

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 19-0942.02 Jery Payne x2157

SENATE BILL 19-249

SENATE SPONSORSHIP

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Business, Labor, & Technology
Appropriations

House Committees

State, Veterans, & Military Affairs
Appropriations

HOUSE
3rd Reading Unamended
May 2, 2019

A BILL FOR AN ACT

101 **CONCERNING THE LICENSING OF A BUSINESS SELLING USED MOTOR**
102 **VEHICLES THAT THE BUSINESS USED FOR ITS PURPOSES, AND, IN**
103 **CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

HOUSE
2nd Reading Unamended
May 1, 2019

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

SENATE
3rd Reading Unamended
May 1, 2019

Current law requires a business to be licensed as a used motor vehicle dealer when selling more than 20 vehicles, which were used for business purposes, over a 2-year period. The bill creates a new type of license for a business to sell its used vehicles if the vehicle sales do not exceed 20% of the business's gross revenue.

SENATE
Amended 2nd Reading
April 30, 2019

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

The bill also authorizes the motor vehicle dealer board to discipline a person holding this type of license for the following:

- ! A material misstatement in an application;
- ! Violating several classes of laws dealing with motor vehicle sales and commerce;
- ! Having been convicted of certain crimes;
- ! Various types of fraud;
- ! Failing to perform a written agreement;
- ! Failure to make the required disclosures;
- ! Misleading or inaccurate advertising;
- ! Representing or selling as new a used motor vehicle;
- ! Selling a defective vehicle unless sold as a tow-away and not to be driven; and
- ! Failing to notify a prospective buyer of the acceptance or rejection of a motor vehicle purchase within a reasonable period when on a finance sale or a consignment sale.

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

2 **SECTION 1.** In Colorado Revised Statutes, 44-20-104, amend
3 (3)(a), (3)(f)(I), (3)(h) introductory portion, and (3)(l)(I) introductory
4 portion as follows:

5 **44-20-104. Board - oath - meetings - powers and duties - rules.**

6 (3) The board is authorized and empowered:

7 (a) To promulgate, amend, and repeal rules reasonably necessary
8 to implement this part 1, including the administration, enforcement,
9 issuance, and denial of licenses to motor vehicle dealers, motor vehicle
10 salespersons, used motor vehicle dealers, wholesale motor vehicle auction
11 dealers, BUSINESS DISPOSERS, and wholesalers, and the laws of the state
12 of Colorado;

13 (f) (I) To investigate through the director, on its own motion or
14 upon the written and signed complaint of any person, any suspected or
15 alleged violation by a motor vehicle dealer, motor vehicle salesperson,
16 used motor vehicle dealer, wholesale motor vehicle auction dealer,

1 BUSINESS DISPOSER, or wholesaler of any of the terms and provisions of
2 this part 1 or of any rule promulgated by the board under the authority
3 conferred upon it in this section. The board shall order an investigation
4 of all written and signed complaints, may issue subpoenas, and may
5 delegate the authority to issue subpoenas to the director, and the director
6 shall make an investigation of all complaints transmitted by the board
7 pursuant to section 44-20-105 (3). The board may seek to resolve disputes
8 before beginning an investigation or hearing through its own action or by
9 direction to the director.

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

19 (l) (I) To prescribe a form or forms to be used as a part of a
20 contract for the sale of a motor vehicle by any motor vehicle dealer,
21 BUSINESS DISPOSER, or motor vehicle salesperson, other than a retail
22 installment sales contract subject to the provisions of the "Uniform
23 Consumer Credit Code", articles 1 to 9 of title 5, which shall include the
24 following information in addition to any other disclosures or information
25 required by state or federal law:

26 **SECTION 2.** In Colorado Revised Statutes, 44-20-108, **add** (1)(i)
27 as follows:

1 **44-20-108. Classes of licenses.** (1) The following classes of
2 licenses are issued under this part 1:

3 (i) IF THE SALES VALUE OF ALL THE MOTOR VEHICLES SOLD DOES
4 NOT EXCEED TWENTY PERCENT OF THE BUSINESS'S GROSS REVENUE, THE
5 BUSINESS DISPOSAL LICENSE PERMITS A BUSINESS TO SELL USED MOTOR
6 VEHICLES THAT:

- 7 (I) HAVE BEEN OWNED FOR MORE THAN ONE YEAR;
- 8 (II) HAVE BEEN USED EXCLUSIVELY FOR BUSINESS PURPOSES;
- 9 (III) ARE TITLED IN THE NAME OF THE BUSINESS;
- 10 (IV) FOR WHICH ALL RELATED TAXES HAVE BEEN PAID; AND
- 11 (V) ARE NOT DESIGNED OR USED PRIMARILY TO CARRY
12 PASSENGERS, NOT INCLUDING:

13 (A) A VEHICLE DESIGNED PRIMARILY FOR TRANSPORTING MORE
14 THAN TEN INDIVIDUALS; OR

15 (B) A TRUCK HAVING AN ENCLOSED CAB AND AN OPEN CARGO
16 AREA.

17 **SECTION 3.** In Colorado Revised Statutes, 44-20-111, **amend**
18 **(1) introductory portion, (1)(h), (3), and (4)(c); and add (1)(i) as follows:**

19 **44-20-111. Fees - disposition - expenses - expiration of licenses.**

20 (1) ~~There shall be collected with~~ Each application MUST BE
21 ACCOMPANIED BY the fee established pursuant to IN subsection (5) of this
22 section for each of the following licenses:

23 (h) Wholesale motor vehicle auction dealer's license; OR

24 (i) BUSINESS DISPOSAL LICENSE.

25 (3) If an application for a buyer agent's, motor vehicle dealer's,
26 used motor vehicle dealer's, wholesaler's, BUSINESS DISPOSER'S, or motor
27 vehicle salesperson's license is withdrawn by the applicant prior to

1 issuance of the license, the director shall refund one-half of the license
2 fee.

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

11 **SECTION 4.** In Colorado Revised Statutes, 44-20-112, **amend**
12 (1) and (2)(a) as follows:

13 **44-20-112. Bond of licensee.** (1) Before any motor vehicle
14 dealer's, wholesaler's, wholesale motor vehicle auction dealer's, BUSINESS
15 DISPOSAL, or used motor vehicle dealer's license ~~shall be~~ IS issued by the
16 board through the executive director to ~~any~~ AN applicant, ~~therefor,~~ the
17 applicant ~~shall~~ MUST procure and file with the board evidence of a
18 savings account, deposit, or certificate of deposit meeting the
19 requirements of section 11-35-101 or a good and sufficient bond with
20 corporate surety thereon duly licensed to do business within the state,
21 approved as to form by the attorney general of the state, and conditioned
22 that the applicant ~~shall~~ MUST not practice fraud, make any fraudulent
23 representation, or violate any of the provisions of this part 1 that are
24 designated by the board by rule in the conduct of the business for which
25 the applicant is licensed. A motor vehicle dealer, BUSINESS DISPOSER, or
26 used motor vehicle dealer ~~shall not be required to~~ NEED NOT furnish an
27 additional bond, savings account, deposit, or certificate of deposit under

1 this section if the dealer furnishes a bond, savings account, deposit, or
2 certificate of deposit under section 44-20-412.

3 (2) (a) The purpose of the bond procured by the applicant pursuant
4 to subsection (1) of this section and section 44-20-114 (1) is to provide
5 for the reimbursement for any loss or damage suffered by any retail
6 consumer caused by violation of this part 1 by a motor vehicle dealer,
7 used motor vehicle dealer, wholesale motor vehicle auction dealer,
8 BUSINESS DISPOSER, or wholesaler. For a wholesale transaction, the bond
9 is available to each party to the transaction; except that, if a retail
10 consumer is involved, the consumer shall have priority to recover from
11 the bond. The amount of the bond shall be fifty thousand dollars for a
12 motor vehicle dealer applicant, used motor vehicle dealer applicant,
13 wholesale motor vehicle auction dealer applicant, BUSINESS DISPOSAL
14 APPLICANT, or wholesaler applicant except the amount of the bond shall
15 be five thousand dollars for those dealers who sell only small utility
16 trailers that weigh less than two thousand pounds. The aggregate liability
17 of the surety for all transactions shall not exceed the amount of the bond,
18 regardless of the number of claims or claimants.

19 **SECTION 5.** In Colorado Revised Statutes, 44-20-118, **amend**
20 (1) and (6) as follows:

21 **44-20-118. Application - prelicensing education -**
22 **fingerprint-based background check - rules.** (1) Application for a
23 motor vehicle dealer's, motor vehicle salesperson's, used motor vehicle
24 dealer's, wholesale motor vehicle auction dealer's, ~~or~~ wholesaler's, OR
25 BUSINESS DISPOSAL license ~~shall~~ MUST be made to the board.

26 (6) All persons applying for a motor vehicle dealer's license, a
27 used motor vehicle dealer's license, a wholesaler's license, a motor vehicle

1 auctioneer's license, ~~or~~ a motor vehicle salesperson's license, ~~shall~~ OR A
2 BUSINESS DISPOSAL LICENSE MUST file with the board a good and
3 sufficient instrument in writing in which the applicant ~~shall appoint~~
4 APPOINTS the secretary of the board as the true and lawful agent of the
5 applicant upon whom all process may be served in any action ~~which may~~
6 ~~thereafter be~~ commenced against the applicant arising out of any claim for
7 damages suffered by ~~any firm, A person association, or corporation~~ by
8 reason of ~~the~~ A violation ~~of~~ BY the applicant ~~of any of the terms and~~
9 ~~provisions~~ of this part 1 or any condition of the applicant's bond.

10 **SECTION 6.** In Colorado Revised Statutes, 44-20-121, **add** (6.5)
11 as follows:

12 **44-20-121. Licenses - grounds for denial, suspension, or**
13 **revocation.** (6.5) A BUSINESS DISPOSAL LICENSE MAY BE DENIED,
14 SUSPENDED, OR REVOKED ON THE FOLLOWING GROUNDS:

15 (a) MAKING A MATERIAL MISSTATEMENT IN AN APPLICATION FOR
16 A LICENSE;

17 (b) VIOLATING THIS PART 1 OR A RULE PROMULGATED BY THE
18 BOARD UNDER THIS PART 1;

19 (c) HAVING BEEN CONVICTED OF OR PLED NOLO CONTENDERE TO
20 A FELONY, A CRIME UNDER ARTICLE 3, 4, OR 5 OF TITLE 18, OR ANY LIKE
21 CRIME UNDER FEDERAL LAW OR THE LAW OF ANOTHER STATE. A CERTIFIED
22 COPY OF THE JUDGMENT OF CONVICTION BY A COURT OF COMPETENT
23 JURISDICTION IS CONCLUSIVE EVIDENCE OF THE CONVICTION IN A HEARING
24 HELD UNDER THIS ARTICLE 20.

25 (d) DEFRAUDING A BUYER, SELLER, MOTOR VEHICLE SALESPERSON,
26 OR FINANCIAL INSTITUTION TO THE PERSON'S DAMAGE;

27 (e) INTENTIONAL OR NEGLIGENT FAILURE TO PERFORM ANY

- 1 WRITTEN AGREEMENT WITH A BUYER OR SELLER;
- 2 (f) MAKING A FRAUDULENT OR ILLEGAL SALE, TRANSACTION, OR
3 REPOSSESSION;
- 4 (g) WILLFUL MISREPRESENTATION OR CIRCUMVENTION OF,
5 CONCEALMENT OF, OR FAILURE TO DISCLOSE ANY OF THE MATERIAL
6 PARTICULARS REQUIRED TO OR THE NATURE OF ANY OF THE MATERIAL
7 PARTICULARS REQUIRED TO BE STATED OR FURNISHED TO THE BUYER;
- 8 (h) INTENTIONALLY PUBLISHING OR CIRCULATING AN
9 ADVERTISEMENT THAT IS MISLEADING OR INACCURATE IN ANY MATERIAL
10 PARTICULAR OR THAT MISREPRESENTS A PRODUCT SOLD BY OR FURNISHED
11 BY A LICENSED DEALER;
- 12 (i) KNOWINGLY SELLING, ACQUIRING, OR DISPOSING OF A STOLEN
13 MOTOR VEHICLE;
- 14 (j) WILLFULLY VIOLATING A STATE OR FEDERAL LAW GOVERNING
15 COMMERCE OR MOTOR VEHICLES OR A RULE GOVERNING COMMERCE OR
16 MOTOR VEHICLES PROMULGATED BY ANY LICENSING OR REGULATING
17 AUTHORITY GOVERNING MOTOR VEHICLES IF THE ACT CONSTITUTING THE
18 VIOLATION DIRECTLY AND NECESSARILY INVOLVES COMMERCE OR MOTOR
19 VEHICLES;
- 20 (k) REPRESENTING OR SELLING AS NEW A MOTOR VEHICLE THAT
21 THE DEALER OR SALESPERSON KNOWS:
- 22 (I) HAS BEEN USED FOR AND OPERATED FOR DEMONSTRATION
23 PURPOSES; OR
- 24 (II) IS A USED MOTOR VEHICLE;
- 25 (l) VIOLATING A STATE OR FEDERAL STATUTE, RULE, OR
26 REGULATION DEALING WITH ODOMETERS;
- 27 (m) SELLING TO A RETAIL CUSTOMER A MOTOR VEHICLE THAT IS

1 NOT EQUIPPED AS REQUIRED BY OR IN PROPER CONDITION AND
2 ADJUSTMENT AS REQUIRED BY PART 2 OF ARTICLE 4 OF TITLE 42 UNLESS
3 THE VEHICLE IS SOLD AS A TOW-AWAY AND NOT TO BE DRIVEN;

4 (n) COMMITTING A FRAUDULENT INSURANCE ACT UNDER SECTION
5 10-1-128;

6 (o) FAILING TO NOTIFY A PROSPECTIVE BUYER OF THE ACCEPTANCE
7 OR REJECTION OF A MOTOR VEHICLE PURCHASE ORDER AGREEMENT WITHIN
8 A REASONABLE PERIOD, AS DETERMINED BY THE BOARD, WHEN THE
9 LICENSEE IS WORKING WITH THE PROSPECTIVE BUYER ON A FINANCE SALE
10 OR A CONSIGNMENT SALE;

11 (p) FAILING TO MAINTAIN IN COLORADO, WHEN THE BUSINESS
12 DISPOSER IS LICENSED, A PLACE OF BUSINESS THAT:

13 (I) IS MAINTAINED BY THE BUSINESS DISPOSER AND IS LOCATED AT
14 A FIXED ADDRESS, OTHER THAN SOLELY A POST OFFICE BOX OR AN
15 ELECTRONIC ADDRESS; AND

16 (II) EMPLOYS ONE OR MORE INDIVIDUALS ON A FULL-TIME BASIS.

17 **SECTION 7.** In Colorado Revised Statutes, 44-20-122, amend

18 (2)(a)(I) as follows:

19 **44-20-122. Procedure for denial, suspension, or revocation of**
20 **license - judicial review.** (2) (a) (I) The board shall appoint an
21 administrative law judge pursuant to part 10 of article 30 of title 24 to
22 conduct any hearing concerning the licensing or discipline of a motor
23 vehicle dealer, used motor vehicle dealer, wholesaler, buyer's agent,
24 BUSINESS DISPOSER, or wholesale motor vehicle auction dealer; except
25 that the board may, upon a unanimous vote of the members present when
26 the vote is taken, conduct the hearing in lieu of appointing an
27 administrative law judge.

1 **SECTION 8.** In Colorado Revised Statutes, 44-20-123, **amend**
2 (1)(a) as follows:

3 **44-20-123. Sales activity following license denial, suspension,**
4 **or revocation - unlawful act - penalty.** (1) (a) ~~It shall be~~ IS unlawful
5 and a violation of this part 1 for any person whose motor vehicle dealer's,
6 used motor vehicle dealer's, motor vehicle wholesaler's, BUSINESS
7 DISPOSER'S, or motor vehicle salesperson's license has been denied,
8 suspended, or revoked to exercise any of the privileges of the license that
9 was denied, suspended, or revoked.

10 **SECTION 9.** In Colorado Revised Statutes, 44-20-124, **amend**
11 (2) introductory portion as follows:

12 **44-20-124. Unlawful acts.** (2) It is unlawful for any person to act
13 as a motor vehicle dealer, manufacturer, distributor, wholesaler,
14 manufacturer representative, used motor vehicle dealer, buyer agent,
15 wholesale motor vehicle auction dealer, BUSINESS DISPOSER, or motor
16 vehicle salesperson unless the person has been duly licensed under this
17 part 1, except for:

18 **SECTION 10.** In Colorado Revised Statutes, 44-20-128, **amend**
19 (2)(b) as follows:

20 **44-20-128. Penalty.** (2) (b) Any person who willfully violates
21 section 44-20-124 (2) by acting as a motor vehicle dealer, wholesaler,
22 used motor vehicle dealer, buyer agent, wholesale motor vehicle auction
23 dealer, BUSINESS DISPOSER, or motor vehicle salesperson without proper
24 authorization commits a class 3 misdemeanor and, upon conviction
25 thereof, shall be punished by a fine of not less than one thousand dollars
26 and a penalty of twenty-five hours of useful public service, neither of
27 which the court may suspend, for each separate offense; except that, if the

1 violator is a corporation, the corporation shall be punished by a fine of not
2 less than five thousand dollars nor more than twenty-five thousand dollars
3 for each separate offense. A second conviction for an individual shall be
4 punished by a fine of not less than five thousand dollars nor more than
5 twenty-five thousand dollars for each separate offense, which the court
6 may not suspend.

7 **SECTION 11. In Colorado Revised Statutes, 44-20-131, amend**
8 **(1) as follows:**

9 **44-20-131. Right of action for loss. (1) (a) If any A person**
10 **suffers loss or damage by reason of any fraud practiced on the person or**
11 **fraudulent representation made to the person by a licensed dealer or one**
12 **of the dealer's salespersons acting for the dealer on the dealer's behalf or**
13 **within the scope of the employment of the salesperson or suffers any loss**
14 **or damage by reason of the violation by the dealer or salesperson of any**
15 **of the provisions of this part 1 that are designated by the board by rule,**
16 **whether or not the violation is the basis for denial, suspension, or**
17 **revocation of a license, the person shall have SUFFERING LOSS OR**
18 **DAMAGES HAS a right of action against the dealer, the dealer's motor**
19 **vehicle salespersons, and the sureties upon their respective bonds. The**
20 **right of a person to recover for loss or damage as provided in this**
21 **subsection (1) against the dealer or salesperson shall IS not be limited to**
22 **the amount of their respective bonds.**

23 **(b) A PERSON SUFFERING LOSS OR DAMAGES HAS A RIGHT OF**
24 **ACTION AGAINST A LICENSED BUSINESS DISPOSER AND THE SURETY UPON**
25 **THE DISPOSER'S BOND IF:**

26 **(I) THE LOSS OR DAMAGE IS CAUSED BY FRAUD PRACTICED ON THE**
27 **PERSON OR A FRAUDULENT REPRESENTATION MADE TO THE PERSON BY THE**

1 DISPOSER OR THE DISPOSER'S AGENT WITHIN THE SCOPE OF EMPLOYMENT;

2 OR

3 (II) THE LOSS OR DAMAGE IS CAUSED BY THE DISPOSER VIOLATING

4 THIS PART 1 AND THE VIOLATION IS DESIGNATED BY THE BOARD BY RULE,

5 WHETHER OR NOT THE VIOLATION IS THE BASIS FOR DENIAL, SUSPENSION,

6 OR REVOCATION OF THE LICENSE.

7 **SECTION 12. Appropriation.** For the 2019-20 state fiscal year,

8 \$14,000 is appropriated to the department of revenue for use by the motor

9 vehicle dealer licensing board. This appropriation is from the auto dealers

10 license fund created in section 44-20-133 (1), C.R.S. To implement this

11 act, the board may use this appropriation for operating expenses.

12 **SECTION 13. Act subject to petition - effective date.** This act

13 takes effect at 12:01 a.m. on the day following the expiration of the

14 ninety-day period after final adjournment of the general assembly (August

15 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a

16 referendum petition is filed pursuant to section 1 (3) of article V of the

17 state constitution against this act or an item, section, or part of this act

18 within such period, then the act, item, section, or part will not take effect

19 unless approved by the people at the general election to be held in

20 November 2020 and, in such case, will take effect on the date of the

21 official declaration of the vote thereon by the governor.