

AN ACT

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

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

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

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

- (1) Any large boat which is the property of the governmental units which are exempted from motor vehicle registration fees by §§ 32-5-42 and 32-5-42.1;
- (2) Any large boat acquired by inheritance or bequest;
- (3) Any large boat previously titled or licensed jointly in the names of two or more persons and subsequently transferred without consideration to one or more of such persons;
- (4) Any large boat transferred without consideration between spouses, between a parent and child, and between siblings;
- (5) Any large boat transferred pursuant to any mergers or consolidations of corporations or limited liability companies, or plans of reorganization by which substantially all of the assets of a corporation or limited liability company are transferred if the large boat was previously titled, licensed, and registered in this state;
- (6) Any large boat transferred by a subsidiary corporation or limited liability company to its parent corporation or limited liability company for no or nominal consideration or in sole consideration of the cancellation or surrender of the subsidiary's stock if the large boat was previously titled, licensed, and registered in this state;
- (7) Any large boat transferred between an individual and a corporation if the individual and the owner of the majority of the capital stock of the corporation are one and the same, or

any large boat transferred between an individual and a limited liability company if the individual and the majority member of the limited liability company are one and the same, and if the large boat was previously titled and registered in this state;

- (8) Any large boat transferred between a corporation or limited liability company and its stockholders, members, or creditors if to effectuate a dissolution of the corporation or limited liability company it is necessary to transfer the title from the corporate entity or limited liability company to the stockholders, members, or creditors and if the large boat was previously titled and registered in this state;
- (9) Any large boat transferred between an individual and limited or general partnership if the individual and the owner of the majority interest in the partnership are one and the same person and if the large boat was previously titled and registered in this state;
- (10) Any large boat transferred to effect a sale of all or substantially all of the assets of the business entity if the large boat was previously titled and registered in this state;
- (11) Any large boat acquired by a secured party or lien holder in satisfaction of a debt;
- (12) Any large boat sold or transferred which is eleven or more years old and which is sold or transferred for one thousand five hundred dollars or less before trade-in;
- (13) Any damaged large boat transferred to an insurance company in the settlement of an insurance claim;
- (14) Any large boat owned by a former resident of this state who returns to the state and who had previously paid excise tax to this state on the large boat as evidenced within the department's records or by submission of other acceptable proof of payment of such tax;
- (15) Any large boat transferred between corporations, both subsidiary and nonsubsidiary, if the individuals who hold a majority of stock in the first corporation also hold a majority of stock in the second corporation; but these individuals need not hold the same ratio of

stock in both corporations and if the large boat was previously titled and registered in this state;

- (16) Any large boat transferred between limited liability companies, both subsidiary and nonsubsidiary, if the individuals who hold a majority interest in the first limited liability company also hold a majority interest in the second limited liability company and if the large boat was previously titled, licensed, and registered in this state; and
- (17) Any large boat transferred by a trustor to a trustee or from a trustee to a beneficiary of a trust.

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

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

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

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

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

32-5-27. Any dealer, person, firm, corporation, or limited liability company which brings into

the state or purchases any used or secondhand out-of-state motor vehicles not currently licensed in this state for the purpose of sale or resale, except as a trade-in on a new motor vehicle or another used motor vehicle, a used motor vehicle purchased by a dealer and sold to another dealer, vehicles receiving a junking certificate, motor vehicles with a gross vehicle weight rating of over twenty-six thousand pounds, or a semitrailer with a manufacturer's shipping weight of nine thousand pounds or more, shall, within thirty days from the date of purchase or entry of the motor vehicle into the limits of this state, or from the date of purchase at a dealer's car auction agency, title the motor vehicle pursuant to chapter 32-3 and pay the excise tax pursuant to chapter 32-5B but is not required to license the vehicle. Any licensed motor vehicle dealer titling a motor vehicle pursuant to this section is exempt from paying the excise tax imposed by § 32-5B-1 on the vehicle. A vehicle titled by a licensed motor vehicle dealer pursuant to this section shall be issued a title indicating that no excise tax has been paid. Upon transfer of the title to a subsequent purchaser of the motor vehicle, the excise tax shall be paid by the purchaser or by any other person as defined by subdivision 2-14-2(18), on behalf of and as the agent for the purchaser. A violation of this section is a Class 2 misdemeanor.

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

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

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

- (1) Any motor vehicle exempted in § 32-5-42, 32-5-42.1, or 32-5-1.3;
- (2) Any motor vehicle acquired by inheritance from or bequest of a decedent;
- (3) Any motor vehicle previously titled or licensed jointly in the names of two or more persons and subsequently transferred without consideration to one or more of such

persons;

- (4) Any motor vehicle transferred without consideration between spouses, between a parent and child, and between siblings;
- (5) Any motor vehicle transferred pursuant to any mergers or consolidations of corporations or limited liability companies, or plans of reorganization by which substantially all of the assets of a corporation or limited liability company are transferred if the motor vehicle was previously titled, licensed, and registered in this state;
- (6) Any motor vehicle transferred by a subsidiary corporation or limited liability company to its parent corporation or limited liability company for no or nominal consideration or in sole consideration of the cancellation or surrender of the subsidiary's stock if the motor vehicle was previously titled, licensed, and registered in this state;
- (7) Any motor vehicle transferred between an individual and a corporation if the individual and the owner of the majority of the capital stock of the corporation are one and the same, or any motor vehicle transferred between an individual and a limited liability company if the individual and the majority member of the limited liability company are one and the same, and if the motor vehicle was previously titled, licensed, and registered in this state;
- (8) Any motor vehicle transferred between a corporation or limited liability company and its stockholders, members, or creditors if to effectuate a dissolution of the corporation or limited liability company it is necessary to transfer the title from the corporate entity or limited liability company to the stockholders, members, or creditors and if the motor vehicle was previously titled, licensed, and registered in this state;
- (9) Any motor vehicle transferred between an individual and a limited or general partnership if the individual and the owner of the majority interest in the partnership are one and the same person and if the motor vehicle was previously titled, licensed, and registered in this

state;

- (10) Any motor vehicle transferred to effect a sale of all or substantially all of the assets of the business entity if the motor vehicle was previously titled, licensed, and registered in this state;
- (11) Any motor vehicle acquired by a secured party or lien holder in satisfaction of a debt;
- (12) Any motor vehicle sold or transferred that is eleven or more model years old and that is sold or transferred for two thousand two hundred dollars or less before trade-in;
- (13) Any damaged motor vehicle transferred to an insurance company in the settlement of an insurance claim;
- (14) Any motor vehicle owned by a former resident of this state who returns to the state and who had previously paid vehicle excise tax to this state on the motor vehicle as evidenced within the department's records or by submission of other acceptable proof of payment of such tax;
- (15) Any motor vehicle transferred between corporations, both subsidiary and nonsubsidiary, if the individuals who hold a majority of stock in the first corporation also hold a majority of stock in the second corporation; but these individuals need not hold the same ratio of stock in both corporations and if the motor vehicle was previously titled, licensed, and registered in this state;
- (16) Any motor vehicle transferred between limited liability companies, both subsidiary and nonsubsidiary, if the individuals who hold a majority interest in the first limited liability company also hold a majority interest in the second limited liability company and if the motor vehicle was previously titled, licensed, and registered in this state;
- (17) Any motor vehicle transferred by a trustor to a trustee or from a trustee to a beneficiary of a trust;

- (18) Any motor vehicle rented for twenty-eight days or less is subject to the tax imposed by § 32-5B-20; and
- (19) Any motor vehicle transferred without consideration to any South Dakota nonprofit corporation that will donate the motor vehicle to a needy family or individual.

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

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

- (1) The name and address of the applicant;
- (2) The name of the firm or copartnership, with the names and addresses of all members, if the applicant is a firm or copartnership;
- (3) The name of the corporation or limited liability company, with the names and addresses of the principal officers or members, if the applicant is a corporation or limited liability company;
- (4) The exact location of the place of business and, if owned by the applicant, when acquired. If the place of business is leased, a true copy of the lease shall accompany the application;
- (5) A certification that the location provides an adequately equipped office and is not the residence of the applicant;
- (6) A certification that the location affords sufficient space to adequately store all vehicles offered for sale;
- (7) A certification that the location is the place where the applicant keeps and maintains books, records, and files necessary to conduct business, which shall be available at all reasonable hours to inspection by the department;
- (8) A consent to allow periodic inspections of the dealership by the department;
- (9) A certification that the business of a vehicle dealer is the principal business conducted at

the location;

- (10) A description of the principal place of business and any supplemental lots;
- (11) A statement that the applicant is either franchised by a manufacturer of vehicles, in which case the name of each vehicle that the applicant is franchised to sell shall be included or is a used vehicle dealer;
- (12) A list of financial references;
- (13) A certification that neither the applicant, nor any other partner, member, officer, or financial supporter, has been convicted of a crime involving vehicle theft or fraud in the last five years;
- (14) Such other information as the department may require;
- (15) Verification as to the accuracy of the information provided by the applicant;
- (16) A certificate that the applicant has obtained a public liability insurance policy of not less than three hundred thousand dollars; and
- (17) For any emergency vehicle dealer whose principal place of business is not located in South Dakota, proof the dealer is a licensed dealer in another state and has no outstanding dealer violations.

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

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

- (1) The name and address of the applicant;
- (2) The name of the partnership, with the names and addresses of all partners;
- (3) The name of the corporation or limited liability company, with the names and addresses of the principal officers or members, if the applicant is a corporation or limited liability



company;

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

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

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

- (1) "Consumer," the purchaser, other than for purposes of resale, of a new or previously untitled motor vehicle used in substantial part for personal, family, or household purposes, and any other person entitled by the terms of the warranty to enforce the obligations of the warranty;
- (2) "Express warranty," a written warranty, so labeled, issued by the manufacturer of a new motor vehicle, including any terms or conditions precedent to the enforcement of obligations under that warranty;
- (3) "Lemon law rights period," the period ending one year after the date of the original delivery of a motor vehicle to a consumer or the first twelve thousand miles of operation, whichever first occurs;

- (4) "Manufacturer," the person, firm, corporation, or limited liability company engaged in the business of manufacturing, importing, or distributing motor vehicles to be made available to a motor vehicle dealer for retail sale;
- (5) "Motor vehicle," every vehicle intended primarily for use and operation on the public highways which is self-propelled. The term does not apply to any motor home or to any motor vehicle having a manufacturer's gross vehicle weight rating of ten thousand pounds or more;
- (6) "Motor vehicle dealer" or "authorized dealer," any person operating under a dealer agreement from a manufacturer and licensed pursuant to chapter 32-6B;
- (7) "Nonconforming condition," any condition of a motor vehicle that is not in conformity with the terms of any express warranty issued by the manufacturer to a consumer and that significantly impairs the use, value, or safety of the motor vehicle and occurs or arises solely in the course of the ordinary use of the motor vehicle, and that does not arise or occur as a result of abuse, neglect, modification, or alteration of the motor vehicle not authorized by the manufacturer, nor from any accident or other damage to the motor vehicle which occurs or arises after the motor vehicle was delivered by an authorized dealer to the consumer;
- (8) "Notice of a nonconforming condition," a written statement delivered to the manufacturer and which describes the motor vehicle, the nonconforming condition, and all previous attempts to correct such nonconforming condition by identifying the person who made the attempt and the time the attempt was made.

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

32-7A-4.1. Any person selling manufactured homes or mobile homes pursuant to the requirements of this chapter shall file with the department, upon forms provided by the department,

an application including the following information:

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

either related directly to the business for which the license is sought or involved fraud, misrepresentation, or misuse of funds, or has suffered a judgment in a civil action involving fraud, misrepresentation or conversion within the previous five years or has had any government issued license or permit suspended or revoked as a result of an action brought by federal or state governmental agency in this or any other state within the last five years;

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

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

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

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

(1) The name and address of the applicant;

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

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

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

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

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

a used boat dealer, or both;

- (7) A certification that neither the applicant, nor any other partner, member, or officer has been convicted of a crime involving theft or fraud in the last five years; and
- (8) Such other information as the department may require.

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

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

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

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

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

32-9-13. Every person, corporation, or limited liability company desiring to operate a motor vehicle, trailer, or semitrailer as a motor carrier of property on the public highways of this state shall choose and fix at the time of registration the maximum gross weight of the motor vehicle, trailer, or

semitrailer, without regard to the manufacturer's rated carrying capacity of the vehicle.

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

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

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

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

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

32-10-11. A person, firm, corporation, or limited liability company residing in or organized under the laws of South Dakota, but having a place of business in a foreign country, state, territory, or federal district and owning a motor vehicle used in connection with and garaged at such place of business which it is compelled to register in the foreign jurisdiction, shall be deemed a resident of the foreign jurisdiction and a nonresident of this state within the meaning of this chapter for the purposes of enjoying the reciprocity privileges, upon complying with the terms of § 32-10-12.

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

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

- (1) Total amount paid to the State of South Dakota for commercial motor vehicle licenses on any such vehicles;
- (2) Total amount which would have been paid to the State of South Dakota if all such vehicles had been licensed in South Dakota;
- (3) Total miles traveled in South Dakota by all motor vehicles owned or leased by the operator;
- (4) Total miles traveled by all motor vehicles owned or leased by the operator.

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

An Act to include limited liability companies in certain provisions regarding the licensing of boats and motor vehicles and certain provisions regarding the dealers and manufacturers of certain vehicles, manufactured homes, and mobile homes.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1061

\_\_\_\_\_  
Chief Clerk

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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1061  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office this \_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby approved this \_\_\_\_ day of \_\_\_\_\_ , A.D., 20\_\_

\_\_\_\_\_  
Governor

=====  
STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_ , 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State