

2016 Regular Session

HOUSE BILL NO. 271

BY REPRESENTATIVE PRICE

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

1 AN ACT

2 To amend and reenact R.S. 32:783(F)(8), 791(B)(3)(b)(i) and (4)(b) and (G), 792(B)(8)
3 through (12), (15), and (17)(a), 796(D)(3) and to enact R.S. 32:792(17)(k) and (18);
4 relative to the regulation of used motor vehicles; to amend the powers and duties of
5 the Louisiana Used Motor Vehicle Commission; to amend used motor vehicle dealer
6 license application procedures; to increase bond requirements for used motor vehicle
7 dealers; to provide for unauthorized acts; to regulate purchase agreements; and to
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 32:783(F)(8), 791(B)(3)(b)(i) and (4)(b) and (G), 792(B)(8) through
11 (12), (15), and (17)(a), 796(D)(3) are hereby amended and reenacted and R.S. 32:792(17)(k)
12 and (18) are hereby enacted to read as follows:

13 §783. Used Motor Vehicle Commission; appointment and qualification; terms of
14 office; powers and duties

15 * * *

16 F. The commission's powers and duties shall include but are not limited to
17 the following:

18 * * *

1 (8) ~~Serving in the capacity of a receivership to take~~ (a) Taking possession of
2 certificates of title and further distributing those titles to the rightful owners pursuant
3 to R.S. 32:705 from;

4 (i) ~~a~~ A used motor vehicle dealer who has failed or refused to provide a
5 certificate of title to his customer ~~and to further distribute those titles~~ or to the
6 rightful owners pursuant to R.S. 32:705.

7 (ii) A floor plan financier or other similar holder of a security interest
8 relative to a used motor vehicle who has failed or refused to provide a certificate of
9 title to a bona fide retail purchaser in actual good faith in accordance with R.S.
10 32:710(D).

11 **(b)(i) The executive director of the commission is empowered to take any**
12 **and all actions necessary to obtain and deliver a certificate of title to a retail**
13 **purchaser in actual good faith including instituting or participating in any legal**
14 **action to obtain a certificate of title and endorsing a certificate of title on behalf of**
15 **any used motor vehicle dealer who either refuses or is unavailable to sign or endorse**
16 **the certificate of title.**

17 (ii) If the commission institutes or participates in legal action to obtain a
18 certificate of title for delivery to a retail purchaser in actual good faith, the
19 commission is entitled to an award of reasonable attorney fees and court costs to be
20 paid by the individual or entity responsible for delivery of the certificate of title.

21 * * *

22 §791. Application for license; fee; educational seminar; bond requirements; liability
23 insurance; salesperson's license; location of business

24 * * *

25 B.

26 * * *

27 (3)

28 * * *

1 (b)(i) ~~On and after January 1, 2002, every~~ Every application for the issuance
2 of a used motor vehicle dealer's license ~~that is submitted by an applicant who has not~~
3 ~~been licensed prior to January 1, 2003,~~ shall be accompanied by, or supported by,
4 such evidence as the commission shall prescribe, documenting that the dealership's
5 general manager, office manager, title clerk, or other responsible representative of
6 the dealership has attended a four-hour educational seminar or has registered to
7 attend such seminar within sixty days after issuance of the license. The failure to
8 attend the seminar shall be considered a violation of this Part. The educational
9 seminar shall include but is not limited to the dealer requirements of this Part and the
10 rules promulgated to implement, enforce, and administer this Part. Additionally, the
11 seminar materials shall include a presentation of the requirements of the Louisiana
12 Department of Public Safety and Corrections, office of motor vehicles, the Louisiana
13 Department of Revenue, and such other information that will promote good business
14 practices. Such educational seminar requirement shall not include written or oral
15 exams.

* * *

17 (4)

* * *

19 (b) Any dealer who submits a renewal application after the expiration date
20 of an existing license shall be subject to a late penalty of one hundred dollars in
21 addition to any penalty, fine, or cost assessed for operating without a license which
22 shall be paid to the commission.

* * *

24 G.(1) Every applicant for licensure or renewal of a license as a used motor
25 vehicle dealer shall show proof of responsibility by depositing with the commission
26 a continuing bond in the amount of fifty thousand dollars. ~~required herein:~~

27 ~~(a) Twenty thousand dollars if the applicant sold less than one hundred and~~
28 ~~twenty vehicles during the twelve month period preceding the licensure period.~~

1 ~~(b) Thirty-five thousand dollars if the applicant sold one hundred and twenty~~
2 ~~or more vehicles during the twelve month period preceding the licensure period.~~

3 ~~(c) All bonds shall be with a commercial surety authorized to do business in~~
4 ~~the state and, which bond shall be approved by the commission, payable to the state~~
5 ~~of Louisiana through the commission, and shall be conditioned upon faithful~~
6 ~~observance of all laws regulated by the commission, including but not limited to laws~~
7 ~~relating to penalties and hearing costs and to the proper disposition of licenses, tags,~~
8 ~~or titles, and shall also indemnify any person who suffers any loss by reason of a~~
9 ~~failure to observe the provisions of the law relating to sales tax, licenses, tags, or~~
10 ~~titles and shall also indemnify any person who suffers any loss, damages, and~~
11 ~~expenses by reason of a failure to deliver title and for the proper disposition of all~~
12 ~~taxes, licenses, and registration fees.~~

13 ~~(2) Such The bond shall be for the license period and a new bond or a proper~~
14 ~~continuation certificate shall be delivered to the commission at the beginning of each~~
15 ~~license period; however, the aggregate liability of the surety in any ~~one~~ calendar year~~
16 ~~shall in no event exceed fifty thousand dollars ~~the sum of such bond~~.~~

17 ~~(3) Such The bond shall be made payable to the state of Louisiana through~~
18 ~~the commission for the following purposes: ~~the use, benefit, and indemnity of any~~~~
19 ~~persons who shall suffer any loss as a result of any violation of the conditions herein~~
20 ~~above contained and for the proper disposition of all taxes and registration fees.~~

21 ~~(a) The proper disposition of taxes, license fees, tags, or certificates of title.~~

22 ~~(b) Indemnification to any purchaser of a used motor vehicle who suffers any~~
23 ~~loss, damage, or expense due to the failure of the dealer to comply with any law~~
24 ~~relating to the registration of a used motor vehicle, the payment of sales tax, and~~
25 ~~obtaining a license tag or certificate of registration, including but not limited to the~~
26 ~~failure of the licensee to deliver a certificate of title or remit any tax, license, or~~
27 ~~registration fee.~~

28 ~~(c) Restitution imposed by the commission in accordance with R.S.~~
29 ~~32:785(B)(6).~~

1 (d) Unpaid penalties, fines, and hearing costs imposed by the commission
 2 not to exceed twenty-five thousand dollars.

3 (e) Attorney fees or court costs assessed pursuant to R.S. 32:783.

4 * * *

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

6 * * *

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

11 * * *

12 (8) ~~Engaging in a practice of failing~~ Failing to deliver ~~certificates~~ any
 13 certificate of title to a consumer within the time limitations prescribed in R.S.
 14 32:705.

15 (9) ~~Engaging in a practice of failing~~ Failing to submit any monthly sales
 16 reports report to Motor Vehicle Audit by the twentieth day of the following month.

17 (10) ~~Engaging in a practice of failing~~ Failing to remit sales tax where the tax
 18 has been collected by the dealer.

19 (11) ~~Engaging in a practice of leaving~~ Leaving the certificate of title open
 20 or unassigned to the dealer.

21 (12) ~~Engaging in a practice of issuing~~ Issuing temporary license plates or
 22 temporary dealer's plates in violation of the law.

23 * * *

24 (15) Requiring ~~consumers~~ a consumer to sign and execute a voluntary
 25 surrender or other similar document at the time of the sale of a used motor vehicle.

26 * * *

27 (17) Use of false, misleading, or unsubstantiated advertising in connection
 28 with his business. For the purpose of this Paragraph, false, misleading, or

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 unsubstantiated advertising in connection with the sale of a used motor vehicle shall
2 include but not be limited to the following:

3 (a) Making any unsubstantiated ~~claims~~ claim regarding the dealership, such
4 as being the "largest" or "biggest" dealer, or being the "number one dealer" in an
5 area.

6 * * *

7 (k) Advertising a down payment without including all restrictions or
8 limitations in the same size lettering.

9 (18) Failing to comply with R.S. 32:705.

10 * * *

11 §796. Deposit and down payment disclosure and delivery of vehicle pending the
12 sale

13 * * *

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

17 * * *

18 (3) A statement that if the customer withdraws from the agreement to
19 purchase, the customer shall be responsible not only for damages occurring during
20 the customer's use of the vehicle but also for usage of the vehicle at a day rate not to
21 exceed twenty-five dollars per day and thirty-five cents per mile, which may be
22 deducted from the deposit or down payment. A customer shall be considered as
23 having withdrawn from the agreement if the customer intentionally provided false
24 or fraudulent information to the dealer in connection with the transaction.

25 * * *

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 271 Reengrossed

2016 Regular Session

Price

Abstract: Provides for the powers and duties of the Louisiana Used Motor Vehicle Commission and amends the regulations imposed on license application procedures, bond requirements, unauthorized acts, and purchase agreements relative to used motor vehicle dealers.

Present law enumerates powers and duties of the Louisiana Used Motor Vehicle Commission (commission). Present law empowers the commission to take possession of certificates of title from used motor vehicle dealers in certain circumstances. Proposed law allows the commission to also distribute those titles to the rightful owners pursuant to present law (R.S. 32:705). Proposed law expands the authority of the commission to take possession of certificates of title by adding floor plan financiers or other persons holding a security interest relative to a used motor vehicle who has failed or refused to provide a certificate of title to a bona fide retail purchaser in actual good faith in accordance with present law (R.S. 32:710). Proposed law further empowers the commission to take any action necessary to obtain and deliver a certificate of title to a retail purchaser in actual good faith including instituting or participating in any legal action to obtain a certificate of title and endorsing a certificate of title on behalf of any used motor vehicle dealer who either refuses or is unavailable to sign or endorse the certificate of title. Proposed law also entitles the commission to an award of reasonable attorney fees and court costs to be paid by the individual or entity responsible for delivery of the certificate of title in the event that the commission institutes or participates in any legal action for the purposes of proposed law.

Present law requires certain representatives of used motor vehicle dealerships to include proof of attending an educational seminar but provides an exception for dealers licensed prior to 2003. Proposed law removes the exception to the educational seminar requirement provided for in present law.

Present law requires any dealer who submits a late renewal application to pay a penalty of \$100 to the commission. Proposed law authorizes the commission to also assess against the dealer a penalty, fine, or cost for operating without a license in addition to the \$100 late renewal application penalty.

Present law establishes a schedule indicating the bond requirement amounts imposed by the commission on every applicant for licensure or renewal of license. Present law sets the required bond amounts at either \$25,000 or \$35,000 depending on the number of used motor vehicles sold by the applicant during the preceding licensure period. Proposed law amends the required bond amount and declares that every applicant shall deposit with the commission a bond in the amount of \$50,000.

Present law enumerates certain requirements in the furnishment of the bond. Proposed law removes all requirements relative to the furnishment of the bond but retains the portion of present law that requires the bond to be with a commercial surety authorized to do business in the state and be approved by the commission.

Present law establishes the period for which the bond shall be furnished and requires a new bond to be furnished at the beginning of each new license period. Proposed law retains present law but clarifies that the aggregate liability of the surety in any calendar year shall in no event exceed \$50,000.

Present law indicates that the bond shall be made payable to the state through the commission for the purpose of indemnifying of persons who suffer any loss due to any violation of the provisions of present law and for the proper disposition of taxes and registration fees. Proposed law retains and expands upon present law by enumerating a list of purposes for the bond.

Present law establishes the grounds whereby the commission may revoke or suspend, issue a fine or penalty, or enjoin a licensee. Present law uses the phrase "engaging in a practice of" in determining certain unauthorized acts of a licensee. Proposed law removes the references to "engaging in a practice of" and further clarifies that any single event of an enumerated unauthorized act may be deemed a violation of present law resulting in a revocation, suspension, fine, penalty, or injunction. Proposed law also adds, as an unauthorized act, failing to comply with present law (R.S. 32:705) to grounds whereby the commission may revoke or suspend, issue a fine or penalty, or enjoin a licensee.

Present law enumerates a nonexclusive list of advertising deemed to be false, misleading, or unsubstantiated. Proposed law adds advertising a down payment without including all restrictions or limitations in the same size lettering to the enumerated list provided for in present law.

Present law restricts purchase agreements by requiring pre-delivery sale disclosure statements to include a statement regarding the implications of a consumer withdrawing from a purchase agreement. Proposed law provides that a customer shall be considered as having withdrawn from an agreement if the customer intentionally provided false or fraudulent information to the dealer in connection with the transaction.

(Amends R.S. 32:783(F)(8), 791(B)(3)(b)(i) and (4)(b) and (G), 792(B)(8) through (12), (15), and (17)(a), 796(D)(3); Adds R.S. 32:792(17)(k) and (18))

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Remove a provision amending certain requirements relative to licensing applications and fees.
3. Clarify a circumstance in which a used motor vehicle dealer may have his license revoked or suspended, be issued a fine or penalty, or be enjoined.