

State of South Dakota

NINETY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2018

850Z0489

HOUSE COMMERCE AND ENERGY ENGROSSED NO. **HB 1236** - 2/5/2018

Introduced by: Representatives Willadsen, Anderson, Campbell, Chase, Clark, Frye-Mueller, Goodwin, Johnson, Lesmeister, Livermont, Rasmussen, Smith, Steinhauer, and Zikmund and Senators Wiik, Frerichs, Otten (Ernie), Solano, Stalzer, and Youngberg

1 FOR AN ACT ENTITLED, An Act to provide for the acquisition of certain motor vehicle titles
2 by auction agencies in certain circumstances.

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

4 Section 1. That chapter 32-3 be amended by adding a NEW SECTION to read:

5 If an insurer requests that an auction agency take possession of a motor vehicle that is the
6 subject of an insurance claim and there is no total loss claim payment that results in transfer of
7 ownership to the insurer of the motor vehicle, the department, upon request of the auction
8 agency, shall provide the last known name and address of the record holder of title and any
9 readily identifiable lienholder to the auction agency free of any charge.

10 Section 2. That chapter 32-3 be amended by adding a NEW SECTION to read:

11 Notwithstanding any other law, an auction agency in possession of a motor vehicle under
12 section 1 of this Act may apply for and shall be issued a salvage title or a certificate of title for
13 the motor vehicle in the name of the auction agency if the motor vehicle is not claimed by its



1 owner or any lienholder as provided under section 3 of this Act. The auction agency seeking title
2 under this section shall send written notice by certified mail, or a similar service that provides
3 proof of delivery, to the owner of the motor vehicle and any readily identifiable lienholder of
4 record at the owner's or lienholder's last known address. The notice shall include the location
5 of the motor vehicle; the circumstance surrounding acquisition of the motor vehicle; reasonable
6 charges incurred by the auction agency; the year, make, model, and serial number of the motor
7 vehicle; and shall inform the owner or lienholder of the right to reclaim the motor vehicle under
8 section 3 of this Act. If the auction agency cannot determine with reasonable certainty the
9 identity and address of the owner or any lienholder, a notice shall be published once in a
10 newspaper of general circulation in the area where the motor vehicle was acquired by the
11 auction agency. Published notices required under this section may be grouped together for
12 convenience and economy.

13 Section 3. That chapter 32-3 be amended by adding a NEW SECTION to read:

14 An owner or lienholder may reclaim a motor vehicle for which notice has been provided as
15 required under section 2 of this Act. The owner or lienholder shall provide notice to the auction
16 agency of any intent to reclaim the motor vehicle from the auction agency by certified mail, or
17 any similar service that provides proof of delivery, within thirty days of the owner's or
18 lienholder's receipt of notice under section 2 of this Act. Notwithstanding any other law, and
19 only if the auction agency has complied with the provisions of this chapter, title to the motor
20 vehicle irrevocably vests in the auction agency in possession of the abandoned motor vehicle
21 if:

- 22 (1) The auction agency has not received notice of intent to reclaim the motor vehicle
23 from the owner or any lienholder within forty-five days from their receipt of notice
24 provided under section 2 of this Act; or

1 (2) The owner or lienholder provides notice of an intent to reclaim the motor vehicle
2 under this section but fails to:

3 (a) Pay to the auction agency the reasonable charges incurred by the auction
4 agency; and

5 (b) Claim and remove the motor vehicle within forty-five days after the auction
6 agency's receipt of the notice of intent to reclaim the motor vehicle.

7 Upon an auction agency's receipt of title, the motor vehicle shall be sold by the auction
8 agency, and any excess proceeds received from the sale, beyond settlement of the reasonable
9 charges incurred by the auction agency, shall be paid jointly to the owner and any prior
10 lienholder, and mailed to the first lienholder, if any, or otherwise to the prior owner. If the
11 auction agency cannot identify or contact the owner or any lienholder, any excess proceeds
12 received from the sale shall be sent to the state treasurer and treated as unclaimed property
13 pursuant to chapter 43-41B. After any salvage title or certificate of title is issued under the
14 provisions of this section or section 2 of this Act, an owner's or lienholder's exclusive right
15 against the auction agency shall be to any excess proceeds from the auction agency's sale of the
16 vehicle under this section. For purposes of this section and section 2 of this Act, reasonable
17 charges incurred by the auction agency include any cost incurred by the auction agency for
18 towing and storage of the motor vehicle, providing notice by mail or publication to the owner
19 or any lienholder, and conducting the auction pursuant to this section.

20 Section 4. That chapter 32-3 be amended by adding a NEW SECTION to read:

21 Notwithstanding any other law, if an insurer is unable to obtain a certificate of title for a
22 motor vehicle from the owner or lienholder within forty-five days of payment of a total loss
23 claim on the motor vehicle, and is unable to surrender the certificate of title to the department
24 as required pursuant to § 32-3-51.20, the department shall issue a salvage title or certificate of

1 title for the motor vehicle to the insurer when the insurer provides to the department:

2 (1) Proof of payment for the motor vehicle to the registered owner; and

3 (2) Proof of payment in satisfaction of any lien that was previously perfected on the
4 vehicle.

5 The department may promulgate rules, pursuant to chapter 1-26, to implement the provisions
6 of this section.