

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

400A0300

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **HB1035** - 1/31/97

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, 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.

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

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

- (1) Any receiver, trustee, administrator, executor, guardian, or other person appointed by or acting under the judgment or order of any court;
- (2) Any public officer while performing the officer's official duties;
- (3) Any employee of any person licensed as a vehicle dealer if engaged in the specific performance of the employee's duties;
- (4) Any person not engaged in the sale of vehicles as a business who operates fleets of vehicles and is disposing of vehicles used in the person's business if the same were acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter;
- (5) Any regulated lenders as that term is defined in § 54-3-14, any insurance company authorized to do business in this state or any financing institution as defined in and licensed pursuant to chapter 54-7 that acquires vehicles as an incident to its regular business;
- (5A) Any financial institution chartered or licensed in any other jurisdiction that acquires vehicles as an incident to its regular business and sells such vehicles to dealers licensed under this chapter;
- (6) Any vehicle rental and leasing company that sells its used vehicles to dealers licensed under this chapter;
- (7) Any nonprofit automobile club if selling automobiles twenty years old or older under the provisions of chapter 32-3;
- (8) Any person engaged in the business of manufacturing or converting new vehicles if selling such vehicles to a licensed dealer holding a franchise from the original 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:

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

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

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

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

32-6B-44. ~~The~~ If a licensee, after receiving a license revocation notice pursuant to § 32-6B-43, decides to challenge the revocation, the licensee shall submit a request for a hearing in writing to the department prior to the effective date of the revocation. If no request is received by the department prior to the effective date of the revocation, the license shall be revoked and 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,

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

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

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

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

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

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

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

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

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

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

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

32-6B-3. ~~No person~~ Any vehicle dealer or public auction may sell, or offer to sell, new or used vehicles on consignment. For the purposes of this chapter, "consignment" means the

1 delivery of a vehicle by the owner into the possession of another without transfer of title for the
2 purpose of sale or where there is any condition that the purchaser does not have an absolute
3 obligation to pay for the vehicle or has a right to return the vehicle to the seller. Any vehicle
4 dealer or public auction who sells, or offers to sell, vehicles on consignment shall enter into a
5 contract with the consignor. The department shall prescribe the form of the contract.

1 **BILL HISTORY**

2 January 14 - First read in House and referred to Transportation. H.J. 29

3 January 27 - Scheduled for hearing.

4 January 29 - Scheduled for hearing.

5 January 29 - Passed as amended, AYES 9, NAYS 3. H.J. 210