

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

671L0610

HOUSE TRANSPORTATION COMMITTEE ENGROSSED NO. **HB 1111** - 02/02/2005

Introduced by: Representatives Krebs, Buckingham, Dykstra, Lange, McLaughlin, Michels,
and Weems and Senators Olson (Ed), Abdallah, Bartling, Earley, Hundstad,
Koskan, and Peterson (Jim)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the records required
2 to be kept by certain dealers and to require that certain liens be paid by a dealer before a
3 vehicle, snowmobile, mobile or manufactured home, or boat is offered for sale, sold, or
4 exchanged.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. That § 32-6B-20 be amended to read as follows:

7 32-6B-20. Each dealer licensed under the provisions of this chapter, shall keep books,
8 records, or files, in such form as prescribed or approved by the department. ~~The dealer shall~~
9 ~~keep a record of the purchase, sale, or exchange, of any vehicle, a description of the vehicle,~~
10 ~~together with the name and address of the owner or other person from whom the vehicle was~~
11 ~~purchased or received, and to whom it was sold or delivered. The description shall include the~~
12 ~~vehicle identification number, manufacturer's make and model, and odometer mileage. The~~
13 ~~dealer shall also possess a certificate of title from the previous owner of any vehicle not~~
14 ~~purchased from the manufacturer, from the time the vehicle is delivered to the dealer until it has~~



1 ~~been disposed of by the dealer. However, for any vehicle with a manufacturer's weight of sixteen~~
2 ~~thousand pounds or greater, if a copy of the front and back of any certificate of title which has~~
3 ~~been assigned to the dealer is kept at the location where the vehicle is being offered for sale, the~~
4 ~~certificate of title for the vehicle may be kept at another South Dakota dealership owned by the~~
5 ~~same dealer or kept by a lending institution. Prior to keeping any certificate of title at another~~
6 ~~dealership or at a lending institution, the dealer shall notify the department in writing where the~~
7 ~~certificate of title is to be kept. Such record shall be open to inspection by any peace officer or~~
8 ~~department dealer inspector, including the following:~~

9 (1) A record of the purchase, sale, or exchange, of any vehicle;

10 (2) A description of each vehicle purchased, sold, or exchanged, together with the name
11 and address of the owner or other person from whom the vehicle was purchased or
12 received and to whom it was sold or delivered. The description shall include the
13 vehicle identification number, manufacturer's make and model, and odometer
14 mileage; and

15 (3) A certificate of title from the previous owner of any vehicle not purchased from the
16 manufacturer, from the time the vehicle is delivered to the dealer until it has been
17 disposed of by the dealer.

18 The books and records and other papers and documents shall, at all times during business
19 hours of the day, be subject to inspection by the secretary of revenue and regulation.

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

22 A dealer is not required to keep a certificate of title for any vehicle with a manufacturer's
23 weight of sixteen thousand pounds or greater if a copy of the front and back of the certificate
24 of title which has been assigned to the dealer is kept at the location where the vehicle is being

1 offered for sale and the original certificate of title for the vehicle is kept at another South Dakota
2 dealership owned by the same dealer or kept by a lending institution.

3 Prior to keeping any certificate of title at another dealership or at a lending institution, the
4 dealer shall notify the department in writing where the certificate of title is to be kept.

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

7 A dealer may offer for sale, sell, or exchange a vehicle without a certificate of title if the
8 dealer complies with the following applicable provisions:

- 9 (1) The dealer has a record of purchase, sale, or exchange of a vehicle to include the
10 satisfaction of any outstanding liens or encumbrances and a secured power of
11 attorney;
- 12 (2) If the vehicle is encumbered by a lien noted on the title, the dealer shows that
13 payment has been tendered to the lienholder for the amount of the lien, except a lien
14 that is the result of dealer inventory financing; or
- 15 (3) If the dealer is required by law to obtain title prior to offering the vehicle for sale and
16 the dealer has applied for title through the electronic on-line title system and has
17 submitted the documents to the department.

18 This section does not relieve a dealer from the provisions of § 32-3-7.

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

21 If a person trades in a vehicle to a dealer or enters into a consignment agreement with a
22 dealer whereby the dealer will sell the vehicle and the vehicle has a lien noted on the title, the
23 dealer and person may agree that the dealer shall satisfy the lien amount by paying the lienholder
24 who is noted on the title. Failure to satisfy a lien pursuant to this section constitutes theft

1 pursuant to chapter 22-30A. The degree of theft is determined by the amount of the unsatisfied
2 lien. Multiple violations of this section occurring within any thirty-day period may be
3 aggregated in amount to determine the degree of theft.

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

6 If a dealer enters into an agreement pursuant to section 4 of this Act, the dealer shall satisfy
7 the lien within ten business days after the receipt of funds. No dealer may offer the vehicle for
8 sale until payment has been tendered to the lienholder, except on a consigned vehicle, whereby
9 the dealer shall comply with the terms of the consignment agreement.

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

11 32-6C-6. Any dealer licensed under the provisions of this chapter, shall keep books, records,
12 or files, in such form as prescribed or approved by the department. ~~The licensee shall keep a~~
13 ~~record of the purchase, sale, or exchange, of any snowmobile, a description of the snowmobile~~
14 ~~together with the name and address of the owner or other person from whom the snowmobile~~
15 ~~was purchased or received, and to whom it was sold or delivered. The description shall include~~
16 ~~the snowmobile serial number, manufacturer's make, and model. The dealer shall also have in~~
17 ~~his possession a certificate of title from the previous owner of any snowmobile not purchased~~
18 ~~from the manufacturer from the time the snowmobile is delivered to him until it has been~~
19 ~~disposed of by him. Such record shall be opened to inspection by any law enforcement officer~~
20 ~~or department inspector, including the following:~~

21 (1) A record of the purchase, sale, or exchange, of any snowmobile;

22 (2) A description of each snowmobile purchased, sold, or exchanged, together with the
23 name and address of the owner or other person from whom the snowmobile was
24 purchased or received and to whom it was sold or delivered. The description shall

1 include the snowmobile identification number and manufacturer's make and model;
2 and

3 (3) A certificate of title from the previous owner of any snowmobile not purchased from
4 the manufacturer, from the time the snowmobile is delivered to the dealer until it has
5 been disposed of by the dealer.

6 The books and records and other papers and documents shall, at all times during business
7 hours of the day, be subject to inspection by the secretary of revenue and regulation.

8 Section 7. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as
9 follows:

10 A dealer may offer for sale, sell, or exchange a snowmobile without a certificate of title if
11 the dealer complies with the following applicable provisions:

12 (1) The dealer has a record of purchase, sale, or exchange of a snowmobile to include the
13 satisfaction of any outstanding liens or encumbrances and a secured power of
14 attorney;

15 (2) If the snowmobile is encumbered by a lien noted on the title, the dealer shall show
16 that payment has been tendered to the lienholder for the amount of the lien, except
17 a lien that is the result of dealer inventory financing; or

18 (3) If the dealer is required by law to obtain title prior to offering the snowmobile for sale
19 and the dealer has applied for title through the electronic on-line title system and has
20 submitted the documents to the department.

21 This section does not relieve a dealer from the provisions of § 32-3-7.

22 Section 8. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as
23 follows:

24 If a person trades in a snowmobile to a dealer or enters into a consignment agreement with

1 a dealer whereby the dealer will sell the snowmobile and the snowmobile has a lien noted on
2 the title, the dealer and person may agree that the dealer shall satisfy the lien amount by paying
3 the lienholder who is noted on the title. Failure to satisfy a lien pursuant to this section
4 constitutes theft pursuant to chapter 22-30A. The degree of theft is determined by the amount
5 of the unsatisfied lien. Multiple violations of this section occurring within any thirty-day period
6 may be aggregated in amount to determine the degree of theft.

7 Section 9. That chapter 32-6C be amended by adding thereto a NEW SECTION to read as
8 follows:

9 If a dealer enters into an agreement pursuant to section 8 of this Act, the dealer shall satisfy
10 the lien within ten business days after the receipt of funds. No dealer may offer the snowmobile
11 for sale until payment has been tendered to the lienholder, except on a consigned snowmobile,
12 whereby the dealer shall comply with the terms of the consignment agreement.

13 Section 10. That § 32-7A-12 be amended to read as follows:

14 32-7A-12. ~~Every~~ Any dealer or manufacturer licensed under the provisions of this chapter,
15 shall keep a record, in such form as may be prescribed by the Department of Revenue and
16 Regulation. ~~The licensee shall keep a record of the purchase, sale or exchange, or receipt for the~~
17 ~~purpose of sale, of any mobile home or manufactured home. The licensee shall also keep a~~
18 ~~record of a description of the home together with the name and address of the seller, the~~
19 ~~purchaser, or other person from whom it was received or to whom it was delivered, including~~
20 the following:

- 21 (1) A record of the purchase, sale, or exchange, of any mobile or manufactured home;
22 (2) A description of each mobile or manufactured home purchased, sold, or exchanged,
23 together with the name and address of the owner or other person from whom the
24 mobile or manufactured was purchased or received and to whom it was sold or

1 delivered. The description shall include the mobile or manufactured home
2 identification number and manufacturer's make and model; and

3 (3) A certificate of title from the previous owner of any mobile or manufactured home
4 not purchased from the manufacturer, from the time the mobile or manufactured
5 home is delivered to the dealer until it has been disposed of by the dealer.

6 The books and records and other papers and documents shall, at all times during business
7 hours of the day, be subject to inspection by the secretary of revenue and regulation.

8 Section 11. That chapter 32-7A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 A dealer may offer for sale, sell, or exchange a mobile or manufactured without a certificate
11 of title if the dealer complies with the following applicable provisions:

12 (1) The dealer has a record of purchase, sale, or exchange of a mobile or manufactured
13 home to include the satisfaction of any outstanding liens or encumbrances and a
14 secured power of attorney;

15 (2) If the mobile or manufactured home is encumbered by a lien noted on the title, the
16 dealer shall show that payment has been tendered to the lienholder for the amount of
17 the lien, except a lien that is the result of dealer inventory financing; or

18 (3) If the dealer is required by law to obtain title prior to offering the mobile or
19 manufactured home for sale and the dealer has applied for title through the electronic
20 on-line title system and has submitted the documents to the department.

21 This section does not relieve a dealer from the provisions of § 32-3-7.

22 Section 12. That chapter 32-7A be amended by adding thereto a NEW SECTION to read
23 as follows:

24 If a person trades in a mobile or manufactured home to a dealer or enters into a consignment

1 agreement with a dealer whereby the dealer will sell the mobile or manufactured home and the
2 mobile or manufactured home has a lien noted on the title, the dealer and person may agree that
3 the dealer shall satisfy the lien amount by paying the lienholder who is noted on the title. Failure
4 to satisfy a lien pursuant to this section constitutes theft pursuant to chapter 22-30A. The degree
5 of theft is determined by the amount of the unsatisfied lien. Multiple violations of this section
6 occurring within any thirty-day period may be aggregated in amount to determine the degree of
7 theft.

8 Section 13. That chapter 32-7A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 If a dealer enters into an agreement pursuant to section 12 of this Act, the dealer shall satisfy
11 the lien within ten business days after the receipt of funds. No dealer may offer the mobile or
12 manufactured home for sale until payment has been tendered to the lienholder, except on a
13 consigned mobile or manufactured home, whereby the dealer shall comply with the terms of the
14 consignment agreement.

15 Section 14. That § 32-7B-9 be amended to read as follows:

16 32-7B-9. Any dealer licensed under the provisions of this chapter, shall keep books, records,
17 or files, in such form as prescribed or approved by the department. ~~The licensee shall keep a~~
18 ~~record of the purchase, sale or exchange, of any boat, a description of the boat together with the~~
19 ~~name and address of the owner or other person from whom the boat was purchased or received,~~
20 ~~and to whom it was sold or delivered for a period of five years. The description shall include~~
21 ~~the boat serial number, manufacturer's make and model. The dealer shall also have in possession~~
22 ~~a certificate of title from the previous owner of any boat not purchased from the manufacturer~~
23 ~~from the time the boat is delivered to the dealer until it has been disposed of by the dealer. Such~~
24 ~~record shall be opened to inspection by any law enforcement law officer or department~~

1 inspector, including the following:

2 (1) A record of the purchase, sale, or exchange, of any boat;

3 (2) A description of each boat purchased, sold, or exchanged, together with the name and
4 address of the owner or other person from whom the boat was purchased or received
5 and to whom it was sold or delivered. The description shall include the boat
6 identification number and manufacturer's make and model; and

7 (3) A certificate of title from the previous owner of any boat not purchased from the
8 manufacturer, from the time the boat is delivered to the dealer until it has been
9 disposed of by the dealer.

10 The books and records and other papers and documents shall, at all times during business
11 hours of the day, be subject to inspection by the secretary of revenue and regulation.

12 Section 15. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as
13 follows:

14 A dealer may offer for sale, sell, or exchange a boat without a certificate of title if the dealer
15 complies with the following applicable provisions:

16 (1) The dealer has a record of purchase, sale, or exchange of a boat to include the
17 satisfaction of any outstanding liens or encumbrances and a secured power of
18 attorney;

19 (2) If the boat is encumbered by a lien noted on the title, the dealer shall show that
20 payment has been tendered to the lienholder for the amount of the lien, except a lien
21 that is the result of dealer inventory financing; or

22 (3) If the dealer is required by law to obtain title prior to offering the boat for sale and
23 the dealer has applied for title through the electronic on-line title system and has
24 submitted the documents to the department.

1 This section does not relieve a dealer from the provisions of § 32-3-7.

2 Section 16. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as
3 follows:

4 If a person trades in a boat to a dealer or enters into a consignment agreement with a dealer
5 whereby the dealer will sell the boat and the boat has a lien noted on the title, the dealer and
6 person may agree that the dealer shall satisfy the lien amount by paying the lienholder who is
7 noted on the title. Failure to satisfy a lien pursuant to this section constitutes theft pursuant to
8 chapter 22-30A. The degree of theft is determined by the amount of the unsatisfied lien.
9 Multiple violations of this section occurring within any thirty-day period may be aggregated in
10 amount to determine the degree of theft.

11 Section 17. That chapter 32-7B be amended by adding thereto a NEW SECTION to read as
12 follows:

13 If a dealer enters into an agreement pursuant to section 16 of this Act, the dealer shall satisfy
14 the lien within ten business days after the receipt of funds. No dealer may offer the boat for sale
15 until payment has been tendered to the lienholder, except on a consigned boat, whereby the
16 dealer shall comply with the terms of the consignment agreement.