

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 20-0928.01 Jery Payne x2157

SENATE BILL 20-140

SENATE SPONSORSHIP

Holbert,

HOUSE SPONSORSHIP

Melton,

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE TYPES OF CONDITIONS THAT MAY AUTHORIZE A**
102 **PERSON TO RECOVER FROM THE BOND REQUIRED AS A**
103 **CONDITION TO BE LICENSED TO SELL VEHICLES WITH MOTORS.**

Bill Summary

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

Current law requires motor vehicle dealers, motor vehicle salespersons, motor vehicle buyer agents, wholesale motor vehicle auction dealers, business disposers, used motor vehicle dealers, wholesalers, used powersports vehicle dealers, powersports vehicle dealers, and powersports salespersons (dealers) to have bonds to

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

SENATE
Amended 2nd Reading
February 18, 2020

compensate people for fraud or a violation of the motor vehicle dealer statutes if the violation is designated as recoverable by the motor vehicle dealer board. **Sections 1, 2, 3, 5, and 6** of the bill require the violation to be related to fraud in order for a person to recover from the bond. **Sections 4 and 7** authorize a person to recover from a bond in an action if the board makes a finding in a hearing that a dealer committed fraud.

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

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

4 **44-20-112. Bond of licensee.** (1) Before any motor vehicle
5 dealer's, wholesaler's, wholesale motor vehicle auction dealer's, business
6 disposal, or used motor vehicle dealer's license is issued by the board
7 through the executive director to an applicant, the applicant must procure
8 and file with the board evidence of a savings account, deposit, or
9 certificate of deposit meeting the requirements of section 11-35-101 or a
10 good and sufficient bond with corporate surety ~~thereon~~ duly licensed to
11 do business within the state, approved as to form by the attorney general
12 of the state, and conditioned that the applicant must not practice fraud
13 ~~make any fraudulent representation,~~ or violate any ~~of the provisions~~
14 ~~PROVISION~~ of this part 1 RELATED TO FRAUD that ~~are~~ IS designated by the
15 board by rule in ~~the conduct of~~ CONDUCTING the business for which the
16 applicant is licensed. A motor vehicle dealer, business disposer, or used
17 motor vehicle dealer need not furnish an additional bond, savings
18 account, deposit, or certificate of deposit under this section if the dealer
19 furnishes a bond, savings account, deposit, or certificate of deposit under
20 section 44-20-412.

21 (2)(a) The purpose of the bond procured by the applicant pursuant
22 ~~to~~ IN ACCORDANCE WITH subsection (1) of this section and section

1 44-20-114 (1) is to provide for the reimbursement for any loss or damage
2 suffered by any retail consumer caused by FRAUD OR A violation of this
3 part 1 RELATED TO FRAUD by a motor vehicle dealer, used motor vehicle
4 dealer, wholesale motor vehicle auction dealer, business disposer, or
5 wholesaler. For a wholesale transaction, the bond is available to each
6 party to the transaction; except that, if a retail consumer is involved, the
7 consumer ~~shall have~~ HAS priority to recover from the bond. The amount
8 of the bond ~~shall~~ MUST be fifty thousand dollars for a motor vehicle
9 dealer applicant, used motor vehicle dealer applicant, wholesale motor
10 vehicle auction dealer applicant, business disposal applicant, or
11 wholesaler applicant; except THAT the amount of the bond ~~shall~~ MUST be
12 five thousand dollars for those dealers who sell only small utility trailers
13 that weigh less than two thousand pounds. The aggregate liability of the
14 surety for all transactions ~~shall not exceed~~ IS LIMITED TO the amount of
15 the bond, regardless of the number of claims or claimants.

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

20 **SECTION 2.** In Colorado Revised Statutes, 44-20-113, **amend**
21 (1) and (2) as follows:

22 **44-20-113. Motor vehicle salesperson's bond.** (1) Before ~~any~~
23 A motor vehicle salesperson's license is issued by the board through the
24 executive director to any applicant, ~~therefor,~~ the applicant ~~shall~~ MUST
25 procure and file with the board evidence of a savings account, deposit, or
26 certificate of deposit meeting the requirements of section 11-35-101 or a
27 good and sufficient bond in the amount of fifteen thousand dollars with

1 corporate surety ~~thereon~~ duly licensed to do business within the state,
2 approved as to form by the attorney general of the state, and conditioned
3 that the applicant ~~shall~~ MUST perform in good faith as a motor vehicle
4 salesperson without fraud ~~or fraudulent representation~~ and without the
5 violation of any ~~of the provisions~~ PROVISION of this part 1 RELATED TO
6 FRAUD that ~~are~~ IS designated by the board by rule. A motor vehicle
7 salesperson ~~shall~~ NEED not ~~be required to~~ furnish an additional bond,
8 savings account, deposit, or certificate of deposit under this section if the
9 dealer furnishes a bond, savings account, deposit, or certificate of deposit
10 under section 44-20-413.

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

15 **SECTION 3.** In Colorado Revised Statutes, 44-20-114, **amend**
16 (1) and (3) as follows:

17 **44-20-114. Buyer agent bonds.** (1) ~~TO BE ISSUED~~ a buyer agent's
18 license, ~~shall not be issued by the executive director to any~~ AN applicant
19 ~~therefor until the applicant procures and files~~ MUST PROCURE AND FILE
20 with the executive director evidence of a savings account, deposit, or
21 certificate of deposit meeting the requirements of section 11-35-101 or a
22 good and sufficient bond in the amount of five thousand dollars with a
23 corporate surety duly licensed to do business within the state and
24 approved as to form by the attorney general. The bond shall be available
25 to ensure that the applicant shall perform in good faith as a buyer agent
26 without fraud ~~or fraudulent representation~~ and without violating any ~~of~~
27 ~~the provisions~~ PROVISION of this part 1 RELATED TO FRAUD that ~~are~~ IS

1 designated by the executive director by rule.

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

6 **SECTION 4.** In Colorado Revised Statutes, 44-20-131, **amend**
7 (1); and **add** (4) as follows:

8 **44-20-131. Right of action for loss.** (1) (a) If a person suffers
9 loss or damage by reason of fraud practiced on the person ~~or fraudulent~~
10 ~~representation made to the person~~ by a licensed dealer or one of the
11 dealer's salespersons acting on the dealer's behalf or within the scope of
12 the employment of the salesperson, or IF A PERSON suffers any loss or
13 damage by reason of the violation by the dealer or salesperson of ANY
14 PROVISION OF this part 1 RELATED TO FRAUD that ~~are~~ IS designated by the
15 board by rule, whether or not the violation is the basis for denial,
16 suspension, or revocation of a license, the person suffering loss or
17 damages has a right of action against the dealer OR the dealer's motor
18 vehicle salespersons. ~~and the sureties upon their respective bonds.~~ The
19 right of a person to recover for loss or damage as provided in this
20 subsection (1) against the dealer or salesperson is not limited to the
21 amount of their respective bonds.

22 (b) A person suffering loss or damages has a right of action
23 against a licensed business disposer ~~and the surety upon the disposer's~~
24 ~~bond~~ if:

25 (I) The loss or damage is caused by fraud practiced on the person
26 ~~or a fraudulent representation made to the person~~ by the disposer or the
27 disposer's agent within the scope of employment; or

1 (II) The loss or damage is caused by the disposer violating ANY
2 PROVISION OF this part 1 RELATED TO FRAUD and the violation is
3 designated by the board by rule, whether or not the violation is the basis
4 for denial, suspension, or revocation of the license.

5 (4) A PERSON WHO SUFFERS LOSS OR DAMAGES RESULTING FROM
6 FRAUD MAY BRING A SEPARATE ACTION AGAINST, AND RECOVER FROM THE
7 SURETY ON THE BOND OF, THE LICENSED DEALER, BUSINESS DISPOSER,
8 BUYER AGENT, OR SALESPERSON IF:

9 (a) THE LICENSED DEALER, DISPOSER, BUYER AGENT, OR
10 SALESPERSON HAS NOT REIMBURSED THE PERSON FOR THE LOSS OR
11 DAMAGES; AND

12 (b) AFTER EITHER:

13 (I) THE BOARD ISSUED A FINAL AGENCY ORDER WITH A FINDING OF
14 FRAUD BY A LICENSED DEALER, DISPOSER, BUYER AGENT, OR
15 SALESPERSON; OR

16 (II) A COURT ENTERED JUDGMENT UPON A CLAIM OF FRAUD BY A
17 LICENSED DEALER, DISPOSER, BUYER AGENT, OR SALESPERSON.

18 **SECTION 5.** In Colorado Revised Statutes, 44-20-412, **amend**
19 (1) and (2) as follows:

20 **44-20-412. Bond of licensee.** (1) TO BE ISSUED a wholesaler's
21 license, powersports vehicle dealer's license, or used powersports vehicle
22 dealer's license, ~~shall not be issued to any~~ AN applicant ~~unless the~~
23 ~~applicant procures and files~~ MUST PROCURE AND FILE with the board
24 evidence of a savings account, deposit, or certificate of deposit meeting
25 the requirements of section 11-35-101 or a good and sufficient bond with
26 A corporate surety ~~thereon~~ duly licensed to do business within the state,
27 approved as to form by the attorney general, and conditioned that the

1 applicant ~~shall not make any fraudulent representation~~ NOT PRACTICE
2 FRAUD or violate any of the provisions of this part 4 RELATED TO FRAUD
3 or any rule promulgated by the board under this part 4 RELATED TO
4 FRAUD. A powersports vehicle dealer or used powersports vehicle dealer
5 ~~shall not be required to~~ NEED NOT furnish an additional bond, savings
6 account, deposit, or certificate of deposit under this section if the dealer
7 furnishes a bond, savings account, deposit, or certificate of deposit under
8 section 44-20-112.

9 (2) (a) The purpose of the bond procured by the applicant ~~pursuant~~
10 ~~to~~ IN ACCORDANCE WITH subsection (1) of this section and section
11 44-20-413 is to provide for the reimbursement for any loss or damage
12 suffered by any retail consumer caused BY FRAUD OR by A violation of
13 this part 4 RELATED TO FRAUD by a wholesaler, powersports vehicle
14 dealer, or used powersports vehicle dealer. For a wholesale transaction,
15 the bond is available to each party to the transaction; except that, if a
16 retail consumer is involved, the consumer ~~shall have~~ HAS priority to
17 recover from the bond. The amount of the bond ~~shall~~ MUST be fifty
18 thousand dollars for each wholesaler applicant, powersports vehicle
19 dealer applicant, and used powersports vehicle dealer applicant. The
20 aggregate liability of the surety for all transactions ~~shall~~ DOES not exceed
21 the amount of the bond, regardless of the number of claims or claimants.

22 (b) No corporate surety ~~shall be~~ IS required to make a payment to
23 any person making a claim under the bond until a final determination of
24 fraud ~~or fraudulent representation~~ has been made by the board or by a
25 court of competent jurisdiction.

26 **SECTION 6.** In Colorado Revised Statutes, 44-20-413, **amend**
27 (1) and (2) as follows:

1 **44-20-413. Powersports vehicle salesperson's bond.** (1) TO BE
2 ISSUED a powersports vehicle salesperson's license, ~~shall not be issued~~
3 ~~unless the applicant has procured and filed~~ MUST PROCURE AND FILE with
4 the board evidence of a savings account, deposit, or certificate of deposit
5 meeting the requirements of section 11-35-101 or a good and sufficient
6 bond in the amount of fifteen thousand dollars with A corporate surety
7 ~~thereon~~ duly licensed to do business within the state, approved as to form
8 by the attorney general, and conditioned that the applicant ~~shall~~ perform
9 in good faith as a powersports vehicle salesperson without fraud ~~or~~
10 ~~fraudulent representation~~ and without violating A PROVISION OF this part
11 4 RELATED TO FRAUD or any rule promulgated by the board under this part
12 4 RELATED TO FRAUD. The board shall implement ~~by January 1, 2008,~~ a
13 psychometrically valid and reliable salesperson exam that measures the
14 minimum level of competence necessary to practice. A powersports
15 vehicle salesperson ~~shall not be required to~~ NEED NOT furnish an
16 additional bond, savings account, deposit, or certificate of deposit under
17 this section if the salesperson furnishes a bond, savings account, deposit,
18 or certificate of deposit under section 44-20-113.

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

23 **SECTION 7.** In Colorado Revised Statutes, 44-20-432, **amend**
24 (1); and **add** (4) as follows:

25 **44-20-432. Right of action for loss.** (1) A person ~~shall have~~ HAS
26 a right of action against the LICENSED POWERSPORTS VEHICLE dealer,
27 USED POWERSPORTS VEHICLE DEALER, OR the dealer's POWERSPORTS

1 salespersons ~~and the sureties upon their respective bonds~~ if the person
2 suffers loss or damage by reason of fraud practiced on the person ~~or~~
3 ~~fraudulent representation made to the person by a licensed powersports~~
4 ~~vehicle dealer or a licensed used powersports vehicle dealer~~, BY A DEALER
5 or one of the dealer's salespersons acting on the dealer's behalf or within
6 the scope of the employment or suffers loss or damage by reason of the
7 violation by the dealer or salesperson of any ~~of the provisions~~ PROVISION
8 of this part 4 RELATED TO FRAUD that ~~are~~ IS designated by the board by
9 rule, whether or not the violation is the basis for denial, suspension, or
10 revocation of a license. The right of a person to recover for loss or
11 damage as provided in this subsection (1) against the dealer or
12 salesperson ~~shall~~ IS not ~~be~~ limited to the amount of their respective bonds.

13 (4) A PERSON WHO SUFFERS LOSS OR DAMAGES RESULTING FROM
14 FRAUD MAY BRING A SEPARATE ACTION AGAINST, AND RECOVER FROM THE
15 SURETY ON THE BOND OF, THE LICENSED POWERSPORTS VEHICLE DEALER,
16 USED POWERSPORTS VEHICLE DEALER, OR POWERSPORTS SALESPERSON IF:

17 (a) THE LICENSED DEALER OR SALESPERSON HAS NOT REIMBURSED
18 THE PERSON FOR THE LOSS OR DAMAGES; AND

19 (b) AFTER EITHER:

20 (I) THE BOARD ISSUED A FINAL AGENCY ORDER WITH A FINDING OF
21 FRAUD BY A LICENSED DEALER OR SALESPERSON; OR

22 (II) A COURT ENTERED JUDGMENT UPON A CLAIM OF FRAUD BY A
23 LICENSED DEALER OR SALESPERSON.

24 **SECTION 8. Act subject to petition - effective date -**
25 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
26 the expiration of the ninety-day period after final adjournment of the
27 general assembly (August 5, 2020, if adjournment sine die is on May 6,

1 2020); except that, if a referendum petition is filed pursuant to section 1
2 (3) of article V of the state constitution against this act or an item, section,
3 or part of this act within such period, then the act, item, section, or part
4 will not take effect unless approved by the people at the general election
5 to be held in November 2020 and, in such case, will take effect on the
6 date of the official declaration of the vote thereon by the governor.

7 (2) This act applies to offenses committed on or after the
8 applicable effective date of this act.