

1 **State of Arkansas**

2 **79th General Assembly**

3 **Regular Session, 1993**

# **A Bill**

**HOUSE BILL 1420**

4 **By: Representatives Hunton, Jordan, Whorton, Wooldridge, Steele, Wyrick, Carter, Sheid,**  
5 **Curran, Hill, Stalnaker and Fletcher**

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## **For An Act To Be Entitled**

9 "AN ACT TO PROVIDE THAT WHEN A MOTOR VEHICLE SUSTAINS  
10 CERTAIN PRESCRIBED LEVELS OF DAMAGE OR WATER DAMAGE, THE  
11 DAMAGE AND REPAIR SHALL BE DISCLOSED TO THE OFFICE OF  
12 MOTOR VEHICLES AND NOTED ON THE CERTIFICATE OF TITLE; TO  
13 REQUIRE MOTOR VEHICLE DEALERS TO PROVIDE DISCLOSURE OF THE  
14 BRANDED TITLE AND DAMAGE TO ANY PROSPECTIVE BUYERS OR  
15 PURCHASERS; TO PROVIDE FOR PENALTIES FOR THE FAILURE TO  
16 SUBMIT REQUIRED STATEMENTS OR FAILURE TO DISCLOSE BRANDED  
17 TITLES AND DAMAGE AS REQUIRED BY THIS ACT; AND FOR OTHER  
18 PURPOSES."

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## **Subtitle**

21 "AN ACT TO REQUIRE MOTOR VEHICLES WITH CERTAIN LEVELS OF  
22 DAMAGE TO DISCLOSE THE DAMAGE AND REPAIR ON THE  
23 CERTIFICATE OF TITLE TO PROSPECTIVE BUYERS."

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

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27 SECTION 1. As used in this act, unless the context otherwise requires:

28 (1) "Dealer" means any person or business who sells or offers for sale  
29 a motor vehicle after selling or offering for sale five (5) or more motor  
30 vehicles in the previous twelve (12) months, or who is a new or used motor  
31 vehicle dealer licensed by or with the state of Arkansas. Persons or  
32 businesses that operate as salvage vehicle pools or salvage vehicle auctions  
33 are not "dealers" under this act when selling vehicle parts to a dealer.

34 (2) "Motor vehicle" means every self-propelled vehicle, except  
35 motorcycles, motor-driven cycles, and trucks with an unladen weight of 10,000

1 pounds or more, in, upon, or by which any person or property is or may be  
2 transported upon a street or highway.

3 (3) "Office of Motor Vehicles" or "Office" means the Office of Motor  
4 Vehicles of the Revenue Division of the Department of Finance and  
5 Administration.

6 (4) "Owner" means an individual, insurance company or other entity with  
7 legal title to the motor vehicle.

8 (5) "Water Damage" means damage to a motor vehicle caused by submerging  
9 or partially submerging the vehicle in water to the extent that the vehicle  
10 was submerged or partially submerged at any water level above the dashboard of  
11 the vehicle, regardless of the actual dollar amount of the damage.

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13 *SECTION 2. (a) When a motor vehicle is water damaged or sustains*  
14 *damage in an amount equal to or exceeding seventy percent (70%) of its average*  
15 *retail value, as found in the National Automobile Dealers' Association*  
16 *Official Price Guide, or other source approved by the Office of Motor*  
17 *Vehicles, the owner, or insurance company if it obtains ownership of the*  
18 *vehicle through transfer of title as the result of a settlement of an*  
19 *insurance claim, shall forward the properly endorsed certificate of title to*  
20 *the Office of Motor Vehicles together with a fee in the amount now or*  
21 *hereafter prescribed by law for the registration and issuance of a certificate*  
22 *of title.*

23 (b) *Upon receipt of such title, there shall be issued a new certificate*  
24 *of title with the word "DAMAGED" printed in the remarks section on the face of*  
25 *the title.*

26 (c) *An Arkansas certificate of title issued from an out-of-state*  
27 *certificate of title, or comparable ownership document which carries a*  
28 *designation such as "damaged", "salvage", "water damaged", "reconstructed",*  
29 *"rebuilt", or other similar classification shall have a brand notation printed*  
30 *in the remarks section on its face as would be required by this Act to be*  
31 *printed on an Arkansas certificate of title issued under the provisions of*  
32 *either subsection (b) or subsection (e) of this section. Provided, however,*  
33 *that an Arkansas certificate of title shall not be issued from an out-of-state*  
34 *junking certificate, or other ownership document bearing a designation of*  
35 *"Junk", it being the intent of this section that any motor vehicle damaged to*

1 the extent that it has been labeled as "junk" shall be dismantled for parts or  
2 scrap and shall not be titled in the State of Arkansas.

3 (d) When any motor vehicle issued a "DAMAGED" certificate of title, or  
4 similar branded title by another state, is rebuilt or reconstructed the owner  
5 shall, within ten (10) working days, make application to the Office of Motor  
6 Vehicles for the registration and issuance of a new certificate of title to  
7 the motor vehicle. The application shall be accompanied by the "DAMAGED"  
8 certificate of title, or similar title issued by another state, a fee in the  
9 amount now or hereafter prescribed by law for the registration and issuance of  
10 a certificate of title, and a sworn statement executed by the rebuildder or  
11 restorer on a form prescribed by the Office of Motor Vehicles describing the  
12 type of repairs performed, listing all parts replaced and including the  
13 vehicle identification number of any parts bearing such a number or a  
14 derivative thereof.

15 (e) Upon receipt of such "DAMAGED" certificate of title, or similar  
16 title issued by another state, and the sworn statement required to be  
17 submitted by subsection (d) of this section, there shall be issued a new  
18 certificate of title with the words "PREVIOUS DAMAGE" printed in the remarks  
19 section on the face of the title. Such brand shall be carried forward and  
20 printed in the remarks section on the face of all titles issued thereafter for  
21 such motor vehicle.

22 (f) The sworn statement submitted pursuant to subsection (d) of this  
23 section shall be maintained by the Office of Motor Vehicles as a part of the  
24 permanent title record of the motor vehicle in question, and the information  
25 contained therein shall be made available to any prospective buyer or  
26 transferee upon request.

27 (g) In the event an appropriation is provided for elsewhere by law to  
28 be used by the Department of Finance and Administration, Revenue Division to  
29 defray the expenses incurred by the Office of Motor Vehicles to provide a 1-  
30 900 toll service telephone number, the information contained in the sworn  
31 statement submitted pursuant to subsection (d) of this section shall be made  
32 available to any prospective buyer or transferee who provides the Office of  
33 Motor Vehicles with the vehicle identification number through the use of such  
34 1-900 toll service number. The Director of the Department of Finance and  
35 Administration is authorized to establish a fee for use of such 1-900 toll

1 *service that is sufficient to cover the expenses of operating such a service,*  
2 *and all revenues derived from the operation of such 1-900 toll service shall*  
3 *be deposited to the State Central Services Fund Account for support of such*  
4 *service. Nothing herein shall be construed as to require the Department of*  
5 *Finance and Administration to establish a 1-900 toll service for the purposes*  
6 *specified herein if an appropriation is not enacted to authorize the*  
7 *expenditure of funds generated by such service for its support.*

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9       SECTION 3. (a) When any dealer in this state offers for sale a motor  
10 vehicle which carries a title branded pursuant to this act, the dealer shall  
11 disclose to any prospective buyer or purchaser, prior to sale, the nature of  
12 the title brand and shall furnish him a description of the damage sustained by  
13 the motor vehicle on file with the Office of Motor Vehicles. The disclosure  
14 shall be on a buyer\_s notification form to be prescribed by the Consumer  
15 Protection Division of the Office of Attorney General. The form shall be  
16 fully filled out and affixed to a side window of the motor vehicle with the  
17 title "Buyer's Notification" facing to the outside. The form may be removed  
18 temporarily from the window during any test drive, but shall be replaced as  
19 soon as the test drive is over.

20       (b) The form to be prescribed by the Consumer Protection Division shall  
21 have an acknowledgement section that the selling dealer shall require the  
22 buyer sign prior to completing a sales transaction on a motor vehicle that  
23 carries a branded title. The selling dealer shall retain a copy of the signed  
24 notification form.

25       (c) Failure of the selling dealer to procure the buyer's  
26 acknowledgement signature shall render the sale voidable at the election of  
27 the buyer. The election to render the sale voidable shall be limited to  
28 *thirty (30) days after the sales transaction.*

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30       SECTION 4. (a) Any repairer, rebuilder, or restorer who pleads guilty,  
31 *nolo contendere, or who is found guilty of failing to provide to a motor*  
32 *vehicle owner the sworn statement required by Section 2. of this Act to be*  
33 *submitted to the Office of Motor Vehicles, or, if the repairer, rebuilder or*  
34 *restorer is the motor vehicle owner, failing to submit the sworn statement*  
35 *required by Section 2. of this Act to be submitted to the Office of Motor*

1 Vehicles, or any motor vehicle owner who conceals or attempts to conceal the  
2 fact that the motor vehicle has been damaged from any prospective buyer or  
3 transferee in violation of this act shall be guilty of a Class A misdemeanor  
4 and shall be punished as provided by law.

5 (b) Any dealer who pleads guilty, nolo contendere, or who is found  
6 guilty of failing to disclose the information provided for in Section 2. of  
7 this act or any motor vehicle owner who conceals or attempts to conceal the  
8 fact that the motor vehicle has been damaged from any prospective buyer or  
9 purchaser in violation of this act shall be guilty of a Class A misdemeanor  
10 and shall be punished as provided by law.

11 (c) Any sale, attempted sale, or transfer of a motor vehicle in  
12 violation of the provisions of this act shall constitute an unfair or  
13 deceptive act or practice under the provisions of the Deceptive Trade  
14 Practices Act, Arkansas Code §§ 4-88-101 et seq.

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16 *SECTION 5. The provisions of this Act shall not apply to motor vehicles*  
17 *more than five (5) model years old.*

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19 *SECTION 6. Any person licensed by the state of Arkansas as a dealer in*  
20 *motor vehicles who is required under the provisions of this act to register*  
21 *and title a motor vehicle in the name of such dealership shall be exempt from*  
22 *the payment of sales or use taxes on such transaction.*

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24 *SECTION 7. The Director of the Department of Finance and Administration*  
25 *shall promulgate necessary rules and regulations for the proper enforcement*  
26 *and administration of this Act.*

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28 *SECTION 8. All provisions of this act of general and permanent nature*  
29 *are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code*  
30 *Revision Commission shall incorporate the same in the Code.*

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32 *SECTION 9. If any provisions of this act or the application thereof to*  
33 *any person or circumstance is held invalid, the invalidity shall not affect*  
34 *other provisions or applications of the act which can be given effect without*  
35 *the invalid provisions or application, and to this end the provisions of this*

1 act are declared to be severable.

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3 SECTION 10. All laws and parts of laws in conflict with this act are  
4 hereby repealed.

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*/s/Jerry Hunton, et al*