

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**  
4 **By: Senator Gwatney**

# A Bill

**ACT 568 OF 1995**  
**SENATE BILL 481**

## For An Act To Be Entitled

8 "AN ACT TO AMEND THE ARKANSAS MOTOR VEHICLE COMMISSION ACT  
9 TO INCREASE LICENSE FEES; TO REMOVE WHOLESALERS AND AUTO  
10 AUCTIONS FROM THE PROVISIONS OF THE ACT; AND FOR OTHER  
11 PURPOSES."

## Subtitle

14 "AN ACT TO AMEND THE ARKANSAS MOTOR  
15 VEHICLE COMMISSION ACT TO INCREASE  
16 LICENSE FEES AND TO REMOVE WHOLESALERS  
17 AND AUTO AUCTIONS FROM THE PROVISIONS OF  
18 THE ACT."

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

22 SECTION 1. Arkansas Code § 23-112-102 is amended to read as follows:  
23 "23-112-102. Legislative findings - Purpose.

24 (a) The General Assembly finds and declares that the distribution and  
25 sale of motor vehicles in Arkansas vitally affects the general economy of the  
26 state and the public interest and the public welfare.

27 (b) The General Assembly further finds and declares that it is  
28 necessary, in the exercise of its police power, to regulate and to license  
29 motor vehicle manufacturers, factory branches and divisions, distributors,  
30 distributor branches and divisions, distributor representatives, new motor  
31 vehicle dealers, and salesmen doing business in Arkansas in order to:

32 (1) Prevent frauds, unfair practices, discrimination,  
33 impositions, and other abuses upon the citizens of Arkansas;

34 (2) Avoid undue control of the independent motor vehicle dealer  
35 by motor vehicle manufacturing and distributing organizations;

36 (3) Foster and keep alive vigorous and healthy competition;

- 1           (4) Prevent the creation or perpetuation of monopolies;
- 2           (5) Prevent the practice of requiring the buying of special
- 3 features, accessories, special models, appliances, and equipment not desired
- 4 by a motor vehicle dealer or the ultimate purchaser;
- 5           (6) Prevent false and misleading advertising;
- 6           (7) Promote and keep alive a sound system of distribution of
- 7 motor vehicles to the public; and
- 8           (8) Promote the public safety and welfare."

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10       SECTION 2. Arkansas Code § 23-112-202 is amended to read as follows:

11       "§ 23-112-202. Proceedings - Bond.

12       (a) The commission shall meet at Little Rock and complete its

13 organization immediately after the entire membership thereof has been

14 appointed and has qualified.

15       (b) The chairman and each member of the commission, before entering

16 upon the discharge of the duties of his office, shall take and subscribe to

17 the oath of office prescribed by the Constitution of Arkansas and shall file

18 this oath in the office of the Secretary of State.

19       (c)(1) The commission shall purchase either a blanket position honesty

20 or faithful performance bond from some surety company authorized to do

21 business in this state. This bond shall be in the penal sum of ten thousand

22 dollars (\$10,000), made payable to the State of Arkansas, conditioned for the

23 honest and faithful performance of the duties of the chairman and each member

24 of the commission, the executive director of the commission, and all other

25 employees of the commission, said bond to be approved by the Governor and

26 filed in the office of the Secretary of State.

27       (2) The commission shall keep the bond in force at all times from

28 and after the date the commission is organized.

29       (d) A majority of the commission shall constitute a quorum for the

30 transaction of any business.

31       (e) The commission shall adopt and use a common seal for the

32 authentication of its records and orders.

33       (f) The commission shall hold all of its regular monthly meetings in

34 its office at Little Rock, Arkansas, but may, upon approval of a majority of

35 its members, hold special meetings and the hearings provided for under

1 §§ 23-112-501 - 23-112-509 at any time and place within the State of  
2 Arkansas."

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4 SECTION 3. Arkansas Code § 23-112-203 is amended to read as follows:  
5 "23-112-203. Executive director - Employees - Office.

6 (a) (1) The commission shall appoint a qualified person to serve as  
7 executive director thereof, to serve at the pleasure of the commission, and  
8 shall fix his salary and shall define and prescribe the duties.

9 (2) The executive director shall be in charge of the commission's  
10 office and shall devote such time to the duties thereof as may be necessary.

11 (3) The duties shall include but shall not be limited to the  
12 collection of all fees and charges under the provisions of this chapter,  
13 keeping a record of all proceedings of the commission, and keeping an accurate  
14 account of all moneys received and disbursed by the commission, all of which  
15 records shall be considered as public records.

16 (b) The commission may employ such clerical and professional help and  
17 incur such expenses as may be reasonably necessary for the proper discharge of  
18 its duties under this chapter.

19 (c) The commission shall maintain its office and transact its business,  
20 except as provided in this chapter, at Little Rock, Arkansas."

21

22 SECTION 4. Arkansas Code § 23-112-301 is amended to read as follows:  
23 "23-112-301. License required.

24 (a) (1) It shall be unlawful for any person to engage in business as, or  
25 serve in the capacity of, or act as a new motor vehicle dealer, motor vehicle  
26 salesman, motor vehicle lessor, manufacturer, distributor, factory branch or  
27 division, distributor branch or division, factory representative, or  
28 distributor representative, as such, in this state without first obtaining a  
29 license therefor as provided in this chapter, regardless of whether or not the  
30 person maintains or has a place of business in this state.

31 (2) Any person, firm, association, corporation, or trust  
32 engaging, acting, or serving in more than one (1) of these capacities or  
33 having more than one (1) place where such business is carried on or conducted  
34 shall be required to obtain and hold a current license for each capacity and  
35 place of business.

1           (3) (A) However, any licensed motor vehicle dealer shall not be  
2 required to obtain a license as a motor vehicle lessor for any location  
3 licensed as a motor vehicle dealer.

4           (B) A motor vehicle lessor shall be required to obtain only  
5 one (1) motor vehicle lessor's license regardless of the number of leasing  
6 locations he owns and operates but shall list each location on his application  
7 and pay a fee of fifty dollars (\$50.00) for each location.

8           (C) New locations opened after a license is issued shall be  
9 approved by the commission but shall not require a new license.

10           (D) A motor vehicle lessor shall sell or offer for sale  
11 motor vehicles only from an established place of business and only after  
12 application to, approval of, and licensure at each location by the commission.

13           (b) (1) No person may engage in the business of buying, selling, or  
14 exchanging new motor vehicles unless he holds a valid license issued by the  
15 commission for the makes of new motor vehicles being bought, sold, or  
16 exchanged, or unless he is a bona fide employee or agent of the licensee.

17           (2) For purposes of this subsection, the term engage in the  
18 business of buying, selling, or exchanging new motor vehicles means:

19           (A) Displaying for sale new motor vehicles on a lot or  
20 showroom;

21           (B) Advertising for sale new motor vehicles; or

22           (C) Regularly or actively soliciting buyers for new motor  
23 vehicles.

24           (3) Subdivisions (b) (1) and (2) of this subsection authorize the  
25 practice of a licensed new automobile or truck dealer selling, on special  
26 order, a new automobile or truck for which he does not hold a manufacturer's  
27 franchise.

28           (4) When a new automobile or truck dealer secures a new  
29 automobile or truck for a special order and the customer does not consummate  
30 the transaction, the automobile or truck dealer may sell the vehicle to  
31 another ultimate purchaser, provided, the automobile or truck dealer shall  
32 document the name, address, and telephone number of the customer for whom the  
33 truck or automobile was ordered in a statement detailing why the transaction  
34 was not consummated, such documentation to be held by the dealer subject to  
35 inspection by the commission for a period of two (2) years after the date the

1 purchase was refused; and further provided that the automobile or truck shall  
2 be deemed a used motor vehicle; and the dealer shall not advertise such  
3 automobile or truck as a new automobile or truck.

4           (5) The presence of more than one (1) such vehicle resulting from  
5 such nonconsummated special-order transactions in said automobile or truck  
6 dealers' inventories at the same time, ordered by the same customer, creates a  
7 rebuttable presumption that (b)(1) of this section has been violated on those  
8 transactions.

9           (6) Notwithstanding any other provision of this subchapter  
10 including but not limited to § 23-112-308 or § 23-112-309, the sole and  
11 exclusive remedy of the commission in the event a new automobile or truck  
12 dealer violates or exceeds his authority under subsection (b)(1), (b)(2), or  
13 (b)(3) of this section shall be to seek an injunction prohibiting the  
14 challenged transaction pursuant to § 23-112-104.

15           (c) A willful violation of subsection (a) of this section shall be a  
16 Class B misdemeanor."

17

18           SECTION 5. Arkansas Code § 23-112-302 is amended to read as follows:

19           "23-112-302. Application for license.

20           (a) Applications for licenses required to be obtained under the  
21 provisions of this chapter shall be verified by the oath or affirmation of the  
22 applicants and shall be on forms prescribed by the commission and furnished to  
23 the applicants. They shall contain such information as the commission deems  
24 necessary to enable it to fully determine the qualifications and eligibility  
25 of the several applicants to receive the licenses applied for.

26           (b) The commission shall require that there be set forth in each  
27 application information relating to the applicant's financial standing, the  
28 applicant's business integrity, whether the applicant has an established place  
29 of business and is primarily engaged in the pursuit, avocation, or business  
30 for which licenses are applied for, whether the applicant has the proper  
31 facilities and is able to properly conduct the business for which licenses are  
32 applied for and other pertinent information consistent with the safeguarding  
33 of the public interest and public welfare.

34           (c)(1) Applications for licenses as new motor vehicle dealers and motor  
35 vehicle lessors must, in addition to the foregoing, also be accompanied by the

1 filing with the commission of a corporate surety bond in the penal sum of  
2 twenty-five thousand dollars (\$25,000) on a bond form approved by the  
3 commission. However, an applicant for licenses at multiple locations may  
4 choose to provide a corporate surety bond in the penal sum of one hundred  
5 thousand dollars (\$100,000) covering all licensed locations of the same  
6 capacity in lieu of separate bonds for each individual location.

7           (2) The bond shall be in effect upon the applicant being licensed  
8 and shall be conditioned upon his complying with the provisions of this  
9 chapter.

10           (3) The bond shall be an indemnity for any loss sustained by any  
11 person by reason of the acts of the person bonded when those acts constitute  
12 grounds for the suspension or revocation of his license.

13           (4) The bond shall be executed in the name of the State of  
14 Arkansas for the benefit of any aggrieved party.

15           (5) The aggregate liability of the surety for all claimants,  
16 regardless of the number of years this bond is in force or has been in effect,  
17 shall not exceed the amount of the bond.

18           (6) The proceeds of the bond shall be paid upon receipt by the  
19 commission of a final judgment from an Arkansas court of competent  
20 jurisdiction against the principal and in favor of an aggrieved party.

21           (d) In addition to the foregoing, applications for licenses as motor  
22 vehicle dealers in new motor vehicles must also be accompanied by the filing  
23 with the commission of a bona fide contract or franchise then in effect  
24 between the applicant and a manufacturer or distributor of the new motor  
25 vehicles proposed to be dealt in, unless the contract or franchise has already  
26 been filed with the commission in connection with a previous application made  
27 by the applicant, in which event the applicant shall, in lieu of again filing  
28 the contract or franchise, identify the contract or franchise by appropriate  
29 reference and file all revisions and additions, if any, which have been made  
30 to the contract or franchise.

31           (e) The applicant must furnish satisfactory evidence that he or it  
32 maintains adequate space in the building or structure wherein his or its  
33 established business is conducted for the display of new motor vehicles, or  
34 that he will have the facilities within a reasonable time after receiving a  
35 license, and that he or it has or will have adequate facilities in the

1 building or structure for the repair and servicing of motor vehicles and the  
2 storage of new parts and accessories for the motor vehicles."

3

4 SECTION 6. Arkansas Code § 23-112-303 is amended to read as follows:

5 "23-112-303. Application fees.

6 (a) All applications for licenses shall be accompanied by the  
7 appropriate fees therefor in accordance with the schedule thereof set out in  
8 this subchapter.

9 (b) In the event any application is denied and the license applied for  
10 is not issued, the entire license fee shall be returned to the applicant.

11 (c) The schedule of license fees to be charged and received by the  
12 commission for the licenses issued pursuant to this subchapter shall be as  
13 follows:

14 (1) For each manufacturer, distributor, factory branch and  
15 division, or distributor branch and division, four hundred dollars (\$400);

16 (2) For each motor vehicle dealer, motor vehicle lessor, factory  
17 representative, and distributor representative, one hundred dollars (\$100);

18 (3) For each motor vehicle salesman, ten dollars (\$10.00).

19 (d) Any person, firm, or corporation required to be licensed under this  
20 subchapter who fails to make application for the license at the time required  
21 shall, in addition to the fees required to be paid pursuant to subsection (c)  
22 of this section, pay interest at the rate of six percent (6%) per annum for  
23 the period of time during which he shall operate without a proper license,  
24 and, in addition thereto, shall pay a penalty of fifty percent (50%) of the  
25 amount of the license fee. The penalty, however, may be waived in whole or in  
26 part within the discretion of the commission."

27

28 SECTION 7. Arkansas Code § 23-112-304 is amended to read as follows:

29 "23-112-304. Issuance of license - Change of location - Dealers,  
30 manufacturers, distributors, etc.

31 (a) The license issued to each motor vehicle dealer, manufacturer,  
32 distributor, factory branch or division, or distributor branch or division  
33 shall specify the location of the factory, office, branch, or division  
34 thereof.

35 (b) In case the location is changed, the commission shall endorse the

1 change of location on the license without charge if it is within the same  
2 county.

3 (c) A change of location to another county shall require a new  
4 license."

5

6 SECTION 8. Arkansas Code § 23-112-305 is amended to read as follows:

7 "23-112-305. Display of license - Change of employer - Factory  
8 representative and distributor representative.

9 (a) Every motor vehicle factory representative or distributor  
10 representative shall have his license upon his person when engaged in his  
11 business and shall display the license upon request.

12 (b) The name of the employer of the factory representative or  
13 distributor representative shall be stated on the license, and, in case of a  
14 change of employer, the holder of the license shall immediately mail the  
15 license to the commission for its endorsement of the change thereon.

16 (c) A fee of five dollars (\$5.00) shall be charged by the commission  
17 for endorsing each change of employer on the licenses, and the fee shall  
18 accompany the application for change."

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20 SECTION 9. Arkansas Code § 23-112-306 is amended to read as follows:

21 "23-112-306. Display of license - Change of employer - Salesman.

22 (a) Every motor vehicle salesman shall have his license upon his person  
23 or displayed at his place of employment, except as provided in this section,  
24 when engaged in his business and shall display the license upon request. The  
25 name and business address of the employer of the salesman shall be stated on  
26 the license.

27 (b) In case of a change of employer, the following procedure shall be  
28 adhered to:

29 (1) The licensee shall, within three (3) days following the  
30 change, mail or deliver his license to the commission for its endorsement of  
31 the change thereon. The license shall be accompanied by a fee of five dollars  
32 (\$5.00) for endorsing each change of employer and a written statement of the  
33 licensee setting forth the name and business address of his new employer, the  
34 date his employment terminated with his last employer, and the date his  
35 employment commenced with his new employer;



1           (2) The last employer of the licensee, within three (3) days  
2 following the termination of employment of the licensee, shall make a report  
3 to the commission setting forth the reasons why the services of the licensee  
4 were terminated and such other information as may be required by the  
5 commission;

6           (3) Upon receipt by the commission of the licensee's license and  
7 fee and his last employer's report, the commission shall immediately make an  
8 appropriate endorsement on the license showing the change of employer and mail  
9 the license, as endorsed, to the licensee unless the commission has grounds to  
10 believe and does believe that the licensee is no longer qualified under the  
11 provisions of this chapter as a motor vehicle salesman. Under such  
12 circumstances, the commission shall immediately notify him and his new  
13 employer in writing that a hearing will be held for the purpose of determining  
14 whether his license should be revoked or suspended, specifying the grounds for  
15 revocation or suspension, as the case may be, and the time and place for the  
16 hearing. The hearing and any and all appeals by the licensee with respect  
17 thereto shall be in accordance with the provisions of §§ 23-112-501 -  
18 23-112-509;

19           (4) If, after the commission receives the licensee's license and  
20 fee and his last employer's report, the executive director of the commission  
21 cannot for any reason endorse and mail to the licensee his license within a  
22 period of three (3) days following the receipt by the commission of the  
23 licensee's license and fee and his last employer's report, then and in that  
24 event he shall mail to the licensee a permit in such form as the commission  
25 shall prescribe, which permit shall serve in lieu of a license until such time  
26 as the commission endorses and mails the license to the licensee or until such  
27 time as the licensee's license is revoked or suspended in accordance with the  
28 provisions of this chapter. If the license is ultimately revoked or suspended,  
29 then immediately upon the revocation or suspension the licensee shall return  
30 the permit to the commission for cancellation.

31           (c) The commission shall maintain a permanent file with respect to each  
32 licensed motor vehicle salesman. Each file shall contain all pertinent  
33 information with respect to the fitness and qualifications of each licensee  
34 for the use by the commission in determining from time to time whether his  
35 license should be revoked or suspended.

1 (d) There is no intent under this chapter to prevent a salesman who has  
2 not previously been licensed or a transferee salesman from selling during the  
3 time required to process his application. The applicant shall be allowed to  
4 sell from the date of employment as long as he and his dealer follow the  
5 procedure for license application."

6

7 SECTION 10. Arkansas Code § 23-112-307 is amended to read as follows:

8 "23-112-307. Expiration of license.

9 (a) Unless the commission shall by regulation provide to the contrary,  
10 all licenses issued to manufacturers, distributors, factory or distributor  
11 branches, factory or distributor representatives, motor vehicle dealers, and  
12 motor vehicle salesmen of new motor vehicles shall expire December 31  
13 following the date of issue.

14 (b) Unless the commission shall by regulation provide otherwise, all  
15 licenses issued to motor vehicle lessors shall expire June 30 following the  
16 date of issue.

17 (c) Unless the commission by regulation provides to the contrary,  
18 licenses relating to motor vehicles having fewer than four (4) wheels shall  
19 expire December 31 following the date of issue."

20

21 SECTION 11. Arkansas Code § 23-112-505 is amended to read as follows:

22 "23-112-505. Decisions and orders of commission - Quorum.

23 (a) All decisions of the commission with respect to the hearings  
24 provided for in this subchapter shall be incorporated into orders of the  
25 commission and spread upon its minutes.

26 (b) A majority of the members of the commission shall constitute a  
27 quorum for purposes of rendering an order and no order will issue except upon  
28 the affirmative vote of a majority of the quorum of the members of the  
29 commission as established under § 23-112-201."

30

31 SECTION 12. Arkansas Code § 23-112-405 is repealed.

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33 SECTION 13. All provisions of this act of a general and permanent  
34 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
35 Code Revision Commission shall incorporate the same in the Code.

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SECTION 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 15. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 16. EMERGENCY. It is hereby found and determined by the General Assembly that certain license fees charged by the Arkansas Motor Vehicle Commission need to be increased; that some of these fees are due on July 1 of each year; that unless this act is effective on July 1, 1995 those fees will not be increased; and that for the effective administration of this act an effective date of July 1, 1995 is necessary. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on July 1, 1995.

APPROVED: 3-9-95

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