

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**

A Bill

ACT 490 OF 1993
HOUSE BILL 1331

4 **By: Representatives Riabie, McCuiston, D. Wood, Jordan, McGee, Whorton, Wooldridge,**
5 **Henry, Carter, Sheid, Molinaro, Choate, Stalnaker, Wallis, and Young**

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For An Act To Be Entitled

9 "USED MOTOR VEHICLE BUYERS PROTECTION ACT."

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Subtitle

12 "USED MOTOR VEHICLE BUYERS PROTECTION ACT."

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14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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16 SECTION 1. Necessity for regulation - legislative findings -
17 legislative declaration. The General Assembly hereby declares that the public
18 interest is affected by the sale and distribution of used motor vehicles, and
19 it is recognized that a significant factor of the inducement in making a sale
20 of a used motor vehicle to a member of the general public is the trust and
21 confidence of the purchaser in the retail dealer from whom the purchase is
22 made, with the expectancy that the dealer will remain in business to stand
23 behind and provide service for the motor vehicle purchased.

24 It is therefore found to be necessary to license used motor vehicle
25 dealers and to prohibit certain acts and set penalties for violations and
26 perpetration of certain acts by used motor vehicle dealers who are not
27 licensed as new motor vehicle dealers selling used cars incidental to their
28 new motor vehicle dealership operations, sales persons, agents,
29 representatives, and employees of used motor vehicle dealers in order to
30 prevent fraud, improper impositions, and other abuses upon the citizens of the
31 state and to protect and preserve the investments and properties of the
32 citizens of this state and to foster and keep alive vigorous and healthy
33 competition by prohibiting unfair practices by which fair and honest
34 competition is destroyed or prevented.

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36 SECTION 2. Definitions. The following words, terms, and phrases, when

1 used throughout this act, shall have the meanings ascribed to them in this
2 section, except where the context clearly indicates a different meaning:

3 (1) "Auto auction" means any person who operates or provides a place of
4 business or facilities for the wholesale exchange of motor vehicles by and
5 between duly licensed motor vehicle dealers, or from used motor vehicle
6 dealers to individuals, or individuals to used motor vehicle dealers or any
7 combination thereof, or any motor vehicle dealer licensed to sell used motor
8 vehicles, selling used motor vehicles using an auction format or on
9 consignment. The term "auto auction" shall also apply to any person who
10 provides the facilities for or is in the business of selling motor vehicles in
11 an auction format.

12 (2) "Drafter" means any person who obtains financing for the purchase
13 and resale of vehicles of another person or used motor vehicle dealer through
14 the use of the account of or based on the extension of credit by presenting at
15 the time of purchase of the subject vehicles a documentary draft for purchase
16 of the vehicle or otherwise promises to pay through the accounts or credit of
17 another person or used motor vehicle dealer.

18 (3) "Licensed location" means the address designated as the business
19 address of the used motor vehicle dealer on his application for a used motor
20 vehicle dealer license.

21 (4) "Motor vehicle" means any motor-driven vehicle having two (2) or
22 more wheels of the sort and kind required to have an Arkansas motor vehicle
23 license, certificate, or permit for operation in the state of Arkansas.

24 (5) "Off premises" means a location other than the address designated as
25 the licensed address.

26 (6) "Person" means and includes, individually and collectively,
27 individuals, firms, partnerships, associations, corporations, trusts, or any
28 other form of business, individual enterprise or entity.

29 (7) "Sale or sell" means the actual sale of a motor vehicle, the
30 attempted sale or the offering or advertising of a motor vehicle for sale.

31 (8) "Used motor vehicle" means any motor vehicle which has previously
32 been sold, bargained, exchanged, given away, or the title thereto transferred
33 from the person or corporation who first took title from the manufacturer,
34 importer, or dealer or agent of the manufacturer or importer, or so used as to
35 have become what is commonly known as a second hand or previously owned motor

1 vehicle. In the event of transfer reflected on the statement of origin from
2 the original franchise dealer to any other dealer, individual, or corporation
3 other than a franchise dealer of the same make of vehicle, the vehicle shall
4 be considered a used motor vehicle.

5 (9) "Used motor vehicle dealer" hereinafter referred to as "dealer"
6 means any person, wholesaler, or auto auction who, for a commission or with
7 intent to make a profit or gain of money or other thing of value, sells,
8 brokers, exchanges, rents, or leases with option to purchase or own, or
9 attempts to negotiate a sale or exchange of an interest in any used motor
10 vehicle, or who is wholly or in part in the business of buying, selling,
11 trading, or exchanging used motor vehicles, whether or not such motor vehicles
12 are owned by such person. The sale or attempted sale of three (3) or more
13 used motor vehicles in any one calendar year shall be prima facie evidence and
14 shall constitute a rebuttable presumption that a person is engaged in the
15 business of selling used motor vehicles.

16 Used motor vehicle dealers shall not include:

17 (A) Receivers, trustees, administrators, executors, guardians, or
18 other persons appointed by or acting pursuant to a judgment or order of any
19 court.

20 (B) Public officers, while performing their official duties.

21 (C) Mortgagees or secured parties as to sales of motor vehicles
22 constituting collateral on a mortgage or security agreement, if such
23 mortgagees or secured leasing parties shall not realize for their own account
24 from such sales any monies in excess of the outstanding balance secured by
25 such mortgage or security agreement after consideration of costs of
26 collection.

27 (D) Lien holders, artisans, mechanics, or garages selling repaired
28 items pursuant to a lien granted them by Arkansas law.

29 (E) *Persons selling motor vehicles titled in their own name, or*
30 *motor vehicles titled to their respective business, or persons engaged in*
31 *leasing or renting vehicles and selling vehicles titled in the name of their*
32 *lease or rental business.*

33 (F) New motor vehicle dealers selling used motor vehicles in
34 conjunction with their new motor vehicle dealer operations, who are licensed
35 under the Motor Vehicle Commission Act.

1 (10) "Used motor vehicle salesman" hereinafter referred to as "salesman"
2 is anyone, who, for compensation of any kind, operates as a salesman, broker,
3 agent, or representative of a used motor vehicle dealer, or any person who
4 attempts to or in fact negotiates a sale of a vehicle owned partially or
5 entirely by a used motor vehicle dealer, or a person or drafter using the
6 financial resources, line of credit, or floor plan of a used motor vehicle
7 dealer to purchase, sell, or exchange an interest in a used motor vehicle.

8 (11) "Wholesaler" means any person, resident or non-resident, who, in
9 whole or in part, primarily sells used motor vehicles to motor vehicle
10 dealers. Used motor vehicle dealers who, incidental to their primary
11 business, sell motor vehicles to other dealers, are not considered wholesalers
12 because of their incidental sales.

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14 SECTION 3. License required. It shall be unlawful for any person to
15 engage in business as a used motor vehicle dealer or to sell a vehicle not his
16 own without obtaining a used motor vehicle dealer license, except that a
17 person defined as a salesman in Section 2(10) may act on behalf of the dealer
18 by whom such person is employed.

19

20 SECTION 4. Dealer license. Persons wishing to obtain a used motor
21 vehicle dealer license shall submit a fully executed application on such used
22 motor vehicle dealer application forms as may be prescribed by the Arkansas
23 State Police. Said application shall be verified by the oath or affirmation
24 of the applicant.

25 The Arkansas State Police shall require in relation to the application
26 the following information and verification prior to issuing a license
27 certificate:

28 (1) a photograph of the business location;

29 (2) a corporate surety bond in the sum of at least twenty-five thousand
30 dollars (\$25,000);

31 (3) *proof of liability insurance coverage on all vehicles to be offered*
32 *for sale in an amount equal to or greater than the amount required by the*
33 *Motor Vehicle Safety Responsibility Act;*

34 (4) a list of the persons or entities having any ownership interest in
35 the used vehicle dealership;

1 (5) a list of salesmen to be employed;

2 (6) that the applicant has a bona fide established place of business
3 used primarily for the sale of used motor vehicles;

4 (7) that the applicant has a telephone number listed in the name of the
5 business;

6 (8) that the applicant has a sign identifying the establishment as a
7 used *motor vehicle* dealership legible from the street, road, or highway, and a
8 picture thereof;

9 (9) that the applicant has a filing cabinet or other repository adequate
10 to secure the business records of the establishment under lock and key or
11 combination;

12 (10) whether the applicant has ever been issued a motor vehicle dealer
13 license and if the applicant has ever had a motor vehicle dealer license
14 suspended or revoked;

15 (11) an affidavit from a State Police officer stating that said officer
16 has inspected the facility and found it to be in compliance with the
17 requirements for application; and

18 (12) the name, address, and telephone number of the person designated to
19 receive legal process in the event of the commencement of any legal action in
20 any court against the applicant.

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22 SECTION 5. License certificate fees. The fee for a license certificate
23 shall be one hundred dollars (\$100) per year for each used motor vehicle
24 dealer licensed. *Such fee shall be for the licensing period beginning on*
25 *January 1 of each year and ending on December 31 of each year, and shall be*
26 *renewable during the month of January following its expiration.* A dealer
27 having more than one location will receive an additional certificate for each
28 second and subsequent location for twenty-five dollars (\$25.00) each. Only
29 used motor vehicle dealers licensed under this section shall qualify for used
30 motor vehicle dealer license plates from the Arkansas Department of Finance
31 and Administration. *All fees for the issuance of a license certificate under*
32 *the provisions of this Section shall be remitted to the Department of Arkansas*
33 *State Police and shall be deposited in the State Treasury as special revenues*
34 *to the credit of the Department of Arkansas State Police Fund.*

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1 SECTION 6. Corporate surety bond. Each applicant shall obtain a
2 corporate surety bond in the penal sum of twenty-five thousand dollars
3 (\$25,000) on a bond form approved by the State, provided that an applicant for
4 a license at multiple locations may provide a corporate surety bond in the
5 penal sum of one hundred thousand dollars (\$100,000) covering all licensed
6 locations in lieu of separate bonds for each individual location. The bond
7 shall be an indemnity for any loss and reasonable attorney's fees sustained by
8 a *retail buyer* by reason of the acts of the person bonded when such act
9 constitutes a violation of this law. Provided, the surety shall in no event
10 be liable for more than twenty-five thousand dollars (\$25,000). The bond
11 shall be executed in the name of the State of Arkansas or any aggrieved party.
12 The proceeds of the bonds shall be paid either to the State of Arkansas or
13 the *retail buyer* upon a judgment from an Arkansas court of competent
14 jurisdiction against the principal and in favor of the aggrieved party or the
15 State of Arkansas.

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17 SECTION 7. *All bonds posted by presently licensed used motor vehicle*
18 *dealers under Act 1058 of 1985 or Act 169 of 1989 (1st Extraordinary Session)*
19 *shall be an indemnity for loss sustained by retail buyers only; and the*
20 *proceeds shall be due and payable upon receipt by the Director of the*
21 *Department of Finance and Administration of a final judgement from an Arkansas*
22 *court of competent jurisdiction against the principal and in favor of an*
23 *aggrieved retail buyer.*

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25 SECTION 8. Upon satisfactory submission and verification of a fully
26 executed application as required by Section 4 herein, payment of the fee
27 provided for by Section 5, and receipt of the corporate surety bond as
28 required by Section 6, the Arkansas State Police shall issue the applicant a
29 license certificate.

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31 SECTION 9. Display of dealer license. Each dealer licensed hereunder
32 shall maintain for display in a conspicuous place at the dealer's business
33 location, the license certificate issued by the Arkansas State Police.

34 Each dealer shall also have placed conspicuously on all dealer signage
35 logos, and printed on all advertisements, the dealer's name or the words

1 "AR DLR" and the phone number listed on the dealer's license application.

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3 SECTION 10. Records to be maintained. Every person required to have a
4 license shall maintain for three (3) years from the date of purchase, records
5 of each vehicle transaction to which said person was a party. Vehicle
6 transaction records (bill of sale, titles, odometer statement, invoices,
7 reassignments) shall be open to inspection to any Arkansas State Police
8 officer acting in an official capacity during reasonable business hours.

9

10 SECTION 11. It shall be a violation of this act to knowingly or
11 intentionally:

12 (1) sell a vehicle without a dealer license. The sale of each vehicle
13 shall constitute a separate offense;

14 (2) commit a fraudulent act in selling, purchasing, or otherwise dealing
15 in motor vehicles;

16 (3) fail to maintain the conditions and requirements necessary to
17 qualify for the issuance of a license;

18 (4) sell, attempt to sell, or advertise for sale vehicles from a
19 location other than that set forth on the dealer license, except:

20 (A) as a participating dealer in a state trade association
21 promotion or exhibit,

22 (B) with a special sale permit, or

23 (C) at an auto auction;

24 (5) falsify, alter, or neglect to endorse or deliver a certificate of
25 title to a transferee or lawful owner, or fail to properly designate a
26 transferee on a document of assignment or certificate of title;

27 (6) knowingly purchase, sell, or otherwise acquire or dispose of a
28 stolen motor vehicle;

29 (7) submit a false affidavit setting forth that a title has been lost or
30 destroyed;

31 (8) pass title or reassign title as a dealer without a dealer license or
32 when his dealer license has been suspended;

33 (9) for a person to represent that he is a dealer or salesman, either
34 verbally or in any advertisement, when said person is not licensed as such;

35 (10) violate any provision or requirement in this act.

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SECTION 12. Penalty for violation and disbursal of fines. *In addition to any other penalty prescribed by existing laws, the penalties for violation of this act and the disbursement of fines shall be as follows:*

A first violation of this act by any person shall constitute a Class A misdemeanor.

A second violation of this act by any person shall constitute a Class D felony.

Conviction of a third or subsequent violation shall constitute a Class D felony and the dealer_s license shall be suspended for three (3) years for each respective third or subsequent violation.

Any person found guilty of selling a used motor vehicle as a dealer or salesman while their used motor vehicle dealer or salesman license is suspended or revoked shall be guilty of a Class C felony.

(1) If the arresting officer is a State Police officer, one-half (1/2) of the fine shall be deposited in the State Treasury and credited to the Arkansas State Police Fund to be used for the purchase and maintenance of State Police vehicles;

(2) If the arresting officer is a county law enforcement officer, one-half (1/2) of the fine shall be deposited in that county fund used for the purchase and maintenance of rescue, emergency medical, and law enforcement vehicles to be used for those purposes; and

(3) If the arresting officer is a municipal law enforcement officer, one-half (1/2) of the fine shall be deposited in that municipal fund used for the purchase and maintenance of rescue, emergency medical, and law enforcement vehicles to be used for those purposes.

SECTION 13. Power to promulgate rules and regulations. The Arkansas State Police shall have the power to promulgate such rules and regulations as are necessary to implement, enforce, and administer this act. Said Arkansas State Police may cancel a license if the respective dealer fails to keep and maintain the requirements set forth in Section 4 herein or upon conviction of a third violation of this act.

SECTION 14. *Arkansas Code Annotated 27-14-601(a)(6)(A) is hereby*

1 amended to read as follows:

2 "(A) A 'dealer' for the purposes of this subdivision, is a person, firm
3 or corporation engaged in the business of buying and selling vehicles subject
4 to registration in this state."

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6 SECTION 15. Arkansas Code Annotated 27-14-601(a)(6)(B) is hereby
7 amended to read as follows:

8 "(B)(i) As a condition precedent to obtaining dealer's license plates,
9 the dealer shall furnish the director a certification by the sheriff of the
10 county in which the applicant's business is located, or if located within a
11 city of the first class, a certification by an officer of the metropolitan
12 police department that the applicant is a vehicle dealer and has a bonafide,
13 established place of business used exclusively for the sale of vehicles, an
14 office used exclusively for such business, a telephone listed in the name of
15 the business, and a sign identifying the establishment as a vehicle
16 dealership. Certification shall be required for all renewals of dealer
17 license plates. This dealer certification shall not apply to dealers licensed
18 by the Arkansas State Police or the Arkansas Motor Vehicle Commission and who
19 are regulated by either of those authorities.

20 (ii) Upon furnishing such certification to the director, or a copy of
21 the dealer's license from either the Arkansas State Police or Arkansas Motor
22 Vehicle Commission, and the payment of a fee of one hundred dollars (\$100.00),
23 the dealer shall be issued a master license plate and upon the payment of a
24 fee of twenty-five dollars (\$25.00) shall be issued a dealer's extra license
25 plate. There is no limit to the number of dealer's extra license plates which
26 may be purchased by a dealer. However, the dealer must secure a master
27 license plate for each separate place of business."

28

29 SECTION 16. All provisions of this act of a general and permanent
30 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
31 Code Revision Commission shall incorporate the same in the Code.

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33 SECTION 17. If any provision of this act or the application thereof to
34 any person or circumstance is held invalid, such invalidity shall not affect
35 other provisions or applications of the act which can be given effect without

1 the invalid provision or application, and to this end the provisions of this
2 act are declared to be severable.

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4 SECTION 18. Arkansas Code Annotated §§ 23-112-601 through 23-112-604
5 and all laws and parts of laws in conflict with this act are hereby repealed.

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7 SECTION 19. Grandfather clause. All dealers holding used motor vehicle
8 licenses pursuant to Arkansas Code Annotated §§23-112-601 through 23-112-604
9 on the effective date of this act shall be recognized as qualifying dealers
10 hereunder until the expiration of their existing dealer licenses.

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/s/Mark Riable, et al

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APPROVED: 03/12/93

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