HLS 17RS-1113 ORIGINAL

2017 Regular Session

HOUSE BILL NO. 430

BY REPRESENTATIVE PYLANT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MOTOR VEHICLES: Provides relative to the regulation of used motor vehicles

1	AN ACT
2	To amend and reenact R.S. 6:969.3(B) and R.S. 32:781(13)(a), 782, 784, and 792(B)(17)(j)
3	and to enact R.S. 6:969.3(A)(7) and 969.36(A)(9) and R.S. 32:781(13)(b)(vii) and
4	(18), 783(F)(10), 791.1, and 792(B)(17)(l), relative to the regulation of used motor
5	vehicles; to provide for certain exclusions; to provide for licensing requirements; to
6	provide for definitions; to provide for legislative findings; to provide for the powers
7	and duties of the Used Motor Vehicle Commission; to enumerate certain
8	prohibitions; to impose certain procedures and requirements regarding used motor
9	vehicle sales finance licensing; to prohibit certain advertising; to provide for special
10	effectiveness; and to provide for related matters.
11	Be it enacted by the Legislature of Louisiana:
12	Section 1. R.S. 6:969.3(B) is hereby amended and reenacted and R.S. 6:969.3(A)(7)
13	and 969.36(A)(9) are hereby enacted to read as follows:
14	§969.3. Exclusions
15	A. Except as provided in Subsection B of this Section, this Chapter does not
16	apply to any of the following:
17	* * *
18	(7) Used motor vehicle dealers licensed pursuant to Chapter 4-C of Title 32
19	of the Revised Statutes of 1950.

1	B. All persons, except those licensed pursuant to Chapter 4-C of Title 32 of
2	the Revised Statutes of 1950, financing the purchase or acquisition of a motor
3	vehicle, irrespective of whether the transaction otherwise is subject to this Chapter,
4	shall comply with the requirements of R.S. 32:1251 et seq. and the rules and
5	regulations of the Louisiana Motor Vehicle Commission pertaining to advertising.
6	* * *
7	§969.36. License not required
8	A. All of the following shall be exempt from the licensing requirements of
9	this Chapter:
10	* * *
11	(9) Used motor vehicle dealers licensed pursuant to Chapter 4-C of Title 32
12	of the Revised Statutes of 1950.
13	* * *
14	Section 2. R.S. 32:781(13)(a), 782, 784, and 792(B)(17)(j) are hereby amended and
15	reenacted and R.S. 32:781(13)(b)(vii) and (18), 783(F)(10), 791.1, and 792(B)(17)(l) are
16	hereby enacted to read as follows:
17	§781. Definitions
18	As used in this Chapter:
19	* * *
20	(13)(a)(i) "Used motor vehicle dealer" means any person, partnership,
21	corporation, limited liability company, or other entity who, for a commission or with
22	intent to make a profit or gain of money or other thing of value, buys, sells, brokers,
23	exchanges, rents with option to purchase, auctions at retail or public, offers, or
24	attempts to negotiate a sale or exchange of an interest in used motor vehicles and
25	who is engaged wholly or in part in the business of buying and selling used motor
26	vehicles, whether such motor vehicles are owned by such person and whether the
27	motor vehicles are sold from a dealership location or via any form of advertising,
28	including but not limited to the Internet. A person shall be presumed to be engaged
29	in the business of selling used motor vehicles if he sells five or more used motor

vehicles in any twelve-month period which vehicles are not registered to and insured
by members of the individual's household, immediate family members, or legal
entities in which the individual has an ownership interest or which employ the
individual. An entity shall be presumed to be engaged in the business of selling used
motor vehicles if the entity sells five or more used motor vehicles which are not
registered to and insured by the entity or by an entity affiliated with the entity
receiving anything of value.
(ii) The term shall also include anyone not licensed under Chapter 6 of Title
32 of the Louisiana Revised Statutes of 1950 who sells used motor vehicles and who
rents on a daily basis used motor vehicles.
(b) "Used motor vehicle dealer" shall not include any of the following:
* * *
(vii) Motor vehicle dealers licensed by the Louisiana Motor Vehicle
Commission pursuant to Chapter 6 of Title 32 of the Louisiana Revised Statutes of
<u>1950.</u>
* * *
(18) "Rent" or "Daily rental" means engaging in the business of renting used
motor vehicles not of the current or immediate prior year models that have been
titled previously to an ultimate purchaser.
§782. Jurisdiction and authority of commission Commission; legislative findings
The provisions of this Chapter shall not apply to any person, partnership,
corporation, limited liability company, or other entity that is licensed or regulated by
the Louisiana Motor Vehicle Commission. If any provision of this Chapter conflicts
with any provision of Chapter 6 of this Title, the provisions of Chapter 6 of this Title
shall prevail legislature finds all of the following:
(1) The used motor vehicle industry is a collection of various businesses,
including used motor vehicle dealerships, used motor vehicle auctions, used motor
vehicle renters, motor vehicle dismantlers and parts recyclers, crushers, and salvage
pool dealers, which are a vital part of the commerce of the state of Louisiana.

1	(2) The used motor vehicle industry operates independently and separately
2	from motor vehicle dealerships who have manufacturer franchise agreements.
3	(3) The regulation of the sale, rental, transfer, dismantling, and disposal of
4	used motor vehicles, salvaged vehicles, and usable parts by independent used car
5	dealers, salvage dealers, dismantlers, motor vehicle crushers, and auctions is
6	necessary to protect the safety and welfare of the citizens of the state of Louisiana.
7	(4) It is a matter of public interest and concern that only qualified
8	independent dealers, auctions, and dismantlers be permitted to engage in the sale,
9	transfer, financing, and rental of used motor vehicles, salvaged vehicles, and usable
10	parts.
11	(5) The licensing, regulation, and education of independent used motor
12	vehicles dealers by the Used Motor Vehicle Commission, which is composed of
13	members of the industry and consumers, is in the best interest of the state and of the
14	public.
15	§783. Used Motor Vehicle Commission; appointment and qualification; terms of
16	office; powers and duties
17	* * *
18	F. The commission's powers and duties shall include but are not limited to
19	the following:
20	* * *
21	(10) Having the sole and exclusive authority to administer all claims made
22	against the bond required by R.S. 32:791(G), including the denial or rejection of any
23	claim.
24	(a) The executive director of the commission may take any and all actions
25	necessary to administer and obtain payments related to the bond, including
26	instituting any legal action to obtain payment related to the bond and preventing any
27	unauthorized payment related to the bond.
28	(b) If the commission institutes or participates in any legal action to obtain
29	payment or to prevent payment related to the bond, the commission is entitled to an

1	award of reasonable attorney fees and court costs to be paid by the entity responsible
2	for the nonpayment or payment related to the bond.
3	* * *
4	§784. Dealers, dismantlers, and auctions to be licensed; exception
5	A. No person, firm, or corporation, unless licensed by the commission under
6	pursuant to the provisions of this Chapter, shall carry on or conduct the business of:
7	(1) A used motor vehicle dealer.
8	(2) A dealer in used parts or used accessories of motor vehicles.
9	(3) A dismantler and parts recycler.
10	(4) Public or retail motor vehicle auctions, wholesale motor vehicle auctions,
11	or salvage pools that deal in used motor vehicles.
12	(5) A rent-to-own dealer as defined in R.S. 32:793(A)(6) or renting on a
13	daily basis used motor vehicles as authorized by R.S. 32:781(13)(a)(ii).
14	(6) A used motor vehicle salesperson for any dealer licensed pursuant to this
15	Chapter.
16	(7) A used motor vehicle dealer who rents or provides daily rentals of used
17	motor vehicles.
18	(8) A used motor vehicle dealer engaged in the business of making consumer
19	loans for the purchase or acquisition of a used motor vehicle.
20	B. Any motor vehicle dealer, not licensed under the provisions of Chapter
21	6 of this Title, who rents on a daily basis motor vehicles not of the current year or
22	immediate prior year models, that have been titled previously to an ultimate
23	purchaser, shall be subject to the regulation of the Louisiana Used Motor Vehicle
24	Commission.
25	C. No person, partnership, corporation, limited liability company, or other
26	entity, unless licensed by the commission as a used car dealer, shall engage in the
27	business as a "broker", "purchasing company", "sales agent", or similar title for the
28	procurement of prospective purchasers for used motor vehicles.

D. C. No person, partnership, corporation, limited liability company, or other
entity licensed by the Louisiana Used Motor Vehicle Commission shall display any
used motor vehicle at any place other than at a facility licensed by the commission
unless an off-premises permit authorizing the display of such used motor vehicle at
the location has been issued by the commission. The commission may issue one off-
premises permit to a dealer in any ninety-day period in accordance with rules and
regulations authorizing the display of up to five vehicles at an event within thirty-
five miles of the dealer's place of business for a period of up to three days.
E. D. A public or retail motor vehicle auction shall not be required to obtain
an off-premises permit to auction, via an Internet site, a used motor vehicle for a
third party which is in the possession of the third party.
* * *
§791.1. Application for used motor vehicle sales finance license; fee; educational
seminar
A.(1) It shall be unlawful for any used motor vehicle dealer to make a loar
to a consumer or, for compensation or other monetary gain, to provide loan
origination services to any consumer for the financing of a used motor vehicle
unless the used motor vehicle dealer has a current motor vehicle sales finance license
issued by the commission.
(2) Any used motor vehicle dealer having more than one location where
business is conducted shall be required to obtain and hold a current license for each
location in which the used motor vehicle dealer provides assistance to any consumer
applying for financing the sale of a used motor vehicle.
(3) All used motor vehicle dealers shall comply with the provisions of the
Louisiana Motor Vehicle Sales Finance Act, R.S. 6:969.1, et seq., and any violation
of the Louisiana Motor Vehicle Sales Finance Act shall subject the violator to any
penalties or other remedies provided by law, including R.S. 32:785, 786, and 788.
B.(1) Any application for a used motor vehicle sales finance license shall be
on a form prescribed by the commission and shall include the following:

1	(a) The signature of the applicant.
2	(b) All information regarding the type of assistance to be offered to
3	consumers in obtaining the financing.
4	(c) The name of any third party entity who may be involved and through
5	which financing will be offered.
_	
6	(d) Any other information that the commission deems necessary either to
7	fully determine the qualifications and eligibility of an applicant or to safeguard the
8	general interest and welfare of the public.
9	(2) All applications for a license for motor vehicle sales finance shall be
10	accompanied by the appropriate fee or fees in accordance with the schedule provided
1	for in this Section. In the event that any application is denied and the license is not
12	granted, the application fee, less a processing fee of twenty-five dollars, shall be
13	returned to the applicant.
14	C.(1) Every application for a license for motor vehicle sales finance shall be
15	accompanied or supported by any evidence the commission shall prescribe for the
16	purpose of documenting that the general manager, office manager, title clerk, or
17	other responsible representative of a dealership has attended the educational seminar
18	required by R.S. 32:791.
19	(2) The educational seminar shall be designed to develop and present
20	programs that enhance the knowledge and competence of independent used motor
21	vehicle dealers, their salespersons, and service personnel who assist consumers with
22	applying for financing.
23	(3) The educational seminar shall include instruction regarding the Louisiana
24	Motor Vehicle Sales Finance Act, dealer requirements imposed by the provisions of
25	this Part, any rules promulgated to implement, enforce, or administer this Part, and
26	any such other information that will promote good business practices.
27	(4) The commission shall do all of the following:
28	(a) Create a uniform document used to both certify completion of the
29	seminar and detail all materials used in conducting the seminar.

1	(b) Approve any fees charged for seminar materials and attendance.
2	(c) Promulgate any rules necessary to implement the educational seminar
3	program.
4	D. The schedule of license fees to be charged and received by the
5	commission for a motor vehicle sales finance license shall be as follows:
6	(1) A maximum of one hundred fifty dollars for the principal place of
7	business of the used motor vehicle dealer.
8	(2) One hundred dollars for each place of business, in addition to the
9	principal place of business of the used motor vehicle dealer, in which the used motor
10	vehicle dealer provides assistance to any consumer applying for financing the sale
11	of a used motor vehicle.
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	* * * *.
19	(17) Use of false, misleading, or unsubstantiated advertising in connection
20	with his business. For the purpose of this Paragraph, false, misleading, or
21	unsubstantiated advertising in connection with the sale of a used motor vehicle shall
22	include but not be limited to the following:
23	* * *
24	(j) <u>Including within the name of the business of the used motor vehicle</u>
25	dealership the word, "certified" or any Use use of the words "certified",
26	"certification", or other similar terms without having proof of a certification process
27	approved by the commission.
28	* * *

1 (1) Including within the name of the business of the used motor vehicle 2 dealership the word, "wholesale", or using the word, "wholesale," in any 3 advertisement. 4 5 Section 3. This Act shall become effective upon signature by the governor or, if not 6 signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If 7 8 vetoed by the governor and subsequently approved by the legislature, this Act shall become 9 effective on the day following such approval. 10 Section 4. Notwithstanding Section 3 of this Act, the provisions of R.S. 32:791.1, 11 as amended by Section 2 of this Act, shall become effective January 1, 2018. 12 Section 5. Notwithstanding Section 3 of this Act, the provisions of R.S. 13 32:792(B)(17)(j), as amended by Section 2 of this Act, and the provisions of R.S. 14 32:792(B)(17)(l), as enacted by Section 2 of this Act, shall become effective January 1, 15 2020.

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)]

HB 430 Original

2017 Regular Session

Pylant

Abstract: Provides for the powers and duties of the La. Used Motor Vehicle Commission and imposes regulations on used motor vehicle sales financing and certain prohibited acts.

<u>Present law</u> provides certain exclusions from the provisions of the La. Motor Vehicle Sales Finance Act (R.S. 6:969.1, et seq.). <u>Proposed law</u> excludes used motor vehicle dealers licensed pursuant to <u>present law</u> (Chapter 4-C of Title 32 of the Revised Statutes of 1950) from the La. Motor Vehicle Sales Finance Act.

<u>Present law</u> provides that certain persons or entities are exempt from the provisions of the La. Motor Vehicle Sales Finance Act. <u>Proposed law</u> exempts used motor vehicle dealers licensed pursuant to present law (Chapter 4-C of Title 32 of the Revised Statutes of 1950).

<u>Present law</u> defines "used motor vehicle dealer". <u>Proposed law</u> removes a reference to "rents with option to purchase" leaving only a reference to "rents". <u>Proposed law</u> deletes a provision of <u>present law</u> providing for a presumption that any entity that sells five or more used motor vehicles which are not registered to and insured by the entity or by an entity affiliated with the entity receiving anything of value shall be presumed to be engaged in the business of selling used motor vehicles. <u>Proposed law</u> also deletes a provision of <u>present law</u>

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

declaring that the term "used motor vehicle dealer' includes anyone not licensed under certain provisions of <u>present law</u> who sells used motor vehicles and who rents on a daily basis used motor vehicles.

<u>Present law</u> enumerates a list of certain persons who are not included in the term "used motor vehicle dealer". <u>Proposed law</u> adds motor vehicle dealers licensed by the La. Motor Vehicle Commission pursuant to <u>present law</u>.

Proposed law defines "rent" and "daily rental".

<u>Present law</u> establishes the general jurisdiction and authority of the commission. <u>Proposed law</u> deletes <u>present law</u> and enumerates a list of legislative findings regarding the purpose and necessity of the commission.

Present law enumerates a nonexclusive list of the powers of the commission. Proposed law adds to the list. Proposed law provides that the commission has the sole and exclusive authority to administer all claims made against a particular bond required by present law (R.S. 32:791(G), including the denial or rejection of any claim. Proposed law further provides that the executive director of the commission is authorized to take any and all actions necessary to administer and obtain payments related to the bond, including instituting any legal action to obtain payment related to the bond and preventing any unauthorized payment related to the bond. Proposed law also provides that if the commission institutes or participates in any legal action to obtain payment or to prevent payment related to the bond, the commission is entitled to an award of reasonable attorney fees and court costs to be paid by the entity responsible for the nonpayment or payment related to the bond.

<u>Present law</u> enumerates a list of activities or businesses prohibited to persons not licensed by the commission. <u>Proposed law</u> adds to that list both of the following persons:

- (1) A used motor vehicle dealer who rents or provides daily rentals of used motor vehicles.
- (2) A used motor vehicle dealer engaged in the business of making consumer loans for the purchase or acquisition of a used motor vehicle.

<u>Present law</u> provides that any motor vehicle dealer, not licensed under the provisions of <u>present law</u>, who rents on a daily basis motor vehicles not of the current year or immediate prior year models, that have been titled previously to an ultimate purchaser, shall be subject to the regulation of the commission. <u>Proposed law</u> deletes <u>present law</u>.

<u>Proposed law</u> maintains the remainder of <u>present law</u>.

<u>Proposed law</u> provides that it shall be unlawful for any used motor vehicle dealer to make a loan to a consumer or, for compensation or other monetary gain, to provide loan origination services to any consumer for the financing of a used motor vehicle, unless the used motor vehicle dealer has a current motor vehicle sales finance license issued by the commission.

<u>Proposed law</u> provides that any used motor vehicle dealer having more than one location where business is conducted shall be required to obtain and hold a current license for each location in which the used motor vehicle dealer provides assistance to any consumer applying for financing the sale of a used motor vehicle.

<u>Proposed law</u> provides that all used motor vehicle dealers shall comply with the provisions of the La. Motor Vehicle Sales Finance Act (R.S. 6:969.1, et seq.), and any violation of that Act shall subject the violator to any penalties or other remedies provided by law, including <u>present law</u> (R.S. 32:785, 786, and 788).

<u>Proposed law</u> requires that any application for a used motor vehicle sales finance license be on a form prescribed by the commission and shall include the following:

- (1) The signature of the applicant.
- (2) All information regarding the type of assistance to be offered to consumers in obtaining the financing.
- (3) The name of any third party entity who may be involved and through which financing will be offered.
- (4) Any other information that the commission deems necessary either to fully determine the qualifications and eligibility of an applicant or to safeguard the general interest and welfare of the public.

<u>Proposed law</u> requires that all applications for a license for motor vehicle sales finance be accompanied by the appropriate fee or fees in accordance with the schedule provided for in <u>proposed law</u>. In the event that any application is denied and the license is not granted, the application fee, less a processing fee of \$25, shall be returned to the applicant.

<u>Proposed law</u> requires every application for a license for motor vehicle sales finance be accompanied or supported by any evidence the commission shall prescribe for the purpose of documenting that the general manager, office manager, title clerk, or other responsible representative of a dealership has attended the educational seminar required by <u>present law</u> (R.S. 32:791).

<u>Proposed law</u> requires that the educational seminar be designed to develop and present programs that enhance the knowledge and competence of independent used motor vehicle dealers, their salespersons, and service personnel who assist consumers with applying for financing.

<u>Proposed law</u> requires the educational seminar to include instruction regarding the La. Motor Vehicle Sales Finance Act, dealer requirements imposed by the provisions of <u>present law</u> and <u>proposed law</u>, any rules promulgated to implement, enforce, or administer <u>present law</u> and <u>proposed law</u>, and any such other information that will promote good business practices.

<u>Proposed law</u> requires the commission to do all of the following:

- (1) Create a uniform document used to both certify completion of the seminar and detail all materials used in conducting the seminar.
- (2) Approve any fees charged for seminar materials and attendance.
- (3) Promulgate any rules necessary to implement the educational seminar program.

<u>Proposed law</u> requires that the schedule of license fees to be charged and received by the commission for a motor vehicle sales finance license be as follows:

- (1) A maximum of \$150 for the principal place of business of the used motor vehicle dealer.
- (2) \$100 for each place of business, in addition to the principal place of business of the used motor vehicle dealer, in which the used motor vehicle dealer provides assistance to any consumer applying for financing the sale of a used motor vehicle.

<u>Present law</u> imposes restrictions on a nonexclusive list of activities deemed to be prohibited forms of advertising. <u>Proposed law</u> maintains <u>present law</u> but adds to the nonexclusive list. <u>Proposed law</u> prohibits advertising from including within the name of the business of the

used motor vehicle dealership the word, "certified". <u>Proposed law</u> further prohibits advertising from including within the name of the business of the used motor vehicle dealership the word, "wholesale", or using the word, "wholesale," in any advertisement.

<u>Proposed law</u> clarifies that certain provisions of <u>proposed law</u> relative to used motor vehicle sales finance licensing shall not be effective until January 1, 2018.

<u>Proposed law</u> clarifies that certain provisions of <u>proposed law</u> relative to advertising prohibitions shall not be effective until January 1, 2020.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 6:969.3(B) and R.S. 32:781(13)(a), 782, 784, and 792(B)(17)(j); Adds R.S. 6:969.3(A)(7) and 969.36(A)(9) and R.S. 32:781(13)(b)(vii) and (18), 783(F)(10), 791.1, and 792(B)(17)(l))