

South Carolina General Assembly
121st Session, 2015-2016

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Bill 4548

~~Indicates Matter Stricken~~

~~Indicates New Matter~~

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~~Indicates Matter Stricken~~

~~Indicates New Matter~~

AMENDED

May 17, 2016

H. 4548

Introduced by Reps. Sandifer, Forrester, Toole, Bales, Chumley, Burns, Hardee, Allison, Tallon, Henderson, Clemmons, Sottile, Crosby, V.S. Moss, Jefferson, Yow, Duckworth, H.A. Crawford, Jordan, Fry, Herbkersman, Lowe, Goldfinch, Hixon, Norman, Hiott, Taylor, McCoy, D.C. Moss, Collins, Rutherford, Anderson, Kirby, Pitts, Corley, Ballentine, Hamilton, Finlay, Huggins, Ott, Govan, Riley, Willis, Thayer, Felder, Hicks, Simrill, G.A. Brown, Bedingfield, Stringer, Ryhal, King, Loftis, Hayes, Mack, Rivers, Ridgeway, Clary, Brannon, Atwater, Daning, Bannister, Anthony, McEachern, Mitchell, Erickson, Weeks, Knight, Cole, George, Horne, G.R. Smith, G.M. Smith, Williams, Limehouse, Pope, Gambrell, Alexander, Stavrinakis, Newton, White, Spires, R.L. Brown, Gilliard, Dillard and Gagnon

S. Printed 5/17/16--S.

Read the first time February 25, 2016.

A BILL

TO AMEND SECTION 37-2-307, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CLOSING FEES ASSESSED ON MOTOR VEHICLES SALES CONTRACTS, SO AS TO PROVIDE A MOTOR VEHICLE DEALER WHO MEETS CERTAIN STATUTORY REQUIREMENTS MAY CHARGE A CLOSING FEE, TO ESTABLISH DEFENSES FOR A MOTOR VEHICLE DEALER, AND TO AUTHORIZE THE DEPARTMENT OF CONSUMER AFFAIRS TO ADMINISTER AND ENFORCE MOTOR VEHICLE DEALER CLOSING FEES.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 37-2-307 of the 1976 Code is amended to read:

"Section 37-2-307. (A)(1) Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year before January 31st to the Department of Consumer Affairs. The department shall set the fee annually in an amount not to exceed twenty-five dollars.

(2) The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

(B) A closing fee is defined as a fee charged for all administrative and financial work needed to transfer the motor vehicle to the consumer, person, or entity including, but not limited to, compliance with all state, federal, and lender requirements, preparation and retrieval of documents, protection of the private personal information of the consumer, records retention, and storage costs.

(C)(1) Prior to charging a closing fee, a motor vehicle dealer shall provide written notice to the Department of Consumer Affairs of the maximum amount of a closing fee the dealer intends to charge on an annual basis. The department may review the amount of the closing fee for reasonableness using the criteria in subsection (C)(3) if the maximum amount of the closing fee intended to be charged by a dealer in a vehicle transaction exceeds two hundred twenty-five dollars per vehicle. The department shall not conduct a review of the amount of the closing fee for reasonableness when the maximum amount the dealer intends to charge in a vehicle transaction is not more than two hundred twenty-five dollars per vehicle. If the department intends to conduct a formal review of a proposed closing fee, the department shall provide written notice to the motor vehicle dealer of the department's intention to review the proposed closing fee within thirty days of receiving the proposed closing fee notice. If the department does not provide a motor vehicle dealer with written notice of the department's intention to review the proposed closing fee within thirty days, the motor vehicle dealer is authorized to charge the proposed closing fee. If the department determines that a proposed closing fee is not reasonable, the department shall issue a written order detailing the department's findings. The department may require the fee to be reduced or require the motor vehicle dealer to submit a new fee for review. The dealer is at all times authorized to submit a new closing fee that is equal to or less than two hundred twenty-five dollars per vehicle which is not subject to review. During the pendency of the review period, a motor vehicle dealer is authorized to charge a closing fee at an amount not to exceed the amount most recently on file and permitted to be charged by the department. If the department finds that a closing fee is not reasonable, the motor vehicle dealer may request a hearing in accordance with the Administrative Procedures Act.

(2) If the maximum amount of the closing fee that the dealer intends to charge is not more than two hundred twenty-five dollars per vehicle, the closing fee is deemed approved by the department and the dealer does meet and fulfill all reasonableness requirements and criteria in compliance with the law and this section.

(3) In determining the reasonableness of a closing fee, the department shall allow the following items to be included in a reasonable closing fee:

(a) all administrative expenses, costs, staff, supplies, materials, and financial work needed to transfer the motor vehicle to the consumer and to procure the closing of the motor vehicle transaction;

(b) all costs for administrative expenses, costs, staff, supplies, and materials necessary by dealer to comply with all state, federal, and lender requirements;

(c) all costs for administrative costs, staff, and materials needed for the preparation and retrieval of documents;

(d) all costs for administrative costs, staff, supplies, and materials necessary for the protection of the private personal information of the consumer; and

(e) all costs for administrative costs, staff, supplies, and materials necessary for records retention and storage costs of such records.

(D) Whether the vehicle transaction is a credit sale, consumer lease, or cash transaction:

(1) notwithstanding another provision of law, a motor vehicle dealer who complies with this section and any regulation promulgated under it and who charges a closing fee is not engaging in any action which is arbitrary, in bad faith, unconscionable, an unfair or deceptive practice, or an unfair method of competition for purposes of Section 56-15-30 and 56-15-40 with regard to the charging of a closing fee and may lawfully charge a closing fee;

- (2) a motor vehicle dealer may assert any defenses provided to a creditor pursuant to the provisions of this title; and
- (3) a purchaser injured or damaged by an action of a motor vehicle dealer in violation of this section or any regulation promulgated thereunder, may assert the remedies available pursuant to the provisions of this title.

(E)(1) The Department of Consumer Affairs shall administer and enforce the subject of motor vehicle dealer closing fees including, but not limited to, this section. The department shall make and promulgate such rules and regulations relating to motor vehicle dealer closing fees to administer and enforce this section. The department shall have access to a motor vehicle dealer's books, accounts, and records to determine if the dealer is complying with the provisions of this section, and this financial information must be kept confidential and privileged from disclosure, except as provided by law.

(2) If the department determines that a closing fee is not reasonable, the department shall issue a written order detailing the department's findings. The department may require the fee to be reduced or require the motor vehicle dealer to submit a new fee for review. If the department finds that a closing fee is not reasonable, the motor vehicle dealer may request a hearing in accordance with the Administrative Procedures Act.

(F) It is the intent of the General Assembly to authorize a motor vehicle dealer to charge a closing fee in compliance with this section and to protect a motor vehicle dealer from civil liability for charging a closing fee if the fee is charged in compliance with this title and any Department of Consumer Affairs regulation or administrative interpretation. It is further the intent to protect consumers by the disclosure and notice provisions established in this section and with the remedies provided by this title."

SECTION 2. This act takes effect upon approval by the Governor; provided, however, a motor vehicle dealer must be allowed an additional period of thirty days from the effective date to comply with Section 37-2-307(C).

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