

SECTION 1

REQUIREMENTS TO BE A LICENSED DEALER

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South Dakota requires that people who engage in the business of selling vehicles/boats, whether exclusively or in addition to any other occupation have a dealer license.

A vehicle dealer is defined as: “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.”

A used vehicle dealer is defined as: “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; or any person who sells five or more used vehicles or offers for sale five or more used vehicles at the same address or telephone number in one calendar year.” (Any person who sells less than 5 vehicles in a 12 month period, unless the person is licensed as a dealer in another state or holds himself or herself out as being in the business of selling vehicles, is exempt.)

A trailer dealer is defined as: “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, recreational park trailers, or travel trailers or who is engaged in the business of selling new or used trailers, semitrailers, recreational park trailers, or travel trailers whether or not such vehicles are owned by such person.” (Any person who sells less than 3 travel trailers in a 12 month period, unless the person is licensed as a dealer in another state or holds himself or herself out as being in the business of selling trailers, is exempt.)

A mobile home dealer is defined as: “any person, other than a manufacturer of a mobile home or a manufactured home, who sells three or more mobile homes or manufactured homes in any consecutive twelve month period.

A snowmobile dealer is defined as: “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 snowmobiles, or who is engaged wholly or in part in the business of selling new or used snowmobiles.”

A boat dealer is defined as: “any person who, for commission or with intent to make a profit or gain, sells, exchanges, rents, or leases with the 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.

Emergency vehicle dealer is defined as: “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.

There are exceptions that have been granted from the requirements of having a dealer’s license.

1. Any receiver, trustee, administrator, executor, guardian or other person appointed by or acting under the judgment or order of any court.
2. Any public officer while performing the officer’s official duties.
3. Any employee of any person licensed as a vehicle dealer if engaged in the specific performance of the employee’s duties.
4. Any person not engaged in the sale of vehicles as a business who operates fleets of vehicles and is disposing of vehicles used in the person’s business if the same were acquired and used in good faith and not for the purpose of avoiding the provisions of dealer licensing.
5. Any regulated lenders as that term is defined in §54-3-14, an insurance company authorized to do business in this state or any financing institution as defined in and licensed pursuant to chapter 54-7 that acquires vehicles as an incident to its regular business.
- 5A. Any financial institution chartered or licensed in any other jurisdiction that acquires vehicles as an incident to its regular business and sells such vehicles to licensed dealers.
6. Any vehicle rental and leasing company that sells its used vehicles to licensed dealers.
7. Any nonprofit automobile club if selling automobiles twenty years old or older.

8. Any person engaged in the business of manufacturing or converting new vehicles if selling such vehicles to a licensed dealer holding a franchise from the original manufacturer of the vehicle.

8A. Any person who sells less than 5 vehicles in a 12 month period, unless the person is licensed as a dealer in another state or holds himself or herself out as being in the business of selling vehicles. However, if the vehicles are travel trailers, any person who sells less than 3 travel trailers in a 12 month period, unless the person is licensed as a dealer in another state or holds himself or herself out as being in the business of selling trailers.

9. Any person acting as an auctioneer if auctioning South Dakota titled vehicles for a licensed dealer or a person who is exempt from the provisions of dealer licensing.

10. Any towing agency that acquires and sells a vehicle which has been towed at the request of a private landowner under the provision of chapter 32-36 or at the request of a law enforcement officer, if no vehicle is sold for an amount over two hundred dollars.

11. Any person not engaged in the sale of vehicles as a business and is disposing of vehicles used solely for personal use if the vehicles were acquired and used in good faith and not for the purpose of avoiding the provisions of dealer licensing.

Dealer license applications are obtained from the county treasurer in the county where the licensee will be conducting business. No applicant, nor any other partner, member, officer or financial supporter of the dealership may have been convicted of a crime involving vehicle theft or fraud in the last five years. The fees for dealer license depend on the type of license the dealer is obtaining.

1. Vehicle dealer license -- \$300
2. Used vehicle dealer license -- \$300
3. Mobile/manufactured home dealer license -- \$300
4. Motorcycle dealer license -- \$250
5. Snowmobile dealer license -- \$150
6. Trailer dealer license -- \$125
7. Boat dealer license -- \$250

8. Emergency vehicle dealer license -- \$300

A vehicle dealer's license and used vehicle dealer's license allows the licensee to sell a broad range of vehicles. In addition to being able to sell vehicles, they are also able to sell motorcycles and trailers without specifically acquiring those licenses. A dealer selling low-speed vehicles must be licensed as a vehicle dealer or used vehicle dealer. A boat dealer license allows a boat dealer to sell boat trailers without a separate license. However, dealers of motorcycles, trailers, mobile/manufactured homes and snowmobiles must have that specific category of license.

A dealer's license authorizing the sale of new vehicles, listing vehicles the dealer is authorized to sell, will not be issued until a franchise agreement between the dealer and the manufacturer of the new vehicles the dealer proposes to deal in is filed with the department. If a franchisor seeks to terminate or not continue the franchise, unless the dealer elects to voluntarily terminate the franchise, or seeks to enter into an additional franchise of the same make of vehicle that is already represented in a community, the franchisor must notify the department.

In addition to the other requirements set out for a license, a new vehicle dealer must have, within the principal place of business, or within the county of the principal place of business, a repair shop, with space to repair, service, maintain and recondition one or more vehicles and shall be equipped with ample tools, parts and accessories.

The dealer license application must be completed in its entirety and submitted with the fee, original surety bond, a certificate of public liability insurance (when the license requires insurance), and written verification of conformance with land use ordinances, building codes, and zoning from the city or county. The application and fees are forwarded from the county treasurer's office to the Division of Motor Vehicles in Pierre. The application is then routed to the dealer inspector.

During licensing year 2000, a staggered license renewal system was implemented for all license types. License renewal notices and billings are mailed out to all licensees within 3 months of expiration of a license. (The South Dakota Dealer License Application Form previously used for renewal of a license is now used only for an initial application for a dealer license.) The license renewal notice and billing must be reviewed, updated, and submitted, along with required fees, to the county treasurer's office of the dealership prior to the expiration of the license. **(Note: If the notice is not submitted by the deadline date, an initial license fee will be assessed.)**

When an initial license is issued, the license is issued for a 12-month period. During the following renewal period, the license renewal and billing period includes only those months that will take the dealer to his requested/assigned staggered registration month, provided a dealer opts to change his renewal month from the month of his original application for license. If the assigned staggered registration renewal month is within 6 months of expiration of the current license, fees are assessed into the next licensing year. The renewal fee is prorated according to the number of months in the billing period.

The license renewal notice and billing also includes dealer plates assigned to the dealership. When increasing or decreasing the number of plates assigned, the change must be noted on the notice and the billing adjusted accordingly.

The actual (paper) dealer license and dealer plates are issued with an expiration date of 2010 (5-year cycle). The license, however, must be renewed annually by following the procedure noted above (verifying and submitting the license renewal notice and billing, along with the required fees, to the county treasurer of the dealership).

The renewal fee, if submitted prior to the expiration of the old license, is based on the following schedule:

1. Vehicle dealer license -- \$175
2. Used vehicle dealer license -- \$175
3. Mobile/manufactured home dealer license -- \$150
4. Motorcycle dealer license -- \$150
5. Snowmobile dealer license -- \$125
6. Trailer dealer license -- \$100
7. Boat dealer license -- \$175
8. Emergency vehicle dealer license -- \$175

A surety bond is required for most licensed dealers. The bond must be executed by the applicant as principal and by a surety company qualified to do business in the state as surety. The amount of the bond is based upon the type of license applied for.

1. Vehicle dealer license -- \$25,000

2. Used vehicle dealer license -- \$25,000
3. Mobile/manufactured home dealer license -- \$25,000
4. Motorcycle dealer license -- \$5,000
5. Trailer dealer license -- \$10,000 for trailers weighing 2,000 pounds or more
6. Snowmobile dealer license -- \$5,000
7. Boat dealer license -- \$20,000

Vehicle dealers, used vehicle dealers and motorcycle dealers are obligated to have a public liability insurance policy of not less than three hundred thousand dollars. This is not required of trailer dealers, snowmobile dealers, mobile/manufactured home dealers, and boat dealers.

All applicants and existing dealerships must have a principal place of business that conforms to the laws and rules under dealer licensing. For vehicle, used vehicle, motorcycle, trailer, and boat dealers, this requires an enclosed structure located within the state, easily accessible and open to the public at all reasonable times. There must be an improved area adjoining the building that is large enough to display five or more vehicles/boats of the type the dealer is licensed to sell.

Additionally, the principal place of business location must accord to all applicable land use ordinances, building codes and zoning. It is the location that all books, records and files necessary to conduct business are kept and maintained. In no event may rooms in a hotel, motel, apartment house or any part of a single or multiple unit dwelling house be considered a "principal place of business", unless the entire ground floor is devoted principally to, and occupied for, commercial purposes. The principal place of business must have separate office space for conducting business if more than one business occupies the structure. To maintain a principal place of business, the licensed dealer must be open for business on a continuing basis, with normal business hours posted in a place visible for viewing by the public. The dealership must maintain a telephone and telephone number, with the number being listed in the white or yellow pages, in the name of the dealership. In the event the principal place of business is in a structure which houses more than one business, the dealer's office must be separate from the other business. A dealer inspector must inspect all principal places of business and certify they are in accordance with the law before a dealer license is issued.

The principal place of business for mobile/manufactured homes is essentially the same as previously stated, however, there are some differences. The place

of business for mobile/manufactured home dealers may not be a tent, temporary stand or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement. The licensee may use unimproved lots and premises for sale, storage and display of mobile homes and manufactured homes. A licensee may use a residence located within or adjacent to his mobile home park or a manufactured home park as a principal place of business unless prohibited by local zoning.

Snowmobile dealers do not have a principal place of business requirement.

In addition to the other requirements set out for a license, a new vehicle dealer must have within the principal place of business or within the county of the principal place of business, a repair shop with space to repair, service, maintain and recondition one or more vehicles and shall be equipped with ample tools, parts and accessories.

Every person licensed as a dealer shall display his license in a conspicuous place at the principal place of business.

A dealer licensee is allowed to move a principal place of business to a new location within the county. The Office of Dealer Licensing must be notified in writing 30 days in advance of the proposed move. A dealer inspector, to insure it meets the requirements mentioned previously, shall inspect the new principal place of business. The dealer will be required to furnish written verification of conformance with building and zoning from the city or county on the new location. The bond and insurance on file with the department must also be updated, if needed, with new certificates or riders.

A dealership temporarily closed must conspicuously display notification in public view at the established place of business. Written notice must be sent to the department 30 days in advance of temporary closing.

A licensee is permitted to sell, store and display vehicles/boats on premises other than their principal place of business. This location is called a supplemental lot and requires a supplemental license. The supplemental lot may be an unimproved lot and must meet all local zoning codes and ordinances. The lot must be located within the county for which the original license is issued. The dealer inspector must inspect the location for approval prior to the supplemental license being issued. Titles and paperwork on vehicles/boats sold at a supplemental dealership must be completed under the primary dealership license. The dealership name used for a supplemental dealership must be the same name as the primary dealership or must have the primary dealership name incorporated into it. The title and paperwork must list the primary dealership name. Advertising also falls under these guidelines. There is no additional fee for the supplemental license. If a dealer chooses to

operate a supplemental dealership under a separate name from the primary dealership, the business is not considered a supplemental dealership and a separate license is required.

A dealer licensed under S.D.C.L. 32-6B may **display** vehicles within the corporate limits of a municipality where the dealer is licensed.

A temporary supplemental lot is a location other than the principal place of business or supplemental lot 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, where a licensee may conduct business for a period of time which may not exceed ten consecutive days. This type of lot is for a specific purpose such as fairs, auto shows, auctions, shopping center promotions or tent sales. Temporary supplemental lots shall meet all local zoning and building codes for the type of business being conducted. An additional license is not required for these lots.

[*The adjoining county can have no licensed (new) vehicle dealer selling automobiles, pick-ups, or passenger vans and can be no more than 10 miles from the principal place of business. If a licensed new 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 new vehicle dealer.]

A licensed vehicle dealer may establish, for manufactured sponsored events, a temporary supplemental lot in an adjoining county that has no like franchised licensed dealer.

A temporary special events lot is a location other than the principal place of business, supplemental lot, or temporary supplemental lot outside the county of the principal place of business where a licensed trailer dealer, a licensed vehicle dealer or used vehicle dealer selling only truck tractors, travel trailers or motor homes, or any combination, may conduct business for a period of time not to exceed 10 consecutive days for a specific purpose, such as fairs, auctions, shopping center sales, or tent sales. A temporary special event's lot shall meet all zoning and building codes for the type of business being conducted.

An auxiliary lot is a physically separate location, such as a mobile home park, manufactured housing rental community, manufactured housing subdivision, or any residential lot where a licensed mobile home or manufactured home dealer may display manufactured homes or mobile homes. An auxiliary lot may be located outside the county of the principal place of business of the dealer. A dealer must obtain a supplemental license for an auxiliary lot. An auxiliary lot shall meet all local zoning codes and ordinances.

A temporary boat show lot is a location other than the principal place of business or supplemental lot outside the county of the principal place of business where a licensed boat dealer may conduct business for a period of time not to exceed 10 consecutive days for a specific purpose, such as fairs, shopping center sales, or boat shows. A temporary boat show lot must meet all local zoning and building codes.

To enforce compliance with the laws and regulations pertaining to dealers, a dealer inspector/agent of the department may enter both publicly owned and privately owned property and sign complaints when a violation is found.

In each calendar year, a dealer investigation may be performed to determine if any violations exist. The investigation may include an inspection of the principal place of business, supplemental lots, and any books, records or files required by the department. An examination of the titles/MSOs and vehicles owned and offered for sale may also be done.

If a dealer refuses to allow an inspection/investigation, an inspection/investigation will not be done. If during the course of an inspection/investigation, a dealer refuses to allow it to continue, the inspection/investigation will cease. In either case, the department may initiate revocation proceedings against the dealer's license.