

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 3250

| (SENATE AUTHORS: JASINSKI, Newman, Jensen, Kent and Koran) | | |
|--|-------|---|
| DATE | D-PG | OFFICIAL STATUS |
| 03/12/2018 | 6427 | Introduction and first reading |
| | | Referred to Transportation Finance and Policy |
| 03/15/2018 | 6502a | Comm report: To pass as amended and re-refer to Commerce and Consumer Protection Finance and Policy |
| 03/27/2018 | | Comm report: To pass as amended and re-refer to Judiciary and Public Safety Finance and Policy |

1.1

A bill for an act

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relating to motor vehicles; modifying various provisions governing motor vehicle

1.3

titling and registration; amending Minnesota Statutes 2016, sections 80E.13;

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168.013, subdivision 6; 168.27, by adding subdivisions; 168.301, subdivision 3;

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168.33, subdivision 8a; 168.346, subdivision 1; 168A.05, by adding a subdivision;

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168A.12, subdivision 2; 168A.17, by adding a subdivision; Minnesota Statutes

1.7

2017 Supplement, section 168.013, subdivision 1a; proposing coding for new law

1.8

in Minnesota Statutes, chapter 168A.

1.9

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

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Section 1. Minnesota Statutes 2016, section 80E.13, is amended to read:

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80E.13 UNFAIR PRACTICES BY MANUFACTURERS, DISTRIBUTORS,

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FACTORY BRANCHES.

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It is unlawful and an unfair practice for a manufacturer, distributor, or factory branch

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to engage in any of the following practices:

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(a) delay, refuse, or fail to deliver new motor vehicles or new motor vehicle parts or

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accessories in reasonable time and in reasonable quantity relative to the new motor vehicle

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dealer's facilities and sales potential in the dealer's relevant market area, after having accepted

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an order from a new motor vehicle dealer having a franchise for the retail sale of any new

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motor vehicle sold or distributed by the manufacturer or distributor, if the new motor vehicle

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or new motor vehicle parts or accessories are publicly advertised as being available for

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delivery or actually being delivered. This clause is not violated, however, if the failure is

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caused by acts or causes beyond the control of the manufacturer;

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(b) refuse to disclose to any new motor vehicle dealer handling the same line make, the

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manner and mode of distribution of that line make within the relevant market area;

(c) obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and the other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to, the new motor vehicle dealer;

(d) increase prices of new motor vehicles which the new motor vehicle dealer had ordered for private retail consumers prior to the dealer's receiving the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each order if the vehicle is in fact delivered to that customer. In the event of manufacturer price reductions, the amount of any reduction received by a dealer shall be passed on to the private retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer;

(e) offer any refunds or other types of inducements to any new motor vehicle dealer for the purchase of new motor vehicles of a certain line make without making the same offer to all other new motor vehicle dealers in the same line make within geographic areas reasonably determined by the manufacturer;

(f) release to any outside party, except under subpoena or in an administrative or judicial proceeding involving the manufacturer or dealer, any business, financial, or personal information which may be provided by the dealer to the manufacturer, without the express written consent of the dealer or unless pertinent to judicial or governmental administrative proceedings or to arbitration proceedings of any kind;

(g) deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose;

(h) unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursement or authority granted its new vehicle dealers to make warranty adjustments with retail customers;

(i) compete with a new motor vehicle dealer in the same line make operating under an agreement or franchise from the same manufacturer, distributor, or factory branch. A manufacturer, distributor, or factory branch is considered to be competing when it has an ownership interest, other than a passive interest held for investment purposes, in a dealership of its line make located within the state. A manufacturer, distributor, or factory branch shall not, however, be deemed to be competing when operating a dealership, either temporarily or for a reasonable period, which is for sale to any qualified independent person at a fair and reasonable price, or when involved in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably

expect to acquire full ownership and full management and operational control of the dealership within a reasonable time on reasonable terms and conditions;

(j) prevent a new motor vehicle dealer from transferring or assigning a new motor vehicle dealership to a qualified transferee. There shall be no transfer, assignment of the franchise, or major change in the executive management of the dealership, except as is otherwise provided in sections 80E.01 to 80E.17, without consent of the manufacturer, which shall not be withheld without good cause. In determining whether good cause exists for withholding consent to a transfer or assignment, the manufacturer, distributor, factory branch, or importer has the burden of proving that the transferee is a person who is not of good moral character or does not meet the franchisor's existing and reasonable capital standards and, considering the volume of sales and service of the new motor vehicle dealer, reasonable business experience standards in the market area. Denial of the request must be in writing and delivered to the new motor vehicle dealer within 60 days after the manufacturer receives the completed application customarily used by the manufacturer, distributor, factory branch, or importer for dealer appointments. If a denial is not sent within this period, the manufacturer shall be deemed to have given its consent to the proposed transfer or change. In the event of a proposed sale or transfer of a franchise, the manufacturer, distributor, factory branch, or importer shall be permitted to exercise a right of first refusal to acquire the franchisee's assets or ownership if:

(1) the franchise agreement permits the manufacturer, distributor, factory branch, or importer to exercise a right of first refusal to acquire the franchisee's assets or ownership in the event of a proposed sale or transfer;

(2) the proposed transfer of the dealership or its assets is of more than 50 percent of the ownership or assets;

(3) the manufacturer, distributor, factory branch, or importer notifies the dealer in writing within 60 days of its receipt of the complete written proposal for the proposed sale or transfer on forms generally utilized by the manufacturer, distributor, factory branch, or importer for such purposes and containing the information required therein and all documents and agreements relating to the proposed sale or transfer;

(4) the exercise of the right of first refusal will result in the dealer and dealer's owners receiving the same or greater consideration with equivalent terms of sale as is provided in the documents and agreements submitted to the manufacturer, distributor, factory branch, or importer under clause (3);

4.1 (5) the proposed change of 50 percent or more of the ownership or of the dealership
4.2 assets does not involve the transfer or sale of assets or the transfer or issuance of stock by
4.3 the dealer or one or more dealer owners to a family member, including a spouse, child,
4.4 stepchild, grandchild, spouse of a child or grandchild, brother, sister, or parent of the dealer
4.5 owner; to a manager who has been employed in the dealership for at least four years and is
4.6 otherwise qualified as a dealer operator; or to a partnership or corporation owned and
4.7 controlled by one or more of such persons; and

4.8 (6) the manufacturer, distributor, factory branch, or importer agrees to pay the reasonable
4.9 expenses, including reasonable attorney fees, which do not exceed the usual customary and
4.10 reasonable fees charged for similar work done for other clients incurred by the proposed
4.11 new owner and transferee before the manufacturer, distributor, factory branch, or importer
4.12 exercises its right of first refusal, in negotiating and implementing the contract for the
4.13 proposed change of ownership or transfer of dealership assets. However, payment of such
4.14 expenses and attorney fees shall not be required if the dealer has not submitted or caused
4.15 to be submitted an accounting of those expenses within 20 days after the dealer's receipt of
4.16 the manufacturer, distributor, factory branch, or importer's written request for such an
4.17 accounting. The manufacturer, distributor, factory branch, or importer may request such an
4.18 accounting before exercising its right of first refusal. The obligation created under this clause
4.19 is enforceable by the transferee;

4.20 (k) threaten to modify or replace or modify or replace a franchise with a succeeding
4.21 franchise that would adversely alter the rights or obligations of a new motor vehicle dealer
4.22 under an existing franchise or that substantially impairs the sales or service obligations or
4.23 investments of the motor vehicle dealer;

4.24 (l) unreasonably deny the right to acquire factory program vehicles to any dealer holding
4.25 a valid franchise from the manufacturer to sell the same line make of vehicles, provided
4.26 that the manufacturer may impose reasonable restrictions and limitations on the purchase
4.27 or resale of program vehicles to be applied equitably to all of its franchised dealers. For the
4.28 purposes of this paragraph, "factory program vehicle" has the meaning given the term in
4.29 section 80E.06, subdivision 2;

4.30 (m) fail or refuse to offer to its same line make franchised dealers all models manufactured
4.31 for that line make, other than alternative fuel vehicles as defined in section 216C.01,
4.32 subdivision 1b. Failure to offer a model is not a violation of this section if the failure is not
4.33 arbitrary and is due to a lack of manufacturing capacity, a strike, labor difficulty, or other
4.34 cause over which the manufacturer, distributor, or factory branch has no control;

(n) require a dealer to pay an extra fee, or remodel, renovate, or recondition the dealer's existing facilities, or purchase unreasonable advertising displays, training, tools, or other materials, or to require the dealer to establish exclusive facilities or dedicated personnel as a prerequisite to receiving a model or a series of vehicles;

(o) require a dealer to adhere to performance standards that are not applied uniformly to other similarly situated dealers.

A performance standard, sales objective, or program for measuring dealership performance that may have a material effect on a dealer, including the dealer's right to payment under any incentive or reimbursement program, and the application of the standard or program by a manufacturer, distributor, or factory branch must be fair, reasonable, equitable, and based on accurate information.

A manufacturer, distributor, or factory branch has the burden of proving that the performance standard, sales objective, or program for measuring dealership performance is fair and reasonable under this subdivision;

(p) unreasonably reduce a dealer's area of sales effectiveness without giving at least 90 days' notice of the proposed reduction. The change may not take effect if the dealer commences a civil action to determine whether there is good cause for the change within the 90 days' notice period. The burden of proof in such an action shall be on the manufacturer or distributor; ~~or~~

(q) to charge back, withhold payment, deny vehicle allocation, or take any other adverse action against a dealer when a new vehicle sold by the dealer has been exported to a foreign country, unless the manufacturer, distributor, or factory branch can show that at the time of sale, the customer's information was listed on a known or suspected exporter list made available to the dealer, or the dealer knew or reasonably should have known of the purchaser's intention to export or resell the motor vehicle in violation of the manufacturer's export policy. There is a rebuttable presumption that the dealer did not know or should not have reasonably known that the vehicle would be exported or resold in violation of the manufacturer's export policy if the vehicle is titled and registered in any state of the United States; or

(r) to charge back, withhold payment, deny payment, or take any other adverse action against a dealer due to a delay in the transfer or registration of a new motor vehicle that is reasonably attributable to the registrar, as defined under section 168.002, subdivision 29.

Sec. 2. Minnesota Statutes 2017 Supplement, section 168.013, subdivision 1a, is amended to read:

Subd. 1a. **Passenger automobile; hearse.** (a) On passenger automobiles as defined in section 168.002, subdivision 24, and hearses, except as otherwise provided, the tax is \$10 plus an additional tax equal to 1.25 percent of the base value.

(b) Subject to the classification provisions herein, "base value" means the manufacturer's suggested retail price of the vehicle including destination charge using list price information published by the manufacturer or determined by the registrar if no suggested retail price exists, and shall not include the cost of each accessory or item of optional equipment separately added to the vehicle and the suggested retail price. In the case of the first registration of a new vehicle sold or leased by a licensed dealer, the dealer may elect to individually determine the base value of the vehicle using suggested retail price information provided by the manufacturer. The registrar must use the base value determined by the dealer to properly classify the vehicle. A dealer that elects to make the determination must retain a copy of the suggested retail price label or other supporting documentation with the vehicle transaction records maintained under Minnesota Rules, part 7400.5200.

(c) If the manufacturer's list price information contains a single vehicle identification number followed by various descriptions and suggested retail prices, the registrar shall select from those listings only the lowest price for determining base value.

(d) If unable to determine the base value because the vehicle is specially constructed, or for any other reason, the registrar may establish such value upon the cost price to the purchaser or owner as evidenced by a certificate of cost but not including Minnesota sales or use tax or any local sales or other local tax.

(e) The registrar shall classify every vehicle in its proper base value class as follows:

| FROM | TO |
|--------|-----------|
| \$ 0 | \$ 199.99 |
| \$ 200 | \$ 399.99 |

and thereafter a series of classes successively set in brackets having a spread of \$200 consisting of such number of classes as will permit classification of all vehicles.

(f) The base value for purposes of this section shall be the middle point between the extremes of its class.

(g) The registrar shall establish the base value, when new, of every passenger automobile and hearse registered prior to the effective date of Extra Session Laws 1971, chapter 31,

7.1 using list price information published by the manufacturer or any nationally recognized
7.2 firm or association compiling such data for the automotive industry. If unable to ascertain
7.3 the base value of any registered vehicle in the foregoing manner, the registrar may use any
7.4 other available source or method. The registrar shall calculate tax using base value
7.5 information available to dealers and deputy registrars at the time the application for
7.6 registration is submitted. The tax on all previously registered vehicles shall be computed
7.7 upon the base value thus determined taking into account the depreciation provisions of
7.8 paragraph (h).

7.9 (h) The annual additional tax must be computed upon a percentage of the base value as
7.10 follows: during the first year of vehicle life, upon 100 percent of the base value; for the
7.11 second year, 90 percent of such value; for the third year, 80 percent of such value; for the
7.12 fourth year, 70 percent of such value; for the fifth year, 60 percent of such value; for the
7.13 sixth year, 50 percent of such value; for the seventh year, 40 percent of such value; for the
7.14 eighth year, 30 percent of such value; for the ninth year, 20 percent of such value; for the
7.15 tenth year, ten percent of such value; for the 11th and each succeeding year, the sum of \$25.

7.16 (i) In no event shall the annual additional tax be less than \$25.

7.17 (j) For any vehicle previously registered in Minnesota and regardless of prior ownership,
7.18 the total amount due under this subdivision and subdivision 1m must not exceed the smallest
7.19 total amount previously paid or due on the vehicle.

7.20 Sec. 3. Minnesota Statutes 2016, section 168.013, subdivision 6, is amended to read:

7.21 Subd. 6. **Listing by dealers.** The owner of every motor vehicle not exempted by section
7.22 168.012 or 168.28, ~~shall~~ must, so long as it is subject to taxation within the state, annually
7.23 list and register the same and pay the tax herein provided annually under this section;
7.24 provided, however, that any dealer in motor vehicles, to whom dealer's plates have been
7.25 issued as provided in this chapter, coming into the possession of ~~any such~~ a motor vehicle
7.26 to be held solely for the purpose of sale or demonstration or both, ~~shall be~~ is entitled to
7.27 withhold the tax due on the vehicle from the prior registration period or becoming due on
7.28 such vehicle for the following year and no lien for registration tax as provided in section
7.29 168.31, subdivision 6, shall attach. When, thereafter, ~~such~~ the vehicle is otherwise used or
7.30 is sold, leased, or rented to another person, firm, corporation, or association, the tax for the
7.31 remainder of the year, prorated on a monthly basis, ~~shall become~~ becomes payable
7.32 immediately.

8.1 Sec. 4. Minnesota Statutes 2016, section 168.27, is amended by adding a subdivision to
8.2 read:

8.3 Subd. 32. **Multiple licenses.** If a single legal entity holds more than one new or used
8.4 vehicle dealer license, new and used vehicles owned by the entity may be held and offered
8.5 for sale at any of the licensed dealership locations without assigning vehicle ownership or
8.6 title from one licensee to another. This subdivision does not authorize the sale or offering
8.7 for sale of new vehicles by a licensee without a franchise described in subdivision 10.

8.8 Sec. 5. Minnesota Statutes 2016, section 168.27, is amended by adding a subdivision to
8.9 read:

8.10 Subd. 33. **Designated dealer title and registration liaison.** The registrar must designate
8.11 by name and provide contact information for one or more registrar employees as needed to
8.12 (1) promptly and effectively respond to questions from licensed dealers, and (2) troubleshoot
8.13 dealer issues related to vehicle titling and registration.

8.14 Sec. 6. Minnesota Statutes 2016, section 168.301, subdivision 3, is amended to read:

8.15 Subd. 3. **Late fee.** In addition to any fee or tax otherwise authorized or imposed upon
8.16 the transfer of title for a motor vehicle, the commissioner of public safety shall impose a
8.17 \$2 additional fee for failure to deliver a title transfer within ten business days. This
8.18 subdivision does not apply to transfers from licensed vehicle dealers.

8.19 Sec. 7. Minnesota Statutes 2016, section 168.33, subdivision 8a, is amended to read:

8.20 Subd. 8a. **Electronic transmission.** (a) If the commissioner accepts electronic
8.21 transmission of a motor vehicle transfer and registration by a new or used motor vehicle
8.22 dealer, a deputy registrar who is equipped with electronic transmission technology and
8.23 trained in its use shall receive the filing fee provided for in subdivision 7 and review the
8.24 transfer of each new or used motor vehicle to determine its genuineness and regularity
8.25 before issuance of a certificate of title, and shall receive and retain the filing fee under
8.26 subdivision 7, paragraph (a), clause ~~(ii)~~ (2).

8.27 (b) The commissioner must establish reasonable performance, security, technical, and
8.28 financial standards to approve and allow companies that provide computer software and
8.29 services to motor vehicle dealers to electronically transmit vehicle title transfer and
8.30 registration information. An approved company must be offered access to department
8.31 facilities, staff, and technology on a fair and reasonable basis.

Sec. 8. Minnesota Statutes 2016, section 168.346, subdivision 1, is amended to read:

Subdivision 1. **Vehicle registration data; federal compliance.** (a) Data on an individual provided to register a vehicle shall be treated as provided by United States Code, title 18, section 2721, as in effect on May 23, 2005, and shall be disclosed as required or permitted by that section. The commissioner is prohibited from restricting the uses for which a licensed dealer may obtain data as permitted by United States Code, title 18, section 2721, subsections (b)(2), (3), (7), and (13). The commissioner shall disclose the data in bulk form to an authorized recipient upon request for any of the permissible uses described in United States Code, title 18, section 2721.

(b) The registered owner of a vehicle who is an individual may consent in writing to the commissioner to disclose the individual's personal information exempted by United States Code, title 18, section 2721, to any person who makes a written request for the personal information. If the registered owner is an individual and so authorizes disclosure, the commissioner shall implement the request.

(c) If authorized by the registered owner as indicated in paragraph (b), the registered owner's personal information may be used, rented, or sold solely for bulk distribution by organizations for business purposes including surveys, marketing, or solicitation.

Sec. 9. Minnesota Statutes 2016, section 168A.05, is amended by adding a subdivision to read:

Subd. 1d. **Issuance of certificate by deputy registrar.** (a) If an application for a vehicle's certificate of title is received by a deputy registrar and the deputy registrar is satisfied as to its genuineness and regularity and that the applicant is entitled to the issuance of a certificate of title, the deputy registrar may issue a certificate of title for the vehicle.

(b) On or before August 1, 2019, the commissioner must authorize a deputy registrar to issue a certificate of title, subject to procedures established by the commissioner.

Sec. 10. Minnesota Statutes 2016, section 168A.12, subdivision 2, is amended to read:

Subd. 2. **Owner's interest terminated or vehicle sold by secured party.** If the interest of the owner is terminated or the vehicle is sold under a security agreement by a secured party named in the certificate of title or an assignee of the secured party, the transferee shall promptly mail or deliver to the department the last certificate of title, if available, an application for a new certificate in the format the department prescribes, and an affidavit made by or on behalf of the secured party or assignee that the interest of the owner was

lawfully terminated or the vehicle sold pursuant to the terms of the security agreement. If the secured party or assignee succeeds to the interest of the owner and holds the vehicle for resale, the secured party or assignee need not secure a new certificate of title; provided that a notice thereof in a format designated by the department is mailed or delivered by the secured party or assignee to the department in duplicate within 48 hours, but upon transfer to another person the secured party or assignee shall promptly execute assignment and warranty of title and mail or deliver to the transferee or the department the certificate, if available, the affidavit, and other documents required to be sent to the department by the transferee.

Sec. 11. Minnesota Statutes 2016, section 168A.17, is amended by adding a subdivision to read:

Subd. 4. **Notice of perfection by dealer.** When a security interest in a vehicle sold by a dealer licensed under section 168.27 is perfected under subdivision 2, the dealer may provide a statement of perfection to the secured party on a form provided by the department. The statement must certify compliance with subdivision 2 and contain the date of delivery to the department. The information provided in the dealer's statement is considered prima facie evidence of the facts contained in it.

Sec. 12. **[168A.241] MOTOR VEHICLE TITLE TRANSFER AND REGISTRATION ADVISORY COMMITTEE.**

Subdivision 1. **Establishment; purpose.** A Motor Vehicle Title and Registration Advisory Committee is established for the Department of Public Safety. The purpose of the advisory committee is to advise the commissioner of public safety on matters relevant to:

(1) effective and efficient systems relating to the ownership, transfer, and registration of motor vehicles; and

(2) planning and implementing future changes and enhancements to vehicle registration systems.

Subd. 2. **Members.** (a) The advisory committee consists of:

(1) two members of the house of representatives, one appointed by the speaker of the house and one appointed by the minority leader;

(2) two members of the senate, one appointed by the majority leader and one appointed by the minority leader;

(3) one representative from the Minnesota Deputy Registrar's Association;

- 11.1 (4) one representative from the Minnesota Automobile Dealers Association;
- 11.2 (5) one representative from the Northland Independent Automobile Dealers Association;
- 11.3 (6) one staff member from the Department of Public Safety Driver and Vehicle Services
- 11.4 Division;
- 11.5 (7) two representatives from deputy registrars, appointed by the commissioner;
- 11.6 (8) two representatives from dealers licensed under section 168.27, appointed by the
- 11.7 commissioner; and
- 11.8 (9) one representative who performs auctions exclusively for dealers licensed under
- 11.9 section 168.27 and not for the general public, appointed by the commissioner following
- 11.10 consultation with eligible auto auction businesses.
- 11.11 (b) Section 15.059 governs the Motor Vehicle Title and Registration Advisory Committee.
- 11.12 (c) Members of the advisory committee must be compensated as provided in section
- 11.13 15.059, subdivision 3.
- 11.14 Subd. 3. **Organization.** (a) The commissioner or the commissioner's designee must
- 11.15 convene the first meeting of the advisory committee.
- 11.16 (b) The members of the advisory committee must annually elect a chair and other officers
- 11.17 as the members deem necessary.
- 11.18 (c) The advisory committee must meet at least two times per year.
- 11.19 Subd. 4. **Open meetings.** The advisory committee is subject to chapter 13D. An advisory
- 11.20 committee meeting occurs when a quorum is present and the members receive information,
- 11.21 discuss, or take action on any matter relating to the advisory committee's duties . The advisory
- 11.22 committee may conduct meetings as provided in section 13D.015 or 13D.02. The advisory
- 11.23 committee may conduct meetings at any location in the state that is appropriate for the
- 11.24 purposes of the advisory committee, provided the location is open and accessible to the
- 11.25 public. For legislative members of the advisory committee, enforcement of this subdivision
- 11.26 is governed by section 3.055, subdivision 2. For nonlegislative members of the advisory
- 11.27 committee, enforcement of this subdivision is governed by section 13D.06, subdivisions 1
- 11.28 and 2.
- 11.29 Subd. 5. **Staff.** The commissioner must provide support staff, office space, and
- 11.30 administrative services to the advisory committee.
- 11.31 Subd. 6. **Duties.** The advisory committee's duties include but are not limited to:

12.1 (1) serving in an advisory capacity to the commissioner of public safety and the director
12.2 of driver and vehicle services; and

12.3 (2) reviewing and making recommendations with respect to work plans, policy initiatives,
12.4 major activities, and strategic planning.

12.5 Subd. 7. **Report and recommendations.** Beginning February 15, 2019, and annually
12.6 thereafter, the commissioner must prepare and submit to the chairs and ranking minority
12.7 members of the committees of the house of representatives and the senate with jurisdiction
12.8 over motor vehicle title and registration a report that summarizes the advisory committee's
12.9 activities, issues identified by the advisory committee, methods taken to address the issues,
12.10 and recommendations for legislative action, if needed.

12.11 Subd. 8. **Expiration.** The advisory committee expires June 30, 2021.