

SECOND REGULAR SESSION

SENATE BILL NO. 926

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATORS KENNEY, WIGGINS, JACOB, YECKEL AND STEELMAN.

Read 1st time January 14, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3248S.02I

AN ACT

To repeal sections 301.550, 301.553, 301.555, 301.557, 301.559, 301.560, 301.561, 301.562, 301.563, 301.564, 301.565, 301.566, 301.568 and 301.573, RSMo, relating to the sale of motor vehicles and vessels, and to enact in lieu thereof eighteen new sections relating to the same subject, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 301.550, 301.553, 301.555, 301.557, 301.559, 301.560, 301.561, 301.562, 301.563, 301.564, 301.565, 301.566, 301.568 and 301.573, RSMo, are repealed and eighteen new sections enacted in lieu thereof, to be known as sections 301.550, 301.551, 301.553, 301.554, 301.555, 301.557, 301.559, 301.560, 301.561, 301.562, 301.563, 301.564, 301.565, 301.566, 301.567, 301.568, 301.571 and 301.573, to read as follows:

301.550. 1. The definitions contained in section 301.010 shall apply to sections 301.550 to 301.573, and in addition as used in sections 301.550 to 301.573, the following terms mean:

(1) "Board", the Missouri motor vehicle board;

[(1)] (2) "Boat dealer", any natural person, partnership, or corporation who, for a commission or with an intent to make a profit or gain of money or other thing of value, sells, barter, exchanges, leases or rents with the option to purchase, offers, attempts to sell, or negotiates the sale of any vessel or vessel trailer, whether or not the vessel or vessel trailer is owned by such person. The sale of six or more vessels or vessel trailers or both in any calendar year shall be required as evidence that such person is eligible for licensure as a boat dealer **[under]** pursuant to sections 301.550 to 301.573. The boat dealer shall demonstrate eligibility for renewal of **[his]** said license by selling six or more vessels or vessel trailers or both in the

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

prior calendar year while licensed as a boat dealer pursuant to sections 301.550 to 301.573;

[(2)] **(3)** "Boat manufacturer", any person engaged in the manufacturing, assembling or modification of new vessels or vessel trailers as a regular business, including a person, partnership or corporation which acts for and is under the control of a manufacturer or assembly in connection with the distribution of vessels or vessel trailers;

[(3)] **(4)** "Department", the Missouri department of [revenue] **economic development**;

[(4)] **(5)** "Director", the **executive** director of the Missouri [department of revenue] **motor vehicle board**;

(6) "Division", the division of professional registration;

[(5)] **(7)** "Manufacturer", any person engaged in the manufacturing, assembling or modification of new motor vehicles or trailers as a regular business, including a person, partnership or corporation which acts for and is under the control of a manufacturer or assembly in connection with the distribution of motor vehicles or accessories for motor vehicles;

[(6)] **(8)** "Motor vehicle broker", a person who holds himself out through solicitation, advertisement, or otherwise as one who offers to arrange a transaction involving the retail sale of a motor vehicle, and who is not:

(a) A dealer, or any agent, or any employee of a dealer when acting on behalf of a dealer;

(b) A manufacturer, or any agent, or employee of a manufacturer when acting on behalf of a manufacturer;

(c) The owner of the vehicle involved in the transaction; or

(d) A public motor vehicle auction or wholesale motor vehicle auction where buyers are licensed dealers in this or any other jurisdiction;

[(7)] **(9)** "Motor vehicle dealer" or "dealer", any person who, for commission or with an intent to make a profit or gain of money or other thing of value, sells, barters, exchanges, leases or rents with the option to purchase, or who offers or attempts to sell or negotiates the sale of motor vehicles or trailers whether or not the motor vehicles or trailers are [owned by such person; provided, however, an individual auctioneer or auction conducted by an auctioneer licensed pursuant to chapter 343, RSMo, shall not be included within the definition of a motor vehicle dealer. The sale of six or more motor vehicles or trailers in any calendar year shall be required as evidence that such person is engaged in the motor vehicle business and is eligible for licensure as a motor vehicle dealer under sections 301.550 to 301.573;] **purchased or owned by, or titled in the name of, such person. This term includes, without limitation, new motor vehicle franchise dealers; used motor vehicle dealers; powersport dealers; and trailer dealers. This term does not include:**

(a) An individual auctioneer licensed pursuant to chapter 343, RSMo, conducting sales on behalf of a public or wholesale motor vehicle auction;

(b) Any financial institution authorized to do business under federal or state law which, in the normal course of its business, takes title to vehicles by reason of foreclosure or repossession as a result of loans secured by a lien on such vehicles;

(c) Business entities dealing solely in the sale and distribution of fire-fighting equipment, ambulances, and funeral vehicles, including motor vehicles adapted therefor;

(d) Receivers, trustees, administrators, executors, guardians, conservators or other persons appointed by or acting under judgment or order of any court, including employees of such persons acting within their specific scope of employment;

(e) Any employee of an organization arranging for the purchase or lease by the organization of vehicles for use in the organization's business;

(f) Any insurance company authorized to do business in this state that sells or otherwise disposes of vehicles in its ordinary course of business;

(g) Any credit union authorized to do business in this state, provided the credit union does not receive a commission, money, or other thing of value directly from a motor vehicle dealer;

(h) Any office or agency of this state when selling or otherwise disposing of vehicles procured for use in official state business;

(i) A person selling no more than four motor vehicles per calendar year which are titled in that person's name, if, prior to sale, such motor vehicles were used by the seller exclusively for personal, family, or household purposes and if any profit derived from such sales is merely incidental and the seller's primary intent in making the sale was not to receive any profit or income from the sale;

(10) "Motor vehicle salesperson", or "salesperson", any person who is employed as a salesperson by a motor vehicle dealer to sell or exchange motor vehicles, including any person licensed as a motor vehicle dealer and who sells or exchanges motor vehicles;

[(8)] (11) "New motor vehicle", any motor vehicle being transferred for the first time from a manufacturer, distributor or new vehicle dealer which has not been registered or titled in this state or any other state and which is offered for sale, barter or exchange by a dealer who is franchised to sell, barter or exchange that particular make of motor vehicle. The term "new motor vehicle" shall not include manufactured homes, as defined in section 700.010, RSMo;

[(9)] (12) "New motor vehicle franchise dealer", any motor vehicle dealer who has been franchised to deal in a certain make of motor vehicle by the manufacturer or distributor of that make and motor vehicle and who may, in line with conducting [his] business as a franchise dealer, sell, barter or exchange used motor vehicles;

[(10)] (13) "Person" includes [an individual] any natural person, a partnership,

corporation, an unincorporated society or association, joint venture, **limited liability company**, or any other entity;

(14) "Powersport dealer", any motor vehicle dealer who sells, either pursuant to a franchise agreement or otherwise, primarily motor vehicles including but not limited to motorcycles, all-terrain vehicles, and personal watercraft, as those terms are defined in this chapter and chapter 306, RSMo;

[(11)] **(15)** "Public motor vehicle auction", any person, firm or corporation who takes possession of a motor vehicle whether by consignment, bailment or any other arrangement, except by title, for the purpose of selling motor vehicles at a public auction by a licensed auctioneer;

[(12)] **(16)** "Storage lot", an area, within the same city or county where a dealer may store excess vehicle inventory;

(17) "Trailer", any trailer as defined in section 301.010;

[(13)] **(18)** "Used motor vehicle", any motor vehicle which is not a new motor vehicle, as defined in sections 301.550 to 301.573, and which has been sold, bartered, exchanged or given away or which may have had a title issued in this state or any other state, or a motor vehicle so used as to be what is commonly known as a secondhand motor vehicle. In the event of an assignment of the statement of origin from an original franchise dealer to any individual or other motor vehicle dealer other than a new motor vehicle franchise dealer of the same make, the vehicle so assigned shall be deemed to be a used motor vehicle and a certificate of ownership shall be obtained in the assignee's name. The term "used motor vehicle" shall not include manufactured homes, as defined in section 700.010, RSMo;

[(14)] **(19)** "Used motor vehicle dealer", any motor vehicle dealer who **sells used motor vehicles and who** is not a new motor vehicle franchise dealer;

[(15)] **(20)** "Vessel", every boat and watercraft defined as a vessel in section 306.010, RSMo;

[(16)] **(21)** "Vessel trailer", any trailer, as defined by section 301.010 which is designed and manufactured for the purposes of transporting vessels;

[(17)] **(22)** "Wholesale motor vehicle auction", any person, firm or corporation in the business of providing auction services solely in wholesale transactions at its established place of business in which the purchasers are motor vehicle dealers licensed by this or any other jurisdiction, and which neither buys, sells nor owns the motor vehicles it auctions in the ordinary course of its business. Except as required by law with regard to the auction sale of a government owned motor vehicle, a wholesale motor vehicle auction shall not provide auction services in connection with the retail sale of a motor vehicle;

[(18)] **(23)** "Wholesale motor vehicle dealer", a motor vehicle dealer who sells motor vehicles only to other new motor vehicle franchise dealers or used motor vehicle dealers or via

auctions limited to other dealers of any class.

2. For purposes of sections 301.550 to 301.573, neither the term "motor vehicle" nor the term "trailer" shall include manufactured homes, as defined in section 700.010, RSMo.

3. Dealers shall be divided into classes as follows:

- (1) Boat dealers;
- (2) Franchised new motor vehicle dealers;
- (3) Used motor vehicle dealers;
- (4) Wholesale motor vehicle dealers;
- (5) Powersport dealers;**
- (6) Public motor vehicle auctions;**
- (7) Wholesale motor vehicle auctions;**
- ~~[(5)]~~ **(8)** Recreational motor vehicle dealers;
- ~~[(6)]~~ **(9)** Historic motor vehicle dealers; **and**
- ~~[(7)]~~ **(10)** Classic motor vehicle dealers; **and**
- (8) Motorcycle dealers].

301.551. 1. If, in any retail sale by a dealer of a used motor vehicle which is not a commercial motor vehicle as defined in this chapter, for use on highways and which is normally used for personal, family, or household use, the dealer offers an express warranty on such vehicle, the dealer shall provide the buyer with full written disclosure of such warranty. Compliance with this subsection may be had by completing in full the Buyer's Guide as required by federal law, and, in addition, obtaining the buyer's signature and date of sale on the Buyer's Guide and incorporating same as a part of the buyer's order or bill of sale.

2. Subject to the laws of this state, a dealer may sell a used motor vehicle at retail "as is" and exclude all warranties only if, prior to sale, the dealer provides the buyer with a separate written disclosure as to the effect of an "as is" sale. Such written disclosure shall be conspicuous and shall be attached to or placed on the buyer's order or bill of sale, and shall be signed by the buyer prior to sale. The disclosure shall be printed in bold, not less than ten point type and contain the following statement: "I understand that this vehicle is being sold "AS IS" with all faults and is not covered by any dealer warranty. I understand that the dealer is not required to make any repairs to this vehicle after I purchase it. I understand that I will be responsible for paying the costs of any repairs this vehicle will need".

3. Failure to provide the disclosures required by this section shall be deemed a cause for discipline pursuant to section 301.562. Compliance with such requirements shall constitute a rebuttable defense to any civil claim brought by a purchaser or the attorney general pursuant to chapter 407, RSMo, or any such claim

based on common law fraud, if such claim is based in whole or in part upon allegations that the dealer concealed or failed to disclose a known or unknown material defect in the vehicle.

4. Compliance with the provisions of this section shall not be deemed to relieve any seller of its obligation to provide an inspection otherwise required by section 307.350.

301.553. 1. **There is hereby created the "Missouri Motor Vehicle Board" in the division of professional registration within the department of [revenue] economic development which shall be responsible for the licensing of all manufacturers, motor vehicle dealers, motor vehicle salespersons, boat dealers, wholesale motor vehicle auctions, public motor vehicle auctions and wholesale motor vehicle dealers pursuant to the provisions of sections 301.550 to 301.573 and the rules and regulations which it may adopt.**

2. All the powers, duties and functions of the Missouri [motor vehicle commission,] **department of revenue granted pursuant to section 301.280 and sections 301.550 to 301.573, in effect immediately prior to [July 1, 1997] August 28, 2002,** are transferred by type I transfer, as provided in the Omnibus State Reorganization Act of 1974, to the **Missouri motor vehicle board within the department of [revenue] economic development.** [The rules and regulations adopted by the commission which were adopted pursuant to this section prior to July 1, 1997, shall continue in effect after July 1, 1997.]

3. The board shall be composed of nine members, who shall be appointed by the governor with the advice and consent of the senate, not more than five of whom shall be affiliated with the same political party. Members of the board shall be citizens of the United States and residents of this state for at least five years prior to their appointment. Five members shall be franchised new motor vehicle dealers; three members shall be used motor vehicle dealers; and one member shall be a public member who shall have no pecuniary interest in any entity regulated by the provisions of sections 301.550 to 301.573.

4. The members of the board shall be appointed for a term of four years, except that from the initial appointments, the governor shall designate three members to serve two-year terms, three members to serve three-year terms, and three members to serve four-year terms. Thereafter, each member shall be appointed for a four-year term. Each member shall serve until the expiration of such member's term or until a successor is duly appointed and qualified. Any vacancy on the board shall be filled by the governor with the advice and consent of the senate, for the duration of the unexpired term.

5. The board shall elect a president and secretary at the first regular meeting held after January first of each year. The board shall meet at such times as it may

determine, but the board shall meet at least quarterly. Special meetings may be held upon call of the president upon adequate notice given by the director to the members of the board. To conduct business, a quorum of at least five members of the board must be present. Board members shall receive no salary or other compensation for their service as members, but shall receive their necessary travel and other expenses incurred while actually engaged in performing their official duties.

6. The board shall adopt an official seal, which shall consist of the official seal of the state of Missouri bordered by the inscription "Missouri Motor Vehicle Board".

[3.] **7.** All orders or decisions of the [department] **board** shall be in writing, signed by the director and the official seal affixed thereto.

[4.] **8.** The [department] **board** shall have the authority to promulgate those rules and regulations necessary to perform the provisions of sections 301.550 to 301.573 and is vested with those powers and duties necessary and proper to enable it to fully and effectively carry out the provisions of sections 301.550 to 301.573. [No rule or portion of a rule promulgated under the authority of sections 301.550 to 301.573 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.] **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.**

9. The powers and duties of the board shall include, but not be limited to, the following:

(1) Establishing the qualifications of applicants for licensure, provided that all qualifications shall be necessary to ensure competence and integrity;

(2) Examining, or cause to be examined, the qualifications of each applicant for licensure, including the preparation, administration and grading of examinations;

(3) Licensing qualified applicants pursuant to the provisions of section 301.550 to 301.573;

(4) Establishing and collecting fees for licensure and renewal that are sufficient to cover all expenses for the administration and operation of the board;

(5) Levying special assessments, as necessary, to cover costs of operating the board on licenses;

(6) Revoking, suspending, denying, or otherwise disciplining a licensee, or

assessing a civil penalty upon a licensee, for just cause pursuant to section 301.562 or enumerated in regulations promulgated by the board;

(7) Conducting inspections of licensees to ensure that all licensed dealers and salespersons are conducting business in a professional and lawful manner, not in violation of any provisions of this chapter, and chapter 407, RSMo, any regulations duly promulgated by the board, or any other applicable state or federal law;

(8) Receiving and investigating complaints concerning the conduct of persons and businesses required to be licensed by the board and to take appropriate disciplinary action if warranted;

(9) Entering into contracts necessary for performing the functions of the board;

(10) Establishing committees of the board, appointing members to such committees, and promulgating regulations establishing the responsibilities of such committees. The board may at its discretion include a citizen member on any committee established, who shall have no pecuniary interest in any motor vehicle or boat dealership. Any action recommended by a committee shall be subject to prior ratification by the full board prior to implementation. Committees to be established may include, but not be limited to the following:

- (a) Advertising;
- (b) Licensing;
- (c) Dealer practices;
- (d) Franchise relations;
- (e) Dealer/salesperson examination; and
- (f) Complaint review.

301.554. 1. There is hereby established in the office of the state treasurer a fund to be known as the "Missouri Motor Vehicle Board Fund". All fees of any kind and character, other than fees for the issuance of the license plates and certificates of number authorized by section 301.560, authorized to be charged by the board shall be collected by the director of the division of professional registration and shall be transmitted to the department of revenue for deposit in the state treasury for credit to this fund, to be disbursed only in payment of expenses of maintaining the board and for the enforcement of the provisions of law concerning professions regulated by the board; and no other money shall be paid out of the state treasury for carrying out these provisions. Warrants shall be issued on the state treasurer for payment out of said fund. Fees collected pursuant to section 301.560 for the issuance of dealer license plates and certificates of number shall be transferred to the credit of the department of revenue to offset its costs for the manufacture of such license plates and certificates of number.

2. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds two times the amount of the appropriation from the board's funds for the preceding fiscal year or, if the board by regulation permits registration renewal less frequently than yearly, then three times the appropriation from the board's funds for the preceding fiscal year. The amount, if any, in the fund which shall lapse is that amount in the fund which exceeds the appropriate multiple of the appropriations from the board's funds for the preceding fiscal year.

301.555. [Every official and employee of the department] **Each member of the board** and each person who provides information to or otherwise participates in the operation of the [department] **board** shall be immune from **personal** civil liability for such acts **performed within the scope of their official duties** so long as the acts were performed in good faith, without malice, and were reasonably related to the scope of inquiry of the [department] **board**.

301.557. 1. **The board shall employ an executive director who shall be an attorney licensed to practice law in this state and who shall serve at the pleasure of the board. The board may employ such other personnel as are required to fulfill its duties and responsibilities pursuant to sections 301.550 to 301.573.**

2. The duties of the executive director shall include, but not be limited to:

(1) The supervision and direction of the activities of the [department's] **board's** employees;

(2) [Keeping custody of the department's official seal and affixing of this seal to all licenses and orders issued by the department pursuant to sections 301.550 to 301.573;

(3)] The receipt and prompt disposition of all correspondence or inquiries directed to the [department] **board**;

(3) Being the custodian of the files and records of the board;

(4) Maintaining all minutes of board proceedings;

[(4)] (5) Maintaining a record **which shall be available for public inspection** of the total number of annual new motor vehicle sales by individual franchise dealers and a separate record of total annual used motor vehicle sales by individual **used** motor vehicle dealers from [the director of revenue. These records will be available for public inspection] **dealer sales records**;

(6) Supervising the handling of and disposition of all complaints against licensees submitted to the board, and maintaining a log of such complaints to be made available for public inspection, subject to applicable law regarding nondisclosure;

(7) Keeping custody of the board's official seal and affixing of this seal to all licenses and orders issued by the board pursuant to sections 301.550 to 301.573;

[(5) Being the custodian of the files and records of the department;

(6)] **(8)** The performance of any other duty required in the enforcement of sections 301.550 to 301.573.

[2. The director shall receive complaints concerning its licensee's business or professional practices. The complaints shall be logged into record, the record shall include at a minimum, the licensee's name, the name of the complaining party, if given, the date of the complaint and a brief statement of the complaint and its ultimate disposition. Notwithstanding any provisions of law to the contrary, such complaint shall be kept in confidence by the director until such time as formal proceedings are filed with the director, or the director disposes of the complaint in accordance with section 301.562; provided that upon inquiry from a licensee against whom a complaint has been received, the director shall acknowledge to the licensee that a complaint has been made. The licensee shall have access to all complaints and information contained therein.]

301.559. 1. It shall be unlawful for any person to engage in business as or act as a motor vehicle dealer, **motor vehicle salesperson**, boat dealer, manufacturer, boat manufacturer, public motor vehicle auction, wholesale motor vehicle auction or wholesale motor vehicle dealer without first obtaining a license from the [department] **board** as required in sections 301.550 to 301.573. Any person who maintains [or], operates, **or conducts** any business wherein a license is required pursuant to the provisions of sections 301.550 to 301.573, without such license, is guilty of a class A misdemeanor. Any person committing a second violation of sections 301.550 to 301.573 shall be guilty of a class D felony. **Any person that has reason to believe that the provisions of this section are being violated may file a complaint with the prosecuting attorney in the county in which the violation occurred. Upon the filing of such a complaint, the prosecuting attorney shall investigate the complaint and take appropriate action.**

2. All [dealer] licenses [shall expire on December thirty-first of each year. The department shall notify each person licensed under] **issued pursuant to** sections 301.550 to 301.573 [of the date of license expiration and the amount of the fee required for renewal. The notice shall be mailed at least ninety days before the date of license expiration to the licensee's last known business address.] **shall be issued for a period of twelve consecutive months except, at the discretion of the board, the periods may be adjusted as is necessary to distribute the licenses as equally as practicable on a monthly basis, and the board may, by regulation, authorize biennial licensure for all or any class of licenses required pursuant to sections 301.550 to 301.573. The expiration date shall be the last day of the twelfth or twenty-fourth month of validity or the last day of the designated month. Every license shall be renewed annually or biennially by the board on application by the licensee and by payment of fees required by law, the renewal shall take effect on the first day of the succeeding month. If a material change has occurred from the information appearing on a dealer's initial application or previous**

year's renewal application, the dealer shall notify the board of such changes no later than the next renewal. The board shall prescribe a form for the disclosure of the changes and shall include in the renewal application a request for disclosure of material changes.

3. Every **motor vehicle dealer, motor vehicle salesperson, boat dealer, manufacturer, boat manufacturer, motor vehicle dealer, wholesale motor vehicle dealer, public auction, wholesale motor vehicle auction, or boat dealer [or public motor vehicle auction]** shall make application to the [department] **board** for issuance of a license. The application shall be on forms prescribed by the [department] **board** and shall be issued [under] **pursuant to** the terms and provisions of sections 301.550 to 301.573 and require all applicants **except applicants for a manufacturer's license**, as a condition precedent to the issuance of a license, to **successfully complete an examination prepared and administered by the board. However, any person who is licensed as a dealer or auction on August 28, 2002, shall be entitled to licensure without examination on application to the board made on or before December 31, 2002. In addition, the board shall require all applicants to** provide such information as the [department] **board** may deem necessary to determine that the applicant is bona fide and of good moral character, [except that] **and** every application for a license shall contain, in addition to such information as the [department] **board** may require, a statement to the following [facts] **information:**

(1) The name and business address, not a post office box, of the applicant and the fictitious name, if any, under which [he] **such person** intends to conduct [his] business; and if the applicant [be] **is** a partnership, the name and residence address of each partner, an indication of whether the partner is a limited or general partner and the name under which the partnership business is to be conducted. In the event that the applicant is a corporation, the application shall list the names of the principal officers **and board of directors** of the corporation and the state in which it is incorporated. Each application shall be verified by the oath or affirmation of the applicant, if an individual, or in the event an applicant is a partnership or corporation, then by a partner or officer;

(2) Whether the application is being made for registration as a manufacturer, boat manufacturer, new motor vehicle franchise dealer, used motor vehicle dealer, **motor vehicle salesperson, manufacturer, boat manufacturer**, wholesale motor vehicle dealer, boat dealer, wholesale motor vehicle auction or a public motor vehicle auction;

(3) When the application is for a new motor vehicle franchise dealer, the application shall be accompanied by a copy of the franchise agreement in the registered name of the dealership setting out the appointment of the applicant as a franchise holder and it shall be signed by the manufacturer, or [his] **such manufacturer's** authorized agent, or the distributor, or [his] **such distributor's** authorized agent, and shall include a description of the make of all motor vehicles

covered by the franchise. The [department] **board** shall not require a copy of the franchise agreement to be submitted with each renewal application unless the applicant is now the holder of a franchise from a different manufacturer or distributor from that previously filed, or unless a new term of agreement has been entered into;

(4) When the application is for a public motor vehicle auction, that the public motor vehicle auction has met the requirements of section 301.561.

4. [No insurance company, finance company, credit union, savings and loan association, bank or trust company shall be required to obtain a license from the department in order to sell any motor vehicle, trailer or vessel repossessed or purchased by the company on the basis of total destruction or theft thereof when the sale of the motor vehicle, trailer or vessel is in conformance with applicable title and registration laws of this state.

5. No person shall be issued a license to conduct a public motor vehicle auction or wholesale motor vehicle auction if such person has a violation of sections 301.550 to 301.573 or other violations of chapter 301, RSMo, sections 407.511 to 407.556, RSMo, or section 578.120, RSMo, which resulted in a felony conviction or finding of guilt or a violation of any federal motor vehicle laws which resulted in a felony conviction or finding of guilt.] **Once licensed, no dealer, manufacturer, or motor vehicle auction may terminate and cease its business without providing the board with a minimum of thirty days' prior written notification, except when a license has been suspended or revoked. On termination of business, a licensee shall immediately surrender to the board its license certificate, all salesperson licenses, dealer license plates, sales reports, and any other materials furnished by the board or the department of revenue. After termination of business, the former licensee shall continue to maintain and make available to the board and department of revenue the records described in section 301.564.**

5. **The board may adopt regulations specifying additional training or conditions for applicants seeking licensure pursuant to sections 301.550 to 301.573, and for otherwise implementing and enforcing the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.**

301.560. 1. In addition to **submitting** the application forms prescribed by the [department] **board**, each applicant shall [submit] **comply with** the [following to the

department:] **application requirements set forth in this section.**

[(1)] **2.** When the application is being made for licensure as a [manufacturer, boat manufacturer,] motor vehicle dealer, boat dealer, [wholesale] **manufacturer, boat manufacturer, public** motor vehicle [dealer] **auction**, wholesale motor vehicle auction or [a public] **wholesale** motor vehicle [auction] **dealer**, a certification by a uniformed member of the Missouri state highway patrol stationed in the troop area in which the applicant's place of business is located; except, that in counties of the first classification, certification may be authorized by an officer of a metropolitan police department when the applicant's established place of business of distributing or selling motor vehicles or [trailers] **vessels** is in the metropolitan area where the certifying metropolitan police officer is employed, that the applicant has [a bona fide] **an** established place of business. **[A bona fide] For purposes of this section, an** established place of business [for any new motor vehicle franchise dealer or used motor vehicle dealer] shall [include a permanent enclosed building or structure, either owned in fee or leased and actually occupied as a place of business by the applicant for the selling, bartering, trading or exchanging of motor vehicles or trailers and wherein the public may contact the owner or operator at any reasonable time, and wherein shall be kept and maintained the books, records, files and other matters required and necessary to conduct the business. The applicant's place of business shall contain a working telephone which shall be maintained during the entire registration year. In order to qualify as a bona fide established place of business for all applicants licensed pursuant to this section there shall be an exterior sign displayed carrying the name and class of business conducted in letters at least six inches in height and clearly visible to the public and there shall be an area or lot which shall not be a public street on which one or more vehicles may be displayed, except when licensure is for a wholesale motor vehicle dealer, a lot and sign shall not be required. When licensure is for a boat dealer, a lot shall not be required. In the case of new motor vehicle franchise dealers, the bona fide established place of business shall include adequate facilities, tools and personnel necessary to properly service and repair motor vehicles and trailers under their franchisor's warranty;

(2) If the application is for licensure as a manufacturer, boat manufacturer, new motor vehicle franchise dealer, used motor vehicle dealer, wholesale motor vehicle auction, boat dealer or a public motor vehicle auction, a photograph, not to exceed eight inches by ten inches, showing the business building and sign shall accompany the initial application.] **be the location at which the dealership regularly conducts sales activity, service, and all other elements of the dealership's business, and which:**

(1) Satisfies all local zoning regulations;

(2) Has sales, service, and office space devoted exclusively to the dealership of at least two hundred fifty square feet in a permanent, enclosed building not used as a residence;

(3) Houses all records the dealership is required to maintain pursuant to section 301.564;

(4) Is equipped with a desk, chairs, filing space, a working land-based telephone which is not a mobile telephone listed in the name of the dealership, and working utilities including electricity and provisions for space heating;

(5) Displays a sign and business hours as required by this section, except that this requirement shall not apply to wholesale dealers;

(6) Has contiguous space designated for the exclusive use of the dealership adequate to permit the display of at least ten motor vehicles, except that this requirement shall not apply to wholesale dealers or boat dealers;

(7) In the case of new motor vehicle franchise dealers, the established place of business shall include adequate facilities, tools and personnel necessary to properly service and repair motor vehicles and trailers under their franchisor's warranty; and

(8) Is open to the public for business a minimum of twenty hours per week, with business hours to be prominently posted at the dealership location as provided by board regulation.

3. The licenses of all motor vehicle dealers, boat dealers and auctions shall specify the location of the established place of business, and each license shall be prominently displayed at each licensed established place of business. Any dealer wishing to change location shall provide the board with at least thirty days written advance notice, and an inspection by the appropriate law enforcement agency of the proposed new location shall be submitted prior to approval of a change of location. There shall be no additional fee for such approvals if the new location is within the same city or county, and in such case the board shall endorse the change of location on the current license. A change in location to different city or county shall require a new license and an additional fee.

4. A franchised dealer may maintain more than one location for the display and sale of motor vehicles under the same license, provided that each location meets the requirements of this section, that each location is identified on the license application, and that nothing within the dealer's franchise prohibits the additional locations. However, a separate license shall be required for each separate and distinct dealership as determined by the board. The board shall adopt regulations regarding the requirements for issuance of multi-location permits to allow a dealer to operate the same dealership from different locations within the same city or county under the same license, and shall adopt regulations regarding the approval procedure and requirements to be followed by dealers wishing to maintain a storage lot as defined in section 301.550.

5. All motor vehicle dealers shall post and maintain in a prominent location a list of salespersons employed by the dealership. Each motor vehicle salesperson shall carry his or her license when engaged in business and shall display the license on request.

6. All initial applications shall contain a photograph, not to exceed eight inches by ten inches, showing the business building and sign. In the case of a manufacturer, new motor vehicle franchise dealer or used motor vehicle dealer **applicants**, the photograph shall include the **display** lot of the business. A new motor vehicle franchise dealer applicant who has purchased a currently licensed new motor vehicle franchised dealership shall be allowed to submit a photograph of the existing dealership building, lot and sign but shall be required to submit a new photograph upon the installation of the new dealership sign as required by sections 301.550 to 301.573. Applicants **for license renewal** shall not be required to submit a photograph annually unless the business has moved from its previously licensed location, or unless the name of the business or address has changed, or unless the class of business has changed[;

(3) If the application is for licensure as a wholesale motor vehicle dealer or as a boat dealer, the application shall contain the business address, not a post office box, and telephone number of the place where the books, records, files and other matters required and necessary to conduct the business are located and where the same may be inspected during normal daytime business hours. Wholesale motor vehicle dealers and boat dealers shall file reports as required of new franchised motor vehicle dealers and used motor vehicle dealers;

(4) Every applicant as a new motor vehicle franchise dealer, a used motor vehicle dealer, a].

7. Each motor vehicle dealer's place of business, except wholesale dealers, shall be identified by a permanent sign visible from the nearest public street so that the public may quickly and easily identify the dealership. The sign shall contain the name of the dealership by which it is known to the public, which need not be identical to the name appearing on the dealership's license so long as such name is registered as a fictitious name with the secretary of state, and a copy of such fictitious name registration has been provided to the board. The name shall appear on the sign in letters no less than six inches in height.

8. Subject to the provisions of section 301.559, every initial applicant for licensure, except applicants for a manufacturer's license but including applicants for licensure as a motor vehicle salesperson, shall be required to successfully complete an examination to be prepared and administered by the board, prior to receiving a license. The board shall adopt all necessary rules and regulations for the administration of such examinations.

9. Every applicant as a motor vehicle dealer, boat dealer, manufacturer, boat manufacturer, public motor vehicle auction, wholesale motor vehicle auction or wholesale motor vehicle dealer, or boat dealer shall furnish with the application a corporate surety bond or an irrevocable letter of credit as defined in section 400.5-103, RSMo, issued by any state or federal financial institution in the penal sum of twenty-five thousand dollars on a form approved by the [department] **board**. The bond or irrevocable letter of credit shall be conditioned upon the dealer complying with the provisions of the statutes applicable to new motor vehicle franchise dealers, used motor vehicle dealers, wholesale motor vehicle dealers and boat dealers, and the bond shall be an indemnity for any loss sustained by reason of the acts of the person bonded when such acts constitute grounds for the suspension or revocation of the dealer's license. The bond shall be executed in the name of the state of Missouri for the benefit of all aggrieved parties or the irrevocable letter of credit shall name the state of Missouri as the beneficiary; except, that the aggregate liability of the surety or financial institution to the aggrieved parties shall, in no event, exceed the amount of the bond or irrevocable letter of credit. The proceeds of the bond or irrevocable letter of credit shall be paid upon receipt by the [department] **board** of a final judgment from a Missouri court of competent jurisdiction against the principal and in favor of an aggrieved party[;].

[(5) Payment of] **10. Every applicant shall pay** all [necessary] **applicable** license **and examination** fees as established by the [department. In establishing the amount of the annual license fees, the department shall, as near as possible, produce sufficient total income to offset operational expenses of the department relating to the administration of sections 301.550 to 301.573. All fees payable pursuant to the provisions of sections 301.550 to 301.573, other than those fees collected for the issuance of dealer plates or certificates of number collected pursuant to subsection 6 of this section, shall be collected by the department for deposit in the state treasury to the credit of the "Motor Vehicle Commission Fund", which is hereby created. The motor vehicle commission fund shall be administered by the Missouri department of revenue. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in such fund shall not be transferred and placed to the credit of the general revenue fund until the amount in the motor vehicle commission fund at the end of the biennium exceeds two times the amount of the appropriation from such fund for the preceding fiscal year or, if the department requires permit renewal less frequently than yearly, then three times the appropriation from such fund for the preceding fiscal year. The amount, if any, in the fund which shall lapse is that amount in the fund which exceeds the multiple of the appropriation from such fund for the preceding fiscal year.

2. In the event a new manufacturer, boat manufacturer, motor vehicle dealer, wholesale motor vehicle dealer, boat dealer, wholesale motor vehicle auction or a public motor vehicle auction submits an application for a license for a new business and the applicant has complied

with all the provisions of this section, the department shall make a decision to grant or deny the license to the applicant within eight working hours after receipt of the dealer's application, notwithstanding any rule of the department.] **board, subject to the following guidelines:**

(1) For new motor vehicle franchise dealers and manufacturers, not less than two hundred fifty dollars for initial licensure and annual license renewal;

(2) For used motor vehicle dealers, wholesale motor vehicle dealers, public and wholesale motor vehicle auctions, boat dealers, and powersport dealers, not less than one hundred fifty dollars for initial licensure and annual license renewal;

(3) For motor vehicle salespersons, not less than twenty-five dollars for initial licensure and annual license renewal;

(4) For examination of a dealer or auction applicant, not less than twenty-five dollars;

(5) For examination of a salesperson applicant, not less than ten dollars.

11. In establishing fees for examination and licensure, the board shall attempt, as closely as possible, to generate annual revenues sufficient to cover the board's operational costs in implementing sections 301.550 to 301.573.

[3.] **12. Upon the initial issuance of a license by the [department] board, the [department] board shall assign a distinctive dealer, manufacturer, or auction license number [or certificate of number] to the applicant [and the department shall issue one number plate or certificate] from the appropriate category set forth in this section. Upon initial licensure and payment of a fee to be determined by the board and the department of revenue, which shall not be less than fifty dollars, each motor vehicle dealer, boat dealer, and manufacturer shall be issued one dealer or manufacturer license plate bearing the distinctive dealer [license number or certificate of number within eight working hours after presentment of the application. Upon the renewal of a boat dealer, boat manufacturer, manufacturer, motor vehicle dealer, public motor vehicle auction, wholesale motor vehicle dealer or wholesale motor vehicle auction, the department shall issue the distinctive dealer license number or certificate of number as quickly as possible. The issuance of such distinctive dealer license number or certificate of number shall be in lieu of registering each motor vehicle, trailer, vessel or vessel trailer dealt with by a boat dealer, boat manufacturer, manufacturer, public motor vehicle auction, wholesale motor vehicle dealer, wholesale motor vehicle auction or motor vehicle dealer.] or manufacturer license number. The board and the department of revenue shall cooperate in order to create a system for the manufacture and distribution of dealer and manufacturer license plates authorized hereby. The board and the department of revenue are hereby granted authority and shall take all steps necessary and appropriate to facilitate the timely and efficient distribution of license plates authorized by this section, but the board alone shall have authority to**

determine all matters relating to the use and regulation of such license plates. All dealer and manufacturer license plates and certificates of number authorized by this section may, at the discretion of the board and director of revenue, be placed in a system of staggered issue to distribute the work of issuing such license plates and certificates of number as uniformly as practicable throughout the year. The issuance of distinctive dealer and manufacturer license numbers shall be in lieu of registering each motor vehicle, vessel, or trailer purchased, sold, leased, or traded by a motor vehicle dealer, boat dealer, manufacturer, boat manufacturer, public motor vehicle auction, wholesale motor vehicle auction or wholesale motor vehicle dealer.

[4.] **13.** Notwithstanding any other provision of the law to the contrary, the [department] **board** shall assign the following distinctive dealer license numbers to:

New motor vehicle franchise dealers	D-0 through D-999
New motor vehicle franchise and commercial motor vehicle dealers	D-1000 through D-1999
Used motor vehicle dealers	D-2000 through D-5399 and D-6000 through D-9999
Wholesale motor vehicle dealers	W-1000 through W-1999
Wholesale motor vehicle auctions	W-2000 through W-2999
Trailer dealers	T-0 through T-9999
Motor vehicle and trailer manufacturers	M-0 through M-9999
[Motorcycle] Powersport dealers	D-5400 through D-5999
Public motor vehicle auctions	A-1000 through A-1999
Boat dealers and boat manufacturers	B-0 through B-9999

[5.] **14.** Upon the sale of a currently licensed new motor vehicle franchise dealership the [department shall] **board may**, upon request, authorize the new approved dealer applicant to retain the selling dealer's license number and shall cause the new dealer's records to indicate such transfer.

[6. In the case of manufacturers and motor vehicle dealers, the department shall also issue one number plate bearing the distinctive dealer license number to the applicant upon payment by the manufacturer or dealer of a fifty-dollar fee. Such license plates] **15. Dealer license plates for motor vehicle dealers and manufacturers** shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. Boat dealers and boat manufacturers shall be entitled to one certificate of number bearing such number upon the payment of a [fifty-dollar fee. As many additional number plates as may be desired by manufacturers and motor vehicle dealers and as many] **fee as determined by the board and the department of revenue. Additional license plates and, for boat dealers, additional**

certificates of number [as may be desired by boat dealers and boat manufacturers] may be obtained upon payment of a fee of **not less than** ten dollars and fifty cents for each additional plate or certificate[.], **except that:**

(1) Dealerships which sold fewer than twenty-five vehicles during the last twelve months of the preceding license year shall be eligible to receive no more than two dealer license plates;

(2) Dealerships which sold at least twenty-five but fewer than fifty vehicles during the last twelve months of the preceding license year shall be eligible to receive no more than four dealer license plates;

(3) Dealerships which sold fifty or more vehicles during their current license year may apply for additional license plates not to exceed four times the number of licensed salespersons employed by that dealership;

(4) Dealerships which sold fifty or more vehicles during the last twelve months of the preceding license year shall be eligible to receive a number of dealer license plates not to exceed four times the number of licensed salespersons employed by that dealership; and

(5) A newly licensed dealer shall be eligible to receive a number of dealer license plates not to exceed four times the number of licensed salespersons to be initially employed by that dealership.

For purposes of this section, a salesperson or employee shall be considered to be employed only if he or she works for the dealership at least twenty hours per week on a regular basis, and is financially compensated for this work.

16. A motor vehicle dealer, boat dealer, manufacturer, boat manufacturer, [public motor vehicle auction,] **or** wholesale motor vehicle dealer [or wholesale motor vehicle auction] obtaining a dealer license plate or certificate of number or additional license plate or additional certificate of number, throughout the calendar year, shall be required to pay a fee for such license plates or certificates of number computed on the basis of one-twelfth of the full fee prescribed for the original and duplicate number plates or certificates of number for such dealers' licenses, multiplied by the number of months remaining in the licensing period for which the dealer or manufacturers shall be required to be licensed. In the event of a renewing dealer, the fee due at the time of renewal shall not be prorated.

[7.] 17. The **license** plates issued pursuant to [subsection 3 or 6 of] this section may be displayed on any motor vehicle owned and held for resale by the motor vehicle dealer or manufacturer, and used by a customer who is test driving the motor vehicle **with the dealer's permission**, or is used by an employee or [officer] **licensed owner of the dealership**, but shall not be displayed on any motor vehicle or trailer hired or loaned to others or upon any regularly used service or wrecker vehicle. Motor vehicle dealers may display their dealer plates on a

tractor, truck or trailer to demonstrate a vehicle under a loaded condition. **For purposes of this subsection, "employee" shall be defined as set forth in subsection 16 of this section.**

[8.] **18.** The certificates of number issued pursuant to [subsection 3 or 6 of] this section may be displayed on any vessel or vessel trailer owned and held for resale by a boat manufacturer or a boat dealer, and used by a customer who is test driving the vessel or vessel trailer **with the dealer's permission**, or is used by an employee or [officer] **licensed owner of the dealership**, but shall not be displayed on any vessel or vessel trailer hired or loaned to others or upon any regularly used service vessel or vessel trailer. Boat dealers and manufacturers may display their certificate of number on a vessel or vessel trailer which is being transported to an exhibit or show. **For purposes of this subsection, "employee" shall be defined as set forth in subsection 16 of this section.**

19. It shall be unlawful to use or permit the use of any dealer's license plates on vehicles for which there is no automobile liability insurance coverage. No dealer's license plates or certificates of number shall be issued unless the dealer certifies to the board and department of revenue that there is automobile liability insurance coverage, or an approved certificate of self-insurance which is in compliance with the laws of this state. Such automobile liability insurance or certificate of self-insurance shall be maintained as long as each dealer license plate remains valid. If insurance or a certificate of self-insurance is not so maintained, the dealer's license plates shall be surrendered to the board or the department of revenue. The board may also cancel and recall any dealer license plate under such circumstances, and may cancel and recall any license plate that has been used in any way not authorized by the provisions of this section; board investigators are authorized to pick up or remove such plates for return to the board. Any person violating any of the provisions of this section shall be guilty of a class A misdemeanor. Misuse of any dealer license plate or certificate of number shall constitute cause for discipline of a license pursuant to section 301.562.

301.561. **Motor vehicles sold by a public motor vehicle auction licensee shall not require inspection pursuant to sections 307.350 to 307.400, RSMo, provided that the licensee has not been assigned the certificate of ownership to such vehicles and is acting only as an agent for the sellers of such vehicles.** Any person [or corporation] holding a public motor vehicle auction shall display in a conspicuous manner two signs each of which shall bear the following warning in letters at least six inches high: "Attention Buyers: Vehicles sold at this auction may not have had a safety inspection." The dimensions of each sign shall be at least two feet by two feet.

301.562. 1. The [department] **board** may refuse to issue or renew any license required pursuant to sections 301.550 to 301.573 for any one or any combination of causes stated in

subsection 2 of this section. The [department] **board** shall notify the applicant or licensee in writing at his last known address of the reasons for the refusal to issue or renew the license and shall advise the applicant or licensee of his **or her** right to [appeal] **file a complaint with the [decision of the department] administrative hearing commission** as provided [in] **by** chapter [536] **621**, RSMo.

2. The [department] **board** may [take such disciplinary action] **cause a complaint to be filed with the administrative hearing commission** as provided in subsection 3 of this section upon a written notice and an opportunity to be heard in substantially the same manner as provided in chapter [536] **621**, RSMo, against any holder of any license [issued under] **required pursuant to** sections 301.550 to 301.573 **or any person who has failed to renew or has surrendered his or her license** for any one or any combination of the following causes:

(1) [The applicant or license holder was previously the holder of a license issued under sections 301.550 to 301.573, which license was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of suspension have not been fulfilled] **The person was previously the holder of a license issued pursuant to sections 301.550 to 301.573, or was previously a partner, stockholder, director or officer of a partnership or corporation holding such license, which license was revoked for cause and never reissued by the board, or which license was suspended for cause and the terms of suspension have not been fulfilled;**

(2) The [applicant or license holder was previously a partner, stockholder, director or officer controlling or managing a partnership or corporation whose license issued under sections 301.550 to 301.573 was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled;

(3) The applicant or license holder has, within ten years prior to the date of the application,] **person has** been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any business licensed under sections 301.550 to 301.573; for any offense, an essential element of which is fraud, dishonesty or an act of violence; [or] for any offense involving moral turpitude, whether or not sentence is imposed; **or for any offense classified as a felony;**

[(4)] **(3)** Use of fraud, deception, misrepresentation or bribery in securing any license issued pursuant to sections 301.550 to 301.573;

[(5)] **(4)** Obtaining or attempting to obtain any money, commission, fee, barter, exchange or other compensation by fraud, deception or misrepresentation;

[(6)] **(5)** Violation of, or assisting or enabling any person to violate any provisions of sections 301.550 to 301.573 or of any lawful rule or regulation adopted pursuant to sections 301.550 to 301.573;

[(7)] **(6)** The applicant or license holder has filed an application for a license which, as of its effective date, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

[(8)] **(7)** The applicant or license holder has failed to pay the proper application or license fee or fails to establish or maintain [a bona fide] **an established** place of business;

[(9)] **(8)** Uses or permits the use of any special license or license plate assigned to [him] **such person** for any purpose other than those permitted by law;

[(10)] **(9)** The applicant or license holder is finally adjudged insane or incompetent by a court of competent jurisdiction;

[(11)] **(10)** Use of any advertisement or solicitation which [is false] **violates the provisions of section 301.567 or is otherwise false, deceptive, or misleading;**

[(12)] **(11)** Violations of sections 301.550 to 301.573 or violations of this chapter, sections 407.511 to 407.556, RSMo, **or** section 578.120, RSMo, which resulted in a [felony] **criminal** conviction or finding of guilt or violation of any federal motor vehicle laws which result in a [felony] **criminal** conviction or finding of guilt;

(12) Failure to comply subsequent to receipt of any written warning from the board;

(13) Failing or refusing to pay any civil penalty imposed by the board pursuant to subsection 6 of section 301.562;

(14) Failing to maintain automobile liability insurance or a certificate of self-insurance as required by section 301.560.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the [department] **administrative hearing commission** that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the [department] **board** may [refuse to issue the person a license], **singly or in combination:**

(1) Issue a warning, issue a **public or** private reprimand, **or** place the person **named in the complaint** on probation on such terms and conditions as the [department] **board** deems appropriate for a period [of one day] **not to exceed** five years[, suspend the person's license from one day to six days, or revoke the person's license for such period as the department deems appropriate. The applicant or];

(2) Suspend the license for a period not to exceed six days;

(3) Revoke the license;

(4) Assess a civil penalty pursuant to the provisions of subsection 6 of this section.

The licensee shall have the right to appeal the decision of the [department] **administrative**

hearing commission and board in the manner provided in chapter 536, RSMo.

4. Upon the suspension or revocation of any person's license issued [under] **pursuant** to sections 301.550 to 301.573, the [department] **board** shall **cancel and** recall any [distinctive number] **dealer license** plates **or certificates of number** that were issued to that licensee.

5. **If at any time after disciplinary sanctions have been imposed pursuant to this section or the provisions of sections 301.550 to 301.573, the licensee removes himself or herself from the state of Missouri, ceases to be currently licensed pursuant to the provisions of sections 301.550 to 301.573, or fails to keep the board advised of his or her current established place of business and residence, the time of his or her absence, or unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed.**

6. **Upon a finding by the administrative hearing commission pursuant to subsections 2 and 3 of this section, any person violating any of the provisions of sections 301.550 to 301.573 may be assessed a civil penalty by the board. No such civil penalty shall exceed two thousand dollars for any single violation. Civil penalties collected pursuant to sections 301.550 to 301.573 shall be deposited into the highway fund to the credit of the Missouri department of transportation.**

301.563. 1. The [department] **board** or its designated representative may issue process, subpoena witnesses, administer oaths, examine books and papers, and require the production thereof, and cause the deposition of any witness to be taken and the costs thereof paid as other costs under sections 301.550 to 301.573. Any party may **serve** process to compel the attendance of witnesses and the production of books and papers, and at [his] **their** own cost to take and use depositions in like manner as in civil cases in the circuit court. The subpoena shall extend to all parts of the state, and may be served as in civil actions in the circuit court, but the costs of the service shall be as in other civil actions. Each witness shall receive the fees and mileage prescribed by law in civil cases, but the same shall not be allowed as costs to the party in whose behalf the witness was summoned unless the person who conducts the hearing certifies that the testimony of the witness was necessary. All costs under this section shall be approved by the [department] **board** and paid out of the Missouri motor vehicle [commission] **board** fund established in section [301.560] **301.554**, except that if the [department] **board** determines that any proceedings are brought, prosecuted or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who brought, prosecuted or defended the proceedings.

2. If any person subpoenaed to appear at any hearing or proceeding fails to obey the command of such subpoena without reasonable cause or if any person attending a hearing or proceeding shall, without reasonable cause, refuse to be sworn or to be examined or to answer a question or to produce a book or paper or to subscribe or swear to [his] **such person's**

deposition, such person is guilty of a class B misdemeanor and on conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment, and in the case of a continuing violation, each day's continuance thereof shall be a separate and distinct offense.

301.564. 1. Any person [or his agent] licensed [or registered] as a **motor vehicle dealer, boat dealer**, manufacturer, [motor vehicle dealer, wholesale motor vehicle dealer, boat dealer,] **boat manufacturer, public motor vehicle auction**, wholesale motor vehicle auction, or [a public motor vehicle auction] **wholesale motor vehicle dealer** pursuant to the provisions of sections 301.550 to 301.573, shall permit an employee of the [department of revenue] **board** or any law enforcement official to inspect, during normal business hours, any of the [following] **business** documents which are in his **or her** possession or under his **or her** custody or control, **including but not limited to the following:**

- (1) Any title to any motor vehicle or vessel;
- (2) Any application for title to any motor vehicle or vessel;
- (3) Any affidavit provided pursuant to sections 301.550 to 301.573 or chapter 407, RSMo;
- (4) Any assignment of title to any motor vehicle or vessel;
- (5) Any disclosure statement or other document relating to mileage or odometer readings required by the laws of the United States or any other state;

- (6) Any inventory and related documentation.

2. For purposes of this section, the term "law enforcement official" shall mean any of the following:

- (1) Attorney general, or any person designated [by him] to make such an inspection;
- (2) Any prosecuting attorney or any person designated by a prosecuting attorney to make such an inspection;
- (3) Any member of the highway patrol or water patrol;
- (4) Any sheriff or deputy sheriff;
- (5) Any peace officer certified pursuant to chapter 590, RSMo, acting in [his] **an** official capacity.

3. All dealer business records regarding: salespersons and other employees; lists of vehicles in inventory for sale or which are on consignment; vehicle purchases, sales, leases, trades, and transfers of ownership; documents transferring or assigning title to any vehicle or vessel; odometer disclosure statements; records of dealer license plates assigned to the dealer and any temporary certificates of ownership; and all other records required by the board or department of revenue, shall be maintained on the premises of the established place of business for the time periods set forth by board regulation. The board may, on written request by a dealer, permit records to be maintained at a location other than the established place of business for good

cause shown.

301.565. 1. Upon application by the [department] **board**, and the necessary burden having been met, a court of general jurisdiction may grant an injunction, restraining order or other order as may be appropriate to enjoin a person from:

(1) Offering to engage or engaging in the performance of any acts or practices for which a license is required [under] **pursuant to** the provisions of this chapter, upon a showing that such acts or practices were performed or offered to be performed without a license; or

(2) Violating any provision of this chapter, any rule promulgated by the department pursuant to this chapter, [subsection 1 of section 307.350, RSMo, sections 407.511 to 407.556] **chapter 307, or chapter 407**, RSMo, or section 578.120, RSMo.

2. Any action brought [under] **pursuant to** this section shall be in addition to and not in lieu of any remedy provided by this chapter and may be brought concurrently with other actions to enforce this chapter.

301.566. 1. A motor vehicle dealer may participate in any **off-premise** motor vehicle show, **display**, or sale and conduct sales of motor vehicles away from the dealer's usual, licensed place of business if either:

(1) The requirements of subsection 2 [or 3] of this section are met; or

(2) The **off-premise** event is conducted for not more than ten days, and if a **numerical** majority of the motor vehicle dealers within [a class of dealers described pursuant to subsection 3 of section 301.550 in a city or town participate] **the same classification pursuant to section 301.550, in the city or town in which the off-premise event is conducted, participate in the event** or are invited and have the opportunity to participate in the event, except that a recreational motor vehicle dealer classified in subdivision (5) of subsection 3 of section 301.550 may participate in such a show or sale even if a majority of recreational motor vehicle dealers in a city or town do not participate in the event. The [department] **board** shall consider such events to be proper in all respects and as if each dealer participant was conducting business at the dealer's usual business location. Nothing contained in this section shall be construed as applying to the sale of motor vehicles or trailers through either a wholesale motor vehicle auction or public motor vehicle auction. **For purposes of this section, "off-premise" shall mean a location other than the established place of business of a licensed dealer.**

2. Any [person, partnership, corporation or association] **licensee** disposing of vehicles used and titled solely in its ordinary course of business as provided in section 301.570 may sell at retail such vehicles away from [that person's bona fide] **its** established place of business, thus constituting an off-site sale, by adhering to each of the following conditions with regard to each and [every off-site] **off-premise** sale conducted:

(1) Have in effect a valid license, pursuant to sections 301.550 to 301.575, from the [department] **board** for the sale of used motor vehicles;

(2) No [off-site] **off-premise** sale may exceed [ten] **three** days in duration, and only one sale may be held per year, per county, in counties of the third and fourth classification;

(3) Pay to the motor vehicle commission fund, pursuant to section 301.560, a permit fee of two hundred fifty dollars for each [off-site] **off-premise** sale event;

(4) Advise the [department] **board**, at least ten days prior to the sale, of the date, location and duration of each [off-site] **off-premise** sale;

(5) The sale of **motor** vehicles at [off-site] **off-premise** sales **authorized by this subsection** shall be limited to sales by a seller of vehicles used and titled solely in its ordinary course of business, and such sales shall be held in conjunction with a credit union and limited to members of the credit union, thus constituting a private sale to be advertised to members only;

(6) [Off-site sales by a seller of vehicles used and titled solely in its ordinary course of business] **Off-premise sales pursuant to this subsection** may also be held in conjunction with other financial institutions provided that any such sale event shall be held on the premises of the financial institution, and sales shall be limited to persons who were customers of the financial institution prior to the date of the sale event. [Off-site] **Off-premise** sales held with such other financial institutions shall be limited to one sale per year per institution;

(7) The sale of motor vehicles which have the designation of the current model year, except discontinued models, is prohibited at [off-site sales] **any off-premise sale authorized pursuant to this subsection** until subsequent model year designated vehicles of the same manufacture and model are offered for sale to the public.

3. On forms to be prescribed by the board, a person who is not licensed pursuant to sections 301.550 to 301.573 may apply for a temporary license, which shall not exceed five days duration, in order to conduct a public or wholesale motor vehicle auction in this state, provided that:

(1) **The applicant conducts no more than three such auctions during any calendar year;**

(2) **The applicant, due to the circumstances of his or her proposed auction activities, may not reasonably be required to establish and maintain an established place of business as described in section 301.560;**

(3) **The applicant is of good moral character and would not otherwise be subject to refusal or discipline of any license issued pursuant to sections 301.550 to 301.573 for any of the reasons set forth in section 301.562;**

(4) **The proposed location of such auction meets all local zoning regulations;**

(5) **The auction is conducted by an auctioneer licensed in this state pursuant to chapter 343, RSMo; and**

(6) **The applicant pays to the board a fee of not less than two-hundred fifty dollars per auction event for each temporary license issued.**

4. The board shall adopt all necessary regulations for the enforcement of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.

[3.] **5.** A recreational vehicle dealer, as that term is defined in section 700.010, RSMo, who is licensed in another state may participate in recreational vehicle shows or exhibits with recreational vehicles within this state, in which less than fifty dealers participate as exhibitors with permission of the dealer's licensed manufacturer if all of the following conditions exist:

(1) The show or exhibition has a minimum of ten recreational vehicle dealers licensed as motor vehicle dealers in this state;

(2) More than fifty percent of the participating recreational vehicle dealers are licensed motor vehicle dealers in this state; and

(3) The state in which the recreational vehicle is licensed is a state contiguous to Missouri and the state permits recreational vehicle dealers licensed in Missouri to participate in recreational vehicle shows in such state pursuant to conditions substantially equivalent to the conditions which are imposed on dealers from such state who participate in recreational vehicle shows in Missouri.

[4.] **6.** A recreational vehicle dealer licensed in another state may participate in a vehicle show or exhibition in Missouri which has, when it opens to the public, at least fifty dealers displaying recreational vehicles if the show or exhibition is trade-oriented and is predominantly funded by recreational vehicle manufacturers. All of the participating dealers who are not licensed in Missouri shall be licensed as recreational vehicle dealers by the state of their residence.

301.567. 1. For purposes of this section, a violation of any of the following advertising standards shall be deemed an attempt by the advertising dealer, or by the manufacturer in the case of manufacturer sponsored advertising, to obtain a fee or other compensation by fraud, deception or misrepresentation in violation of section 301.562:

(1) A motor vehicle shall not be advertised as new, either by express terms or implication, unless it is a "new motor vehicle" as defined in section 301.550;

(2) When advertising any motor vehicle which is not a new motor vehicle, such advertisement must expressly identify that the motor vehicle is a used motor vehicle

by express use of the term "used", or by such other term as is commonly understood to mean that the vehicle is used;

(3) Any terms, conditions, and disclaimers relating to the advertised motor vehicle's price or financing options shall be stated clearly and conspicuously. An asterisk or other reference symbol may be used to point to a disclaimer or other information, but not be used as a means of contradicting or changing the meaning of an advertised statement;

(4) The expiration date, if any, of an advertised sale or vehicle price shall be clearly and conspicuously disclosed. In the absence of such disclosure, the advertised sale or vehicle price shall be deemed effective so long as such vehicles remain in the advertising dealership's inventory;

(5) The terms "list price", "sticker price", or "suggested retail price", shall be used only in reference to the manufacturer's suggested retail price for new motor vehicles, and, if used, shall be accompanied by a clear and conspicuous disclosure that such terms represent the "manufacturer's suggested retail price" of the advertised vehicle;

(6) Terms such as "at cost", "\$..... above cost", shall not be used in advertisements because of the difficulty in determining a dealer's actual net cost at the time of the sale. Terms such as "invoice price", "\$..... over invoice", may be used, provided that the invoice referred to is the manufacturer's factory invoice for a new motor vehicle and the invoice is available for customer inspection. For purposes of this section, "manufacturer's factory invoice" means that document supplied by the manufacturer to the dealer listing the manufacturer's charge to the dealer before any deduction for holdback, group advertising, factory incentives or rebates, or any governmental charges;

(7) When the price or financing terms of a motor vehicle are advertised, the vehicle shall be fully identified as to year, make, and model. In addition, in advertisements placed by individual dealers and not line-make marketing groups, the advertised price or credit terms shall include all charges which the buyer must pay to the dealer, except buyer-selected options and state and local taxes. If a processing fee or freight or destination charges are not included in the advertised price, the amount of any such processing fee and freight or destination charge must be clearly and conspicuously disclosed within the advertisement;

(8) Advertisements which offer to match or better any competitors' prices shall not be used;

(9) Advertisements of "dealer rebates" shall not be used, however, this shall not be deemed to prohibit the advertising of manufacturer rebates, so long as all material terms of such rebates are clearly and conspicuously disclosed;

(10) "Free", "at no cost", shall not be used if any purchase is required to qualify for the "free" item, merchandise, or service;

(11) "Bait advertising", in which an advertiser may have no intention to sell at the prices or terms advertised, shall not be used. Bait advertising shall include, but not be limited to, the following examples:

(a) Not having available for sale the advertised motor vehicles at the advertised prices. If a specific vehicle is advertised, the dealer shall be in possession of a reasonable supply of such vehicles, and they shall be available at the advertised price. If the advertised vehicle is available only in limited numbers or only by order, such limitations shall be stated in the advertisement;

(b) Advertising a motor vehicle at a specified price, including such terms as "as low as \$.....", but having available for sale only vehicles equipped with dealer added cost options which increase the selling price above the advertised price;

(12) Any reference to monthly payments, down payments, or other reference to financing or leasing information shall be accompanied by a clear and conspicuous disclosure of the following:

(a) Whether the payment or other information relates to a loan or a lease transaction;

(b) If the payment or other information relates to a loan transaction, the minimum down payment, annual percentage interest rate, and number of payments necessary to obtain the advertised payment amount must be disclosed, in addition to any special qualifications required for obtaining the advertised terms including, but not limited to, "first-time buyer" discounts, "college graduate" discounts, and a statement concerning whether the advertised terms are subject to credit approval;

(c) If the payment or other information relates to a lease transaction, the total amount due from the purchaser at signing with such costs broken down and identified by category, lease term expressed in number of months, whether the lease is closed-end or open-end, and total cost to the lessee over the lease term in dollars;

(13) Any advertisement which states or implies that the advertising dealer has a special arrangement or relationship with the distributor or manufacturer, as compared to similarly situated dealers, shall not be used;

(14) Any advertisement which, in the circumstances under which it is made or applied, is false, deceptive, or misleading shall not be used;

(15) No abbreviations for industry words or phrases shall be used in any advertisement unless such abbreviations are accompanied by the fully spelled or spoken words or phrases.

2. The requirements of this section shall apply regardless of whether a dealer

advertises by means of print, broadcast, or electronic media, or direct mail.

301.568. New motor vehicles may be exchanged for resale from one new motor vehicle franchised dealer to another who is franchised to sell the same make of new motor vehicles by assignment of the manufacturer's statement of origin. Such exchange shall not be deemed to be a sale and shall not require the motor vehicle dealer to register and make application for a certificate of ownership as set out in this chapter. However, when an exchange by assignment of the manufacturer's statement of origin is between a new motor vehicle franchised dealer and another motor vehicle dealer who has a franchise for a different make of motor vehicle or a motor vehicle dealer who is not a new motor vehicle franchised dealer, the transaction shall be deemed a sale and shall void the resale of that motor vehicle as a new motor vehicle, and it shall be unlawful for any motor vehicle dealer to hold forth, offer for sale, advertise or sell such motor vehicle as a new motor vehicle. A **franchised new** motor vehicle dealer shall not assign ownership on any vehicle in a retail sale by the assignment of a manufacturer's statement of origin unless [he] **such dealer** is enfranchised by the manufacturer to sell that particular make of vehicle; however, this provision shall not take effect if the motor vehicle dealer and the manufacturer are in the process of negotiating a new franchise agreement, or the motor vehicle dealer has filed a timely protest to the manufacturer or appealed under section 407.825, RSMo, of the motor vehicle franchise practices act. The provisions of this section shall not apply to mobile homes or trailers.

301.571. 1. Every motor vehicle salesperson shall have such license upon his or her person or displayed at his or her place of employment, except as provided in this section, when engaged in motor vehicle sales business and shall display such license upon request. The name and business address of the employer of the salesperson shall be stated on the license.

2. In case of a change of employer of a licensed salesperson, the following procedure shall be adhered to:

(1) The licensee shall, within three days following the change, mail or deliver his or her license to the board for its endorsement of the change thereon. The license shall be accompanied by a fee of five dollars for endorsing each change of employer and a written statement of the licensee setting forth the name and business address of his or her new employer, the date employment was terminated with the previous employer, and the date employment commenced with the new employer;

(2) Upon receipt by the board of the licensee's license and fee, the board shall immediately make an appropriate endorsement on the license showing the change of employer and mail the license, as endorsed, to the licensee unless the board has obtained a determination from the administrative hearing commission, as provided in section 301.562, that the licensee is subject to disciplinary action for any of the

grounds enumerated therein;

(3) If, after the board receives the licensee's license and fee, the executive director of the board cannot for any reason endorse and mail to the licensee such license within a period of three days following such receipt by the board, then the executive director shall mail to the licensee a permit in such form as the board shall prescribe, which permit shall serve in lieu of a license until such time as the board endorses and mails the license to the licensee or until such time as the licensee's license is revoked or suspended in accordance with the provisions of section 301.562. If the licensee is ultimately revoked or suspended, then immediately upon the revocation or suspension the licensee shall return the permit to the board for cancellation;

(4) The commission shall maintain a permanent file with respect to all disciplinary actions taken against licensed motor vehicle salespersons. Such file shall be available for public inspection during the board's normal business hours and shall be subject to the board's usual and customary copying fees;

(5) This section shall not be deemed to prohibit a salesperson who has not previously been licensed or a transferee salesperson from selling during the time required to process such application. The applicant shall be allowed to sell from the date of employment as long as the applicant and the employing dealer follow the requirements for application and licensure pursuant to sections 301.550 to 301.573.

3. It shall be unlawful for any motor vehicle salesperson licensed pursuant to sections 301.550 to 301.573 to sell, or offer or attempt to sell, any motor vehicle except on behalf of the licensed motor vehicle dealer by whom he or she is employed; any person violating this subsection shall be deemed to be acting as a motor vehicle dealer in violation of section 301.559.

301.573. The department **of revenue** may review all title designations. Any designation described in section 301.190 or 301.227, placed on a certificate of ownership or certificate of title issued pursuant to section 301.190 or 301.227, shall remain on the certificate of ownership or title, and any and all subsequent certificates of ownership or title issued for that vehicle shall carry such designation on the face of such certificates of ownership or title.