

Committee: Senate Commerce and Energy

Thursday, February 16, 2023 10:00 AM

Roll Call

Present: Sen. Crabtree, Sen. Brent "B.R." Hoffman, Sen. Steve Kolbeck, Sen. Nesiba, Sen. Schoenbeck, Sen. Stalzer, Sen. Zikmund, Sen. Beal, and Sen. Wheeler

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Senator Wheeler

MOTION: TO APPROVE THE MINUTES OF TUESDAY, FEBRUARY 14TH

Moved by: Beal
Second by: Schoenbeck
Action: Prevailed by voice vote

HB 1133 : define a commodity for the purpose of qualifying as a common carrier.

Presented by: Senator Bryan J. Breitling (Handout(s) #1)
Representative Karla Lems

Proponents: Craig Schaunaman, self, Aberdeen
Joy Hohn, self, Sioux Falls
Dennis Feickert, self, Aberdeen
Wendy Schulz, self, Watertown
Ed Fischbach, self, Mellette
Mark Lapka, self, Leola
Rick Bonander, self, Valley Springs

Opponents: Brett Koenecke, Summit Carbon Solutions, Ames, IA (Handout(s) #2, #3, #4)
Elizabeth Burns-Thompson, Navigator Heartland Greenway, Altoona, IA
Walt Wendland, Ringneck Energy & Feed LLC, Onida
Kirk Yackley, self, Onida
Jim Seuer, Glacial Lakes, Watertown
Kent Hartwig, Gevo, Lake Preston

Others: Jake Ketzner, Summit Carbon Solutions, Ames, IA

MOTION: DEFER HB 1133 TO THE 41ST LEGISLATIVE DAY

Moved by: Crabtree
Second by: Stalzer
Action: Prevailed by Majority Members Elect (9-0-0-0)

Voting Yes: Crabtree, Brent "B.R." Hoffman, Steve Kolbeck, Nesiba, Schoenbeck, Stalzer, Zikmund, Beal, and Wheeler

HB 1230 : clarify references to the court in a condemnation action.

Presented by: Senator Erin Tobin
Representative Will Mortenson

Proponents: Steve Siegel, Landowners for Eminent Domain Reform, Omaha, NE
Tony Ventura, self, Hudson

Opponents: Justin Bell, Summit Carbon Solutions, Ames, IA
 Brett Koenecke, South Dakota Electric Utility Companies, Pierre
 Elizabeth Burns-Thompson, Navigator Heartland Greenway, Altoona, IA

MOTION: DO PASS HB 1230

Moved by: Brent "B.R." Hoffman
 Second by: Zikmund
 Action: Was not acted on.

MOTION: SUBSTITUTE MOTION: DEFER HB 1230 TO THE 41ST LEGISLATIVE DAY

Moved by: Crabtree
 Second by: Schoenbeck
 Action: Prevailed by Majority Members Elect (6-3-0-0)

Voting Yes: Crabtree, Steve Kolbeck, Schoenbeck, Stalzer, Zikmund, and Wheeler

Voting No: Brent "B.R." Hoffman, Nesiba, and Beal

SB 159 : revise provisions regarding vehicle warranty claims.

Presented by: Senator Erin Tobin
 Proponents: Christine Vinatieri-Erickson, South Dakota Auto Dealers Association, Sioux Falls
 Dan Mills, Dealer, Geddes
 William Rush, Dealer, Sioux Falls
 William M. Van Camp, South Dakota Retailers Association, Pierre

MOTION: AMEND SB 159

159B

On the Introduced bill, delete everything after the enacting clause and insert:

"

Section 1. That § 32-6B-1 be AMENDED:

32-6B-1. Terms as used in this chapter mean:

- (1) "Administrator," the administrator of the dealer licensing and inspection program of the Department of Revenue;
- (2) "Auctioneer," a person who presides over a public auction where following an initial starting price, bids are taken from two or more people until a final bid or price is established for a motor vehicle;
- (3) "Authorized emergency vehicle," any vehicle of a fire department and any ambulance and emergency vehicle of a municipal department or public service corporation that are designated or authorized by the Department of Public Safety or the Department of Health;
- (4) "Broker," a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale or exchange of vehicles, and who is not:
 - (a) A dealer or a bona fide agent or employee of a dealer;
 - (b) A representative or a bona fide agent or employee of a manufacturer; or

- (c) At any point in the transaction the bona fide owner of the vehicle involved in the transactions;
- (5) "Chassis cab," any incomplete motor vehicle, with a completed occupant compartment, that requires only the addition of cargo carrying, work performing, or load bearing components to perform the vehicle's intended function;
- (6) "Community," the franchisee's area of responsibility as stipulated in the franchise or a minimum radius of ten miles around an existing dealership;
- (7) "Converter," a person who modifies or installs on previously assembled chassis special bodies or equipment that, when completed, form an integral part of the vehicle and that constitutes a major manufacturing alteration and who may issue a supplemental or secondary statement of origin;
- (8) "Demonstration," the noncommercial use of a dealer owned vehicle by any employee of the dealership for any purpose in the ordinary course of business relating to the sale of the vehicle within the trade or market area of the dealership or demonstration by any prospective buyer for a period of three days. The term includes vehicles donated by a dealership to a community or organization and used for a one-day parade or event;
- (9) "Department," the Department of Revenue;
- (10) "Emergency vehicle dealer," any person who converts or manufacturers authorized emergency vehicles and who, for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale or exchange of new, or new and used authorized emergency vehicles, or who is engaged wholly or in part in the business of selling new, or new and used authorized emergency vehicles;
- (11) "Event," a fair, exposition, vehicle show, vehicle rally, or fishing tournament that is held once each year and lasts at least three days including any setup time but does not exceed fifteen days;
- (12) "Final stage manufacturer dealer," any person who assembles or installs on a previously assembled new motor vehicle chassis cab any special body or equipment that forms an integral part of the motor vehicle, constitutes a major manufacturing alteration, and completes the vehicle;
- (13) "Franchise," a written or oral agreement or contract between a franchisor and franchisee that fixes the legal rights and liabilities of the parties to the agreement or contract;
- (14) "Franchisee," person who receives vehicles from a franchisor under a franchise and who offers and sells the vehicles to the general public;
- (15) "Franchisor," any person engaged in the manufacturing or distribution of vehicles including any person who acts for the franchisor;
- (16) "Good faith," honesty in fact and the observance of reasonable, nondiscriminatory commercial standards of fair dealing in the trade;
- (17) "In-transit," the noncommercial use of a dealer owned vehicle by any employee of the dealership for travel to and from any service facility, detail shop, repair shop, gas station, car wash, dealer auction, another lot owned by the dealer, a supplemental lot, temporary special events lot, temporary supplemental lot, or any other location to facilitate a dealer trade;
- (18) "Manufacturer," a person who manufactures or assembles vehicles, including motor homes, or any parts, components, complete assemblies, or sub-assemblies of vehicles ~~and who issues the original or first manufacturer's statement of origin~~. The term includes a central or principal sales corporation through which it distributes its products to franchised dealers;
- (19) "Off-road vehicle," any self-propelled, two or more wheeled vehicle designed primarily to be operated on land other than a highway and includes any all

- terrain vehicle, dune buggy, and vehicle whose manufacturer's statement of origin or manufacturer's certificate of origin states that the vehicle is not for highway use;
- (20) "Public auction," a business that is open to the public where South Dakota titled motor vehicles are consigned, displayed, and auctioned to the highest bidder by an auctioneer;
- (21) "Sell-it-yourself lot," any space provided to a person for a fee to display that person's boat or vehicle for sale;
- (22) "Semitrailer," any vehicle of the trailer type, equipped with a kingpin assembly, designed and used in conjunction with a fifth wheel connecting device on a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle;
- (23) "Supplemental lot," a physically separate location owned and maintained by a licensed dealer within the same county as the principal place of business;
- (24) "Trailer," any vehicle without motive power designed to be coupled to or drawn by a motor vehicle and constructed so that no part of its weight or that of its load rests upon the towing vehicle;
- (25) "Trailer dealer," any person who, for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale or exchange of new or used trailers, semitrailers or travel trailers or who is engaged in the business of selling new or used trailers, semitrailers or travel trailers whether or not the vehicles are owned by the person;
- (26) "Travel trailer," any trailer or semitrailer that provides as its primary purpose adequate, comfortable, temporary living quarters while on pleasure excursions or while touring for business, professional, educational or recreational purposes;
- (27) "Used vehicle dealer," any person who, for commission or with intent to make a profit or gain sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale or exchange of used vehicles or who is engaged in the business of selling used vehicles;
- (28) "Vehicle," any new or used automobile, truck, truck tractor, motorcycle, off-road vehicle, motor home, trailer, semitrailer or travel trailer of the type and kind required to be titled and registered under chapters 32-3 and 32-5, or required to be titled under chapter 32-20 except any manufactured home, used mobile home, moped, or snowmobile; and
- (29) "Vehicle dealer," any person who, for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale or exchange of new, or new and used vehicles, or who is engaged wholly or in part in the business of selling new, or new and used vehicles.

Section 2. That chapter 32-6B be amended with a NEW SECTION:

Except as provided in section 3 of this Act, a manufacturer may not charge back to a dealer any warranty claim that has been paid and approved if:

- (1) The repair work was covered under the manufacturer's warranty;
 (2) The repair work corrected the defective condition that needed to be repaired; and
 (3) The dealer provided documentation of the parts repaired and the process used to make the repairs.

Section 3. That chapter 32-6B be amended with a NEW SECTION:

A manufacturer may charge back a warranty claim if:

- (1) The claim was false or fraudulent; or
 (2) The repairs were not necessary to correct the defective condition under accepted standards of workmanship."

Moved by: Crabtree
Second by: Schoenbeck
Action: Prevailed by voice vote

MOTION: DO PASS SB 159 AS AMENDED

Moved by: Crabtree
Second by: Schoenbeck
Action: Prevailed by Majority Members Elect (8-0-1-0)

Voting Yes: Crabtree, Steve Kolbeck, Nesiba, Schoenbeck, Stalzer, Zikmund, Beal, and Wheeler

Excused: Brent "B.R." Hoffman

HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED SB 159 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

SB 167 : revise provisions regarding vehicle dealer warranty compensation.

Presented by: Senator Erin Tobin

MOTION: TO TABLE SB 167

Moved by: Schoenbeck
Second by: Beal
Action: Prevailed by Majority Members Elect (9-0-0-0)

Voting Yes: Crabtree, Brent "B.R." Hoffman, Steve Kolbeck, Nesiba, Schoenbeck, Stalzer, Zikmund, Beal, and Wheeler

SB 178 : create provisions for the protection of warehouse distribution center employees.

MOTION: AMEND SB 178

178C

On page 1, line 1, of the Introduced bill, delete "create provisions for the protection of warehouse distribution center employees" and insert " create new provisions for the distribution of legal newspapers"

On the Introduced bill, delete everything after the enacting clause and insert:

Section 1. That § 17-2-2.2 be AMENDED:

17-2-2.2. A legal newspaper shall, for at least one year prior to publication of legal and official notices, be intended for distribution and circulation to the general public, without regard to business, trade, or profession and must:

(1) ~~maintain~~ Maintain a definite price of not less than fifty percent of its published price, and shall be paid for by no less than fifty percent of those to whom it is distributed. Such legal newspaper shall have a minimum paid circulation of at least two hundred and be intended for distribution and circulation to the general public, without regard to business, trade, or profession; or

(2) Meet the requirements of a South Dakota twenty-first century newspaper as defined in section 2 of this Act.

Section 2. That chapter 17-2 be amended with a NEW SECTION:

A South Dakota twenty-first century newspaper is a newspaper that meets the following criteria:

- (1) Has a majority of the outstanding or issued voting stock or membership interests of the South Dakota twenty-first century newspaper owned or controlled by South Dakota residents, as identified on an annual report to be filed with the Secretary of State. Any person or entity owning more than twenty percent of the newspaper must be disclosed on the annual report;
- (2) Maintains a minimum of five hundred paid online subscribers as of January 1 of the current year;
- (3) Prints and distributes at least seven hundred fifty copies of the newspaper each week regardless of whether the print edition is made available to the public for a paid subscription or at no cost to the reader;
- (4) Distributes the minimum print copies in each county for which the newspaper will act as a legal newspaper in quantities as required by this section, with not more than five percent of the copies delivered to any single distribution location within such county;
- (5) Publishes, at least annually, an affidavit by an owner or agent of any newspaper stating the newspaper complies with subsections one through four;
- (6) Maintains an office in the state of South Dakota for the purpose of gathering news, soliciting advertising, and conducting general newspaper business for at least eight normal business hours per week; and
- (7) Complies with a written request from the governing body who has placed legal notices in the newspaper for an audit of compliance with subsection two through four for the calendar year preceding the notice of audit.

The provisions of §§ 17-2-2.4 and 17-2-2.5 shall not apply to a South Dakota twenty-first century newspaper.

Section 3. That chapter 17-2 be amended with a NEW SECTION:

On or before the last business day in January of each year, any legal newspaper who received funds from a South Dakota governmental entity for publishing legal notices in the preceding calendar year must file a report with the Secretary of State stating the amount of gross revenue, by county, of all such funds received in the prior year for such legal notices.

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Moved by: Schoenbeck
Second by: Crabtree
Action: Prevailed by voice vote

THE CHAIR DEFERRED SB 178 UNTIL TUESDAY, FEBRUARY 21ST 2023

MOTION: ADJOURN

Moved by: Stalzer
Second by: Beal
Action: Prevailed by voice vote

Susan Gullickson, Committee Secretary

/s/ DAVID WHEELER
David Wheeler, Chair