

*As Engrossed: 2/13/91 3/1/91*

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Representative Jones**

**A BILL ACT 411 OF 1991**  
**HOUSE BILL 1209**

**For An Act To Be Entitled**

8 "AN ACT TO AMEND THE ARKANSAS MOTOR VEHICLE COMMISSION ACT  
9 TO GRANT THE MOTOR VEHICLE COMMISSION THE POWER TO DENY,  
10 REVOKE OR SUSPEND THE LICENSE OF ANY MOTOR VEHICLE  
11 MANUFACTURER OR DISTRIBUTOR WHO FAILS TO COMPENSATE ITS  
12 MOTOR VEHICLE DEALERS FOR PARTS AS REQUIRED HEREIN; TO  
13 AMEND ARKANSAS CODE 4-72-202(1) TO EXPAND THE DEFINITION  
14 OF FRANCHISE UNDER THE FRANCHISE PRACTICES ACT; AND FOR  
15 OTHER PURPOSES."

16  
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18  
19 SECTION 1. Arkansas Code 23-112-308(a)(10) is hereby amended to read as  
20 follows:

21 "(10) On satisfactory proof that any manufacturer, distributor,  
22 distributor branch or division, or factory branch or division has unfairly and  
23 without due regard to the equities of the parties or to the detriment of the  
24 public welfare failed to properly fulfill any warranty agreement or to  
25 adequately and fairly compensate any of its motor vehicle dealers for labor,  
26 parts (compensation for parts for two wheeled vehicles must be at the  
27 manufacturer's suggested retail price), or incidental expenses incurred by the  
28 dealer with regard to factory warranty agreements performed by the dealer."

29

30 SECTION 2. Arkansas Code 23-112-310(a) is hereby amended to read as  
31 follows:

32 "(a) A copy of the delivery and preparation obligations of its motor  
33 vehicle dealers and a schedule of the compensation to be paid to its motor  
34 vehicle dealers for the work and services they shall be required to perform in  
35 connection with the delivery and preparation obligations shall be filed with  
36 the commission by every licensed motor vehicle manufacturer and shall

1 constitute the dealer's only responsibility for product liability as between  
2 the dealer and the manufacturer."

3

4       SECTION 3. Arkansas Code 23-112-103(17) is hereby amended to read as  
5 follows:

6       "(17) 'Broker' means a person who for any valuable consideration,  
7 whether received directly or indirectly, arranges or offers to arrange a  
8 transaction involving the sale, for purposes other than resale of a new motor  
9 vehicle and who is not:

10       (A) A dealer or bona fide agent or employee of a new motor vehicle  
11 dealer;

12       (B) A representative or bona fide agent or employee of a manufacturer,  
13 factory branch, or factory representative of new motor vehicles;

14       (C) A representative or bona fide agent or employee of a distributor or  
15 distributor branch of new motor vehicles; or

16       (D) At any point in the transaction, the bona fide owner of the vehicle  
17 involved in the transaction."

18

19       SECTION 4. Arkansas Code 23-112-403(2) is hereby amended by adding at  
20 the end thereof seven new subdivisions to read as follows:

21       "(K) Notwithstanding the terms of any franchise agreement, fails to pay  
22 to a dealer or any lienholder in accordance with their respective interests  
23 after the termination of franchise, the dealer cost plus any charges by the  
24 manufacturer, distributor, or a representative for distribution, delivery, and  
25 taxes, less all allowances paid to the dealer by the manufacturer,  
26 distributor, or representative for new, unsold, undamaged, and complete motor  
27 vehicles of current model year and one (1) year prior model year in the  
28 dealer's inventory;

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

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

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

11           (O) the cost of transporting, handling, packing, and loading of motor  
12 vehicles, parts, signs, tools, and equipment subject to repurchase;

13           (P) any sums due as provided by paragraph (A) of this subdivision  
14 within sixty (60) days after termination of a franchise and any sums due as  
15 provided by paragraphs (B) through (E) of this subdivision within ninety (90)  
16 days after termination of a franchise. As a condition of payment, the dealer  
17 is to comply with reasonable requirements with respect to the return of  
18 inventory as are set out in the terms of the franchise agreement. A  
19 manufacturer, distributor, or representative who fails to pay those sums  
20 within the prescribed time or at such time as the dealer and lienholder, if  
21 any, proffer good title prior to the prescribed time for payment, is liable to  
22 the dealer for:

23           (1) the greatest of dealer cost, fair market value, or current price of  
24 the inventory;

25           (2) interest on the amount due calculated at the rate applicable to a  
26 judgment of a court; and

27           (3) reasonable attorney's fees and costs.

28           (Q) The terms and conditions of subdivision (K) shall not apply to  
29 manufacturers of mobile homes, as defined in 27-14-207, when mobile home  
30 dealers undertake to terminate, cancel or fail to renew an agreement.

31

32           SECTION 5. Arkansas Code 4-72-202(1) is hereby amended to read as  
33 follows:

34           "(1) 'Franchise' means a written or oral agreement for a definite or  
35 indefinite period, in which a person grants to another person a license to use

1 a trade name, trademark, service mark, or related characteristic within an  
2 exclusive or non-exclusive territory, or to sell or distribute goods or  
3 services with an exclusive or non-exclusive territory, at wholesale, retail,  
4 by lease agreement, or otherwise. However, a franchise is not created by a  
5 lease, license or concession granted by a retailer to sell goods or furnish  
6 services on or from premises which are occupied by the retailer-grantor  
7 primarily for its own merchandising activities."

8

9 SECTION 6. All provisions of this Act of a general and permanent nature  
10 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
11 Revision Commission shall incorporate the same in the Code.

12

13 SECTION 7. If any provision of this Act or the application thereof to  
14 any person or circumstance is held invalid, such invalidity shall not affect  
15 other provisions or applications of the Act which can be given effect without  
16 the invalid provision or application, and to this end the provisions of this  
17 Act are declared to be severable.

18

19 SECTION 8. All laws and parts of laws in conflict with this Act are  
20 hereby repealed.

21

22

23 /s/ Myra Jones

24

25 APPROVED: 3-8-91

26

27

28

29