

State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

400V0345

HOUSE BILL NO. 1061

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

1 FOR AN ACT ENTITLED, An Act to include limited liability companies in certain provisions
2 regarding the licensing of boats and motor vehicles and certain provisions regarding the
3 dealers and manufacturers of certain vehicles, manufactured homes, and mobile homes.

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

5 Section 1. That § 32-3A-52 be amended to read as follows:

6 32-3A-52. Exempt from the provisions of § 32-3A-50 are:

- 7 (1) Any large boat which is the property of the governmental units which are exempted
8 from motor vehicle registration fees by §§ 32-5-42 and 32-5-42.1;
- 9 (2) Any large boat acquired by inheritance or bequest;
- 10 (3) Any large boat previously titled or licensed jointly in the names of two or more
11 persons and subsequently transferred without consideration to one or more of such
12 persons;
- 13 (4) Any large boat transferred without consideration between spouses, between a parent
14 and child, and between siblings;
- 15 (5) Any large boat transferred pursuant to any mergers or consolidations of corporations



1 or limited liability companies, or plans of reorganization by which substantially all
2 of the assets of a corporation or limited liability company are transferred if the large
3 boat was previously titled, licensed, and registered in this state;

4 (6) Any large boat transferred by a subsidiary corporation or limited liability company
5 to its parent corporation or limited liability company for no or nominal consideration
6 or in sole consideration of the cancellation or surrender of the subsidiary's stock if the
7 large boat was previously titled, licensed, and registered in this state;

8 (7) Any large boat transferred between an individual and a corporation if the individual
9 and the owner of the majority of the capital stock of the corporation are one and the
10 same, or any large boat transferred between an individual and a limited liability
11 company if the individual and the majority member of the limited liability company
12 are one and the same, and if the large boat was previously titled and registered in this
13 state;

14 (8) Any large boat transferred between a corporation or limited liability company and its
15 stockholders, members, or creditors if to effectuate a dissolution of the corporation
16 or limited liability company it is necessary to transfer the title from the corporate
17 entity or limited liability company to the stockholders, members, or creditors and if
18 the large boat was previously titled and registered in this state;

19 (9) Any large boat transferred between an individual and limited or general partnership
20 if the individual and the owner of the majority interest in the partnership are one and
21 the same person and if the large boat was previously titled and registered in this state;

22 (10) Any large boat transferred to effect a sale of all or substantially all of the assets of the
23 business entity if the large boat was previously titled and registered in this state;

24 (11) Any large boat acquired by a secured party or lien holder in satisfaction of a debt;

- 1 (12) Any large boat sold or transferred which is eleven or more years old and which is
2 sold or transferred for one thousand five hundred dollars or less before trade-in;
- 3 (13) Any damaged large boat transferred to an insurance company in the settlement of an
4 insurance claim;
- 5 (14) Any large boat owned by a former resident of this state who returns to the state and
6 who had previously paid excise tax to this state on the large boat as evidenced within
7 the department's records or by submission of other acceptable proof of payment of
8 such tax;
- 9 (15) ~~Between~~ Any large boat transferred between corporations, both subsidiary and
10 nonsubsidiary, if the individuals who hold a majority of stock in the first corporation
11 also hold a majority of stock in the second corporation; but these individuals need not
12 hold the same ratio of stock in both corporations ~~provided and if~~ the large boat was
13 previously titled and registered in this state; ~~and~~
- 14 (16) Any large boat transferred between limited liability companies, both subsidiary and
15 nonsubsidiary, if the individuals who hold a majority interest in the first limited
16 liability company also hold a majority interest in the second limited liability company
17 and if the large boat was previously titled, licensed, and registered in this state; and
- 18 (17) Any large boat transferred by a trustor to ~~his~~ a trustee or from a trustee to a
19 beneficiary of a trust.

20 Section 2. That § 32-5-2.2 be amended to read as follows:

21 32-5-2.2. The first letter of the owner's last name shall determine the month in which a
22 noncommercial vehicle owner shall register ~~his~~ the vehicle. For a corporation or limited liability
23 company, the first letter in its name shall be used. The registration shall proceed as follows:

1	January	A, B
2	February	C, D, E
3	March	F, G, J
4	May	H, I, O
5	June	K, L
6	July	M, N
7	August	P, Q, R
8	September	S
9	November	T, U, V, W, X, Y, Z

10 The secretary may promulgate rules pursuant to chapter 1-26 to allow owners with different
 11 last names living in the same household to register their noncommercial vehicles in the same
 12 month.

13 Section 3. That § 32-5-27 be amended to read as follows:

14 32-5-27. Any dealer, person, firm, ~~or corporation,~~ or limited liability company which brings
 15 into the state or purchases any used or secondhand out-of-state motor vehicles not currently
 16 licensed in this state for the purpose of sale or resale, except as a trade-in on a new motor
 17 vehicle or another used motor vehicle, a used motor vehicle purchased by a dealer and sold to
 18 another dealer, vehicles receiving a junking certificate, motor vehicles with a gross vehicle
 19 weight rating of over twenty-six thousand pounds, or a semitrailer with a manufacturer's
 20 shipping weight of nine thousand pounds or more, shall, within thirty days from the date of
 21 purchase or entry of the motor vehicle into the limits of this state, or from the date of purchase
 22 at a dealer's car auction agency, title the motor vehicle pursuant to chapter 32-3 and pay the
 23 excise tax pursuant to chapter 32-5B but is not required to license the vehicle. Any licensed
 24 motor vehicle dealer titling a motor vehicle pursuant to this section is exempt from paying the
 25 excise tax imposed by § 32-5B-1 on ~~such~~ the vehicle. A vehicle titled by a licensed motor

1 vehicle dealer pursuant to this section shall be issued a title indicating that no excise tax has
2 been paid. Upon transfer of the title to a subsequent purchaser of the motor vehicle, the excise
3 tax shall be paid by the purchaser or by any other person as defined by subdivision 2-14-2(18),
4 on behalf of and as the agent for the purchaser. A violation of this section is a Class 2
5 misdemeanor.

6 The provisions of this section do not apply to any motor vehicle titled and licensed in
7 another jurisdiction ~~which~~ that is sold in this state through a dealer's car auction agency licensed
8 under the provisions of chapter 32-6B.

9 Section 4. That § 32-5B-2 be amended to read as follows:

10 32-5B-2. Motor vehicles exempted from the provisions of this chapter are as follows:

- 11 (1) Any motor vehicle exempted in § 32-5-42, 32-5-42.1, or 32-5-1.3;
- 12 (2) Any motor vehicle acquired by inheritance from or bequest of a decedent;
- 13 (3) Any motor vehicle previously titled or licensed jointly in the names of two or more
14 persons and subsequently transferred without consideration to one or more of such
15 persons;
- 16 (4) Any motor vehicle transferred without consideration between spouses, between a
17 parent and child, and between siblings;
- 18 (5) Any motor vehicle transferred pursuant to any mergers or consolidations of
19 corporations or limited liability companies, or plans of reorganization by which
20 substantially all of the assets of a corporation or limited liability company are
21 transferred if the motor vehicle was previously titled, licensed, and registered in this
22 state;
- 23 (6) Any motor vehicle transferred by a subsidiary corporation or limited liability
24 company to its parent corporation or limited liability company for no or nominal

1 consideration or in sole consideration of the cancellation or surrender of the
2 subsidiary's stock if the motor vehicle was previously titled, licensed, and registered
3 in this state;

4 (7) Any motor vehicle transferred between an individual and a corporation if the
5 individual and the owner of the majority of the capital stock of the corporation are
6 one and the same, or any motor vehicle transferred between an individual and a
7 limited liability company if the individual and the majority member of the limited
8 liability company are one and the same, and if the motor vehicle was previously
9 titled, licensed, and registered in this state;

10 (8) Any motor vehicle transferred between a corporation or limited liability company and
11 its stockholders, members, or creditors if to effectuate a dissolution of the corporation
12 or limited liability company it is necessary to transfer the title from the corporate
13 entity or limited liability company to the stockholders, members, or creditors and if
14 the motor vehicle was previously titled, licensed, and registered in this state;

15 (9) Any motor vehicle transferred between an individual and a limited or general
16 partnership if the individual and the owner of the majority interest in the partnership
17 are one and the same person and if the motor vehicle was previously titled, licensed,
18 and registered in this state;

19 (10) Any motor vehicle transferred to effect a sale of all or substantially all of the assets
20 of the business entity if the motor vehicle was previously titled, licensed, and
21 registered in this state;

22 (11) Any motor vehicle acquired by a secured party or lien holder in satisfaction of a debt;

23 (12) Any motor vehicle sold or transferred ~~which~~ that is eleven or more model years old
24 and ~~which~~ that is sold or transferred for two thousand two hundred dollars or less

1 before trade-in;

2 (13) Any damaged motor vehicle transferred to an insurance company in the settlement
3 of an insurance claim;

4 (14) Any motor vehicle owned by a former resident of this state who returns to the state
5 and who had previously paid vehicle excise tax to this state on the motor vehicle as
6 evidenced within the department's records or by submission of other acceptable proof
7 of payment of such tax;

8 (15) ~~Between~~ Any motor vehicle transferred between corporations, both subsidiary and
9 nonsubsidiary, if the individuals who hold a majority of stock in the first corporation
10 also hold a majority of stock in the second corporation; but these individuals need not
11 hold the same ratio of stock in both corporations ~~provided and if~~ the motor vehicle
12 was previously titled, licensed, and registered in this state;

13 (16) Any motor vehicle transferred between limited liability companies, both subsidiary
14 and nonsubsidiary, if the individuals who hold a majority interest in the first limited
15 liability company also hold a majority interest in the second limited liability company
16 and if the motor vehicle was previously titled, licensed, and registered in this state;

17 (17) Any motor vehicle transferred by a trustor to ~~his~~ a trustee or from a trustee to a
18 beneficiary of a trust;

19 ~~(17)~~(18) Any motor vehicle rented for twenty-eight days or less is subject to the tax
20 imposed by § 32-5B-20; and

21 ~~(18)~~(19) Any motor vehicle transferred without consideration to any South Dakota
22 nonprofit corporation ~~which~~ that will donate the motor vehicle to a needy
23 family or individual.

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

1 32-6B-6. Any person selling vehicles pursuant to the requirements of this chapter shall file
2 with the department, upon forms provided by the department, an application including the
3 following:

- 4 (1) The name and address of the applicant;
- 5 (2) The name of the firm or copartnership, with the names and addresses of all members,
6 if the applicant is a firm or copartnership;
- 7 (3) The name of the corporation or limited liability company, with the names and
8 addresses of the principal officers or members, if the applicant is a ~~body corporate~~
9 corporation or limited liability company;
- 10 (4) The exact location of the place of business and, if owned by the applicant, when
11 acquired. If the place of business is leased, a true copy of the lease shall accompany
12 the application;
- 13 (5) A certification that the location provides an adequately equipped office and is not the
14 residence of the applicant;
- 15 (6) A certification that the location affords sufficient space to adequately store all
16 vehicles offered for sale;
- 17 (7) A certification that the location is the place where the applicant keeps and maintains
18 books, records, and files necessary to conduct business, which shall be available at
19 all reasonable hours to inspection by the department;
- 20 (8) A consent to allow periodic inspections of the dealership by the department;
- 21 (9) A certification that the business of a vehicle dealer is the principal business
22 conducted at the location;
- 23 (10) A description of the principal place of business and any supplemental lots;
- 24 (11) A statement that the applicant is either franchised by a manufacturer of vehicles, in

1 which case the name of each vehicle that the applicant is franchised to sell shall be
2 included or is a used vehicle dealer;

3 (12) A list of financial references;

4 (13) A certification that neither the applicant, nor any other partner, member, officer, or
5 financial supporter, has been convicted of a crime involving vehicle theft or fraud in
6 the last five years;

7 (14) Such other information as the department may require;

8 (15) Verification as to the accuracy of the information provided by the applicant;

9 (16) A certificate that the applicant has obtained a public liability insurance policy of not
10 less than three hundred thousand dollars; and

11 (17) For any emergency vehicle dealer whose principal place of business is not located in
12 South Dakota, proof it the dealer is a licensed dealer in another state and has no
13 outstanding dealer violations.

14 Section 6. That § 32-6C-3 be amended to read as follows:

15 32-6C-3. Any person selling snowmobiles pursuant to the requirements of this chapter shall
16 file with the Department of Revenue, upon forms provided by the department, an application
17 including the following information:

18 (1) The name and address of the applicant;

19 (2) The name of the partnership, with the names and addresses of all partners;

20 (3) The name of the corporation or limited liability company, with the names and
21 addresses of the principal officers or members, if the applicant is a corporation or
22 limited liability company;

23 (4) The exact location of the place of business and, if owned by the applicant, when
24 acquired. If the place of business is leased, a copy of the lease shall accompany the

- 1 application;
- 2 (5) A certification that the location is the place where the applicant keeps and maintain
- 3 books, records, and files necessary to conduct business, which shall be available at
- 4 all reasonable hours to inspection by the department;
- 5 (6) A statement that the applicant is either franchised by a manufacturer of snowmobiles,
- 6 in which case the name of each snowmobile that the applicant is franchised to sell
- 7 shall be included, or is a used snowmobile dealer, or both;
- 8 (7) A certification that neither the applicant, nor any other partner, member, or officer
- 9 has been convicted of a crime involving vehicle theft or fraud in the last five years;
- 10 (8) Such other information as the department may require.

11 Section 7. That § 32-6D-1 be amended to read as follows:

12 32-6D-1. Terms used in this chapter mean:

- 13 (1) "Consumer," the purchaser, other than for purposes of resale, of a new or previously
- 14 untitled motor vehicle used in substantial part for personal, family, or household
- 15 purposes, and any other person entitled by the terms of ~~such~~ the warranty to enforce
- 16 the obligations of the warranty;
- 17 (2) "Express warranty," a written warranty, so labeled, issued by the manufacturer of a
- 18 new motor vehicle, including any terms or conditions precedent to the enforcement
- 19 of obligations under that warranty;
- 20 (3) "Lemon law rights period," the period ending one year after the date of the original
- 21 delivery of a motor vehicle to a consumer or the first twelve thousand miles of
- 22 operation, whichever first occurs;
- 23 (4) "Manufacturer," the person, firm, ~~or~~ corporation, or limited liability company
- 24 engaged in the business of manufacturing, importing, or distributing motor vehicles

1 to be made available to a motor vehicle dealer for retail sale;

2 (5) "Motor vehicle," every vehicle intended primarily for use and operation on the public
3 highways which is self-propelled. The term does not apply to any motor home or to
4 any motor vehicle having a manufacturer's gross vehicle weight rating of ten
5 thousand pounds or more;

6 (6) "Motor vehicle dealer" or "authorized dealer," any person operating under a dealer
7 agreement from a manufacturer and licensed pursuant to chapter 32-6B;

8 (7) "Nonconforming condition," any condition of a motor vehicle ~~which~~ that is not in
9 conformity with the terms of any express warranty issued by the manufacturer to a
10 consumer and ~~which~~ that significantly impairs the use, value, or safety of the motor
11 vehicle and occurs or arises solely in the course of the ordinary use of the motor
12 vehicle, and ~~which~~ that does not arise or occur as a result of abuse, neglect,
13 modification, or alteration of the motor vehicle not authorized by the manufacturer,
14 nor from any accident or other damage to the motor vehicle which occurs or arises
15 after the motor vehicle was delivered by an authorized dealer to the consumer;

16 (8) "Notice of a nonconforming condition," a written statement delivered to the
17 manufacturer and which describes the motor vehicle, the nonconforming condition,
18 and all previous attempts to correct such nonconforming condition by identifying the
19 person who made the attempt and the time the attempt was made.

20 Section 8. That § 32-7A-4.1 be amended to read as follows:

21 32-7A-4.1. Any person selling manufactured homes or mobile homes pursuant to the
22 requirements of this chapter shall file with the department, upon forms provided by the
23 department, an application including, ~~but not limited to~~, the following information:

24 (1) The name and address of the applicant;

- 1 (2) The name of the firm or copartnership, with the names and addresses of all members,
2 if the applicant is a firm or copartnership;
- 3 (3) The name of the corporation or limited liability company, with the names and
4 addresses of the principal officers or limited liability company, if the applicant is a
5 ~~body corporate~~ corporation or limited liability company;
- 6 (4) The exact location of the place of business and, if owned by the applicant, when
7 acquired. If the place of business is leased, a true copy of the lease shall accompany
8 the application;
- 9 (5) A certification that the location is the place where the applicant keeps and maintains
10 books, records, and files necessary to conduct business, which shall be available at
11 all reasonable hours to inspection by the department;
- 12 (6) A consent to allow periodic inspections of the dealership by the department;
- 13 (7) A description of the principal place of business and any supplemental lots;
- 14 (8) A statement that the applicant is either franchised by a manufacturer of manufactured
15 homes or mobile homes, in which case the brand name of each home that the
16 applicant is franchised to sell shall be included, or is a used manufactured home or
17 mobile home dealer;
- 18 (9) The applicant's qualifications and business history, including whether the applicant,
19 or any director, officer, member, limited or general partner, controlling shareholder,
20 or affiliate has ever been adjudged bankrupt or insolvent, or has any unsatisfied court
21 judgments outstanding against them;
- 22 (10) ~~Whether~~ If the applicant, or any director, officer, member, limited or general partner,
23 controlling shareholder, or affiliate, has been convicted of a crime within the
24 previous ten years that either related directly to the business for which the license is

1 sought or involved fraud, misrepresentation, or misuse of funds, or has suffered a
2 judgment in a civil action involving fraud, misrepresentation or conversion within
3 the previous five years or has had any government issued license or permit suspended
4 or revoked as a result of an action brought by federal or state governmental agency
5 in this or any other state within the last five years;

6 (11) Such other information as the department may require; and

7 (12) Verification as to the accuracy of the information provided by the applicant.

8 Section 9. That § 32-7B-4 be amended to read as follows:

9 32-7B-4. Any person selling boats pursuant to the requirements of this chapter shall file with
10 the Department of Revenue, upon forms provided by the department, an application including
11 the following information:

12 (1) The name and address of the applicant;

13 (2) The name of the partnership, with the names and addresses of all partners;

14 (3) The name of the corporation or limited liability company, with the names and
15 addresses of the principal officers or members, if the applicant is a corporation or
16 limited liability company;

17 (4) The exact location of the place of business and, if owned by the applicant, when
18 acquired. If the place of business is leased, a copy of the lease shall accompany the
19 application;

20 (5) A certification that the location is the place where the applicant keeps and maintains
21 books, records, and files necessary to conduct business, which shall be available at
22 all reasonable hours to inspection by the department;

23 (6) A statement that the applicant is either franchised by a manufacturer of boats, in
24 which case the name of each boat that the applicant is franchised to sell shall be

1 included, or is a used boat dealer, or both;

2 (7) A certification that neither the applicant, nor any other partner, member, or officer
3 has been convicted of a crime involving theft or fraud in the last five years; and

4 (8) Such other information as the department may require.

5 Section 10. That § 32-9-2 be amended to read as follows:

6 32-9-2. Except as provided in § 32-9-3, the term, motor carrier, when used in this chapter
7 means any person, copartnership, ~~or~~ corporation, or limited liability company owning,
8 controlling, operating, or maintaining a commercial vehicle.

9 Section 11. That § 32-9-6 be amended to read as follows:

10 32-9-6. Any person~~or~~, corporation, or limited liability company desiring to operate a motor
11 vehicle, trailer, semitrailer as a motor carrier of persons or property on the public highways of
12 this state shall, before beginning ~~such~~ the operations, cause to be presented to the county
13 treasurer of the county of which ~~such~~ the applicant is a resident, if ~~such~~ the applicant be a
14 resident of this state, and if a nonresident, then to the county treasurer of any county through
15 which ~~such~~ that applicant may travel, except as provided for interstate carriers, an application
16 upon forms to be furnished and provided by the Department of Revenue. The application shall
17 set forth the name of the manufacturer of ~~such~~ the vehicle, the factory number, ~~and~~ the engine
18 number~~thereof~~, of the vehicle, the model ~~thereof~~, of the vehicle, and the desired gross weight
19 classification or rated maximum seating capacity~~thereof~~ of the vehicle, together with such other
20 and additional information as the Department of Revenue may deem necessary. A violation of
21 this section is a Class 2 misdemeanor.

22 Section 12. That § 32-9-13 be amended to read as follows:

23 32-9-13. Every person~~or~~, corporation, or limited liability company desiring to operate a
24 motor vehicle, trailer, or semitrailer as a motor carrier of property on the public highways of this

1 state shall choose and fix at the time of registration the maximum gross weight of ~~his said~~ the
2 motor vehicle, trailer, or semitrailer, without regard to the manufacturer's rated carrying capacity
3 of the ~~same~~ vehicle.

4 Section 13. That § 32-9-21 be amended to read as follows:

5 32-9-21. ~~Every~~ Each motor carrier desiring to discontinue using a vehicle as a commercial
6 motor vehicle, may, on or before the termination of any year as provided in § 32-9-17, return
7 ~~his~~ the commercial motor vehicle plates and certificates to the county treasurer of the county
8 where the vehicle was registered together with ~~his~~ an application for ~~such~~ the discontinuance.
9 Upon satisfactory evidence that ~~such~~ the carrier will not further operate ~~such~~ the vehicle as a
10 commercial motor vehicle, the county treasurer shall issue to the person ~~or~~, corporation, or
11 limited liability company, so applying, a warrant for the amount due for the remaining months
12 of that year less a five dollar administrative fee which shall be retained by the county. The
13 commercial motor vehicle plates and certificates shall be in the possession of the county
14 treasurer on or before the fifth day of the month to receive credit for that month.

15 Section 14. That § 32-9-41 be amended to read as follows:

16 32-9-41. ~~Every~~ Each person ~~or~~, corporation, or limited liability company operating a motor
17 vehicle, trailer, or semitrailer as a motor carrier on the highways of this state, whether engaged
18 in business wholly in this state, or partly in this state and partly in an adjoining state, shall
19 comply with the provisions of this chapter pertaining to the type of operation engaged in by ~~such~~
20 the carrier.

21 Section 15. That § 32-10-11 be amended to read as follows:

22 32-10-11. A person, firm, ~~or~~ corporation, or limited liability company residing in or
23 organized under the laws of South Dakota, but having a place of business in a foreign country,
24 state, territory, or federal district and owning a motor vehicle used in connection with and

1 garaged at such place of business which it is compelled to register in ~~such~~ the foreign
2 jurisdiction, shall be deemed a resident of ~~such~~ the foreign jurisdiction and a nonresident of this
3 state within the meaning of this chapter for the purposes of enjoying the reciprocity privileges,
4 upon complying with the terms of § 32-10-12.

5 Section 16. That § 32-10-12 be amended to read as follows:

6 32-10-12. A person, firm, ~~or~~ corporation, or limited liability company described in § 32-10-
7 11 shall, on or before the first day of January of each year, file with the Department of Revenue
8 a verified statement showing for the preceding year:

9 (1) Total amount paid to the State of South Dakota for commercial motor vehicle
10 licenses on any such vehicles;

11 (2) Total amount which would have been paid to the State of South Dakota if all such
12 vehicles had been licensed in South Dakota;

13 (3) Total miles traveled in South Dakota by all motor vehicles owned or leased by ~~such~~
14 the operator;

15 (4) Total miles traveled by all motor vehicles owned or leased by ~~such~~ the operator.

16 If ~~such~~ the statement ~~shall establish~~ establishes that the ratio of (1) to (2) is at least as great
17 as the ratio of (3) to (4), the secretary of revenue may certify that ~~such~~ the operator is eligible
18 for the reciprocity provisions granted in § § 32-10-5 to 32-10-11, inclusive.