

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003

A Bill

SENATE BILL 728

4
5 By: Senator Capps
6
7

For An Act To Be Entitled

8
9 AN ACT TO REVISE VARIOUS PROVISIONS OF THE
10 ARKANSAS MOTOR VEHICLE COMMISSION ACT FOR
11 ENFORCEMENT, WARRANTY AGREEMENTS, AND UNLAWFUL
12 ACTIVITIES FOR MANUFACTURERS; AND FOR OTHER
13 PURPOSES.
14

Subtitle

15
16 TO REVISE VARIOUS PROVISIONS OF THE
17 ARKANSAS MOTOR VEHICLE COMMISSION ACT.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code Title 23, Chapter 112, Subchapter 1 is
23 amended to add an additional section to read as follows:

24 23-112-106. Enforcement.

25 Subject to a person's right to appeal, the commission shall have the
26 authority to enforce the findings and conclusions of the commission's orders
27 upon entry, if the commission finds that failure to do so would be
28 detrimental to the public interest or public welfare.
29

30 SECTION 2. Arkansas Code § 23-112-313(a), concerning compensation of
31 new motor vehicle dealers for warranty agreements for parts and labor, is
32 amended to read as follows:

33 (a)(1) Every manufacturer, distributor, wholesaler, distributor branch
34 or division, factory branch or division, or wholesale branch or division
35 shall properly fulfill any warranty or recall agreement and adequately and
36 fairly compensate each of its motor vehicle dealers for labor and parts.



1 (2) The requirement of subdivision (a)(1) of this section to
 2 compensate each motor vehicle dealer for parts under a warranty agreement
 3 shall be met if the reimbursement equals an amount not less than the cost of
 4 the parts, plus a forty-five percent (45%) mark-up or an amount agreed to in
 5 writing by the manufacturer or franchiser and by a majority of the Arkansas
 6 motor vehicle dealers of the same line and make.

7
 8 SECTION 3. Arkansas Code § 23-112-403(a)(2)(K), concerning unlawful
 9 activities for manufacturers, distributors, second-stage manufacturers,
 10 importers, or converters under the Arkansas Motor Vehicle Commission Act, is
 11 amended to read as follows:

12 (K) Notwithstanding the terms of any franchise agreement,
 13 to fail to pay to a dealer or any lienholder in accordance with their
 14 respective interests after the termination of franchise:

15 (i)(a) ~~The dealer cost plus any charges by the~~
 16 ~~manufacturer, distributor, or a representative for distribution, delivery,~~
 17 ~~and taxes, less all allowances paid to the dealer by the manufacturer,~~
 18 ~~distributor, or representative for new, unsold, undamaged, and complete motor~~
 19 ~~vehicles of current model year and one (1) year prior model year in the~~
 20 ~~dealer's inventory;~~ The dealer cost of each new motor vehicle in the dealer's
 21 inventory with mileage of six thousand (6,000) miles or less, reduced by the
 22 net discount value of each vehicle. However, if the vehicle cannot be
 23 reduced by the net discount value, then a manufacturer or distributor shall
 24 pay the dealer the net cost of the vehicle.

25 (b) As used in this subdivision (a)(2)(K)(i),
 26 the "net discount value" is determined by multiplying the net cost times the
 27 total mileage of the vehicle and then dividing by one hundred thousand
 28 (100,000).

29 (c) As used in this subdivision (a)(2)(K)(i),
 30 the "net cost" equals the dealer cost plus any charges by the manufacturer,
 31 distributor, or a representative for distribution, delivery, and taxes, less
 32 all allowances paid to the dealer by the manufacturer, distributor, or
 33 representative for new, unsold, undamaged, and complete motor vehicles of
 34 current model year and one (1) year prior model year in the dealer's
 35 inventory;

36 (ii) The dealer cost of each new, unused, undamaged,

1 and unsold part or accessory, if the part or accessory is in the current
 2 parts catalogue, and if the part or accessory was purchased by the dealer
 3 either directly from the manufacturer or distributor or from an outgoing
 4 authorized dealer as a part of the dealer's initial inventory;

5 (iii) The fair market value of each undamaged sign
 6 owned by the dealer which bears a trademark or trade name used or claimed by
 7 the manufacturer, distributor, or representative, if the sign was purchased
 8 from or purchased at the request of the manufacturer, distributor, or
 9 representative;

10 (iv) The fair market value of all special tools and
 11 automotive service equipment owned by the dealer which were recommended in
 12 writing and designated as special tools and equipment and purchased from or
 13 purchased at the request of the manufacturer, distributor, or representative,
 14 if the tools and equipment are in usable and good condition except for
 15 reasonable wear and tear;

16 (v) The cost of transporting, handling, packing, and
 17 loading of motor vehicles, parts, signs, tools, and equipment subject to
 18 repurchase;

19 (vi) The balance of all claims for warranty and
 20 recall service and all other money owed by the manufacturer to the dealer;

21 (vii)(a) Compensation for the actual pecuniary loss
 22 caused by the franchise termination, cancellation, or nonrenewal unless for
 23 due cause.

24 (b) In determining the actual pecuniary loss,
 25 the value of any continued service or parts business available to the dealer
 26 for the line make covered by the franchise shall be considered. If the
 27 dealer and the manufacturer, importer, or distributor cannot agree on the
 28 amount of compensation to be paid under this subchapter, either party may
 29 file an action in a court of competent jurisdiction; or

30 (viii) Any sums due as provided by subdivision
 31 (a)(2)(K)(i) of this section within sixty (60) days after termination of a
 32 franchise and any sums due as provided by subdivisions (a)(2)(K)(ii)-(vii) of
 33 this section within ninety (90) days after termination of a franchise. As a
 34 condition of payment, the dealer is to comply with reasonable requirements
 35 with respect to the return of inventory as are set out in the terms of the
 36 franchise agreement. A manufacturer, distributor, or representative who

1 fails to pay those sums within the prescribed time or at such time as the
2 dealer and lienholder, if any, proffer good title prior to the prescribed
3 time for payment, is liable to the dealer for:

4 (a) The greatest of dealer cost, fair market
5 value, or current price of the inventory;

6 (b) Interest on the amount due calculated at
7 the greater of either the rate applicable to a judgment of a court, or the
8 motor vehicle dealer's floor plan interest rate; and

9 (c) Reasonable attorney's fees and costs;

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36