

2023 South Dakota Legislature

Senate Bill 159**AMENDMENT 159C
FOR THE SENATE COMMERCE AND ENERGY ENGROSSED
BILL**

1 **An Act to revise provisions regarding vehicle warranty claims.**

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

3 **Section 1. That § 32-6B-1 be AMENDED:**

4 **32-6B-1.** Terms as used in this chapter mean:

- 5 (1) "Administrator," the administrator of the dealer licensing and inspection program
6 of the Department of Revenue;
- 7 (2) "Auctioneer," a person who presides over a public auction where following an initial
8 starting price, bids are taken from two or more people until a final bid or price is
9 established for a motor vehicle;
- 10 (3) "Authorized emergency vehicle," any vehicle of a fire department and any
11 ambulance and emergency vehicle of a municipal department or public service
12 corporation that are designated or authorized by the Department of Public Safety
13 or the Department of Health;
- 14 (4) "Broker," a person who, for a fee, commission, or other valuable consideration,
15 arranges or offers to arrange a transaction involving the sale or exchange of
16 vehicles, and who is not:
- 17 (a) A dealer or a bona fide agent or employee of a dealer;
- 18 (b) A representative or a bona fide agent or employee of a manufacturer; or
- 19 (c) At any point in the transaction the bona fide owner of the vehicle involved
20 in the transactions;
- 21 (5) "Chassis cab," any incomplete motor vehicle, with a completed occupant
22 compartment, that requires only the addition of cargo carrying, work performing,
23 or load bearing components to perform the vehicle's intended function;
- 24 (6) "Community," the franchisee's area of responsibility as stipulated in the franchise
25 or a minimum radius of ten miles around an existing dealership;

- 1 ~~(7)~~ "Component manufacturer," a person that manufactures or assembles parts,
2 components, complete assemblies, or sub-assemblies for vehicles, which are
3 separately warranted from the vehicles, and does not otherwise manufacture or
4 assemble vehicles;
- 5 ~~(7)~~(8) "Converter," a person who modifies or installs on previously assembled chassis
6 special bodies or equipment that, when completed, form an integral part of the
7 vehicle and that constitutes a major manufacturing alteration and who may issue
8 a supplemental or secondary statement of origin;
- 9 ~~(8)~~(9) "Demonstration," the noncommercial use of a dealer owned vehicle by any
10 employee of the dealership for any purpose in the ordinary course of business
11 relating to the sale of the vehicle within the trade or market area of the dealership
12 or demonstration by any prospective buyer for a period of three days. The term
13 includes vehicles donated by a dealership to a community or organization and used
14 for a one-day parade or event;
- 15 ~~(9)~~(10) "Department," the Department of Revenue;
- 16 ~~(10)~~(11) "Emergency vehicle dealer," any person who converts or manufacturers
17 authorized emergency vehicles and who, for commission or with intent to make a
18 profit or gain, sells, exchanges, rents with option to purchase, offers, or attempts
19 to negotiate a sale or exchange of new, or new and used authorized emergency
20 vehicles, or who is engaged wholly or in part in the business of selling new, or new
21 and used authorized emergency vehicles;
- 22 ~~(11)~~(12) "Event," a fair, exposition, vehicle show, vehicle rally, or fishing tournament
23 that is held once each year and lasts at least three days including any setup time
24 but does not exceed fifteen days;
- 25 ~~(12)~~(13) "Final stage manufacturer dealer," any person who assembles or installs on a
26 previously assembled new motor vehicle chassis cab any special body or equipment
27 that forms an integral part of the motor vehicle, constitutes a major manufacturing
28 alteration, and completes the vehicle;
- 29 ~~(13)~~(14) "Franchise," a written or oral agreement or contract between a franchisor and
30 franchisee that fixes the legal rights and liabilities of the parties to the agreement
31 or contract;
- 32 ~~(14)~~(15) "Franchisee," person who receives vehicles from a franchisor under a franchise
33 and who offers and sells the vehicles to the general public;
- 34 ~~(15)~~(16) "Franchisor," any person engaged in the manufacturing or distribution of
35 vehicles including any person who acts for the franchisor;

- 1 ~~(16)~~(17) "Good faith," honesty in fact and the observance of reasonable,
2 nondiscriminatory commercial standards of fair dealing in the trade;
- 3 ~~(17)~~(18) "In-transit," the noncommercial use of a dealer owned vehicle by any employee
4 of the dealership for travel to and from any service facility, detail shop, repair shop,
5 gas station, car wash, dealer auction, another lot owned by the dealer, a
6 supplemental lot, temporary special events lot, temporary supplemental lot, or any
7 other location to facilitate a dealer trade;
- 8 ~~(18)~~(19) "Manufacturer," a person who manufactures or assembles vehicles, including
9 motor homes, ~~or any parts, components, complete assemblies, or sub-assemblies~~
10 ~~of vehicles~~ and who issues the original or first manufacturer's statement of origin.
11 The term includes a central or principal sales corporation through which it
12 distributes its products to franchised dealers;
- 13 ~~(19)~~(20) "Off-road vehicle," any self-propelled, two or more wheeled vehicle designed
14 primarily to be operated on land other than a highway and includes any all terrain
15 vehicle, dune buggy, and vehicle whose manufacturer's statement of origin or
16 manufacturer's certificate of origin states that the vehicle is not for highway use;
- 17 ~~(20)~~(21) "Public auction," a business that is open to the public where South Dakota titled
18 motor vehicles are consigned, displayed, and auctioned to the highest bidder by
19 an auctioneer;
- 20 ~~(21)~~(22) "Sell-it-yourself lot," any space provided to a person for a fee to display that
21 person's boat or vehicle for sale;
- 22 ~~(22)~~(23) "Semitrailer," any vehicle of the trailer type, equipped with a kingpin assembly,
23 designed and used in conjunction with a fifth wheel connecting device on a motor
24 vehicle and constructed so that some part of its weight and that of its load rests
25 upon or is carried by another vehicle;
- 26 ~~(23)~~(24) "Supplemental lot," a physically separate location owned and maintained by a
27 licensed dealer within the same county as the principal place of business;
- 28 ~~(24)~~(25) "Trailer," any vehicle without motive power designed to be coupled to or drawn
29 by a motor vehicle and constructed so that no part of its weight or that of its load
30 rests upon the towing vehicle;
- 31 ~~(25)~~(26) "Trailer dealer," any person who, for commission or with intent to make a profit
32 or gain, sells, exchanges, rents with option to purchase, offers or attempts to
33 negotiate a sale or exchange of new or used trailers, semitrailers or travel trailers
34 or who is engaged in the business of selling new or used trailers, semitrailers or
35 travel trailers whether or not the vehicles are owned by the person;

1 ~~(26)~~(27) "Travel trailer," any trailer or semitrailer that provides as its primary purpose
 2 adequate, comfortable, temporary living quarters while on pleasure excursions or
 3 while touring for business, professional, educational or recreational purposes;

4 ~~(27)~~(28) "Used vehicle dealer," any person who, for commission or with intent to make
 5 a profit or gain sells, exchanges, rents with option to purchase, offers or attempts
 6 to negotiate a sale or exchange of used vehicles or who is engaged in the business
 7 of selling used vehicles;

8 ~~(28)~~(29) "Vehicle," any new or used automobile, truck, truck tractor, motorcycle, off-
 9 road vehicle, motor home, trailer, semitrailer or travel trailer of the type and kind
 10 required to be titled and registered under chapters 32-3 and 32-5, or required to
 11 be titled under chapter 32-20 except any manufactured home, used mobile home,
 12 moped, or snowmobile; and

13 ~~(29)~~(30) "Vehicle dealer," any person who, for commission or with intent to make a profit
 14 or gain, sells, exchanges, rents with option to purchase, offers or attempts to
 15 negotiate a sale or exchange of new, or new and used vehicles, or who is engaged
 16 wholly or in part in the business of selling new, or new and used vehicles.

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

18 Except as provided in section 3 of this Act, a manufacturer ~~or component~~
 19 manufacturer may not charge back to a ~~vehicle~~ dealer any warranty claim that has been
 20 paid and approved ~~if for any vehicle or any part, component, complete assembly, or~~
 21 subassembly for a vehicle if:

22 (1) The repair work was covered under the manufacturer's ~~or component~~
 23 manufacturer's warranty;

24 (2) The repair work corrected the defective condition that needed to be repaired; ~~and~~

25 (3) The ~~vehicle~~ dealer provided documentation of the parts repaired and the process
 26 used to make the repairs; ~~and~~

27 (4) The ~~vehicle dealer~~ performed the repair in accordance with reasonable written
 28 requirements of the manufacturer or component manufacturer, if the ~~vehicle dealer~~
 29 was notified of the requirements before the claim arose and if the requirements
 30 were in effect when the claim arose.

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

32 A manufacturer ~~or component manufacturer~~ may charge back a warranty claim if:

33 (1) The claim was false or fraudulent; or

1 (2) The repairs were not necessary to correct the defective condition under accepted
2 standards of workmanship.

3 **Section 4. That § 32-6B-58 be AMENDED:**

4 **32-6B-58.** Every franchisor, component manufacturer, or manufacturer shall
5 properly fulfill any warranty agreement and compensate, as set forth in § 32-6B-61, each
6 of its vehicle dealers for labor and parts. The franchisor, component manufacturer, or
7 manufacturer shall pay all claims made by a vehicle dealer for the labor and parts within
8 thirty days following their approval. The franchisor, component manufacturer, or
9 manufacturer shall either approve or disapprove the claim within thirty days after its
10 receipt. If a claim is disapproved, the vehicle dealer who submitted the claim shall be
11 notified in writing of the claim's disapproval within the thirty-day period. Any claim
12 rejected for technical reasons may be put into proper form by the vehicle dealer. Any
13 claim resubmitted by the vehicle dealer within thirty days after the receipt of the claim
14 shall be considered to be approved and payment shall be made within thirty days. The
15 franchisor, component manufacturer, or manufacturer has the right to audit any vehicle
16 dealer claim for a period of one year after the claim is paid to the dealer and to charge
17 back to the new vehicle dealer the amount of any unsubstantiated claim. If there is
18 evidence of fraud by the vehicle dealer, the audit period is two years from the actual or
19 constructive notice of facts constituting the alleged fraud.

20 **Section 5. That § 32-6B-58.1 be AMENDED:**

21 **32-6B-58.1.** A franchisor, component manufacturer, or manufacturer that
22 provides a separate warranty for an engine, transmission, or rear axle installed in a
23 commercial medium- and heavy-duty on-highway vehicle, as defined in 49 U.S.C.
24 § 32901(a)(7) as of January 1, 2021, shall compensate any authorized repair facility that
25 performs warranty work to repair or replace the engine, transmission or rear axle upon
26 the same terms and conditions as provided in § 32-6B-61 for compensation of warranty
27 work performed by a vehicle dealer. The franchisor, component manufacturer, or
28 manufacturer shall pay all claims made by the facility for the labor and parts within thirty
29 days following approval. The franchisor, component manufacturer, or manufacturer shall
30 either approve or disapprove the claim within thirty days after receiving the claim. If a
31 claim is disapproved, the facility that submitted the claim shall be notified in writing of the
32 claim's disapproval within the thirty-day period. Any claim rejected for technical reasons
33 may be put into proper form by the facility. Any claim resubmitted by the facility within

1 thirty days after the receipt of the claim shall be considered to be approved and payment
 2 shall be made within thirty days. The franchisor, component manufacturer, or
 3 manufacturer has the right to audit any facility's claim for a period of one year after the
 4 claim is paid to the facility and to charge back to the facility the amount of any
 5 unsubstantiated claim. If there is evidence of fraud by the facility, the audit period is two
 6 years from the actual or constructive notice of facts constituting the alleged fraud.

7 **Section 6. That § 32-6B-61 be AMENDED:**

8 **32-6B-61.** The schedule of compensation for warranty work shall include
 9 reasonable compensation for diagnostic work, as well as repair service, parts, and labor.
 10 Time allowances for diagnosis and performance of warranty work and service shall be
 11 adequate for the work to be performed. The hourly labor rate paid to the dealer for
 12 warranty services may not be less than the rate charged by the dealer for like service to
 13 nonwarranty customers for nonwarranty service. Reimbursement for parts used in the
 14 performance of warranty repair may not be less than the current retail rate customarily
 15 charged by the vehicle dealer for such parts. Each manufacturer or component
 16 manufacturer, in establishing a schedule of compensation for warranty work, shall rely on
 17 the vehicle dealer's written schedule of hourly labor rates and parts and may not obligate
 18 any vehicle dealer to engage in unduly burdensome documentation thereof, including,
 19 without limitation, obligating vehicle dealers to engage in transaction by transaction
 20 calculations.