

Colorado

Statutes & Regulations for the Powersports Industry



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COLORADO STATUTES & REGULATIONS FOR THE POWERSPORTS INDUSTRY

PART 5 POWERSPORTS VEHICLES

12-6-501. Legislative declaration. (1) The general assembly hereby declares that:

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

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

(c) The licensing and supervision of powersports vehicle dealers by the motor vehicle dealer board are necessary for the protection of consumers, and, therefore, the sale of powersports 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 powersports vehicle industry, the considerations when purchasing a powersports 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.

12-6-502. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "ANSI/SVIA-1-2001" means the American national standards institute's, or its successor organization's, provisions for four-wheel all-terrain vehicles, equipment configuration, and performance requirements, developed by the specialty vehicle institute of America, or its successor organization.

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

(3) "Consumer" means a purchaser, renter, or lessee of a powersports vehicle that is primarily used for business, personal, family, or household purposes. "Consumer" does not include a purchaser of powersports vehicles primarily for resale.

(4) "Custom trailer" means a vehicle that 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 that is uniquely designed and manufactured for a specific purpose or customer. "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) "Executive director" means the executive director of the department of revenue.

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

(7) "New powersports vehicle" mean a powersports vehicle that has been transferred on a manufacturer's statement of origin and for which an ownership registration card has been submitted by the original owner to the powersports vehicle manufacturer.

(8) "Off-highway vehicle" means any self-propelled vehicle that is designed to travel on wheels or tracks in contact with the ground, designed primarily for use off of the public highways, and generally and commonly used to transport persons for recreational purposes. "Off-highway vehicle" does not include the following:

(a) Military vehicles;

(b) Golf carts;

(c) Vehicles designed and used to carry persons with disabilities; and

(d) Vehicles designed and used specifically for agricultural, logging, or mining purposes.

(9) "Personal watercraft" means a motorboat that is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel, and that is designed primarily for use off of the public highways, and that uses either of the following as the primary source of motive power:

(a) An inboard motor powering a water jet pump; or

b) An outboard motor-driven propeller.

(10) "Powersports vehicle" means any of the following:

(a) An off-highway vehicle;

(b) A personal watercraft; or

(c) A snowmobile.

(11) "Powersports vehicle dealer" means a person, who, for commission or with intent to make a profit or gain of money or other thing of value, sells, leases, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale, lease, or exchange of an interest in new or new and used powersports vehicles or who is engaged wholly or in part in the business of selling or leasing new or new and used powersports vehicles, whether or not the powersports vehicles are owned by such person. The sale or lease of ten or more new or new and used powersports vehicles or the offering for sale or lease of more than ten new or new and used powersports 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 or leasing new or new and used powersports vehicles. "Powersports vehicle dealer" includes an owner of real property who allows more than ten new or new and used powersports vehicles to be offered for sale or lease on such property during one calendar year unless said property is leased to a licensed powersports vehicle dealer. "Powersports vehicle dealer" does not include:

REGULATION 12-6-502 (11) Profit or gain of money or other thing of value means:

Profit may be defined as the difference between the price paid and the market value of the vehicle after deduction of the expenses incurred in the sale thereof.

Gain of money or other thing of value includes but is not limited to any increase or addition to what one has of that which is of profit, advantage or benefit.

A profit or gain does not necessarily mean a direct return; and therefore, a saving of expense which would otherwise be incurred is also a profit or gain to the person benefited.

(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 "powersports vehicle dealer" when engaged in the specific performance of their duties as such employees;*

(d) *A wholesaler or anyone selling powersports vehicles solely to wholesalers; or*

(e) A wholesale motor vehicle auctioneer.

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

(13) "Powersports vehicle manufacturer" means any person, firm, association, corporation, trust, resident, or nonresident who manufactures or assembles new powersports vehicles.

(14) "Powersports vehicle manufacturer representative" means a representative employed by a person who manufactures or assembles powersports vehicles for the purpose of making or promoting the sale of the person's powersports vehicles or for supervising or contacting its dealers or prospective dealers.

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

(16) "Principal place of business" means a site or location for which the powersports vehicle dealer is licensed 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 powersports vehicles, and including a permanent enclosed building or structure 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. Motor vehicle and used motor vehicle dealers shall be authorized to offer both motor vehicles and powersports vehicles from the same principal place of business. In the case of motor vehicle dealers, such principal place of business shall be at the address set forth in the dealer's sales agreement.

(17) "Snowmobile" means a self-propelled vehicle primarily designed or altered for travel on snow or ice when supported in part by skis, belts, or cleats and designed primarily for use off of the public highways. "Snowmobile" shall not include machinery used strictly for the grooming of snowmobile trails or ski slopes.

(18) "Used powersports vehicle" means a powersports vehicles that is not a new powersports vehicle.

(19) "Used powersports 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 powersports vehicles, or attempts to negotiate a sale, or lease of a new and used powersports vehicles or who is engaged wholly or in part in the business of selling used powersports vehicles, whether or not such used powersports vehicles are owned by such person. The sale of ten or more used powersports vehicles or the offering for sale of more than ten used powersports 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 powersports vehicles. "Used powersports vehicle dealer" includes an owner of real property who allows more than ten used powersports vehicles to be offered for sale on such property during one calendar year unless the property is leased to a licensed used powersports vehicle dealer. "Used powersports 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 used powersports vehicle dealers when engaged in the specific performance of their duties;

(d) Anyone selling powersports vehicles solely to wholesalers;

(e) Mortgagees or secured parties as to powersports 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; or

(f) A motor vehicle auctioneer.

(20) "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, lease, or exchange of an interest in a new or new and used powersports vehicle solely to powersports vehicle dealers or used powersports vehicle dealers.(HB09-1026)(Effective 10-1-2009)

12-6-503. Motor vehicle dealer board. Powersports vehicle dealers, used powersports vehicle dealers, powersports manufacturers, distributors, representatives, and powersports vehicle salespersons shall be subject to the jurisdiction of the motor vehicle dealer board.

12-6-504. Board - oath - meetings - powers and duties - rules. (1) In addition to the duties and powers of the board under section 12-6-104, the board may:

(a) Promulgate, amend, and repeal rules reasonably necessary to implement this part 5, including, without limitation, the administration, enforcement, issuance, and denial of

licenses to wholesalers, powersports vehicle dealers, powersports vehicle salespersons, and used powersports vehicle dealers; (HB09-1026)(Effective 10-1-2009)

- (b) 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;

REGULATION 12-6-504 (1) (b). Powers and Duties of the Executive Secretary.

In addition to any other duties delegated to the Executive Secretary of the Motor Vehicle Dealer Board contained in the board's regulations, the Executive Secretary is delegated the authority to perform the following ministerial acts:

(I) The board permits its Executive Secretary to set and maintain the board's docket, grant motions for continuances and motions for enlargements of time, issue subpoenas, and issue final agency orders pursuant to the board's action.

(II) Board orders and correspondence may be written, signed and issued by the Executive Secretary on behalf of the board consistent with the board's action or direction. Notices of charges may be signed and issued by the Executive Secretary after the board has referred the matter for a hearing pursuant to section 12-6-504(1)(f)(V), C.R.S.

(III) The Executive Secretary is delegated the authority to conduct informal fact-finding conferences and make recommendations to the board for the granting or denying of an application for a powersports vehicle salesperson license.

- (c) Issue through the department of revenue a temporary license to an applicant seeking a license issued by the board, which temporary license shall permit the applicant to operate for not more than one hundred twenty days, during which time the board may complete its investigation and determination of all facts relative to the qualifications of the applicant for such license;

REGULATION 12-6-504 (1) (c).

1. A temporary license shall not issue, and a salesperson shall not be allowed to offer, negotiate or sell vehicles unless the board has received and date stamped at the main office of the Auto Industry Division a signed application, completed in every respect, with all required details and attachments, including bond, fees, and the licensing examination affidavit required by Regulation 12-6-104(3)(J). Dealers' payrolls and other evidence will be checked to ascertain that all salespersons for such dealers are licensed. (Effective 8/30/2010)

2. All original applicants shall have a criminal history background investigation conducted prior to the issuance of a permanent license.

3. *No temporary license shall issue to any person who has been the subject of disciplinary proceedings before the board within the past 5 years, unless such disciplinary proceedings resulted in dismissal of all charges. Such person's application shall require prior board review and approval of a license before said person shall be permitted to engage in activities requiring a salesperson license.*

4. *Any salesperson applicant who has been notified by the Auto Industry Division that additional documentation is required by the board before a license can be approved, and who fails to comply by the date specified with the request for information, shall be deemed not to have submitted a complete application and may not engage in activities requiring a powersports vehicle salesperson license until the board has reviewed and approved the application.*

5. *The Executive Secretary may issue a notice of denial to any applicant who fails to provide documentation as requested, if the application discloses, on its face, grounds for denial under section 12-6-520, C.R.S.*

6. *Any person who allows such applicant to engage in activities requiring a powersports vehicle salesperson license may be subject to disciplinary action for violation of section 12-6-509 C.R.S.*

(d) (I) Issue through the department of revenue and, for reasonable cause shown or upon satisfactory proof of the unfitness of the applicant under this part 5, to refuse to issue to any applicant any license the board is authorized to issue by this part 5;

(II) Permit the executive director to issue licenses pursuant to rules adopted by the board under paragraph (a) of this subsection (1);

(e) (I) After due notice and a hearing:

(A) Review the findings of an administrative law judge or hearing officer from a hearing conducted pursuant to this part 5; or

(B) Revoke and suspend or order the executive director to issue or to reinstate, on such terms and conditions and for such period of time as the board deems fair and just, any license issued pursuant to this part 5;

(II) Issue a letter of admonition for a minor violation of this part 5 that does not become a part of the licensee's record with the board;

(III) Issue a letter of reprimand and a notice of the right to request formal disciplinary proceedings, in writing within twenty days, to a licensee for a violation of this part 5, which letter 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; except that the letter shall be vacated and a formal disciplinary proceeding shall be instituted upon a written request within twenty days after the letter is issued;

(f) (I) Investigate, with the assistance of the executive director, on its own motion or upon a written and signed complaint from any person, a suspected or alleged violation by a wholesaler, powersports vehicle dealer, used powersports vehicle dealer, or powersports vehicle salesperson of this part 5 or a rule promulgated by the board; (HB09-1026)(Effective 10-1-2009)

(II) Issue subpoenas or delegate the authority to issue subpoenas to the executive director;

(III) Require the executive director to investigate complaints transmitted by the board pursuant to section 12-6-505 (1) (e) and (1) (f);

(IV) Seek to resolve disputes before beginning an investigation or hearing through its own action or by direction of the executive director;

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

(g) Summarily issue to any person who is licensed by the board pursuant to this part 5 cease and desist orders on such terms and conditions and for such time as the board deems fair and just, if such orders are followed by notice and a hearing pursuant to this section;

(h) (I) Prescribe the forms to be used for applications for persons licensed under this part 5;

(II) Require of an applicant, as a requisite to the issuance of a license, information concerning the applicant's fitness to be licensed under this part 5 as the board considers necessary;

(i) 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;

(j) Require that a powersports vehicle dealer's or used powersports vehicle dealer's principal place of business and such other sites or locations operated by the dealer have signs or devices giving notice of the dealer's name, the location and address of the dealer's principal place of business, and the type and number of license held by the dealer, as the board considers necessary to notify any person doing business with

the dealer to identify such dealer, and for this purpose to promulgate rules determining the size, shape, lettering, and location of such signs or devices;

REGULATION 12-6-504 (1) (j). Signage.

The principal place of business and other locations of the dealer shall display a permanent sign thereon with letters at least six (6) inches in height, clearly visible to the major avenue of traffic, which sign shall clearly designate the name of the business for which the license application is made or under which such business is conducted.

- (k)** Cause to be conducted written examinations, as prescribed by the board, to test the competency of all first-time applicants for a wholesaler's license, powersports vehicle dealer's license, used powersports vehicle dealer's license, or powersports vehicle salesperson's license; (HB09-1026)(Effective 10-1-2009)

REGULATION 12-6-504 (1) (k).

1. Applicants may use the information provided by the Auto Industry Division to study for the examination. The following examination criteria shall apply to the examination process and the examination results: 1) The numerical percentage that will constitute a passing score of the examination, as determined from the ratio of questions correctly answered to questions asked shall be eighty-five percent (85%); 2) The number of times in a calendar day that an applicant may take the examination before being timed out prior to attempting the examination again shall be two (2); 3) The manner in which an applicant and others shall certify both the applicant's compliance with the required examination process and the authenticity of the examination results shall be by submission of an examination affidavit on the form approved by the board. (Effective 8/30/2010)

2. Any applicant or licensee who is found to have falsified the examination affidavit or provided answers to an applicant prior to or during the examination may be subject to disciplinary action. An applicant shall neither request nor permit any other person, including but not limited to any person administering the examination, to take the examination on his behalf or other wise to assist him or to participate in the taking of the examination. An applicant shall neither request nor accept answers to examination questions from any other person, including but not limited to any person administering the examination, either before or during the examination. An applicant who violates this rule is subject to denial, suspension, or revocation of his license. Any licensee who either 1) assists an applicant in violating this rule, 2) conspires with others in violating this rule, 3) falsifies information regarding the results of an applicant's licensing examination, or 4) otherwise falsely declares to the board or its representatives the manner in which an applicant took an examination, is subject to disciplinary action to the limits of the board's penal jurisdiction. (Effective 8/30/2010)

3. *If an applicant is not licensed within one year of passing the examination, the score is removed from the record and the person must retake and pass the examination again, in accordance with the board's examination criteria, before a license can be issued.*
(Effective 8/30/2010)

4. *The examination may be administered by the employing dealer or designated manager of the employing dealer, the Auto Industry Division, or a third party approved by the board.*

5. *If an applicant has held a license during the previous twelve months, the applicant shall not be required to retake the examination.*

(I) Promulgate rules requiring off-highway vehicles sold by persons licensed under this part 5 to comply with ANSI/SVIA-1-2001 or a successor standard promulgated by the American national standards institute or its successor organization if such rules do not conflict with the ANSI standards or set standards more stringent than those set by ANSI.

(I) (I) Prescribe forms to be used as a part of a contract for the sale of a powersports vehicle by a powersports vehicle dealer or powersports 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., that shall include the following information in addition to any other disclosures or information required by state or federal law:

REGULATION 12-6-504 (1)(I) (ANSI requirements)

1. *Beginning with 2009 model year all Four-Wheel All- Terrain Vehicles sold by persons licensed under this part 5, shall meet the American National Standard for Four-Wheel All-Terrain Vehicles, ANSI/SVIA-1-2007 Standard or any successor standard.*

2. *This requirement of sale shall apply only to those Four-Wheel All-Terrain Vehicles manufactured as 2009 models and all model years manufactured thereafter.*

3. *All Four-Wheel All-Terrain Vehicles manufactured as 2009 models and all models manufactured thereafter shall be equipped with a certification label, placed in a location that allows viewing without removing any part of the ATV. The wording of such certification label shall comply with the requirements of Section 12, of the ANSI/SVIA-1-2007 Standard.*

(A) In twelve-point, bold-faced type, or 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 powersports vehicle does not understand the form, such purchaser should seek legal assistance;

(B) In the type and 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 powersports vehicle and that any conflicting oral representations made to the purchaser are void;

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

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

(E) Except as otherwise provided under this part 5, if the purchase price of the powersports vehicle is not paid to the powersports vehicle dealer in full at the time of consummation of the sale and the vehicle dealer delivers and the purchaser takes possession of the vehicle at such time, a statement in bold-faced type that, if financing cannot be arranged in accordance with the contract and the sale is not consummated, the purchaser shall agree to pay a daily rate for use of the vehicle until financing of the purchase price of the vehicle is arranged for the obligor by or through the authorized powersports vehicle dealer or until the purchase price is paid in full by or through the obligor, which daily rate shall be agreed upon in writing on the contract;

REGULATION 12-6-504 (1) (m) (I). Disclosure Form.

DISCLOSURES REQUIRED AS PART OF A MOTOR VEHICLE/POWERSPORTS VEHICLE SALES CONTRACT

These disclosures are required by Colorado Law unless the buyer has already been given a copy of a completed retail installment sales contract that includes all disclosures required by federal and state laws. Initialing the provisions below incorporates them into your contract to purchase a Motor Vehicle/Powersports Vehicle.

Dealer/Agent's
Initials

Buyer's
Initials

- | | |
|---|-----------|
| <p>A. IMPORTANT NOTICE: The papers you are signing as part of this Motor Vehicle / Powersports vehicle sale are legal documents. You should read them carefully and if there is anything you do not understand, you should seek legal assistance.</p> | <p>A.</p> |
| <p>B. WARNING: Only the terms and conditions written into these documents are part of the contract. Be sure that any oral representations are also written into these documents otherwise they cannot be enforced.</p> | <p>B.</p> |
| <p>C. Any fraud or misrepresentation in a Motor Vehicle/Powersports Vehicle sale is punishable under Colorado State Law.</p> | <p>C.</p> |
| <p>D. The contract is for cash. It requires you to pay the dealer \$ _____, the total balance due after your trade-in and/or deposit(s) are deducted. Failure to pay this amount by _____ may result in the loss of any deposit(s) you have paid and/or your trade vehicle.</p> | <p>D.</p> |

OR

Dealer has agreed to arrange financing for you and you agree to buy the Motor Vehicle/Powersports Vehicle if financing can be arranged at an interest rate that does not exceed _____% annual percentage rate. At this percentage rate your monthly payments would be _____ per month for _____ months, until paid in full, assuming a down payment or trade worth _____. This annual percentage rate must be agreed upon by both you and the dealer. Also, you are entitled by law to complete, written disclosure of all the loan terms and the contract is not binding until you receive such a disclosure and accept the loan terms disclosed.

- | | |
|--|-----------|
| <p>E. You and the dealer have agreed that the vehicle will be delivered to you prior to the purchase price being paid in full. If financing cannot be arranged at the terms stated in the contract, and the contract is cancelled, you agree to pay the dealer \$ _____ dollars per day and _____ cents per mile for your use of the vehicle from the date of delivery until the vehicle is returned to the dealer. If the contract is cancelled, it may require you to immediately return the vehicle to the dealer and to pay the cost of repair for any damage occurring to the vehicle while it is in your possession along with the agreed upon daily and mileage charges. The contract may also give the dealer the right to take the vehicle from you 24 hours after cancellation and demand for the vehicle's return. You may also be required by the contract to pay any costs the dealer may have to pay in regaining possession of the vehicle. If you owe any money from daily and mileage charges, damage repair costs or repossession costs to the dealer when the vehicle is returned, the dealer may keep your deposit(s) up to the amount owed. Otherwise, the deposit must be returned unless you have agreed that it is non-refundable.</p> | <p>E.</p> |
|--|-----------|

The Colorado Motor Vehicle Dealer Board has the authority to investigate all complaints arising from the sale of a Motor Vehicle/Powersports Vehicle from a licensed dealer. **Any complaints should be forwarded in writing to the Auto Industry Division on behalf of the Dealer Board to 1881 Pierce St. #142, Lakewood, CO 80214, or you may send via fax at 303-205-5977. You may visit our website at www.colorado.gov/revenue/enforcement or contact us at 303-205-5604.**

I hereby certify that I have received a copy of this I hereby certify that I have given the buyer a copy of this disclosure.

I hereby certify that I have given the buyer a copy of this disclosure.

Dealer/Agent's Printed Name

Buyer's Printed Name

Dealer/Agent's Signature	Date	Buyer's Signature	Date
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(II) The information required by subparagraph (I) of this paragraph (m) shall be read and initialed by both parties at the time of the consummation of the sale of a powersports vehicle;

(III) The use of the contract form required by subparagraph (I) of this paragraph (m) shall be mandatory for the sale of a powersports vehicle;

(n) After final action is taken on a hearing held before an administrative law judge or a hearing officer designated by the board from within the board's membership, review the findings of law and fact and the fairness of any fine imposed and to uphold such fine, impose an administrative fine upon its own initiative that shall not exceed ten thousand dollars for each separate offense by any licensee, or vacate the fine imposed by the judge or hearing officer; except that, for powersports 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; and

(o) 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 12-6-523 (2).

REGULATION 12-6-504 (1) (o). *When considering whether to impose a fine and the amount of the fine, or other administrative penalty, the board will consider aggravating and mitigating circumstances, the degree of harm to a powersports vehicle purchaser, severity of offense, and whether there is a pattern of violations or repeat offenses.*

(2) The board shall:

(a) Order an investigation of all written and signed complaints;

(b) Require an application for a powersports vehicle dealer's license or used powersports vehicle dealer's license to 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 any trade name under which the applicant intends to conduct business;

(II) If the applicant is a partnership, the name and residence address of each member, whether a limited or general partner, and the name under which the partnership business is to be conducted; and

(III) If the applicant is a corporation, the name of the corporation and the name and address of each of its principal officers and directors;

(IV) A complete description, including the municipality, street, and number, if any, of the principal place of business, and any other additional places of business as shall be operated and maintained by the applicant;

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

(VI) The name and address of any person who will act as a salesperson under the authority of the license, if issued.

(3) The findings of the board under subsection (1) of this section shall be final.

(4) (a) For the purposes of paragraphs (e) and (g) of subsection (1) of this section, 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 powersports vehicles are displayed in violation of section 12-6-523 (2), as indicated in the records of the county assessor's office; or any address for service of process in accordance with rule 4 of the Colorado rules of civil procedure.

(b) A person who fails to pay a fine ordered by the board for a violation of section 12-6-523 (2) under paragraph (o) of subsection (1) of this section 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. Fines collected under this subsection (4) shall be disposed of pursuant to section 12-6-528.

(5) (a) If a hearing is conducted 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 5; except that, for a powersports vehicle dealer who sells primarily vehicles that weigh under one thousand five hundred pounds, the fine for each separate offense may not exceed one thousand dollars.

(b) (I) If 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.

(II) If 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.

12-6-505. 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 powersports vehicle distributors, powersports vehicle manufacturer representatives, and powersports vehicle manufacturers, and shall have the following powers and duties:

REGULATION 12-6-505 (1) All manufacturers doing business in the state of Colorado, irrespective of whether they maintain or have places of business herein, must be licensed as such.

The sale of any new and unused powersports vehicles, either directly or indirectly in the state of Colorado shall constitute doing business in the state by the manufacturer and shall subject such manufacturer to the requirements of this article.

(a) To promulgate, amend, and repeal rules reasonably necessary to undertake the functions the executive director is mandated to carry out pursuant to this part 5 and to administer the laws of this state that the executive director deems necessary to carry out the duties of the office of the executive director pursuant to this part 5;

(b) To employ, subject to the laws of this state and after consultation with the board, an executive secretary for the board, who shall be accountable to the board and shall, pursuant to delegation by the board, discharge the responsibilities of the board under this part 5;

(c) To employ and assign duties to clerks, deputies, and assistants, which duties the executive director considers necessary to discharge the duties imposed upon the executive director by this part 5;

(d) To issue and, for reasonable cause shown or upon satisfactory proof of the unfitness of the applicant under this part 5, to refuse to issue to an applicant any license the executive director is authorized to issue by this part 5;

(e) 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 12-6-504 (1) (f) (I), any suspected or alleged violation of this part 5, or of any rule promulgated by the executive director under this section, by any person licensed by the executive director pursuant to this part 5;

(f) To delegate authority to persons for the purpose of investigating alleged or suspected violations of this part 5. The investigators and their supervisors utilized by the executive director, while actually engaged in performing their duties, shall have the authority as delegated by the executive director:

(I) To issue subpoenas, in accordance with the performance of their duties, to licensees who are under the jurisdiction of the executive director;

(II) To issue summonses for violations of section 12-6-523 (2);

(III) To issue misdemeanor summonses for violations of section 12-6-522 (1) (a);
and

(IV) To procure criminal records during an investigation.

(g) To prescribe the forms to be used for applications for licenses to be issued by the executive director under this part 5 and to require of applicants, as a condition precedent to the issuance of a license, such information concerning the applicant's fitness to be licensed under this part 5 as the executive director considers necessary;

REGULATION 12-6-505 (1) (g).

1. All applications for licenses shall be made upon forms prescribed by the executive director. No application will be considered which is not complete in every material detail, nor which is not accompanied by a remittance in full for the whole amount of the annual license fee.

If the applicant is a partnership, it shall submit with the application a certificate of partnership.

If the applicant is a corporation, it shall submit with the application a copy of its articles of incorporation, and if a foreign corporation, evidence of its qualification to do business within the state. In addition, each corporation applicant shall submit the names and addresses of all persons holding ten percent or more of the outstanding and issued capital stock of said corporation. Any transfer of ten percent or more of the capital stock of any corporation holding a license under the provisions of this article shall be reported to executive director not less than ten days prior to such transfer. All such reports shall be made on forms supplied by the executive director.

Upon request of the executive director, applicants for a license shall provide suitable additional evidence of residence, good character and reputation. Applicants and licensees shall also submit upon request by the executive director all required information concerning financial and management associations and interests of other persons in the business.

No licensee shall change the name or trade name of the business, the place of business or business address without submitting written notice to the executive director, not less than ten days prior to the change.

All information submitted to the executive director, by application for license or otherwise, shall be given fully, faithfully, truthfully and fairly. The failure of an applicant or licensee to so inform the executive director shall be grounds for the suspension, revocation, or denial of the license.

2. A change in the nature of the legal structure of a licensee's business shall be cause for the revocation of the license and shall require a new application and fee.

- (h) (I) To summarily issue cease and desist orders on such terms and conditions, and for such period of time as the executive director deems fair and just, to any person who is licensed by the executive director pursuant to this part 5 if such orders are followed by notice and a hearing pursuant to section 12-6-504 (4) (a);

REGULATION 12-6-505 (1)(h). *If it shall appear from an investigation by the executive director and executive director agents and representatives, or shall otherwise come to the attention of the executive director that there is probable cause to believe that a licensee has violated any provision set forth in this article or any rule or regulation promulgated in accordance therewith, executive director shall issue and cause to be served upon such licensee either by certified mail at the last address furnished the executive director by the licensee, or by personal service upon the licensee, a notice of hearing.*

A hearing shall be held at a place and time designated by the executive director on the day stated in the notice, or upon such other day as may be set for good cause shown. Evidence in support of the charges shall be given first, followed by cross-examination of those testifying thereto. The licensee, in person or by counsel, shall then be permitted to give evidence in defense and explanation, and shall be allowed to give evidence and statements in mitigation of the charges. In the event the licensee is found to have committed the violation charged, evidence and statements in aggravation of the offense shall also be permitted.

After considering all the evidence and arguments presented at the hearing, the executive director will make a final determination either at the hearing or within a reasonable time thereafter, and send the licensee by certified mail at the last address furnished the executive director by the licensee or by personal service upon the licensee a notice of final determination. In the event the licensee is found not to have violated any law, rule or regulation, the charges against the licensee will be dismissed. If the licensee is found to have violated some law, rule or regulation, a cease and desist order shall be issued by the executive director, and in the proper case the licensee's license suspended or revoked on such terms and conditions and for such period of time as to the executive director shall appear fair and just. The decision of the executive director shall include a statement of findings and conclusions upon all the material issues of fact, law, or discretion presented by the record and the appropriate rule, order, sanction, relief or denial thereof. Failure to appear for the hearing without good cause shown shall be grounds for automatic suspension or revocation of the license.

- (II) To issue cease and desist orders to persons acting as powersports vehicle manufacturers without the powersports vehicle manufacturer's license required by this part 5; and

(III) To impose a fine, not to exceed one thousand dollars per day, for each violation of section 12-6-523 (1), after a notice and hearing subject to section 24-4-105, C.R.S.

(2) If a 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 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.

12-6-506. Records as evidence. Copies of all records and papers in the office of the board or the 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.

12-6-507. Attorney general to advise and represent. (1) The attorney general shall represent the board and executive director and shall give opinions on questions of law relating to the interpretation of this part 5 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 5 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.

12-6-508. Classes of licenses. (1) Licenses issued under this part 5 shall be of the following classes: (HB09-1026)(Effective 10-1-2009)

(a) A powersports vehicle dealer's license shall permit the licensee to engage in the business of selling, exchanging, leasing, or offering new and used powersports vehicles, which license shall not permit more than two persons named therein as owners of the business of the licensee to act as powersports vehicle salespersons.

(b) A used powersports vehicle dealer's license shall permit the licensee to engage in the business of selling, exchanging, leasing, or offering used powersports vehicles only. Such license shall also permit a licensee to negotiate for a consumer the sale, exchange, or lease of used and new powersports vehicles not owned by the licensee. Prior to completion of a sale, exchange, or lease of a powersports vehicle not owned by the licensee, the licensee shall disclose in writing to the consumer whether the licensee will receive compensation from the consumer or the owner of the powersports vehicle as a result of such transaction. If the licensee receives compensation from the owner of the powersports 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 license shall not

permit more than two persons named therein who shall be owners of the business of the licensee to act as powersports vehicle salespersons.

REGULATION 12-6-508 (1) (b). Compensation Disclosures.

1. Whenever a used powersports vehicle dealer negotiates the sale, exchange, or lease of a powersports vehicle or used powersports vehicle not owned by the used powersports vehicle dealer, the following form will be deemed adequate to satisfy the disclosure requirements of section 12-6-508 (1)(b), C.R.S., for the used powersports vehicle dealer. This form is an example of adequate disclosure; nothing herein shall be construed to limit permissible disclosure to the information shown.

COMPENSATION DISCLOSURES

Pursuant to Colorado law, _____ hereby discloses to _____
(used powersports dealer) (consumer)

1. My dealership will receive compensation from the consumer. (Check one)

Yes No

2. My dealership will receive compensation from the owner of the vehicle if a sale, exchange or lease is concluded. (Check one)

Yes No

(NAME OF OWNER)

Used Powersports Vehicle Dealer Dealer # Authorized Dealer Signature Date

I have been provided a copy of the above disclosure prior to completion of such sale, exchange or lease of a powersports vehicle not owned by the licensee.

Signature of Consumer

Printed Name

Date

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

(d) A powersports vehicle manufacturer's or distributor's license shall permit the licensee to engage in the activities of a powersports manufacturer or distributor;

(e) A powersports vehicle manufacturer representative's license shall permit the licensee to engage in the activities of a powersports vehicle manufacturer representative.

(f) A wholesaler's license shall permit the licensee to engage in the activities of a wholesaler. (HB09-1026)(Effective 10-1-2009)

(2) (a) A person who is licensed as a motor vehicle salesperson pursuant to part 1 of this article shall be deemed to be licensed as a powersports vehicle salesperson under this part 5.

(b) A person who is licensed as a motor vehicle manufacturer or distributor pursuant to part 1 of this article shall be deemed to be licensed as a powersports vehicle manufacturer or distributor under this part 5.

(c) A person who is licensed as a motor vehicle manufacturer pursuant to part 1 of this article shall be deemed to be licensed as a powersports vehicle manufacturer under this part 5.

12-6-509. Temporary powersports vehicle dealer license. (1) If a licensed powersports vehicle dealer has entered into a written agreement to sell a dealership to a purchaser and the purchaser has been awarded a new franchise, the board may issue a temporary powersports 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 powersports vehicle dealer's license and a powersports vehicle dealer's license, the appropriate application fee for the powersports vehicle dealer's application, evidence of a passing score of the written examination described in section 12-6-515, and evidence that the franchise has been awarded to the applicant by the powersports vehicle manufacturer. A temporary powersports vehicle dealer's license shall authorize the licensee to act as a powersports vehicle dealer and subject the licensee to this article and to all rules adopted by the executive director or the board. A temporary powersports vehicle dealer's license shall be effective for up to sixty days or until the board acts on such licensee's application for a powersports vehicle dealer's license, whichever is sooner.

Regulation 12-6-509(1) Evidence of a passing score shall be as required by Regulation 12-6-504(1)(k). (Effective 8/30/2010)

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

REGULATION 12-6-509 (2). Applicants for an out-of-state temporary dealer license shall submit completed application, bond, and license fee. Specifically identified events shall include the Colorado State Fair, National Western Stock Show, and the annual Denver RV, Sports, Boat and Travel Show. Such out-of-state dealer shall provide evidence that the manufacturer has authorized the dealer to do business at such location

in Colorado. No more than three out-of-state dealer licenses shall be issued to any one dealer per license year.

12-6-510. 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 powersports vehicle salesperson shall be mailed to the business address where the salesperson is licensed 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. A powersports vehicle dealer or wholesaler shall display conspicuously the person's license in the person's place of business. Each license issued pursuant to this part 5 is separate and distinct. It shall be a violation of this part 5 for a person to exercise any of the privileges granted under a license that such person does not hold, or for a licensee to knowingly allow such an exercise of privileges. (HB09-1026)(Effective 10-1-2009)

12-6-511. Fees - disposition - expenses - expiration of licenses. (1) The fee established pursuant to subsection (5) of this section shall be collected with each application for each of the following:

- (a) (I) Powersports vehicle dealer's license or used powersports vehicle dealer's license;
- (II) Powersports vehicle dealer's or used powersports vehicle dealer's license for each place of business in addition to the principal place of business;
- (III) Renewal or reissue of powersports vehicle dealer's license or used dealer's license after change in location or lapse in principal place of business;
- (b) Powersports manufacturer's license;
- (c) Powersports distributor's license;
- (d) Powersports manufacturer representative's license;
- (e) Powersports vehicle salesperson's license including, without limitation, reissuing a license.
- (f) Wholesaler's license. (HB09-1026)(Effective 10-1-2009)

(2) Fees shall be paid to the state treasurer who shall credit the same to the auto vehicle dealers license fund.

(3) If an application for a wholesaler's license, powersports vehicle dealer's, used powersports vehicle dealer's or powersports salesperson's license is withdrawn by the

applicant prior to issuance of the license, one-half of the license fee shall be refunded.
(HB09-1026)(Effective 10-1-2009)

(4) (a) Licenses issued under this part 5, if not suspended or revoked, shall be valid until one year following the month of issuance thereof and shall then expire; except that any license issued under this part 5 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 a license, the executive director shall mail to the licensee's business address of record a notice stating when the person's license is due to expire and the fee necessary to renew such license. For a powersports vehicle salesperson or powersports vehicle manufacturer representative, the notice shall be mailed to the address of the powersports vehicle dealer, used powersports vehicle dealer, or powersports vehicle manufacturer where person is licensed.

(c) Upon the expiration of a license, unless suspended or revoked, it may be renewed upon the payment of the application fees specified in this section and renewal shall be made from year to year as a matter of right; except that, if a wholesaler or powersports vehicle dealer 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. (HB09-1026)(Effective 10-1-2009)

(d) Notwithstanding paragraph (a) of this subsection (4), a person has a thirty-day grace period after the license expires in which the license may be renewed pursuant to paragraph (c) of this subsection (4), so long as the person has a bond in full force and effect that complies with the applicable bonding requirements of section 12-6-512 or 12-6-513 during the thirty-day period. A person applying during the thirty-day grace period shall pay a late fee established pursuant to subsection (5) of this section.

(5) (a) The board shall propose, as part of its annual budget request, an adjustment in the amount of each fee that 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 any 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 fees covers the direct and indirect costs of administering this part 5. Such fees shall remain in effect for the fiscal year for which the appropriation is made.

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

12-6-512. Bond of licensee. (1) A wholesaler's license, powersports vehicle dealer's license or used powersports vehicle dealer's license shall not be issued to any applicant unless the applicant procures and files 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, and conditioned that the applicant shall not make any fraudulent representation or violate any of the provisions of this part 5 or any rule promulgated by the board under this part 5. A powersports vehicle dealer or used powersports vehicle dealer shall not be required to furnish an additional bond, savings account, deposit, or certificate of deposit under this section if such dealer furnishes a bond, savings account, deposit, or certificate of deposit under section 12-6-111. (HB09-1026)(Effective 10-1-2009)

(2) (a) The purpose of the bond procured by the applicant pursuant to subsection (1) of this section and section 12-6-513 is to provide for the reimbursement for any loss or damage suffered by any retail consumer caused by violation of this part 5 by a wholesaler, powersports vehicle dealer or used powersports vehicle dealer. 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 fifty thousand dollars for each wholesaler applicant, powersports vehicle dealer applicant and used powersports vehicle dealer applicant. 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. (HB09-1026)(Effective 10-1-2009)

(b) No corporate surety shall be required to make a payment to any person making a claim 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) Bonds required pursuant to this section shall be renewed annually when the bondholder's license is renewed. Bonds may be renewed through a continuation certificate issued by the surety.

(4) Nothing in this part 5 shall interfere with the authority of the courts to administer and conduct an interpleader action for claims against a licensee's bond.

12-6-513. Powersports vehicle salesperson's bond. (1) A powersports vehicle salesperson's license shall not be issued unless the applicant has procured and filed 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 fifteen thousand dollars with corporate surety thereon duly licensed to do business

within the state, approved as to form by the attorney general and conditioned that the applicant shall perform in good faith as a powersports vehicle salesperson without fraud or fraudulent representation and without violating this part 5 or any rule promulgated by the board under this part 5. The board shall implement by January 1, 2008, a psychometrically valid and reliable salesperson exam that measures the minimum level of competence necessary to practice. A powersports vehicle salesperson shall not be required to furnish an additional bond, savings account, deposit, or certificate of deposit under this section if such salesperson furnishes a bond, savings account, deposit, or certificate of deposit under section 12-6-112.

(2) No corporate surety shall be required to make a 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) Bonds required under this section shall be renewed annually when the bondholder's license is renewed. Bonds may be renewed through a continuation certificate issued by the surety.

12-6-514. Notice of claims honored against bond. (1) A corporate surety that has provided a bond to a licensee pursuant to section 12-6-512 or 12-6-513 shall provide notice to the board and executive director of any claim that is honored against the bond. The 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 subsection (1) of this section shall be in the form required by the executive director, subject to approval by the board, and shall include, without limitation, 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.

12-6-515. Testing licensees. All persons applying for a wholesaler's, powersports vehicle dealer's, used powersports vehicle dealer's or powersports vehicle salesperson's license under this part 5 shall be examined for their knowledge of the powersports vehicle laws of the state of Colorado and the rules promulgated pursuant to this part 5. If the applicant is a corporation, the managing officer shall take the 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. This section shall not apply to a motor vehicle dealer, used motor vehicle dealer, or motor vehicle salesperson licensed pursuant to part 1 of this article. (HB09-1026)(Effective 10-1-2009)

Regulation 12-6-515. See Regulation 12-6-504(1)(k)(Effective 8/30/2010)

12-6-516. Filing of written warranties. A licensed powersports vehicle manufacturer shall file with the executive director all written warranties and changes in written warranties the manufacturer makes on powersports vehicle or parts thereof. A licensed

powersports vehicle manufacturer shall file with the executive director a copy of the delivery and preparation obligations of a powersports vehicle manufacturer's dealer, and these warranties and obligations shall constitute the powersports vehicle dealer's only responsibility for product liability as between the powersports vehicle dealer and the powersports vehicle manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranties of the powersports vehicle manufacturer shall constitute the powersports vehicle manufacturer's product or warranty liability, and the powersports vehicle manufacturer shall reasonably compensate any authorized powersports vehicle dealer who performs work to rectify a powersports vehicle manufacturer's product or warranty defects.

12-6-517. Application. (1) An application for a wholesaler's license, powersports vehicle dealer's license, used powersports vehicle dealer's license, or powersports salesperson's license shall be submitted to the board. (HB09-1026)(Effective 10-1-2009)

(2) An application for a powersports vehicle distributor, powersports vehicle manufacturer's representative, or powersports vehicle manufacturer license shall be submitted to the executive director.

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

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

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

REGULATION 12-6-517 (5). *“Agreement” means contract or franchise or any other terminology used to describe the contractual relationship between manufacturers, distributors and powersports vehicle dealers.*

Manufacturers and distributors shall notify the executive director immediately of the appointment of any additional dealers, of any revisions or additions to the typical written agreement on file, or of any supplements to such agreement. Agreements are deemed to be continuing unless the manufacturer or distributor has notified the executive director of the discontinuation or cancellation of the agreement of any of its dealers.

If a manufacturer or distributor does not enter into any formal written agreement with its dealers, written notice to this effect shall be given to the executive director and placed on file.

(6) Persons applying for a wholesaler's, powersports vehicle dealer's, used powersports vehicle dealer's, or a powersports vehicle salesperson's license shall file with the board a written instrument in which the applicant shall appoint the secretary of the board as the agent of the applicant upon whom all process may be served in any action against the applicant arising out of a claim for damages suffered by a violation of this part 5, rules promulgated under this part 5, or any condition of the applicant's bond. (HB09-1026)(Effective 10-1-2009)

REGULATION 12-6-517 (6). *In any case wherein a licensee or licensees are served with process by service upon the secretary of the board, the secretary shall, no later than two days after the service of said process, mail a copy thereof to each such licensee addressed to the licensee at the last address furnished to the board by the licensee, by certified mail with request for return receipt. A copy shall also be mailed to the surety on the licensee's bond at the address of the surety given in said bond, by certified mail with request for return receipt.*

(7) (a) A person applying for a wholesaler's license or used powersports vehicle dealer's license shall file with the board a certification that the applicant has met the educational requirements for licensure under this subsection (7), unless the applicant is licensed as a motor vehicle dealer or a used motor vehicle dealer. This subsection (7) shall not apply to a person who has held a license, within the last three years, as a motor vehicle dealer, used motor vehicle dealer, wholesaler, wholesale motor vehicle auction dealer, powersports vehicle dealer, or used powersports vehicle dealer under this part 5 or part 1 of this article. (HB09-1026)(Effective 10-1-2009)

(b) An applicant for a wholesaler's license or used powersports vehicle dealer's license shall not be licensed unless one of the following persons has completed an eight-hour prelicensing education program: (HB09-1026)(Effective 10-1-2009)

(I) The managing officer if the applicant is a corporation or limited liability company;

(II) All of the general partners if the applicant is any form of Partnership; or

(III) The owner or managing officer if the applicant is a sole proprietorship.

(c) The pre-licensing education program shall include, without limitation, state and federal statutes and rules governing the sale of powersport vehicles.

(d) A pre-licensing education program shall not fulfill the requirements of this section unless approved by the board. The board shall approve any program with a curriculum that reasonably covers the material required by this section within eight hours.

REGULATION 12-6-517 (7) (d) (Effective 12/31/2008)

1. *The board hereby delegates to the board's executive secretary the authority to execute all actions within the authority of the board respective to the Pre-licensing Education Program.*

2. *The executive secretary shall provide public notice a) immediately after the effective date of these rules, and b) once every year thereafter, by means of publication on the board's website, which public notice shall contain a general description of the Pre-licensing Education Program requirements and shall indicate the procedures by which interested persons may apply to obtain approval from the executive secretary to provide a Pre-licensing Education Program.*

3. *The executive secretary shall evaluate each Pre-licensing Education Program application for compliance with the requirements of the relevant statutes and rules.*

4. *An approval of a Pre-licensing Education Program is for a period of one year from the date of approval.*

5. *A Pre-licensing Education Program Provider can reapply by means of an updated application for an approval of its program in subsequent years.*

6. *The executive secretary shall, by means of a Letter of Approval, within thirty (30) days of the executive secretary's receipt of either 1) an initial application for an approval of a prospective Pre-licensing Education Program Provider or 2) a subsequent application for a renewal of an existing approval of a Pre-licensing Education Program Provider, notify any applicant, whose Pre-licensing Education Program has been approved in its initial or a subsequent term, of the specific dates of the one-year term of the approval and of the procedures to apply to renew the approval for subsequent one-year terms.*

7. *The executive secretary shall, by means of a Letter of Denial, within thirty (30) days of the executive secretary's receipt of either 1) an initial application for an approval of a prospective Pre-licensing Education Program Provider or 2) a subsequent application for a renewal of an existing approval of a Pre-licensing Education Program Provider, notify any applicant, whose Pre-licensing Education Program has been denied in its initial or a subsequent term, of the basis and reasons for the denial and the procedure to follow to appeal the denial to the board.*

8. *Any recipient of a Letter of Denial shall have the right to appeal that denial to the board by means of a request for a hearing in writing within sixty (60) days after notice of the denial.*

9. *Any approved Pre-licensing Education Program Provider or prior approved Pre-licensing Education Program Provider may bring to the board a complaint or concern about the administration of the program application and approval process. The Provider must first seek to resolve the matter with the executive secretary. The Provider may bring its complaint or concern to the board by means of a request in writing within thirty (30)*

days of the failure of the Provider's efforts to resolve the matter with the executive secretary.

10. The executive secretary shall provide to the board the name of each approved Pre-licensing Education Program Provider and the term of approval for that Provider.

11. The executive secretary shall post on the board's website a list of the names, addresses, and contact information, as provided to the executive secretary, for each approved Pre-licensing Education Program Provider, showing the term of approval for each Provider and the geographic scope of each Provider's program.

12. An approved Pre-licensing Education Program Provider that intends to cease operations, must provide the executive secretary with a written notice of cessation of its Pre-licensing Education Program at least 180 days in advance of the last date on which the Pre-licensing Education Program Provider will provide instruction in its Pre-licensing Education Program.

13. An approved Pre-licensing Education Program Provider shall maintain a place of business in the state of Colorado.

14. An approved Pre-licensing Education Program Provider shall maintain the following records at its Colorado place of business for a period of at least three (3) years from the date of the instruction of any participant: 1) the specific curriculum administered; 2) the specific handouts or other ancillary teaching materials provided or available to the participant; 3) the specific validation test or tests used; 4) the registration data for each participant, showing the participant's name, business association, date of participation, and means by which the participant was identified; 5) the specific validation test result(s) for the given participant; 6) the name of the instructor or other program authority who administered the program to the participant; and, 7) a copy of the completion certificate provided to the participant.

15. The executive secretary shall have the authority as a matter of routine compliance investigation, or upon the receipt of a specific complaint, to perform an investigation of the activities of a Pre-licensing Education Program Provider.

16. The executive secretary shall have the authority to obtain copies at no cost to the State of all materials utilized in or related to a Pre-licensing Education Program, including, but not limited to, the records of a Pre-licensing Education Program Provider respective to any or all persons who have participated in the Provider's program.

17. Procedures for the suspension or revocation of the approval of a Pre-licensing Education Program Provider shall be in accordance with sections 24-4-104 and 24-4-105, C.R.S.

(e) The board may adopt rules establishing reasonable fees to be charged for the pre-licensing education program.

(f) The board may adopt reasonable rules to implement this section, including, without

limitation, rules that govern:

(I) The content and subject matter of education;

REGULATION 12-6-517 (7) (f) (I) (Effective 12/31/2008)

The Pre-Licensing Education Program shall include in its content, federal and Colorado state laws and federal and Colorado state regulations governing motor vehicle dealers. The education curriculum shall contain without limitation titles 4, 5, 6, 12, 18, 39, and 42 of the Colorado Revised Statutes applicable to motor vehicle dealers and motor vehicle sales and Federal Laws and Rules applicable to motor vehicle dealers and motor vehicle sales.

(II) The criteria, standards, and procedures for the approval of courses and course instructors;

REGULATION 12-6-517 (7) (f) (II) (Effective 12/31/2008)

1. An application from a prospective Pre-licensing Education Program Provider or a renewal application of a prior-approved Pre-licensing Education Program Provider must contain each of the following items:

a. Identifying information, to include the applicant's full legal name, the mailing address of its Colorado place of business, telephone number(s), email address(es), if any, and website addresses, if any. Addresses in addition to that of the Colorado place of business may also be provided, although communications will go to the Colorado place of business only.

b. Contact information, to include the name and title of any individual(s) who have authority to speak on behalf of the applicant.

c. A Pre-licensing Education Program Proposal for the delivery of the required education. The Proposal must include each of the following items, but may include additional items: 1) the manner of completing the eight (8) required hours of classroom instruction; 2) a detailed outline of curriculum (or full course materials, if available); 3) the full legal names and dates of birth of all instructors, teachers, and curriculum preparers, and their respective educational credentials (faculty additions and changes may later be made, subject to approval by the executive secretary); 4) routine educational materials, if any, which will be made available to program participants as part of the pre-licensing education program either prior to, during, or subsequent to the classroom attendance time; 5) optional educational materials, if any, which will be made available to program participants as supplements, enhancements, or enrichments in addition to routine educational materials; 6) the testing protocols and baselines of achievement that will be used to ensure that a program participant has learned what the program is required by law to teach; and, 7) the methods that the Pre-licensing Education Program Provider will consistently use a) to establish the identity of each participant in the Pre-licensing Education Program and b) to

verify that any test or examination validating achievement in the Pre-licensing Education Program is taken by the individual participant whose identity had been established and not by another person.

- 2. The provider of a Pre-licensing Education Program must have a minimum of three (3) years experience in the regulation and enforcement of state and federal laws governing motor vehicle dealers and motor vehicle sales, or have three (3) years experience as an instructor working for an approved Pre-licensing Education Program provider.*
- 3. The executive secretary shall require additional information from any applicant, in the event that the application is deficient with regard to any of the noted materials, or in the event that more information is needed to reach a decision on the application.*

(III) The training facility requirements; and

REGULATION 12-6-517 (7) (f) (III) (Effective 12/31/2008)

- 1. A Pre-licensing Education Program Provider must maintain an educational site, or sites, appropriate to classroom instruction.*
- 2. A Pre-licensing Education Program Provider must ensure the integrity of its educational materials and the instructional records of its participants, each being subject to inspection by the executive secretary.*
- 3. The executive secretary will evaluate each prospective Pre-licensing Education Program Provider and each prior-approved Pre-licensing Education Program Provider reapplying for program approval with regard to the above criteria.*

(IV) The methods of instruction.

REGULATION 12-6-517 (7) (f) (IV) (Effective 12/31/2008)

- 1. The methods of instruction may vary according to the approved Pre-licensing Education Program approved for any given Pre-licensing Education Program Provider, and may include within the eight-hour classroom instruction limitation: 1) traditional or non-traditional classroom instruction geared to adult learners, with testing validation; and, 2) CD or DVD instruction, with provisions for testing validation.*
- 2. The methods of instruction actually used must match those that were approved through the application process.*

(g) An approved pre-licensing program provider shall issue a certificate to a person who successfully completes the approved pre-licensing education program. The current certificate of completion, or a copy of the certificate, shall be posted conspicuously at the dealership's principal place of business.

REGULATION 12-6-517 (7) (g) (Effective 12/31/2008)

An approved Pre-licensing Education Program Provider shall issue a Program-completion Certificate to each person who successfully completes an approved Pre-licensing Education Program. The Certificate shall be on a form approved by the Executive Secretary and shall be issued within ten (10) days of successful completion of the Pre-licensing Education Program.

(h) An approved pre-licensing program provider shall submit a certificate to the executive director for each person who successfully completes the prelicensing education program. The certificate may be transmitted electronically.

REGULATION 12-6-517 (7) (g) (Effective 12/31/2008)

An approved Pre-licensing Education Program Provider shall issue a Program-completion Certificate to each person who successfully completes an approved Pre-licensing Education Program. The Certificate shall be on a form approved by the Executive Secretary and shall be issued within ten (10) days of successful completion of the Pre-licensing Education Program.

12-6-518. Notice of change of address or status. (1) The board, through the executive director, shall not issue a powersports vehicle dealer's license or used powersports vehicle dealer's license to an applicant who has no principal place of business. If a powersports vehicle dealer or used powersports vehicle dealer changes the site or location of the dealer's principal place of business, the dealer shall immediately notify the board in writing, and thereupon, a new license shall be granted for the unexpired portion of the term of the existing license at a fee established pursuant to section 12-6-511. If a powersports vehicle dealer or used powersports vehicle dealer ceases to possess a principal place of business where the dealer conducts the business for which the dealer is licensed, the dealer shall immediately notify the board in writing and, upon demand by the board, shall deliver the dealer's license, which shall be held and retained until it appears to the board that the licensee possesses a principal place of business; whereupon, the dealer's license shall be reissued. Nothing in this part 5 shall be construed to prevent a powersports vehicle dealer or used powersports vehicle dealer from conducting the business for which the dealer is licensed at one or more sites or locations not contiguous to the dealer's principal place of business but operated and maintained in conjunction therewith.

(2) Should the powersports vehicle dealer change to a new line of powersports vehicles, add another franchise for the sale of new powersports vehicles, or cancel or otherwise lose a franchise for the sale of new powersports vehicles, the dealer shall immediately notify the board. If a franchise is canceled or lost, the board shall determine whether the dealer should be licensed as a used powersports vehicle dealer. If so, the board shall cancel and the powersports vehicle dealer shall deliver to it the dealer's license, and the board shall direct the executive director to issue to the dealer a used powersports vehicle dealer's license. Upon the cancellation or loss of a franchise to sell new powersports vehicles and the re-licensing of the dealer as a used powersports vehicle dealer, the dealer may continue in the business for which a powersports vehicle dealer is licensed for a time, not exceeding six months after the re-licensing of the dealer, to enable the dealer to

dispose of the stock of new powersports vehicles on hand at the time of the relicensing, but not otherwise.

(3) If a powersports vehicle salesperson is discharged, leaves an employer, or changes a place of employment, the powersports vehicle dealer who last employed the salesperson shall confiscate and return the salesperson's license to the board. Upon being reemployed as a powersports vehicle salesperson, the powersports vehicle salesperson shall notify the board. Upon receiving the notification, the board shall issue a new license for the unexpired portion of the returned license after collecting a fee set pursuant to section 12-6-511 (5). It shall be unlawful for the salesperson to act as a powersports vehicle salesperson until a new license is procured.

(4) Upon a change of place of business or business address, a wholesaler shall immediately notify the board of the change. (HB09-1026)(Effective 10-1-2009)

12-6-519. 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.

REGULATION 12-6-519 (1).

1. "Adequate sanitary facilities" means a permanent sewer hookup, cesspool or septic tank with leaching field, or portable chemical toilet.

2. A dealer's license shall not be issued to a person located at a principal place of business or other additional locations unless such place of business or additional locations are owned or leased by and actually occupied by the applicant. A powersports vehicle dealer's license shall be suspended or revoked if the dealer's principal place of business or other additional locations are not owned or leased by and not actually occupied by the licensee.

(2) A room in a hotel, rooming house, or apartment house building or a part of any single or multiple unit dwelling house shall not be used as a principal place of business unless the entire ground floor of the hotel, apartment house, or rooming house building or the dwelling house is devoted principally to and occupied for commercial purposes and the office of the dealer is located on the ground floor thereof.

(3) Nothing in this section shall be construed to exempt a powersports vehicle dealer or used powersports vehicle dealer from local zoning ordinances.

12-6-520. Licenses - grounds for denial, suspension, or revocation. (1) A powersports vehicle manufacturer's or distributor's license may be denied, suspended, or revoked on the following grounds:

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

(b) Willful failure to comply with this part 5 or any rule promulgated by the executive director under this part 5;

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

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

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

(b) Willful failure to comply with this part 5 or any rules promulgated by the executive director under this part 5;

(c) Committing any unconscionable business practice under title 4, C.R.S.;

(d) Having coerced or attempted to coerce a powersports vehicle dealer to accept delivery of any powersports vehicle, parts or accessories therefore, or any other commodities or services that have not been ordered by the dealer;

(e) Having coerced or attempted to coerce a powersports vehicle dealer to enter into any agreement to do an act unfair to the dealer by threatening to cause the cancellation of the dealer's franchise;

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

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

(3) A wholesaler's license, powersports vehicle dealer's license or a used powersports vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (HB09-1026)(Effective 10-1-2009)

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

REGULATION 12-6-520 (3) (a). *“Material misstatement” means any relevant false or misleading statement, omission, or misrepresentation by the applicant or a partner, officer, director, or shareholder of any corporation, limited liability company, limited liability partnership or any other business entity authorized under law to hold a license, regarding personal identification information, employment history, personal or business entity financial information, prior occupational licensing history, whether regarding a license issued by the board or any other licensing/regulatory agency, criminal background and history including arrests, criminal information filings, indictments,*

municipal, misdemeanor, and/or felony convictions, and deferred judgments, civil judgments, assurances of discontinuance, consent order/decrees, and/or stipulation arising from the operating of a business in this state or any other state engaged in the sale, lease, or distribution of powersports vehicles. This Regulation does not apply to shareholders of corporations, who own less than five per-cent, that are subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended.

(b) Willful failure to comply with this part 5 or any rule promulgated by the executive director under this part 5;

(c) Having been convicted of or pled nolo contendere to any felony or 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 another state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of the conviction in a hearing held pursuant to this article.

REGULATION 12-6-520 (3) (c). *Dealers, officers, directors or stockholders of corporations owning five per-cent or more, licensed as such, who are convicted of or pled nolo contendere or a plea in a deferred judgment and sentence to any felony or any crime pursuant to Article 3, 4, or 5 of Title 18, C.R.S., or like crime pursuant to federal law or the law of any other state, shall provide to the board written notice of such conviction within thirty days after receiving such conviction. The licensee shall provide complete information including copies of such conviction and pre-sentence reports within thirty days of the conviction.*

(d) Defrauding any buyer, seller, powersports vehicle salesperson, or financial institution to the person's damage;

(e) Intentionally or negligently failing to perform any written agreement with any buyer or seller;

(f) Failing or refusing to furnish and keep in force a bond required under this part 5;

(g) Making a fraudulent or illegal sale, transaction, or repossession;

(h) Willfully misrepresenting, circumventing, concealing, or failing to disclose, through subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to the buyer;

REGULATION 12-6-520 (3) (h).

A copy of the completed contract form shall be given to the purchaser when signed by both parties. The year and make of the powersports vehicle along with miles or hours of operation (if known) shall be disclosed on the contract.

A powersports dealer shall disclose on the contract form when a powersports vehicle is known by the dealer to have sustained material damage such as complete replacement of the engine, drive train, chassis or when the vehicle was known to be a rental.

Addendum to Powersports vehicle sales contract

Year of Vehicle _____

Make _____

Miles (if applicable) _____

Hours (if known) _____

Used as a daily rental
(if known) _____ Yes _____ No
Disclosure

The selling dealer certifies that it **has/has no** knowledge that this powersports vehicle is known to have sustained any material damage such as complete replacement of the engine, drive train or chassis.

Dealer

Purchaser

- (i) Intentionally publishing or circulating advertising that is misleading or inaccurate in any material particular or that misrepresents a product sold or furnished by a licensed dealer;

REGULATION 12-6-520 (3) (i). Advertising shall be construed to be misleading or inaccurate in the following particulars:

Rule 1. Advertising a powersports vehicle which is not in operable condition unless specifically disclosed.

Rule 2. Advertising which would imply the dealer is going out of business when such is not the case.

Rule 3. Advertising a specific powersports vehicle for sale or lease with price or terms quoted, without fully identifying the vehicle as to year, make, model, if known, and dealer stock number. Such vehicle shall be willfully shown and sold at the advertised price and/or terms while such vehicle remains unsold or unleased, for a period of five days following the last date the ad was published, unless the ad states that the advertised price

and terms are good only for a specific time and such time has elapsed. If a specific number of powersports vehicles are advertised, such vehicles must have been invoiced to the dealer.

Rule 4. Using a picture or photograph of a powersports vehicle in advertising when the picture or photograph is not the same make, year and equipment actually being offered for the price or terms advertised.

Rule 5. Advertising in such a manner which utilizes an asterisk or other reference symbols to contradict or materially change the meaning of any advertising statements.

Rule 6. Advertising used powersports vehicles to create the impression that they are new or using the word 'new' when advertising used powersports vehicles, such as "new, used powersports vehicles". Any powersports vehicle of the current model or the previous model year which is a used powersports vehicle shall be so identified in any advertisement for said powersports vehicle.

Rule 7. Advertising in any manner to imply that a purchaser will be receiving benefits of any existing loan on a powersports vehicle when no such benefit exists.

Rule 8. Advertising or making statements that are not true or that cannot or will not be honored. Advertising which creates the false impression that the purchaser will determine the terms, price or conditions of a sale, such as "write your own deal," "name your own price," "no reasonable offer refused," and "we will not be undersold." Advertising any item as "free" which is associated with or conditioned upon the negotiated sale of a powersports vehicle.

Rule 9. Advertising sales prices for used powersports vehicles which claim or imply a specific savings or discount without clearly and accurately documenting the basis for the savings or discount.

Rule 10. Advertising any reference to "dealer cost" or "invoice" price. Advertising the word "wholesale" in connection with the retail offering of powersports vehicles.

Rule 11. Advertising a specific trade-in amount or range of amounts without, in fact, offering such a trade-in amount and, failing to disclose or advertise the M.S.R.P., sale price, or capitalized cost of the powersports vehicle from which the trade-in will be deducted.

Rule 12. Advertising the price of a powersports vehicle without including all costs to the purchaser at the time of delivery, except sales tax, finance charges, cost of any required emissions test, and transportation costs, incurred after sale, to deliver the powersports vehicle to the purchaser at the purchaser's request.

Rule 13. Advertising any specific discount or rebate on new powersports vehicles without the manufacturer's suggested retail price conspicuously stated in the ad.

Rule 14. Advertising any qualifying statement or disclosure which is not clear, conspicuous, and readable, and which is not adjacent to the offer or terms it qualifies, and in less than eight-point type.

Rule 15. Advertising any contest that offers to prospective participants the opportunity to receive or compete for gifts or prizes without such advertisement containing the words “no purchase or payment of any kind is necessary to enter or win this contest” in bold-faced type and at least ten-point type.

(j) Knowingly purchasing, selling, or otherwise acquiring or disposing of a stolen powersports vehicle;

(k) Engaging in the business for which the dealer is licensed without at all times maintaining a principal place of business as required by this part 5 during reasonable business hours;

REGULATION 12-6-520 (3) (k). *All powersports vehicle dealers and all used powersports vehicle dealers must be open for business at least three (3) days per week for a continuous period of time not less than four (4) hours per day between the hours of 8 A.M. and 9 P.M.*

Any powersports dealership open less than forty (40) hours a week must post a clear and legible sign on its place of business indicating the days and hours that it is open for business. In addition such powersports dealerships shall notify the board in writing of any subsequent change in such periods of time.

Any powersports dealership which will not be open for business for a period of at least two (2) weeks must post a clear and legible sign on its place of business indicating this fact as well as notifying the board in writing of such fact.

A powersports dealer’s principal place of business shall be made available to inspection by the board or its agents and employees at any reasonable time even if such time is outside the usual business hours posted by the dealer.

(l) Engaging in the business through employment of an unlicensed powersports vehicle salesperson;

(m) Willfully violating any state or federal law respecting commerce or powersports vehicles, or any lawful rule respecting commerce or powersports vehicles promulgated by any licensing or regulating authority pertaining to powersports vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or powersports vehicles;

(n) Representing or selling as a new and unused powersports vehicle any powersports vehicle that the dealer or salesperson knows is otherwise a used powersports vehicle;

(o) Committing a fraudulent insurance act pursuant to section 10-1-128, C.R.S.;

(p) Failing to give notice to a prospective buyer of the acceptance or rejection of a powersports vehicle purchase order agreement within a reasonable time period, as determined by the board, when the licensee is working with the prospective buyer on a finance sale or a consignment sale.

REGULATION 12-6-520 (3) (p). *A powersports dealer shall give notice of rejection of financing to the prospective buyer within ten (10) calendar days from the date of the purchase order or agreement on a finance or consignment sale.*

(3.5) A wholesaler's license may be denied, suspended, or revoked for the selling, leasing, or offering or attempting to negotiate the sale, lease, or exchange of an interest in motor vehicles to persons other than powersports vehicle dealers, used powersports vehicle dealers, or other wholesalers. (HB09-1026)(Effective 10-1-2009)

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

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

REGULATION 12-6-520 (4) (a). *“Material misstatement” in an application for a salesperson license means any relevant false or misleading statement, omission, or misrepresentation regarding personal identification information, employment history, prior occupational licensing history, whether regarding a license issued by the board or any other licensing/regulatory agency, criminal background and history including arrests, criminal information filings, indictments, municipal, misdemeanor, and/or felony convictions, plea of nolo contendere or a plea in a deferred judgment and sentence.*

(b) Failure to comply with any provision of this part 5 or any rule promulgated by the board or executive director under this part 5;

(c) To engage in the business for which the licensee is licensed without having in force and effect a good and sufficient bond with corporate surety as provided in this part 5;

(d) To intentionally publish or circulate an advertisement that is misleading or inaccurate in any material particular or that misrepresents a powersports vehicle product sold or attempted to be sold by the salesperson;

(e) Having indulged in any fraudulent business practice;

- (f) Selling, offering, or attempting to negotiate the sale, exchange, or lease of powersports vehicles for a powersports vehicle dealer or used powersports vehicle dealer for which the salesperson is not licensed; except that negotiation with a powersports vehicle dealer or used powersports vehicle dealer for the sale, exchange, or lease of new and used powersports vehicles, by a salesperson compensated for the negotiation by a powersports vehicle dealer or used powersports vehicle dealer for which the salesperson is licensed shall not be grounds for denial, revocation, or suspension;

REGULATION 12-6-520 (4) (f). *Reissue of powersports salesperson licenses.*

1. Salespersons who change employment during their license year shall notify the Auto Industry Division, on the form prescribed by the board, of the identity of the new employer prior to commencing employment at the new dealership.

2. Upon the submission of the notification, acknowledged by the new employing dealer, the salesperson may begin working as a salesperson at the new employing dealership.

3. After receipt of notification, the Auto Industry Division shall issue a new license to the salesperson for the remainder of the license term with the new employing dealership.

4. Any salesperson who fails to provide timely notification may be subject to disciplinary action.

- (g) Representing oneself as a salesperson for a powersports vehicle dealer when the salesperson is not so employed and licensed;

(h) 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 another state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of the conviction in a hearing held pursuant to this article.

REGULATION 12-6-520 (4) (h). *A powersports salesperson who is convicted of or pled nolo contendere or a plea in a deferred judgment and sentence to any felony or any crime pursuant to article 3, 4, or 5 of title 18, C.R.S., or like crime pursuant to federal law or the law of any other state, must give the board written notice of such conviction within thirty days after that conviction. The licensee shall provide complete information including copies of conviction and pre-sentence reports within thirty days of the conviction.*

- (i) Having knowingly purchased, sold, or otherwise acquired or disposed of a stolen powersports vehicle;

- (j) Employing an unlicensed powersports vehicle salesperson;

(k) Defrauding any retail buyer to the person's damage;

(l) Representing or selling as a new and unused powersports vehicle a powersports vehicle that the salesperson knows is otherwise a used powersports vehicle;

(m) Willfully violating any state or federal law respecting commerce or powersports vehicles, or any lawful rule respecting commerce or powersports vehicles promulgated by any licensing or regulating authority pertaining to powersports vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or powersports vehicles;

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

(5) A license issued pursuant to this part 5 may be denied, revoked, or suspended if unfitness of the 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) A Violation of any lawful order of the board.

REGULATION 12-6-520 (5).

(a) The board, in determining whether a licensee or license applicant has demonstrated unfitness of licensing character or record, will consider whether the licensee or license applicant or the licensee's or license applicant's partner, officer, director, or shareholder of any corporation, limited liability company, limited liability partnership or any other business entity authorized under law to hold a license, 1) has had a license fined, denied, suspended or revoked, 2) has been determined to have violated the licensing examination procedures of Regulation 12-6-504(1)(k); or 3) has had any complaints, civil judgments, injunctions, consent orders/decrees, or stipulations, arising from the operation of a business in this state or any other state, engaged in the sale, lease, or distribution of powersports vehicles, and, if so, the nature, severity, and extent of these legal matters. This regulation does not apply to shareholders of corporations, who own less than five per-cent that are subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended. (Effective 8/30/2010)

(b) The board, in determining whether a licensee or applicant has demonstrated unfitness of criminal character or record, will consider the nature and date of the convictions, parole or probation status, including whether the licensee or applicant has maintained satisfactory compliance, and/or restitution. A pattern of convictions which individually may not constitute grounds for denial or disciplinary action, may, taken together constitute unfitness.

(c) The board, in determining whether a licensee or applicant has demonstrated unfitness of financial character or record, will consider net worth, liquid assets including cash, lines of credit, marketable securities, credit reports, unpaid judgments and/or tax liens, delinquent debts, and bankruptcy status. Applications for a powersports vehicle dealer or used powersports vehicle license will be closely evaluated based on the factors herein and the applicant's concept of operation for the business to assess the potential for harm to retail customers.

(d) Failure to pay any fine imposed by the board, or the submission of a draft or check for the payment of any fee required by the board which is dishonored shall be deemed to demonstrate unfitness of financial character or record.

(6) (a) A license issued or applied for pursuant to this part 5 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 another jurisdiction during the previous ten years:

(I) 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 another state; or

(II) A crime involving salvage fraud or the defrauding of a retail consumer in a powersports vehicle sale or lease transaction.

(b) A certified copy of a judgment of conviction by a court of competent jurisdiction of an offense under subparagraph (I) of paragraph (a) of this subsection (6) is conclusive evidence of the conviction in any hearing held pursuant to this article.

12-6-521. Procedure for denial, suspension, or revocation of license - judicial review. **(1)** The denial, suspension, or revocation of licenses issued under this part 5 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.

(2) The board shall appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct any hearing concerning the licensing or discipline of a wholesaler, powersports vehicle dealer, used powersports vehicle dealer, powersports vehicle manufacturer, powersports vehicle manufacturer representative, or powersports vehicle distributor; except that the board may, upon a unanimous vote of the members present when the vote is taken, conduct the hearing in lieu of appointing an administrative law judge. (HB09-1026)(Effective 10-1-2009)

REGULATION 12-6-521 (2). Hearing procedures.

(I) *The board president will normally preside at hearings before the full board, or in the president's absence, such board member as may be designated by a majority of the board members present, may preside and conduct the hearing.*

(II) *The presiding officer shall rule on all evidentiary and procedural matters during the course of the hearing. Rulings on motions prior to or after the hearing, and the findings, conclusions, and order shall be determined by a majority of board members present. In the event a motion is filed requesting relief from a board order, the effects of which will occur prior to the next scheduled meeting of the board, the board president may rule on said motion, and the executive secretary shall issue the written order on behalf of the board. In the absence of the president, the first vice-president or second vice-president respectively may rule on any motion.*

(III) *An original and 10 copies of all documents intended to be introduced into evidence at hearings before the full board shall be provided for distribution to the board and the opposing party. Respondent's and applicant's exhibits shall be marked alphabetically. The Department of Revenue's exhibits shall be marked numerically.*

(IV) *License applicants shall have the burden of proof to demonstrate to the board that they meet all the qualifications for licensure. If denied a license by the board, applicants shall have the burden of proof to demonstrate that the specific reasons given in the notice of denial should not preclude the issuance of a license. Salesperson license applicants shall provide written proof that the employing dealer is aware of the grounds giving rise to the initial license denial, and, that said dealer shall be responsible for the actions of the salesperson in the course of employment in the event that a restricted license is approved.*

(V) *Motions shall be served on the board through its executive secretary with proof of service on the opposing party. Except in the most extraordinary circumstances, motions shall be filed not later than 30 calendar days prior to the hearing. A response to any motion shall be filed within 5 business days of the filing of the initial motion. Failure to timely comply may result in the motion being denied. Motions will be considered by the board at its next opportunity. The pendency of motions shall not be cause to continue a scheduled hearing.*

(VI) *Continuances will not be granted unless timely filed and with good cause shown. Unreasonable delay in securing legal counsel or failing to timely exercise discovery rights may not constitute "good cause" except in the most extraordinary circumstances.*

(3)(a) *The board shall assign a hearing concerning the licensing or discipline of a powersports vehicle salesperson to the executive director, who shall appoint an officer to conduct a hearing.*

(b) Hearings conducted before an administrative law judge shall be in accordance with the rules of procedure of the office of administrative courts. Hearings conducted before an officer appointed by the executive director shall be in accordance with the rules of procedure established by the executive director.

(4) The board may summarily suspend a licensee required to post a bond under this article if such licensee does not have a bond in full force and effect as required by this article. The suspension shall become effective upon the earlier of the licensee receiving notice of the suspension or within three days after the notice of suspension is mailed to a licensee's last known address on file with the board. The notice may be effected by certified mail or personal delivery.

(5) The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. The proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

12-6-522. Sales activity following license denial, suspension, or revocation - unlawful act - penalty. (1) (a) It shall be unlawful and a violation of this part 5 for any person whose wholesaler's, powersports vehicle dealer's, used powersports vehicle dealer's, or powersports vehicle salesperson's license has been denied, suspended, or revoked to exercise the privileges of the license that was denied, suspended, or revoked. (HB09-1026)(Effective 10-1-2009)

(b) A violation of paragraph (a) of this subsection (1) shall be punishable in accordance with section 12-6-527; except that a second or subsequent violation of said paragraph (a) shall be a class 6 felony.

(c) In any trial for a violation of paragraph (a) of this subsection (1):

(I) A duly authenticated copy of the board's order of denial, suspension, or revocation shall constitute prima facie evidence of the denial, suspension, or revocation;

(II) A duly authenticated invoice, buyer's order, or other customary, written sales or purchase document or instrument proven to be signed by the defendant and indicating the defendant's role in the purchase or sale of a powersports vehicle at a retail or wholesale powersports vehicle sales location shall constitute prima facie evidence of the defendant's exercise of a privilege of licensure; (HB09-1026)(Effective 10-1-2009)

(III) It shall be an affirmative defense that the defendant bought or sold a powersports vehicle that was, at all relevant times, intended for the defendant's own use and not bought or sold for the purpose of profit or gain; and

(IV) The fact that the defendant has a powersports vehicle dealer's, used powersports vehicle dealer's, or powersports vehicle salesperson's license, or another license to buy and sell powersports vehicles, that is issued by a state or jurisdiction other than Colorado shall not constitute a defense.

(2) Upon the defendant's conviction by entry of a plea of guilty or nolo contendere or judgment or verdict of guilt in connection with a violation of paragraph (a) of subsection (1) of this section or of section 12-6-523 (2) or 42-6-142 (1), C.R.S., the court shall immediately give the executive director written notice of the conviction. In addition, the court shall forward to the executive director copies of documentation of any conviction on a lesser included offense and any amended charge, plea bargain, deferred prosecution, deferred sentence, or deferred judgment in connection with the original charge.

(3) Upon receiving notice of a conviction or other disposition pursuant to subsection (2) of this section, the executive director or his or her designee shall forward the notice to the motor vehicle dealer board, which shall immediately examine its files to determine whether the defendant's license was denied, suspended, or revoked at the time of the offense. If in fact the defendant's license was denied, suspended, or revoked at the time of the offense, the board shall:

(a) Not issue or reinstate any license to the defendant until one year after the time the defendant would otherwise have been eligible to receive a new or reinstated license; and

(b) Revoke or suspend any other licenses held by the defendant until at least one year after the date of the conviction or other disposition.

12-6-523. Unlawful acts. (1) It shall be unlawful and a violation of this part 5 for any powersports vehicle manufacturer, distributor, or manufacturer representative:

(a) To willfully fail to cause to not be performed any written warranties made with respect to a powersports vehicle or parts thereof;

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

(c) To coerce or attempt to coerce any powersports vehicle dealer to accept delivery of a powersports vehicle, parts or accessories thereof, or any commodities or services that have not been ordered by the dealer;

(d) (I) To cancel or cause to be canceled, directly or indirectly, without just cause, the franchise of a powersports 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 powersports vehicle dealer;

(B) The investments necessarily made and obligations incurred by the powersports 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 the investments and obligations;

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

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

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

(F) The powersports 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 powersports 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 powersports vehicle 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 powersports vehicles, powersports vehicle parts and accessories, commodities, or moneys due powersports vehicle dealers for warranty work done by any powersports vehicle dealer;

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

(g) To coerce any powersports 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 12-6-524, 12-6-525, or 12-6-526;

(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; except that nothing in this part 5 shall authorize the sale, transfer, or assignment of a franchise or a change of the principal operator without the approval of the powersports vehicle manufacturer or distributor;

(i) **(I)** To fail to provide to the powersports vehicle dealer, within twenty days after receipt of a notice of intent from a powersports vehicle dealer, the list of documents and information necessary to approve the sale or transfer of the ownership of a dealership by sale of the business or by stock transfer or the change in executive management of the dealership; (SB09-091)(Effective 7-1-2009)

(II) To fail to confirm within twenty days after receipt of all documents and information listed in subparagraph (I) of this paragraph (i) that such documentation and information has been received; (SB09-091)(Effective 7-1-2009)

(III) To refuse to approve, unreasonably, the sale or transfer of the ownership of a dealership by sale of the business or by stock transfer within sixty days after the manufacturer has received all documents and information necessary to approve the sale or transfer of ownership, or to refuse to approve, unreasonably, the change in executive management of the dealership within sixty days after the manufacturer has received all information necessary to approve the change in management; except that nothing in this part 5 shall authorize the sale, transfer, or assignment of a franchise or a change of the principal operator without the approval of the powersports vehicle manufacturer or distributor unless the manufacturer or distributor fails to send notice of the disapproval within sixty days after receiving all documents and information necessary to approve the sale or transfer of ownership; or (SB09-091)(Effective 7-1-2009)

(IV) To condition the sale, transfer, relocation, or renewal of a franchise agreement or to condition sales, services, parts, or finance incentives upon site control or an agreement to renovate or make improvements to a facility; except that voluntary acceptance of such conditions by the dealer shall not constitute a violation; (SB09-091)(Effective 7-1-2009)

(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 powersports vehicle 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, which shall be judged based on the circumstances of the individual dealer and the conditions of the market served by the dealer;

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

(I) Maintains a reasonable line of credit for each make or line of new powersports vehicle; (SB09-091)(Effective 7-1-2009)

(II) Remains in compliance with reasonable capital standards and reasonable facilities requirements specified by the powersports vehicle manufacturer, but "reasonable facilities requirements" shall not include a requirement that a powersports vehicle dealer establish or maintain exclusive facilities, personnel, or display space; and (SB09-091)(Effective 7-1-2009)

(III) Provides written notice to the manufacturer, distributor, or manufacturer's representative, no less than ninety days prior to the dealer's intent to participate in the management of, investment in, or acquisition of another line-make of new powersports vehicles or related products; (SB09-091)(Effective 7-1-2009)

(l) To fail to pay to a powersports vehicle dealer, within ninety days after the termination, cancellation, or non-renewal of a franchise, all of the following:

(I) The dealer cost, plus any charges made by the powersports vehicle manufacturer for distribution, delivery, and taxes, less all allowances paid or credited to the powersports vehicle dealer by the powersports vehicle manufacturer, of unused, undamaged, and unsold powersports vehicles in the powersports vehicle dealer's inventory that were acquired from the powersports vehicle manufacturer or from another powersports vehicle dealer of the same line-make in the ordinary course of business within the previous twelve months; (SB09-091)(Effective 7-1-2009)

(II) The dealer cost, less all allowances paid or credited to the powersports vehicle dealer by the powersports vehicle manufacturer, for all unused,

undamaged, and unsold supplies, parts, and accessories in original packaging and listed in the powersports vehicle manufacturer's current parts catalog;

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

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

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

(m) To require, coerce, or attempt to coerce a powersports vehicle dealer to close or change the location of the powersports 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 powersports vehicles so as to justify the changes, in light of the current market and economic conditions;

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

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

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

(o) To require, coerce, or attempt to coerce a powersports 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.

(p) To discriminate between or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make based upon unreasonable sales and service standards; (SB09-091)(Effective 7-1-2009)

(q) To fail to make practically available an incentive, rebate, bonus, or other similar benefit to a powersports vehicle dealer that is offered to another powersports vehicle dealer of the same line-make within this state; (SB09-091)(Effective 7-1-2009)

(r) To fail to pay to a powersports vehicle dealer: (SB09-091)(Effective 7-1-2009)

(I) Within ninety days after the termination, cancellation, or nonrenewal of a franchise for the failure of a dealer to meet performance sales and service obligations or after the termination, elimination, or cessation of a line-make, the cost of the lease for the facilities used for the franchise or line-make for the unexpired term of the lease, not to exceed one year; except that: (SB09-091)(Effective 7-1-2009)

(A) If the powersports vehicle dealer owns the facilities, the value of renting such facilities for one year, prorated for each line-make based upon total sales volume for the previous twelve months before the involuntary termination; (SB09-091)(Effective 7-1-2009)

(B) Nothing in this subparagraph (i) shall be construed to limit the application of paragraph (d) of this subsection (1); (SB09-091)(Effective 7-1-2009)

(II) Within ninety days after the termination, elimination, or cessation of a line-make, the fair market value of the powersports vehicle dealer's goodwill for the line-make as of the date the manufacturer or distributor announces the action that results in the termination, elimination, or cessation, not including any amounts paid under subparagraphs (I) to (V) of paragraph (1) of this subsection (1); and (SB09-091)(Effective 7-1-2009)

(s) To condition a franchise agreement on improvements to a facility unless reasonably required by the technology of a powersports vehicle being sold at the facility. (SB09-091)(Effective 7-1-2009)

(2) It is unlawful for a person to act as a wholesaler, powersports vehicle dealer, used powersports vehicle dealer, powersports vehicle manufacturer, powersports vehicle distributor, powersports vehicle manufacturer representative, or powersports vehicle salesperson unless the person has been duly licensed under the provisions of this part 5. (HB09-1026)(Effective 10-1-2009)

12-6-524. New, reopened, or relocated dealer - notice required - grounds for refusal of dealer license - definitions - rules.

(1) No powersports vehicle manufacturer shall establish an additional new powersports vehicle dealer, reopen a previously existing powersports vehicle dealer, or relocate an existing powersports 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. The notice shall state:

(a) The specific location at which the additional, reopened, or relocated powersports vehicle dealer will be established;

(b) The date on or after which the powersports vehicle manufacturer intends to be engaged in business with the additional, reopened, or relocated powersports vehicle dealer at the proposed location;

(c) The identity of all powersports 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 powersports vehicle dealer is proposed to be located; and

(d) The names and addresses of the dealer and principal investors in the proposed additional, reopened, or relocated powersports vehicle dealer.

(1.5) A powersports vehicle manufacturer shall reasonably approve or disapprove of a powersports vehicle dealer facility initial site location or relocation request within sixty days after the request or after sending the notice required by subsection (1) of this section to all of its franchised powersports vehicle dealers, whichever is later, but not to exceed one hundred days. (SB09-091)(Effective 7-1-2009)

(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) "Powersports manufacturer" means a powersports vehicle manufacturer, distributor, or manufacturer representative.

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

(I) 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 powersports 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) (a) If a licensee brings an action or proceeding before the executive director or a court pursuant to this part 5, the powersports vehicle manufacturer shall have the burden of proof on the following issues:

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

(II) Growth or decline in population in the relevant market area;

(III) 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

(IV) Whether the powersports vehicle dealers of the same line-make in the relevant market area are providing adequate and convenient customer care for powersports 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.

(b) **(I)** In addition to the powers specified in section 12-6-505, the executive director has jurisdiction to resolve actions or proceedings brought before the executive director pursuant to this part 5 that allege a violation of this part 5 or rules promulgated pursuant to this part 5. The executive director may promulgate rules to facilitate the administration of the actions or proceedings, including provisions specifying procedures for the executive director or the executive director's designee to:

(A) Conduct an investigation pursuant to section 12-6-505 (1) (e) and (1) (f) of an alleged violation of this part 5 or rules promulgated pursuant to this part 5, including issuance of a notice of violation;

(B) Hold a hearing regarding the alleged violation to be held pursuant to section 24-4-105, C.R.S.;

(C) Issue an order, including a cease and desist order issued pursuant to section 12-6-505 (1) (h) to resolve the notice of violation; and

(D) Impose a fine pursuant to section 12-6-505 (1) (h) (III).

(II) The court of appeals has initial jurisdiction to review all final actions and orders that are subject to judicial review of the executive director made pursuant to this subsection (4). The proceedings shall be conducted in accordance with section 24-4-106, C.R.S.

12-6-525. Independent control of dealer - definitions.

(1) Except as otherwise provided in this section, no powersports vehicle manufacturer shall own, operate, or control any powersports vehicle dealer or used powersports vehicle dealer in Colorado. (SB09-091)(Effective 7-1-2009)

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

(a) Operation of a powersports vehicle dealer for a temporary period, not to exceed twelve months, during the transition from one owner or operator to another independent owner or operator; except that the executive director may extend the period, not to exceed twenty-four months, upon showing the manufacturer or distributor of the need to operate the dealership for such time to achieve a transition from an owner or operator to another independent third-party owner or operator; (SB09-091)(Effective 7-1-2009)

(b) Ownership or control of a powersports vehicle 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 powersports vehicle 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 powersports vehicle dealer if the powersports vehicle 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 powersports vehicle manufacturer and a powersports vehicle dealer under a franchise agreement.

(b) "Operate" means to directly or indirectly manage a powersports vehicle dealer.

(c) "Own" means to hold any beneficial ownership interest of one percent or more class of equity interest in a powersports vehicle 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.

(d) "Powersports vehicle manufacturer" means a powersports vehicle manufacturer, distributor, or manufacturer representative.

12-6-526. Successor under existing franchise agreement - duties of powersports vehicle manufacturer. (1) If a licensed powersports vehicle dealer under franchise by a powersports vehicle manufacturer dies or becomes incapacitated, the powersports vehicle manufacturer shall act in good faith to allow a successor, which may include a family member, designated by the deceased or incapacitated powersports vehicle dealer to succeed to ownership and operation of the dealer under the existing franchise agreement if:

(a) Within ninety days after the powersports vehicle dealer's death or incapacity, the designated successor gives the powersports vehicle manufacturer written notice of an intent to succeed to the rights of the deceased or incapacitated powersports 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 powersports vehicle manufacturer in qualifying powersports vehicle dealers.

(2) A powersports vehicle manufacturer may refuse to honor the existing franchise agreement with the designated successor only for good cause. The powersports vehicle 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 the data promptly upon request.

(3) (a) If a powersports vehicle manufacturer believes that good cause exists for refusing to honor the requested succession, the powersports vehicle 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 powersports 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 powersports vehicle manufacturer gives notice of refusal to approve the succession, the 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 the action.

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

12-6-526.5. Audit reimbursement limitations - dealer claims.

(SB09-091) (Effective 7-1-2009)

(1) (a) A manufacturer, distributor, or manufacturer representative shall have the right to audit warranty, sales, or incentive claims of a powersports vehicle dealer for fifteen months after the date the claim was submitted.

(b) A manufacturer, distributor, or manufacturer representative shall not require documentation for warranty, sales, or incentive claims or audit warranty, sales, or incentive claims of a powersports vehicle dealer more than twenty-four months after the date the claim was submitted, nor shall the manufacturer require a charge back, reimbursement, or credit against a future transaction arising out of an audit or request for documentation arising more than fifteen months after the date the claim was submitted.

(2) The powersports vehicle dealer shall have fifteen months after making a sale or providing service to submit warranty, sales, or incentive claims to the manufacturer, distributor, or manufacturer's representative.

(3) Subsection (1) of this section shall not limit any action for fraud instituted in a court of competent jurisdiction.

(4) A powersports vehicle dealer may request a determination from the executive director, within thirty days, that a charge back, reimbursement, or credit required violates subsection (1) of this section. If a determination is requested within the thirty-day period, then the charge back, reimbursement, or credit shall be stayed pending the decision of the executive director. If the executive director determines after a hearing that the charge back, reimbursement, or credit violates subsection (1) of this section, the charge back, reimbursement, or credit shall be void.

12-6-526.7. reimbursement for disapproving sale.

A manufacturer or distributor shall pay reasonable attorney fees, not to exceed the usual and customary fees charged for the transfer of a franchise, and reasonable expenses that are incurred by the proposed owner or transferee before the manufacturer or distributor exercised its right of first refusal in negotiating and implementing the contract for the proposed change of ownership or the transfer of assets. payment of attorney fees and expenses is not required if the claimant has failed to submit an accounting of attorney fees and expenses within twenty days after the receipt of the manufacturer's or dealer's written request for an accounting. an expense accounting may be requested by the manufacturer or distributor before exercising its right of first refusal. (SB09-091) (Effective 7-1-2009)

12-6-527. Penalty. A person who willfully violates this part 5 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.; except that a person who violates section 12-6-523 (2) commits a class 3 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars for each separate offense, or if the violator is a corporation, the fine shall be not less than five hundred dollars nor 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.

12-6-528. Fines - disposition - unlicensed sales. Any fine collected for a violation of section 12-6-523 (2) shall be awarded to the law enforcement agency that investigated and issued the citation for the violation.

12-6-529. Drafts not honored for payment - penalties. (1) If a wholesaler, powersports vehicle dealer, or used powersports vehicle dealer issues a draft or check to a wholesaler, powersports vehicle dealer or used powersports vehicle dealer and fails to honor the draft or check, then the license of the licensee shall be subject to suspension pursuant to section 12-6-520. The license suspension shall be effective upon the date of a final decision against the licensee. A licensee whose license has been suspended pursuant to this subsection (1) shall not be eligible for reinstatement of the license and shall not be eligible to apply for another license issued under this part 5 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. (HB09-1026)(Effective 10-1-2009)

(2) A wholesaler, powersports vehicle dealer, or used powersports vehicle dealer that issues a draft or check to a wholesaler, powersports vehicle dealer or used powersports vehicle dealer and who fails to honor the 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 that investigated and issued the citation for the violation. (HB09-1026)(Effective 10-1-2009)

12-6-530. Right of action for loss. (1) A person shall have a right of action against the dealer, the dealer's salespersons, and the sureties upon their respective bonds if the person suffers loss or damage by reason of fraud practiced on the person or fraudulent representation made to the person by a licensed powersports vehicle dealer or a licensed used powersports vehicle dealer, or one of the dealer's salespersons acting on the dealer's behalf or within the scope of the employment, or suffers loss or damage by reason of the violation by the dealer or salesperson of any of the provisions of this part 5 that are designated by the board by rule, whether or not the violation is the basis for denial, suspension, or revocation of a license. 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 a person suffers any loss or damage by reason of any unlawful act under section 12-6-523 (1) (a), the person shall have a right of action against the powersports vehicle manufacturer, distributor, or manufacturer representative. In a court action wherein a powersports vehicle manufacturer, distributor, or manufacturer representative has been found liable in damages to any person under this part 5, 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.

(3) If a licensee suffers loss or damage by reason of an unlawful act under section 12-6-523 (1), the licensee shall have a right of action against the powersports vehicle manufacturer, distributor, or manufacturer representative. In a court action wherein a powersports vehicle manufacturer, distributor, or manufacturer representative has been found liable in damages to a licensee under this part 5, the licensee so damaged shall also be entitled to recover reasonable attorney fees.

12-6-531. Contract disputes - venue - choice of law. (1) In the event of a dispute between a powersports vehicle dealer and a powersports vehicle manufacturer under a franchise agreement, notwithstanding any provision of the agreement to the contrary:

(a) At the option of the powersports 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.

12-6-532. Advertisement - inclusion of dealer name. No powersports vehicle dealer or used powersports vehicle dealer or an agent of a dealer shall advertise an offer for the sale, lease, or purchase of a powersports vehicle that creates the false impression that the vehicle is being offered by a private party or that 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".

12-6-533. Repeal of part. This part 5 is repealed, effective July 1, 2017. Prior to the repeal, the functions of the motor vehicle dealer board and the executive director under

this part 5, including licensing, shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 5. 12-6-111 (1), Colorado Revised Statutes, is amended to read:

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. A motor vehicle dealer or used motor vehicle dealer shall not be required to furnish an additional bond, savings account, deposit, or certificate of deposit under this section if such dealer furnishes a bond, savings account, deposit, or certificate of deposit under section 12-6-512.

SECTION 6. 12-6-112 (1), Colorado Revised Statutes, is amended to read:

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. A motor vehicle salesperson shall not be required to furnish an additional bond, savings account, deposit, or certificate of deposit under this section if such dealer furnishes a bond, savings account, deposit, or certificate of deposit under section 12-6-513.

SECTION 7. 12-6-113, Colorado Revised Statutes, is amended to read:

12-6-113. Testing licensees. 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 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. This section

shall not apply to a powersports vehicle dealer, used powersports vehicle dealer, or powersports salesperson licensed pursuant to part 5 of this article.