~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

March 21, 2018

**H. 4795**

Introduced by Reps. Herbkersman, Simrill, W. Newton and Bradley

S. Printed 3/21/18--H. [SEC 3/23/18 9:58 AM]

Read the first time January 31, 2018.

**A** **BILL**

TO AMEND SECTION 56‑15‑10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TERMS AND THEIR DEFINITIONS REGARDING THE REGULATION OF MANUFACTURERS, DISTRIBUTORS, AND DEALERS, SO AS TO REVISE THE DEFINITION OF THE TERMS “DEALER” OR “MOTOR VEHICLE DEALER” TO EXCLUDE CERTAIN PERSONS CONDUCTING AUCTIONS IN CONJUNCTION WITH THE ANNUAL HILTON HEAD ISLAND CONCOURS D’ELEGANCE.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 56‑15‑10 of the 1976 Code is amended to read:

“Section 56‑15‑10. As used in this chapter the following words shall, unless the text otherwise requires, have the following meanings:

(a) ‘Motor vehicle’~~,~~ means any motor driven vehicle required to be registered pursuant to Section 56‑3‑110. This definition does not include motorcycles, new recreational vehicles as defined in Section 56‑14‑10, or mopeds.

(b) ‘Manufacturer’ means any person engaged in the business of manufacturing or assembling new and unused motor vehicles.

(c) ‘Factory branch~~,~~’ means a branch office maintained by a manufacturer which manufactures or assembles motor vehicles for sale to distributors or motor vehicle dealers or which is maintained for directing and supervising the representatives of the manufacturer.

(d) ‘Distributor branch’~~,~~ means a branch office maintained by a distributor who or which sells or distributes new motor vehicles to motor vehicle dealers.

(e) ‘Factory representative~~,~~’ means a representative employed by a manufacturer or employed by a factory branch for the purpose of making or promoting the sale or motor vehicles or for supervising, servicing, instructing or contracting with motor vehicle dealers or prospective motor vehicle dealers.

(f) ‘Distributor representative’~~,~~ means a representative employed by a distributor branch or distributor.

(g) ‘Distributor’ means any person who sells or distributes new motor vehicles to motor vehicle dealers or who maintains distributor representatives within the State.

(h) ‘Dealer’ or ‘motor vehicle dealer’~~,~~ means any person who sells or attempts to effect the sale of any motor vehicle. These terms do not include:

(1) distributors or wholesalers~~.~~;

(2) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under the judgment or order of any court~~.~~;

(3) public officers while performing their official duties~~.~~;

(4) persons disposing of motor vehicles acquired for their own use and so used in good faith and not for the purpose of avoiding the provisions of law. Any person who effects or attempts to effect the sale of more than five motor vehicles in any one calendar year is considered a dealer or wholesaler, as appropriate, for purposes of this chapter;

(5) finance companies or other financial institutions who sell repossessed motor vehicles and insurance companies who sell motor vehicles they own as an incident to payments made under policies of insurance; or

(6) a South Carolina dealer who conducts the auction of investment grade or collector motor vehicles not more than three days per year who:

(a) has obtained a surety bond in the amount of one million dollars;

(b) provides this service for an entity organized under 501(c)(3) of the Internal Revenue Code;

(c) possesses during the event all vehicle titles unencumbered by liens; and

(d) is responsible for ensuring all taxes are paid and all vehicles have been registered and titled property.

This subitem shall not permit any other temporary retail auctions or any other retail auctions of consignment vehicles.

(i) ‘Franchise~~,~~’ means an oral or written arrangement for a definite or indefinite period in which a manufacturer, distributor or wholesaler grants to a motor vehicle dealer a license to use a trade name, service mark, or related characteristic, and in which there is a community of interest in the marketing of motor vehicles or services related thereto at wholesale, retail, leasing or otherwise.

(j) ‘Franchiser~~,~~’ means a manufacturer, distributor or wholesaler who grants a franchise to a motor vehicle dealer.

(k) ‘Franchisee~~,~~’ means a motor vehicle dealer to whom a franchise is offered or granted.

(l) ‘Sale~~,~~’ means shall include the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest therein or of any franchise related thereto; and any option, subscription or other contract, or solicitation, looking to a sale, or offer or attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle or franchise with respect thereto with, or as, a bonus on account of the sale of anything shall be deemed a sale of such motor vehicle or franchise.

(m) ‘Fraud~~,~~’ means shall include, in addition to its normal legal connotation, the following: a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; and an intentional failure to disclose a material fact.

(n) ‘Person~~,~~’ means a natural person, corporation, partnership, trust or other entity, and, in case of an entity, it shall include any other entity in which it has a majority interest or effectively controls as well as the individual officers, directors and other persons in active control of the activities of each such entity.

(o) ‘New motor vehicle~~,~~’ means a motor vehicle which has not been previously sold to any person except a distributor or wholesaler or motor vehicle dealer for resale.

(p) ‘Wholesaler’ or ‘motor vehicle wholesaler’ means any person who sells or attempts to effect the sale of any used motor vehicle exclusively to motor vehicle dealers or to other wholesalers.

(q) Reserved.

(r) ‘Due cause’~~,~~ means a material breach by a dealer of a lawful provision of a franchise or selling agreement that is not cured within a reasonable period of time after being given prior written notice of the specific material breach.

(s) ‘Material breach’~~,~~ means a contract violation that is substantial and significant.

(t) ‘Investment grade vehicle’~~,~~ means a motor vehicle not currently sold by a franchised motor vehicle dealer and not in current production with a value that exceeds two hundred fifty thousand dollars.

(u) ‘Collector motor vehicle’~~,~~ means a motor vehicle that is at least twenty years old.

(v) ‘Charity vehicle’ means a donated vehicle of which the net proceeds go to charity.

(w) ‘Special interest vehicle’~~,~~ means a unique vehicle of rarity, originality, unique or special coachwork, or previous ownership of significance vehicle that is not and or has not been mass produced.

SECTION 2. This act takes effect upon approval by the Governor.

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