~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

January 20, 2016

**S. 911**

Introduced by Senators L. Martin, Campsen, Massey, Hayes, Alexander, Bennett, Bright, Bryant, Campbell, Corbin, Gregory, Hembree, S. Martin, O’Dell, Peeler, Shealy, Turner, Johnson, Grooms, Williams, Davis, Verdin, Fair, Reese, Nicholson, Cleary and Lourie

S. Printed 1/20/16--S. [SEC 1/21/16 12:57 PM]

Read the first time January 13, 2016.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 911) to amend the Code of Laws of South Carolina, 1976, relating to closing fees on motor vehicle sales contracts, so as to establish a definition of a closing fee that, etc., respectfully

**REPORT:**

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

Majority favorable. Minority unfavorable.

LARRY A. MARTIN BRAD HUTTO

For Majority. For Minority.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CLOSING FEES ON MOTOR VEHICLE SALES CONTRACTS, SO AS TO ESTABLISH A DEFINITION OF A CLOSING FEE THAT A MOTOR VEHICLE DEALER MAY CHARGE BY AMENDING SECTION 37‑2‑307 OF THE CODE AND TO PROVIDE AN AFFIRMATIVE DEFENSE FOR A MOTOR VEHICLE DEALER WHO COMPLIES WITH THE REQUIREMENTS OF THE CODE IS IN COMPLIANCE WITH STATE LAW; RELATING TO THE DEALERS’ ACT TO CLARIFY THE PROCEDURAL PROCESS FOR BRINGING A CLAIM SO AS TO REPEAL SECTION 56‑15‑110(2) AND TO AMEND THE PROCEDURAL PROCESS FOR A PERSON TO BRING A CLAIM IN AN INDIVIDUAL CAPACITY UNDER THE DEALER’S ACT IN SECTION 56‑15‑110(1); AND TO CLARIFY THE CURRENT PROCEDURAL PROCESS IN STATE LAW FOR A MOTOR VEHICLE TO BRING ACTION OR CLAIM FOR DAMAGE AND HARM TO ITS BUSINESS OR PROPERTY BY THE MANUFACTURER, DISTRIBUTOR, OR OTHER PERSON BY AMENDING SECTION 56‑15‑30.

Whereas, the South Carolina Supreme Court held in the matter of Freeman v. J.L.H. Investments, L.P., a/k/a Hendrick Honda of Easley issued on November 4, 2015, that a closing fee charged by a motor vehicle dealer pursuant to Section 37‑2‑307 of the South Carolina Code must bear some relation to the actual expenses incurred for the closing and the majority; and

Whereas, the General Assembly enacted Section 37‑2‑307 of the South Carolina Code in 2000 and placed the closing fee statute in the disclosure chapter of the South Carolina Consumer Protection Code as a disclosure provision if a motor vehicle dealer intends to collect or charge a closing fee; and

Whereas, the South Carolina Supreme Court’s Opinion, directly and adversely threatens the economic stability and ongoing viability of owners and operators of motor vehicle dealerships, their employees, vendors, customers, and communities; and

Whereas, there are approximately 282 franchised automotive dealerships employing 22,568 citizens in jobs throughout the State of South Carolina and their economic interests are important to their communities and to the State; and

Whereas, the majority expressly invited the General Assembly to address and correct this interpretation if it disagreed with the aforementioned Opinion; and

Whereas, the General Assembly enacted Section 56‑15‑110(2) of the Dealer’s Act (Chapter 15 of Title 56) to allow motor vehicle dealers who are aggrieved and damaged as a result of the manufacturer and/or distributor to have the ability to join together in seeking remedy and action against the manufacturer and/or distributor; and

Whereas, the General Assembly finds that the court’s dissenting opinion accurately reflects the intent of the General Assembly when it enacted the Closing Fee Statute as part of the Consumer Protection Code and placed the enforcement authority with the Department of Consumer Affairs to ensure compliance with the statute and to encourage reliance on the construction of the code by the department thereby protecting consumers and providing due regard for the interests of legitimate businesses seeking to comply with applicable requirements established by the department. Now, therefore,

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) 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 to the Department of Consumer Affairs. 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 motor vehicle dealer who complies with subsection (a) above is deemed to be in compliance with the provisions of this section and may lawfully charge a closing fee. A motor vehicle dealer may assert any defenses provided to a creditor under the provision of Title 37 of the South Carolina Code of Laws whether the vehicle transaction is a credit sale or cash transaction.

(c) The Department of Consumer Affairs shall administer this section and shall exclusively enforce the subject of motor vehicle dealer closing fees, including, but not limited to, this section.

SECTION 2. Section 56‑15‑110(1) of Article 1, Chapter 15, Title 56 of the 1976 Code is amended to read:

“Section 56-15-110. (1) In addition to temporary or permanent injunctive relief as provided in Section 56‑15‑40(3)(c), any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefor in the court of common pleas individually, but not in a representative or group capacity, nor acting as a private attorneys general, and shall recover double the actual damages by him sustained, and the cost of suit, including a reasonable attorney’s fee and costs.”

SECTION 3. Section 56‑15‑110(2) of the 1976 Code is repealed.

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this Act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 5. This act takes effect upon approval by the Governor, and shall apply to any and all causes of action, including appeals, pending on January 12, 2016, which have not been reduced to final judgment, and this act shall apply to any matter pending and unresolved on the effective date of this act.

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