

# State of South Dakota

SEVENTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 1997

400A0300

## HOUSE BILL NO. 1035

Introduced by: The Committee on Transportation at the request of the Department of Revenue

1 FOR AN ACT ENTITLED, An Act to revise certain provisions pertaining to the regulation of  
2 vehicle dealers, snowmobile dealers, and boat dealers.

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

4 Section 1. That § 32-6B-1 be amended by adding thereto a NEW SUBDIVISION to read  
5 as follows:

6 "Sell-it-yourself lot," any space provided to a person for a fee to display that person's boat  
7 or vehicle for sale.

8 Section 2. That § 32-5B-16 be amended to read as follows:

9 32-5B-16. Any seller of a motor vehicle or snowmobile shall, on demand by the secretary of  
10 revenue, make available all books, records and memoranda which relate to the sale of a motor  
11 vehicle or snowmobile. The secretary, in the event of any failure or refusal to produce ~~such~~ the  
12 records, may conduct an audit of the books and records of any licensed motor vehicle or  
13 snowmobile dealer failing or refusing to produce ~~such~~ the records. All books, records and  
14 memoranda which relate to the sale of a motor vehicle or snowmobile shall be retained by the  
15 seller for ~~three~~ five years.

1 Section 3. That § 32-6B-5 be amended to read as follows:

2 32-6B-5. The following persons are exempt from the provisions of this chapter:

3 (1) Any receiver, trustee, administrator, executor, guardian, or other person appointed  
4 by or acting under the judgment or order of any court;

5 (2) Any public officer while performing the officer's official duties;

6 (3) Any employee of any person licensed as a vehicle dealer if engaged in the specific  
7 performance of the employee's duties;

8 (4) Any person not engaged in the sale of vehicles as a business who operates fleets of  
9 vehicles and is disposing of vehicles used in the person's business if the same were  
10 acquired and used in good faith and not for the purpose of avoiding the provisions of  
11 this chapter;

12 (5) Any regulated lenders as that term is defined in § 54-3-14, any insurance company  
13 authorized to do business in this state or any financing institution as defined in and  
14 licensed pursuant to chapter 54-7 that acquires vehicles as an incident to its regular  
15 business;

16 (5A) Any financial institution chartered or licensed in any other jurisdiction that acquires  
17 vehicles as an incident to its regular business and sells such vehicles to dealers licensed  
18 under this chapter;

19 (6) Any vehicle rental and leasing company that sells its used vehicles to dealers licensed  
20 under this chapter;

21 (7) Any nonprofit automobile club if selling automobiles twenty years old or older under  
22 the provisions of chapter 32-3;

23 (8) Any person engaged in the business of manufacturing or converting new vehicles if  
24 selling such vehicles to a licensed dealer holding a franchise from the original  
25 manufacturer of the vehicle;

1 (8A) Any person who sells less than five vehicles in a twelve-month period, unless the  
 2 person is licensed as a dealer in another state or holds himself or herself out as being  
 3 in the business of selling vehicles. However, if the vehicles are travel trailers, any  
 4 person who sells less than three travel trailers in a twelve-month period;

5 (9) Any person acting as an auctioneer if auctioning South Dakota titled vehicles for a  
 6 licensed dealer or ~~a person who is exempt from the provisions of this chapter~~ an  
 7 individual or other entity. An auctioneer is not exempt from the provisions of this  
 8 chapter if auctioning for a group of individuals or entities that are not licensed dealers;

9 (10) Any towing agency that acquires and sells a vehicle which has been towed at the  
 10 request of a private landowner under the provision of chapter 32-36 or at the request  
 11 of a law enforcement officer, if no vehicle is sold for an amount over two hundred  
 12 dollars; ~~and~~

13 (11) Any person not engaged in the sale of vehicles as a business and is disposing of  
 14 vehicles used solely for personal use if the vehicles were acquired and used in good  
 15 faith and not for the purpose of avoiding the provisions of this chapter; and

16 (12) Any person or company engaged in the activity of operating a sell-it-yourself lot  
 17 unless the operator is conducting those business activities prohibited by section 4 of  
 18 this Act.

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

21 No sell-it-yourself lot operator may engage in the following business activities concerning  
 22 any vehicle on the sell-it-yourself lot premises, unless licensed in accordance with the provisions  
 23 of this chapter:

- 24 (1) Sell, offer to sell, or negotiate the sale of any vehicle;
- 25 (2) Buy, offer to buy, or negotiate the purchase of any vehicle;

- 1 (3) Make any comments about the appearance, condition, or reputation of any vehicle;
- 2 (4) Communicate the name, address, or phone number of the owner of any vehicle to a
- 3 potential customer. However, the ownership information can be provided to a
- 4 potential customer by means of a sign placed in or on the vehicle by its owner;
- 5 (5) Advertise a vehicle in any manner either as part of a group or individually, or as an
- 6 agent for the owner;
- 7 (6) Authorize the test drive of any vehicle; or
- 8 (7) Take possession of the keys of a vehicle for any purpose.

9 A sell-it-yourself lot operator who engages in a business activity prohibited by this section  
 10 without being licensed in accordance with this chapter is guilty of a Class 6 felony.

11 Section 5. That § 32-6B-14 be amended to read as follows:

12 32-6B-14. Each license ~~expires annually at the end of the calendar year unless suspended or~~  
 13 ~~revoked prior to that date. Any licensee who does not file his application and renewal fees with~~  
 14 ~~the department prior to the license expiration date shall cease to engage in business as a dealer~~  
 15 ~~on the license expiration date~~ may be issued for a multiple year period. The application for  
 16 license and all applicable fees are due prior to the issuance of the initial license. All licenses shall  
 17 be reviewed annually by the department. The department shall mail to the licensee at the last  
 18 known address a renewal notice. The department shall establish by rules promulgated pursuant  
 19 to chapter 1-26 the review date, if other than October first to December thirty-first, inclusive.  
 20 If the licensee fails to return the renewal notice or to pay the applicable fees the department shall  
 21 cancel and revoke the license pursuant to the provisions of §§ 32-6B-43 and 32-6B-44.

22 Section 6. That § 32-6B-21 be amended to read as follows:

23 32-6B-21. The department shall issue metal numerical license plates to licensed dealers upon  
 24 application and payment of a thirty dollars dollar yearly fee to be paid at the time of the annual  
 25 review date for each set desired. Such fees shall be distributed in the manner specified in

1 § 32-11-2 and §§ 32-11-4.1 to 32-11-9, inclusive. The license plates shall be numbered  
2 consecutively and shall bear as a prefix the number "77". The plates may be issued for a multiple  
3 year period. If a dealer's license is revoked or canceled or the dealer goes out of business the  
4 "77" plates shall be returned to the department. If any person operates a motor vehicle with "77"  
5 plates after the dealer license is revoked or canceled or after the dealer goes out of business, or  
6 if the person refuses to return the plates, the person is guilty of a Class 2 misdemeanor.

7 Section 7. That § 32-6B-43 be amended to read as follows:

8 32-6B-43. The department may prepare and serve written notice upon a licensee which it  
9 ~~receives complaints on in the manner provided by chapter 1-26. The notice shall require the~~  
10 ~~licensee to appear before the department at a time and place, not less than five days after service~~  
11 ~~of the notice, to show cause why the license should not be revoked~~ has violated § 32-6B-41 or  
12 if the licensee has failed to stay in compliance with the provisions of this chapter. The notice shall  
13 state that the department intends to revoke and cancel the license thirty days after the notice was  
14 sent by certified mail or hand delivered. The notice may contain the requirements the licensee  
15 shall meet to correct the violation or to come into compliance with the provisions of this chapter.  
16 If the licensee meets the requirements within the thirty days, the licensee shall retain the license.

17 Section 8. That § 32-6B-44 be amended to read as follows:

18 32-6B-44. ~~The~~ If a licensee, after receiving a license revocation notice pursuant to § 32-6B-  
19 43, decides to challenge the revocation, the licensee shall submit a request for a hearing in  
20 writing to the department prior to the effective date of the revocation. If no request is received  
21 by the department prior to the effective date of the revocation, the license shall be revoked and  
22 canceled. If a hearing request is made the department shall, in accordance with chapter 1-26 and  
23 at the time and place fixed pursuant to § 32-6B-43, hear and determine the matter on its merits.  
24 If the department finds the existence of any cause for suspension or revocation as set forth in  
25 § 32-6B-41, it shall suspend or revoke the license. A copy of the order shall be served upon the

1 licensee in the manner provided by chapter 1-26. Upon suspension or revocation the licensee  
2 shall immediately return to the department all dealers' metal plates issued to ~~him~~ the licensee and  
3 shall immediately surrender ~~his~~ the license certificate to a representative of the department  
4 serving ~~such~~ the written order upon ~~him~~ the licensee.

5 Section 9. That § 32-6C-14 be amended to read as follows:

6 32-6C-14. The department may deny any application, or suspend or revoke any license issued  
7 under the provisions of this chapter, for the violation of any of the following provisions:

- 8 (1) Commission of fraud or willful misrepresentation in the application for or in obtaining  
9 a license;
- 10 (2) Conviction of a felony involving the theft of snowmobiles or other motor vehicles in  
11 the last five years;
- 12 (3) Second or subsequent violations of any law of this state which relates to dealing in  
13 snowmobiles;
- 14 (4) Repeated failure to comply with any administrative rule promulgated by the  
15 department;
- 16 (5) Perpetration of a fraud upon any person as a result of dealing in snowmobiles;
- 17 (6) Repeated failure to apply for transfers of title as required in chapters 32-3 and  
18 32-20A;
- 19 (7) Willful failure to allow department inspections, including initial and annual  
20 inspections, complaint investigations and necessary follow-up inspections;
- 21 (8) Willful misrepresentation through false, deceptive or misleading statements with  
22 regard to the sale or financing of snowmobiles which a dealer has, or causes to have,  
23 advertised, printed, displayed, published, distributed, broadcast, televised or made in  
24 any manner with regard to the sale or financing of snowmobiles;
- 25 (9) Refusal to comply with a licensee's responsibility under the terms of a snowmobile

1 warranty issued by its respective manufacturer, unless such refusal is at the direction  
2 of the manufacturer;

3 (10) Willful failure to comply with the terms of any bona fide written, executed agreement  
4 pursuant to the sale of a snowmobile;

5 (11) Willful failure to disclose damage to a new snowmobile of which the dealer had  
6 knowledge if the dealer's actual cost to repair, exceeds five percent of the  
7 manufacturer's suggested retail price; or

8 (12) Inability to obtain or renew surety bond; ~~or~~

9 ~~(13) Failure to maintain and continuously occupy a principal place of business.~~

10 Section 10. That § 10-1-28.2 be amended to read as follows:

11 10-1-28.2. All lists of taxpayers, licensees or applicants compiled by the Department of  
12 Revenue are confidential except licensees which were licensed under the provisions of chapter  
13 10-47B, 32-6B, 32-6C, or 32-7A. It is a Class 2 misdemeanor to disclose any such list except  
14 to the extent necessary to carry out the official duties of the department.

15 Section 11. That chapter 32-6B be amended by adding thereto a NEW SECTION to read  
16 as follows:

17 The department may sell lists of dealers licensed pursuant to chapter 32-6B, 32-6C, or 32-  
18 7A. The department may promulgate rules pursuant to 1-26 to establish the fees for the lists.  
19 Lists shall be provided free of charge, if the use is for the enforcement of this chapter.

20 Section 12. That § 42-8-8.1 be amended to read as follows:

21 42-8-8.1. The Department of ~~game, fish and parks~~ Revenue shall issue boat license tags of  
22 a durable material to boat manufacturers and dealers upon application and payment of fifteen  
23 dollars for each set of boat license tags desired. Each set of boat license tags shall be valid until  
24 December thirty-one next following the date of issuance.

25 Section 13. That chapter 42-8 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 At time of the sale or exchange of a new or used large boat by a boat dealer, the boat dealer  
3 is required to keep a record of the sale or exchange. The record shall include:

- 4 (1) Date of sale, date of exchange, or both;
- 5 (2) Accurate description of the large boat as provided by acceptable ownership  
6 documents previously issued for the boat or the manufacturer's statement of origin;  
7 and
- 8 (3) Name and address of the purchaser.

9 The record required of this section shall be open to inspection by any law enforcement officer  
10 or dealer inspector upon request. Any violation of this section is a Class 2 misdemeanor.

11 Section 14. That § 42-8-8.4 be amended to read as follows:

12 42-8-8.4. ~~When~~ If a new or used boat is sold by a boat manufacturer or boat dealer, the boat  
13 manufacturer or boat dealer may provide a temporary tag permit to operate the boat in this state  
14 for thirty days after the date of sale of the boat or until the time the purchaser receives his  
15 licenses from the county treasurer, whichever occurs first. The temporary boat license tags shall  
16 be displayed as required by § 42-8-6 and rules promulgated, pursuant to chapter 1-26, by the  
17 Department of Revenue. A boat dealer may not use or furnish the temporary tag permit to be  
18 used upon any boat owned by the boat dealer or for any purpose other than on a boat sold by  
19 the boat dealer. No person may renew the temporary tag permit nor change or alter in any way  
20 any information provided on the temporary tag permit. Any violation of this section is a Class  
21 2 misdemeanor.