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Document No. 5169
DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 28
Statutory Authority: 1976 Code Sections 37-2-307(E), 37-6-104, and 37-6-506

28-75. Motor Vehicle Dealer Closing Fees. (New)

Preamble:

The South Carolina Department of Consumer Affairs proposes adding a regulation to set forth parameters for determining reasonableness and provide other guidance regarding the filing process and displaying the fee in the dealership.

Section-by-Section Discussion:

A. Definitions

Adds new text with reference to Title 37 definitions and additional definitions.

B. General

Adds new text regarding effective dates of a closing fee and registration expiration.

C. Written Notice of Proposed Closing Fee

Adds new text regarding filing a written notice for all closing fees.

D. Cost Analysis Addendum and Supporting Exhibits

Adds new text outlining the parameters for conducting a cost analysis and submitting required documents and information for closing fees exceeding two hundred twenty-five dollars per vehicle.

E. Posting of Permitted Closing Fee

Adds new text regarding conspicuous display of the closing fee certificate.

The Notice of Drafting was published in the *State Register* on September 23, 2022.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons are invited to submit their views in writing by mail to Kelly Rainsford, Deputy Administrator/General Counsel, South Carolina Department of Consumer Affairs, P.O. Box 5757, Columbia, SC 29250 or by e-mail to KRainsford@scconsumer.gov. To be considered, comments must be received no later than 5:00 p.m. on December 28, 2022, the close of the comment period. Should a public hearing be requested pursuant to Section 1-23-110(A)(3) of the South Carolina Code Annotated, the hearing will be held on January 10, 2023, at 2:30 p.m., at the South Carolina Department of Archives and History, 8301 Parklane Road, Columbia, SC 29223. If no qualifying hearing request is received by 5:00 p.m. on December 28, 2022, the hearing will be cancelled.

Preliminary Fiscal Impact Statement:

There will be no cost incurred by the State or any of its political subdivisions for the promulgation of this regulation.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: 28-75. Motor Vehicle Dealer Closing Fees.

Purpose: The purpose of the regulation is to establish parameters regarding the closing fee filing process, the dealer's submission of documents and information to support a closing fee exceeding two hundred twenty-five dollars per vehicle, the Department's review of closing fee filings for reasonableness, and the dealer's requirement to display the closing fee in a conspicuous location in the dealership.

Legal Authority: 1976 Code Sections 37-2-307(E), 37-6-104, and 37-6-506.

Plan for Implementation: The regulation will take effect upon General Assembly approval and publication in the State Register. Department personnel will take appropriate steps to inform the regulated community of the regulation, including posting a notice on the Department's website.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The proposed regulation is necessary and reasonable to establish parameters regarding the closing fee filing process, the dealer's submission of documents and information to support a closing fee exceeding two hundred twenty-five dollars per vehicle, the Department's review of closing fee filings for reasonableness, and the dealer's requirement to display the closing fee in a conspicuous location in the dealership.

DETERMINATION OF COSTS AND BENEFITS:

Implementation of this regulation will not require additional resources or result in additional costs to the Department, the State, or its political subdivisions. This regulation will provide guidance to motor vehicle dealers filing a closing fee and establish a more streamlined and efficient filing and review process. The parameters will reduce Department costs for processing filings. As a result, this regulation should benefit motor vehicle dealers as well as the Department. The regulation also will aid in ensuring consumers are made aware of the closing fee intended to be charged prior to making a purchase decision.

UNCERTAINTIES OF ESTIMATES:

It is possible the Department may need to pursue enforcement of the regulation requirements. A finite amount of costs is undetermined due to uncertainty in estimating the number of matters that will warrant administrative action or litigation.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

This regulation will have no effect on the environment or public health.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

There will be no detrimental effect on the environment or public health of this State if this regulation is not implemented.

Statement of Rationale:

Section 37-2-307 provides that a motor vehicle dealer may charge a closing fee if the dealer files it with the Department, pays the filing fee, includes it in the advertised price of the motor vehicle, discloses it on

the sales contract, and displays it in a conspicuous location in the dealership. It further provides that if the maximum closing fee the dealer intends to charge exceeds \$225.00 per vehicle, the Department may review the amount for reasonableness using the criteria provided in Section 37-2-307(C)(3). It is necessary to promulgate a regulation to set forth parameters for determining reasonableness and provide other guidance regarding the filing process and displaying the fee in the dealership.

~~Indicates Matter Stricken~~

Indicates New Matter

Text:

28-75. Motor Vehicle Dealer Closing Fees.

A. Definitions

Definitions shall be those contained in S.C. Code Ann. S. 37-1-100 et seq. (1976 as amended) and the following:

(1) “Customary” means within a range of values most other motor vehicle dealers within the same geographical area associate with the same or similar product, activity, or service.

(2) “Dealer” or “motor vehicle dealer” means the same as defined in Title 56, Chapter 15.

(3) “Good faith” means honesty in fact and the observance of reasonable standards of fair dealing.

(4) “Motor vehicle” means the same as defined in Title 56, Chapter 15.

(5) “Needed” means necessary or required.

(6) “Purchaser” means a consumer, person, or entity who is a buyer, prospective buyer, lessee, or prospective lessee of a motor vehicle or the object of a solicitation or offer relating to the promotion, sale or lease of a motor vehicle.

(7) “Usual” means matching what an individual dealer typically charges or pays for the same or similar product, activity, or service.

B. General

(1) A notification of the dealer’s proposed closing fee is not considered effective until the Department receives the filing fee, a complete written notice and, if the dealer intends to charge a closing fee in excess of two hundred twenty-five dollars per vehicle, a cost analysis addendum and supporting exhibits meeting the requirements of this regulation.

(2) Closing fee registrations expire January 31 each year.

C. Written Notice of Proposed Closing Fee

(1) A dealer must provide written notice for each location at which the dealer intends to charge a closing fee on motor vehicles.

(2) The written notice to the Department of the maximum closing fee amount a motor vehicle dealer intends to charge must be provided on a form prescribed by the Department.

D. Cost Analysis Addendum and Supporting Exhibits

(1) If the dealer files a written notice to charge a closing fee exceeding two hundred twenty-five dollars per vehicle, the dealer also must submit a good faith cost analysis showing the closing fee is reasonable. For proposed closing fees exceeding two hundred twenty-five dollars per vehicle, the dealer has the burden of showing that all included costs are reasonable and supported by adequate documentation.

(2) Reasonableness requirements. In order to be considered reasonable, the closing fee must reflect permissible costs actually incurred by the dealer that are:

(a) Allowable, known, and measurable. Costs must be directly related to activities defined in Section 37-2-307(B) and (C)(3)(a)–(e) which occurred during the most recent twelve-month period ending not earlier than September 1. Costs also must have been paid and properly recorded in the books and records of the dealer.

(b) Usual and customary. Costs are limited to those that are usual and customary for a prudent business person to pay in a competitive marketplace for items, activities, or services needed to transfer a motor vehicle.

(c) Timing. Costs must be incurred:

(i) either concurrently with or after the dealer's preparation of at least one of the following: a buyer's order, bill of sale, purchase agreement, or retail installment sales contract; and

(ii) before the title of the purchased motor vehicle is actually transferred or when the title is legally required to have been transferred, whichever is earlier.

(d) The dealer must prorate costs to ensure that only permissible costs are included and impermissible costs are excluded.

(e) No finance charge. The closing fee may not include any amount that would be considered a finance charge.

(f) Other prohibitions. The closing fee may not include costs associated with any of the following:

(i) Advertising;

(ii) Floor planning (i.e., the dealer's credit arrangements for the purchase of its inventory);

(iii) Manufacturer's or distributor's rebates;

(iv) The price of any report on the condition or history of the motor vehicle to be purchased or traded in;

(v) Ancillary or optional products;

(vi) Items the dealer refers to as, or otherwise represents as, free to a purchaser; or

(vii) Delivery, transportation, gas, or detailing.

(3) Cost Analysis Addendum. A cost analysis addendum must be provided on a form prescribed by the Department, shall include only items used to calculate the submitted closing fee, and shall indicate the dollar amount calculated in good faith associated with each of the following categories:

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

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

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

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

(4) Supporting exhibits. A dealer must provide an itemization of the costs included in the calculation and a supporting exhibit for each category of costs. The exhibits should include data derived from the dealer's financial statements, general ledger, deal jackets, job descriptions, invoices and other documents specifically referenced in the preparation of the dealer's closing fee filing. At a minimum, the exhibits shall include:

(a) Staff costs. The exhibit for staff must describe how all staff salaries included in the closing fee comply with the reasonableness requirements described in this regulation. The exhibit for staff must include each salary and a complete description of how compensation is calculated for each position (e.g., a pay plan).

(b) Software costs. The exhibit for software must identify the cost, type, and specific functions of each included piece of software.

(c) Facilities costs. The exhibit must describe the methodology used to ensure that the closing fee includes only the portion of the facilities costs that corresponds to the percentage of time and space used for permissible activities.

(d) Other costs. The exhibit must identify all other costs included in the closing fee, state the amount of each cost, and state the nature of the associated activities.

(5) Cost analysis covering multiple locations. A dealer may submit a cost analysis that covers more than one location if:

(a) the cost structures of all covered locations are substantially similar (e.g., due to centralized processing among a group of locations); and

(b) in the supporting exhibits, the dealer explains which costs are similar and which are different among the locations.

(6) Transfer of ownership. If a dealer purchases an existing dealership, the Department will accept a cost analysis addendum and supporting exhibits if the purchasing dealer:

(a) has not been in operations twelve months or more;

(b) requests to charge a closing fee in an amount not exceeding the selling dealer's current, active fee on file with the Department;

(c) provides the most recent twelve months of actual data from the selling dealer; and

(d) demonstrates the dealer will be operating on the same premises with the same or similar fixed operating costs and staffing requirements.

E. Posting of Permitted Closing Fee

The motor vehicle dealer must display the closing fee certificate issued by the Department in a conspicuous location in the dealership. A closing fee certificate is conspicuously displayed if it is reasonably likely to be seen by the purchaser before and during negotiations with the dealer.