

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 19-0942.02 Jery Payne x2157

SENATE BILL 19-249

SENATE SPONSORSHIP

Gonzales and Scott,

HOUSE SPONSORSHIP

(None),

Senate Committees

Business, Labor, & Technology
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE LICENSING OF A BUSINESS SELLING USED MOTOR**
102 **VEHICLES THAT THE BUSINESS USED FOR ITS PURPOSES.**

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>.)

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.

The bill also authorizes the motor vehicle dealer board to

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.

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,**
17 **BUSINESS DISPOSER, or wholesaler of any of the terms and provisions of**

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

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

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

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

27 **44-20-108. Classes of licenses.** (1) The following classes of

1 licenses are issued under this part 1:

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

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

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

14 **44-20-111. Fees - disposition - expenses - expiration of licenses.**

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

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

19 (i) BUSINESS DISPOSAL LICENSE.

20 (3) If an application for a buyer agent's, motor vehicle dealer's,
21 used motor vehicle dealer's, wholesaler's, BUSINESS DISPOSER'S, or motor
22 vehicle salesperson's license is withdrawn by the applicant prior to
23 issuance of the license, the director shall refund one-half of the license
24 fee.

25 (4) (c) Upon the expiration of the license, unless suspended or
26 revoked, the same may be renewed upon the payment of the fees specified
27 in this section which shall THAT accompany applications, and the renewal

1 shall MAY be made from year to year as a matter of right; except that, if
2 a motor vehicle dealer, used motor vehicle dealer, BUSINESS DISPOSER, or
3 wholesaler voluntarily surrenders its license or abandons its place of
4 business for a period of more than thirty days, the licensee is required to
5 file a new application to renew its license.

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

8 **44-20-112. Bond of licensee.** (1) Before any motor vehicle
9 dealer's, wholesaler's, wholesale motor vehicle auction dealer's, BUSINESS
10 DISPOSAL, or used motor vehicle dealer's license shall be IS issued by the
11 board through the executive director to any AN applicant, therefor, the
12 applicant shall MUST procure and file with the board evidence of a
13 savings account, deposit, or certificate of deposit meeting the
14 requirements of section 11-35-101 or a good and sufficient bond with
15 corporate surety thereon duly licensed to do business within the state,
16 approved as to form by the attorney general of the state, and conditioned
17 that the applicant shall MUST not practice fraud, make any fraudulent
18 representation, or violate any of the provisions of this part 1 that are
19 designated by the board by rule in the conduct of the business for which
20 the applicant is licensed. A motor vehicle dealer, BUSINESS DISPOSER, or
21 used motor vehicle dealer shall not be required to NEED NOT furnish an
22 additional bond, savings account, deposit, or certificate of deposit under
23 this section if the dealer furnishes a bond, savings account, deposit, or
24 certificate of deposit under section 44-20-412.

25 (2)(a) The purpose of the bond procured by the applicant pursuant
26 to subsection (1) of this section and section 44-20-114 (1) is to provide
27 for the reimbursement for any loss or damage suffered by any retail

1 consumer caused by violation of this part 1 by a motor vehicle dealer,
2 used motor vehicle dealer, wholesale motor vehicle auction dealer,
3 BUSINESS DISPOSER, or wholesaler. For a wholesale transaction, the bond
4 is available to each party to the transaction; except that, if a retail
5 consumer is involved, the consumer shall have priority to recover from
6 the bond. The amount of the bond shall be fifty thousand dollars for a
7 motor vehicle dealer applicant, used motor vehicle dealer applicant,
8 wholesale motor vehicle auction dealer applicant, BUSINESS DISPOSAL
9 APPLICANT, or wholesaler applicant except the amount of the bond shall
10 be five thousand dollars for those dealers who sell only small utility
11 trailers that weigh less than two thousand pounds. The aggregate liability
12 of the surety for all transactions shall not exceed the amount of the bond,
13 regardless of the number of claims or claimants.

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

16 **44-20-118. Application - prelicensing education -**
17 **fingerprint-based background check - rules.** (1) Application for a
18 motor vehicle dealer's, motor vehicle salesperson's, used motor vehicle
19 dealer's, wholesale motor vehicle auction dealer's, ~~or~~ wholesaler's, OR
20 BUSINESS DISPOSAL license ~~shall~~ MUST be made to the board.

21 (6) All persons applying for a motor vehicle dealer's license, a
22 used motor vehicle dealer's license, a wholesaler's license, a motor vehicle
23 auctioneer's license, ~~or~~ a motor vehicle salesperson's license, ~~shall~~ OR A
24 BUSINESS DISPOSAL LICENSE MUST file with the board a good and
25 sufficient instrument in writing in which the applicant ~~shall appoint~~
26 APPOINTS the secretary of the board as the true and lawful agent of the
27 applicant upon whom all process may be served in any action ~~which may~~

1 ~~thereafter~~ be commenced against the applicant arising out of any claim for
2 damages suffered by ~~any firm, A person association, or corporation~~ by
3 reason of ~~the~~ A violation ~~of~~ BY the applicant ~~of any of the terms and~~
4 ~~provisions~~ of this part 1 or any condition of the applicant's bond.

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

7 **44-20-121. Licenses - grounds for denial, suspension, or**
8 **revocation.** (6.5) A BUSINESS DISPOSAL LICENSE MAY BE DENIED,
9 SUSPENDED, OR REVOKED ON THE FOLLOWING GROUNDS:

10 (a) MAKING A MATERIAL MISSTATEMENT IN AN APPLICATION FOR
11 A LICENSE;

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

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

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

22 (e) INTENTIONAL OR NEGLIGENT FAILURE TO PERFORM ANY
23 WRITTEN AGREEMENT WITH A BUYER OR SELLER;

24 (f) MAKING A FRAUDULENT OR ILLEGAL SALE, TRANSACTION, OR
25 REPOSSESSION;

26 (g) WILLFUL MISREPRESENTATION OR CIRCUMVENTION OF,
27 CONCEALMENT OF, OR FAILURE TO DISCLOSE ANY OF THE MATERIAL

1 PARTICULARS REQUIRED TO OR THE NATURE OF ANY OF THE MATERIAL
2 PARTICULARS REQUIRED TO BE STATED OR FURNISHED TO THE BUYER;

3 (h) INTENTIONALLY PUBLISHING OR CIRCULATING AN
4 ADVERTISEMENT THAT IS MISLEADING OR INACCURATE IN ANY MATERIAL
5 PARTICULAR OR THAT MISREPRESENTS A PRODUCT SOLD BY OR FURNISHED
6 BY A LICENSED DEALER;

7 (i) KNOWINGLY SELLING, ACQUIRING, OR DISPOSING OF A STOLEN
8 MOTOR VEHICLE;

9 (j) WILLFULLY VIOLATING A STATE OR FEDERAL LAW GOVERNING
10 COMMERCE OR MOTOR VEHICLES OR A RULE GOVERNING COMMERCE OR
11 MOTOR VEHICLES PROMULGATED BY ANY LICENSING OR REGULATING
12 AUTHORITY GOVERNING MOTOR VEHICLES IF THE ACT CONSTITUTING THE
13 VIOLATION DIRECTLY AND NECESSARILY INVOLVES COMMERCE OR MOTOR
14 VEHICLES;

15 (k) REPRESENTING OR SELLING AS NEW A MOTOR VEHICLE THAT
16 THE DEALER OR SALESPERSON KNOWS:

17 (I) HAS BEEN USED FOR AND OPERATED FOR DEMONSTRATION
18 PURPOSES; OR

19 (II) IS A USED MOTOR VEHICLE;

20 (l) VIOLATING A STATE OR FEDERAL STATUTE, RULE, OR
21 REGULATION DEALING WITH ODOMETERS;

22 (m) SELLING TO A RETAIL CUSTOMER A MOTOR VEHICLE THAT IS
23 NOT EQUIPPED AS REQUIRED BY OR IN PROPER CONDITION AND
24 ADJUSTMENT AS REQUIRED BY PART 2 OF ARTICLE 4 OF TITLE 42 UNLESS
25 THE VEHICLE IS SOLD AS A TOW-AWAY AND NOT TO BE DRIVEN;

26 (n) COMMITTING A FRAUDULENT INSURANCE ACT UNDER SECTION
27 10-1-128; OR

1 (o) FAILING TO NOTIFY A PROSPECTIVE BUYER OF THE ACCEPTANCE
2 OR REJECTION OF A MOTOR VEHICLE PURCHASE ORDER AGREEMENT WITHIN
3 A REASONABLE PERIOD, AS DETERMINED BY THE BOARD, WHEN THE
4 LICENSEE IS WORKING WITH THE PROSPECTIVE BUYER ON A FINANCE SALE
5 OR A CONSIGNMENT SALE.

6 **SECTION 7. In Colorado Revised Statutes, 44-20-124, amend**
7 **(2) introductory portion as follows:**

8 **44-20-124. Unlawful acts. (2) It is unlawful for any person to act**
9 **as a motor vehicle dealer, manufacturer, distributor, wholesaler,**
10 **manufacturer representative, used motor vehicle dealer, buyer agent,**
11 **wholesale motor vehicle auction dealer, BUSINESS DISPOSER, or motor**
12 **vehicle salesperson unless the person has been duly licensed under this**
13 **part 1, except for:**

14 **SECTION 8. In Colorado Revised Statutes, 44-20-128, amend**
15 **(2)(b) as follows:**

16 **44-20-128. Penalty. (2) (b) Any person who willfully violates**
17 **section 44-20-124 (2) by acting as a motor vehicle dealer, wholesaler,**
18 **used motor vehicle dealer, buyer agent, wholesale motor vehicle auction**
19 **dealer, BUSINESS DISPOSER, or motor vehicle salesperson without proper**
20 **authorization commits a class 3 misdemeanor and, upon conviction**
21 **thereof, shall be punished by a fine of not less than one thousand dollars**
22 **and a penalty of twenty-five hours of useful public service, neither of**
23 **which the court may suspend, for each separate offense; except that, if the**
24 **violator is a corporation, the corporation shall be punished by a fine of not**
25 **less than five thousand dollars nor more than twenty-five thousand dollars**
26 **for each separate offense. A second conviction for an individual shall be**
27 **punished by a fine of not less than five thousand dollars nor more than**

1 twenty-five thousand dollars for each separate offense, which the court
2 may not suspend.

3 **SECTION 9. Act subject to petition - effective date.** This act
4 takes effect at 12:01 a.m. on the day following the expiration of the
5 ninety-day period after final adjournment of the general assembly (August
6 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
7 referendum petition is filed pursuant to section 1 (3) of article V of the
8 state constitution against this act or an item, section, or part of this act
9 within such period, then the act, item, section, or part will not take effect
10 unless approved by the people at the general election to be held in
11 November 2020 and, in such case, will take effect on the date of the
12 official declaration of the vote thereon by the governor.