

AN ACT

ENTITLED, An Act to revise certain provisions regarding vehicle dealer licensing.

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

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

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;
- (3) "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 or the Department of Health;
- (4) "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;
- (5) "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;
- (6) "Community," the franchisee's area of responsibility as stipulated in the franchise or a

minimum radius of ten miles around an existing dealership;

- (7) "Converter," a person who modifies or installs on previously assembled chassis special bodies or equipment that, when completed, form an integral part of the vehicle and that constitutes a major manufacturing alteration and who may issue a supplemental or secondary statement of origin;
- (8) "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;
- (9) "Department," the Department of Revenue;
- (10) "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;
- (11) "Event," a fair, exposition, vehicle show, vehicle rally, or fishing tournament that is held once each year and lasts at least three days including any setup time but does not exceed fifteen days;
- (12) "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;

- (13) "Franchise," a written or oral agreement or contract between a franchisor and franchisee that fixes the legal rights and liabilities of the parties to the agreement or contract;
- (14) "Franchisee," person who receives vehicles from a franchisor under a franchise and who offers and sells the vehicles to the general public;
- (15) "Franchisor," any person engaged in the manufacturing or distribution of vehicles including any person who acts for the franchisor;
- (16) "Good faith," honesty in fact and the observance of reasonable, nondiscriminatory commercial standards of fair dealing in the trade;
- (17) "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;
- (18) "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 includes a central or principal sales corporation through which it distributes its products to franchised dealers;
- (19) "Off-road vehicle," any self-propelled, two or more wheeled vehicle designed primarily to be operated on land other than a highway and includes any all terrain vehicle, dune buggy, and vehicle whose manufacturer's statement of origin or manufacturer's certificate of origin states that the vehicle is not for highway use;
- (20) "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;
- (21) "Sell-it-yourself lot," any space provided to a person for a fee to display that person's boat

or vehicle for sale;

- (22) "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;
- (23) "Supplemental lot," a physically separate location owned and maintained by a licensed dealer within the same county as the principal place of business;
- (24) "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;
- (25) "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 the vehicles are owned by the person;
- (26) "Travel trailer," any trailer or semitrailer that provides as its primary purpose adequate, comfortable, temporary living quarters while on pleasure excursions or while touring for business, professional, educational or recreational purposes;
- (27) "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;
- (28) "Vehicle," any new or used automobile, truck, truck tractor, motorcycle, off-road vehicle, 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, or required to be titled under chapter 32-20

except any manufactured home, used mobile home, moped, or snowmobile;

(29) "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.

Section 2. That chapter 32-6B be amended by adding a NEW SECTION to read:

For the purposes of this chapter, the term, motor home, means a motor vehicle that is 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 that has at least four of the following permanently installed systems:

- (1) Cooking facilities;
- (2) Ice box or mechanical refrigerator;
- (3) Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both;
- (4) Self-contained toilet connected to a plumbing system with connection for external water disposal;
- (5) Heating or air conditioning system, or both, separate from the vehicle engine or the vehicle electrical system; or
- (6) 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.

Section 3. That chapter 32-6B be amended by adding a NEW SECTION to read:

For the purposes of this chapter, the term, recreational park trailer, means a vehicle that is primarily designed to provide temporary living quarters for recreational, camping, or seasonal use and that:

- (1) Is built on a single chassis mounted on wheels;
- (2) Has a gross trailer area not exceeding four hundred square feet in the setup mode;
- (3) Is certified by the manufacturer as complying with American National Standards Institute Standard No. A119.5 in effect on January 1, 2008; and
- (4) 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.

Section 4. That chapter 32-6B be amended by adding a NEW SECTION to read:

For the purposes of this chapter, the term, temporary special events lot, means 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, or a licensed vehicle dealer selling only truck tractors, 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.

Section 5. That chapter 32-6B be amended by adding a NEW SECTION to read:

For the purposes of this chapter, the term, temporary supplemental lot, means a location other than the principal place of business or supplemental lot that is:

- (1) Within the same county as the principal place of business;
- (2) Within the corporate limits of a municipality that overlaps boundaries of an adjoining county;
- (3) Within an adjoining county, if the adjoining county has no licensed vehicle dealer selling automobiles, pick-ups, or passenger vans and the lot is within a ten-mile radius of the principal place of business; or
- (4) Within an adjoining county that has no like franchised licensed dealer.

A licensed vehicle dealer or a licensed used vehicle dealer may conduct business at such a lot for a period of time not to exceed ten consecutive days for a specific purpose such as fairs, vehicle 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 in that county may establish a temporary supplemental lot in the county of the licensed vehicle dealer.

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

32-6B-2. For purposes of this chapter, the term, principal place of business, means an enclosed commercial structure located within this state, easily accessible and open to the public at least twenty hours per week between the hours of 8:00 a.m. to 8:00 p.m., inclusive, with an improved display area immediately adjoining the building that is large enough to display five or more vehicles of the type the dealer is licensed to sell. It is the location at which the business of a vehicle dealer may be lawfully carried on in accordance with all applicable building codes, zoning, and other land use ordinances. Each licensed dealer shall maintain an enclosed permanent office on the location. Each office shall be adequately heated and lighted. The hours of operation of the office and an operating phone number shall be clearly posted at or near the main entrance to the office. Each location shall display an exterior sign that contains the name of the business and that is permanently affixed to the land or building. The exterior sign shall be clearly legible from the public right-of-way serving the location. It is the location where the books, records, and files necessary to conduct the business of the dealer are kept and maintained. In no event may rooms in a hotel, motel, apartment house, or any part of any single or multiple unit dwelling house be considered a principal place of business unless the entire ground floor of the facility is devoted principally to and occupied for commercial purposes. Any dealer licensed under this chapter shall maintain and continuously occupy a principal place of

business. However, an emergency vehicle dealer is exempt from the requirement of having its principal place of business in South Dakota.

Section 7. That chapter 32-6B be amended by adding a NEW SECTION to read:

A person who is a licensed dealer in another state may sell motorcycles at an event without a license issued under this chapter if the person meets the provisions of this section. Before selling any motorcycle, the person shall register and purchase a permit from the department. Before the department may issue a permit, the person shall provide proof the person is a licensed dealer in another state and has no outstanding dealer violations. The permit may be issued if any new motorcycle make being sold is not franchised in this state. The permit may be issued if any used motorcycle make being sold is franchised in this state, is at least two model years old, and has at least two thousand five hundred miles on the odometer. The fee for the permit is five hundred dollars. However, if the permit is purchased before the start of the event, the fee for the permit is two hundred fifty dollars. The permit is valid for fifteen consecutive days. Any person found to be in violation of the provisions of this section shall be denied a permit for a period of fifteen months from the date of the violation.

Section 8. That chapter 32-6B be amended by adding a NEW SECTION to read:

A person who is a licensed dealer in another state may sell trailers at an event without a license issued under this chapter if the person meets the provisions of this section. Before selling any trailer, the person shall register and purchase a permit from the department. Before the department may issue a permit, the person shall provide proof the person is a licensed dealer in another state and has no outstanding dealer violations. The permit may only be issued if the trailer make being sold is not franchised in this state unless the person obtains a written waiver from any similar franchise dealer in this state. The person shall present the waiver to the department at the time the person applies for the permit. The fee for the permit is five hundred dollars. However, if the permit is purchased before

the start of the event, the fee for the permit is two hundred fifty dollars. The permit is valid for fifteen consecutive days. Regardless of whether or not there is a franchise in this state, any person may display a trailer at an event. Any person found to be in violation of the provisions of this section shall be denied a permit for a period of fifteen months from the date of the violation.

Section 9. That chapter 32-6B be amended by adding a NEW SECTION to read:

A person who is a licensed dealer in another state may sell a vehicle that is at least twenty years old or a motorcycle that is at least thirty years old at a public auction on consignment without a license issued under this chapter if the person meets the provisions of this section. The vehicle or motorcycle shall have a title issued in the name of the dealer by any state other than this state. Before selling any vehicle or motorcycle, the person shall register and purchase a permit from the department. Before the department may issue a permit, the person shall provide proof the person is a licensed dealer in another state and has no outstanding dealer violations. The fee for the permit is five hundred dollars. However, if the permit is purchased before the start of the auction, the fee is two hundred fifty dollars. The permit is valid for fifteen consecutive days. Any person found to be in violation of the provisions of this section shall be denied a permit for a period of fifteen months from the date of the violation.

Section 10. That chapter 32-6B be amended by adding a NEW SECTION to read:

A person who is engaged in the business of manufacturing trailers may display any trailer at an event without a license issued under this chapter if the person meets the provisions of this section. Before displaying any trailer, the person shall register and purchase a permit from the department. The permit does not allow the sale of any trailer. The fee for the permit is five hundred dollars. However, if the permit is purchased before the start of the event, the fee is two hundred fifty dollars. The permit is valid for fifteen consecutive days. Any person found to be in violation of the provisions of this section shall be denied a permit for a period of fifteen months from the date of the

violation.

Section 11. That chapter 32-6B be amended by adding a NEW SECTION to read:

A person who is engaged in the business of manufacturing or customizing motor vehicles may display and offer limited demonstration of a person's customized motor vehicle at an event without a license issued under this chapter if the person meets the provisions of this section. Before displaying or demonstrating any motor vehicle, the person shall register and purchase a permit from the department. The permit does not allow the sale of any motor vehicle. The fee for the permit is five hundred dollars. However, if the permit is purchased before the start of the event, the fee is two hundred fifty dollars. The permit is valid for fifteen consecutive days. Any person found to be in violation of the provisions of this section shall be denied a permit for a period of fifteen months from the date of the violation. For the purposes of this section, the term, customized motor vehicle, means any motor vehicle that has been altered from the manufacturer's original design or has a body constructed of nonoriginal materials.

Section 12. That chapter 32-6B be amended by adding a NEW SECTION to read:

A person who is sponsoring an event for displaying customized motorcycles built for the event may do so without a license issued under this chapter if the person meets the provisions of this section. Before displaying any such motorcycle, the person sponsoring the event shall register and purchase a permit from the department. The fee for the permit is five hundred dollars. However, if the permit is purchased before the start of the event, the fee is two hundred fifty dollars. The permit is valid for fifteen consecutive days. Any person found to be in violation of the provisions of this section shall be denied a permit for a period of fifteen months from the date of the violation. If any person wishes to display any customized motorcycle outside the sponsored event, the person shall register and purchase a permit as provided under section 11 of this Act.

Section 13. That chapter 32-6B be amended by adding a NEW SECTION to read:

A licensed dealer may take a vehicle to an adjoining county for demonstration purposes. For the purpose of this section, a demonstration is for the purpose of showing the qualities and characteristics common to vehicles of the same or similar models or types in parades.

Section 14. That § 32-6B-22 be amended to read:

32-6B-22. Any new vehicle or used vehicle owned by a licensed dealer, bearing a dealer's 77 license plate issued pursuant to § 32-6B-21, may be driven on the streets and highways of this state for any purpose. However, the dealer 77 license plate may not be used on any vehicle used for lease or hire or used as a wrecker or service truck. The dealer 77 license plate is transferable by the dealer from one vehicle owned by the dealer to another vehicle owned by the dealer. A violation of this section is a Class 1 misdemeanor.

Section 15. That § 32-6B-14 be amended to read:

32-6B-14. Each license may be issued for a multiple year period. The application for license and all applicable fees are due prior to the issuance of the initial license. Each license shall be reviewed annually by the department. The department shall mail to the licensee at the last known address a renewal notice. If the licensee is registered on the electronic dealer system, the licensee shall receive the renewal notice by electronic means. The department shall establish by rules promulgated pursuant to chapter 1-26 the review date, if other than October first to December thirty-first, inclusive. If the licensee fails to return the renewal notice or to pay the applicable fees the department shall suspend or revoke the license pursuant to the provisions of §§ 32-6B-41.1 to 32-6B-41.6, inclusive.

Section 16. That § 32-6B-62 be amended to read:

32-6B-62. The provisions of subdivision 32-6B-6(16) and subdivision 32-6B-41(13) do not apply to a trailer dealer's license.

Section 17. That § 32-6B-3.4 be amended to read:

32-6B-3.4. Notwithstanding the provisions of subdivision 32-6B-5(4), any titled vehicle, including a vehicle owned by a vehicle dealer who has obtained a permit under the provisions of section 9 of this Act but who is licensed in another state, except a motorcycle, that is not titled in South Dakota and is at least twenty years old may be sold at a public auction on consignment if the title of the vehicle is issued in the name of the seller. All other provisions of this chapter pertaining to consignment sales or public auctions need to be met.

Section 18. That § 32-6B-3.5 be amended to read:

32-6B-3.5. Notwithstanding the provisions of subdivision 32-6B-5(4), any motorcycle, including a motorcycle owned by a dealer who has obtained a permit under the provisions of section 9 of this Act but who is licensed in another state, that is not titled in South Dakota, and that is at least thirty years old, may be sold at a public auction on consignment if the title of the vehicle is issued in the name of the seller. All other provisions of this chapter pertaining to consignment sales or public auction need to be met.

Section 19. That § 32-6B-19 be amended to read:

32-6B-19. Any person licensed under this chapter, who sells vehicles at locations other than the principal place of business, shall obtain a supplemental license for each auxiliary or supplemental lot not contiguous to the location for which the original license is issued. If the license is granted, the licensee may be permitted to use unimproved lots and premises for sale, storage, and display of vehicles. Supplemental lots and premises shall be located within the county of the principal place of business of the applicant and shall meet local zoning codes or ordinances. No supplemental license is required for display of vehicles within the corporate limits of a municipality if the vehicle dealer is licensed or if one or more licensed vehicle dealers wish to display their vehicles on a temporary supplemental lot as defined in section 5 of this Act.

Section 20. That § 32-6B-5.1 be repealed.

An Act to revise certain provisions regarding vehicle dealer licensing.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1059

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Chief Clerk

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Speaker of the House

Attest:

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Chief Clerk

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President of the Senate

Attest:

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Secretary of the Senate

House Bill No. 1059

File No. _____

Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

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By _____
for the Governor

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

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Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

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

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Secretary of State

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By _____
Asst. Secretary of State