

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(5) and (13)(a)(i), to enact R.S. 32:792(B)(17) and 796,
3 and to repeal R.S. 32:792(B)(1)(d) and 795, relative to used motor vehicle dealers;
4 to amend the definitions of motor vehicle and used motor vehicle dealer; to provide
5 relative to false, misleading, or unsubstantiated advertising in connection with a used
6 motor vehicle dealer business; to provide relative to the deposit and down payment
7 disclosure and delivery pending a sale by a used motor vehicle dealer; and to provide
8 for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 32:781(5) and (13)(a)(i) and 792(B)(1)(d) are hereby amended and
11 reenacted and R.S. 32:792(B)(17) and 796 are hereby enacted to read as follows:

12 §781. Definitions

13 As used in this Chapter:

14 * * *

15 (5) "Motor vehicle" means any motor-driven car, van, or truck required to
16 be registered pursuant to the Vehicle Registration License Tax Law, R.S. 47:451 et
17 seq., or any vehicle manufactured for off-road use and issued a manufacturer's
18 statement or certificate of origin, as required by the Louisiana Motor Vehicle
19 Commission, that cannot be issued a registration certificate and license to operate on
20 the public roads of this state because, at the time of manufacture, the vehicle does not

1 meet the safety requirements prescribed by R.S. 32:1301 through 1310 which is used
2 or is designed to be used, for the transporting of passengers or goods for public,
3 private, commercial, or for-hire purposes ~~and~~, including but not limited to motor
4 homes, motorcycles, all-terrain vehicles, recreational vehicles, travel trailers, boat
5 trailers, ambulances, buses, fire trucks, conversion vehicles, wreckers, semitrailers,
6 hearses, and marine products, as any of the terms are defined in R.S. 32:1252.

7 * * *

8 (13)(a)(i) "Used motor vehicle dealer" means any person, partnership,
9 corporation, limited liability company, or other entity who, for a commission or with
10 intent to make a profit or gain of money or other thing of value, buys, sells, brokers,
11 exchanges, rents with option to purchase, auctions at retail or public, offers, or
12 attempts to negotiate a sale or exchange of an interest in used motor vehicles and
13 who is engaged wholly or in part in the business of buying and selling used motor
14 vehicles, whether such motor vehicles are owned by such person and whether the
15 motor vehicles are sold from a dealership location or via any form of advertising,
16 including but not limited to the Internet. A person shall be presumed to be engaged
17 in the business of selling used motor vehicles if he sells five or more used motor
18 vehicles in any twelve-month period which vehicles are not registered to and insured
19 by members of the individual's household, immediate family members, or legal
20 entities which the individual has an ownership interest in or is employed by. An
21 entity shall be presumed to be engaged in the business of selling used motor vehicles
22 if the entity sells five or more used motor vehicles which are not registered to and
23 insured by the entity or by an entity affiliated with the entity receiving anything of
24 value.

25 * * *

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

27 * * *

28 B. The commission may revoke or suspend a license, issue a fine or penalty,
29 or enjoin a used motor vehicle dealer, dealer in used parts or used accessories of

1 motor vehicles, used motor vehicle auctioneer, or salesperson for any of the
2 following conduct:

3 * * *

4 (17) Use of false, misleading or unsubstantiated advertising in connection
5 with his business. For the purpose of this Paragraph, false, misleading and
6 unsubstantiated advertising in connection with the sale of a used motor vehicle shall
7 include but not be limited to the following:

8 (a) Making unsubstantiated claims regarding the dealership, such as being
9 the "largest" or "biggest" dealer, or being the "number one dealer" in an area.

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

13 (c) Advertising a loan interest rate without including all restrictions or
14 limitations in the same size lettering.

15 (d) Advertising guaranteed credit approval without including all restrictions
16 or limitations and any required credit rating in the same size lettering.

17 (e) Advertising a monthly note without restriction or limitation and without
18 reference to an approved credit rating in the same size lettering.

19 (f) Advertising a guaranteed amount for trade-ins.

20 (g) Advertising a price other than the full cash price for which the vehicle
21 will be sold, except for tax, title, and license which must be referenced.

22 (h) Advertising a price without providing a complete and accurate
23 description of the vehicle, including make, model and model year and any
24 identification and serial number of the vehicle.

25 (i) Performing a "bait and switch" in which the dealer does not have the
26 vehicle advertised for sale and has not had the vehicle within a reasonable time from
27 the advertisement.

28 * * *

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

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

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

15 C. In every transaction between a used motor vehicle dealer and a customer
16 in which the customer provides either a down payment or a deposit for the purchase
17 of a used motor vehicle, the used motor vehicle dealer is required to abide by the
18 following provisions and shall complete a disclosure statement that contains the
19 following provisions:

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

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

23 (3) Clear statements that:

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

26 (b) If the used motor vehicle dealer chooses to withdraw from the
27 transaction, the dealer shall return the deposit or down payment.

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

4 (d) The inability of the customer to secure financing or to obtain
5 state-mandated compulsory automobile insurance, if the customer failed to provide
6 accurate or complete information necessary to obtain financing or insurance or
7 regarding the customer's ability to obtain credit or insurance, shall be treated the
8 same as the customer withdrawing.

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

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

13 (6) The price of the vehicle and a description of the vehicle including the
14 make, model, year, identification and serial number and its condition.

15 (7) The amount of the trade-in allowance and a description of the trade-in
16 vehicle including the make, model, year, identification and serial number and its
17 condition.

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

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

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

27 (3) A statement that if the customer withdraws from the agreement to
28 purchase, the customer shall be responsible not only for damages occurring during
29 the customer's use of the vehicle but also for usage of the vehicle at a day rate not to

1 exceed thirty-five cents per mile, which may be deducted from the deposit or down
2 payment.

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

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

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

13 * * *

14 Section 2. R.S. 32:792(B)(1)(d) and 795 are hereby repealed in their 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 for purposes of certain laws pertaining to used motor vehicle dealers, that "motor vehicle" means any motor-driven car, van, or truck required to be registered pursuant to the Vehicle Registration License Tax Law, which is used or is designed to be used, for the transporting of passengers or goods for public, private, commercial, or for-hire purposes and, including motor homes, motorcycles, all-terrain vehicles, recreational vehicles, travel trailers, boat trailers, ambulances, buses, fire trucks, conversion vehicles, wreckers, semitrailers, hearses, and marine products, as any of the terms are defined in certain present law pertaining to motor vehicles.

Proposed law provides that for purposes of certain laws pertaining to used motor vehicle dealers, that "motor vehicle" also means any vehicle manufactured for off-road use and issued a manufacturer's statement or certificate of origin, as required by the Louisiana Motor Vehicle Commission, that cannot be issued a registration certificate and license to operate on the public roads of this state because, at the time of manufacture, the vehicle does not meet certain safety requirements, which is used or is designed to be used, for the transporting of passengers or goods for public, private, commercial, or for-hire purposes.

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.

Proposed law provides that "motor vehicle" means any motor-driven car, van, or truck required to be registered pursuant to the Vehicle Registration License Tax Law, R.S. 47:451 et seq., which is used or is designed to be used, for the transporting of passengers or goods for public, private, commercial, or for-hire purposes, including but not limited to motor homes, motorcycles, all-terrain vehicles, recreational vehicles, travel trailers, boat trailers, ambulances, buses, fire trucks, conversion vehicles, wreckers, semitrailers, hearses, and marine products, as any of the terms are defined in present law.

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 repeals the provision of law relating to false advertising as change in condition following licensure for which a license can be revoked for under present law and 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 the use of false, misleading, or unsubstantiated advertising in connection with his business.

Proposed law adds a nonexclusive list of what shall be considered 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 customer 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 customer 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 customer in which the customer 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 includes:

- (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) Clear statements that 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 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 customer to secure financing or to obtain state-mandated compulsory automobile insurance, if the customer failed to provide accurate or complete information necessary to obtain financing or insurance or regarding the customer's ability to obtain credit or insurance, shall be treated as the customer withdrawing.
- (4) A time limit in which to complete the transaction not to exceed 20 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 price of the vehicle and a description of the vehicle including the make, model, year, identification and serial number and its condition.
- (7) The amount of the trade-in allowance and a description of the trade-in vehicle including the make, model, year, identification and serial number and its condition.

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 proposed law.

(Amends R.S. 32:781(5) and (13)(a)(i); Adds R.S. 32:792(B)(17) and 796; Repeals R.S. 32:792(B)(1)(d) and 795)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Made technical corrections and additions.
2. Amended definition of "motor vehicle" in portion of law pertaining to used motor vehicle dealers.
3. Repealed the provision of law relating to false advertising as change in condition following licensure under present law and provided 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 the use of false, misleading, or unsubstantiated advertising in connection with his business.
4. Provided that advertisements are false or misleading if all restrictions or limitations on financing terms are not in the same size lettering as the offer.
5. Provided the disclosure statement required pursuant to proposed law shall contain a clear statement that the inability of the customer to secure financing or to obtain state-mandated compulsory automobile insurance, or the customer's failure to provide accurate or complete information necessary to obtain financing or insurance or regarding the customer's ability to obtain credit or insurance, shall be treated as the customer withdrawing.