

AN ACT

ENTITLED, An Act to revise the definition of a boat dealer, used vehicle dealer, and dealer of mobile homes or manufactured homes, and to revise certain penalties for selling motor vehicles, snowmobiles, mobile homes, manufactured homes, or boats without a license.

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

Section 1. That § 32-3A-2 be amended to read as follows:

32-3A-2. Terms used in this chapter mean:

- (1) "Boat," every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water;
- (2) "Boat dealer," any person or business who in the ordinary course of business sells new or used large boats or any person or business who in the ordinary course of business sells five or more large boats in a year;
- (3) "Commission," the Game, Fish and Parks Commission of this state acting directly or through its authorized officers;
- (4) "Department," the Department of Revenue;
- (5) "Large boat," any boat over twelve feet in length or a motorboat, used or capable of being used as a means of transportation on water, except canoes, inflatable boats, kayaks, sailboards and seaplanes;
- (6) "Motorboat," any boat propelled by machinery, whether or not such machinery is the principal source of propulsion, but does not include a boat which has a valid marine document issued by the commissioner of customs of the United States government or any federal agency successor thereto;
- (7) "Operate," to navigate or otherwise use a boat;
- (8) "Owner," a person, other than a lien holder, having the property in or title to a boat. The

term includes a person entitled to the use or possession of a boat subject to an interest in another person reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security;

- (9) "Personal watercraft," any motorboat that has an inboard or outboard motor powering a water jet pump or caged propeller as its primary source of motive power and is designed to be operated by a person standing on, kneeling on, sitting astride, or being towed behind the watercraft, and has the probability that the operator and passengers may in the normal course of use, fall overboard;
- (10) "Racing boat," any boat designed and manufactured exclusively for racing;
- (11) "Sailboard," any single-hulled boat equipped with an articulating mast and designed to be operated by a person standing on the board, maneuvering through the trim of the hand-held sail and distributing his body weight on the board; and
- (12) "Waters of this state," any public waters within the territorial limits of this state and all waters which form a common boundary between this state and Minnesota, North Dakota, Montana, Wyoming, Iowa, or Nebraska.

Section 2. 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;
- (3A) "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.
- (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;

- (6C) "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;
- (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, 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;
- (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;
- (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.

Section 3. That § 32-7A-1 be amended to read as follows:

32-7A-1. Terms used in this chapter mean:

- (1) "Auxiliary lot," a physically separate location, such as a mobile home park, manufactured housing rental community, manufactured housing subdivision, or any residential lot, where a licensed dealer displays manufactured homes or mobile homes.
- (2) "Dealer," any person, other than a manufacturer of a mobile home or a manufactured home, who, for a commission or with the intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale, or makes an exchange of a mobile or manufactured home or who is engaged in the business of selling mobile or manufactured homes;
- (3) "Department," the Department of Revenue;
- (4) "Manufactured home," a structure, transportable in one or more sections, which is eight feet or more in width or forty feet or more in length in the traveling mode, or is three hundred twenty or more square feet when erected on a site; which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation,

when connected to the required utilities; and which contains in it the plumbing, heating, air conditioning and electrical systems. The term includes any structure which has been certified by the secretary of housing and urban development as having complied with the National Manufactured Housing Construction and Safety Standards Act of 1974 as amended and in effect on January 1, 1984;

- (5) "Mobile home," a movable or portable unit, designed and constructed to be towed on its own chassis (comprised of frame and wheels), and designed to be connected to utilities for year-round occupancy. The term includes:
 - (a) Units containing parts that may be folded, collapsed or telescoped when being towed and that may be expanded to provide additional cubic capacity; and
 - (b) Units composed of two or more separately towable components designed to be joined into one integral unit capable of being separated again into the components for repeated towing;
- (6) "Supplemental lot," a physically separate location owned and maintained by a licensed dealer within the same county as the principal place of business;
- (7) "Temporary supplemental lot," a location other than the principal place of business or supplemental lot where a licensed dealer may conduct business for a period of time not to exceed ten consecutive days for a specific purpose such as fairs, auctions, shopping center promotions or tent sales. Such temporary supplemental lots shall meet all local zoning and building codes for the type of business being conducted.

Section 4. That § 32-7B-1 be amended to read as follows:

32-7B-1. For the purposes of this chapter, a boat dealer is any person who, for commission or with intent to make a profit or gain, sells, exchanges, rents, or leases with option to purchase, offers or attempts to negotiate a sale or exchange of new or used boats, or who is engaged wholly or in part

in the business of selling new or used boats.

Section 5. That § 32-6B-4 be amended to read as follows:

32-6B-4. No person may engage in the business, either exclusively or in addition to any other occupation, of selling, offering to sell, or displaying new or used vehicles, without a license as provided in § 32-6B-12. A violation of this section is a Class 2 misdemeanor. Any subsequent violation that occurs within two years from any violation of this section is a Class 1 misdemeanor.

The term, offering to sell, as used in this section, does not mean traditional advertising. However, the term includes the physical presence in this state of a new or used vehicle offered for sale by a person not exempt pursuant to the provisions of § 32-6B-5. For an emergency vehicle dealer, as defined by § 32-6B-1, the term includes the submission of a bid proposal for the sale of a vehicle if the bid proposal is offered in response to a bid request originating in this state.

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

32-6C-2. No person may engage in the business of selling, or may offer to sell, display, act as a broker, or advertise the sale of new or used snowmobiles, without a license. Any violation of this section is a Class 2 misdemeanor. Any subsequent violation that occurs within two years from any violation of this section is a Class 1 misdemeanor. The licensing requirements of this section do not apply to any regulated lenders as that term is defined in § 54-3-14, any insurance company authorized to do business in this state, or any financing institution as defined in and licensed pursuant to chapter 54-4 that acquires snowmobiles as an incident to its regular business.

Section 7. That § 32-7A-3 be amended to read as follows:

32-7A-3. No person may engage in the business, either exclusively or in addition to any other occupation, of selling or manufacturing mobile homes or manufactured homes, new or used, or shall offer to sell, solicit, or advertise the sale of mobile homes or manufactured homes, new or used, without first having acquired a license to do so. Any violation of this section is a Class 2

misdemeanor. Any subsequent violation that occurs within two years from any violation of this section is a Class 1 misdemeanor. The licensing requirements of this section do not apply to any regulated lenders as that term is defined in § 54-3-14, any insurance company authorized to do business in this state, or any financing institution as defined in and licensed pursuant to chapter 54-4 that acquires mobile homes or manufactured homes as an incident to its regular business.

Section 8. That § 32-7B-2 be amended to read as follows:

32-7B-2. No person may engage in the business of selling, or may offer to sell, display, act as a broker, or advertise the sale of new or used boats, without a license as provided in this chapter. Any violation of this section is a Class 2 misdemeanor. Any subsequent violation that occurs within two years from any violation of this section is a Class 1 misdemeanor. The licensing requirements of this section do not apply to any regulated lenders as that term is defined in § 54-3-14, any insurance company authorized to do business in this state, or any financing institution as defined in and licensed pursuant to chapter 54-4 that acquires new or used boats as an incident to its regular business.

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I certify that the attached Act
originated in the
SENATE as Bill No. 54

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 54
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