

AN ACT

ENTITLED, An Act to define a final stage manufacturer dealer and to provide for licensing of final stage manufacturer dealers.

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

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

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

- (1) "Administrator," the administrator of the dealer licensing and inspection program of the Department of Revenue;
- (2) "Auctioneer," a person who presides over a public auction where following an initial starting price, bids are taken from two or more people until a final bid or price is established for a motor vehicle;
- (2A) "Authorized emergency vehicle," any vehicle of a fire department and any ambulance and emergency vehicle of a municipal department or public service corporation that are designated or authorized by the Department of Public Safety;
- (3) "Broker," a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale or exchange of vehicles, and who is not:
 - (a) A dealer or a bona fide agent or employee of a dealer;
 - (b) A representative or a bona fide agent or employee of a manufacturer; or
 - (c) At any point in the transaction the bona fide owner of the vehicle involved in the transactions;
- (4) "Community," the franchisee's area of responsibility as stipulated in the franchise. A community has a minimum radius of ten miles around an existing dealership;
- (5) "Converter," a person who modifies or installs on previously assembled chassis special

bodies or equipment which, when completed, form an integral part of the vehicle and which constitutes a major manufacturing alteration and who may issue a supplemental or secondary statement of origin;

- (6) "Demonstration," the noncommercial use of a dealer owned vehicle by any employee of the dealership for any purpose in the ordinary course of business relating to the sale of the vehicle within the trade or market area of the dealership or demonstration by any prospective buyer for a period of three days. The term includes vehicles donated by a dealership to a community or organization and used for a one-day parade or event;
- (6A) "Department," the Department of Revenue;
- (6B) "Emergency vehicle dealer," any person who converts or manufacturers authorized emergency vehicles and who, for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale or exchange of new, or new and used authorized emergency vehicles, or who is engaged wholly or in part in the business of selling new, or new and used authorized emergency vehicles;
- (7) "Franchise," a written or oral agreement or contract between a franchisor and franchisee which fixes the legal rights and liabilities of the parties to such agreement or contract;
- (8) "Franchisee," person who receives vehicles from a franchisor under a franchise and who offers and sells the vehicles to the general public;
- (9) "Franchisor," any person engaged in the manufacturing or distribution of vehicles including any person who acts for the franchisor;
- (9A) "Good faith," honesty in fact and the observance of reasonable, nondiscriminatory commercial standards of fair dealing in the trade, as defined and interpreted in the Uniform Commercial Code as amended to January 1, 2010;

- (10) "In-transit," the noncommercial use of a dealer owned vehicle by any employee of the dealership for travel to and from any service facility, detail shop, repair shop, gas station, car wash, dealer auction, another lot owned by the dealer, a supplemental lot, temporary special events lot, temporary supplemental lot, or any other location to facilitate a dealer trade;
- (10A) "Manufacturer," a person who manufactures or assembles vehicles, including motor homes, and who issues the original or first manufacturer's statement of origin. The term, manufacturer, includes a central or principal sales corporation through which it distributes its products to franchised dealers;
- (11) "Motor home," a motor vehicle designed as an integral unit to be used as a conveyance upon the public highways and for use as a temporary or recreational dwelling and having at least four of the following permanently installed systems:
- (a) Cooking facilities;
 - (b) Ice box or mechanical refrigerator;
 - (c) Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both;
 - (d) Self-contained toilet connected to a plumbing system with connection for external water disposal;
 - (e) Heating or air conditioning system, or both, separate from the vehicle engine or the vehicle electrical system;
 - (f) A one hundred ten--one hundred fifteen volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both, or a liquified petroleum system and supply;

- (12) "Public auction," a business that is open to the public where South Dakota titled motor vehicles are consigned, displayed, and auctioned to the highest bidder by an auctioneer;
- (12A) "Recreational park trailer," a vehicle that is primarily designed to provide temporary living quarters for recreational, camping, or seasonal use and which:
- (a) Is built on a single chassis mounted on wheels;
 - (b) Has a gross trailer area not exceeding four hundred square feet in the setup mode;
 - (c) Is certified by the manufacturer as complying with American National Standards Institute Standard No. A119.5 in effect on January 1, 2008; and
 - (d) Has at least a seventeen digit identification number and the manufacturer has designated the vehicle as a recreational park model on the manufacturer statement of origin;
- (13) "Sell-it-yourself lot," any space provided to a person for a fee to display that person's boat or vehicle for sale;
- (14) "Semitrailer," any vehicle of the trailer type, equipped with a kingpin assembly, designed and used in conjunction with a fifth wheel connecting device on a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle;
- (15) "Supplemental lot," a physically separate location owned and maintained by a licensed dealer within the same county as the principal place of business;
- (16) "Temporary special events lot," a location other than the principal place of business, supplemental lot, or temporary supplemental lot where a licensed trailer dealer, a licensed used car dealer selling only truck tractors, travel trailers, or motor homes, or any combination thereof, or a licensed vehicle dealer selling only truck tractors, travel trailers, or motor homes, or any combination thereof, may conduct business for a period of time

not to exceed ten consecutive days for a specific purpose such as fairs, auctions, shopping center sales, or tent sales. A temporary special events lot shall meet all local zoning and building codes for the type of business being conducted;

- (17) "Temporary supplemental lot," a location other than the principal place of business or supplemental lot but within the same county as the principal place of business, or within the corporate limits of a municipality which overlaps boundaries of a county, or in an adjoining county, if the adjoining county has no licensed vehicle dealer selling automobiles, pick-ups, or passenger vans and the temporary supplemental lot is no more than ten miles from the principal place of business, where a licensed vehicle dealer or a licensed used vehicle dealer may conduct business for a period of time not to exceed ten consecutive days for a specific purpose such as fairs, auto shows, auctions, shopping center promotions, or tent sales. A temporary supplemental lot shall meet all local zoning and building codes for the type of business being conducted. If a licensed vehicle dealer establishes a temporary supplemental lot in a county with a licensed used vehicle dealer, a licensed used vehicle dealer may establish a temporary supplemental lot in a county with a licensed vehicle dealer. A licensed vehicle dealer may establish, for manufacturer sponsored events, a temporary supplemental lot in an adjoining county that has no like franchised licensed dealer;
- (18) "Trailer," any vehicle without motive power designed to be coupled to or drawn by a motor vehicle and constructed so that no part of its weight or that of its load rests upon the towing vehicle;
- (19) "Trailer dealer," any person who, for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale or exchange of new or used trailers, semitrailers or travel trailers or who is engaged in the

business of selling new or used trailers, semitrailers or travel trailers whether or not such vehicles are owned by such person;

- (20) "Travel trailer," any trailer or semitrailer which provides as its primary purpose adequate, comfortable, temporary living quarters while on pleasure excursions or while touring for business, professional, educational or recreational purposes;
- (21) "Used vehicle dealer," any person who, for commission or with intent to make a profit or gain sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale or exchange of used vehicles or who is engaged in the business of selling used vehicles; or any person who sells five or more used vehicles or offers for sale five or more used vehicles at the same address or telephone number in any one calendar year;
- (22) "Vehicle," any new or used automobile, truck, truck tractor, motorcycle, motor home, trailer, semitrailer or travel trailer of the type and kind required to be titled and registered under chapters 32-3 and 32-5, except manufactured homes, mobile homes, mopeds or snowmobiles;
- (23) "Vehicle dealer," any person who, for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale or exchange of new, or new and used vehicles, or who is engaged wholly or in part in the business of selling new, or new and used vehicles;
- (24) "Final stage manufacturer dealer," any person who assembles or installs on a previously assembled new motor vehicle chassis cab any special body or equipment that forms an integral part of the motor vehicle, constitutes a major manufacturing alteration, and completes the vehicle;
- (25) "Chassis cab," any incomplete motor vehicle, with a completed occupant compartment, that requires only the addition of cargo carrying, work performing, or load bearing

components to perform the vehicle's intended function.

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

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

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

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

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

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

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

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

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

32-6B-80. Except as otherwise provided by §§ 32-6B-79 to 32-6B-83, inclusive, no manufacturer or franchisor may directly or indirectly:

- (1) Own an interest in a vehicle dealer or dealership;
- (2) Operate or control a vehicle dealer or dealership; or
- (3) Act in the capacity of a vehicle dealer.

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

An Act to define a final stage manufacturer dealer and to provide for licensing of final stage manufacturer dealers.

=====

I certify that the attached Act
originated in the

SENATE as Bill No. 16

Secretary of the Senate
=====

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 16
File No. _____
Chapter No. _____

=====

Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State