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Indicates New Matter

COMMITTEE REPORT

April 1, 2010

**H. 4607**

Introduced by Reps. Sandifer, Huggins, Ott, Hutto, Howard, Anderson, Gambrell, Rice, Hayes, Erickson, Bedingfield, Lowe, Brady, G.A. Brown, Pinson, Bowers, Toole, Crawford, Bales, Mack, Allison, Parker, Mitchell, Long, Viers, Sellers, Sottile, Forrester, Horne, Clemmons, Simrill and Cole

S. Printed 4/1/10--S.

Read the first time March 24, 2010.

**THE COMMITTEE ON BANKING AND INSURANCE**

To whom was referred a Bill (H. 4607) to amend the Code of Laws of South Carolina, 1976, by adding Section 37‑2‑308 so as to define necessary terms and provide procedures that must be followed, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

DAVID L. THOMAS for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Department of Consumer Affairs and the Administrative Law Court indicate that this bill would have no impact on the General Fund of the State or federal and/or other funds as it merely adds procedures and penalties to the Consumer Protection Code.

**SPECIAL NOTES:**

The Board of Economic Advisors is the appropriate entity to address any revenue impact associated with this bill.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 37‑2‑308 SO AS TO DEFINE NECESSARY TERMS AND PROVIDE PROCEDURES THAT MUST BE FOLLOWED BY MOTOR VEHICLE DEALERS IN ADVERTISEMENTS MADE IN THE COURSE OF SOLICITING FOR THE SALE OR LEASE OF MOTOR VEHICLES; AND TO AMEND SECTION 37‑6‑108, AS AMENDED, RELATING TO ADMINISTRATIVE ENFORCEMENT ORDERS, SO AS TO PROVIDE PENALTIES FOR MOTOR VEHICLE DEALERS WHO VIOLATE THE PROVISIONS OF SECTION 37‑2‑308.

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

SECTION 1. Part 3, Chapter 2, Title 37 of the 1976 Code is amended by adding:

“Section 37‑2‑308. (A) As used in this section, unless the context requires otherwise, the term:

(1) ‘Advertisement’ means an oral, written, graphic, or pictorial statement made in the course of soliciting for the sale or lease of a motor vehicle in a newspaper, magazine, or on radio, television, or the Internet. A manufacturer’s federal Monroney Sticker or a motor vehicle dealer’s addendum to the sticker is not considered an advertisement.

(2) ‘Clear and conspicuous’ means that the statement, representation, or disclosure regarding a motor vehicle for sale or lease is of a size, color, contrast, and audibility that is presented to be readily noticed and understood. All language and terms, including abbreviations, must be used in accordance with their common or ordinary usage and meaning.

(a) In a print advertisement, eight point type or larger must be used in all disclosures.

(b) In a broadcast commercial, if the statement is made orally it must be clear and understandable in pace and volume; however, if the statement is in visual form it must be displayed so that the average viewer can easily read and understand it and it must be at least twenty scan lines and each disclosure must appear continuously on the screen for at least five seconds.

(B) All disclosures regarding a motor vehicle for sale or lease must be clear and conspicuous. Credit advertisements must comply with Federal Truth in Lending Act and Regulation Z. Lease advertisements must comply with Federal Truth in Leasing Act and Regulation M.

(C) A motor vehicle dealer may not advertise in a manner that is false, deceptive, or misleading, or that misrepresents a vehicle offered for sale.

(D) Discounts or savings on the sale or lease of a new motor vehicle indicated in an advertisement must be those that are deducted from the Manufacturer’s Suggested Retail Price as stated on the Monroney sticker. An advertisement that offers a discount or savings not deducted from the manufacturer's suggested retail price on the sale or lease of a new motor vehicle must display the prediscounted price and the discounted price. No qualification such as ‘with trade’ or ‘with down payment’ may be used.

(E) If a rebate on the sale or lease of a motor vehicle is indicated as part of an advertised price, the rebate must be one that is available to the majority of the general buying public. If the rebate is not available to the majority of the general buying public, it may not be figured in the advertised price. The amount of the rebate may be listed as an additional incentive to those who qualify.

(F) When the price of a motor vehicle is quoted, the advertisement must clearly identify the motor vehicle as new or used and include the make, model, and year.

(G) Motor vehicle dealers may not use the term ‘free’ when a purchase or other consideration is required to obtain the item represented as free.

(H) Advertisements for the sale or lease of a motor vehicle must include the name of the motor vehicle dealership and may not imply that the dealer has some special arrangement with the manufacturer that is not available to other similarly situated dealerships.

(I) Advertisements for the sale or lease of a motor vehicle may not use statements that guarantee the value or range of value for trade‑in motor vehicles.

(J) For purposes of this section, ‘advertising agencies’ are agents of the motor vehicle dealer.

(K) Penalties and hearing rights for violations of this section are governed by the provisions of Section 37‑6‑108.”

SECTION 2. Section 37‑6‑108 of the 1976 Code, as last amended by Act 128 of 2005, is further amended to read:

“Section 37‑6‑108. (A) After notice, the administrator may order a creditor, a person acting on his behalf, or a person subject to this title to cease and desist from engaging in violations of this title. A respondent aggrieved by an order of the administrator may request a contested case before the Administrative Law Court in accordance with the Administrative Law Court’s rules of procedure. The administrator may obtain an order from the Administrative Law Court for enforcement of his orders as provided in the Administrative Procedures Act and the Administrative Law Court’s rules of procedure. The proceeding for enforcement must be initiated by filing a petition with the Administrative Law Court in accordance with the Administrative Law Court’s rules of procedure, and copies of the request for a contested case hearing must be served upon all parties of record.

(B) The jurisdiction of the Administrative Law Court is exclusive, and its final order may be appealed as provided in Sections 1‑23‑610 and 1‑23‑380.

(C) A request for a contested case hearing pursuant to this section must be initiated within thirty days after a copy of the order of the administrator is received. If a request is not initiated, the administrator may move for an order from the Administrative Law Court for enforcement of his order upon a showing that the order was issued in compliance with this section, that a request for a contested case hearing was not initiated within thirty days after a copy of the order was received, and that the respondent is subject to the jurisdiction of the Administrative Law Court.

(D) For purposes of this section and Sections 37‑6‑117 and 37‑6‑118, a violation of the South Carolina Unfair Trade Practices Act arising out of the production, promotion, or sale of consumer goods, services, or interests in land is considered a violation of this title subject to action by the administrator before the Administrative Law Court.

(E) Unless otherwise specifically provided by law, the following administrative penalties may be levied against persons found to have engaged in violations of this title pursuant to subsection (A) ~~of this section~~:

(1) If the violator is found to have violated repeatedly and intentionally ~~any~~ a provision of this title, the violator must be fined in an amount not to exceed two thousand five hundred dollars and not to exceed ten thousand dollars for ~~any~~ a transaction or occurrence or set of transactions or occurrences which violated multiple provisions of this title.

(2) If the violator is shown to have violated a previous lawful order of the tribunal of competent jurisdiction, the violator may be fined in an amount not to exceed five thousand dollars for each violation.

(3) The penalties in items (1) and (2) ~~of this subsection~~ are in addition to any other penalties provided by law or any other remedies provided by law.

(F) Notwithstanding the other provisions of this section, a person who violates the provisions of Section 37‑2‑308 must be punished as follows:

(1) for a first violation, the department shall send a written warning to the motor vehicle dealer;

(2) for a second violation in a six‑month period, the department may charge a five hundred dollar administrative penalty;

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

(4) for a fourth violation in a six‑month period, the department may charge not more than a ten thousand dollar administrative penalty.

Continued violations of the provisions of Section 37‑2‑308 may be considered grounds for revocation, suspension, and nonrenewal of a dealer license pursuant to Section 56‑15‑350. For the purposes of this subsection, a violation is defined as each notice received by the dealer for an offense. Each notice received by the dealer for a related offense serves as a subsequent violation. Additionally, the department must send notices of all offenses to motor vehicle dealers who have violated the provisions of Section 37‑2‑308 by mail.

(G) The administrative law judge may make findings and issue and enforce cease and desist orders regarding unconscionable conduct or unconscionable debt collection pursuant to this section, but the administrative law judge may not award damage, treble damage, or attorney’s fee remedies to affected customers in these hearings.”

SECTION 3. This act takes effect on January 1, 2011.

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