

AN ACT

ENTITLED, An Act to regulate the transfer, assignment, or sale of a motor vehicle franchise agreement or controlling interest in a motor vehicle dealership.

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

Section 1. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as follows:

In order to transfer, assign, or sell a franchise agreement or controlling interest in the dealership to another person, a dealer shall notify the manufacturer or franchisor whose vehicles the dealer is franchised to sell of the dealer's decision to transfer, assign, or sell the dealership. The notification shall be by certified mail, return receipt requested, and is the application by the dealer for approval by the manufacturer or franchisor of the transfer.

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

The notice shall be in writing and shall include:

- (1) The prospective transferee's name, address, financial qualifications, and business experience;
- (2) A copy of pertinent agreements regarding the proposed transfer, assignment, or sale;
- (3) Completed application forms and related information generally utilized by the manufacturer or franchisor in reviewing prospective dealers; and
- (4) The prospective transferee's written agreement to comply with the terms of the franchise agreement to the extent that the franchise agreement is not in conflict with this chapter.

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

Not later than the sixty days after receiving notice and application as provided by this Act, the manufacturer or franchisor shall determine whether or not the dealer's prospective transferee is

qualified and shall send a letter by certified mail, return receipt requested, informing the dealer of the approval of the prospective transferee or the unacceptability of the prospective transferee. If the prospective transferee is not acceptable, the manufacturer or franchisor shall include a statement setting forth the material reasons for the rejection. An application filed by a dealer as provided in this Act is approved unless rejected by the manufacturer or franchisor in the manner provided by this Act.

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

Approval by a manufacturer or franchisor of an application filed under this Act may not be unreasonably withheld. It is unreasonable for a manufacturer or franchisor to reject a prospective transferee who is of good moral character and who otherwise meets the manufacturer's or franchisor's written, reasonable, and uniformly applied standards or qualifications, if any, relating to the prospective transferee's business experience and financial qualifications.

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

A dealer whose application to transfer is rejected may file an objection with the department as provided for in § 32-6B-53. In an action brought under this Act, the burden is on the manufacturer or franchisor to prove that the prospective transferee is not qualified. An objection filed under this Act is a contested case.

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

The issue in an objection filed under this Act is whether or not the prospective transferee is qualified. The department shall enter an order holding that the prospective transferee either is qualified or is not qualified. If the department's order is that the prospective transferee is qualified, the dealer's franchise agreement is amended to reflect the change in franchisee and the manufacturer or franchisor shall accept the transfer for all purposes. If the department's order is that the prospective

transferee is not qualified, the department may include specific reasons why the prospective transferee is not qualified and may include specific conditions under which the prospective transferee would be qualified. If the department's order that a prospective transferee is not qualified includes specific conditions under which the prospective transferee would be qualified, the department may retain jurisdiction of the dispute for a time certain to allow the dealer and prospective transferee to meet the conditions set forth.

Section 7. That § 32-6B-53 be amended to read as follows:

32-6B-53. If a timely objection is filed, the department shall enter an order fixing the time, which shall be within thirty days of the date of such order, and place of a hearing on the objection and shall send by first class mail a copy of the order to the franchisor, franchisee, and any other persons entitled to receive a copy of the notice provided for in § 32-6B-50 or section 1 of this Act. The department may, upon request, continue the date of hearing for a period of thirty days.

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I certify that the attached Act originated in the

SENATE as Bill No. 78

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. 78
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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

Governor

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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