CHAPTER 37

Motor Vehicle Dealer Performance Evaluation System

**SECTION 56‑37‑10.** Application of chapter.

 This chapter applies to any dealer licensed under Title 56 regardless of the dealer license type.

HISTORY: 2023 Act No. 51 (S.549), Section 23, eff January 1, 2024.

Code Commissioner's Note

At the direction of the Code Commissioner, "chapter" was substituted for "article" to correct a scrivener's error.

Editor's Note

2023 Act No. 51, Section 40(D), provides as follows:

"[SECTION 40.](D) SECTIONS 15 through 28 take effect on January 1, 2024. Any dealership applying for or renewing licenses, or operating on a currently issued license on or after January 1, 2024, is subject to the provisions of SECTIONS 15 through 28."

**SECTION 56‑37‑20.** Definitions.

 As used in this title:

 (1) "Immediate family" means spouse, parent, stepparent, child, stepchild, sister, brother, grandparent, and grandchild.

 (2) "Suspend" means temporarily prevent from continuing.

 (3) "Revoke" means prevent from continuing for at least ten years.

 (4) "Violation" means a single found incident leading to the issuance of points. For purposes of this chapter, a violation could be a single sale, a single vehicle, a single document, or other similar items.

 (5) "Out‑of‑trust" means a dealer selling a vehicle without paying the complete financial obligation needed to obtain the title for the sold vehicle.

 (6) "Open title" means, upon the purchase of a vehicle by a dealer and the seller has completed his portion of the certificate of title, the dealer or purchaser intentionally leaves the buyer or purchaser assignment blank on the title.

 (7) "Dealer" means any entity licensed as a dealer under this title without regard to the type of dealer license issued by the department.

HISTORY: 2023 Act No. 51 (S.549), Section 23, eff January 1, 2024.

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**SECTION 56‑37‑30.** Establishment of points system for evaluating performance record of dealers; violations; sanctions.

 (A) There is established a points system for evaluating the performance record of any dealer licensed under this title and its continuing ability to operate as a dealer in this State. The department may only impose the sanctions described below if they are found to have occurred in the course of dealer‑related business, to include a private citizen acting on behalf of a licensed dealer in their role as a dealer. If any dealer or employee of a dealership makes these errors in their role as a private citizen, those violations are not counted against the dealer license but may be penalized in accordance with state law.

 (B) For multiple record errors over a six‑month period of time, the department may impose a two‑point violation against a dealer license for the following:

 (1) errors or omissions on transactions regarding incoming or outgoing documents;

 (2) incorrect acquisition or sale dates;

 (3) incorrect vehicle identification numbers;

 (4) incorrect make, model, or type of body;

 (5) incorrect incoming or outgoing odometer reading;

 (6) incorrect name and address of the person a vehicle was acquired from or transferred to;

 (7) inability to provide an account for a dealer, transporter, or wholesale auto auction plate; or

 (8) issuance of a second temporary plate to a purchaser.

 (C) The following are four‑point violations:

 (1) dealer selling at address different than indicated on dealer application and license;

 (2) failure to deliver a title to a buyer or the department within forty‑five days of the date of sale;

 (3) reasonable records request unavailable upon the demand of the department;

 (4) issuance of any temporary license plate to a person not authorized to have the plate;

 (5) misuse of dealer, transporter, or wholesale auto auction plate; and

 (6) operating or allowing the operation of a vehicle with a suspended dealer plate.

 (D) The following are six‑point violations:

 (1) selling out‑of‑trust or breach‑of‑trust;

 (2) possession of an open title;

 (3) altering or changing documents to avoid or delay registration;

 (4) maintaining or producing fraudulent records;

 (5) licensure as a wholesaler dealer only, but selling vehicles retail;

 (6) having a volume of sales that do not warrant the number of license plates issued;

 (7) dealer or auction facilitating a wholesaler selling retail;

 (8) failure to remit any state‑owed fees within the time period prescribed by law to the department;

 (9) conviction by the licensee involving acquisition or transfer of a title to a vehicle;

 (10) conviction by the licensee of a criminal offense or judgment in a civil case in which there is fraud connected to the sale or transfer of a vehicle; and

 (11) use of fraudulent methods or practices.

 (E) The department's Inspector General or the Inspector General's designee has the authority to issue sanctions based on findings during inspections and audits. The department may turn any records of sanctions over to the law enforcement entity with jurisdiction over the licensed location of the dealership for criminal prosecution.

HISTORY: 2023 Act No. 51 (S.549), Section 23, eff January 1, 2024.

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**SECTION 56‑37‑40.** Dealer Sanction Review Board created; membership; contesting sanctions.

 (A) There is created a Dealer Sanction Review Board that consists of the executive director of the department or his designee, a department employee with expertise in dealer licensing regardless of dealer license type, two nonfranchise automobile dealers, and three franchise automobile dealers. All dealers serving on the board must have been in business no less than ten years and be in good standing with the department. The department is responsible for ensuring the board is seated at the beginning of each fiscal year. Unless the board decides otherwise or a board member no longer qualifies to remain on the board, individuals on the board serve for three fiscal years and may serve a maximum of nine consecutive years. The department in conjunction with the board should take efforts to ensure that dealers represent all regions of the State and the sizes of dealerships owned. The two statewide dealer associations shall choose their members. The chairperson shall be elected and rotated between dealer members serving on the board.

 (B) Dealers licensed pursuant to this title may contest sanctions provided for in this chapter by written request to the department no later than thirty days after receiving formal notice of the sanctions being levied.

 (1) All notices of sanctions are deemed received no later than thirty days after mailing by the department.

 (2) No later than sixty days after receiving the written request from the dealer, the board must determine if the sanctions and corresponding points must be posted to the dealer's record as maintained by the department.

 (3) No contested sanctions and corresponding points may be posted until the board has made a determination.

 (4) The board's decision is considered final unless a dealer files a protest in administrative law court within twenty days of being provided written notice.

 (5) The board may decide to decrease the number of points levied for a sanction, but the board may not increase the number of points levied for a sanction beyond those specified in this chapter.

 (C) If a dealer licensed under this title does not contest sanctions within the time period prescribed in subsection (B), the assessed points are effective and will be posted to the dealer's record maintained by the department.

HISTORY: 2023 Act No. 51 (S.549), Section 23, eff January 1, 2024.

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**SECTION 56‑37‑50.** Computation of total number of points.

 In computing the total number of points levied against any dealer after a particular violation, those accrued as a result of violations during the twelve‑month period including and immediately preceding the last violation must be counted at their full value. Those accrued from twelve to twenty‑four months preceding the last violation must be counted at one‑half their established value, and those resulting from violations which occurred more than twenty‑four months prior to the last violation must not be counted.

HISTORY: 2023 Act No. 51 (S.549), Section 23, eff January 1, 2024.

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**SECTION 56‑37‑60.** Reduction of points.

 (A) Any dealer who has accumulated points under the provisions of this chapter must have the number of points reduced by four upon proving to the satisfaction of the Department of Motor Vehicles that the dealer has completed a voluntary course related to the proper licensing of dealers in this State. Before an entity may administer the course, and every three years thereafter, the department must approve the course. Entities offering this course must provide documentation, to the satisfaction of the department, regarding the training provided during the course. The department is not obligated to offer this course on its own.

 (B) No dealer's points may be reduced more than one time in a three‑year period by completing a course related to the proper licensing of a dealer in this State.

HISTORY: 2023 Act No. 51 (S.549), Section 23, eff January 1, 2024.

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**SECTION 56‑37‑70.** Suspensions of license; notification; contested case hearing.

 (A) The department must suspend the license of any dealer for seven days upon the accumulation of twelve points or if the dealer has misused any department computer system or third‑party computer system that contains department data, including allowing another dealer location other than the one licensed by the department access to the system.

 (B) The department must suspend the license of any dealer for thirty days upon the second accumulation of twelve points within a three‑year period from the end date of the prior suspension.

 (C) The department must suspend the license of any dealer for three years upon the third accumulation of twelve points within a three‑year period. Dealers may not reapply for any kind of dealer license for three years after the last issued points. Should the provisions of this subsection apply, then the department may deny applications for any type of dealer license when the applicant is a member of the immediate family of the suspended dealer. The department shall notify the licensee or applicant by certified mail at the mailing address provided in his application of its intention to suspend his license at least thirty days in advance and shall provide the licensee an opportunity for a contested case hearing before the Office of Motor Vehicle Hearings pursuant to its rules of procedure and the Administrative Procedures Act of this State. A licensee desiring a contested case hearing must request the hearing in writing within thirty days of receiving notice of the proposed suspension of his dealer's or wholesaler's license. Should the dealer not request a contested case hearing from the Office of Motor Vehicle Hearings within thirty days of receiving notice of the proposed suspension, then the suspension of the dealer license must go into effect. If the dealer requests a contested case hearing from the Office of Motor Vehicle Hearings within thirty days of receiving notice of the proposed suspension, then the dealer may continue to operate until the Office of Motor Vehicle Hearings makes a final ruling in the contested case. Upon the suspension of a license, the licensee shall immediately return to the department the license and all dealer license plates.

HISTORY: 2023 Act No. 51 (S.549), Section 23, eff January 1, 2024.

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**SECTION 56‑37‑80.** Revocation of license; denial of application for dealer license.

 (A) The Department of Motor Vehicles must immediately revoke the license of any dealer issued pursuant to this title upon:

 (1) a conviction involving theft or possessions of a stolen vehicle, involvement with a chop shop, or a violation of law involving tampering with, altering, or removing vehicle identification numbers or markings; or

 (2) a conviction in administrative, civil, or criminal court of a dealer violation of state or federal law regarding the disconnecting, resetting, altering, or otherwise unlawful tampering with a motor vehicle's odometer.

 (B) Upon the revocation of a license, the licensee, or his designee, shall immediately return to the department the license and all dealer license plates. The department must revoke the dealer license plates if the plates are not returned to the department.

 (C) The department may deny any application for dealer licenses for ten years after notification of the conviction if the applicant is a member of the immediate family as a dealer whose license has been revoked. At the conclusion of the ten‑year period, a dealer whose license has been revoked may apply to the Dealer Sanctions Review Board to be relicensed. However, upon review of the board, a dealer whose license has been revoked may continue to be denied a dealer license of any type.

HISTORY: 2023 Act No. 51 (S.549), Section 23, eff January 1, 2024.

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