

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

941W0315

HOUSE BILL NO. 1113

Introduced by: Representatives Westra, Beal, Conzet, Cronin, Duvall, Feickert, Gosch, Hagggar (Don), Langer, Mickelson, Novstrup (Al), Qualm, Rounds, Stevens, Willadsen, and Wollmann and Senators Novstrup (David), Brown, Ewing, Hunhoff (Bernie), Lederman, Peterson (Jim), and Rave

1 FOR AN ACT ENTITLED, An Act to repeal and revise certain motor vehicle and boat damage
2 and salvage disclosure requirements.

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

4 Section 1. That § 32-3-51.5 be amended to read as follows:

5 32-3-51.5. Any motor vehicle, trailer, or semitrailer whose title has been marked by another
6 state or jurisdiction, shall receive a title, which shall contain ~~the~~ similar damage disclosure
7 information ~~as set forth in §§ 32-3-51.7 and 32-3-51.8~~. However, if the title has been branded
8 as salvage or with any other similar brand by another state or jurisdiction the applicant shall
9 receive a salvage title or, at the option of the owner, a junking certificate.

10 Section 2. That § 32-3-51.7 be repealed.

11 ~~— 32-3-51.7. Each certificate of title issued by the department shall contain the following~~
12 ~~phrase: South Dakota state law requires the disclosure of damage on motor vehicles. This~~
13 ~~information is available upon written request from the Department of Revenue, Division of~~
14 ~~Motor Vehicles. Each certificate of title shall also contain on its front a statement as to whether~~



1 previous damage disclosure statements indicate the motor vehicle had been damaged at one time
2 in excess of five thousand dollars as provided by § 32-3-51.8.

3 Section 3. That § 32-3-51.8 be repealed.

4 ~~— 32-3-51.8. Upon the sale, transfer, trade-in, or titling of a motor vehicle, the seller,
5 transferor, trader, or person wishing to title in South Dakota shall submit an accurately
6 completed damage disclosure statement. The completed damage disclosure statement may be
7 on the back of the certificate of title or on a separate document that has been approved for use
8 by the department. Except as otherwise provided by this section, no certificate of title may be
9 issued by the department unless the damage disclosure statement accompanies the application.
10 It is a Class 1 misdemeanor to intentionally falsify any information on the damage disclosure
11 statement. No person or dealer is liable to a subsequent owner of a vehicle because a prior
12 owner of the vehicle failed to disclose that the vehicle had previously been damaged and
13 repaired. This section does not apply to any motor vehicle more than six model years old or with
14 a gross vehicle weight rating of more than sixteen thousand pounds and does not apply if a
15 rebuilt title or junking certificate is sought.~~

16 ~~— This section applies to all other motor vehicles, but only damage in excess of five thousand
17 dollars shall be disclosed in the statement. If the motor vehicle has incurred damages more than
18 once, only those damages that occurred at one time are considered in determining whether the
19 damages exceeded five thousand dollars.~~

20 Section 4. That § 32-3-51.9 be repealed.

21 ~~— 32-3-51.9. For the purposes of the damage disclosure statement provided by § 32-3-51.8,
22 the term, damage, is damage to the motor vehicle caused by fire, vandalism, collision, weather,
23 submersion in water, or flood, and does not include normal wear and tear, glass damage,
24 mechanical repairs, or electrical repairs that have not been caused by fire, vandalism, collision,~~

1 ~~weather, submersion in water, or flood.~~

2 Section 5. That § 32-3-51.10 be repealed.

3 ~~—32-3-51.10. For the purposes of § 32-3-51.8, a "motor vehicle" is an automobile, motor~~
4 ~~truck, truck tractor, semi-tractor, or motor home.~~

5 Section 6. That § 32-3-51.14 be repealed.

6 ~~—32-3-51.14. The department shall prescribe, pursuant to chapter 1-26, the format for the~~
7 ~~damage disclosure statement provided by § 32-3-51.8. An area for a damage disclosure~~
8 ~~statement shall appear on the back of each certificate of title issued by the department. The~~
9 ~~department may also approve separate documents on which a damage disclosure statement may~~
10 ~~be submitted. The damage disclosure statement form shall indicate whether the motor vehicle~~
11 ~~has been damaged such that it cost more than five thousand dollars to repair to its predamaged~~
12 ~~condition and any other damage information the department deems appropriate. If a separate~~
13 ~~document from the certificate of title contains the damage disclosure statement, the document~~
14 ~~shall also require the following information: year, make, model, and vehicle identification~~
15 ~~number of the motor vehicle.~~

16 Section 7. That § 32-3-51.15 be repealed.

17 ~~—32-3-51.15. The dollar amount of damage to a motor vehicle required to be disclosed~~
18 ~~pursuant to § 32-3-51.8 shall include the costs necessary to return the damaged motor vehicle~~
19 ~~to its predamaged condition. Such costs include parts, labor, paint, and frame work done on the~~
20 ~~damaged motor vehicle. If the retail value of labor has not been determined by a purchase in the~~
21 ~~ordinary course of business (for example, the labor is performed by the owner of the vehicle),~~
22 ~~the retail value of the labor is presumed to be the product of the repair time, as provided in a~~
23 ~~generally accepted autobody repair flat rate manual, multiplied by thirty-five dollars.~~

24 Section 8. That § 32-3-51.18 be amended to read as follows:

1 32-3-51.18. Any vehicle that is required to be titled pursuant to this chapter and is sold or
2 offered for sale by a vehicle dealer or a used vehicle dealer as defined in § 32-6B-1 shall display
3 a sticker, decal, or notice that discloses damage to the vehicle ~~in accordance with the provisions~~
4 ~~of §§ 32-3-51.7, 32-3-51.8, 32-3-51.14, and 32-3-51.15, as determined by the department in~~
5 ~~rules promulgated pursuant to chapter 1-26. A vehicle more than six model years old is not~~
6 ~~exempt from the provisions of this section for which the current title denotes a salvage brand~~
7 ~~or similar brand denoting damage to that vehicle. The rules shall also~~ department shall
8 promulgate rules pursuant to chapter 1-26 to prescribe the format and construction of the sticker,
9 decal, or notice. If the dealer fails to comply with this section, the purchaser of the motor vehicle
10 may return the motor vehicle to the dealer within ten days after receiving the title, and the dealer
11 shall make a full refund to the purchaser.

12 Section 9. That § 32-3-51.19 be amended to read as follows:

13 32-3-51.19. For purposes of §§ 32-3-51.5, ~~32-3-51.9, 32-3-51.19,~~ 32-3-51.20, and 32-3-
14 51.21, the term, salvage vehicle, means any motor vehicle ~~as defined in § 32-3-51.10~~ that an
15 insurer or self insurer determines a total loss due to theft or to damage caused by fire, vandalism,
16 collision, weather, submersion in water, or flood. This section does not apply to any motor
17 vehicle more than ~~six~~ ten model years old or with a gross vehicle weight rating of more than
18 sixteen thousand pounds.

19 Section 10. That § 32-3-51.21 be amended to read as follows:

20 32-3-51.21. If an insurer or self insurer declares a vehicle to be a total loss but does not
21 acquire ownership of the vehicle, the owner shall obtain a salvage title for the vehicle. The
22 insurer or self insurer shall, in writing, notify the owner of the obligation to obtain a salvage title
23 before the owner sells or transfers the title. If the owner sells or transfers the ownership of the
24 vehicle without first obtaining a salvage title, the owner is guilty of a Class 1 misdemeanor. This

1 section does not apply to any motor vehicle more than ~~six~~ ten model years old or with a gross
2 vehicle weight rating of more than sixteen thousand pounds.

3 Section 11. That § 32-3-51.22 be amended to read as follows:

4 32-3-51.22. If a stolen vehicle is recovered, the insurer or self insurer shall, within thirty
5 days of recovery, inspect the vehicle and apply for a title as follows:

6 (1) If the vehicle has no damage or the damage is less than that defined in § ~~32-3-51.8~~
7 § 32-3-51.19, surrender the existing salvage title to the department. The department
8 shall promptly issue a title marked as a recovered theft with no ~~damage disclosure~~
9 salvage notation pursuant to § 32-3-51.8; or

10 ~~(2) If the vehicle has damage equal to or greater than that defined in § 32-3-51.8,~~
11 ~~surrender the existing salvage title to the department. The department shall promptly~~
12 ~~issue a title marked as a recovered theft with the damage disclosure notation pursuant~~
13 ~~to § 32-3-51.8.~~

14 However, if the condition of the vehicle is such that it would have been determined a
15 salvage vehicle as defined in § 32-3-51.19 due to the damage to the vehicle, the salvage title is
16 retained and the insurer or self insurer is not required to apply for a title pursuant to this section.

17 Section 12. That § 32-3A-38 be amended to read as follows:

18 32-3A-38. The department may upon written request and receipt of a five dollar fee furnish
19 a person a certified abstract of the title history ~~which shall include any damage disclosure~~
20 ~~statement of any boat registered under the provisions of this chapter.~~ The abstract may include
21 all documents filed with the department to establish the title history of the boat. The fee shall
22 be deposited in the state motor vehicle fund. Governmental entities and their subdivisions are
23 exempt from this fee requirement.

24 Section 13. That § 32-3A-38.1 be repealed.

1 ~~32-3A-38.1. Upon the sale, assignment, or transfer of a large boat, or if registering a large~~
2 ~~boat in South Dakota which is titled in another state or jurisdiction, the seller, assignor, or~~
3 ~~transferor, or person wishing to register in South Dakota a large boat which is titled in another~~
4 ~~state or jurisdiction shall submit an accurately completed damage disclosure statement when~~
5 ~~applying for a certificate of title pursuant to § 32-3A-20. The completed damage disclosure~~
6 ~~statement may be on the back of the certificate of title or on a separate document that has been~~
7 ~~approved for use by the department. No certificate of title may be issued by the department~~
8 ~~unless the damage disclosure statement accompanies the application. It is a Class 1~~
9 ~~misdemeanor to intentionally falsify any information on the damage disclosure statement. No~~
10 ~~person is liable to a subsequent owner of a large boat because a prior owner of the large boat~~
11 ~~failed to disclose that the large boat had previously been damaged and repaired. This section~~
12 ~~applies to any large boat with damage in excess of five thousand dollars and is six years old or~~
13 ~~less. If the large boat has incurred damages more than once, only those damages which occurred~~
14 ~~at one time would be considered in determining whether the damages exceeded five thousand~~
15 ~~dollars.~~

16 Section 14. That § 32-3A-38.2 be repealed.

17 ~~32-3A-38.2. For the purposes of the damage disclosure statement provided by § 32-3A-38.1,~~
18 ~~the term, damage, means damage to the large boat caused by fire, vandalism, collision, weather,~~
19 ~~submersion in water, or flood, and does not include normal wear and tear, glass damage,~~
20 ~~mechanical repairs, or electrical repairs that have not been caused by fire, vandalism, collision,~~
21 ~~weather, submersion in water, or flood.~~

22 Section 15. That § 32-3A-38.3 be amended to read as follows:

23 32-3A-38.3. The department shall retain each damage disclosure statement received. The
24 statement shall become part of the title history available to the public pursuant to § 32-3A-38.

1 Section 16. That § 32-3A-38.4 be repealed.

2 ~~32-3A-38.4. The department shall promulgate rules, pursuant to chapter 1-26, to prescribe~~
3 ~~the format for the damage disclosure statement provided by § 32-3A-38.1. An area for a damage~~
4 ~~disclosure statement shall appear on the back of each certificate of title issued by the~~
5 ~~department. The department may also approve separate documents on which a damage~~
6 ~~disclosure statement may be submitted. The damage disclosure statement form shall indicate~~
7 ~~whether the large boat has been damaged such that it cost more than five thousand dollars to~~
8 ~~repair to its predamaged condition and any other damage information the department deems~~
9 ~~appropriate. If a separate document from the certificate of title contains the damage disclosure~~
10 ~~statement, the document shall also require the following information: year, make, model, and~~
11 ~~hull identification number of the large boat.~~

12 Section 17. That § 32-3A-38.5 be repealed.

13 ~~32-3A-38.5. The dollar amount of damage to a large boat required to be disclosed pursuant~~
14 ~~to § 32-3A-38.1 shall include the costs necessary to return the damaged large boat to its~~
15 ~~predamaged condition. Such costs include parts, labor, paint, and hull work done on the~~
16 ~~damaged large boat.~~

17 Section 18. That § 32-3A-38.6 be amended to read as follows:

18 32-3A-38.6. Any large boat that is required to be titled pursuant to this chapter and is sold
19 or offered for sale by a boat dealer as defined in § 32-3A-2 shall display a sticker, decal, or
20 notice that discloses previous damage to the large boat ~~in accordance with the provisions of~~
21 ~~§§ 32-3A-38.1 to 32-3A-38.7~~, as determined by the department in rules promulgated pursuant
22 to chapter 1-26. ~~A large boat more than six model years old is not exempt from the provisions~~
23 ~~of this section.~~ The rules shall also prescribe the format and construction of the sticker, decal,
24 or notice.

1 Section 19. That § 32-3A-38.7 be repealed.

2 ~~32-3A-38.7. Each certificate of title issued by the department shall contain the following~~
3 ~~phrase: South Dakota state law requires the disclosure of damage on large boats. This~~
4 ~~information is available upon written request from the Department of Revenue. Each certificate~~
5 ~~of title shall also contain on its front a statement as to whether previous damage disclosure~~
6 ~~statements indicate the large boat had been damaged at one time in excess of five thousand~~
7 ~~dollars.~~

8 Section 20. That § 32-6B-3.2 be amended to read as follows:

9 32-6B-3.2. Before a South Dakota titled vehicle may be sold by a consignee or at a public
10 auction pursuant to § 32-6B-3, the consignee or auctioneer shall have in possession an odometer
11 reading certified by the owner of the motor vehicle, ~~a damage disclosure statement signed by~~
12 ~~the owner of the motor vehicle~~, and a South Dakota title for the motor vehicle. A violation of
13 this section is a Class 2 misdemeanor.

14 Section 21. That § 32-6B-36 be amended to read as follows:

15 32-6B-36. Any auction agency operating under the provisions of this chapter may accept for
16 sale at its option vehicles which are owned by vehicle dealers regularly licensed in either this
17 or some other state, or by the following entities if the vehicle is owned and titled by the entity
18 and acquired incident to its regular business:

19 (1) Any regulated lender as defined in § 54-3-14 or any financing institution licensed
20 pursuant to chapter 54-4;

21 (2) Any financial institution chartered or licensed in any other jurisdiction. However,
22 such entity is not required to have a title in its name if the entity provides a title in the
23 name of the customer, ~~a damage disclosure statement as required pursuant to § 32-3-~~
24 ~~51-8~~, and documentation as required by the department to substantiate a repossession

1 transaction; or

2 (3) Any insurance company authorized to do business in either this state or some other
3 state.

4 An auction agency may also accept from any manufacturer any vehicle that is owned by the
5 manufacturer and that has a manufacturer's certificate of origin or a valid title. Any vehicle with
6 a manufacturer's certificate of origin sold for a manufacturer may only be offered to the
7 manufacturer's franchised dealers with the same line vehicle make.

8 Any vehicle dealer, regularly licensed by this or some other state, may purchase any vehicle
9 from an auction agency, except as otherwise prohibited by this section. Any auction agency that
10 accepts for sale any vehicle not authorized by this section is guilty of a Class 1 misdemeanor.

11 Section 22. That ARSD 61:24:03:05 be amended to read as follows:

12 61:24:03:05. Contents of consignment contract. The contract required by SDCL chapters
13 32-6B and 32-7B must contain, at a minimum, the following information:

14 (1) The name and address of the consignor (the owner);

15 (2) The name and address of the consignee (the dealer or auctioneer);

16 (3) The title number, the year, the make, and the serial number or hull identification number
17 of the vehicle or boat;

18 (4) If applicable, the completed odometer disclosure;

19 (5) The agreed upon price or range;

20 (6) The agreed-upon amount that the owner is to pay the dealer or auctioneer;

21 (7) The length of time the vehicle or boat will be with the dealer or auctioneer;

22 (8) Disclosure by the dealer or auctioneer that the sale is a consignment sale;

23 (9) ~~If applicable, the completed damage disclosure;~~

24 ~~—(10) The signature of the owner and the dealer or auctioneer; and~~

1 ~~VEHICLES THAT HAVE A GROSS VEHICLE WEIGHT RATING OF 16,000 POUNDS~~
 2 ~~OR LESS AND ON BOATS~~ A DEALER TO POST A NOTICE ON ANY VEHICLE OR
 3 BOAT THAT HAS A TITLE OR OWNERSHIP DOCUMENT THAT DENOTES A
 4 SALVAGE BRAND OR SIMILAR BRAND DENOTING DAMAGE TO THE VEHICLE
 5 OR BOAT.

6 **ACKNOWLEDGEMENT OF NOTICE UPON SALE OF VEHICLE OR BOAT:**

7 **THE DOCUMENTS TO THIS VEHICLE OR BOAT INDICATES A DISCLOSURE OF**
 8 **PRIOR**

9 _____ **DAMAGE**

10 _____ **SALVAGE**

11 _____ **OTHER BRAND DENOTING DAMAGE**

12 _____

13 **PRINTED NAME OF PURCHASER**

14 _____

15 **PURCHASER'S SIGNATURE**

DATE

16 The ~~damage~~ disclosure notice must be posted on the inside of a side window, with the front
 17 of the form facing the outside, so that the notice is clearly visible at all times on each vehicle
 18 or boat that contains a ~~damage disclosure~~ salvage title or similar brand denoting damage to the
 19 vehicle that is offered for sale to consumers. The dealer is responsible for keeping the notice
 20 posted at all times that a vehicle or boat is available for sale to consumers.

21 At the time of sale of the vehicle or boat, the dealer shall remove the notice and shall have
 22 the purchaser sign and date it. The dealer shall retain the signed notice along with copies of the
 23 title document for five years from the date of the sale.

24 Section 25. That ARSD 64:28:03:04 be amended to read as follows:

1 64:28:03:04. Damage disclosure statement. ~~In addition to the information required by~~
2 ~~SDCL 32-3-51.8 and 32-3A-38.1, the damage disclosure statement shall require the person~~
3 ~~completing the form to state if the vehicle or boat had \$5,000 or more of unrepaired damage at~~
4 ~~the time it was acquired and to show the nature and location of the damage. Damage in excess~~
5 ~~of \$5,000 must be reported on each applicable vehicle or boat less than seven years old which~~
6 ~~is sold in this state.~~

7 ~~—~~ Damage A damage disclosure statements statement may be obtained from any county
8 treasurer's office or the Division of Motor Vehicles, 445 E. Capitol, Pierre, South Dakota
9 57501-3185. The Division of Motor Vehicles shall provide each licensed dealer in South Dakota
10 with the damage disclosure statement.

11 Section 26. That ARSD 64:28:03:04.03 be repealed.

12 ~~—~~ ~~64:28:03:04.03. Verification of cost of repair of damaged vehicle. The department may~~
13 ~~verify the validity of an insurance adjuster's report or a written estimate with regard to the labor,~~
14 ~~parts, paint, and framework costs required to return a damaged motor vehicle or boat to its~~
15 ~~predamaged condition. If the department determines that the cost of repairing the vehicle or boat~~
16 ~~to its predamaged condition exceeds \$5,000, the department shall recall the current vehicle or~~
17 ~~boat title if it is not in its possession and shall indicate a damage notation on it.~~