

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

347L0684

## HOUSE BILL NO. 1179

Introduced by: Representatives Wick, Dennert, Hanks, Klaudt, and Peters and Senators  
McCracken, Kelly, Peterson (Jim), Sutton (Dan), and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the regulation of  
2 vehicle manufacturers, franchisors, and dealers.

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

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

5 32-6B-58. Every franchisor or manufacturer shall properly fulfill any warranty agreement  
6 and compensate, as set forth in § 32-6B-61, each of its vehicle dealers for labor and parts. The  
7 franchisor or manufacturer shall pay all claims made by a vehicle dealer for ~~such~~ the labor and  
8 parts within thirty days following their approval. The franchisor or manufacturer shall either  
9 approve or disapprove the claim within thirty days after its receipt. If a claim is disapproved, the  
10 vehicle dealer who submitted it the claim shall be notified in writing of its disapproval within  
11 the thirty-day period. Any claim rejected for technical reasons may be put into proper form by  
12 the vehicle dealer ~~and~~. Any claim resubmitted by the vehicle dealer within thirty days after the  
13 receipt of the claim shall be considered to be approved and payment shall be made within thirty  
14 days. The franchisor or manufacturer has the right to audit ~~the~~ the vehicle dealer claims for one year  
15 after payment and to charge back to the new vehicle dealer the amount of any unsubstantiated



1 claim. If there is evidence of fraud by the vehicle dealer, the audit period ~~shall be~~ is two years  
2 from the actual or constructive notice of facts constituting the alleged fraud.

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

4 32-6B-69. A No franchisor may ~~not~~ modify a franchise during the terms of the franchise or  
5 upon its renewal if the modification would substantially and adversely affect the vehicle dealer's  
6 rights, obligations, investment, or return on investment without giving at least ~~thirty~~ sixty days  
7 notice of the proposed modification to the vehicle dealer unless the change is required by law.

8 Within the ~~thirty-day~~ sixty-day period, the vehicle dealer may file an objection requesting a  
9 determination of whether good cause exists for permitting the proposed modification with the  
10 Department of Revenue and Regulation and serve notice on the franchisor. The department shall  
11 promptly schedule a hearing to be held under the provisions of chapter 1-26 and decide the  
12 matter within ~~sixty~~ ninety days from the date the protest is filed. Multiple protests pertaining to  
13 the same proposed modification shall be consolidated for hearing. ~~The~~ No proposed  
14 modification may ~~not~~ take effect with respect to the protesting vehicle dealer's franchise pending  
15 the determination of the matter. The written notice shall contain on the first page thereof a  
16 conspicuous statement which reads substantially as follows: "NOTICE TO DEALER: YOU  
17 MAY BE ENTITLED TO FILE A PROTEST WITH THE SOUTH DAKOTA DEPARTMENT  
18 OF REVENUE AND REGULATION IN PIERRE, SOUTH DAKOTA, AND HAVE A  
19 HEARING IN WHICH YOU MAY PROTEST THE PROPOSED MODIFICATION OR  
20 REPLACEMENT OF YOUR FRANCHISE WITH A SUCCEEDING FRANCHISE UNDER  
21 THE TERMS OF SOUTH DAKOTA LAW IF YOU OPPOSE THIS ACTION."

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

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

24 32-6B-84. Notwithstanding the terms of any franchise ~~agreements~~, the manufacturer or

1 franchisor may exercise a right of first refusal to acquire the ~~motor~~ vehicle dealer's assets or  
2 ownership if all of the following conditions are met:

3 (1) ~~In order to exercise the right of first refusal, the~~ The manufacturer or franchisor shall  
4 ~~notify~~ notifies the ~~motor~~ vehicle dealer in writing within sixty days of its receipt of  
5 the completed proposal for the sale or transfer and all related agreements of its  
6 exercise of the right of first refusal along with a concise statement of its reasons for  
7 doing so;

8 (2) The exercise of the right of first refusal ~~will result~~ results in the vehicle dealer  
9 receiving the same or greater consideration as the vehicle dealer has contracted to  
10 receive in connection with the proposed change of ownership or transfer;

11 (3) The proposed sale or transfer ~~of the dealership's assets~~ does not involve the transfer  
12 or sale to a member or members of the family of one or more vehicle dealers, or to  
13 a qualified manager with at least two years management experience at the dealership  
14 of one or more of ~~these~~ such vehicle dealers, or to a ~~partnership or corporation~~ an  
15 entity controlled by such persons;

16 (4) The manufacturer or franchisor agrees to pay the reasonable expenses, including  
17 attorney fees ~~which do not to~~ to exceed the usual, customary, and reasonable fees  
18 charged for similar work done for other clients, incurred by the proposed owner or  
19 transferee prior to the manufacturer's or franchisor's exercise of its right of first  
20 refusal in negotiating and implementing the contract for the proposed sale or transfer  
21 ~~of the dealership or dealership assets. Such.~~ The expenses and attorney fees shall be  
22 paid to the proposed new owner or transferee at the time of closing of the sale or  
23 transfer for which the manufacturer or franchisor exercised its right of first refusal.  
24 No payment of ~~such~~ expenses and attorney fees is required if the proposed new

1 owner or transferee has not submitted an accounting of those expenses within thirty  
2 days of the vehicle dealer's receipt of the manufacturer's or franchisors written  
3 request for such an accounting. A manufacturer or franchisor may request ~~such an~~ an  
4 accounting before exercising a right of first refusal; ~~and~~

5 (5) The vehicle dealer ~~does not have any~~ has no liability to any person or entity as to any  
6 disclosed term, condition, or issue as a result of a manufacturer or franchisor  
7 exercising a right of first refusal; and

8 (6) Regardless of any express terms, provisions, or conditions of the franchise, the  
9 exercise of the right of first refusal is not unreasonable.