

AN ACT

ENTITLED, An Act to revise certain provisions regarding the regulation of vehicle manufactures, franchisors, and dealers.

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

Section 1. That § 32-6B-58 be amended to read as follows:

32-6B-58. Every franchisor or manufacturer shall properly fulfill any warranty agreement and compensate, as set forth in § 32-6B-61, each of its vehicle dealers for labor and parts. The franchisor or manufacturer shall pay all claims made by a vehicle dealer for the labor and parts within thirty days following their approval. The franchisor or manufacturer shall either approve or disapprove the claim within thirty days after its receipt. If a claim is disapproved, the vehicle dealer who submitted the claim shall be notified in writing of its disapproval within the thirty-day period. Any claim rejected for technical reasons may be put into proper form by the vehicle dealer. Any claim resubmitted by the vehicle dealer within thirty days after the receipt of the claim shall be considered to be approved and payment shall be made within thirty days. The franchisor or manufacturer has the right to audit vehicle dealer claims for one year after payment and to charge back to the new vehicle dealer the amount of any unsubstantiated claim. If there is evidence of fraud by the vehicle dealer, the audit period is two years from the actual or constructive notice of facts constituting the alleged fraud.

Section 2. That § 32-6B-69 be amended to read as follows:

32-6B-69. No franchisor may modify a franchise during the terms of the franchise or upon its renewal if the modification would substantially and adversely affect the vehicle dealer's rights, obligations, investment, or return on investment without giving at least sixty days notice of the proposed modification to the vehicle dealer unless the change is required by law. Within the sixty-day period, the vehicle dealer may file an objection requesting a determination of whether good

cause exists for permitting the proposed modification with the Department of Revenue and Regulation and serve notice on the franchisor. The department shall promptly schedule a hearing to be held under the provisions of chapter 1-26 and decide the matter within ninety days from the date the protest is filed. Multiple protests pertaining to the same proposed modification shall be consolidated for hearing. No proposed modification may take effect with respect to the protesting vehicle dealer's franchise pending the determination of the matter. The written notice shall contain on the first page thereof a conspicuous statement which reads substantially as follows: "NOTICE TO DEALER: YOU MAY BE ENTITLED TO FILE A PROTEST WITH THE SOUTH DAKOTA DEPARTMENT OF REVENUE AND REGULATION IN PIERRE, SOUTH DAKOTA, AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE PROPOSED MODIFICATION OR REPLACEMENT OF YOUR FRANCHISE WITH A SUCCEEDING FRANCHISE UNDER THE TERMS OF SOUTH DAKOTA LAW IF YOU OPPOSE THIS ACTION."

This section does not apply to franchise agreements involving travel trailers or motor homes.

Section 3. That § 32-6B-84 be amended to read as follows:

32-6B-84. Notwithstanding the terms of any franchise, the manufacturer or franchisor may exercise a right of first refusal to acquire the vehicle dealer's assets or ownership if all of the following conditions are met:

- (1) The manufacturer or franchisor notifies the vehicle dealer in writing within sixty days of its receipt of the completed proposal for the sale or transfer and all related agreements of its exercise of the right of first refusal along with a concise statement of its reasons for doing so;
- (2) The exercise of the right of first refusal results in the vehicle dealer receiving the same or greater consideration as the vehicle dealer has contracted to receive in connection with the proposed change of ownership or transfer;

- (3) The proposed sale or transfer does not involve the transfer or sale to a member or members of the family of one or more vehicle dealers, or to a qualified manager with at least two years management experience at the dealership of one or more of such vehicle dealers, or to an entity controlled by such persons;
- (4) The manufacturer or franchisor agrees to pay the reasonable expenses, including attorney fees not to exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed owner or transferee prior to the manufacturer's or franchisor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed sale or transfer. The expenses and attorney fees shall be paid to the proposed new owner or transferee at the time of closing of the sale or transfer for which the manufacturer or franchisor exercised its right of first refusal. No payment of expenses and attorney fees is required if the proposed new owner or transferee has not submitted an accounting of those expenses within thirty days of the vehicle dealer's receipt of the manufacturer's or franchisor's written request for such an accounting. A manufacturer or franchisor may request an accounting before exercising a right of first refusal;
- (5) The vehicle dealer has no liability to any person or entity as to any disclosed term, condition, or issue as a result of a manufacturer or franchisor exercising a right of first refusal; and
- (6) Regardless of any express terms, provisions, or conditions of the franchise, the exercise of the right of first refusal is not unreasonable.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1179

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1179
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