

the question to the voters of the county, unless within 21 days after the second publication of the resolution, a petition requesting a referendum, signed by at least ten percent of the registered voters of the county, is filed with the county auditor or, if combined, the county auditor/treasurer. If a petition is filed, the resolution may be implemented, unless disapproved by a majority of the voters of the county voting on the question at a regular or special election.

#### Sec. 4. **BOARD AUTHORITY.**

Upon adoption of a resolution by the Benton county board of commissioners, the duties of the elected officials required by law whose offices are made appointive under this act must be discharged by the board of commissioners of Benton county acting through a department head or heads appointed by the board for that purpose. Each appointed department head shall serve at the pleasure of the board. As of July 1, 1997, the board may reorganize, consolidate, reallocate, or delegate the duties to promote efficiency in county government. A reorganization, reallocation, or delegation or other administrative change or transfer does not diminish, prohibit, or avoid the discharge of duties required by law.

#### Sec. 5. **TRANSITION.**

The persons elected at the November 1994 general election to the position of auditor, treasurer, recorder, and coroner shall serve in that capacity and perform the duties, functions, and responsibilities required by law, or as duties have been reorganized, consolidated, or reallocated by the board after July 1, 1997, until the completion of the term of office to which elected, or until a vacancy occurs in the office, whichever occurs first.

#### Sec. 6. **EFFECTIVE DATE.**

This act is effective, without local approval, July 1, 1997.

Presented to the governor May 2, 1997

Signed by the governor May 6, 1997, 11:13 a.m.

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### CHAPTER 92—S.F.No. 890

*An act relating to motor vehicles; providing for regulation and licensing of motor vehicle brokers; amending Minnesota Statutes 1996, section 168.27, subdivisions 1, 2, 10, 11, 12, 19a, 24, and by adding a subdivision.*

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

Section 1. Minnesota Statutes 1996, section 168.27, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** For the purposes of this section, the following terms have the meanings given them:

(1) "Leasing motor vehicles" means furnishing a motor vehicle for a fee under a bailor-bailee relationship where no incidences of ownership are intended to be transferred other than the right to use the vehicle for a stated period of time.

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(2) "Brokering motor vehicles" means arranging sales or leases between willing buyers and sellers, or lessees and lessors, of motor vehicles and receiving a fee for said service those services.

(3) "Wholesaling motor vehicles" means selling new or used motor vehicles to dealers for resale to the public.

(4) "Auctioning motor vehicles" means arranging for and handling the sale of motor vehicles, not the property of the auctioneer, to the highest bidder.

(5) "Dealer" includes licensed new motor vehicle dealers, used motor vehicle dealers, motor vehicle brokers, wholesalers, auctioneers, lessors of new or used motor vehicles, scrap metal processors, used vehicle parts dealers, and salvage pools.

(6) "Commercial building" means a permanent, enclosed building that is on a permanent foundation and connected to local sewer and water facilities or otherwise complying with local sanitary codes, is adapted to commercial use, and conforms to local government zoning requirements. "Commercial building" may include strip office malls or garages if a separate entrance and a separate address are maintained and the dealership is clearly identified as a separate business.

(7) "Commercial office space" means office space occupying all or part of a commercial building.

(8) "Horse trailer" is a trailer designed and used to carry horses and other livestock, which has not more than three axles and a maximum gross weight capacity of not more than 24,000 pounds.

(9) "Isolated or occasional sales or leases" means the sale or lease of not more than five motor vehicles in a 12-month period, exclusive of pioneer or classic motor vehicles as defined in section 168.10, subdivisions 1a and 1b, or sales by a licensed auctioneer selling motor vehicles at an auction if, in the ordinary course of the auctioneer's business, the sale of motor vehicles is incidental to the sale of other real or personal property.

(10) "Used motor vehicle" means a motor vehicle for which title has been transferred from the person who first acquired it from the manufacturer, distributor, or dealer. A new motor vehicle will not be considered a used motor vehicle until it has been placed in actual operation and not held for resale by an owner who has been granted a certificate of title on the motor vehicle and has registered the motor vehicle in accordance with this chapter and chapters 168A and 297B, or the laws of the residence of the owner.

(11) "New motor vehicle" means a motor vehicle other than described in paragraph (10).

(12) "Junked vehicle" means a vehicle that is declared unrepairable under section 168A.151.

(13) "Motor vehicle" has the meaning given it in section 168.011, subdivision 4, and also includes a park trailer as defined in section 168.011, subdivision 8.

(14) "Motor vehicle broker" means a person who arranges the sale of a motor vehicle between a buyer and a seller, or the lease of a motor vehicle between a lessee and a lessor, for which service the broker receives a fee.

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Sec. 2. Minnesota Statutes 1996, section 168.27, subdivision 2, is amended to read:

Subd. 2. **NEW MOTOR VEHICLE DEALER.** (a) No person shall engage in the business of selling new motor vehicles or shall offer to sell, solicit, deliver, or advertise the sale of new motor vehicles without first acquiring a new motor vehicle dealer license. A new motor vehicle dealer licensee shall be entitled thereunder to sell, broker, wholesale, or auction and to solicit and advertise the sale, broker, wholesale, or auction of new motor vehicles covered by the franchise and any used motor vehicles or to lease and to solicit and advertise the lease of new motor vehicles and any used motor vehicles and such sales or leases may be either for consumer use at retail or for resale to a dealer. A new motor vehicle dealer may engage in the business of buying or otherwise acquiring vehicles for dismantling the vehicles and selling used parts and remaining scrap materials under chapter 168A, except that a new motor vehicle dealer may not purchase a junked vehicle from a salvage pool, insurance company, or its agent unless the dealer is also licensed as a used vehicle parts dealer. Nothing herein shall be construed to require an applicant for a dealer license who proposes to deal in: (1) new and unused motor vehicle bodies; or (2) type A, B, or C motor homes as defined in section 168.011, subdivision 25, to have a bona fide contract or franchise in effect with either the first-stage manufacturer of the motor home or the manufacturer or distributor of any motor vehicle chassis upon which the new and unused motor vehicle body is mounted. The modification or conversion of a new van-type vehicle into a multipurpose passenger vehicle which is not a motor home does not constitute dealing in new or unused motor vehicle bodies, and a person engaged in the business of selling these van-type vehicles must have a bona fide contract or franchise with the appropriate manufacturer under subdivision 10. A van converter or modifier who owns these modified or converted van-type vehicles may sell them at wholesale to new motor vehicle dealers having a bona fide contract or franchise with the first-stage manufacturer of the vehicles.

(b) The requirements pertaining to franchises do not apply to persons who remodel or convert motor vehicles for medical purposes. For purposes of this subdivision, "medical purpose" means certification by a licensed physician that remodeling or conversion of a motor vehicle is necessary to enable a disabled person to use the vehicle.

(c) A new motor vehicle dealer shall not deliver a manufacturer's or importer's certificate of origin for a passenger automobile, pickup truck, or van requiring a certificate of title pursuant to chapter 168A to any person in conjunction with the sale of a vehicle except to the department, another new motor vehicle dealer licensed to sell the same line or make, or a person whose primary business is picking up and delivering motor vehicle title documents.

(d) If a new motor vehicle dealer agrees to sell or lease a new motor vehicle using the services of a motor vehicle broker, the new motor vehicle dealer may not refuse to deliver possession of the vehicle to the buyer or lessee. This paragraph does not require delivery unless all arrangements have been properly completed for payment, insurance required by law, titling, transfer, and registration of the new vehicle and any trade-in vehicle. Delivery may take place at or away from the dealership.

Sec. 3. Minnesota Statutes 1996, section 168.27, is amended by adding a subdivision to read:

Subd. 7a. **MOTOR VEHICLE BROKER.** (a) No person shall engage in the business of brokering motor vehicles without first acquiring a motor vehicle broker's license.

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A motor vehicle broker shall provide each buyer or lessee with a written disclosure stating whether the motor vehicle broker receives a fee from the dealers with whom the broker does business. The new or used motor vehicle dealer shall be the seller of record in all such transactions. The motor vehicle dealer may pay the motor vehicle broker a fee for brokering services rendered. A motor vehicle broker may:

(1) advertise and solicit the brokering of new motor vehicles. A motor vehicle broker shall not advertise or make any representations which state, imply, or suggest that the motor vehicle broker itself sells vehicles, is authorized to sell vehicles, or obtains vehicles directly from the motor vehicle manufacturer. All advertising or other solicitations by a motor vehicle broker shall disclose that sales of new motor vehicles are arranged through franchised motor vehicle dealers;

(2) negotiate or quote the sale price or lease terms of motor vehicles;

(3) prepare and deliver documents necessary to the transaction;

(4) accept a down payment not to exceed \$500, but otherwise may not accept payment in full or in part for a motor vehicle unless the payment is in the form of a negotiable instrument payable to the vehicle dealer;

(5) accompany a motor vehicle purchaser or lessee at the time of delivery by the selling dealer of a new motor vehicle; and

(6) be present when warranties and safety features are described by the selling dealer in conjunction with the delivery of a new motor vehicle.

(b) A motor vehicle broker shall not:

(1) engage in the business of selling new or used motor vehicles as described in subdivisions 2 and 3;

(2) execute contracts or official documents for the sale or lease of a new motor vehicle;

(3) describe a new vehicle's warranties or safety features in conjunction with the delivery of a new motor vehicle;

(4) display motor vehicles available for sale or lease; or

(5) perform any dealer preparation of new motor vehicles.

All dealer preparation shall be performed only by a licensed new motor vehicle dealer.

This subdivision does not apply to licensed motor vehicle lessors and shall not be construed to restrict licensed motor vehicle lessors from brokering motor vehicle leases or otherwise engaging in the leasing of motor vehicles in accordance with subdivisions 1 and 4.

Sec. 4. Minnesota Statutes 1996, section 168.27, subdivision 10, is amended to read:

Subd. 10. **ESTABLISHED PLACE OF BUSINESS.** All licensees under this section shall have an established place of business which shall include as a minimum:

(1) For a new motor vehicle dealer, the following:

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(a) a commercial building owned or under lease by the licensee. The lease shall be for a minimum term of one year. The building shall contain office space where the books, records, and files necessary to conduct the business are kept and maintained with personnel available during normal business hours. Dealership business hours must be conspicuously posted on the place of doing business and readily viewable by the public;

(b) a bona fide contract or franchise (1) in effect with a manufacturer or distributor of the new motor vehicles the dealer proposes to sell, broker, wholesale, or auction, or (2) in effect with the first-stage manufacturer or distributor of new motor vehicles purchased from a van converter or modifier which the dealer proposes to sell, broker, wholesale, or auction, or (3) in effect with the final stage manufacturer of the new type A, B, or C motor homes which the dealer proposes to sell, broker, wholesale, or auction;

(c) a facility for the repair and servicing of motor vehicles and the storage of parts and accessories, not to exceed ten miles distance from the principal place of business. Such service may be provided through contract with bona fide operators actually engaged in such services;

(d) an area either indoors or outdoors to display motor vehicles which is owned or under lease by the licensee; and

(e) a sign clearly identifying the dealership by name which is readily viewable by the public.

(2) For a used motor vehicle dealer, the following:

(a) a commercial building owned or under lease by the licensee. The lease shall be for a minimum term of one year. The building shall contain office space where the books, records, and files necessary to conduct the business are kept and maintained with personnel available during normal business hours or automatic telephone answering service during normal business hours. Dealership business hours must be conspicuously posted on the place of doing business and readily viewable by the public;

(b) an area either indoors or outdoors to display motor vehicles which is owned or under lease by the licensee; and

(c) a sign clearly identifying the dealership by name which is readily viewable by the public.

(3) For a motor vehicle lessor, the following: a commercial office space where the books, records, and files necessary to conduct the business are kept and maintained with personnel available during normal business hours or an automatic telephone answering service during normal business hours. Business hours must be conspicuously posted on the place of doing business and readily viewable by the public. The office space must be owned or under lease for a minimum term of one year by the licensee.

(4) For a motor vehicle wholesaler, the following: a commercial office space where the books, records, and files necessary to conduct the business are kept and maintained with personnel available during normal business hours or an automatic telephone answering service during normal business hours. The office space must be owned or under lease for a minimum term of one year by the licensee.

(5) For a motor vehicle auctioneer, the following: a permanent enclosed commercial building, within or without the state, on a permanent foundation, owned or under lease by

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the licensee. The lease shall be for a minimum term of one year. The building shall contain office space where the books, records, and files necessary to conduct the business are kept and maintained with personnel available during normal business hours or an automatic telephone answering service during normal business hours.

(6) For a motor vehicle broker, the following: a commercial office space where books, records, and files necessary to conduct business are kept and maintained with personnel available during normal business hours, or an automatic telephone answering service available during normal business hours. Business hours must be conspicuously posted on the place of business and readily viewable by the public. A sign, clearly identifying the motor vehicle broker by name and viewable by the public, must be posted on the place of business. The office space must be owned or under lease for a minimum term of one year by the licensee.

(7) If a new or used motor vehicle dealer maintains more than one place of doing business in a county, the separate places shall be listed on the application. If additional places of business are maintained outside of one county, separate licenses shall be obtained for each county.

(7) (8) If a motor vehicle lessor, wholesaler, or auctioneer, or motor vehicle broker maintains more than one permanent place of doing business, either in one or more counties, the separate places shall be listed in the application, but only one license shall be required. If a lessor proposes to sell previously leased or rented vehicles or if a broker proposes to establish an office at a location outside the seven-county metropolitan area, as defined in section 473.121, subdivision 2, other than cities of the first class, the lessor or broker must obtain a license for each nonmetropolitan area county in which the lessor's sales are to take place or where the broker proposes to locate an office.

(8) (9) If a motor vehicle dealer, lessor, or wholesaler, or motor vehicle broker does not have direct access to a public road or street, any privately owned roadway providing access to a public road or street must be clearly identified and adequately maintained.

Sec. 5. Minnesota Statutes 1996, section 168.27, subdivision 11, is amended to read:

Subd. 11. **LICENSES.** Application for license or notification of a change of location of a license must include a street address, not a post office box, and is subject to the registrar's approval. Upon the filing of an application for a license and the proper fee, the registrar is authorized, unless the application on its face appears to be invalid, to grant a 90-day temporary license and during said 90-day period shall investigate the fitness of the applicant, inspect the site and make such other investigation as is necessary to insure compliance with the licensing law. The registrar may extend the temporary license 30 days. At the end of the period of investigation the license shall either be granted or denied. The license must be denied if within the previous five ten years the applicant was enjoined due to a violation of section 325F.69 or convicted of violating section 325E.14, 325E.15, 325E.16, or 325F.69, or convicted under section 609.53 of receiving or selling stolen vehicles, or convicted of violating United States Code, title 15, sections 1981 to 1991, as amended through December 31, 1984, or pleaded guilty, entered a plea of nolo contendere or no contest, or has been found guilty in a court of competent jurisdiction of any charge of failure to pay state or federal income or sales taxes or felony charge of forgery, embezzlement, obtaining money under false pretenses, theft by swindle, extortion, conspiracy to defraud, or bribery. If the application is approved, the registrar shall license

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the applicant as a motor vehicle dealer for the remainder of the calendar year, and issue a certificate of license therefor as the registrar may provide upon which shall be placed a distinguishing number of identification of such dealer. Each initial application for a license shall be accompanied by a fee of \$50 in addition to the annual fee. The annual fee shall be \$100. All initial fees and annual fees shall be paid into the state treasury and credited to the general fund. If the initial application is received by the registrar after July 1 of any year, the first annual fee shall be reduced by one-half.

Sec. 6. Minnesota Statutes 1996, section 168.27, subdivision 12, is amended to read:

Subd. 12. **GROUND FOR SUSPENSION AND REVOCATION.** A license may be suspended or revoked by the registrar of motor vehicles upon proof satisfactory to the registrar of any of the following:

- (1) violations of any of the provisions of this chapter or chapter 168A, 297B, 325E, or 325F;
- (2) violation of or refusal to comply with the requests and order of the registrar;
- (3) failure to make or provide to the registrar all listings, notices, and reports required by the registrar;
- (4) failure to pay to the registrar all taxes, fees, and arrears due from and by such dealer;
- (5) failure to duly apply for renewal of license provided for herein;
- (6) revocation of previous license, of which the records of the registrar relating thereto shall be prima facie evidence of such previous revocation;
- (7) failure of continued occupancy of an established place of business;
- (8) sale of a new and unused current model motor vehicle other than the make of motor vehicle described in the franchise or contract filed with the original application or renewal thereof, without permission from the registrar;
- (9) sale of a new and unused current model motor vehicle to anyone except for consumer use, or to a dealer duly licensed to sell the same make of motor vehicle;
- (10) material misstatement or misrepresentation in application for license or renewal thereof;
- (11) having advertised, printed, displayed, published, distributed, broadcast or televised or caused or permitted to be advertised, printed, displayed, published, distributed, broadcast or televised in any manner whatsoever, or having made orally any statement or representation with regard to the sale, lease or financing of motor vehicles which is false, deceptive or misleading;
- (12) having been convicted of violating section 325F.69, or having been enjoined due to a violation of section 325F.69;
- (13) having been convicted of violating the Minnesota odometer law, section 325E.14, 325E.15, or 325E.16, or the federal odometer law, United States Code, title 15, sections 1981 to 1991, as amended through December 31, 1984;
- (14) having been convicted of violating the sale of motor vehicles on Sunday law, section 168.275; or

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(15) having been convicted under section 609.53 of receiving or selling stolen vehicles; or

(16) having pleaded guilty, entered a plea of nolo contendere or no contest, or having been found guilty in a court of competent jurisdiction of any charge of failure to pay state or federal income or sales taxes or felony charge of forgery, embezzlement, obtaining money under false pretenses, theft by swindle, extortion, conspiracy to defraud, or bribery.

With respect to clauses (12), (13), and (15), and (16), the registrar may suspend or revoke a license immediately upon receiving certification of conviction or permanent injunction. A hearing is required under subdivision 13 within 30 days following a summary suspension or revocation under this paragraph, if a hearing is requested by the licensee.

Sec. 7. Minnesota Statutes 1996, section 168.27, subdivision 19a, is amended to read:

Subd. 19a. **INJUNCTION.** The commissioner or a county attorney may institute a civil action in the name of the state in district court for an injunction prohibiting a violation of this section and for civil penalties not to exceed \$1,000 for each violation of subdivision 2, 3, 4, 5a, 6, 7, or 7a. The court, upon proper proof that the defendant has engaged in a practice prohibited by this section, may enjoin the future commission of that practice and award civil penalties for violations of subdivision 2, 3, 4, 5a, 6, 7, or 7a. It is not a defense to an action that the state may have adequate remedies at law. Service of process must be as in any other civil suit, except that where a defendant in the action is a natural person or firm residing outside the state, or is a foreign corporation, service of process may also be made by personal service outside the state; in the manner provided by section 5.25; or as the court may direct. Process is valid if it satisfies the requirements of due process of law, whether or not the defendant is doing business in Minnesota regularly or habitually. Nothing in this subdivision limits the rights or remedies otherwise available to persons under common law or other statutes of this state.

Sec. 8. Minnesota Statutes 1996, section 168.27, subdivision 24, is amended to read:

Subd. 24. **BONDS.** All persons licensed hereunder shall keep in full force and effect a bond with a corporate surety to be approved by the registrar of motor vehicles in amounts as herein provided; in the case of boat trailer, snowmobile trailer, horse trailer or motorized bicycle dealers in the amount of \$5,000; and as to all other persons in the amount of ~~\$25,000~~ \$50,000. The bond shall be conditioned on the faithful performance by the licensee of the obligations imposed by the laws of this state, including the conduct required of a licensee by this section and other sections governing the sale or transfer of motor vehicles, and the payment of all taxes, license fees, and penalties. The bond shall be for the benefit of the state of Minnesota and any transferor, seller, or purchaser of a motor vehicle for any monetary loss caused by failure of the licensee to meet the obligations enumerated above. Proceedings on the forfeiture of the bonds shall be commenced in the district court of the county wherein the business of the licensed person was carried on, or if in more than one county, the county in which the offense occurred. This subdivision does not apply to a used vehicle parts dealer or a scrap metal processor.

Presented to the governor May 2, 1997

Signed by the governor May 6, 1997, 11:18 a.m.

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