

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

400A0300

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **HB1035** - 2/19/97

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 and snowmobile 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;
- 7 (10) Any towing agency that acquires and sells a vehicle which has been towed at the
8 request of a private landowner under the provision of chapter 32-36 or at the request
9 of a law enforcement officer, if no vehicle is sold for an amount over two hundred
10 dollars; and
- 11 (11) Any person not engaged in the sale of vehicles as a business and is disposing of
12 vehicles used solely for personal use if the vehicles were acquired and used in good
13 faith and not for the purpose of avoiding the provisions of this chapter.

14 Section 4. That § 32-6B-14 be amended to read as follows:

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

25 Section 5. That § 32-6B-21 be amended to read as follows:

1 32-6B-21. The department shall issue metal numerical license plates to licensed dealers upon
2 application and payment of a thirty dollars dollar yearly fee to be paid at the time of the annual
3 review date for each set desired. Such fees shall be distributed in the manner specified in
4 § 32-11-2 and §§ 32-11-4.1 to 32-11-9, inclusive. The license plates shall be numbered
5 consecutively and shall bear as a prefix the number "77". The plates may be issued for a multiple
6 year period. If a dealer's license is revoked or canceled or the dealer goes out of business the
7 "77" plates shall be returned to the department. If any person operates a motor vehicle with "77"
8 plates after the dealer license is revoked or canceled or after the dealer goes out of business, or
9 if the person refuses to return the plates, the person is guilty of a Class 2 misdemeanor.

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

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

20 Section 7. That § 32-6B-44 be amended to read as follows:

21 32-6B-44. ~~The~~ If a licensee, after receiving a license revocation notice pursuant to § 32-6B-
22 43, decides to challenge the revocation, the licensee shall submit a request for a hearing in
23 writing to the department prior to the effective date of the revocation. If no request is received
24 by the department prior to the effective date of the revocation, the license shall be revoked and
25 canceled. If a hearing request is made the department shall, in accordance with chapter 1-26 and

1 at the time and place fixed pursuant to § 32-6B-43, hear and determine the matter on its merits.
2 If the department finds the existence of any cause for suspension or revocation as set forth in
3 § 32-6B-41, it shall suspend or revoke the license. A copy of the order shall be served upon the
4 licensee in the manner provided by chapter 1-26. Upon suspension or revocation the licensee
5 shall immediately return to the department all dealers' metal plates issued to ~~him~~ the licensee and
6 shall immediately surrender ~~his~~ the license certificate to a representative of the department
7 serving ~~such~~ the written order upon ~~him~~ the licensee.

8 Section 8. That § 32-6C-14 be amended to read as follows:

9 32-6C-14. The department may deny any application, or suspend or revoke any license issued
10 under the provisions of this chapter, for the violation of any of the following provisions:

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

1 advertised, printed, displayed, published, distributed, broadcast, televised or made in
2 any manner with regard to the sale or financing of snowmobiles;

3 (9) Refusal to comply with a licensee's responsibility under the terms of a snowmobile
4 warranty issued by its respective manufacturer, unless such refusal is at the direction
5 of the manufacturer;

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

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

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

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

13 Section 9. That § 10-1-28.2 be amended to read as follows:

14 10-1-28.2. All lists of taxpayers, licensees or applicants compiled by the Department of
15 Revenue are confidential except licensees which were licensed under the provisions of chapter
16 10-47B, 32-6B, 32-6C, or 32-7A. It is a Class 2 misdemeanor to disclose any such list except
17 to the extent necessary to carry out the official duties of the department.

18 Section 10. That chapter 32-6B be amended by adding thereto a NEW SECTION to read
19 as follows:

20 The department may sell lists of dealers licensed pursuant to chapter 32-6B, 32-6C, or 32-
21 7A. Proceeds from such sales shall be deposited in the general fund. The department may
22 promulgate rules pursuant to 1-26 to establish the fees for the lists. Lists shall be provided free
23 of charge, if the use is for the enforcement of this chapter. Lists shall be provided free of charge
24 to any licensed South Dakota dealer that requests a list.

25 Section 11. That § 32-6B-3 be amended to read as follows:

1 32-6B-3. ~~No person~~ Any vehicle dealer or public auction may sell, or offer to sell, new or
2 used vehicles on consignment. For the purposes of this chapter, "consignment" means the
3 delivery of a vehicle by the owner into the possession of another without transfer of title for the
4 purpose of sale or where there is any condition that the purchaser does not have an absolute
5 obligation to pay for the vehicle or has a right to return the vehicle to the seller. Any vehicle
6 dealer or public auction who sells, or offers to sell, South Dakota titled vehicles on consignment
7 shall enter into a contract with the consignor. The department shall prescribe the form of the
8 contract.

9 Section 12. That chapter 32-6B be amended by adding thereto a NEW SECTION to read
10 as follows:

11 No person may sell or offer to sell a motor vehicle, to which a manufacture's statement of
12 origin has not been transferred, on consignment. For the purpose of this chapter, consignment,
13 means the delivery of a new vehicle by the owner into the possession of another without transfer
14 of title for the purpose of sale or where there is any condition that the purchaser does not have
15 an absolute obligation to pay for the vehicle or has a right to return the vehicle to the seller.

16 Section 13. That chapter 32-6B be amended by adding thereto a NEW SECTION to read
17 as follows:

18

19 Before a South Dakota titled vehicle may be sold by a consignee or at a public auction
20 pursuant to § 32-6B-3, the consignee or auctioneer shall have in possession an odometer reading
21 certified by the owner of the motor vehicle, a damage disclosure statement signed by the owner
22 of the motor vehicle, and a South Dakota title for the motor vehicle. A violation of this section
23 is a Class 2 misdemeanor.

24 Section 14. That chapter 32-6B be amended by adding thereto a NEW SECTION to read
25 as follows:

1 A consignee or an auctioneer may not sell a motor vehicle that has a certificate of title with
2 a lien on it for less than the full amount of the lien, without the advance written consent of the
3 lien holder. A consignee or an auctioneer may not release the proceeds from the sale of a motor
4 vehicle with a lien on the title until the lien holder signs a release of the lien. A violation of this
5 section is a Class 2 misdemeanor.

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

8 Every public auction shall keep such books, records, and files as prescribed by the
9 department. A record shall be kept of every vehicle offered for sale by or through the public
10 auction, including the serial or vehicle identification number and a description of the vehicle and
11 the name and address of the motor vehicle owner. If the vehicle is sold, the name and address
12 of the person purchasing the motor vehicle and the price for which it is sold shall be recorded
13 and maintained. Dealer inspectors appointed pursuant to § 32-6B-38 may inspect the books,
14 records, or files required by the department or this section.

15 Section 16. That § 32-6B-1 be amended by adding thereto NEW SUBDIVISIONS to read
16 as follows:

17 "Auctioneer," a person who presides over a public auction where following an initial starting
18 price, bids are taken from two or more people until a final bid or price is established for a motor
19 vehicle;

20 "Public auction," a business that is open to the public where South Dakota titled motor
21 vehicles are consigned, displayed, and auctioned to the highest bidder by an auctioneer;

22 "Temporary special events lot," a location other than the principal place of business,
23 supplemental lot, or temporary supplemental lot where a licensed trailer dealer, a licensed used
24 car dealer selling only travel trailers or motor homes, or both, or a licensed vehicle dealer selling
25 only travel trailers or motor homes, or both, may conduct business for a period of time not to

1 exceed ten consecutive days for a specific purpose such as fairs, auctions, shopping center sales,
2 or tent sales. A temporary special events lot shall meet all local zoning and building codes for the
3 type of business being conducted.

4 Section 17. That subdivision (13) of § 32-6B-1 be amended to read as follows:

5 (13) "Temporary supplemental lot," a location other than the principal place of business
6 or supplemental lot but within the same county as the principal place of business
7 where a licensed vehicle dealer or a licensed used vehicle dealer may conduct business
8 for a period of time not to exceed ten consecutive days for a specific purpose such as
9 fairs, auto shows, auctions, shopping center promotions or tent sales. ~~Such~~ A
10 temporary supplemental ~~lots~~ lot shall meet all local zoning and building codes for the
11 type of business being conducted;

12

1 **BILL HISTORY**

2 1/14/97 First read in House and referred to Transportation. H.J. 29

3 1/27/97 Scheduled for Committee hearing on this date.

4 1/29/97 Scheduled for Committee hearing on this date.

5 1/29/97 Transportation Do Pass Amended, Passed, AYES 9, NAYS 3. H.J. 210

6 2/3/97 Motion to Amend. H.J. 273

7 2/3/97 House of Representatives Do Pass Amended, Passed, AYES 57, NAYS 12. H.J. 274

8 2/3/97 House of Representatives Title Amended. H.J. 274

9 2/4/97 First read in Senate and referred to Transportation. S.J. 313

10 2/6/97 Scheduled for Committee hearing on this date.

11 2/6/97 Deferred to another day. S.J. 348

12 2/11/97 Scheduled for Committee hearing on this date.

13 2/13/97 Scheduled for Committee hearing on this date.

14 2/14/97 Scheduled for Committee hearing on this date.

15 2/18/97 Scheduled for Committee hearing on this date.

16 2/18/97 Transportation Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 487