

AN ACT

ENTITLED, An Act to authorize the secretary of Revenue and Regulation to issue a cease and desist order to vehicle, snowmobile, manufactured home, and boat dealers for certain violations, to authorize imposition of monetary penalties for failure to comply with a cease and desist order, and to modify the reasons for suspending or revoking a dealer's license.

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 addition to any other remedy provided by law, the secretary of revenue and regulation may issue an order directing a vehicle dealer to cease and desist from engaging in any act or practice enumerated in § 32-6B-41. A cease and desist order issued pursuant to this section shall be effective for a period of five years.

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

Within twenty days after service of the order to cease and desist, the vehicle dealer may request a hearing in writing on the question of whether acts or practices in violation of this title have occurred. Any hearing shall be conducted pursuant to, and judicial review shall be available as provided by, chapter 1-26.

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

A cease and desist order pursuant to section 1 of this Act becomes final upon expiration of the time allowed for appeals from the secretary's order if no appeal is taken, or, if an appeal is taken, upon final decision of the court if the court affirms the secretary's order or dismisses the appeal.

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

follows:

If a dealer fails to comply with a cease and desist order issued pursuant to section 1 of this Act, the secretary may issue an order which:

- (1) Imposes a monetary penalty on the dealer of five hundred dollars for each violation of the cease and desist order;
- (2) Suspends dealer's license for not more than thirty days; or
- (3) Revokes the dealer's license.

All monetary penalties collected pursuant to this section shall be deposited into the state motor vehicle fund.

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

A dealer may request a hearing to contest an order issued pursuant to section 4 of this Act. The request shall be submitted to the secretary in writing within twenty days after service of the order. Any hearing shall be conducted pursuant to, and judicial review shall be available as provided by, chapter 1-26.

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

An order issued pursuant to section 4 of this Act becomes final upon expiration of the time allowed for appeals from the secretary's order, if no appeal is taken, or, if an appeal is taken, upon final decision of the court if the court affirms the secretary's order or dismisses the appeal.

Section 7. That § 32-6B-41 be amended to read as follows:

32-6B-41. The department may deny any application or apply the provisions of sections 1 to 6, inclusive, of this Act on any license issued under the provisions of this chapter, for any of the following:

- (1) Commission of fraud or willful misrepresentation in the application for or in obtaining a license;
- (2) Conviction of a felony involving vehicle theft or odometer fraud in the last five years;
- (3) A violation of any law of this state which relates to dealing in vehicles;
- (4) Failure to comply with any administrative rule promulgated by the department;
- (5) Perpetration of a fraud upon any person as a result of dealing in vehicles;
- (6) Failure to apply for transfers of title as required in chapter 32-3;
- (7) Failure to allow department inspections, including initial and annual inspections, complaint investigations, and necessary follow-up inspections;
- (8) Misrepresentation through false, deceptive, or misleading statements with regard to the sale or financing of vehicles which a dealer has, or causes to have, advertised, printed, displayed, published, distributed, broadcast, televised, or made in any manner with regard to the sale or financing of vehicles;
- (9) Refusal to comply with a licensee's responsibility under the terms of the new vehicle warranty issued by its respective manufacturer, unless such refusal is at the direction of the manufacturer;
- (10) Failure to comply with the terms of any bona fide written, executed agreement pursuant to the sale of a vehicle;
- (11) Inability to obtain or renew surety bond or to participate in a dealer asset pool;
- (12) Failure to maintain and continuously occupy a principal place of business; or
- (13) Failure to obtain or renew a public liability insurance policy of not less than three hundred thousand dollars, if the dealer has been given thirty days written notice to comply.

Section 8. That § 32-6B-40 be repealed.

Section 9. That § 32-6B-43 be repealed.

Section 10. That § 32-6B-44 be repealed.

Section 11. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as follows:

In addition to any other remedy provided by law, the secretary of revenue and regulation may issue an order directing a snowmobile dealer to cease and desist from engaging in any act or practice enumerated in § 32-6C-14. A cease and desist order issued pursuant to this section is effective for a period of five years.

Section 12. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as follows:

Within twenty days after service of the order to cease and desist, the snowmobile dealer may request a hearing in writing on the question of whether acts or practices in violation of this title have occurred. Any hearing shall be conducted pursuant to, and judicial review shall be available as provided by, chapter 1-26.

Section 13. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as follows:

A cease and desist order pursuant to section 11 of this Act becomes final upon expiration of the time allowed for appeals from the secretary's order if no appeal is taken, or, if an appeal is taken, upon final decision of the court if the court affirms the secretary's order or dismisses the appeal.

Section 14. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as follows:

If a dealer fails to comply with a cease and desist order issued pursuant to section 11 of this Act, the secretary may issue an order which:

- (1) Imposes a monetary penalty on the dealer of five hundred dollars for each violation of the cease and desist order;

(2) Suspends dealer's license for not more than thirty days; or

(3) Revokes the dealer's license.

All monetary penalties collected pursuant to this section shall be deposited into the state motor vehicle fund.

Section 15. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as follows:

A dealer may request a hearing to contest an order issued pursuant to section 14 of this Act. The request shall be submitted to the secretary in writing within twenty days after service of the order. Any hearing shall be conducted pursuant to, and judicial review shall be available as provided by, chapter 1-26.

Section 16. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as follows:

An order issued pursuant to section 14 of this Act becomes final upon expiration of the time allowed for appeals from the secretary's order, if no appeal is taken, or, if an appeal is taken, upon final decision of the court if the court affirms the secretary's order or dismisses the appeal.

Section 17. That § 32-6C-14 be amended to read as follows:

32-6C-14. The department may deny any application or apply the provisions of sections 11 to 16, inclusive, of this Act on any license issued under the provisions of this chapter, for any of the following:

(1) Commission of fraud or willful misrepresentation in the application for or in obtaining a license;

(2) Conviction of a felony involving the theft of snowmobiles or other motor vehicles in the last five years;

(3) A violation of any law of this state which relates to dealing in snowmobiles;

- (4) Failure to comply with any administrative rule promulgated by the department;
- (5) Perpetration of a fraud upon any person as a result of dealing in snowmobiles;
- (6) Failure to apply for transfers of title as required in chapters 32-3 and 32-20A;
- (7) Failure to allow department inspections, including initial and annual inspections, complaint investigations, and necessary follow-up inspections;
- (8) Misrepresentation through false, deceptive, or misleading statements with regard to the sale or financing of snowmobiles which a dealer has, or causes to have, advertised, printed, displayed, published, distributed, broadcast, televised, or made in any manner with regard to the sale or financing of snowmobiles;
- (9) Refusal to comply with a licensee's responsibility under the terms of a snowmobile warranty issued by its respective manufacturer, unless such refusal is at the direction of the manufacturer;
- (10) Failure to comply with the terms of any bona fide written, executed agreement pursuant to the sale of a snowmobile;
- (11) Failure to disclose damage to a new snowmobile of which the dealer had knowledge if the dealer's actual cost to repair, exceeds five percent of the manufacturer's suggested retail price; or
- (12) Inability to obtain or renew surety bond.

Section 18. That § 32-6C-13 be repealed.

Section 19. That § 32-6C-15 be repealed.

Section 20. That § 32-6C-16 be repealed.

Section 21. That chapter 32-7A be amended by adding thereto a NEW SECTION to read as follows:

In addition to any other remedy provided by law, the secretary of revenue and regulation may

issue an order directing a dealer to cease and desist from engaging in any act or practice enumerated in § 32-7A-4.2. A cease and desist order issued pursuant to this section is effective for a period of five years.

Section 22. That chapter 32-7A be amended by adding thereto a NEW SECTION to read as follows:

Within twenty days after service of the order to cease and desist, the dealer may request a hearing in writing on the question of whether acts or practices in violation of this title have occurred. Any hearing shall be conducted pursuant to, and judicial review shall be available as provided by, chapter 1-26.

Section 23. That chapter 32-7A be amended by adding thereto a NEW SECTION to read as follows:

A cease and desist order pursuant to section 21 of this Act becomes final upon expiration of the time allowed for appeals from the secretary's order if no appeal is taken, or, if an appeal is taken, upon final decision of the court if the court affirms the secretary's order or dismisses the appeal.

Section 24. That chapter 32-7A be amended by adding thereto a NEW SECTION to read as follows:

If a dealer fails to comply with a cease and desist order issued pursuant to section 21 of this Act, the secretary may issue an order which:

- (1) Imposes a monetary penalty on the dealer of five hundred dollars for each violation of the cease and desist order;
- (2) Suspends dealer's license for not more than thirty days; or
- (3) Revokes the dealer's license.

All monetary penalties collected pursuant to this section shall be deposited into the state motor vehicle fund.

Section 25. That chapter 32-7A be amended by adding thereto a NEW SECTION to read as follows:

A dealer may request a hearing to contest an order issued pursuant to section 24 of this Act. The request shall be submitted to the secretary in writing within twenty days after service of the order. Any hearing shall be conducted pursuant to, and judicial review shall be available as provided by, chapter 1-26.

Section 26. That chapter 32-7A be amended by adding thereto a NEW SECTION to read as follows:

An order issued pursuant to section 24 of this Act becomes final upon expiration of the time allowed for appeals from the secretary's order, if no appeal is taken, or, if an appeal is taken, upon final decision of the court if the court affirms the secretary's order or dismisses the appeal.

Section 27. That § 32-7A-4.2 be amended to read as follows:

32-7A-4.2. The department may deny any application or apply the provisions of sections 21 to 26, inclusive, of this Act on any license issued under the provisions of this chapter, for any of the following:

- (1) Commission of fraud or willful misrepresentation in the application for or in obtaining a license;
- (2) A previous manufacturer or dealer license revocation in this or any other state;
- (3) A violation of any law of this state which relates to dealing in manufactured homes or mobile homes;
- (4) Failure to comply with any administrative rule promulgated by the department;
- (5) Perpetration of a fraud upon any person as a result of dealing in manufactured homes or mobile homes;
- (6) Failure to allow department inspections, including initial and annual inspections,

- complaint investigations and necessary follow-up inspections;
- (7) Misrepresentation through false, deceptive, or misleading statements with regard to the sale or financing of manufactured homes or mobile homes which a dealer has, or causes to have, advertised, printed, displayed, published, distributed, broadcast, televised, or made in any manner with regard to the sale or financing of manufactured homes or mobile homes;
  - (8) Refusal to comply with a licensee's responsibility under the terms of the new manufactured home or mobile home warranty issued by its respective manufacturer, unless such refusal is at the direction of the manufacturer;
  - (9) Failure to comply with the terms of any bona fide written, executed agreement pursuant to the sale of a manufactured home or mobile home;
  - (10) Violation by the dealer of any applicable manufactured home building or safety code;
  - (11) Failure to continuously occupy a principal place of business licensed under § 32-7A-2;
  - (12) Failure to deliver the manufacturer's statement of origin to the county treasurer or the certificate of title to a person entitled to it within thirty days after date of delivery;
  - (13) Conviction within the previous five years, of a crime that related directly to the business of the dealer or manufacturer involving fraud, misrepresentation or misuse of funds;
  - (14) Inability to obtain or renew a surety bond; or
  - (15) Misuse of the dealers' metal plates and lending for use on mobile homes or manufactured homes not owned by the manufacturer or dealer.

Section 28. That § 32-7A-20 be repealed.

Section 29. That § 32-7A-21 be repealed.

Section 30. That § 32-7A-22 be repealed.

Section 31. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as

follows:

In addition to any other remedy provided by law, the secretary of revenue and regulation may issue an order directing a boat dealer to cease and desist from engaging in any act or practice enumerated in § 32-7B-17. A cease and desist order issued pursuant to this section is effective for a period of five years.

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

Within twenty days after service of the order to cease and desist, the boat dealer may request a hearing in writing on the question of whether acts or practices in violation of this title have occurred. Any hearing shall be conducted pursuant to, and judicial review shall be available as provided by, chapter 1-26.

Section 33. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as follows:

A cease and desist order pursuant to section 31 of this Act becomes final upon expiration of the time allowed for appeals from the secretary's order if no appeal is taken, or, if an appeal is taken, upon final decision of the court if the court affirms the secretary's order or dismisses the appeal.

Section 34. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as follows:

If a dealer fails to comply with a cease and desist order issued pursuant to section 31 of this Act, the secretary may issue an order which:

- (1) Imposes a monetary penalty on the dealer of five hundred dollars for each violation of the cease and desist order;
- (2) Suspends dealer's license for not more than thirty days; or
- (3) Revokes the dealer's license.

All monetary penalties collected pursuant to this section shall be deposited into the state motor vehicle fund.

Section 35. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as follows:

A dealer may request a hearing to contest an order issued pursuant to section 34 of this Act. The request shall be submitted to the secretary in writing within twenty days after service of the order. Any hearing shall be conducted pursuant to, and judicial review shall be available as provided by, chapter 1-26.

Section 36. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as follows:

An order issued pursuant to section 34 of this Act becomes final upon expiration of the time allowed for appeals from the secretary's order, if no appeal is taken, or, if an appeal is taken, upon final decision of the court if the court affirms the secretary's order or dismisses the appeal.

Section 37. That § 32-7B-17 be amended to read as follows:

32-7B-17. The department may deny any application or apply the provisions of sections 31 to 36, inclusive, of this Act on any license issued under the provisions of this chapter, for any of the following:

- (1) Commission of fraud or willful misrepresentation in the application for or in obtaining a license;
- (2) Conviction of a felony involving the theft of boats or other motor vehicles in the last five years;
- (3) A violation of any law of this state that relates to dealing in boats;
- (4) Failure to comply with any administrative rule promulgated by the department;
- (5) Perpetration of a fraud upon any person as a result of dealing in boats;

- (6) Failure to apply for transfers of title as required in chapters 32-3 and 42-8;
- (7) Failure to allow department inspections, including initial and annual inspections, complaint investigations and necessary follow-up inspections;
- (8) Misrepresentation through false, deceptive, or misleading statements with regard to the sale or financing of boats which a dealer has, or causes to have, advertised, printed, displayed, published, distributed, broadcasted, televised, or made in any manner with regard to the sale or financing of boats;
- (9) Refusal to comply with a licensee's responsibility under the terms of a boat warranty issued by its respective manufacturer, unless such refusal is at the direction of the manufacturer;
- (10) Failure to comply with the terms of any bona fide written, executed agreement pursuant to the sale of a boat;
- (11) Inability to obtain or renew surety bond; or
- (12) Failure to maintain a principal place of business.

Section 38. That § 32-7B-16 be repealed.

Section 39. That § 32-7B-18 be repealed.

Section 40. That § 32-7B-19 be repealed.

An Act to authorize the secretary of Revenue and Regulation to issue a cease and desist order to vehicle, snowmobile, manufactured home, and boat dealers for certain violations, to authorize imposition of monetary penalties for failure to comply with a cease and desist order, and to modify the reasons for suspending or revoking a dealer's license.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1060

\_\_\_\_\_  
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. 1060  
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