

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

400T0271

## SENATE BILL NO. 16

Introduced by: The Committee on Transportation at the request of the Department of Revenue

1 FOR AN ACT ENTITLED, An Act to define a final stage manufacturer dealer and to provide  
2 for licensing of final stage manufacturer dealers.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-6B-1 be amended to read as follows:

5 32-6B-1. Terms as used in this chapter mean:

6 (1) "Administrator," the administrator of the dealer licensing and inspection program of  
7 the Department of Revenue;

8 (2) "Auctioneer," a person who presides over a public auction where following an initial  
9 starting price, bids are taken from two or more people until a final bid or price is  
10 established for a motor vehicle;

11 (2A) "Authorized emergency vehicle," any vehicle of a fire department and any ambulance  
12 and emergency vehicle of a municipal department or public service corporation that  
13 are designated or authorized by the Department of Public Safety;

14 (3) "Broker," a person who, for a fee, commission, or other valuable consideration,  
15 arranges or offers to arrange a transaction involving the sale or exchange of vehicles,



1 and who is not:

2 (a) A dealer or a bona fide agent or employee of a dealer;

3 (b) A representative or a bona fide agent or employee of a manufacturer; or

4 (c) At any point in the transaction the bona fide owner of the vehicle involved in  
5 the transactions;

6 (4) "Community," the franchisee's area of responsibility as stipulated in the franchise. A  
7 community has a minimum radius of ten miles around an existing dealership;

8 (5) "Converter," a person who modifies or installs on previously assembled chassis  
9 special bodies or equipment which, when completed, form an integral part of the  
10 vehicle and which constitutes a major manufacturing alteration and who may issue  
11 a supplemental or secondary statement of origin;

12 (6) "Demonstration," the noncommercial use of a dealer owned vehicle by any employee  
13 of the dealership for any purpose in the ordinary course of business relating to the  
14 sale of the vehicle within the trade or market area of the dealership or demonstration  
15 by any prospective buyer for a period of three days. The term includes vehicles  
16 donated by a dealership to a community or organization and used for a one-day  
17 parade or event;

18 (6A) "Department," the Department of Revenue;

19 (6B) "Emergency vehicle dealer," any person who converts or manufacturers authorized  
20 emergency vehicles and who, for commission or with intent to make a profit or gain,  
21 sells, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale  
22 or exchange of new, or new and used authorized emergency vehicles, or who is  
23 engaged wholly or in part in the business of selling new, or new and used authorized  
24 emergency vehicles;

- 1 (7) "Franchise," a written or oral agreement or contract between a franchisor and  
2 franchisee which fixes the legal rights and liabilities of the parties to such agreement  
3 or contract;
- 4 (8) "Franchisee," person who receives vehicles from a franchisor under a franchise and  
5 who offers and sells the vehicles to the general public;
- 6 (9) "Franchisor," any person engaged in the manufacturing or distribution of vehicles  
7 including any person who acts for the franchisor;
- 8 (9A) "Good faith," honesty in fact and the observance of reasonable, nondiscriminatory  
9 commercial standards of fair dealing in the trade, as defined and interpreted in the  
10 Uniform Commercial Code as amended to January 1, 2010;
- 11 (10) "In-transit," the noncommercial use of a dealer owned vehicle by any employee of the  
12 dealership for travel to and from any service facility, detail shop, repair shop, gas  
13 station, car wash, dealer auction, another lot owned by the dealer, a supplemental lot,  
14 temporary special events lot, temporary supplemental lot, or any other location to  
15 facilitate a dealer trade;
- 16 (10A) "Manufacturer," a person who manufactures or assembles vehicles, including motor  
17 homes, and who issues the original or first manufacturer's statement of origin. The  
18 term, manufacturer, includes a central or principal sales corporation through which  
19 it distributes its products to franchised dealers;
- 20 (11) "Motor home," a motor vehicle designed as an integral unit to be used as a  
21 conveyance upon the public highways and for use as a temporary or recreational  
22 dwelling and having at least four of the following permanently installed systems:
- 23 (a) Cooking facilities;
- 24 (b) Ice box or mechanical refrigerator;

- 1 (c) Potable water supply including plumbing and a sink with faucet either self-  
2 contained or with connections for an external source, or both;
- 3 (d) Self-contained toilet connected to a plumbing system with connection for  
4 external water disposal;
- 5 (e) Heating or air conditioning system, or both, separate from the vehicle engine  
6 or the vehicle electrical system;
- 7 (f) A one hundred ten--one hundred fifteen volt alternating current electrical  
8 system separate from the vehicle engine electrical system either with its own  
9 power supply or with a connection for an external source, or both, or a  
10 liquified petroleum system and supply;
- 11 (12) "Public auction," a business that is open to the public where South Dakota titled  
12 motor vehicles are consigned, displayed, and auctioned to the highest bidder by an  
13 auctioneer;
- 14 (12A) "Recreational park trailer," a vehicle that is primarily designed to provide temporary  
15 living quarters for recreational, camping, or seasonal use and which:
  - 16 (a) Is built on a single chassis mounted on wheels;
  - 17 (b) Has a gross trailer area not exceeding four hundred square feet in the setup  
18 mode;
  - 19 (c) Is certified by the manufacturer as complying with American National  
20 Standards Institute Standard No. A119.5 in effect on January 1, 2008; and
  - 21 (d) Has at least a seventeen digit identification number and the manufacturer has  
22 designated the vehicle as a recreational park model on the manufacturer  
23 statement of origin;
- 24 (13) "Sell-it-yourself lot," any space provided to a person for a fee to display that person's

1 boat or vehicle for sale;

2 (14) "Semitrailer," any vehicle of the trailer type, equipped with a kingpin assembly,  
3 designed and used in conjunction with a fifth wheel connecting device on a motor  
4 vehicle and constructed so that some part of its weight and that of its load rests upon  
5 or is carried by another vehicle;

6 (15) "Supplemental lot," a physically separate location owned and maintained by a  
7 licensed dealer within the same county as the principal place of business;

8 (16) "Temporary special events lot," a location other than the principal place of business,  
9 supplemental lot, or temporary supplemental lot where a licensed trailer dealer, a  
10 licensed used car dealer selling only truck tractors, travel trailers, or motor homes,  
11 or any combination thereof, or a licensed vehicle dealer selling only truck tractors,  
12 travel trailers, or motor homes, or any combination thereof, may conduct business for  
13 a period of time not to exceed ten consecutive days for a specific purpose such as  
14 fairs, auctions, shopping center sales, or tent sales. A temporary special events lot  
15 shall meet all local zoning and building codes for the type of business being  
16 conducted;

17 (17) "Temporary supplemental lot," a location other than the principal place of business  
18 or supplemental lot but within the same county as the principal place of business, or  
19 within the corporate limits of a municipality which overlaps boundaries of a county,  
20 or in an adjoining county, if the adjoining county has no licensed vehicle dealer  
21 selling automobiles, pick-ups, or passenger vans and the temporary supplemental lot  
22 is no more than ten miles from the principal place of business, where a licensed  
23 vehicle dealer or a licensed used vehicle dealer may conduct business for a period of  
24 time not to exceed ten consecutive days for a specific purpose such as fairs, auto

1 shows, auctions, shopping center promotions, or tent sales. A temporary  
2 supplemental lot shall meet all local zoning and building codes for the type of  
3 business being conducted. If a licensed vehicle dealer establishes a temporary  
4 supplemental lot in a county with a licensed used vehicle dealer, a licensed used  
5 vehicle dealer may establish a temporary supplemental lot in a county with a licensed  
6 vehicle dealer. A licensed vehicle dealer may establish, for manufacturer sponsored  
7 events, a temporary supplemental lot in an adjoining county that has no like  
8 franchised licensed dealer;

9 (18) "Trailer," any vehicle without motive power designed to be coupled to or drawn by  
10 a motor vehicle and constructed so that no part of its weight or that of its load rests  
11 upon the towing vehicle;

12 (19) "Trailer dealer," any person who, for commission or with intent to make a profit or  
13 gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate  
14 a sale or exchange of new or used trailers, semitrailers or travel trailers or who is  
15 engaged in the business of selling new or used trailers, semitrailers or travel trailers  
16 whether or not such vehicles are owned by such person;

17 (20) "Travel trailer," any trailer or semitrailer which provides as its primary purpose  
18 adequate, comfortable, temporary living quarters while on pleasure excursions or  
19 while touring for business, professional, educational or recreational purposes;

20 (21) "Used vehicle dealer," any person who, for commission or with intent to make a  
21 profit or gain sells, exchanges, rents with option to purchase, offers or attempts to  
22 negotiate a sale or exchange of used vehicles or who is engaged in the business of  
23 selling used vehicles; or any person who sells five or more used vehicles or offers for  
24 sale five or more used vehicles at the same address or telephone number in any one

1 calendar year;

2 (22) "Vehicle," any new or used automobile, truck, truck tractor, motorcycle, motor home,  
3 trailer, semitrailer or travel trailer of the type and kind required to be titled and  
4 registered under chapters 32-3 and 32-5, except manufactured homes, mobile homes,  
5 mopeds or snowmobiles;

6 (23) "Vehicle dealer," any person who, for commission or with intent to make a profit or  
7 gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate  
8 a sale or exchange of new, or new and used vehicles, or who is engaged wholly or in  
9 part in the business of selling new, or new and used vehicles;

10 (24) "Final stage manufacturer dealer," any person who assembles or installs on a  
11 previously assembled new motor vehicle chassis cab any special body or equipment  
12 that forms an integral part of the motor vehicle, constitutes a major manufacturing  
13 alteration, and completes the vehicle;

14 (25) "Chassis cab," any incomplete motor vehicle, with a completed occupant  
15 compartment, that requires only the addition of cargo carrying, work performing, or  
16 load bearing components to perform the vehicle's intended function.

17 Section 2. That § 32-6B-12 be amended to read as follows:

18 32-6B-12. Any dealer's license issued under this chapter shall be of the following classes:

19 (1) "Vehicle dealer's license," ~~to permit~~ a license that permits the licensee to engage in  
20 the business of selling or exchanging new, or new and used, vehicles;

21 (2) "Used vehicle dealer's license," ~~to permit~~ a license that permits the licensee to engage  
22 in the business of selling or exchanging used vehicles only;

23 (3) "Motorcycle dealer's license," ~~to permit~~ a license that permits the licensee to engage  
24 in the business of selling or exchanging new or used motorcycles only;

- 1 (4) "Trailer dealer's license," ~~to permit a license that permits~~ the licensee to engage in the  
2 business of selling or exchanging trailers, semitrailers, recreational park trailers, or  
3 travel trailers only, new or used; ~~or~~
- 4 (5) "Emergency vehicle dealer's license," ~~to permit a license that permits~~ the licensee to  
5 engage in the business of selling or exchanging new or used authorized emergency  
6 vehicles; or
- 7 (6) "Final stage manufacturer dealer's license," a license that permits the licensee to  
8 engage in the business of selling or exchanging a previously assembled new motor  
9 vehicle chassis cab that has been completed by the final stage manufacturer and to  
10 engage in the business of selling or exchanging used motor vehicles.

11 A license certificate identifying the class of dealership and containing a distinguishing  
12 identification number of licensee shall be issued by the department if the application is in  
13 compliance with the provisions of this chapter.

14 Section 3. That § 32-6B-13 be amended to read as follows:

15 32-6B-13. Upon making initial application for a dealer's license, the applicant shall pay a  
16 fee to the department. The initial fee required for each type of dealer's license is as follows:

- 17 (1) Vehicle dealer's license--\$300;
- 18 (2) Used vehicle dealer's license--\$300;
- 19 (3) Motorcycle dealer's license--\$250;
- 20 (4) Trailer dealer's license--\$125; ~~or~~
- 21 (5) Emergency vehicle dealer's license--\$300; or
- 22 (6) Final stage manufacturer dealer's license--\$300.

23 All money collected pursuant to this section shall be deposited in the state motor vehicle  
24 fund.



1 Section 4. That § 32-6B-80 be amended to read as follows:

2 32-6B-80. Except as otherwise provided by §§ 32-6B-79 to 32-6B-83, inclusive, no

3 manufacturer or franchisor may directly or indirectly:

4 (1) Own an interest in a vehicle dealer or dealership;

5 (2) Operate or control a vehicle dealer or dealership; or

6 (3) Act in the capacity of a vehicle dealer.

7 This section does not apply to a final stage manufacturer dealer.