

HOUSE BILL 132

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 33, Part 2; Title 55, Chapter 16; Title 55, Chapter 17, Part 1 and Title 55, Chapter 3, relative to unlicensed motor vehicle transactions.

WHEREAS, it is the intention of the General Assembly that residents of this State have the right to sell their personally owned vehicles to any person without unnecessary burdens placed upon them by the State; and

WHEREAS, “curbstoning” is the buying and selling of motor vehicles without a motor vehicle dealer license and falsely representing that the motor vehicle is “for sale by owner”; and

WHEREAS, those who engage in curbstoning usually park and display their motor vehicles for sale in high-traffic locations, such as on rights-of-way, on utility or pipeline easements, in public parking lots, such as those at gas stations, convenience stores, or supermarkets, and represent the motor vehicles as “for sale by owner”; and

WHEREAS, curbstoned motor vehicles proliferate after natural disasters such as hurricanes and floods; and

WHEREAS, curbstoners often structure the transaction to bypass laws meant to protect consumers; and

WHEREAS, buyers unknowingly purchase damaged, dangerous, or uninsurable motor vehicles without disclosure from sellers; and

WHEREAS, sales tax fraud is often associated with curbstoning, oftentimes perpetrated by the seller who fails to register the motor vehicle prior to resale to avoid payment of sales and use tax and fails to “close” the title; and

WHEREAS, the General Assembly created the Tennessee Motor Vehicle Commission to regulate the sale and distribution of motor vehicles by requiring the licensing of such activities in order to prevent frauds, impositions, and other abuses upon the citizens of this State; and

WHEREAS, the Tennessee Motor Vehicle Commission received approximately 98 complaints during 2012-2013 of alleged curbstoning activity, making up more than 10% of all complaints submitted to the Commission during that time period; and

WHEREAS, the General Assembly finds that the practice of curbstoning should be regulated to protect consumers; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 55-16-103, is amended by adding the following as a new, appropriately designated subdivision:

() "Curbstoning" means the selling, offering for sale, advertising for sale, or soliciting the sale of:

(A) Any motor vehicle without a properly endorsed certificate of title as required by § 55-3-127 by a person or entity not licensed as a motor vehicle dealer under § 55-17-109; or

(B) More than five (5) motor vehicles in any twelve-month period when such motor vehicles are titled in the selling person's or entity's name if such person or entity is not licensed as a motor vehicle dealer under § 55-17-109.

SECTION 2. Tennessee Code Annotated, Section 55-16-104, is amended by deleting the section in its entirety and by substituting instead:

(a) A police department may take into custody any motor vehicle found abandoned, immobile, unattended, or used in curbstoning on public or private property; provided, that any motor vehicle used in curbstoning on residential property may not be taken into custody unless the police department provides notice on the motor vehicle at least forty-eight (48) hours prior to the seizure.

(b) A police department may employ its own personnel, equipment, and facilities or hire persons, equipment, and facilities for the purpose of removing, preserving, and storing motor vehicles that have been abandoned, immobile, unattended, or used in curbstoning.

(c) Any motor vehicle used in curbstoning is subject to seizure and forfeiture in the same manner as is provided by law for seizure and forfeiture of other items under title 40, chapter 33.

(d) Notwithstanding any law to the contrary, nothing in this section shall limit a local government's initiative for more restrictive requirements regarding the sale of curbstoned vehicles.

SECTION 3. Tennessee Code Annotated, Section 55-17-102, is amended by adding the following as a new, appropriately designated subdivision:

() "Closed title" means an executed certificate of title indicating the motor vehicle dealer as the current owner or transferee;

SECTION 4. Tennessee Code Annotated, Section 55-17-114(b)(1)(N), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(N) Possesses any certificate of title that is not a closed title, unless the motor vehicle dealer maintains an executed consignment form developed by the commission on each motor vehicle that does not have a closed title;

SECTION 5. Tennessee Code Annotated, Section 55-17-114(b)(1), is amended by adding the following as a new subdivision:

() Engaged in curbstoning, as defined in § 55-16-103.

SECTION 6. Tennessee Code Annotated, Section 40-33-201, is amended by adding the language "§ 55-16-104," between "§ 53-11-451," and "§ 55-50-504(h)", so that, as amended, the section shall read:

All personal property, including conveyances, subject to forfeiture under § 39-14-307, § 47-25-1105, § 53-11-451, § 55-16-104, § 55-50-504(h), § 55-10-414, § 57-3-411, § 57-5-409, § 57-9-201, § 67-4-1020, or § 70-6-202, shall be seized and forfeited in accordance with the procedure set out in this part.

SECTION 7. Tennessee Code Annotated, Section 40-33-210(a), is amended by deleting the introductory language in subsection (a) and by substituting instead:

(a) In order to forfeit any property or any person's interest in the property pursuant to § 39-14-307, § 47-25-1105, § 53-11-451, § 55-10-414, § 55-16-104, § 55-50-504(h), § 57-3-411, § 57-5-409, § 57-9-201, § 67-4-1020, or § 70-6-202, the state shall have the burden to prove by a preponderance of the evidence that:

SECTION 8. Tennessee Code Annotated, Section 40-33-211, is amended by adding the following as a new subsection:

(i) Notwithstanding subsections (a) and (b), the revenue derived from the sale of motor vehicles forfeited under the authority of § 55-16-104 shall be distributed as follows:

(1) Seventy-five percent (75%) of the revenue shall be retained by the entity responsible for the seizure;

(2) Ten percent (10%) of the revenue shall be transferred to the state and placed in the general fund; and

(3) Fifteen percent (15%) of the revenue shall be transferred to the department of commerce and insurance, division of consumer affairs, for consumer education.

SECTION 9. This act shall take effect July 1, 2015, the public welfare requiring it.