

Regular Session, 2014

HOUSE BILL NO. 770

BY REPRESENTATIVE PRICE

MOTOR VEHICLES: Provides relative to the Used Motor Vehicle Commission

1 AN ACT

2 To amend and reenact R.S. 32:781(13)(a)(i) and 792(B)(1)(d), to enact R.S. 32:796, and to
3 repeal R.S. 32:795, relative to used motor vehicle dealers; to amend the definition
4 of "used motor vehicle"; to provide for a nonexclusive listing of false, misleading,
5 or unsubstantiated advertising in connection with his used motor vehicle dealers'
6 business; to provide relative to the deposit and down payment disclosure and
7 delivery pending a sale by a used motor vehicle; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 32:781(13)(a)(i) and 792(B)(1)(d) are hereby amended and reenacted
10 and R.S. 32:796 is hereby enacted to read as follows:

11 §781. Definitions

12 As used in this Chapter:

13 * * *

14 (13)(a)(i) "Used motor vehicle dealer" means any person, partnership,
15 corporation, limited liability company, or other entity who, for a commission or with
16 intent to make a profit or gain of money or other thing of value, buys, sells, brokers,
17 exchanges, rents with option to purchase, auctions at retail or public, offers, or
18 attempts to negotiate a sale or exchange of an interest in used motor vehicles and
19 who is engaged wholly or in part in the business of buying and selling used motor
20 vehicles, whether such motor vehicles are owned by such person and whether the

1 motor vehicles are sold from a dealership location or via any form of advertising,
2 including but not limited to the Internet. A person shall be presumed to be engaged
3 in the business of selling used motor vehicles if he sells five or more used motor
4 vehicles in any twelve-month period which vehicles are not registered to and insured
5 by members of the individual's household, immediate family members, or legal
6 entities which the individual has an ownership interest in or is employed by. An
7 entity shall be presumed to be engaged in the business of selling used motor vehicles
8 if the entity sells five or more used motor vehicles which are not registered to and
9 insured by the entity or by an entity affiliated with the entity receiving anything of
10 value.

11 * * *

12 §792. Denial, revocation, or suspension of license; grounds; unauthorized acts

13 * * *

14 B. The commission may revoke or suspend a license, issue a fine or penalty,
15 or enjoin a used motor vehicle dealer, dealer in used parts or used accessories of
16 motor vehicles, used motor vehicle auctioneer, or salesperson for any of the
17 following conduct:

18 (1) A change of condition after the license has been granted resulting in
19 failure to maintain the qualifications for licensure, including but not limited to:

20 * * *

21 (d) Use of false, misleading, or unsubstantiated advertising in connection
22 with his business. For the purpose of this Paragraph, the following shall be
23 considered false, misleading and unsubstantiated advertising in connection with the
24 sale of a used motor vehicle shall include but not be limited to the following:

25 (i) Making unsubstantiated claims regarding the dealership, such as being the
26 "largest" or "biggest" dealer, or being the "number one dealer" in an area.

27 (ii) Advertising that notes will not have to be paid by the customer for a
28 certain period of time, unless the dealer can substantiate the delay in payment and
29 unless the delay is offered to all customers without restriction or limitation.

(iii) Advertising a loan interest rate without restriction or limitation.

(iv) Advertising guaranteed credit approval without restriction or limitation.

(v) Advertising a monthly note without restriction or limitation and without reference to an approved credit rating.

(vi) Advertising a guaranteed amount for trade-ins.

(vii) The advertised price must be the full cash price for which the vehicle will be sold, except for tax, title and license which must be referenced.

(viii) When the price is advertised, the dealer is required to provide a complete and accurate description of the vehicle, including make, model and model year of the vehicle.

(ix) Performing a "bait and switch" in which the dealer does not have the vehicles advertised for sale and has not had the vehicles within a reasonable time from the advertisement.

* * *

§796. Deposit and Down Payment Disclosure and Delivery of Vehicle Pending the Sale.

A. In every transaction between a used motor vehicle dealer and a potential purchaser in which the purchaser provides a deposit on a used motor vehicle, the used motor vehicle dealer is required to provide a statement that the deposit given is on an agreement to purchase, and not an actual sale. The agreement shall clearly state that no transaction has actually occurred, and no sales documents have been completed. The deposit is merely intended as a hold on a vehicle.

B. In every transaction between a used motor vehicle dealer and a potential purchaser in which the purchaser provides a down payment for the purchase of a used motor vehicle, the used motor vehicle dealer is required to provide, either on the bill of sale, or by separate agreement, a statement that the sale is conditioned upon certain identifiable events, such as financing or obtaining state-mandated compulsory automobile insurance.

1 C. In every transaction between a used motor vehicle dealer and a potential
2 purchaser in which the purchaser provides either a down payment or a deposit for the
3 purchase of a used motor vehicle, the used motor vehicle dealer is required to
4 complete a disclosure statement that contains the following provisions:

5 (1) The amount of the deposit or down payment.

6 (2) Whether the money given is either a deposit or a down payment, and
7 shall include a notice that either party may recede or withdraw from the transaction.

8 (3) Clearly state:

9 (a) If the customer chooses to withdraw from the transaction the deposit or
10 down payment will be forfeited to the used motor vehicle dealer.

11 (b) If the used motor vehicle dealer who chooses to withdraw, the dealer
12 must return the deposit or down payment.

13 (c) The failure to perform under the terms of the agreement including but not
14 limited to the dealer's failure to provide a vehicle fit for its intended purpose shall be
15 treated as the same as the dealer withdrawing.

16 (d) The inability of the potential purchaser to secure financing or to obtain
17 state-mandated compulsory automobile insurance shall be treated as the same as the
18 customer withdrawing.

19 (4) A time limit in which to complete the transaction not to exceed twenty
20 days.

21 (5) A complete description of the motor vehicle to be sold including the
22 make, model, year, and any identification and serial numbers of the motor vehicle.

23 (6) The purchase price of a trade-in the vehicle including the make, model,
24 year and identification and serial number of the vehicle and its condition.

25 (7) The price allowed for any trade-in.

26 D. If the dealer allows the customer to take delivery on a vehicle which is
27 the subject of either a deposit or a down payment, a pre-delivery sale disclosure
28 statement from the dealer and the customer shall include the following:

(1) A condition report which clearly identifies any noticeable damage to the vehicle before it is released to the customer.

(2) A statement that if the dealer withdraws from the agreement to purchase, the customer will be responsible only for damages beyond normal wear and tear occurring during the customer's use of the vehicle which may be deducted from the deposit or down payment.

(3) A statement that if the customer withdraws from the agreement to purchase, the customer shall be responsible not only for damages occurring during the customer's use of the vehicle but also for usage of the vehicle at a day rate not to exceed thirty-five cents per mile, which may be deducted from the deposit or down payment.

(4) A statement that if the customer either withdraws from the agreement to purchase or fails to return the vehicle at the expiration of the term of agreement, the dealer may seek repossession of the vehicle by any lawful means.

(5) A statement that if the dealer withdraws from the agreement to purchase that the dealer must give written notice, by certified or registered mail, to the customer at least five days prior to taking repossession of the vehicle which may be done by any lawful means, and only upon return of the deposit in accordance with Subsection (C) of this Section.

E. It shall be unlawful and constitute a violation of this Chapter for any used
motor vehicle dealer to fail to follow any of the provisions of this Section.

* * *

Section 2. R.S. 32:795 is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Price

HB No. 770

Abstract: Provides relative to the business practices of used motor vehicle dealers.

Present law provides that a "used motor vehicle dealer" means any person, partnership, corporation, limited liability company, or other entity who, for a commission or with intent to make a profit or gain of money or other thing of value, buys, sells, brokers, exchanges, rents with option to purchase, auctions, offers, or attempts to negotiate a sale or exchange of an interest in used motor vehicles and who is engaged wholly or in part in the business of buying and selling used motor vehicles, whether such motor vehicles are owned by such person and whether the motor vehicles are sold from a dealership location or via any form of advertising, including but not limited to the Internet.

Proposed law provides that auction shall be a retail or public.

Present law provides that the used motor vehicle commission may revoke or suspend a license, issue a fine or penalty, or enjoin a used motor vehicle dealer, dealer in used parts or used accessories of motor vehicles, used motor vehicle auctioneer, or salesperson for a change of condition after the license has been granted resulting in failure to maintain the qualifications for licensure, including but not limited to the use of false, misleading, or unsubstantiated advertising in connection with his business.

Proposed law adds a nonexclusive list of what shall be considered of false, misleading, or unsubstantiated advertising in connection with his business.

Present law provides that every used motor vehicle dealer who accepts a deposit or a down payment from a consumer shall provide the consumer with a purchase agreement statement containing the following:

- (1) A complete description of the motor vehicle subject to the purchase agreement, including the make, model, year, and vehicle identification number.
- (2) The purchase price of the vehicle.
- (3) The amount of the deposit or down payment.
- (4) A statement identifying whether the funds received by the dealer are for deposit or down payment.
- (5) Any conditions necessary to complete the sale.

Proposed law repeals present law.

Present law provides that every used motor vehicle dealer who accepts a deposit or down payment for a purchase agreement conditioned upon the consumer's ability to obtain financing of the remainder of the purchase price shall return the deposit or down payment upon a determination that the consumer does not qualify for financing. If no determination is made regarding financing within 20 days of the receipt of the deposit or down payment, the deposit or down payment shall be returned to the consumer at the end of the 20 day period.

Proposed law repeals present law.

Proposed law provides that in every transaction between a used motor vehicle dealer and a potential purchaser in which the purchaser provides a deposit on a used motor vehicle, the used motor vehicle dealer is required to provide a statement that the deposit given is on an agreement to purchase, and not an actual sale. The agreement shall clearly state that no transaction has actually occurred, and no sales documents have been completed. The deposit is merely intended as a hold on a vehicle.

Proposed law provides that in every transaction between a used motor vehicle dealer and a potential purchaser in which the purchaser provides a down payment for the purchase of a

used motor vehicle, the used motor vehicle dealer is required to provide, either on the bill of sale, or by separate agreement, a statement that the sale is conditioned upon certain identifiable events, such as financing or obtaining state-mandated compulsory automobile insurance.

Proposed law provides that in every transaction between a used motor vehicle dealer and a potential purchaser in which the purchaser provides either a down payment or a deposit for the purchase of a used motor vehicle, the used motor vehicle dealer is required to complete a disclosure statement that contains the following provisions:

- (1) The amount of the deposit or down payment.
- (2) Whether the money given is either a deposit or a down payment, and shall include a notice that either party may recede or withdraw from the transaction.
- (3) Clearly state:
 - (a) If the customer chooses to withdraw from the transaction the deposit or down payment will be forfeited to the used motor vehicle dealer.
 - (b) If the used motor vehicle dealer who chooses to withdraw, the dealer must return the deposit or down payment.
 - (c) The failure to perform under the terms of the agreement including but not limited to the dealer's failure to provide a vehicle fit for its intended purpose shall be treated as the same as the dealer withdrawing.
 - (d) The inability of the potential purchaser to secure financing or to obtain state-mandated compulsory automobile insurance shall be treated as the same as the customer withdrawing.
- (4) A time limit in which to complete the transaction not to exceed twenty days.
- (5) A complete description of the motor vehicle to be sold including the make, model, year, and any identification and serial numbers of the motor vehicle.
- (6) The purchase price of a trade-in the vehicle including the make, model, year and identification and serial number of the vehicle and its condition.
- (7) The price allowed for any trade-in.

Proposed law provides that if the dealer allows the customer to take delivery on a vehicle which is the subject of either a deposit or a down payment, a pre-delivery sale disclosure statement from the dealer and the customer must include the following:

- (1) A condition report which clearly identifies any noticeable damage to the vehicle before it is released to the customer.
- (2) A statement that if the dealer withdraws from the agreement to purchase, the customer will be responsible only for damages beyond normal wear and tear occurring during the customer's use of the vehicle which may be deducted from the deposit or down payment.
- (3) A statement that if the customer withdraws from the agreement to purchase, the customer shall be responsible not only for damages occurring during the customer's use of the vehicle but also for usage of the vehicle at a day rate not to exceed thirty-five cents per mile, which may be deducted from the deposit or down payment.

- (4) A statement that if the customer either withdraws from the agreement to purchase or fails to return the vehicle at the expiration of the term of agreement, the dealer may seek repossession of the vehicle by any lawful means.
- (5) A statement that if the dealer withdraws from the agreement to purchase that the dealer must give written notice, by certified or registered mail, to the customer at least five days prior to taking repossession of the vehicle which may be done by any lawful means, and only upon return of the deposit in accordance with Subsection (C) of this Section.

(Amends R.S. 32:781(13)(a)(i) and 792(B)(1)(d); Adds R.S. 32:796; Repeals R.S. 32:795)