

ARTICLE 61:24
VEHICLE DEALER LICENSING

Chapter

- 61:24:01 Definitions, Repealed.
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CHAPTER 61:24:01

DEFINITIONS

(Repealed)

Section

61:24:01:01 Repealed.

61:24:01:02 Repealed.

61:24:01:03 Temporary closing defined, Repealed.

61:24:01:03. Temporary closing defined. ~~Temporary closing means that the principal place of business is closed more than ten continuous days for any purpose~~ Repealed.

Source: 16 SDR 111, effective January 7, 1990; 24 SDR 180, effective July 1, 1998.

General Authority: ~~SDCL 32-6B-60, 32-7B-20.~~

Law Implemented: ~~SDCL 32-6B-60, 32-7B-21.~~

CHAPTER 61:24:03
CONDUCT OF BUSINESS

Section

61:24:03:00 Definitions.

61:24:03:01 Maintenance of principal place of business.

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61:24:03:13 Billing requirements.

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61:24:03:15 Temporary closure.

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61:24:03:17 Liquidation upon permanent closure.

61:24:03:00. Definitions. Terms used in this chapter mean:

- (1) "Department," the Department of Revenue;
- (2) "Liquidate," the sale or transfer of motor vehicles out of the licensed dealer's inventory upon the dealer's permanent closure;
- (3) "Permanent closure," the date when a licensed dealer:
 - (a) Closes its dealer operations with no intention of recommencing its operations;
 - (b) Surrenders its dealer license; or
 - (c) Fails to renew its dealer license within ninety days of expiration; and
- (4) "Temporary closure," the closure of a principal place of business for more than ten consecutive days, without permanently closing.

Source:

General Authority: SDCL 32-6B-60, 32-6C-17, 32-7A-14.1, 32-7B-20.

Law Implemented: SDCL 32-6B-2, 32-6B-14, 32-6C-3, 32-6C-5, 32-7A-2, 32-7A-7, 32-7B-8, 32-7B-21.

61:24:03:01. Maintenance of principal place of business. A dealer licensed by the department shall at all times maintain a principal place of business as defined in SDCL 32-6B-2, 32-7A-2, ~~and or 32-7B-21, as applicable.~~ ~~To be considered to maintain a principal place of business, the licensed dealer~~ The principal place of business must be open for business on a continuing basis with normal business hours posted in a conspicuous place in view of the public. The dealer shall list the telephone number of the business in the white pages, the yellow pages, or other similar printed or electronic published telephone directory.

~~A telephone number in the name of the business must be listed in either the white or yellow pages. A telephone answering machine may be used to increase accessibility.~~

~~The dealer must show proof of compliance~~ shall provide the department with proof, by means of photographs, letters, and affidavits, that the principal place of business complies with all state and local zoning, building codes, and land use ordinances ~~by means of photographs, letters, and affidavits.~~

~~The principal place of business must have separate office space for conducting business if~~ If more than one business occupies the structure comprising the principal place of business, the dealer must have separate office space from the other business.

~~A business 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. An address or telephone number where the owner may be contacted must be included in the notice.~~

Source: 16 SDR 111, effective January 7, 1990; 24 SDR 180, effective July 1, 1998; 35 SDR 48, effective September 8, 2008.

General Authority: SDCL 32-6C-17, 32-7A-14.1, 32-7B-20.

Law Implemented: SDCL 32-6B-2, ~~32-6B-60~~, 32-6C-3, 32-7A-2, 32-7B-21, 32-7B-22.

61:24:03:02. Notice of change in principal place of business. A licensed dealer-licensee ~~desiring to move the~~ moving its principal place of business to a new location ~~must notify~~ shall send written notice to the department ~~in writing 30~~ at least thirty days in advance of the proposed move. ~~The new principal place of business shall be inspected by the department pursuant to~~
~~§ 61:24:02:02.~~

Source: 16 SDR 111, effective January 7, 1990; 24 SDR 180, effective July 1, 1998.

General Authority: SDCL 32-6B-60, 32-6C-17, 32-7A-14.1, 32-7B-20.

Law Implemented: SDCL 32-6B-2, 32-6B-18, 32-6C-3, 32-7A-2, 32-7B-22.

61:24:03:03. Record keeping requirements. ~~A licensed dealer must keep the records specified in SDCL chapters 32-6B and 32-7B in the office of the dealer's principal place of business, unless a contract is entered into between a titling service and a licensed dealer. The contract must state the terms of the agreement and must include: (1) The exact location of where the titling service will keep the records; (2) Define a reasonable time period, not to exceed 4 days, that the records will be kept at the title service; (3) Require that all title records be available to the state while the records are held at the title service; and (4) Identify the responsible party for the lost title documents between the title service and the dealer.~~

~~Any record subject to inspection, pursuant to law must be maintained by the dealer for five years. A licensed dealer shall retain the physical or electronic records specified in SDCL chapters 32-6B, 32-6C, 32-7A, and 32-7B, for a period of five years. The dealer shall maintain a physical record in its original form for at least twelve months.~~

~~A dealer may contract with a titling service and authorize the service to temporarily retain the records if the contract:~~

- ~~(1) Describes the exact location where the title service is to keep the records;~~
- ~~(2) Specifies the time period, not to exceed four days, in which the records are to be kept at the title service;~~
- ~~(3) Requires that all title records be available to the state while the records are held at the title service; and~~
- ~~(4) Identifies the party responsible for lost title documents.~~

Source: 16 SDR 111, effective January 7, 1990; 24 SDR 180, effective July 1, 1998; 35 SDR 48, effective September 8, 2008.

General Authority: SDCL 32-6B-60, 32-7B-20.

Law Implemented: SDCL 32-6B-20, 32-6C-6, ~~32-7A-12~~ 32-7A-12, 32-7B-9, 32-7B-14,
32-7B-17.

61:24:03:05. Contents of consignment contract. The consignment contract required by SDCL chapters 32-6B, 32-6C, and 32-7B, and a contract for assignment sale under SDCL chapter 32-7A, must contain, ~~at a minimum,~~ the following information:

- (1) The name and address of the consignor ~~(, who is the owner)~~;
- (2) The name and address of the consignee ~~(, who is the dealer or auctioneer)~~;
- (3) The title number, the year, the make, and the serial number or hull identification number of the vehicle, mobile or manufactured home, or boat;
- (4) If applicable, the completed odometer disclosure;
- (5) The agreed-upon price or price range;
- (6) The agreed-upon amount that the ~~owner~~consignor is to pay the ~~dealer or auctioneer~~consignee;
- (7) The length of time the vehicle, snowmobile, mobile or manufactured home, or boat ~~will~~ is to be with the ~~dealer or auctioneer~~consignee;
- (8) Disclosure by the ~~dealer or auctioneer~~consignee that the sale is a consignment sale;
- (9) The signature of the ~~owner~~consignor and the ~~dealer or auctioneer~~consignee; and
- (10) If applicable, the lienholder's information.

Source: 24 SDR 31, effective September 17, 1997; 24 SDR 180, effective July 1, 1998; 35 SDR 48, effective September 8, 2008; SL 2015, ch 157, § 22, effective July 1, 2015.

General Authority: SDCL 32-6B-60, 32-6C-17, 32-7A-14.1, 32-7B-20.

Law Implemented: SDCL 32-6B-3, 32-6B-20, 32-6B-20.3, 32-6B-37, 32-6C-5.1, 32-7A-12.2, 32-7A-16, 32-7B-26.

61:24:03:06. Records to be made available prior to consignment sale. ~~Prior to a consignment sale, the~~ The following physical or electronic documents must be available at the dealership or auction for inspection by the department at all times after the vehicle, snowmobile, mobile or manufactured home, or boat is delivered to the consignee for sale:

- (1) The South Dakota title in the name of the consignor;
- (2) A completed and signed consignment-sales contract containing the information required in § 61:24:03:05;
- (3) If applicable and not included in the contract, the vehicle's odometer reading certified by the owner; and
- (4) A seller's permit.

~~A Federal Trade Commission (FTC) Buyer Guide must be displayed in a vehicle being offered for sale on consignment on the dealer lot.~~ Licensed dealers consigning titled units shall display the Federal Trade Commission Buyer Guide in a vehicle, snowmobile, mobile or manufactured home, or boat being offered for sale on consignment on the lot. A consignee with electronic records shall maintain physical documents for the prior twelve months at the consignee's principal place of business.

Source: 24 SDR 31, effective September 17, 1997; 24 SDR 180, effective July 1, 1998; 35 SDR 48, effective September 8, 2008; SL 2015, ch 157, § 23, effective July 1, 2015.

General Authority: SDCL 32-6B-60, 32-6C-17, 32-7A-14.1, 32-7B-20.

Law Implemented: SDCL 32-6B-3.2, 32-6B-20, 32-6B-20.3, 32-6B-37, 32-6C-6, 32-7A-12, 32-7A-16, 32-7B-26, 32-7B-28.

Note: A copy of the ~~FTC~~ Federal Trade Commission Buyer Guide may be obtained from the Federal Trade Commission at: https://www.ftc.gov/system/files/documents/plain-language/cfr_buyers_guides_english.pdf ~~1961 Stout Street, Suite 1523, Denver, CO 80294.~~

61:24:03:07. Records to be maintained for five years. ~~A dealer or auctioneer must maintain~~Auctioneers and licensed dealers shall keep physical or electronic records, and documents, and including contracts for consignment sales, maintained and available for inspection by the department for five years following the sale. Auctioneers and dealers shall maintain physical records for the past twelve months at the dealer's or auctioneer's principal place of business.

Source: 24 SDR 31, effective September 17, 1997; 24 SDR 180, effective July 1, 1998.

General Authority: SDCL 32-6B-60, 32-6C-17, 32-7A-14.1, 32-7B-20.

Law Implemented: SDCL 32-6B-20, 32-6B-20.3, 32-6B-37, 32-6C-6, 32-7A-12, 32-7B-9.

61:24:03:10. Dealer surety bond.~~Upon application for an initial dealer license, a~~ A licensed dealer shall furnish the an original surety bond when applying for an initial dealer license before issuance of a the license may be issued.

The original surety bond must be ~~of a continuous nature unless it is~~ continuously maintained until revoked or canceled by the surety company;~~at which time the~~ The surety company shall notify the department of ~~such~~ the revocation or cancellation by certified mail.

~~Upon renewal of a dealer license, the dealer shall verify possession of a surety bond on the renewal license notice that is sent out by the department. The dealer shall verify on the renewal license notice that a surety bond is in effect and that the surety bond must be is maintained and continued for the entire license period. At the time of dealer license renewal, the dealer shall verify on the renewal license notice the dealer's possession of a surety bond, verify that the surety bond is in effect, and acknowledge that the surety bond will remain in effect for the duration of the license period.~~

The surety bond must be made available for inspection at the dealer's principal place of business at any time upon request by an inspector or enforcement officer.

Source: 24 SDR 180, effective July 1, 1998.

General Authority: SDCL ~~32-6B-7, 32-6B-60, 32-6C-4, 32-6C-17, 32-7A-5, 32-7A-14.1,~~
32-7B-20.

Law Implemented: SDCL 32-6B-7, 32-6C-4, 32-7A-5, 32-7B-6

61:24:03:14. ~~Filing requirements~~Online submission of sale information. ~~A dealer has fifteen days from the date of sale of any motor vehicle or boat to a South Dakota resident to submit the application through the on-line system, if title or MSO/MCO is available. If a title is not available within the fifteen days the dealer shall complete a report of sale on-line. Entry of the application through the on-line computer system must be made by the dealer immediately following receipt of the title. Failure to submit the application or file the report of sale within the fifteen days constitutes a dealer violation.~~ If a title, manufacturer's statement of origin, or manufacturer's certificate of origin is available at the time of sale, a licensed dealer must submit a title application through the department's online system within fifteen days from the date of sale.

Source: 35 SDR 48, effective September 8, 2008.

General Authority: SDCL 32-3-57, 32-6B-60, 32-6C-17, 32-7A-14.1, 32-7B-20

Law Implemented: SDCL 32-3-57, 32-3-69.1, 32-6B-3.1, 32-6C-5.2, 32-7A-17, 32-7B-27.

61:24:03:15. Temporary closure. A licensed dealer temporarily closing shall display a conspicuous notice, in view of the public at the principal place of business, which includes a mailing address and phone number where the owner may be contacted. The dealer shall send to the department written notice of, and the reason for, the temporary closure, thirty days before temporary closure. The department may provide written permission for a temporary closure to be extended no more than twenty additional days due to circumstances beyond the dealer's control.

Source:

General Authority: SDCL 32-6B-60, 32-6C-17, 32-7A-14.1, 32-7B-20.

Law Implemented: SDCL 32-6B-2, 32-6C-3, 32-7A-2, 32-7A-3.2, 32-7B-21.

61:24:03:16. Permanent closure. A dealer that is permanently closing shall:

- (1) Notify the department in writing prior to the proposed closure date, if applicable;
- (2) Pay, within fourteen days of the closure date, any balance for licenses or use of the department's electronic title and registration system;
- (3) Complete a permanent closure visit with the department;
- (4) Return all department-issued dealer license plates to the department; and
- (5) Liquidate all remaining dealer inventory within forty-five days of permanent closure.

Source:

General Authority: SDCL 32-6B-60, 32-6C-17, 32-7A-14.1, 32-7B-20.

Law Implemented: SDCL 32-6B-14, 32-6B-21, 32-6C-5, 32-7A-4.2, 32-7B-8.

61:24:03:17. Liquidation upon permanent closure. The dealer shall, on the closure date, provide the department a listing of all motor vehicles, mobile homes, manufactured homes, or snowmobiles in the dealer's inventory containing the make, model, year, and vehicle identification numbers. The dealer shall liquidate all motor vehicle inventory held for sale within forty-five days of the closure date.

Dealers liquidating inventory shall use the following liquidation methods:

- (1) Sale by auction;
- (2) Transfer of title to an individual owner of the dealership's personal name; and
- (3) Any other method approved in writing by the department.

If the dealer transfers any inventory to the dealer's personal name within forty-five days of the closure date, the dealer must pay all appropriate taxes, fees, penalties, and interest based on the invoice price.

If the dealer transfers any inventory to the dealer's personal name more than forty-five days after the closure date, the dealer must pay all appropriate taxes, fees, penalties, and interest based on the fair market value as determined by SDCL subdivisions 32-3A-53(4) and 32-5B-4(4).

Source:

General Authority: SDCL 32-6B-60, 32-6C-17, 32-7A-14.1, 32-7B-20.

Law Implemented: SDCL 32-6B-14, 32-6B-21, 32-6B-41 to 32-6B-41.6, inclusive, 32-6C-5, 32-6C-14 to 32-6C-14.4, inclusive, 32-7A-4.2, 32-7B-8.

CHAPTER 61:24:04

PERMITS

Section

61:24:04:01	Design of demonstration/in-transit permit.
61:24:04:02	Repealed.
61:24:04:03	Repealed.
61:24:04:04	Reserved.
61:24:04:05	Design of demonstration/in-transit permit for a boat, trailer, motorcycle, or snowmobile.
61:24:04:06	Repealed.
61:24:04:07	45-day <u>Forty-five-day</u> sold permit requirements.
61:24:04:08	Special plate order permit, Transferred.

61:24:04:07. ~~45-day~~Forty-five-day sold permit requirements. A licensed dealer shall use the department's on-line system to generate and issue a ~~45-day~~ forty-five-day sold permit which shall that must comply with the following requirements: Be be printed on white paper no larger than 8-1/2 by 11 inches and no smaller than 4 by 6-1/4 inches and indicate the following:

- (1) ~~STATE~~State of sale;
- (2) ~~DEALER LICENSE TYPE and EXPIRATION DATE~~Dealer license type and expiration date;
- (3) ~~DEALER NAME, CITY, AND STATE~~Dealer name, city, and state;
- (4) ~~DEALER LICENSE NUMBER~~Dealer license number;
- (5) ~~DESCRIPTION OF THE VEHICLE~~Description of the motor vehicle, boat, or snowmobile;
- (6) ~~YEAR, MAKE, AND VEHICLE IDENTIFICATION NUMBER~~Year, make, and vehicle identification number;
- (7) ~~DATE SOLD: DAY, MONTH, AND YEAR~~Day, month, and year sold; and ~~the~~
- (8) ~~NAME AND ADDRESS OF THE PERSON WHO PURCHASED THE VEHICLE~~Name and address of the purchaser.

~~The print on the permit must be of a size of print that is clearly visible and readable at 50 feet.~~ The permit must be displayed in a manner that allows the print to be clearly visible and legible to an outside observer at a distance of twenty feet.

If the department's on-line system is not operational, dealers may use an orange five-day sold permit provided by the department.

Source: 35 SDR 48, effective September 8, 2008; SL 2015, ch 156, § 19, effective July 1, 2015.

General Authority: SDCL 32-6B-30, 32-6B-60, 32-6C-17, 32-7B-20.

Law Implemented: SDCL ~~32-6B-60~~, 32-6B-26, 32-6C-10, 32-7B-20.

61:24:07:01. Definitions. Terms used in this chapter mean:

(1) "Clear and conspicuous," ~~presentation of a statement, representation, or term an advertisement presented~~ in a manner that is readily apparent and understood by the person to whom it is being addressed, considering ~~such factors as~~ the size, color, contrast, and length of the advertisement, and the time needed to read the advertisement;

(2) "Monroney sticker," the label required in 15 U.S.C. § 1232 (July 6, 2012);

(3) "Offering price," the full price at which a dealer will sell a motor vehicle, including any rebates and document fees, but not including taxes, license fees, and registration costs;

(4) "Rebate," the payment of money by the manufacturer or dealer to a consumer or to a third party on behalf of a consumer on the condition that the consumer purchase or lease a motor vehicle, snowmobile, boat, manufactured home, or mobile home; and

(5) "Supplemental sticker," a label other than the Monroney sticker affixed to a new motor vehicle displaying the offering price of the motor vehicle.

(6) ~~"Taxes, license fees, and registration costs," the taxes, charges, and fees payable to or collected on behalf of governmental agencies which are necessary for the transfer of an interest in a motor vehicle or for the use of a motor vehicle;~~

(7) ~~"Warranty advertisement," any advertisement in which a warranty or guaranty of a motor vehicle or any of its parts is offered in connection with the sale of the motor vehicle;~~

~~— (8) "Bait and switch," an alluring but insincere offer to sell a product, the primary purpose of which is to obtain leads to persons interested in buying the advertised product in order to sell the person some other product at a higher price or on a basis of more advantageous to the advertiser.~~

Source: 18 SDR 203, effective July 1, 1992.

General Authority: SDCL 32-6B-63, 32-6C-17, 32-7A-14.1, 32-7B-20.

Law Implemented: SDCL 32-6B-63, 32-6B-64, 32-6C-14(8), 32-7A-4.2(7), 32-7B-17(8).

61:24:07:08. Advertising at cost or invoice. A dealer may not use the terms "dealer cost," "inventory price," "factory invoice," "invoice," "wholesale," "broker," ~~and~~ or "factory billing" in advertising or in any publicly displayed business name or trademark associated with the sale or availability of any vehicles, vehicle goods, or vehicle services.

Source: 18 SDR 203, effective July 1, 1992.

General Authority: SDCL 32-6B-63, 32-6C-17, 32-7A-14.1, 32-7B-20.

Law Implemented: SDCL 32-6B-4.1, 32-6B-63, 32-6B-64, 32-6C-14(8), 32-7A-4.2(7), 32-7B-17(8).

61:24:07:11. Factory sales -- Wholesale prices. A dealer may not advertise the sale of motor vehicles in a manner that conveys, or implies, to the public that the vehicles are being offered for sale by ~~the~~ a manufacturer, wholesaler, broker, or distributor of the vehicles. ~~Advertisements~~ Dealer advertisements and associated names or trademarks by dealers may not contain the terms "factory sale," "wholesale," "broker," "wholesale price," or any similar terms ~~which indicate~~ indicating sales other than retail sales.

Source: 18 SDR 203, effective July 1, 1992.

General Authority: SDCL 32-6B-63.

Law Implemented: SDCL 32-6B-4.1, 32-6B-63, 32-6B-64, 32-6C-14(8), 32-7A-4.2(7), 32-7B-17(8).