiered distribution system for motor vehicles.

Recommendation 2 – Streamline the licensing of motor vehicle manufacturers by the Executive Director of the Department of Revenue by amending Title 12 as follows:

§12-6-102, C.R.S.

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

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

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

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

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

(b) Any person, other than a manufacturer operating AS a dealer pursuant to section 12-6-120.5, who is a licensed dealer selling motor vehicles that such person has manufactured.

§12-6-105(1), C.R.S.

The executive director is hereby charged with the administration, enforcement, and issuance or denial of the licensing of buyer agents, ~~distributors,~~ ~~distributor branches,~~ distributor representatives, ~~factory branches,~~ factory representatives, and motor vehicle manufacturers, and shall have the following powers and duties:

Conforming amendments throughout the statute are necessary.

Currently the Director is responsible for licensing motor vehicle distributors, distributor branches, factory branches and manufacturers. These licensing classifications are unnecessarily confusing. Some businesses with manufacturing facilities out of state are licensed as manufacturers, others as distributors, still others as factory branches, and many as all three.

The net effect of this consolidation will not be a reduction in regulatory oversight. Rather it will eliminate an unnecessary regulatory burden for those entities involved in the manufacture and distribution of motor vehicles by consolidating paperwork into a single application. This change will also accurately communicate to the public the actual classification of licensing by the Director.

Recommendation 3 – Eliminate the licensing of distributor and factory representatives by amending section 12-6-105(1), C.R.S., to read as follows:

The executive director is hereby charged with the administration, enforcement, and issuance or denial of the licensing of buyer agents, ~~distributors, distributor branches, distributor representatives, factory branches, factory representatives,~~ and motor vehicle manufacturers, and shall have the following powers and duties:

Conforming amendments throughout the statute are necessary.

Licensing of individual professionals is a mechanism used by the state to ensure that practitioners achieve and/or maintain a minimum level of competency necessary to protect the public. Licensing standards usually include some minimum level of education and/or experience combined with a passing score on either a state or nationally recognized examination designed to measure professional knowledge. Additional features of professional/occupational licensing programs sometimes include fingerprint based criminal record checks and mandatory continuing education requirements. The representative licensing program in Colorado is, in fact, a simple registration program although the statute does provide for removal from the registry. The only requirement for licensure as a factory or distributor representative is the payment of the required fee.

There are approximately 500 individuals licensed as representatives in Colorado at this time. However, there is no evidence that the regulation of these individuals is necessary to protect the public. Distributor or factory representatives may occasionally interact with consumers when there is a dispute between the consumer and a dealer, primarily in the area of service-related issues. The primary function of a licensed representative is to provide sales and service support to franchised dealers. Representatives may also enforce provisions of franchise agreements between dealers and the manufacturer.

The licensing of manufacturer sales/support representatives is unique in Colorado. Even in the case of liquor sales, the other similarly regulated industry, manufacturer and distributor representatives are not licensed. Rather, it is recognized that the employers of these representatives are responsible for actions of their employees.

The concept of *respondeat superior* (the legal theory under which an employer is held vicariously liable for the conduct of his or her employees) applies in the case of motor vehicle manufacturers and distributors. As evidenced by the fact that there have been no complaints against representatives, only their employers, manufacturers and distributors which are held accountable for the actions of their employees without the unnecessarily expensive process of licensing these individuals.

If licensing were retained, it would be possible for manufacturers to check the licensing history of potential new employees seeking to move from one manufacturer to another as part of a pre-employment check. In practice, since the Director has not disciplined a licensee, there is no value to this check. There is no evidence that a manufacturer has ever made a request for disciplinary history before employing a manufacturer representative who had been licensed with a competitor.

Recommendation 4 – Eliminate the licensing of buyer agents by amending section 12-6-105(1), C.R.S., to read as follows:

The executive director is hereby charged with the administration, enforcement, and issuance or denial of the licensing of ~~buyer agents, distributors, distributor branches, distributor representatives, factory branches, factory representatives, and motor vehicle manufacturers,~~ and shall have the following powers and duties:

Conforming amendments throughout the statute are necessary.

A buyer agent is not an employee of a manufacturer or dealer. A buyer agent is employed by a consumer to purchase a motor vehicle for the best price possible and receives compensation for providing this service. The statutory prohibition against buyer agents receiving compensation from a dealer or manufacturer should be maintained. Dealers or manufacturers who violate this prohibition would still be subject to disciplinary action.

The Director has been licensing buyer agents since the 1991 sunset review. Since that time, there has not been a single complaint or disciplinary action against a buyer agent.

The Director did provide documentation of one investigation against an individual who acted as a buyer agent without a license and took money from consumers for the purchase of motor vehicles. The investigation revealed the unlicensed individual committed fraud and actually diverted the funds to his own purpose. A criminal prosecution resulted and the unlicensed buyer agent is currently in prison.

This case clearly illustrates that licensing buyer agents does not eliminate fraud. It also shows that the criminal justice system is effective in resolving fraud and theft issues related to this profession. Sunset criterion II asks if the existing statute and regulations are the least restrictive form necessary to protect the public and if other regulatory mechanisms will protect the public interest. The public will still be protected from fraud and theft using the criminal justice system if the buyer agent license is repealed.

Consumers now have more information available to them about the availability, reliability, and cost of motor vehicles than ever before. Consumers have the ability to determine if the cost of the vehicle and fee charged by the buyer agent are reasonable.

The Director has failed to provide evidence that continuation of this regulatory program is necessary to protect the public. Only one of the eight existing licensees responded to requests for input regarding the need for continued regulation. This licensee believes the Director should be more aggressive in pursuing dealers who advertise as brokers. The licensee was unable to document public harm that would occur by the unlicensed practice of this occupation.

Recommendation 5 – Repeal section 12-6-120(1)(n), C.R.S., to allow non-franchised motor vehicle repair facilities to compete with franchised dealers.

~~(n) (l) To authorize or permit a person to perform warranty service repairs on motor vehicles unless the person is:~~

~~(A) A motor vehicle dealer with whom the manufacturer has entered into a franchise agreement for the sale and service of the manufacturer's motor vehicles; or~~

~~(B) A person or government entity that has purchased new motor vehicles pursuant to a manufacturer's fleet discount program and is performing the warranty service repairs only on vehicles owned by such person or entity.~~

~~(ll) This paragraph (n) shall not apply to manufacturers of recreational vehicles nor to manufacturers of vehicles with a passenger capacity of thirty two or more.~~

This provision of the statute prohibits manufacturers from authorizing the performance of warranty work by anyone except a licensed franchised dealer. Even given the desire of the General Assembly to support a tiered distribution system for motor vehicles, this provision places an unnecessary restriction on consumer choice.

At one time, quality motor vehicle service could only be obtained at a franchise dealership. In the environment that exists today, the only real barrier to obtaining quality warranty service on a new motor vehicle at a location other than a licensed dealer is a state statute. An additional effect of this statute is the unnecessary restriction against small businesses competing for warranty work.

The ability of a consumer to receive prompt, efficient, high quality service is one important component of a motor vehicle purchasing decision. Motor vehicle manufacturers recognize this and generally require dealers to maintain repair facilities and trained service personnel as a requirement to obtain a franchise. However, it is inappropriate for the state to restrict the options of consumers and manufacturers as they relate to motor vehicle service.

In fact, in some instances it may be impossible or unsafe for a manufacturer to comply with this requirement. For example, in complaint Case#01-0073, it was found that the manufacturer had authorized warranty work to be performed by a facility that was not a licensed franchised dealer. At the time this agreement was entered into, the manufacturer did not have a licensed franchised dealer in the state. In order to provide warranty service, it was necessary to violate section 12-6-120(1)(n), C.R.S.

In order to comply with the legal requirement to provide warranty service, the manufacturer would have to either inconvenience consumers by having the vehicle towed out of state or agree to reimburse consumers for emergency warranty work performed by an unauthorized repair facility.

While this is an extreme example, it is not unusual for manufacturers of some vehicles to have only one, or very few dealerships in the state. Consumers who purchase these vehicles may have to travel significant distances to obtain the vehicle; state law should not prevent these consumers from obtaining warranty service at locations convenient to them.

Enforcement of this section can create a public safety risk. Recently, a manufacturer agreed to recall all of its vehicles in a specific class because of a safety issue with the tires. There was no possible way for franchise dealers to handle the volume of tire changes. Even if dealers could provide the service, it could be argued that it was dangerous for consumers in rural areas to drive to the nearest dealership. It was much safer and efficient for the manufacturer to simply authorize the warranty work to be performed by any competent mechanic with the proper tires.

Manufacturers should be allowed to enter into agreements with any repair facility that is capable of providing warranty repairs with the same level of service as a dealership.

Recommendation 6 – The General Assembly should provide for the branding of titles for vehicles repurchased by manufacturers under the provisions of section 42-10-103, C.R.S., by amending the statute to read as follows:

(4) ANY MANUFACTURER OF A MOTOR VEHICLE REPURCHASED AS PROVIDED IN PARAGRAPH (1) SHALL REPORT INFORMATION REGARDING THE TRANSACTION AS THE DIRECTOR MAY REQUIRE BY RULE. THE DIRECTOR OR THE DIRECTOR'S AUTHORIZED AGENT SHALL DESIGNATE IN A CONSPICUOUS PLACE IN THE RECORD FOR A VEHICLE THAT IS A NON-CONFORMING VEHICLE THAT HAS BEEN MADE ROADWORTHY. SUCH DESIGNATION SHALL INCLUDE THE WORDS "REPURCHASED PURSUANT TO THE COLORADO LEMON LAW" AND SHALL BECOME A PERMANENT PART OF THE CERTIFICATE OF TITLE FOR SUCH VEHICLE AND SHALL APPEAR ON ALL SUBSEQUENT CERTIFICATES OF TITLE FOR SUCH VEHICLE.

One area of consumer protection that is not adequately addressed in the current regulatory structure is the notification of consumers when a vehicle has been repurchased by a manufacturer under the provisions of section 42-10-103, C.R.S., the Colorado version of a “lemon law.”

There are provisions in the Consumer Protection Act which require disclosure of known defects. However, these provisions are not always complied with, either intentionally or unintentionally, in Colorado. Even when the disclosures are initially made in good faith, there is no mechanism in place to inform subsequent purchasers of a motor vehicle that it may have significant mechanical problems.

The lemon law requires manufacturers to buy back from consumers problem vehicles that cannot be satisfactorily repaired. Under the state’s tiered system, manufacturers are not permitted to sell these vehicles to consumers. What normally happens is dealers sell these vehicles on behalf of the manufacturers through an auto auction. The Consumer Protection Act, in section 6-1-708, C.R.S., requires disclosure of material defects. However, there is no mechanism to ensure that subsequent purchasers of the vehicle are informed of the vehicle’s history.

The American Association of Motor Vehicle Administrators (AAMVA) is a national association of state administrators of motor vehicle laws. This organization has adopted recommendations for states regarding branding the titles of motor vehicles that have specific histories that may impact the value of the vehicle. Last year, the General Assembly adopted measures to brand the title of vehicles rebuilt from salvage to ensure that consumers were aware of the condition of the vehicle. The same protections should apply to vehicles that have been repurchased by manufacturers because of excessive repairs. Branding involves specific identification on the vehicle title that the vehicle was subject to a repurchase by a manufacturer.

The State of Washington has one of the more effective consumer protection statutes in this regard. In fact, the Washington program contacts the Colorado Attorney General's Consumer Protection Division to notify them when a branded vehicle has been sold in Colorado. The Attorney General's office then attempts to locate the Colorado consumer to notify them of the defect. This cumbersome process could be eliminated if manufacturer repurchases were required to be reported to the Director.

Recommendation 7 – The General Assembly should clarify and separate the financial and disciplinary responsibilities of the Executive Director and the Board. Sections 12-6-105, 12-6-110 and 12-6-120, C.R.S., should be amended to read as follows:

12-6-105(1)(f)(I) To summarily issue cease and desist orders on such terms and conditions and for such period of time as to the executive director appears fair and just to any person who is licensed by the executive director pursuant to this part 1 if such orders are followed by notice and a hearing pursuant to section 12-6-104 (3) (e) (I)

(1)(f)(II) TO ISSUE CEASE AND DESIST ORDERS TO PERSONS ACTING AS MOTOR VEHICLE MANUFACTURERS WITHOUT FIRST OBTAINING A LICENSE AS REQUIRED BY THIS PART ONE.

(3) TO IMPOSE A FINE OF UP TO ONE THOUSAND DOLLARS PER DAY PER VIOLATION FOR ANY PERSON FOUND, AFTER NOTICE AND HEARING PURSUANT TO SECTION 24-4-105, C.R.S., TO HAVE VIOLATED THE PROVISIONS OF SECTION 12-6-120(1).

(4) THE EXECUTIVE DIRECTOR SHALL ANNUALLY ESTABLISH A FEE FOR LICENSES ISSUED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS ARTICLE IN AN AMOUNT SUFFICIENT TO OFFSET THE ANTICIPATED DIRECT AND INDIRECT COSTS ASSOCIATED WITH ADMINISTERING THOSE LICENSES.

12-6-110(5)(a) The board shall propose, as part of its annual budget request, an adjustment in the amount of each fee which the board is authorized by law to collect. The budget request and the adjusted fees for the board shall reflect direct and indirect costs.

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

12-6-120(2) It is unlawful for any person to act as a motor vehicle dealer, manufacturer, ~~distributor, wholesaler, factory branch, distributor branch, factory representative, distributor representative,~~ used motor vehicle dealer, ~~buyer agent,~~ wholesale motor vehicle auction dealer, or motor vehicle salesperson unless such person has been duly licensed under the provisions of this part 1, except for persons exempt from licensure as a manufacturer pursuant to section 12-6-102 (11); however, such persons shall be required to comply with all other applicable requirements for manufacturers, including, but not limited to, those pertaining to vehicle identification numbers and manufacturers' statements of origin.

Article 6 of Title 12 was originally drafted (as section 13-11-101 C.R.S., et seq.) to provide for the regulation of both motor vehicle dealers and manufacturers by the Director. It has been amended numerous times over the years, most notably in 1971, when the Board was granted regulatory powers. The result is some confusing and sometimes conflicting language in the statute.

For example, the Board has the authority to fine persons acting as dealers or manufacturers without a license, even though the Board has no regulatory authority over manufacturer licenses (§12-6-120(2)(o), C.R.S.). This authority should more appropriately be vested in the Director. The Board also has the authority to fine its licensees under the provisions of section 12-6-104(3)(m), C.R.S. However, the Director does not have the authority to fine manufacturers.

The Director has limited disciplinary options for the classes of licenses he/she regulates. The suspension or revocation of a license is a more severe sanction than a fine. However, the net effect of a revocation or suspension ultimately harms consumers and dealers as much as the licensee. If a manufacturer's license is suspended, no dealer would be authorized to sell vehicles in that manufacturer's line. Also, there may be difficulties for consumers in obtaining warranty work. Therefore, unless the violation is a public safety issue related to a mechanical defect of a line of motor vehicles, it is appropriate for the Director to have the option of issuing a cease and desist order or a monetary penalty in lieu of suspending or revoking a license.

Finally, although the Director has regulatory responsibility for manufacturers, section 12-6-110(5)(b), C.R.S., allows the Board to establish fees for the Director's licensees. The Board has established these fees based on the overall costs of the Board related to regulating dealers, rather than on the direct and indirect costs of the Director in regulating manufacturers. It is more appropriate for the Director to establish fees for manufacturers based on the costs to regulate the manufacturer portion of the program.

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; and
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

**Appendix B –
Article 6 of Title
12, and 42-10-101,
et seq., Colorado
Revised Statutes**

12-6-101 - Legislative declaration.

(1) The general assembly hereby declares that:

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

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

(c) The licensing and supervision of motor vehicle dealers by the motor vehicle dealer board are necessary for the protection of consumers and therefore the sale of motor vehicles by unlicensed dealers or salespersons, or by licensed dealers or salespersons who have demonstrated unfitness, should be prevented; and

(d) Consumer education concerning the rules and regulations of the motor vehicle industry, the considerations when purchasing a motor vehicle, and the role, functions, and actions of the motor vehicle dealer board are necessary for the protection of the public and for maintaining the trust and confidence of the public in the motor vehicle dealer board.

12-6-102 - Definitions.

As used in this part 1, unless the context otherwise requires:

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

(1.5) "Advertisement" means any commercial message in any newspaper, magazine, leaflet, flyer, or catalog, on radio, television, or a public address system, in direct mail literature or other printed material, on any interior or exterior sign or display, in any window display, on a computer display, or in any point-of-transaction literature or price tag that is delivered or made available to a customer or prospective customer in any manner whatsoever; except that such term does not include materials required to be displayed by federal or state law.

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

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

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

(b) (I) "Buyer agent" does not include a person whose business includes the purchase of motor vehicles primarily for resale or lease; except that nothing in this subsection (2.5) shall be construed to prohibit a buyer agent from assisting a consumer regarding the disposal of a trade-in motor vehicle that is incident to the purchase or lease of a vehicle if the buyer agent does not advertise the sale of, or sell, such vehicle to the general public, directs interested dealers and wholesalers to communicate their offers directly to the consumer or to the consumer via the buyer agent, does not handle or transfer titles or funds between the consumer and the purchaser, receives no

compensation from a dealer or wholesaler purchasing a consumer's vehicle, and identifies himself or herself as a buyer agent to dealers and wholesalers interested in the consumer's vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

(10.5) "Line-make" means a group or series of motor vehicles that have the same brand identification or brand name, based upon the manufacturer's trademark, trade name, or logo.

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

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

(b) Any person, other than a manufacturer operating a dealer pursuant to section 12-6-120.5, who is a licensed dealer selling motor vehicles that such person has manufactured.

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

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

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

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

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

(b) Public officers while performing their official duties;

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

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

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

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

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

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

(16) "Principal place of business" means a site or location devoted exclusively to the business for which the motor vehicle dealer or used motor vehicle dealer is licensed and businesses incidental thereto, sufficiently designated to admit of definite description, with space thereon or contiguous thereto adequate to permit the display of one or more new or used motor vehicles, and on which there shall be located or erected a permanent enclosed building or structure large enough to accommodate the office of the dealer and to provide a safe place to keep the books and other records of the business of such dealer, at which site or location the principal portion of such dealer's business shall be conducted and the books and records thereof kept and maintained; except that a dealer may keep its books and records at an off-site location in Colorado after notifying the board in writing of such location at least thirty days in advance.

(16.5) "Recreational vehicle" means a camping trailer, fifth wheel trailer, motor home, recreational park trailer, travel trailer, or truck camper, all as defined in section 24-32-902, C.R.S.

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

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

(b) Public officers while performing their official duties;

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

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

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

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

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

(h) An operator, as defined in section 42-4-1802 (5), C.R.S., who sells a motor vehicle pursuant to section 42-4-1806 (2), C.R.S.

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

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

12-6-103 - Motor vehicle dealer board.

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

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

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

12-6-104 - Board - oath - meetings - powers and duties.

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

(2) The board shall annually in the month of July elect from the membership thereof a president, a first vice-president, and a second vice-president. The board shall meet at such times as it deems necessary. A majority of the board shall constitute a quorum at any meeting or hearing.

(3) The board is authorized and empowered:

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

(a.5) To delegate to the board's executive secretary, employed pursuant to section 12-6-105 (1) (b), the authority to execute all actions within the power of the board, carry out the directives of the board, and make recommendations to the board on all matters within the authority of the board;

(a.7) To issue through the department of revenue a temporary license to any person applying for any license issued by the board. The temporary license shall permit the applicant to operate for a period not to exceed one hundred twenty days while the board is completing its investigation and determination of all facts relative to the qualifications of the applicant for such license. A temporary license is terminated when the applicant's license is issued or denied.

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

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

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

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

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

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

(II) After an investigation by the executive director or the executive director's designee, if the board determines that there is probable cause to believe a violation of this article has occurred, it may order that an administrative hearing be held pursuant to section 24-4-105, C.R.S., or may designate one of the board's members as a hearing officer to conduct a hearing pursuant to section 24-4-105, C.R.S.

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

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

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

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

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

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

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

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

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

(II) and (III) (Deleted by amendment, L. 98, p. 592, § 4, effective July 1, 1998.)

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

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

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

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

(D) In bold-faced type, of the size specified in sub-subparagraph (A) of this subparagraph (I), if the contract for the sale of a motor vehicle requires a single lump sum payment of the purchase price, a clear disclosure to the purchaser of that fact or, if the contract is contingent upon the approval of credit financing for the purchaser arranged by or through the motor vehicle dealer, in bold-faced type, a statement that the purchaser shall agree to purchase the motor vehicle which is the subject of the sale from the motor vehicle dealer at not greater than a certain annual percentage rate of financing, which annual percentage rate of financing shall be agreed upon by the parties and entered in writing on the contract;

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

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

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

(I) (Deleted by amendment, L. 98, p. 592, § 4, effective July 1, 1998.)

(m) (I) (A) If a hearing is held before an administrative law judge or a hearing officer designated by the board from within the board's membership, after due notice and a hearing by such judge or hearing officer pursuant to section 24-4-105, C.R.S., to review the findings of law and fact and the fairness of any fine imposed and to uphold such fine, to impose an administrative fine upon its own initiative, which shall not exceed ten thousand dollars for each separate offense by any licensee, or to vacate the fine imposed by the judge or hearing officer; except that, for motor vehicle dealers who sell primarily vehicles that weigh under one thousand five hundred pounds, the fine for each separate offense shall not exceed one thousand dollars. Whenever a hearing is heard by an administrative law judge, the maximum fine that may be imposed is ten thousand dollars for each separate offense by any person licensed by the board pursuant to this part 1; except

that, for motor vehicle dealers who sell primarily vehicles that weigh under one thousand five hundred pounds, the fine for each separate offense may not exceed one thousand dollars. Whenever a licensing hearing is conducted by a hearing officer, the sanctions that may be recommended by the hearing officer are limited to the denial or grant of an unrestricted license or a restricted license under such terms as the hearing officer deems appropriate. Whenever a disciplinary hearing is conducted by a hearing officer, the hearing officer may only recommend a probationary period of no more than twelve months, a fine of no more than five hundred dollars, or both such probationary period and fine for each separate violation committed by a person licensed by the board.

(B) The board shall promulgate rules regarding circumstances in which a board member should not act as a hearing officer in a particular matter before the board because of business competition issues connected with the parties involved in such matter.

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

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

(o) (I) To impose a fine of up to one thousand dollars per day per violation for any person found, after notice and hearing pursuant to section 24-4-105, C.R.S., to have violated the provisions of section 12-6-120 (2). For the purposes of this paragraph (o), the address for the notice to be given under section 24-4-105, C.R.S., is the last-known address for the person as indicated in the state motor vehicle records; the last-known address for the owner of the real property upon which motor vehicles are displayed in violation of section 12-6-120 (2) as indicated in the records of the county assessor's office; or an address for service of process in accordance with rule 4 of the Colorado rules of civil procedure.

(II) Any person who fails to pay a fine ordered by the board for a violation of section 12-6-120 (2) under this paragraph (o) shall be subject to enforcement proceedings, by the board through the attorney general, in the county or district court pursuant to the Colorado rules of civil procedure. Any fines collected under the provisions of this paragraph (o) shall be disposed of pursuant to section 12-6-123.

12-6-105 - Powers and duties of executive director.

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

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

(b) To employ, subject to the laws of the state of Colorado and after consultation with the board, an executive secretary for the board. The executive secretary shall be accountable to the board and shall, pursuant to delegation by the board, discharge the responsibilities of the board under this part 1. The executive director may also employ such clerks, deputies, and

assistants as the executive director considers necessary to discharge the duties imposed upon the executive director by this part 1 and to designate the duties of such clerks, deputies, and assistants.

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

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

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

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

(f) To summarily issue cease and desist orders on such terms and conditions and for such period of time as to the executive director appears fair and just to any person who is licensed by the executive director pursuant to this part 1 if such orders are followed by notice and a hearing pursuant to section 12-6-104 (3) (e) (I).

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

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

12-6-106 - Records as evidence.

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

12-6-107 - Attorney general to advise and represent.

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

(2) The board may request the attorney general to make civil investigations and enforce rules and regulations of the board in cases of civil violations and to bring and defend civil suits and proceedings for any of the purposes necessary and proper for carrying out the functions of the board.

12-6-108 - Classes of licenses.

(1) Licenses issued under the provisions of this part 1 shall be of the following classes:

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

(b) Used motor vehicle dealer's license shall permit the licensee to engage in the business of selling, exchanging, leasing, or offering used motor vehicles only. Such license shall also permit a licensee to negotiate for a consumer the sale, exchange, or lease of used and new motor vehicles not owned by the licensee, except those vehicles defined in section 42-1-102 (55), C.R.S., as motorcycles and section 33-14.5-101 (3), C.R.S., as off-highway vehicles; however, prior to completion of such sale, exchange, or lease of a motor vehicle not owned by the licensee, the licensee shall disclose in writing to the consumer whether the licensee will receive any compensation from the consumer and whether the licensee will receive any compensation from the owner of the motor vehicle as a result of such transaction. If the licensee receives compensation from the owner of the motor vehicle as a result of the transaction, the licensee shall include in the written disclosure the name of such owner from whom the licensee will receive compensation. This form of license shall permit not more than two persons named therein who shall be owners or part owners of the business of the licensee to act as motor vehicle salespersons.

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

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

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

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

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

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

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

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

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

12-6-108.5 - Temporary motor vehicle dealer license.

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

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

12-6-109 - Display, form, custody, and use of licenses.

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

12-6-110 - Fees - disposition - expenses - expiration of licenses.

(1) There shall be collected with each application the fee established pursuant to subsection (5) of this section for each of the following licenses:

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

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

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

(3) (a) Such licenses, if the same have not been suspended or revoked as provided in this part 1, shall be valid until one year following the month of issuance thereof and shall then expire; except that any license issued under this part 1 shall expire upon the voluntary surrender thereof or upon the abandonment of the licensee's place of business for a period of more than thirty days.

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

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

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

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

(5) (a) The board shall propose, as part of its annual budget request, an adjustment in the amount of each fee which the board is authorized by law to collect. The budget request and the adjusted fees for the board shall reflect direct and indirect costs.

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

(c) Whenever moneys appropriated to the board for its activities for the prior fiscal year are unexpended, said moneys shall be made a part of the appropriation to the board for the next fiscal year, and such amount shall not be raised from fees collected by the board or the executive director. If a supplemental appropriation is made to the board for its activities, the fees of

the board and the executive director, when adjusted for the fiscal year next following that in which the supplemental appropriation was made, shall be adjusted by an additional amount which is sufficient to compensate for such supplemental appropriation. Moneys appropriated to the board in the annual general appropriation bill shall be from the fund provided in section 12-6-123.

12-6-111 - Bond of licensee.

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

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

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

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

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

12-6-112 - Motor vehicle salesperson's bond.

(1) Before any motor vehicle salesperson's license is issued by the board through the executive director to any applicant therefor, the said applicant shall procure and file with the board evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a good and sufficient bond in the amount of five thousand dollars with corporate surety thereon duly licensed to do business within the state, approved as to form by the attorney general of the state, and conditioned that said applicant shall perform in good faith as a motor vehicle salesperson

without fraud or fraudulent representation and without the violation of any of the provisions of this part 1 that are designated by the board by rule.

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

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

12-6-112.2 - Buyer agent bonds.

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

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

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

12-6-112.7 - Notice of claims honored against bond.

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

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

12-6-113 - Testing licensees.

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

12-6-114 - Filing of written warranties.

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

12-6-115 - Application.

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

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

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

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

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

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

12-6-116 - Notice of change of address or status.

(1) The board, through the executive director, shall not issue a motor vehicle dealer's license or used motor vehicle dealer's license to any applicant therefor who has no principal place of business as is defined in this part 1. Should the motor vehicle dealer or used motor vehicle dealer change the site or location of such dealer's principal place of business, such dealer shall immediately upon making such change so notify the board in writing, and thereupon a new license shall be granted for the unexpired portion of the term of such license at a fee established pursuant to section 12-6-110. Should a motor vehicle dealer or used motor vehicle dealer, for any reason whatsoever, cease to possess a principal place of business, as defined in this part 1, from and on which such dealer conducts the business for which such dealer is

licensed, such dealer shall immediately so notify in writing the board and, upon demand therefor by the board, shall deliver to it such dealer's license, which shall be held and retained until it appears to the board that such licensee again possesses a principal place of business; whereupon, such dealer's license shall be reissued. Nothing in this part 1 shall be construed to prevent a motor vehicle dealer or used motor vehicle dealer from conducting the business for which such dealer is licensed at one or more sites or locations not contiguous to such dealer's principal place of business but operated and maintained in conjunction therewith.

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

(3) Should any motor vehicle salesperson be discharged or leave an employer or change a place of employment, the motor vehicle dealer or used motor vehicle dealer who last employed said salesperson shall confiscate and forthwith return such salesperson's license to the board. It shall be unlawful for such salesperson to act as a motor vehicle salesperson until a new license is procured.

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

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

12-6-117 - Principal place of business - requirements.

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

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

(b) A motor vehicle dealer who operates such motor vehicle dealer's business from his or her primary residence and who has been a resident of Colorado for the immediately preceding twelve-month period and is a motor vehicle dealer only because such dealer sells custom trailers for one or more manufacturers and maintains an inventory of fewer than four vehicles at all times shall be exempt from the requirements of paragraph (a) of this

subsection (2). Any motor vehicle dealer who is issued dealer plates in accordance with this paragraph (b) pursuant to section 42-3-127, C.R.S., shall only use such plates on trailers.

(3) Repealed.

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

12-6-118 - Licenses - grounds for denial, suspension, or revocation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds:

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

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

(c) Violation of any of the terms and provisions of this part 1 or any rule or regulation promulgated by the board under this part 1;

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

(e) Defrauding any buyer, seller, motor vehicle salesperson, or financial institution to such person's damage;

(f) Intentional or negligent failure to perform any written agreement with any buyer or seller;

(g) Failure or refusal to furnish and keep in force any bond required under this part 1;

(h) Having made a fraudulent or illegal sale, transaction, or repossession;

(i) Willful misrepresentation, circumvention, or concealment of or failure to disclose, through whatsoever subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to the buyer;

(j) Repealed.

(k) To intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products sold or furnished by a licensed dealer;

(l) To knowingly purchase, sell, or otherwise acquire or dispose of a stolen motor vehicle;

(m) For any licensed motor vehicle dealer or used motor vehicle dealer to engage in the business for which such dealer is licensed without at all times maintaining a principal place of business as required by this part 1 during reasonable business hours;

(n) Engaging in such business through employment of an unlicensed motor vehicle salesperson;

(o) To willfully violate any state or federal law respecting commerce or motor vehicles or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles;

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

(q) Repealed.

(r) Representing or selling as a new and unused motor vehicle any motor vehicle which the dealer or salesperson knows has been used and operated for demonstration purposes or which the dealer or salesperson knows is otherwise a used motor vehicle;

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

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

(II) Repealed.

(t.1) Repealed.

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

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

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

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

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

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

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

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

(f) Having indulged in any fraudulent business practice;

(g) Selling, offering, or attempting to negotiate the sale, exchange, or lease of motor vehicles for any motor vehicle dealer or used motor vehicle dealer for which such salesperson is not licensed; except that negotiation with a motor vehicle dealer for the sale, exchange, or lease of new and used motor vehicles, except those vehicles defined in section 42-1-102 (55), C.R.S., as motorcycles and section 33-14.5-101 (3), C.R.S., as off-highway vehicles, by a salesperson compensated for said negotiation by the used motor vehicle dealer for which such salesperson is licensed shall not be grounds for denial, revocation, or suspension;

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

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

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

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

(l) Employing an unlicensed motor vehicle salesperson;

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

(n) Defrauding any retail buyer to such person's damage;

(o) Representing or selling as a new and unused motor vehicle any motor vehicle which the salesperson knows has been used and operated for demonstration purposes or which the salesperson knows is otherwise a used motor vehicle;

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

(II) Repealed.

(p.1) Repealed.

(q) Willfully violating any state or federal law respecting commerce or motor vehicles or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles;

(r) Improperly withholding, misappropriating, or converting to such salesperson's own use any money belonging to customers or other persons, received in the course of employment as a motor vehicle salesperson.

(6) Any license issued pursuant to this part 1 may be denied, revoked, or suspended if unfitness of such licensee or licensee applicant is shown in the following:

(a) The licensing character or record of the licensee or licensee applicant;

(b) The criminal character or record of the licensee or licensee applicant;

(c) The financial character or record of the licensee or licensee applicant;

(d) Violation of any lawful order of the board.

(7) (a) Any license issued or for which an application has been made pursuant to this part 1 shall be revoked or denied if the licensee or applicant has been convicted of or pleaded no contest to any of the following offenses in this state or any other jurisdiction during the previous ten years:

(l) A felony in violation of article 3, 4, or 5 of title 18, C.R.S., or any similar crime under federal law or the law of any other state; or

(II) 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.

(b) A certified copy of a judgment of conviction by a court of competent jurisdiction of an offense under paragraph (a) of this subsection (7) is conclusive evidence of such conviction in any hearing held pursuant to this article.

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

The denial, suspension, or revocation of licenses issued under this part 1 shall be in accordance with the provisions of sections 24-4-104 and 24-4-105, C.R.S.; except that the discovery available under rule 26 (b) (2) of the Colorado rules of civil procedure is available in any proceeding conducted by the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., or a hearing officer from among its membership to conduct hearings for the board. Hearings conducted by a hearing officer appointed from the board membership shall be in accordance with procedures established by the board. Hearings conducted before an administrative law judge shall be in accordance with the rules of procedure of the division of administrative hearings. The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

12-6-120 - Unlawful acts.

(1) It shall be unlawful and a violation of this part 1 for any manufacturer, distributor, factory branch, distributor branch, factory representative, or distributor representative:

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

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

(c) To coerce or attempt to coerce any motor vehicle dealer to accept delivery of any motor vehicle, parts or accessories therefor, or any commodities or services which have not been ordered by said dealer;

(d) (I) To cancel or cause to be canceled, directly or indirectly, without just cause, the franchise of any motor vehicle dealer, and the nonrenewal of a franchise or selling agreement without just cause is a violation of this paragraph (d) and shall constitute an unfair cancellation.

(II) As used in this paragraph (d), "just cause" shall be determined in the context of all circumstances surrounding the cancellation or nonrenewal, including but not limited to:

(A) The amount of business transacted by the motor vehicle dealer;

(B) The investments necessarily made and obligations incurred by the motor vehicle dealer, including but not limited to goodwill, in the performance of its duties under the franchise agreement, together with the duration and permanency of such investments and obligations;

(C) The potential for harm to consumers as a result of disruption of the business of the motor vehicle dealer;

(D) The motor vehicle dealer's failure to provide adequate service of facilities, equipment, parts, and qualified service personnel;

(E) The motor vehicle dealer's failure to perform warranty work on behalf of the manufacturer, subject to reimbursement by the manufacturer; and

(F) The motor vehicle dealer's failure to substantially comply, in good faith, with requirements of the franchise that are determined to be reasonable and material.

(III) The following conduct by a motor vehicle dealer shall constitute just cause for termination without consideration of other factors:

(A) Conviction of, or a plea of guilty or nolo contendere to, a felony;

(B) A continuing pattern of fraudulent conduct against the manufacturer or consumers; or

(C) Continuing failure to operate for ten days or longer.

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

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

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

(h) To violate any duty imposed by, or fail to comply with, any provision of section 12-6-120.3, 12-6-120.5, or 12-6-120.7;

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

(j) (I) To fail or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make except as a result of a strike or labor difficulty, lack of manufacturing capacity, shortage of materials, freight embargo, or other cause over which the manufacturer has no control; or

(II) To require a dealer to pay an unreasonable fee, purchase unreasonable advertising displays or other materials, or comply with unreasonable training or facilities requirements as a prerequisite to receiving any particular model of that same line-make. For purposes of this subparagraph (II), reasonableness shall be judged based on the circumstances of the individual dealer and the conditions of the market served by the dealer.

(III) This paragraph (j) shall not apply to manufacturers of recreational vehicles nor to manufacturers of vehicles with a passenger capacity of thirty-two or more.

(k) To require, coerce, or attempt to coerce any motor vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other line-make of new motor vehicles or related products; except that this paragraph (k) shall not apply unless the motor vehicle dealer:

(I) Maintains a reasonable line of credit for each make or line of new motor vehicle; and

(II) Remains in compliance with reasonable capital standards and reasonable facilities requirements specified by the manufacturer. "Reasonable facilities requirements" shall not include any requirement that a motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space unless such a requirement is justified by reasonable business considerations.

(I) (I) To fail to pay to a motor vehicle dealer, within ninety days after the termination, cancellation, or nonrenewal of a franchise, all of the following:

(A) The dealer cost, plus any charges made by the manufacturer for distribution, delivery, and taxes, less all allowances paid or credited to the motor vehicle dealer by the manufacturer, of unused, undamaged, and unsold motor vehicles in the motor vehicle dealer's inventory that were acquired from the manufacturer or from another motor vehicle dealer of the same line-make within the previous twelve months;

(B) The dealer cost, less all allowances paid or credited to the motor vehicle dealer by the manufacturer, for all unused, undamaged, and unsold supplies, parts, and accessories in original packaging and listed in the manufacturer's current parts catalog;

(C) The fair market value of each undamaged sign owned by the motor vehicle dealer and bearing a common name, trade name, or trademark of the manufacturer if acquisition of such sign was required by the manufacturer;

(D) The fair market value of all special tools and equipment that were acquired from the manufacturer or from sources approved and required by the manufacturer and that are in good and usable condition, excluding normal wear and tear; and

(E) The cost of transporting, handling, packing, and loading the motor vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings described in this paragraph (I).

(II) This paragraph (I) shall only apply to manufacturers of recreational vehicles in cases where the manufacturer terminates, cancels, or fails to renew the recreational vehicle dealer franchise; and this paragraph (I) shall not apply to manufacturers of vehicles with a passenger capacity of thirty-two or more.

(m) To require, coerce, or attempt to coerce any motor vehicle dealer to close or change the location of the motor vehicle dealer, or to make any substantial alterations to the dealer premises or facilities when doing so would be unreasonable or without written assurance of a sufficient supply of motor vehicles so as to justify such changes, in light of the current market and economic conditions;

(n) (I) To authorize or permit a person to perform warranty service repairs on motor vehicles unless the person is:

(A) A motor vehicle dealer with whom the manufacturer has entered into a franchise agreement for the sale and service of the manufacturer's motor vehicles; or

(B) A person or government entity that has purchased new motor vehicles pursuant to a manufacturer's fleet discount program and is performing the warranty service repairs only on vehicles owned by such person or entity.

(II) This paragraph (n) shall not apply to manufacturers of recreational vehicles nor to manufacturers of vehicles with a passenger capacity of thirty-two or more.

(o) To require, coerce, or attempt to coerce any motor vehicle dealer to prospectively agree to a release, assignment, novation, waiver, or estoppel that would relieve any person of a duty or liability imposed under this article except in settlement of a bona fide dispute.

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

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

- (a) To make a material misstatement in an application for a license;
- (b) To willfully fail to perform or cause to be performed any written agreement with respect to any motor vehicle or parts thereof;
- (c) To defraud any buyer, seller, motor vehicle salesperson, or financial institution;
- (d) To intentionally enter into a financial agreement with a seller of a motor vehicle for the buyer agent's own benefit;
- (e) To coerce any motor vehicle dealer into providing installment financing with a specified financial institution.

12-6-120.3 - New, reopened, or relocated dealer - notice required - grounds for refusal of dealer license - definitions.

(1) No manufacturer shall establish an additional new motor vehicle dealer, reopen a previously existing motor vehicle dealer, or relocate an existing motor vehicle dealer without first providing at least sixty days' notice to all of its franchised dealers within whose relevant market area the new, reopened, or relocated dealer would be located. Such notice shall state:

- (a) The specific location at which the additional, reopened, or relocated motor vehicle dealer will be established;
- (b) The date on or after which the manufacturer intends to be engaged in business with the additional, reopened, or relocated motor vehicle dealer at the proposed location;
- (c) The identity of all motor vehicle dealers who are franchised to sell the same line-make of vehicles with licensed locations in the relevant market area where the additional, reopened, or relocated motor vehicle dealer is proposed to be located; and
- (d) The names and addresses of the dealer-operator and principal investors in the proposed additional, reopened, or relocated motor vehicle dealer.

(2) Subsection (1) of this section shall not apply to:

- (a) The relocation of an existing dealer within two miles of its current location; or
- (b) The establishment of a replacement dealer, within two years, either at the former location or within two miles of the former location.

(3) As used in this section:

(a) "Manufacturer" means and includes any motor vehicle manufacturer, distributor, factory branch, distributor branch, factory representative, or distributor representative.

(b) "Relevant market area" means the greater of the following:

- (l) The geographic area of responsibility defined in the franchise agreement of an existing dealer; or

(II) The geographic area within a radius of five miles of any existing dealer of the same line-make of vehicle that is located in a county with a population of more than one hundred fifty thousand or within a radius of ten miles of an existing dealer of the same line-make of vehicles that is located in a county with a population of one hundred fifty thousand or less.

(4) If a licensee brings an action or proceeding before the executive director or a court pursuant to this part 1, the manufacturer shall have the burden of proof on the following issues:

(a) The size and permanency of investment and obligations incurred by the existing motor vehicle dealers of the same line-make located in the relevant market area;

(b) Growth or decline in population and new motor vehicle registrations in the relevant market area;

(c) The effect on the consuming public in the relevant market area and whether the opening of the proposed additional, reopened, or relocated dealer is injurious or beneficial to the public welfare; and

(d) Whether the motor vehicle dealers of the same line-make in the relevant market area are providing adequate and convenient customer care for motor vehicles of the same line-make in the relevant market area, including but not limited to the adequacy of sales and service facilities, equipment, parts, and qualified service personnel.

12-6-120.5 - Independent control of dealer - definitions.

(1) Except as otherwise provided in this section, no manufacturer shall own, operate, or control any motor vehicle dealer in Colorado.

(2) Notwithstanding subsection (1) of this section, the following activities are not prohibited:

(a) Operation of a dealer for a temporary period, not to exceed two years, during the transition from one owner or operator to another;

(b) Ownership or control of a dealer while the dealer is being sold under a bona fide contract or purchase option to the operator of the dealer;

(c) Participation in the ownership of the dealer solely for the purpose of providing financing or a capital loan that will enable the dealer to become the majority owner of the dealer in less than seven years; and

(d) Operation of a motor vehicle dealer if the manufacturer has no other franchised dealers of the same line-make in this state.

(3) As used in this section:

(a) "Control" means to possess, directly, the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise; except that "control" does not include the relationship between a manufacturer and a motor vehicle dealer under a franchise agreement.

(b) "Manufacturer" means and includes any motor vehicle manufacturer, distributor, factory branch, distributor branch, factory representative, or distributor representative.

(c) "Operate" means to directly or indirectly manage a motor vehicle dealer.

(d) "Own" means to hold any beneficial ownership interest of one percent or more of any class of equity interest in a dealer, whether as a shareholder, partner, limited liability company member, or otherwise. To "hold" an ownership interest means to have possession of, title to, or control of the ownership interest, either directly or through a fiduciary or agent.

(4) This section shall not apply to manufacturers of vehicles with a passenger capacity of thirty-two or more.

12-6-120.7 - Successor under existing franchise agreement - duties of manufacturer.

(1) If a licensed motor vehicle dealer under franchise by a manufacturer dies or becomes incapacitated, the manufacturer shall act in good faith to allow a successor, which may include a family member, designated by the deceased or incapacitated motor vehicle dealer to succeed to ownership and operation of the dealer under the existing franchise agreement if:

(a) Within ninety days after the motor vehicle dealer's death or incapacity, the designated successor gives the manufacturer written notice of an intent to succeed to the rights of the deceased or incapacitated motor vehicle dealer in the franchise agreement;

(b) The designated successor agrees to be bound by all of the terms and conditions of the existing franchise agreement; and

(c) The designated successor meets the criteria generally applied by the manufacturer in qualifying motor vehicle dealers.

(2) A manufacturer may refuse to honor the existing franchise agreement with the designated successor only for good cause. The manufacturer may request in writing from a designated successor the personal and financial data that is reasonably necessary to determine whether the existing franchise agreement should be honored, and the designated successor shall supply such data promptly upon request.

(3) (a) If a manufacturer believes that good cause exists for refusing to honor the requested succession, the manufacturer shall send the designated successor, by certified or overnight mail, notice of its refusal to approve the succession within sixty days after the later of:

(I) Receipt of the notice of the designated successor's intent to succeed the motor vehicle dealer in the ownership and operation of the dealer; or

(II) The receipt of the requested personal and financial data.

(b) Failure to serve the notice pursuant to paragraph (a) of this subsection (3) shall be considered approval of the designated successor, and the franchise agreement is considered amended to reflect the approval of the succession the day following the last day of the notice period specified in said paragraph (a).

(c) If the manufacturer gives notice of refusal to approve the succession, such notice shall state the specific grounds for the refusal and shall state that the franchise agreement shall be discontinued not less than ninety days after the date the notice of refusal is served unless the proposed successor files an action in the district court to enjoin such action.

(4) This section shall not be construed to prohibit a motor vehicle dealer from designating a person as the successor in advance, by written instrument filed with the manufacturer. If the motor vehicle dealer files such an instrument, that instrument governs the succession rights to the management and operation of the dealer subject to the designated successor satisfying the manufacturer's qualification requirements as described in this section.

(5) This section shall not apply to manufacturers of vehicles with a passenger capacity of thirty-two or more.

12-6-121 - Penalty.

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

12-6-121.5 - Fines - disposition - unlicensed sales.

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

12-6-121.6 - Drafts not honored for payment - penalties.

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

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

12-6-122 - Right of action for loss.

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

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

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

12-6-122.5 - Contract disputes - venue - choice of law.

(1) In the event of a dispute between a motor vehicle dealer and a manufacturer under a franchise agreement, notwithstanding any provision of the agreement to the contrary:

(a) At the option of the motor vehicle dealer, venue shall be proper in the county or judicial district where the dealer resides or has its principal place of business; and

(b) Colorado law shall govern, both substantively and procedurally.

12-6-123 - Disposition of fees - auto dealers license fund.

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

(a) Repealed.

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

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

12-6-124 - Repeal of article.

This article is repealed, effective July 1, 2003. Prior to such repeal, the motor vehicle dealer board and the functions of the executive director, including licensing, shall be reviewed as provided for in section 24-34-104, C.R.S.

12-6-125 - Advertisement - inclusion of dealer name.

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

12-6-201 - Definitions.

As used in this part 2, unless the context otherwise requires:

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

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

12-6-202 - Exclusive finance agreements void, when.

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

12-6-203 - Threat prima facie evidence of violation.

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

12-6-204 - Threat by agent as evidence of violation.

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

12-6-205 - Offering consideration to eliminate competition.

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

12-6-206 - Accepting consideration to eliminate competition.

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

12-6-207 - Recipient of consideration shall not buy mortgages.

It is unlawful for any person who hereafter so accepts or receives, either directly or indirectly, any payment, thing, or service of value, as set forth in section 12-6-206, or contracts, either directly or indirectly, to receive any such payment, or thing, or service of value to thereafter finance or attempt to finance the purchase or sale of any motor vehicle or buy or attempt to buy any conditional sales contracts, chattel mortgages, or leases on motor vehicles sold at retail in this state.

12-6-208 - Quo warranto action.

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

12-6-209 - Violation by foreign corporation - penalty.

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

12-6-210 - Penalty.

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

12-6-211 - Contract void.

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

12-6-212 - Provisions cumulative.

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

12-6-213 - Damages.

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

12-6-301 - Definitions.

As used in this part 3, unless the context otherwise requires:

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

12-6-302 - Sunday closing.

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

12-6-303 - Penalties.

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

42-10-101 - Definitions.

As used in this article, unless the context otherwise requires:

(1) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle normally used for personal, family, or household purposes, any person to whom such motor vehicle is transferred for the same purposes during the duration of a manufacturer's express warranty for such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

(2) "Motor vehicle" means a self-propelled private passenger vehicle, including pickup trucks and vans, designed primarily for travel on the public highways and used to carry not more than ten persons, which is sold to a consumer in this state; except that the term does not include motor homes as defined in section 42-1-102 (57) or vehicles designed to travel on three or fewer wheels in contact with the ground.

(3) "Warranty" means the written warranty, so labeled, of the manufacturer of a new motor vehicle, including any terms or conditions precedent to the enforcement of obligations under that warranty.

42-10-102 - Repairs to conform vehicle to warranty.

If a motor vehicle does not conform to a warranty and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during the term of such warranty or during a period of one year following the date of the original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent, or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such warranty, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.

42-10-103 - Failure to conform vehicle to warranty - replacement or return of vehicle.

(1) If the manufacturer, its agent, or its authorized dealer is unable to conform the motor vehicle to the warranty by repairing or correcting the defect or condition which substantially impairs the use and market value of such motor vehicle after a reasonable number of attempts, the manufacturer shall, at its option, replace the motor vehicle with a comparable motor vehicle or accept return of the motor vehicle from the consumer and refund to the consumer the full purchase price, including the sales tax, license fees, and registration fees and any similar governmental charges, less a reasonable allowance for the consumer's use of the motor vehicle. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear. A reasonable allowance for use shall be that amount directly attributable to use by the consumer and any previous consumer prior to the consumer's first written report of the nonconformity to the manufacturer, agent, or dealer and during any subsequent period when the vehicle is not out of service by reason of repair.

(2) (a) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the warranty if:

(I) The same nonconformity has been subject to repair four or more times by the manufacturer, its agent, or its authorized dealer within the warranty term or during a period of one year following the date of the original delivery of the motor vehicle to the consumer, whichever is the earlier date, but such nonconformity continues to exist; or

(II) The motor vehicle is out of service by reason of repair for a cumulative total of thirty or more business days of the repairer during the term specified in subparagraph (I) of this paragraph (a) or during the period specified in said subparagraph (I), whichever is the earlier date.

(b) For the purposes of this subsection (2), the term of a warranty, the one-year period, and the thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, or fire, flood, or other natural disaster.

(c) In no event shall a presumption under paragraph (a) of this subsection (2) apply against a manufacturer unless the manufacturer has received prior written notification by certified mail from or on behalf of the consumer and has been provided an opportunity to cure the defect alleged. Such defect shall count as one nonconformity subject to repair under subparagraph (I) of paragraph (a) of this subsection (2).

(d) Every authorized motor vehicle dealer shall include a form, containing the manufacturer's name and business address, with each motor vehicle owner's manual on which the consumer may give written notification of any defect, as such notification is required by paragraph (c) of this subsection (2), and the form shall clearly and conspicuously disclose that written notification by certified mail of the nonconformity is required, in order for the consumer to obtain remedies under this article.

(3) The court shall award reasonable attorney fees to the prevailing side in any action brought to enforce the provisions of this article.

42-10-104 - Affirmative defenses.

(1) It shall be an affirmative defense to any claim under this article that:

(a) An alleged nonconformity does not substantially impair the use and market value of a motor vehicle; or

(b) A nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the motor vehicle by a consumer.

42-10-105 - Limitations on other rights and remedies.

Nothing in this article shall in any way limit the rights or remedies which are otherwise available to a consumer under any other state law or any federal law. Nothing in this article shall affect the other rights and duties between the consumer and a seller, lessor, or lienholder of a motor vehicle or the rights between any of them. Nothing in this article shall be construed as imposing a liability on any authorized dealer with respect to a manufacturer or creating a cause of action by a manufacturer against its authorized dealer; except that failure by an authorized dealer to properly prepare a motor vehicle for sale, to properly install options on a motor vehicle, or to properly make repairs on a motor vehicle, when such preparation, installation, or repairs would have prevented or cured a nonconformity, shall be actionable by the manufacturer.

42-10-106 - Applicability of federal procedures.

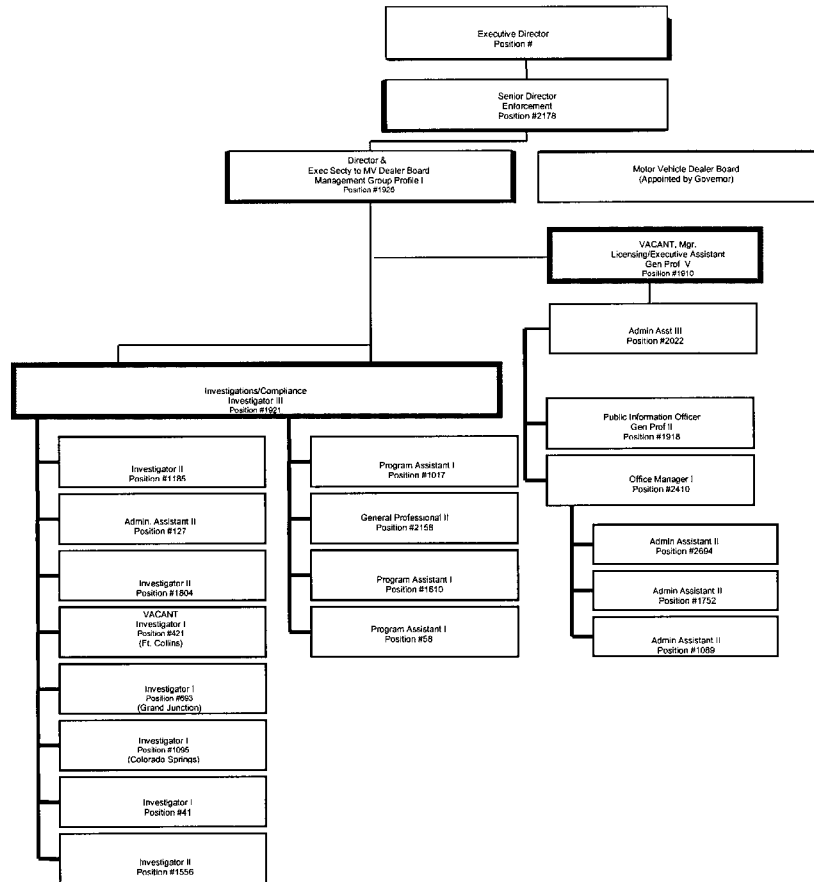
If a manufacturer has established or participates in an informal dispute settlement procedure which substantially complies with the provisions of part 703 of title 16 of the code of federal regulations, as from time to time amended, the provisions of section 42-10-103 (1) concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure.

42-10-107 - Statute of limitations.

Any action brought to enforce the provisions of this article shall be commenced within six months following the expiration date of any warranty term or within one year following the date of the original delivery of a motor vehicle to a consumer, whichever is the earlier date; except that the statute of limitations shall be tolled during the period the consumer has submitted to arbitration under section 42-10-106.

Appendix C – Enforcement Business Group – Auto Industry Division Organizational Chart

Colorado Department of Revenue Enforcement Business Group Auto Industry Division



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Appendix D – Manufacturer License Application

DR 2635 (12/00)
COLORADO DEPARTMENT OF REVENUE
 AUTO INDUSTRY DIVISION
 DENVER CO 80261-0016
 (303) 205-5604

MANUFACTURER/DISTRIBUTOR LICENSE APPLICATION

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All applicants must complete this application and submit with the appropriate fee to the above address.

Manufacturer and distributor applicants must provide the following:

- All written warranties or a statement that none are provided.
- A certified copy of the standard written agreement with dealers.
- A copy of the delivery and preparation obligations of dealers.
- A copy of the manufacturer's certificate of origin (MCO).
- Distributor agreement with the manufacturer (**Distributor applicants only**);

Manufacturers and Distributors must provide immediate notification to the Auto Industry Division of the appointment and/or termination of franchised dealers as well as the addition of new makes.

Check One: (2540) <input type="checkbox"/> Manufacturer		(2544) <input type="checkbox"/> Distributor		(2548) <input type="checkbox"/> Factory Branch		(2548) <input type="checkbox"/> Distributor Branch		
Check One:								
<input type="checkbox"/> Individual		<input type="checkbox"/> Corporation		<input type="checkbox"/> Partnership		<input type="checkbox"/> Ltd. Liab. Company		
<input type="checkbox"/> Ltd. Liab. Partnership								
Name of Applicant						Federal ID Number		
Trade Name (if different)								
Mailing Address				City		State	ZIP	
Colorado Location Address				City		State	ZIP	
Contact Person or Department				FAX Number		Telephone Number ()		
Type of Vehicles Manufactured or Distributed in Colorado:								
<input type="checkbox"/> Car		<input type="checkbox"/> Truck		<input type="checkbox"/> Motorcycle		<input type="checkbox"/> Motor Home		
<input type="checkbox"/> Trailer								
Make of Vehicles Manufactured or Distributed in Colorado								
Name and License Numbers of Colorado Dealers Authorized to Sell Your Motor Vehicles								
Manufacturers and Distributors Only I hereby appoint the following as my true and lawful agent for the service of process in the State of Colorado in any action which may be hereafter commenced against me on any claim for damages alleged to have been suffered by any person by reason of the violation of any of the terms and provisions of Article 6, Title 12, C.R.S. (The administrator of the Department of Revenue, State of Colorado may be appointed as the agent for service of process in the State of Colorado.)								
Name						Telephone Number ()		
Address				City		State	ZIP	
All Applicants I declare under penalty of perjury in the second degree that the statements made on this application are true and complete to the best of my knowledge and that I have authority as the owner, a member of the co-partnership or as an agent of the corporation to sign this application.								
Signature		Printed Name		Title		Date		
Make check payable to: COLORADO DEPARTMENT OF REVENUE				Fee Submitted \$				
FOR OFFICIAL USE ONLY	Department's Action		Manufacturer Number		Date Issued		Liability Code	
	<input type="checkbox"/> Approved <input type="checkbox"/> Denied							
Date								

Original - Auto Industry Division

Canary Copy - Cashier

Appendix E – Representative License Application

DR 2662 (04/97)
COLORADO DEPARTMENT OF REVENUE
 DEALER SECTION
 DENVER, CO 80261-0016
 (303) 205-5604

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REPRESENTATIVE LICENSE APPLICATION

Check One: <input type="checkbox"/> Original Application <input type="checkbox"/> Renewal		Check One: <input type="checkbox"/> Factory Rep. <input type="checkbox"/> Distributor Rep.	
Section 1: Instructions			
C.R.S. 12-6-102 (9) defines a factory representative as anyone "employed by a person who manufactures or assembles motor vehicles or by a factory branch for the purpose of making or promoting the sale of its motor vehicles or for supervising or contacting its dealers or prospective dealers." A distributor representative is defined as a person "employed by a distributor, distributor branch, or wholesaler." Individuals so employed by a motor vehicle manufacturer or distributor must complete the following application and submit the appropriate fee.			
Section 2: All Applicants Read Carefully			
We, the undersigned applicants for representative licenses certify, under penalties of perjury in the second degree, that information contained in this application is true and accurate. We agree to conform with state laws, rules and regulations governing our conduct. We understand that a representative's license can be denied, suspended or revoked on the following grounds: (a) Proof of unfitness; (b) Material misstatement in an application for a license; (c) Willful failure to comply with any provisions of Motor Vehicle law or any rule or regulation promulgated by the administrator; (d) Indulging in any unconscionable business practice; (e) Coercing or attempting to coerce any motor vehicle dealer to accept delivery of any motor vehicle, parts or accessories, or any other commodities or services which have not been ordered by a motor vehicle dealer; (f) Coercing or attempting to coerce any motor vehicle dealer to enter into any agreement to do any act unfair to said dealer by threatening to cause the cancellation of the franchise of said dealer; or (g) Withholding, threatening to withhold, reducing or delaying without just cause an order for motor vehicles, parts or accessories, or any other commodities or services which have been ordered by a motor vehicle dealer.			
Section 3: Applicant Information			
1.	Name		License Number If Renewal
	Residence Address		Date of Birth
	Business Address (If different from employer's address below)		Residence Phone ()
	Signature		Business Phone ()
	Social Security Number		Date
2.	Name		License Number If Renewal
	Residence Address		Date of Birth
	Business Address (If different from employer's address below)		Residence Phone ()
	Signature		Business Phone ()
	Social Security Number		Date
3.	Name		License Number If Renewal
	Residence Address		Date of Birth
	Business Address (If different from employer's address below)		Residence Phone ()
	Signature		Business Phone ()
	Social Security Number		Date
Section 4: Employer's Certification			
It is hereby certified that the above-named individuals are employed as factory or distributor representatives of the undersigned, who is duly licensed pursuant to Article 6, Title 12 of the Colorado Revised Statutes. If these individuals are licensed and then leave the employment of the undersigned, their respective licenses will be returned to the above address by the undersigned.			
Firm Name		License Number	
Business Address		Telephone Number ()	
Signature		Title	Date
Section 5: Fee			
Liability Code: 2550		Check payable to Colorado Department of Revenue	
		Fee Submitted \$ _____	

White copy - Dealer Services Canary copy - Cashier Pink copy - Applicant