

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: S3/25/97

A Bill

ACT 1154 OF 1997
HOUSE BILL 1883

4
5 By: Representative Kidd
6
7

For An Act To Be Entitled

8
9 "AN ACT TO PERMIT RECIPROCITY WITH MOTOR VEHICLE
10 COMMISSIONS OF OTHER STATES; TO PROVIDE FOR PROCEDURES
11 CONCERNING WARRANTY AGREEMENTS; TO AMEND ARKANSAS CODE 23-
12 112-103; TO AMEND ARKANSAS CODE 23-112-104; TO AMEND
13 ARKANSAS CODE 23-112-304; TO AMEND ARKANSAS CODE 23-112-
14 310; TO AMEND ARKANSAS CODE 23-112-311; TO AMEND ARKANSAS
15 CODE 23-112-403; TO AMEND ARKANSAS CODE 23-112-303; AND
16 FOR OTHER PURPOSES."

Subtitle

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18
19 "AN ACT TO PERMIT RECIPROCITY WITH MOTOR
20 VEHICLE COMMISSIONS OF OTHER STATES; TO
21 PROVIDE FOR PROCEDURES CONCERNING
22 WARRANTY AGREEMENTS; AND FOR OTHER
23 PURPOSES."
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. (a) The Arkansas Motor Vehicle Commission is authorized to
28 enter into reciprocal agreements with the Motor Vehicle Commission, or their
29 equivalent, in other states to allow motor vehicle dealers who are licensed in
30 those states to obtain a temporary permit in this state, pursuant to the rules
31 and regulations promulgated by Arkansas Motor Vehicle Commission.

32 (b) Any person who is licensed under the laws of another state or
33 territory of the United States to engage in business as a motor vehicle dealer
34 may apply for a temporary permit in this state upon production of satisfactory
35 proof that:

36 (1) The other state or territory grants similar reciprocity to

1 license holders of this state;

2 (2) The requirements for licensing in the particular state or
3 territory were, at the date of applicant's licensing, substantially
4 equivalent to the requirements in effect in this state;

5 (3) The applicant meets all the qualifications for the temporary
6 permit and pays the fees specified for the permits pursuant to the rules and
7 regulations of the commission; and

8 (4) The applicant meets other reasonable qualifications as may be
9 adopted by the Arkansas Motor Vehicle Commission for reciprocity.

10

11 SECTION 2. (a) Every manufacturer, distributor, wholesaler,
12 distributor branch or division, factory branch or division, or wholesale
13 branch or division shall properly fulfill any warranty agreement and
14 adequately and fairly compensate each of its motor vehicle dealers for labor
15 and parts.

16 (b) In no event shall the compensation fail to include reasonable
17 compensation for diagnostic work, as well as repair service and labor. Time
18 allowances for the diagnosis and performance of warranty work and service
19 shall be reasonable and adequate for the work to be performed. In the
20 determination of what constitutes reasonable compensation under this act, the
21 principal factor to be given consideration shall be the prevailing wage rates
22 being paid by the dealer in the relevant market area in which the motor
23 vehicle dealer is doing business, and in no event shall the compensation of a
24 motor vehicle dealer for warranty service be less than the rates charged by
25 the dealer for like service to retail customers for non-warranty service and
26 repairs. All claims under this act, either original or resubmitted, made by
27 motor vehicle dealers for the labor and parts shall be either approved or
28 disapproved within thirty (30) days following their approval. The motor
29 vehicle dealer who submits a claim which is disapproved shall be notified in
30 writing of the disapproval within the same period, and each such notice shall
31 state the specific grounds upon which the disapproval is based. The motor
32 vehicle dealer shall be permitted to correct and resubmit such disapproved
33 claims within thirty (30) days of receipt of disapproval. Any claims not
34 specifically disapproved in writing within thirty (30) days from their
35 submission shall be deemed approved and payment shall follow within thirty
36 (30) days. The manufacturer or franchiser shall have the right to require

1 documentation for claims and to audit such claims within a one (1) year period
 2 from the date the claim was paid or credit issued by the manufacturer or
 3 franchiser, and to charge back any false or unsubstantiated claims. The audit
 4 and charge back provisions of this act also apply to all other incentive and
 5 reimbursement programs for a period of eighteen (18) months after the date of
 6 the transactions that are subject to audit by the franchiser. However, the
 7 manufacturer retains the right to charge back any fraudulent claim if the
 8 manufacturer establishes in a court of competent jurisdiction in this state
 9 that the claim is fraudulent.

10 (c) This section shall not apply to compensation for parts of a motor
 11 home other than parts of a motorized chassis, engine and power train.

12
 13 SECTION 3. Arkansas Code 23-112-103(2) pertaining to the definitions is
 14 amended to read as follows:

15 "(2) Motor vehicle dealer means any person engaged in the business of
 16 selling, offering to sell, soliciting, or advertising the sale of motor
 17 vehicles, or possessing motor vehicles for the purpose of resale, either on
 18 his own account or on behalf of another, either as his primary business or
 19 incidental thereto. The term motor vehicle dealer shall include any person
 20 engaged in the business of selling, offering to sell, soliciting, or
 21 advertising the sale of commercial buses, school buses, or other multi-
 22 passenger motor vehicles, or possessing them for the purpose of resale. The
 23 term motor vehicle dealer does not include:

24 (A) Receivers, trustees, administrators, executors, guardians, or
 25 other persons appointed by or acting under judgment, decree, or order of any
 26 court;

27 (B) Public officers while performing their duties as officers;

28 (C) Employees of persons, corporations, or associations enumerated
 29 in subdivision (2)(A) of this section when engaged in the specific performance
 30 of their duties as employees;

31 (D) Specialty vehicle dealers; or

32 (E) Financial institutions engaged in the leasing of motor
 33 vehicles;"

34
 35 SECTION 4. Arkansas Code 23-112-103(3) pertaining to the definitions is
 36 amended to read as follows:

1 "(3) New motor vehicle means any motor vehicle, the legal title to
2 which has never been transferred by a manufacturer, distributor, or dealer to
3 an ultimate purchaser, and has not been the subject of retail sale without
4 regard to mileage and any other motor vehicle defined as new by regulations
5 promulgated by the commission;"

6

7 SECTION 5. Arkansas Code 23-112-103(19) pertaining to the definitions
8 is amended to read as follows:

9 "(19) Specialty vehicle means a motor vehicle manufactured by a second
10 stage manufacturer by purchasing motor vehicle components, e.g., frame and
11 drive train, and completing the manufacture of finished motor vehicles for the
12 purpose of resale, with the primary manufacturer warranty unimpaired, to a
13 limited commercial market rather than the consuming public. Specialty
14 vehicles includes garbage trucks, ambulances, fire trucks, ~~buses~~, limousines,
15 hearses, and other similar limited-purpose vehicles as the commission may by
16 regulation provide;"

17

18 SECTION 6. Arkansas Code 23-112-103(21) pertaining to the definitions
19 is amended to read as follows:

20 "(21) Relevant market area means the area within a radius of twenty
21 (20) miles around an existing dealer or the area of responsibility defined in
22 the franchise, whichever is greater. However, where a manufacturer is seeking
23 to establish an additional new motor vehicle dealer and there are one (1) or
24 more existing new motor vehicle dealers of the same line make within a ten-
25 mile radius of the proposed dealer site, the relevant market area shall in all
26 instances be the area within a radius of ten (10) miles around an existing
27 dealer. And further provided, that for motor vehicle dealers of the same like
28 make authorized to sell motorcycles and motorized cycles, including two,
29 three, and four-wheeled motorcycles and motor-driven all-terrain vehicles
30 other than multi-passenger vehicles sold by licensed motor vehicle dealers,
31 the relevant market area ~~means~~ shall in all instances be the area within a
32 radius of thirty (30) miles around an existing dealer or the area of
33 responsibility defined in the franchise, whichever is greater+. Mileage shall
34 be determined by using the closest commonly traveled roadway pursuant to the
35 current highway map published by the Arkansas Highway and Transportation
36 Department;"

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SECTION 7. Arkansas Code 23-112-103 pertaining to the definitions is amended by inserting the additional subdivisions at the end to read as follows:

"(23) Franchise means one (1) or more contracts between a franchised dealer as franchisee, and either a manufacturer or a distributor as franchiser under which:

(A) The franchisee is granted the right to sell and service new motor vehicles manufactured or distributed by the franchiser;

(B) The franchisee as an independent business is a component of franchisers distribution system;

(C) The franchise is substantially associated with franchisers trademark, trade name and commercial symbol;

(D) The franchisees business is substantially reliant on the franchiser for a continued supply of motor vehicles, parts, or accessories for the conduct of its business; or

(E) Any right, duty, or obligation granted or imposed by this act is affected. The term includes a written communication from a franchiser to a franchisee by which a duty is imposed upon the franchisee;

(24) Second stage manufacturer or Converter means a person, firm or corporation who prior to retail sale of a motor vehicle, assembles, installs or affixes a body, cab or special equipment to a chassis, or who substantially adds to, subtracts from, or modifies a previously assembled or manufactured motor vehicle;

(25) Conversion means a motor vehicle other than an ambulance or fire-fighting vehicle, which is substantially modified by a person, firm, or corporation other than the manufacturer or distributor of the chassis of the motor vehicle and which has not been the subject of a retail sale;

(26) Temporary Permit means a license issued for one (1) week or less to a motor vehicle dealer who is licensed in another state for the purpose of displaying, offering to sell, selling and soliciting the sales of motor vehicles at the time and place designated by the commission and only at an approved motor vehicle show in this state."

SECTION 8. Arkansas Code 23-112-104 is hereby amended to read:

"⁸ 23-112-104. Injunction.

1 The Arkansas Motor Vehicle Commission shall be entitled to seek an
2 injunction upon affidavit in the chancery court for the county in which the
3 Commissions office is located to prevent any person, firm, partnership,
4 association, corporation, or legal entity from violating any provision of this
5 chapter or any rule or regulation promulgated by the Arkansas Motor Vehicle
6 Commission. The commission shall not be required to execute or give bond for
7 costs, indemnity, or stay or to give security as a condition to the issuance
8 of a restraining order or injunction, either temporary or permanent."

9

10 SECTION 9. Arkansas Code 23-112-301(a) is amended to read as follows:

11 "(a)(1) It shall be unlawful for any person to engage in business as,
12 or serve in the capacity of, or act as a new motor vehicle dealer, motor
13 vehicle salesman, motor vehicle lessor, manufacturer, distributor, factory
14 branch or division, distributor branch or division, factory representative, or
15 distributor representative, second state manufacturer or converter, as such,
16 in this state without first obtaining a license therefor as provided in this
17 chapter, regardless of whether or not the person maintains or has a place of
18 business in this state.

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

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

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

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

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

36

1 SECTION 10. Arkansas Code 23-112-304 is amended to read as follows:

2 "§ 23-112-304. Issuance of license - Change of location - Change of
3 Business Name or DBA Name - Dealers, manufacturers, distributors, etc.

4 (a) The license issued to each motor vehicle dealer, manufacturer,
5 distributor, factory branch or division, or distributor branch or division
6 shall specify the location of the factory, office, branch, or division
7 thereof.

8 (b) In case the location is changed, the commission shall endorse the
9 change of location on the license without charge if it is within the same
10 county.

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

12 (d) Licensees shall notify the commission in writing of any change in
13 the business or corporate name and of any alternate name(s) in which the
14 company will do business (DBA names) and shall provide the original issue
15 license with the notification of name change or addition of DBA name(s). The
16 Commission shall endorse the change on the license without charge."

17

18 SECTION 11. Arkansas Code 23-112-310(a) is amended to read as follows:

19 "~~(a) A copy of the delivery and preparation obligations of its motor~~
20 ~~vehicle dealers and a schedule of the compensation to be paid to its motor~~
21 ~~vehicle dealers for the work and services they shall be required to perform in~~
22 ~~connection with the delivery and preparation obligations shall be filed with~~
23 ~~the commission by every licensed motor vehicle manufacturer and shall~~
24 ~~constitute the dealer's only responsibility for product liability as between~~
25 ~~the dealer and the manufacturer.~~Every licensed motor vehicle manufacturer or
26 distributor shall file with the commission with its initial application for a
27 license, a copy of the documents stating the delivery, preparation and
28 warranty obligations of its motor vehicle dealers and a schedule of the
29 compensation to be paid to its motor vehicle dealers for the work and services
30 they shall be required to perform in connection with such delivery,
31 preparation and warranty obligations. Such documents shall constitute the
32 dealers only responsibility for product liability as between the dealer and
33 the manufacturer or distributor. Any revisions to the delivery, preparation
34 and warranty obligations or to the schedule of compensation shall be filed no
35 later than September 15 of each calendar year."

36

1 SECTION 12. Arkansas Code 23-112-311(a) and (b) are amended to read as
2 follows:

3 "(a)(1) In all instances, in the event that a manufacturer or
4 distributor seeks to enter into a franchise establishing an additional new
5 motor vehicle dealer or relocating an existing new motor vehicle dealer within
6 or into a relevant market area where the same line make is then represented,
7 the manufacturer or distributor shall in writing first notify the Motor
8 Vehicle Commission and each new motor vehicle dealer in that line make in the
9 relevant market area of the intention to establish an additional dealer or to
10 relocate an existing dealer within or into that market area.

11 (2) Within twenty (20) days of receiving the notice, or within
12 twenty (20) days after the end of any appeal procedure provided by the
13 manufacturer or distributor, any new motor vehicle dealer may file with the
14 Motor Vehicle Commission to protest the establishing or relocating of the new
15 motor vehicle dealer. When a protest is filed, the Motor Vehicle Commission
16 shall inform the manufacturer or distributor that a timely protest has been
17 filed, and that the manufacturer or distributor shall not establish or
18 relocate the proposed new motor vehicle dealer until the Motor Vehicle
19 Commission has held a hearing, nor thereafter if the Motor Vehicle Commission
20 has determined that there is good cause for not permitting the addition or
21 relocation of the new motor vehicle dealer.

22 (b) This section does not apply:

23 (1) To the relocation of an existing dealer within that dealer's
24 relevant market area, provided that the relocation not be at a site within
25 seven (7) miles of a licensed new motor vehicle dealer for the same line make
26 of motor vehicles; ~~or~~

27 (2) If the proposed new motor vehicle dealer is to be established
28 at or within two (2) miles of a location at which a former licensed new motor
29 vehicle dealer for the same line make of new motor vehicle has ceased
30 operating within the previous two (2) years; or

31 (3) To new motor vehicle dealers of motorcycle, motorized cycles
32 and motor driven all-terrain vehicles."

33

34 SECTION 13. Arkansas Code 23-112-403(a) is amended to read as follows:

35 "(a) It shall be unlawful:

36 (1) For a manufacturer, a distributor, a distributor branch or

1 division, a factory branch or division, or officer, agent, or other
2 representative thereof, to coerce, or attempt to coerce, any motor vehicle
3 dealer:

4 (A) To order or accept delivery of any motor vehicles,
5 appliances, equipment, parts, or accessories therefor, or any other
6 commodities which shall not have been voluntarily ordered by the motor vehicle
7 dealer;

8 (B) To order or accept delivery of any motor vehicle with
9 special features, appliances, accessories, or equipment not included in the
10 list price of the motor vehicle as publicly advertised by the manufacturer
11 thereof;

12 (C) To order for any person any parts, accessories,
13 equipment, machinery, tools, appliances, or any commodity whatsoever;

14 (D) To contribute or pay money or anything of value into any
15 cooperative or other advertising program or fund.

16 (2) For a manufacturer, a distributor, a distributor branch or
17 division, a factory branch or division, or officer, agent, or other
18 representative thereof:

19 (A) To refuse to deliver, in reasonable quantities and
20 within a reasonable time after receipt of a dealer's order to any duly
21 licensed motor vehicle dealer having a franchise or contractual arrangement
22 for the retail sale of new motor vehicles sold or distributed by such
23 manufacturer, distributor, distributor branch or division, or factory branch
24 or division, any motor vehicles which are covered by the franchise or contract
25 specifically publicly advertised by the manufacturer, distributor, distributor
26 branch or division, or factory branch or division to be available for
27 immediate delivery. However, the failure to deliver any motor vehicle shall
28 not be considered a violation of this chapter if the failure is due to acts of
29 God, work stoppages or delays due to strikes or labor difficulties, freight,
30 embargoes, or other causes over which the manufacturer or distributor, or any
31 agent thereof, has no control;

32 (B) To coerce, or attempt to coerce, any motor vehicle
33 dealer to enter into any agreement with the manufacturer, distributor,
34 distributor branch or division, or factory branch or division, or officer,
35 agent, or other representative thereof, or to do any other act prejudicial to
36 the dealer by threatening to cancel any franchise or any contractual agreement

1 existing between the manufacturer, distributor, distributor branch or
2 division, or factory branch or division, and the dealer. However, good faith
3 notice to any motor vehicle dealer of the dealer's violation of any terms or
4 provisions of the franchise or contractual agreement shall not constitute a
5 violation of this chapter;

6 (C) To terminate or cancel the franchise or selling
7 agreement of any dealer without due cause. The nonrenewal of a franchise or
8 selling agreement, without due cause, shall constitute an unfair termination
9 or cancellation, regardless of the terms or provisions of the franchise or
10 selling agreement. The manufacturer, distributor, distributor branch or
11 division, or factory branch or division, or officer, agent, or other
12 representative thereof shall notify a motor vehicle dealer in writing and
13 forward a copy of the notice to the commission of the termination or
14 cancellation of the franchise or selling agreement of the dealer at least
15 sixty (60) days before the effective date thereof, stating the specific
16 grounds for the termination or cancellation. The manufacturer, distributor,
17 distributor branch or division, or factory branch or division, or officer,
18 agent, or other representative thereof shall notify a motor vehicle dealer in
19 writing and forward a copy of the notice to the commission at least sixty (60)
20 days before the contractual term of his franchise or selling agreement expires
21 that the franchise or selling agreement will not be renewed, stating the
22 specific grounds for the nonrenewal in those cases where there is no intention
23 to renew it. In no event shall the contractual term of any franchise or
24 selling agreement expire, without the written consent of the motor vehicle
25 dealer involved, prior to the expiration of at least sixty (60) days following
26 the written notice. Any motor vehicle dealer who receives written notice that
27 his franchise or selling agreement is being terminated or cancelled or who
28 receives written notice that his franchise or selling agreement will not be
29 renewed may, within the sixty-day notice period, file with the commission a
30 verified complaint for its determination as to whether the termination or
31 cancellation or nonrenewal is unfair within the purview of this chapter. That
32 franchise or selling agreement shall continue in effect until final
33 determination of the issues raised in the complaint, notwithstanding anything
34 to the contrary contained in this chapter or in the franchise or selling
35 agreement;

36 (D) To resort to or use any false or misleading

1 advertisement in connection with his or its business as a manufacturer,
2 distributor, distributor branch or division, or factory branch or division, or
3 officer, agent, or other representative thereof;

4 (E) To offer to sell or to sell any new motor vehicle to any
5 motor vehicle dealer at a lower actual price therefor than the actual price
6 charged to any other motor vehicle dealer for the same model vehicle similarly
7 equipped or to utilize any device, including, but not limited to, sales
8 promotion plans or programs, which results in a lesser actual price. However,
9 the provisions of this subdivision (a)(2)(E) shall not apply to sales to a
10 motor vehicle dealer for resale to any unit of federal, state, or local
11 government. Further, nothing contained in this subdivision (a)(2)(E) shall be
12 construed to prevent the utilization of sales promotion plans or programs or
13 the offering of volume discounts through new motor vehicle dealers, for fleet
14 or volume purchasers, if the program is available to all new motor vehicle
15 dealers from the same manufacturer in this state. Further, the provisions of
16 this subdivision (a)(2)(E) shall not apply to sales to a motor vehicle dealer
17 of any motor vehicle ultimately sold, donated, or used by the dealer in a
18 driver education program. Further, the provisions of this subdivision
19 (a)(2)(E) shall not apply so long as a manufacturer or distributor, or any
20 agent thereof, offers to sell or sells new motor vehicles to all motor vehicle
21 dealers at the same price;

22 (F) To offer to sell or to sell any new motor vehicle to any
23 person, except a wholesaler or distributor, at a lower actual price therefor
24 than the actual price offered and charged to a motor vehicle dealer for the
25 same model vehicle similarly equipped or to utilize any device which results
26 in a lesser actual price;

27 (G) To offer to sell or to sell parts and accessories to any
28 new motor vehicle dealer for use in his own business for the purpose of
29 repairing or replacing the parts and accessories, or comparable parts and
30 accessories, at a lower actual price therefor than the actual price charged to
31 any other new motor vehicle dealer for similar parts and accessories for use
32 in his own business. However, it is recognized that certain motor vehicle
33 dealers operate and serve as wholesalers of parts and accessories to retail
34 outlets. Therefore, nothing contained in this subdivision shall be construed
35 to prevent a manufacturer or distributor, or any agent thereof, from selling
36 to a motor vehicle dealer who operates and serves as a wholesaler of parts and

1 accessories such parts and accessories as may be ordered by the motor vehicle
2 dealer for resale to retail outlets at a lower actual price than the actual
3 price charged a motor vehicle dealer who does not operate or serve as a
4 wholesaler of parts and accessories;

5 (H) To prevent or attempt to prevent by contract or
6 otherwise any motor vehicle dealer from changing the capital structure of his
7 dealership or the means by or through which he finances the operation of his
8 dealership, provided the dealer at all times meets any capital standards
9 agreed to between the dealership and the manufacturer or distributor and
10 provided the standards are deemed reasonable by the commission+. If the
11 dealer of record requests consent from the manufacturer or distributor in
12 writing on the form, if any, generally utilized or required by the
13 manufacturer or distributor for such purposes and the manufacturer or
14 distributor fails to respond in writing, giving or withholding consent, within
15 sixty (60) days of receipt of the written request, consent is deemed to be
16 given;

17 (I) Notwithstanding the terms of any franchise agreement, to
18 fail to give effect or to attempt to prevent any sale or transfer of a dealer,
19 dealership, or franchise or interest therein, or management thereof, provided
20 the manufacturer or distributor has received sixty (60) days' written notice
21 prior to the transfer or sale, and unless the transferee does not meet the
22 criteria generally applied by the manufacturer in approving new motor vehicle
23 dealers or agree to be bound by all the terms and conditions of the dealer
24 agreement, and the manufacturer so advises its dealer within sixty (60) days
25 of receipt of said notice, or it is shown to the commission after hearing that
26 the result of such sale or transfer will be detrimental to the public or the
27 representation of the manufacturer or distributor+. If the franchisee of
28 record requests consent from the manufacturer or distributor in writing on the
29 form, if any, generally utilized or required by the manufacturer or
30 distributor for such purposes and the manufacturer or distributor fails to
31 respond in writing, giving or withholding consent, within sixty (60) days of
32 receipt of the written request, consent is deemed to be given;

33 (J) Notwithstanding the terms of any franchise agreement, to
34 prevent, attempt to prevent, or refuse to honor the succession to a dealership
35 by any legal heir or devisee under the will of a dealer or under the laws of
36 descent and distribution applicable to the decedent's estate, provided the

1 manufacturer or distributor has received sixty (60) days' written notice prior
2 to the transfer or sale, and unless the transferee does not meet the criteria
3 generally applied by the manufacturer in approving new motor vehicle dealers
4 or agree to be bound by all the terms and conditions of the dealer agreement,
5 and the manufacturer so advises its dealer within thirty (30) days of receipt
6 of said notice, or it is shown to the commission, after notice and hearing,
7 that the result of such succession will be detrimental to the public interest
8 or to the representation of the manufacturer or distributor. However, nothing
9 herein shall prevent a dealer, during his lifetime, from designating any
10 person as his successor dealer by written instrument filed with the
11 manufacturer or distributor. If the dealer's successor, heir or devisee
12 requests consent from the manufacturer or distributor in writing on the form,
13 if any, generally utilized or required by the manufacturer or distributor for
14 such purposes and the manufacturer or distributor fails to respond in writing,
15 giving or withholding consent, within thirty (30) days of receipt of the
16 written request, consent is deemed to be given;

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

20 (i) The dealer cost plus any charges by the
21 manufacturer, distributor, or a representative for distribution, delivery, and
22 taxes, less all allowances paid to the dealer by the manufacturer,
23 distributor, or representative for new, unsold, undamaged, and complete motor
24 vehicles ~~and motor homes~~ of current model year and one (1) year prior model
25 year in the dealer's inventory. The terms and conditions of this subdivision
26 shall not apply to manufacturers of mobile homes and motor homes, as defined
27 in ~~§ 27-14-207, when dealers of mobile homes and motor homes undertake to~~
28 ~~terminate, cancel, or fail to renew an agreement;~~

29 (ii) The dealer cost of each new, unused, undamaged,
30 and unsold part or accessory if the part or accessory is in the current parts
31 catalogue and is still in the original, resalable merchandising package and in
32 unbroken lots, except that in the case of sheet metal, a comparable substitute
33 for the original package may be used, and if the part or accessory was
34 purchased by the dealer either directly from the manufacturer or distributor
35 or from an outgoing authorized dealer as a part of the dealer's initial
36 inventory;

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

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

12 (v) The cost of transporting, handling, packing, and
13 loading of motor vehicles, parts, signs, tools, and equipment subject to
14 repurchase;

15 (vi) Any sums due as provided by subdivision
16 (a)(2)(K)(i) within sixty (60) days after termination of a franchise and any
17 sums due as provided by subdivisions (a)(2)(K)(ii) - (a)(2)(K)(v) within
18 ninety (90) days after termination of a franchise. As a condition of payment,
19 the dealer is to comply with reasonable requirements with respect to the
20 return of inventory as are set out in the terms of the franchise agreement. A
21 manufacturer, distributor, or representative who fails to pay those sums
22 within the prescribed time or at such time as the dealer and lienholder, if
23 any, proffer good title prior to the prescribed time for payment, is liable to
24 the dealer for:

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

27 (b) Interest on the amount due calculated at the rate applicable to a
28 judgment of a court; and

29 (c) Reasonable attorney's fees and costs."
30

31 SECTION 14. Arkansas Code 23-112-303 is amended to read as follows:

32 "§ 23-112-303. Application fees.

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

36 (b) In the event any application is denied and the license applied for

1 is not issued, the entire license fee shall be returned to the applicant.

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

5 (1) For each manufacturer, distributor, factory branch and
6 division, or distributor branch and division, ~~four hundred dollars (\$400)~~ nine
7 hundred dollars (\$900);

8 (2) For each motor vehicle dealer, ~~or~~ or motor vehicle lessor,
9 ~~factory representative, and distributor representative,~~ one hundred dollars
10 (\$100);

11 (3) For each manufacturer, distributor or factory representative,
12 four hundred dollars (\$400);

13 ~~(3)~~ (4) For each motor vehicle salesman, ten dollars (\$10.00).

14 (d) Any person, firm, or corporation required to be licensed under this
15 subchapter who fails to make application for the license at the time required
16 shall, in addition to the fees required to be paid pursuant to subsection (c)
17 of this section, ~~pay interest at the rate of six percent (6%) per annum for~~
18 ~~the period of time during which he shall operate without a proper license,~~
19 ~~and, in addition thereto, shall pay a penalty of fifty percent (50%) of the~~
20 amount of the license fee for each thirty (30) days of default. The penalty,
21 however, may be waived in whole or in part within the discretion of the
22 commission."

23

24 SECTION 15. All provisions of this act of a general and permanent
25 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
26 Code Revision Commission shall incorporate the same in the Code.

27

28 SECTION 16. If any provision of this act or the application thereof to
29 any person or circumstance is held invalid, such invalidity shall not affect
30 other provisions or applications of the act which can be given effect without
31 the invalid provision or application, and to this end the provisions of this
32 act are declared to be severable.

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34 SECTION 17. All laws and parts of laws in conflict with this act are
35 hereby repealed.

36

/s/Kidd

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APPROVED: 4-07-97