



Philip S. Porter  
 Administrator  
 and  
 Consumer Advocate

The State of South Carolina  
 Department of Consumer Affairs

3600 FOREST DRIVE  
 P.O. BOX 5757  
 COLUMBIA, S.C. 29250-5757

Commissioners  
 Barbara B. League  
 Chairman  
 Greenville  
 Lonnie Randolph, Jr.  
 Vice Chairman  
 Columbia  
 Jim Miles  
 Secretary of State  
 Columbia  
 Louis Mayrant, Jr.  
 Pineville  
 Tony Macomson  
 Cowpens  
 W. Chuck Cross  
 Greenville  
 Steven M. Calcutt  
 Florence  
 Samuel E. White  
 Fort Mill  
 Virginia A. McGee  
 Columbia

June 7, 2001

**Administrative Interpretation 2.307-0101**

The assessment of a "closing" or "documentation" fee (also occasionally denominated as an "administrative," "processing," or "procurement" fee) in a consumer credit sale of a motor vehicle is dependant on four factors: 1.) The dealer must pay the Department a registration fee each state fiscal year in the amount of ten (\$10.00) dollars prior to the assessment of a closing fee; 2.) The existence of a closing fee must be disclosed on the sales contract; 3.) The closing fee must be disclosed in a statement displayed in a conspicuous location in the motor vehicle dealership; and 4.) If the closing fee is charged, and the vehicle is advertised, the closing fee must be included in the advertised price. A dealership may use the attached form to make its filing with the Department. A closing fee may only be assessed once these factors are met and the dealership has in its possession a date stamped copy of its disclosure stamped by the Department. The charging of a "closing," "documentation," or similar fees in connection with a consumer credit sale of a motor vehicle in the absence of any of these requirements constitutes the charging of an excess charge for Consumer Protection Code purposes.

In Part II, Section 82 of the 2000-2001 General Appropriations Act, the General Assembly passed an amendment to the Consumer Protection Code to add Section 37-2-307 which reads as follows:

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.

Previously, there had been some question concerning the propriety of charging such fees. The Supreme Court, in the case of *Fanning v. Fritz's Pontiac-Cadillac-Buick*, 322 S.C. 399, 472 S.E.2d 242 (1996), clarified the issue somewhat by stating that based on the stipulated facts of that case (that the fees were charged to cash and credit customers alike, and that the fees were disclosed and subject to negotiation prior to the consumer being obligated to the contract), the

dealership did not violate the Consumer Protection Code's provisions concerning excess charges [*S.C. Code Ann.* § 37-2-201 and -202] or unconscionability [*S. C. Code Ann.* § 37-5-108].

With Section 37-2-307 the General Assembly provided further clarification concerning whether and under what circumstances such fees may be charged. The section does not give an indication of the meaning of the term "motor vehicle dealer." For purposes of construing this section, the Department will assume the intended meaning of the term "motor vehicle dealer" will be the definition used elsewhere in the Code, at *S. C. Code Ann.* § 56-15-10(h).

As clearly indicated from the terminology of Section 37-2-307, from the effective date of that section (June 30, 2000), any dealer choosing to assess a closing or documentation fee must: 1.) File a registration fee of ten dollars (\$10.00) with the Department each state fiscal year prior to the assessment of a closing fee; 2.) Disclose the closing fee on its sales contract; 3.) Display in a conspicuous place in the dealership a statement that indicates the closing fee may be charged; and 4.) If the closing fee is charged, and the vehicle is advertised, the closing fee must be included in the advertised price so that consumers cannot be unfairly surprised by having the closing fee added on after the acceptance of an advertisement's terms. In the absence of any of these requirements, the charging of a closing or other similar fee is an excess charge for Consumer Protection Code purposes.

The section clearly contemplates that the registration fee must be charged in future fiscal years but is silent as to what date if any in the fiscal year might be deemed as a due date beyond which the filing is ineffective under the then existing statute. The only analogous statute of which the Department is aware requiring similar filings in a fiscal year are Sections 37-2-305(8) and -3-305(8), concerning the maximum rate schedule filing. Subsection 37-2-305(8) was amended by Section 6 of Act 142 of 1991 to specify that the deadline for filing maximum rate schedules was January 31 of each year, as subsection 37-3-305(8) for consumer loans had been previously amended pursuant to Section 3 of Act 119 of 1989. Previously, the subsection had not affirmatively stated a deadline but simply specified that the filings had to be made once each state fiscal year. The Department construed such filings to have lapsed as of July 1 of any year in which there had been no filing on any day during the previous State fiscal year (July 1 to June 30). The Court of Appeals upheld this construction in *Bell Finance Co., Inc. v. S.C. Department of Consumer Affairs*, 297 S.C. 111, 374 S.E.2d 918 (1988). We construe Section 37-2-307 similarly to the versions of Sections 37-2-305 and -3-305 as they existed prior to the enactment of Act 142 of 1991.

While the section does not directly say so, the registration fee is referred to as a registration fee and not merely as a fee, with the apparent implication that the dealership seeking to charge closing fees should likewise file or register the disclosure it seeks to use. The attached disclosure may be used for this purpose. It is not required that the dealers use the attached form, but if they do, they will be deemed compliant if the form is properly filled out. Forms considered to be deceptive or to misstate the law will be rejected by the Department.

The section does not specify the content of the disclosure other than to indicate that it must be displayed in a conspicuous place. Regarding this conspicuousness requirement, the word "conspicuous" is defined in Section 37-1-301(9) as follows: " 'Conspicuous' means a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term is conspicuous or not is for decision by the Court." Thus, the disclosure should be displayed in order to ensure that the consumer has an opportunity to see it prior to making a purchasing or financing decision.

The Supreme Court specifically indicated in its holding in *Fanning* that it did not imply such fees might not be actionable under other applicable law. 322 S.C. at 404, 472 S.E.2d at 245, N.8. Likewise, the General Assembly did not further clarify the issue other than to indicate the fees might be legally charged for Consumer Protection Code purposes if the requisite filing and disclosures are made. The Department is aware of nothing in the General Assembly's enactment that legitimizes a closing fee or any fee or charge if it is assessed through fraud or misrepresentation.