



South Carolina
DEPARTMENT OF CONSUMER AFFAIRS
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Carri Grube Lybarker
 Administrator/
 Consumer Advocate

PROTECTING CONSUMERS SINCE 1975

DATE: August 17, 2021

TO: Dealers of Motorcycles, New Recreational Vehicles, and Mopeds

FROM: Carri Grube Lybarker, Esquire *Carri Grube Lybarker*
 Administrator/Consumer Advocate

RE: Closing fee statute does not apply to dealers of motorcycles, new recreational vehicles, or mopeds

The South Carolina Department of Consumer Affairs (“the Department”) is the administrative agency responsible for enforcing the South Carolina Consumer Protection Code (“the Code”), S.C. Code Ann. § 37-1-101 *et seq.* (2015). Section 37-2-307 provides that prior to charging a closing fee (sometimes referred to by other terms such as doc fee, doc prep fee, administrative fee, processing fee), a motor vehicle dealer must provide written notice to the Department of the maximum amount of a closing fee the dealer intends to charge. In 2016, the General Assembly amended the closing fee statute to provide a safe harbor for closing fees of \$225.00 or less and a review process for reasonableness of closing fees exceeding \$225.00.

Historically, many motorcycle dealers have filed closing fees with the Department pursuant to the closing fee statute. Since the 2016 amendments, however, questions have arisen regarding the application of the closing fee statute to motorcycle dealers. Title 37 currently does not contain a definition of “motor vehicle dealer.” With Section 37-2-307 being void of definitions of the terms utilized therein, the Department looked to the definition of “motor vehicle” contained in other chapters under the Department’s jurisdiction¹ as well as the perceived legislative intent to provide a safe harbor to all motor vehicle dealers charging a closing fee.² Based on this analysis, the Department had determined the closing fee statute applied to motorcycle dealers.

¹ Since 1989, the Department has been responsible for Enforcement of Motor Vehicle Express Warranties (typically referred to as the Lemon Law), S.C. Code Ann. § 56-28-10 *et seq.*, which defines “motor vehicle” to include motorcycles. Section 56-28-10(4). Since 2015, the Department has been responsible for enforcing the chapter on Guaranteed Asset Protection Waivers, S.C. Code Ann. § 37-30-100 *et seq.*, which defines “motor vehicle” to include motorcycles, recreational vehicles, all-terrain vehicles, etc. Section 37-30-110(8). Notably, prior to 2015, Title 37 did not contain a definition for motor vehicle.

² 2016 Act No. 231 was enacted in response to the Supreme Court’s ruling in Freeman v. J.L.H. Investments, 414 S.C. 362, 778 S.E.2d 902 (2015).



The Department has since revisited the application of the closing fee statute and determined it does **not** apply to dealers of motorcycles, new recreational vehicles, or mopeds. When the closing fee statute was originally enacted over twenty years ago, the Department relied on the definition of “motor vehicle dealer” found in Section 56-15-10(h) to determine which businesses were subject to the closing fee statute. See Administrative Interpretation 2.307-0101 (June 7, 2001) available on our website³. When the closing fee statute was amended in 2016, the following language was added:

[N]otwithstanding 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 Sections 56-15-30 and 56-15-40 with regard to the charging of a closing fee and may lawfully charge a closing fee.

S.C. Code Ann. § 37-2-307(D)(1). The inclusion of references to Title 56, Chapter 15 are consistent with the Department’s reliance on the definitions found in that Chapter. When reading Section 56-15-10(h) and 56-15-10(a) together, the closing fee statute applies to dealers of motor vehicles⁴ but **does not apply** to dealers of motorcycles, new recreational vehicles as defined in Section 56-14-10, or mopeds.

As such, dealers of motorcycles, new recreational vehicles, or mopeds are not required to file a closing fee with the Department. If your dealership chooses to file a closing fee, however, the Department will review it for reasonableness when it exceeds \$225.00; your dealership also will be subject to all requirements and provisions set forth in Section 37-2-307 including, but not limited to, the requirement to grant the Department access to the dealership’s books, accounts, and records to determine if the dealer is complying with the provisions of Section 37-2-307.

Therefore, your dealership may choose to do one of the following:

- 1) No longer complete the annual Notice of Closing Fee filing; or
- 2) Complete the annual Notice of Closing Fee filing. Please note that if your dealership chooses to file a closing fee with the Department, it will be subject to reviews for reasonableness, records requests, compliance reviews, and potential administrative action by the Department in an effort to enforce Section 37-2-307.

I hope this letter provides clarity on the Department’s interpretation and application of the closing fee statute. If you have any questions or wish to discuss this matter further, please email Legal@scconsumer.gov or call the Department at (803)734-4200.

³ Go to www.consumer.sc.gov, click “Business Resources/Laws,” then “Administrative Interpretations,” then “Chapter 2” under the “Title 37-SC Consumer Protection Code” header.

⁴ The definition of “motor vehicle” for purposes of Title 56, unless otherwise indicated, is every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails. S.C. Code Ann. § 56-1-10(7).

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