



SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS
MOTOR VEHICLE CLOSING FEE CHANGES:
FREQUENTLY ASKED QUESTIONS

1. What is a closing fee under the new law?

It is a fee charged for all administrative and financial work needed to transfer the motor vehicle to the consumer, person, or entity including, but not limited to, compliance with all state, federal, and lender requirements, preparation and retrieval of documents, protection of the private personal information of the consumer, records retention, and storage costs.

2. Who is required to file a closing fee?

All motor vehicle dealers who want to charge a closing fee on a motor vehicle sales contract after July 3, 2016, must file the proposed maximum closing fee amount on the new form.

3. If a dealer already filed its maximum closing fee this year, does the dealer have to file again?

Yes, if the dealer wants to charge a closing fee on a motor vehicle sales contract after July 3, 2016, the dealer must file on the new form and pay the filing fee.

4. If a dealer already filed its maximum closing fee this year, how long can the dealer charge the current closing fee?

The dealer is not prohibited from charging the dealer's current closing fee on motor vehicle sales contracts entered into on or before July 3, 2016.

5. Under the new law, what items can be included in a closing fee?

- (a) all administrative expenses, costs, staff, supplies, materials, and financial work needed to transfer the motor vehicle to the consumer and to procure the closing of the motor vehicle transaction;
- (b) all costs for administrative expenses, costs, staff, supplies, and materials necessary by dealer to comply with all state, federal, and lender requirements;
- (c) all costs for administrative costs, staff, and materials needed for the preparation and retrieval of documents;
- (d) all costs for administrative costs, staff, supplies, and materials necessary for the protection of the private personal information of the consumer; and
- (e) all costs for administrative costs, staff, supplies, and materials necessary for records retention and storage costs of such records.

6. Once the dealer files on the new form, can the dealer begin charging the new closing fee?

No. The law still requires that the closing fee be displayed in a conspicuous location in the dealership, must be included in all advertisements, and must be included on the motor vehicle sales contracts. DCA will be issuing revised Certificates upon processing the new forms (see question 8 below).

7. Is there a maximum closing fee amount that is automatically considered reasonable?

When the maximum amount the dealer proposes to charge is \$225 or less, the proposed maximum closing fee amount will automatically be considered reasonable and will not be subject to further review by DCA. Effective June 22, 2016, complete filings for \$225.00 or less will be processed no later than the next business day after receipt.

8. How can a dealer get the Certificate as soon as possible?

The dealer will receive an email when the Certificate is ready to download. Please add noreply@scconsumer.gov to your address book, contact list, or safe senders list to ensure the notice does not get blocked or sent to your spam folder.

SHOP FEES: RECOMMENDATIONS TO AVOID CONFLICT.

J. Gregory Studemeyer
Attorney at Law
1701 Richland Street
Columbia, South Carolina 29201

Unlike closing fees, South Carolina has no statute that specifically authorizes fees charged in a service department. Chances are that such fees will eventually be challenged for money had and received, as fraudulent, a violation of the Unfair Trade Practices Act or the Dealers Act, or some other creative theory.

Perhaps, lessons can be learned from class actions brought against Firestone and Monroe Muffler Brake in the Midwest. The court in the Firestone matter noted that the **disclosures** regarding the method by which the fee was calculated and the reason for the fee were **clear, simple, and straightforward** and the exact amount to be charged to each customer was disclosed prior to the servicing of the vehicle and again after the service was completed. The court in the Monroe case noted that Monroe disclosed the existence of the fee prior to purchase, that the fee was **calculated** on a fixed percentage basis, the percentage used, that the fee was **charged by Monroe rather than the government**, that the fee was unconditional for non-tire services, and the amount charged.

If dealers choose to charge such fees in the current litigious environment, here are some recommendations. These recommendations are not presented on a “pick and choose” basis. In other words, if all of these recommendations are not acceptable, then it is recommended that such fees not be charged.

I. DEFINE IT:

What is a shop fee? In other words, what is the purpose of charging such a fee? What is it that you wish to recover?

Here's how Firestone and its lawyer defined a “shop supply fee”:

The fee . . . [is] intended to include items such as: seat covers, steering wheel covers, wheel covers, antifreeze, brake fluid, power steering fluid, transmission fluid, lubricants, brake kleen, brake cleaner & degreaser, rust penetrant, carburetor cleaner, plastic cleaner, JD-404 conditioner, brake washer fluid, shock clips, bleeder screws, drain plug gaskets, cotter pins, PVC grommets, hose tees, hose connectors, wire, wire ties, washers, screws, nuts, bolts, carburetor link clips, headlamp screws, wheel bearing grease, parts return bags, moly lube, air conditioning o-rings, a/c refrigerant oil, a/c service port caps, wipes, shop towels, wet start, slider gel lube, instant gasket blue, instant gasket black, instant gasket red, lug nuts standard, lug nuts capped, misc. fasteners, octosorb, acetylene, oxygen, scotch locks, white lube, gasket cement, die electric grease, silicone spray, thread sealer, disc brake shims, gasket sealer, brake silicone lube, disc brake anti-squeal spray, brake fluid test strips, sanding discs for rotors, grease, anti seize, spray lube, gasket remover, vacuum hose fittings, fuel line fittings, fuel line/ft, tire bead sealer, tire cement, and flat repair

supplies. The fee [is] intended to cover a range of similar items, including but not limited to, substances, materials and small parts consumed or used in automotive servicing.

It is not recommended that this language be adopted word for word. Rather, it is suggested that you go over this list with your service manager and edit it as appropriate. Some of these items may no longer be used in the service business and the list may evolve over time. Your service manager needs to be prepared to convince a finder of fact one day that your definition is genuine.

If a customer asks about a shop fee, service department personnel can refer to your written definition rather than shooting from the hip. **In fact, your disclosures should include an offer to provide a customer with a comprehensive, written definition of such fees.**

Waste Oil, Tires, Batteries and the Like

If in addition to the above list, you wish to recover the cost you incur for disposal of waste oil, batteries, tires, and the like, then it is recommended that such a fee be identified separately and similarly defined, justified, and disclosed. This recommendation is based upon the fact that dealers can readily identify the costs they incur for items purchased and consumed in the service department, but outside vendors will be in a better position to explain charges for their services that may be passed on to customers.

If revenue is generated from the sale of waste, it should offset some or all of the cost sought to be recovered. If any branch of government provides any form of credit, reimbursement, or benefit for disposal of tires, batteries, oil, or anything else, then it should likewise offset the costs sought to be recovered. Again, any suggestion that you are attempting to recover costs must be genuine.

II. JUSTIFY IT:

Monroe had a study conducted by its CFO for a previous fiscal year that detailed that its shop supply costs for that year exceeded its shop supply fee revenue. Hopefully, the CFO you have today will be here 10 or more years from now, but what if that turns out not to be the case?

It is strongly recommended that you have an outside accounting firm with a proven track record of longevity conduct a comprehensive study. Preferably, the accounting firm which conducts the study will be the same firm that provides other accounting services on a regular basis. A written summary, setting forth all of the factors considered by your CPA will be helpful if you are ever required to defend any potential claims.

If your fee will include a profit, make sure that it has some basis that your CPA can justify. Perhaps, the typical markup on parts, if there is a typical markup, can be used.

It would probably be a challenge to justify a similar markup on the cost you incur for disposal of waste. This is another reason why such fees should be treated differently.

Ask your CPA to make recommendations on whether the amount you charge should be a flat fee or a percentage of parts and/or labor and whether it should be subject to a floor or a ceiling. The focus

should be on addressing these costs in an equitable manner.

III. DISCLOSE IT:

The existence of a shop supply fee or any other fee should be disclosed on signs posted in the service drive, customer lounge, and at the cashier counter, and on quotes, estimates, work orders and invoices as separate line items, drop-box envelopes, in printed advertising, and on your website. A judge, arbitrator, or a jury should be able to read the disclosure without a magnifying glass.

This worked for Firestone:

TO OUR CUSTOMERS

A variety of shop supplies are consumed in servicing our customer's [sic] vehicles. Parts and labor necessary for servicing customer's [sic] vehicles are itemized on estimates and invoices. However, shop supplies (such as protective items for your vehicle, solvents, cleaners, rags, etc.) do not lend themselves to precise itemization. Therefore, on invoices greater than \$__, an additional charge of __% of the total labor amount, not to exceed \$__ will be added to your invoice. This charge represents costs and profits. Non-mandated disposal or recycling charges may also represent costs and profits.

Again it is not recommended that any of these disclosures be adopted word for word. The fees charged by Firestone are intentionally omitted to avoid suggesting what might be an appropriate fee. This should be an accounting function after a comprehensive study has been completed.

Monroe used a counter sign that stated:

Dear Customer:

We are sure you are aware of the ever-increasing costs of doing business. One of these costs is the many miscellaneous materials needed to repair your car; which cannot be charged directly to your work order, because the cost of the unit package is greater than the amount used. For this reason, these materials are billed directly to you as a percent of the parts and labor charge, as this is the most equitable way of charging for these materials. Included in the list of materials used in the course of repairs to your car, may be the following [list of 44 sample items]

Monroe's wall sign stated:

Surcharge

A __% fee will be applied for service work, not on tires, and will not exceed \$__. The fee covers small quantities of miscellaneous shop supplies, including: brake cleaner, nuts, bolts, sealant, rags, WD-40, silicone and

interior floor and seat covers. This surcharge also includes proper disposal of asbestos and batteries.

Monroe's advertising and website contained the following disclosure:

A ___% charge will be added to the retail list price of all service work, not on tires, not to exceed \$___ and represents costs and profits (does not apply in NY).

Monroe's drop-box envelope included the following disclosure:

A TOKEN CHARGE EQUIVALENT TO UP TO ___% OF LABOR CHARGE IS INCLUDED FOR MATERIALS USED ON YOUR VEHICLE. APPLICABLE SUPPLY ITEMS MAY INCLUDE NON-SPECIFIC NUTS & BOLTS, WASHERS, PINS, AEROSOL, SOLVENTS, RAGS, TOWELS, AND BATTERY CLEANER.

On the backside of each estimate, Monroe made the following disclosure:

A charge not to exceed ___% of parts and labor may be included for materials used on your vehicle like supply items, nuts, bolts, washers, pins, aerosol sprays, solvents, rags, towels, battery cleaners, etc.

As set forth above, Monroe used five similar but different disclosures. It is recommended that the disclosure you adopt be the same no matter where it might be posted.

Attached is a proposed Shop Supply Fee Disclosure. Make sure that your CPA is comfortable with this notice after the study has been conducted.

IV. IF A DISPUTE ARISES, ARBITRATE IT.

Although arbitration is not a panacea, it's the only way to avoid class treatment of consumer claims. If you can limit any potential claim to a multiple of five times the amount of the fee charged and a reasonable award of attorney's fees before an arbitrator, that is significantly better than exposure to thousands of claims before a jury.

The following is a proposed arbitration clause that should appear on every document of whatever nature authorizing service, maintenance, or repairs and must bear the customer's signature. Designating the FAA may prevent hostile state courts from imposing exceptions to arbitration, and designating the ADR Rules may provide structure for claims referred to arbitration and avoid the exorbitant costs of the American Arbitration Association.

Any dispute, claim, or controversy arising out of any service (labor or material) provided at customer's request shall be decided by binding, bilateral arbitration under the Federal Arbitration Act. To the extent that the South Carolina Court-Annexed Alternative Dispute Resolution (ADR) Rules can be applied to binding arbitration, the parties and the arbitrator

shall be guided by the processes of the ADR Rules.

Customer

The font size should be large enough for your customers to read without difficulty.

As indicated above, if all of the foregoing recommendations are not adopted, then it is strongly recommended that these fees not be charged.

While these recommendations provide some general guidelines, it is also recommended that you discuss them with your service manager, accountant and your lawyer before implementing them.