

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
4

As Engrossed: S4/3/03
A Bill

SENATE BILL 728

5 By: Senator Capps
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7

For An Act To Be Entitled

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 TO REVISE VARIOUS PROVISIONS OF THE
16 ARKANSAS MOTOR VEHICLE COMMISSION ACT.
17
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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 enter orders directing and commanding compliance with the
27 Arkansas Motor Vehicle Commission Act and to enforce the findings and
28 conclusions of the commission's orders upon entry, if the commission finds
29 that failure to do so would be detrimental to the public interest or public
30 welfare.
31

32 SECTION 2. *Arkansas Code § 23-112-403(a)(2)(K)(viii), concerning the*
33 *unlawful activities for manufacturers, distributors, second-stage*
34 *manufacturers, importers, and converters under the Arkansas Motor Vehicle*
35 *Commission Act, is amended to read as follows:*

36 *(viii) Any sums due as provided by subdivision*



1 (a)(2)(K)(i) of this section within sixty (60) days after termination of a
 2 franchise and any sums due as provided by subdivisions (a)(2)(K)(ii)-(vii) of
 3 this section within ninety (90) days after termination of a franchise. As a
 4 condition of payment, the dealer is to comply with reasonable requirements
 5 with respect to the return of inventory as are set out in the terms of the
 6 franchise agreement. A manufacturer, distributor, or representative who
 7 fails to pay those sums within the prescribed time or at such time as the
 8 dealer and lienholder, if any, proffer good title prior to the prescribed
 9 time for payment, is liable to the dealer for:

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

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

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

16
 17 SECTION 3. Arkansas Code § 23-112-403(a)(2)(K), concerning the
 18 unlawful activities for manufacturers, distributors, second-stage
 19 manufacturers, importers, and converters under the Arkansas Motor Vehicle
 20 Commission Act, is amended to add an additional subdivision to read as
 21 follows:

22 (ix)(a) In the case of a termination, cancellation,
 23 or non renewal by a motorhome manufacturer for cause, the manufacturer shall,
 24 at the election of the motor home dealer, within thirty (30) days of
 25 termination, repurchase all new, untitled current model year motor home
 26 inventory, acquired from the manufacturer, that have not been altered, used,
 27 except for demonstration purposes, or damaged to the extent that damage is
 28 disclosed to a consumer, at one hundred percent (100%) of the net invoice
 29 cost, including transportation, less applicable rebates and discounts to the
 30 dealer and all new, untitled recreation vehicle inventory of the prior model
 31 year, acquired from the manufacturer, provided the prior model year vehicles
 32 have not been altered, used, except for demonstration purposes, or damaged to
 33 the extent that damage is disclosed to a consumer and were drafted on the
 34 dealer's financing source or paid for within one hundred twenty (120) days
 35 before the effective date of the termination, cancellation, or non-renewal.

36 (b)(1) In the event any of the motor homes

1 repurchased under this subdivision (a)(2)(K)(ix) are damaged, but do not
 2 trigger the consumer disclosure requirement, the amount due the dealer shall
 3 be reduced by the cost to repair the vehicle.

4 (2) Damage before delivery to the dealer
 5 that is disclosed at the time of delivery shall not disqualify the repurchase
 6 under this subdivision (a)(2)(K)(ix).

7 (c) All current and undamaged manufacturer's
 8 accessories and proprietary parts sold to the dealer for resale, if
 9 accompanied by the original invoice, at one hundred five percent (105%) of
 10 the original net price paid to the manufacturer to compensate the dealer for
 11 handling, packing, and shipping the parts.

12 (d)(1) Any fully and correctly functioning
 13 diagnostic equipment special tools, current signage, and other equipment and
 14 machinery, at one hundred percent (100%) of the dealer's net cost plus
 15 freight, destination, delivery, and distribution charges and sales taxes, if
 16 any, provided it was purchased by the dealer within five (5) years before
 17 termination and upon the manufacturer's request and can no longer be used in
 18 the normal course of the dealer's ongoing business; and

19 (2) Manufacturer shall pay dealer within
 20 thirty (30) days of receipt of the returned items;

21
 22 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
 23 General Assembly of the State of Arkansas that motor vehicle manufacturers
 24 are terminating certain makes and models of motor vehicles in Arkansas and in
 25 the United States; that motor vehicle manufacturers are placing a burden on
 26 the motor vehicle dealers to contend with this problem; that the Arkansas
 27 Motor Vehicle Commission Act needs to be amended to contend with these
 28 events; and that this act is immediately necessary because the financial
 29 well-being of Arkansas motor vehicle dealers is at stake. Therefore, an
 30 emergency is declared to exist and this act being immediately necessary for
 31 the preservation of the public peace, health and safety shall become
 32 effective on:

33 (1) The date of its approval by the Governor;

34 (2) If the bill is neither approved nor vetoed by the Governor, the
 35 expiration of the period of time during which the Governor may veto the bill;
 36 or

