

Act 678 of the 1989 Regular Session.

Act 678

SB592

By: Senator Bookout

"AN ACT TO AMEND ACT 388 OF 1975 TO CLARIFY THE RIGHTS OF LICENSED NEW CAR DEALERS; AND FOR OTHER PURPOSES."

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

SECTION 1. Arkansas Code Annotated 23-112-301(b) and (c) are amended to read as follows:

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

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

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

(B) Advertising for sale new motor vehicles; or

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

(3) Ark. Code Ann. Section 23-112-301(b) (1) and (2) authorizes the practice of a licensed new automobile and/or truck dealer selling, on special order, a new automobile and/or truck for which he does not hold a manufacturer's franchise. When a new automobile or truck dealer secures a new automobile or truck for a special order and the customer does not consummate the transaction, the automobile and/or truck dealer may sell the vehicle to another ultimate purchaser provided, the automobile and/or truck dealer shall document the name, address, and telephone number of the customer for whom the truck or automobile was ordered in a statement detailing why the transaction was not consummated, such documentation to be held by the dealer subject to inspection by the Commission for a period of two years after the date the purchase was refused; and further provided that the automobile or truck shall be deemed a used motor vehicle and the dealer shall not advertise such automobile or truck as a new automobile or truck. The presence of more than one such vehicle resulting from such non-consummated special order transactions in said automobile and/or truck dealers inventory at the same time ordered by the same customer creates a rebuttable presumption that Ark. Code Ann. Section 23-112-301(b) (1) has been violated on those transactions.

(4) Notwithstanding any other provision of this act, including but not limited to Arkansas Code Annotated 23-112-308 or 23-112-309 the sole and exclusive remedy of the Commission in the event a new automobile or truck dealer violates or exceeds his authority under (b) (1), (b) (2) or (b) (3) above shall be to seek an injunction prohibiting the challenged transaction pursuant to Arkansas Code Annotated 23-112-104.

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

SECTION 2. Arkansas Code Annotated 23-112-505 is amended to read as follows:

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

"(b) A majority of the members of the Commission shall constitute a quorum

for purposes of rendering an order and no order will issue except upon the affirmative vote of a majority of the members of the Commission as established under Ark. Code Ann. Section 23-112-201."

SECTION 3. Arkansas Code Annotated 23-112-105 is amended to read as follows:

"Any licensee suffering pecuniary loss because of any willful failure by any other licensee to comply with any provision of this chapter other than a new automobile or truck dealer's failure to comply with Ark. Code Ann. Section 23-112-301 (b) (1), (b) (2) and (b) (3) or with any rule or regulation promulgated by the commission under authority vested in it by this chapter may recover reasonable damages and attorney fees therefor in any court of competent jurisdiction."

SECTION 4. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 5. Severability. The provisions of this act shall be deemed to be severable. If any provision of this act shall be held to be invalid, such holding shall not affect the validity or applicability of the remainder of the provisions of this act.

SECTION 6. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 7. It has been found and it is hereby declared by the General Assembly of the State of Arkansas that there is some question as to the ability of new car dealers in this state to meet the special order needs of their customers and therefore the availability and authority clarified and granted in this act is immediately necessary for the protection and preservation of the health, safety, and welfare of the people. 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 from and after its passage and approval.

APPROVED: March 20, 1989

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