**South Carolina General Assembly**

125th Session, 2023-2024

**A45, R54, H3952**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. G.M. Smith, Bannister, Bradley, Crawford, Herbkersman, W. Newton, Felder, Alexander, Wetmore, Hyde, Sessions, Guffey, Connell, Hager, Atkinson, Moss, Stavrinakis, Yow, Mitchell, Ligon, B. Newton, Williams, T. Moore, Robbins, Brewer, Murphy, Wooten, Cromer, Magnuson, Pope, Hixon, Forrest, M.M. Smith, Davis, Ballentine, Erickson, Guest, Ott, Willis, Sandifer, White, Lawson, Hardee and Long

Companion/Similar bill(s): 483

Document Path: LC-0150DG23.docx

Introduced in the House on February 14, 2023

Introduced in the Senate on March 30, 2023

Last Amended on May 3, 2023

Currently residing in the House

Governor's Action: May 16, 2023, Signed

Summary: Consumer affairs

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 2/14/2023 House Introduced and read first time (House Journal‑page 10)

 2/14/2023 House Referred to Committee on **Labor, Commerce and Industry** (House Journal‑page 10)

 2/15/2023 House Member(s) request name added as sponsor: Connell,
 Hager, Atkinson, Moss, Stavrinakis, Yow,
 Mitchell, Ligon

 2/16/2023 House Member(s) request name added as sponsor: B.
 Newton, Williams, T. Moore, Lawson

 2/21/2023 House Member(s) request name added as sponsor: Robbins,
 Brewer, Murphy, Wooten, Cromer, Magnuson,
 Pope, Hixon, Forrest, M.M. Smith, Davis,
 Ballentine, Erickson, Guest

 2/22/2023 House Member(s) request name added as sponsor: Ott, Willis

 3/7/2023 House Member(s) request name added as sponsor:
 Sandifer, White

 3/28/2023 House Committee report: Favorable with amendment **Labor, Commerce and Industry** (House Journal‑page 12)

 3/29/2023 House Member(s) request name added as sponsor: Hardee, Long

 3/29/2023 House Amended (House Journal‑page 10)

 3/29/2023 House Read second time (House Journal‑page 10)

 3/29/2023 House Roll call Yeas-102 Nays-0 (House Journal‑page 16)

 3/29/2023 Scrivener's error corrected

 3/30/2023 House Read third time and sent to Senate (House Journal‑page 31)

 3/30/2023 Senate Introduced and read first time (Senate Journal‑page 8)

 3/30/2023 Senate Referred to Committee on **Banking and Insurance** (Senate Journal‑page 8)

 3/31/2023 Scrivener's error corrected

 4/25/2023 Senate Recalled from Committee on **Banking and Insurance** (Senate Journal‑page 4)

 5/2/2023 Senate Debate adjourned (Senate Journal‑page 35)

 5/2/2023 Senate Roll call Ayes-xxx Nays-xxx (Senate Journal‑page 35)

 5/3/2023 Senate Amended (Senate Journal‑page 216)

 5/3/2023 Senate Read second time (Senate Journal‑page 216)

 5/3/2023 Senate Roll call Ayes-43 Nays-0 (Senate Journal‑page 216)

 5/4/2023 Senate Read third time and returned to House with amendments (Senate Journal‑page 25)

 5/5/2023 Scrivener's error corrected

 5/10/2023 House Concurred in Senate amendment and enrolled (House Journal‑page 35)

 5/10/2023 House Roll call Yeas-109 Nays-0 (House Journal‑page 35)

 5/11/2023 Ratified R 54

 5/16/2023 Signed By Governor

 5/26/2023 Effective date 05/16/23

 5/26/2023 Act No. 45

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**VERSIONS OF THIS BILL**

[02/14/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3952_20230214.docx)

[03/28/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3952_20230328.docx)

[03/29/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3952_20230329.docx)

[03/29/2023-A](https://www.scstatehouse.gov/sess125_2023-2024/prever/3952_20230329a.docx)

[03/31/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3952_20230331.docx)

[04/25/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3952_20230425.docx)

[05/03/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3952_20230503.docx)

[05/05/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3952_20230505.docx)

 3/31/2023 Scrivener's error corrected

 4/25/2023 Senate Recalled from Committee on **Banking and Insurance** ([Senate Journal‑page 4](file:///h%3A%5Csj%5C20230425.docx))

 5/2/2023 Senate Debate adjourned ([Senate Journal‑page 35](file:///h%3A%5Csj%5C20230502.docx))

 5/2/2023 Senate Roll call Ayes-xxx Nays-xxx ([Senate Journal‑page 35](file:///h%3A%5Csj%5C20230502.docx))

 5/3/2023 Senate Amended ([Senate Journal‑page 216](file:///h%3A%5Csj%5C20230503.docx))

 5/3/2023 Senate Read second time ([Senate Journal‑page 216](file:///h%3A%5Csj%5C20230503.docx))

 5/3/2023 Senate Roll call Ayes-43 Nays-0 ([Senate Journal‑page 216](file:///h%3A%5Csj%5C20230503.docx))

 5/4/2023 Senate Read third time and returned to House with amendments ([Senate Journal‑page 25](file:///h%3A%5Csj%5C20230504.docx))

 5/5/2023 Scrivener's error corrected

 5/10/2023 House Concurred in Senate amendment and enrolled ([House Journal‑page 35](file:///h%3A%5Chj%5C20230510.docx))

 5/10/2023 House Roll call Yeas-109 Nays-0 ([House Journal‑page 35](file:///h%3A%5Chj%5C20230510.docx))

 5/11/2023 Ratified R 54 ([Senate Journal‑page 142](file:///h%3A%5Csj%5C20230511.docx))

 5/16/2023 Signed By Governor

 5/26/2023 Effective date 05/16/23

 5/26/2023 Act No. 45

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[03/29/2023-A](https://www.scstatehouse.gov//sess125_2023-2024/prever/3952_20230329a.htm)

[03/31/2023](https://www.scstatehouse.gov//sess125_2023-2024/prever/3952_20230331.htm)

[04/25/2023](https://www.scstatehouse.gov//sess125_2023-2024/prever/3952_20230425.htm)

[05/03/2023](https://www.scstatehouse.gov//sess125_2023-2024/prever/3952_20230503.htm)

[05/05/2023](https://www.scstatehouse.gov//sess125_2023-2024/prever/3952_20230505.htm)

(A45, R54, H3952)

AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 37‑2‑307, RELATING TO MOTOR VEHICLE SALES CONTRACT CLOSING FEES, SO AS TO REQUIRE THE CLOSING FEE TO BE PROMINENTLY DISPLAYED WITH THE ADVERTISED PRICE, to require the fee be reasonable, and to specify the manner in which the department of consumer affairs is to provide enforcement measures.

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

Motor vehicle closing fees

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

 Section 37-2-307. (A) As used in this section:

 (1) A closing fee is defined as a fee for recovery of a motor vehicle dealer’s actual costs for all administrative and financial work needed to transfer and deliver the motor vehicle to the consumer 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.

 (2) “Department” means the South Carolina Department of Consumer Affairs.

 (3) “Dealer” means a “motor vehicle dealer” as defined in Section 56-15-10.

 (B)(1) Every dealer charging closing fees in a motor vehicle sale or lease transaction shall pay a filing fee of ten dollars to the department each time the dealer provides notice of a new closing fee amount to the department. The department shall set the filing fee annually in an amount not to exceed twenty-five dollars.

 (2) The closing fee must be disclosed on the motor vehicle sale or lease contract, displayed in a conspicuous location in the motor vehicle dealership, and clearly and conspicuously disclosed in any advertisement of a specific motor vehicle for sale or lease.

 (C)(1) Prior to charging a closing fee, a dealer shall provide written notice to the department of the maximum amount of the closing fee the dealer intends to charge.

 (2) If the maximum amount of the proposed closing fee the dealer intends to charge is not more than two hundred twenty-five dollars for each vehicle, the closing fee is considered to be approved by the department, and the dealer does meet and fulfill all reasonable requirements and criteria in compliance with this section. If the proposed closing fee exceeds two hundred twenty-five dollars, the department may review the amount of the closing fee for reasonableness using the criteria in item (5).

 (3) If the department intends to conduct a formal review of a proposed closing fee, the department shall provide written notice to the dealer of the department's intention to review the proposed closing fee within fifteen days of receiving the complete proposed closing fee notice. If the department determines that a proposed closing fee is not reasonable, the department shall issue a written order detailing the department’s findings within thirty days of receiving the complete proposed closing fee notice. If the department does not provide the dealer with written notice of the department's approval of the proposed closing fee within thirty days of receiving the proposed closing fee notice, the dealer is authorized to charge the proposed closing fee.

 (4) 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. If the department finds that a proposed closing fee is not reasonable, the dealer may request a hearing in accordance with the Administrative Procedures Act. During the pendency of the department’s review period, or the pendency of any action before the Administrative Law Court, the 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.

 (5)(a) In determining the reasonableness of a closing fee, the department shall accept and allow all of the dealer’s actual costs and expenses including, but not limited to, employee compensation, information processing, facilities costs, supplies, and materials associated with the following closing and delivery activities:

 (i) closing the motor vehicle sale or lease transaction, including any associated loan or lease and transferring title of the motor vehicle to the consumer;

 (ii) delivering the motor vehicle to the consumer;

 (iii) complying with all state, federal, and lender requirements;

 (iv) preparing, storing, and retrieving transaction documents; and

 (v) protecting the private personal information of the consumer.

 (b) Dealer costs must be calculated using generally accepted cost accounting principles for the preceding twelve-month period.

 (c) In determining the reasonableness of a closing fee, the department may compare a particular dealer’s costs only with other similarly situated dealers.

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

 (1) notwithstanding any other provision of law, a 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, 56-15-40, and 39-5-20 with regard to the charging of a closing fee and may lawfully charge a closing fee;

 (2) a 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 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 shall administer and enforce the subject of motor vehicle dealer closing fees as limited by this section. The department may 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 dealer's records, but only to the extent necessary to determine the dealer’s compliance with the disclosure provisions of subsection (B)(2) and the accuracy of the dealer’s cost and expense information in subsection (C)(5), and this information must be kept confidential and privileged from disclosure, except as otherwise provided by law.

 (2) In administering and enforcing this section, or for any other review or investigation of dealers, the department shall:

 (a) promote education for consumers and best practices for dealers; and

 (b) mediate complaints between a consumer and a dealer, whenever possible.

 (3) The department may review or investigate a dealer upon receipt of a complaint or other credible evidence that the dealer has violated a provision of this section or a provision of this title related to closing fees. In administering and enforcing this section:

 (a) The department must provide a written notice by certified mail to the dealer regarding the complaint or other credible evidence. If the department’s records show an email address for the dealer, the department must also send an email to the dealer. This written notice must contain sufficient information for the dealer to identify documents related to the alleged violation, request only such information as is reasonably related to the alleged violation, and state that the dealer may provide a written response to the allegation.

 (b) The dealer must respond to the department’s notice within forty-five days from the date the written notice described in item (3)(a) was received via certified mail. If a dealer fails to provide the requested information within sixty days from the date of receipt of the written notice via certified mail, the department may commence a proceeding pursuant to the Administrative Procedures Act.

 (c) The department must issue a decision within fifteen days of receipt of the requested information from the dealer. If the department determines the dealer failed to comply with the requirements of this section or of this title regarding closing fees, the department’s decision must determine if the violation was either (1) not intentional and resulted from a bona fide error, or (2) an intentional violation.

 (i) In the event of a violation that was not intentional and resulted from a bona fide error, the dealer must refund any excess charge paid by the consumer. The department must close the investigation upon notice that the consumer received the refund.

 (ii) In the event of an intentional violation, the department may request only those records reasonably related to the alleged violation for the ten transactions immediately preceding and the ten transactions immediately after the transaction identified in the complaint or other credible evidence received by the department. If the department discovers a potential violation of any kind related to closing fees in any of these transactions, the department may request only those records reasonably related to the alleged violation for transactions occurring on the date of the transaction identified in the complaint or other credible evidence, and transactions thirty days immediately preceding and thirty days immediately after the transaction identified in the complaint or other credible evidence received by the department.

 (4) A dealer may not be held liable in any action for a violation of this section or a violation of this title regarding closing fees if the dealer (a) shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error; and (b) the dealer refunded any excess charge paid by the consumer.

 (5) A dealer who is found to have intentionally violated this section, or any other provision in this title regarding closing fees, must refund any excess charge paid by the customer within thirty days from the date of written notice from the department regarding its determination of a violation. Notwithstanding any other provision of law, the following remedies also apply for an intentional violation:

 (a) for the first violation in a twelve-month period, the department must send a written warning to the dealer;

 (b) for a second violation in a twelve-month period, the department may charge a five hundred dollar administrative penalty;

 (c) for a third violation in a twelve-month period, the department may charge not more than a one thousand dollar administrative penalty; and

 (d) for a fourth or subsequent violation in a twelve-month period, the department may charge not more than a five thousand dollar administrative penalty, provided that cumulative administrative penalties shall not exceed one hundred thousand dollars in the twelve-month period.

 (F)(1) 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.

 (2) Nothing in this section is intended to prohibit the department from administering and enforcing other laws under the department’s jurisdiction.

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 11th day of May, 2023.

Approved the 16th day of May, 2023.

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