

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.

Act 756 of the Regular Session

As Engrossed: S3/10/09 S3/17/09

A Bill

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

SENATE BILL 781

4
5 By: Senator Teague
6
7

8 **For An Act To Be Entitled**

9 AN ACT TO AMEND THE ARKANSAS MOTOR VEHICLE
10 COMMISSION ACT; AND FOR OTHER PURPOSES.
11

12 **Subtitle**

13 TO AMEND THE ARKANSAS MOTOR VEHICLE
14 COMMISSION ACT.
15

16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code § 23-112-103(8), regarding the definition of
20 "conversion" under the Arkansas Motor Vehicle Commission Act, is amended to
21 read as follows:

22 (8) "Conversion" means a motor vehicle other than an ~~ambulance~~
23 ~~or firefighting vehicle~~ exempted specialty vehicle that is substantially
24 modified by a person, firm, or corporation other than the manufacturer or
25 distributor of the chassis of the motor vehicle and ~~which~~ that has not been
26 the subject of a retail sale;
27

28 SECTION 2. Arkansas Code § 23-112-103(18), regarding the definition of
29 "motor vehicle" under the Arkansas Motor Vehicle Commission Act, is amended
30 to read as follows:

31 (18) "Motor vehicle" means ~~any motor-driven~~ a self-propelled
32 vehicle having two (2) or more wheels that has as its primary purpose the
33 transportation of a person, including, but not limited to, without limitation
34 all-terrain vehicles, automobiles, trucks, motorcycles, motor-driven cycles,
35 motor scooters, and motor homes;



1
2 SECTION 3. Arkansas Code § 23-112-103(19)(A)(i), regarding the
3 definition of "motor vehicle dealer" under the Arkansas Motor Vehicle
4 Commission Act, is amended to read as follows:

5 (19)(A)(i) "Motor vehicle dealer" means ~~any~~ a person that is:
6 (a) engaged Engaged in the business of selling,
7 offering to sell, soliciting, or advertising the sale of servicing or
8 repairing motor vehicles under a manufacturer's warranty, regardless of the
9 medium used, or possessing motor vehicles for the purpose of resale, either
10 on his or her own account or on behalf of another, either as his or her
11 primary business or incidental thereto; and
12 (b) Located at an established and permanent
13 place of business under a franchise, sales and service agreement, or a bona
14 fide contract in effect with a manufacturer or distributor.

15
16 SECTION 4. Arkansas Code § 23-112-103(31), regarding the definition of
17 "used motor vehicle" under the Arkansas Motor Vehicle Commission Act, is
18 amended to read as follows:

19 (31)(A) "Used motor vehicle" means ~~any~~ a motor vehicle:
20 (i) that has previously For which title has been
21 sold, bargained, exchanged, given away, or the title thereto transferred from
22 the person or corporation who first took title ownership from the
23 manufacturer, distributor, dealer, or agents thereof; or

24 (ii) So used as to have become what is commonly
25 known as a "second hand motor vehicle" or a "previously owned motor vehicle".

26 (B) ~~In the event of a transfer that is reflected on the~~
27 ~~statement of origin from the original franchise dealer to any other dealer,~~
28 ~~individual, or corporation other than a franchise dealer of the same make of~~
29 ~~vehicle, the vehicle shall be considered a used motor vehicle~~ A new motor
30 vehicle shall not be considered a used motor vehicle unless the motor vehicle
31 has been:

32 (i) Placed in actual operation; and
33 (ii) Not held for resale by an owner that has:
34 (a) Been granted a certificate of title; and
35 (b) Registered the motor vehicle under the
36 Uniform Motor Vehicle Administration, Certificate of Title, and Antitheft

1 Act, § 27-14-101 et seq.;
2

3 SECTION 5. Arkansas Code § 23-112-103, regarding definitions under the
4 Arkansas Motor Vehicle Commission Act, is amended to add an additional
5 subdivision to read as follows:

6 (34)(A) "Line make of a motor vehicle" means a group or series
7 of motor vehicles that have the same brand identification or brand name,
8 based upon the manufacturer's trademark, trade name, or logo.

9 (B) "Line make of a motor vehicle" does not include motor
10 homes; and

11 (35) "Line make of a motor home" means a specific series of
12 recreational vehicle products that:

13 (A) Are identified by a common series trade name or
14 trademark;

15 (B) Are targeted to a particular market segment, as
16 determined by their décor, features, equipment, size, weight, and price
17 range;

18 (C) Have lengths and interior floor plans that distinguish
19 the recreational vehicles with substantially the same decor, equipment,
20 features, price, and weight;

21 (D) Belong to a single, distinct classification of
22 recreational vehicle product type having a substantial degree of commonality
23 in the construction of the chassis, frame, and body; and

24 (E) The manufacturer-dealer agreement authorizes a dealer
25 to sell.

26
27 SECTION 6. Arkansas Code § 23-112-301(a), regarding the licensing of
28 new motor vehicle dealers, is amended to read as follows:

29 (a) Notwithstanding any other statute, the following acts are declared
30 to be unlawful:

31 (1) The violation of any of the provisions of this chapter; and

32 (2) For any person to engage in business as, or serve in the
33 capacity of, or act as a new motor vehicle dealer, motor vehicle salesperson,
34 motor vehicle lessor, manufacturer, importer, distributor, factory branch or
35 division, distributor branch or division, factory representative, distributor
36 representative, second-stage manufacturer, or converter, as such, in ~~this~~

1 ~~state~~ Arkansas without first obtaining a license therefor as provided in this
2 chapter, regardless of whether or not the person maintains or has a place of
3 business in ~~this state~~ Arkansas.

4
5 SECTION 7. Arkansas Code § 23-112-302(e), regarding the application
6 for license as a new motor vehicle dealer, is amended to read as follows:

7 (e) The applicant for a license as a new motor vehicle dealer ~~must~~
8 shall furnish satisfactory evidence that the applicant:

9 (1) Maintains adequate space in the building or structure
10 wherein the applicant's established business is conducted for the display of
11 new motor vehicles, or will have the facilities within a reasonable time
12 after receiving a license; ~~and~~

13 (2) Has or will have adequate facilities in the building or
14 structure ~~for the repair and servicing of~~ to perform repair and service work
15 on motor vehicles and ~~the~~ adequate space for storage of new parts and
16 accessories for the motor vehicles; and

17 (3) Will perform repair and warranty services on a motor vehicle
18 at the licensed location.

19
20 SECTION 8. Arkansas Code § 23-112-307 is amended to read as follows:

21 23-112-307. Expiration of license.

22 ~~(a) Unless the Arkansas Motor Vehicle Commission shall by regulation~~
23 ~~provide~~ by rule provides to the contrary, all licenses issued to:

24 (1) ~~manufacturers~~ Manufacturers, distributors, factory or
25 distributor branches, importers, second-stage manufacturers, converters, and
26 their representatives expire June 30 following the date of issue; and

27 (2) ~~motor~~ Motor vehicle dealers, motor vehicle salespersons, and
28 motor vehicle lessors shall expire December 31 following the date of issue.

29 ~~(b) Unless the commission shall by regulation provide otherwise, all~~
30 ~~licenses issued to motor vehicle lessors, representatives, and motor vehicle~~
31 ~~salespersons shall expire June 30 following the date of issue.~~

32 ~~(c) Unless the commission by regulation provides to the contrary,~~
33 ~~licenses relating to motor vehicles having fewer than four (4) wheels shall~~
34 ~~expire December 31 following the date of issue.~~

35
36 SECTION 9. Arkansas Code § 23-112-308(a), regarding the denial,

1 revocation, and suspension of a new motor vehicle dealer license, is amended
2 to add additional subdivisions to read as follows:

3 (25) Using or permitting the use of a temporary cardboard
4 buyer's tag assigned to the dealer for any purpose other than permitted under
5 § 27-14-1705; and

6 (26) Failure of a dealer to submit or deliver a certificate of
7 title or manufacturer's certificate of origin within a reasonable period of
8 time.

9
10 SECTION 10. Arkansas Code § 23-112-310(d)(1), regarding delivery,
11 preparation, and warranty obligations, is amended to read as follows:

12 (d)(1)(A) ~~In no event shall any~~ A manufacturer, distributor,
13 distributor branch or division, or factory or division branch shall not pay
14 to any of its motor vehicle dealers a labor rate per hour or parts price for
15 warranty work that is less than that charged by the dealer to its retail
16 customers provided the rate is reasonable compared to other same line-make
17 dealers in the dealer's relevant market area or the dealer's competitive
18 market area.

19 (B) Conversely, ~~no~~ a dealer shall not charge to its
20 manufacturer, distributor, distributor branch or division, or factory branch
21 or division a labor rate per hour or parts price in excess of the rate
22 charged to its retail customers.

23 (C) In the case of a motor home, a warrantor shall
24 reimburse the dealer for warranty parts at the actual wholesale cost plus a
25 minimum thirty percent (30%) handling charge and the cost, if any, of freight
26 to return the warranty parts to the warrantor.

27
28 SECTION 11. Arkansas Code § 23-112-311(c) is amended to read as
29 follows:

30 (c) In determining whether good cause has been established for not
31 entering into a franchise establishing or relocating an additional new motor
32 vehicle dealer for the same line make, the commission shall take into
33 consideration the existing circumstances, including, ~~but not limited to~~
34 without limitation:

35 (1) Permanency of the investment of both the existing and
36 proposed new motor vehicle dealers;

1 (2) Growth or decline in population and new ~~car~~ motor vehicle
2 registrations in the relevant market area;

3 (3) Effect on the consuming public in the relevant market area;

4 (4) Whether it is injurious or beneficial to the public welfare
5 for an additional new motor vehicle dealer to be established;

6 (5) Whether the new motor vehicle dealers of the same line make
7 in that relevant market area are providing adequate competition and
8 convenient customer care for the motor vehicles of the line make in the
9 market area which shall include the adequacy of motor vehicle sales and
10 service facilities, equipment, supply of motor vehicle parts, and qualified
11 service personnel; and

12 (6) Whether the establishment of an additional new motor vehicle
13 dealer would increase competition and, therefore, be in the public interest.
14

15 SECTION 12. Arkansas Code § 23-112-313 is amended to read as follows:
16 23-112-313. Warranty agreements.

17 (a) Every manufacturer, distributor, wholesaler, distributor branch or
18 division, factory branch or division, or wholesale branch or division shall
19 properly fulfill any warranty or recall agreement and adequately and fairly
20 compensate each of its motor vehicle dealers for labor and parts.

21 (b)~~(1)~~ ~~In no event shall the~~ The compensation shall not fail to
22 include reasonable compensation for diagnostic work, ~~as well as repair~~
23 ~~service, and labor, and parts.~~

24 (c)(1) Time allowances for the diagnosis and performance of warranty
25 or recall work and service shall be reasonable and adequate for the work to
26 be performed.

27 (2) In the determination of what constitutes reasonable
28 compensation for warranty or recall work and service under this subsection,
29 the principal factor to be ~~given consideration shall be~~ considered is the
30 *prevailing wage rates, exclusive of routine maintenance, that are being paid*
31 *charged by the ~~dealer~~ dealers in the relevant market area in which the motor*
32 *vehicle dealer is doing business, ~~and.~~*

33 (3) ~~in no event shall the~~ The compensation of a motor vehicle
34 dealer for warranty or recall service shall not be less than the rates
35 charged by the dealer for like service to retail customers for nonwarranty
36 service and repairs provided the rate is reasonable compared to other same

1 line-make dealers in the dealer's relevant market area or the dealer's
 2 competitive market area.

3 (d)(1)(A) The pricing for a recalled part shall not be reduced to an
 4 amount that is less than the original dealer cost or price for the same part
 5 unless the manufacturer obtains a discounted rate for the recalled part from
 6 a supplier.

7 (B) A recalled part is considered the same part if it is
 8 substantially the same part regardless of the part number.

9 (2) Additionally, there shall be no requirement for a part-by-
 10 part analysis is not required in determining to determine the retail rate for
 11 parts.

12 (3) The parts mark-up shall not be substituted for a handling
 13 allowance or similar pricing amount that results in the reduction of
 14 compensation for the dealer.

15 ~~(3)(A)(e)(1)~~ (1) All claims under this ~~subsection~~ section, either original
 16 or resubmitted, made by motor vehicle dealers for the labor and parts shall
 17 be either approved or disapproved within thirty (30) days following their
 18 approval or disapproval.

19 ~~(B)(i)(2)(A)(i)~~ (i) The motor vehicle dealer who submits a claim
 20 which is disapproved shall be notified in writing of the disapproval within
 21 the same period, and ~~each such~~ the notice shall state the specific grounds
 22 upon which the disapproval is based.

23 (ii) The motor vehicle dealer ~~shall be~~
 24 ~~permitted to~~ may correct and resubmit ~~such the~~ disapproved claims within
 25 thirty (30) days of receipt of disapproval.

26 ~~(ii)(B)~~ (B) Any claims not specifically disapproved in writing
 27 within thirty (30) days from their submission shall be deemed approved, and
 28 payment shall follow within thirty (30) days.

29 ~~(iii)(3)(A)~~ (3)(A) ~~No~~ A claim shall not be disapproved because ~~of~~
 30 clerical error was made ~~which that~~ does not render the amount of the claim
 31 incorrect.

32 (B) However, a dealer may contest the disapproval
 33 through the manufacturer's appeals process.

34 ~~(C)(i)(4)(A)~~ (4)(A) The manufacturer or franchiser ~~shall have the right~~
 35 ~~to~~ may:

36 (i) require Require documentation for claims;

1 ~~(ii) and to audit~~ Audit the claims within a
 2 one-year period from the date the claim was paid or credit issued by the
 3 manufacturer or franchiser; and

4 ~~(iii) to charge~~ Charge back any false or
 5 unsubstantiated claims.

6 ~~(ii)(B)~~ (B) The audit and charge-back provisions of this
 7 ~~subdivision (b)(3)~~ subsection (e) also apply to all other incentive and
 8 reimbursement programs for a period of twelve (12) months after the date of
 9 the transactions that are subject to audit by the franchiser.

10 ~~(iii)(C)~~ (C) However, the manufacturer retains the right to
 11 charge back any fraudulent claim if the manufacturer establishes in a court
 12 of competent jurisdiction in this state that the claim is fraudulent within a
 13 period not to exceed two (2) years from the date of the claim in question.

14 ~~(iv)(a)(D)(i)~~ (i) A dealer may file an appeal with the
 15 Arkansas Motor Vehicle Commission to protest any chargeback under this
 16 subdivision ~~(b)(3)(C)~~ (e)(4) within ~~thirty (30) days~~ ninety (90) days of
 17 notification by the manufacturer or distributor.

18 ~~(b)(ii)~~ (ii) If a dealer files an appeal of the
 19 chargeback with the commission, the manufacturer or distributor shall not
 20 levy the chargeback until the appeal is resolved. The commission shall hold a
 21 hearing on the matter no later than one hundred twenty (120) days from the
 22 time the appeal is filed unless all parties have otherwise agreed to settle
 23 the matter.

24 ~~(e)(iii)~~ (iii) An appeal by the licensee under this
 25 subdivision ~~(b)(3)(C)(iv)~~ (e)(4)(D) shall be in accordance with ~~the~~
 26 ~~provisions of~~ § 23-112-501 et seq.

27 ~~(e)(f)~~ (f) This section ~~shall~~ does not apply to compensation for parts of
 28 a motor home other than parts of a motorized chassis, engine, and power
 29 train.

30
 31 SECTION 13. Arkansas Code § 23-112-403(a)(2)(C)(v), regarding
 32 manufacturers, distributors, second-stage manufacturers, importers, and
 33 converters, is amended to read as follows:

34 ~~(v)(a) In the event of the termination or~~
 35 ~~cancellation of~~ If the franchise agreement, sales and service agreement, or
 36 bona fide contract or selling agreement is terminated or cancelled, the

1 terminating or canceling party shall notify the commission of the termination
 2 or cancellation of the franchise or selling agreement at least sixty (60)
 3 days before the effective date.

4 (b) For motor vehicles other than motor homes,
 5 this subdivision (a)(2)(C)(v) applies to both voluntary and involuntary
 6 termination or cancellation of the franchise or selling agreement.

7 (c)(1) For motor homes, this subdivision
 8 (a)(2)(C)(v) applies to both the voluntary dealer-initiated termination or
 9 cancellation of all motor home franchise or selling agreements and the
 10 involuntary manufacturer-initiated termination or cancellation of any one (1)
 11 or more motor home franchise or selling agreements.

12 (2) This subdivision only applies to the
 13 voluntary dealer initiated termination of one (1) of two (2) or more line
 14 makes of motor homes if the dealer can show due cause to terminate or cancel
 15 the motor home franchise or selling agreement;

16 SECTION 14. Arkansas Code § 23-112-403(a)(2)(K), regarding
 17 manufacturers, distributors, second-stage manufacturers, importers, and
 18 converters, is amended to read as follows:

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

22 (i) The dealer cost plus any charges by the
 23 manufacturer, distributor, or a representative for distribution, delivery,
 24 and taxes, less all allowances paid to the dealer by the manufacturer,
 25 distributor, or representative for new, unsold, undamaged, and complete motor
 26 vehicles of current model year and one (1) year prior model year in the
 27 dealer's inventory;

28 (ii) The dealer cost of each new, unused, undamaged,
 29 and unsold part or accessory, ~~if the part or accessory is in the current~~
 30 ~~parts catalogue, and if the part or accessory was purchased by the dealer~~
 31 ~~either directly from the manufacturer or distributor or from an outgoing~~
 32 ~~authorized dealer as a part of the dealer's initial inventory~~

33 (a) Was purchased from the manufacturer by the
 34 dealer and is in the original package;

35 (b) Is identical to a part or accessory in the
 36 current parts catalogue except for the number assigned to the part or

1 accessory; or

2 (c) Was purchased in the ordinary course of
3 business by the dealer from another authorized dealer so long as the
4 authorized dealer purchased the part or accessory directly from the
5 manufacturer or distributor or from an outgoing authorized dealer as part of
6 the dealer's initial inventory;

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

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

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

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

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

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

32 (viii) Any sums due as provided by subdivision
33 (a)(2)(K)(i) of this section within sixty (60) days after termination of a
34 franchise and any sums due as provided by subdivisions (a)(2)(K)(ii)-(vii) of
35 this section within ninety (90) days after termination of a franchise. As a
36 condition of payment, the dealer ~~is to~~ shall comply with reasonable

1 requirements with respect to the return of inventory as are set out in the
 2 terms of the franchise agreement. A manufacturer, distributor, or
 3 representative who fails to pay those sums within the prescribed time or at
 4 such time as the dealer and lienholder, if any, proffer good title ~~prior to~~
 5 before the prescribed time for payment, is liable to the dealer for:

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

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

10 (c) *Reasonable attorney's fees and costs; or*

11 (ix) Obligations under this subdivision (a)(2)(K) do
 12 not apply if the termination is a result of the conviction of the franchisee
 13 in a court of competent jurisdiction of an offense that is punishable by a
 14 term of imprisonment in excess of one (1) year and the offense is
 15 substantially related to the business conducted pursuant to the franchise;
 16

17 SECTION 15. Arkansas Code § 23-112-403(a)(2)(M), regarding
 18 manufacturers, distributors, second-stage manufacturers, importers, and
 19 converters, is amended to read as follows:

20 (M)(i) To offer to sell or to sell any motor vehicle to a
 21 consumer, except through a licensed new motor vehicle dealer holding a
 22 franchise, a sales and service agreement, or a bona fide contract for the
 23 line make covering the new motor vehicle or as may otherwise be provided in
 24 subdivision (a)(3) of this section.

25 (ii) This subdivision (a)(2)(M) ~~shall~~ does not apply
 26 to manufacturer sales of new motor vehicles to the federal government,
 27 charitable organizations, or employees of the manufacturer;
 28

29 SECTION 16. Arkansas Code § 23-112-404 is amended to read as follows:

30 23-112-404. Motor vehicle lessors.

31 It ~~shall be~~ is unlawful for a motor vehicle lessor or any agent,
 32 employee, or representative thereof:

33 (1) To represent and to offer for sale or to sell as a new ~~or~~
 34 ~~unused~~ motor vehicle ~~any~~ a motor vehicle ~~which~~ that has been used or was
 35 intended to be used and operated for leasing or rental purposes or which is
 36 otherwise a used motor vehicle;

1 (2) To resort to, use, or employ any false, fraudulent,
 2 deceptive, or misleading advertising or representations in connection with
 3 the business of leasing or renting motor vehicles; or

4 (3) To sell or offer to sell a motor vehicle from an unlicensed
 5 location.

6
 7 SECTION 17. Arkansas Code § 23-112-406(b), regarding requirements for
 8 acting as a broker, is amended to read as follows:

9 (b)(1) To effectuate this chapter, ~~the definition of~~ “arranges or
 10 offers to arrange a ~~transition~~ transaction” means soliciting or referring
 11 buyers for new motor vehicles for a fee, commission, or other valuable
 12 consideration.

13 (2) “Arranges or offers to arrange a transaction” does not
 14 include Advertising is not included in this definition advertising as long as
 15 the person’s business primarily includes the business of broadcasting,
 16 printing, publishing, or advertising for others in their own names.

17
 18 SECTION 18. Arkansas Code § 23-112-501 is amended to read as follows:
 19 23-112-501. Right to hearing.

20 (a)(1) The Arkansas Motor Vehicle Commission shall not+ may
 21 ~~(1) Deny deny~~ an application for a license ~~without first giving~~
 22 ~~the applicant a hearing, or an opportunity to be heard, on the question of~~
 23 ~~whether he or she is qualified under the provisions of this chapter to~~
 24 ~~receive the license applied for; if the application is considered inadequate~~
 25 after the initial review by the executive director.

26 (2) Within thirty (30) days after the executive director denies
 27 an application under subdivision (a)(1) of this section, the affected
 28 applicant may protest the executive director’s decision and request a hearing
 29 before the commission.

30 (b) The Arkansas Motor Vehicle Commission shall not:

31 ~~(2)(1)~~ Revoke or suspend a license without first giving the
 32 licensee a hearing, or an opportunity to be heard, on the question of whether
 33 there are sufficient grounds under ~~the provisions of~~ this chapter upon which
 34 to base the revocation or suspension; or

35 ~~(3)(2)~~ Impose a civil penalty pursuant to § 23-112-314 without
 36 first giving the respondent a hearing pursuant to the Arkansas Administrative

1 Procedure Act, § 25-15-201 et seq.

2

3 SECTION 19. Arkansas Code § 23-112-503(d), regarding the notice and
4 location of a hearing before the Arkansas Motor Vehicle Commission, is
5 amended to read as follows:

6 ~~(d)(1) Any hearing shall be held in the county of the residence of the~~
7 ~~party whose rights may be affected thereby or the county of that party's~~
8 ~~principal place of business.~~

9 ~~(2) If the party is a nonresident of the state, the hearing~~
10 ~~shall be held in the county where the principal office of the commission is~~
11 ~~located unless both parties agree to an alternate location.~~

12

13 SECTION 20. Arkansas Code § 27-14-1705 is amended to read as follows:

14 27-14-1705. Temporary cardboard buyer's tags.

15 (a) A dealer shall issue to a person who buys an unregistered vehicle
16 one (1) temporary cardboard buyer's tag for the vehicle.

17 (b)(1) The temporary cardboard buyer's tag is valid for the operation
18 of the vehicle until the earlier of:

19 (A) The date on which the vehicle is registered; or

20 (B) The thirtieth day after the date of purchase.

21 (2) If the date that a transferee of a motor vehicle must
22 register the vehicle is extended under § 27-14-903(a)(1), the dealer may
23 issue one (1) additional temporary cardboard buyer's tag to the transferee,
24 to expire thirty (30) days from the date that the additional temporary
25 cardboard buyer's tag was issued.

26 (3) A temporary cardboard buyer's tag also may be used for:

27 (A) A demonstration vehicle for a period of time not to
28 exceed seventy-two (72) hours for test drive purposes; or

29 (B) A loaner vehicle for a period of time not to exceed
30 fourteen (14) days to allow repairs on a vehicle.

31 (4) A temporary cardboard buyer's tag shall not be placed on
32 work or service vehicles owned by a dealer, manufacturer, or transporter.

33 (c)(1) The dealer shall show in ink on the temporary cardboard buyer's
34 tag the actual date of sale and any other information required by the
35 Director of the Department of Finance and Administration.

36 (2) The dealer ~~shall be~~ is responsible for affixing the

1 temporary cardboard buyer's tag to the vehicle as provided in this section.

2 (d) The temporary cardboard buyer's tag under this section shall be
3 placed at the location provided for the permanent motor vehicle license
4 plate.

5 (e) The dealer is responsible for the safekeeping and distribution of
6 each temporary cardboard buyer's tag that the dealer obtains from the
7 director.

8 (f) The director shall provide the specifications, form, and color of
9 the temporary cardboard buyer's tag.

10 (g)(1)(A) The dealer ~~shall be~~ is responsible for paying to the
11 director a fee to be set by the director, which shall not exceed one dollar
12 (\$1.00), for each temporary cardboard buyer's tag. The dealer shall pass this
13 fee on to the buyer to whom the tag was issued.

14 (B) The fee shall be collected by the director before
15 issuance of the temporary cardboard buyer's tag to the dealer.

16 (C) ~~No dealer shall be allowed to~~ A dealer shall not
17 charge a customer a fee for a temporary cardboard buyer's tag higher than
18 that charged to the dealer by the director.

19 (2) The gross receipts or gross proceeds derived from the sale
20 or issuance of temporary cardboard buyer's tags under this section ~~shall be~~
21 are exempt from the Arkansas gross receipts tax levied by the Arkansas Gross
22 Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas compensating use
23 tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.,
24 and any other state or local tax administered under those chapters.

25 (3) All fees collected by the director under this section shall
26 be deposited into the State Treasury, and the Treasurer of State shall credit
27 them as general revenues to the General Revenue Fund Account of the State
28 Apportionment Fund.

29 (h) For each temporary cardboard buyer's tag provided to a buyer by
30 the dealer, the dealer shall retain documentation containing:

- 31 (1) The dealer's name;
32 (2) The buyer's name;
33 (3) The date the temporary cardboard buyer's tag was issued;
34 (4) The vehicle's vehicle identification number;
35 (5) The make and model of the vehicle; and
36 (6) The expiration date of the temporary cardboard buyer's tag.

1 (i) To purchase temporary cardboard buyer's tags under this
 2 subchapter, the person shall establish that he or she is a licensed:

3 (1) New motor vehicle dealer under § 23-112-301;

4 (2) Used motor vehicle dealer under § 23-112-607;

5 (3) Manufacturer of motor vehicles under this chapter; or

6 (4) Transporter of motor vehicles under this chapter.

7 ~~(i)~~(j)(1) Any dealer, manager, salesperson, or employee of the dealer
 8 who pleads guilty or nolo contendere to or who is found guilty of the misuse
 9 of a temporary cardboard buyer's tag or of allowing anyone else to misuse a
 10 temporary cardboard buyer's tag is guilty of a violation under § 5-1-108 and
 11 shall be fined not more than two hundred fifty dollars (\$250) for the first
 12 offense, not more than five hundred dollars (\$500) for the second offense,
 13 and not more than one thousand dollars (\$1,000) for the third and subsequent
 14 offenses.

15 (2) In addition to criminal penalties under this subsection (j),
 16 the use of temporary cardboard buyer's tags in a manner not authorized under
 17 this section may result in the denial, revocation, or suspension of the
 18 license of the new motor vehicle dealer, used motor vehicle dealer,
 19 manufacturer, or transporter.

20 ~~(j)~~(k) This section ~~shall~~ does not apply to an owner or lessee of a
 21 registered motor vehicle who elects to display a license plate on a
 22 replacement motor vehicle under § 27-14-902(a)(3)(B).
 23

24 SECTION 21. Arkansas Code § 14-22-101(8), regarding the definition of
 25 "used or secondhand motor vehicles, equipment, or machinery" used for county
 26 purchasing procedures, is amended to read as follows:

27 (8)(A) "Used or secondhand motor vehicles, equipment, or
 28 machinery" means any motor vehicles, equipment, or machinery at least two (2)
 29 years in age from the date of original manufacture or that has at least five
 30 hundred (500) working hours' prior use or ten thousand (10,000) miles' prior
 31 use.

32 (B)(i) Any purchase of a used motor vehicle, equipment, or
 33 machinery shall be accompanied by a statement in writing from the vendor on
 34 the bill of sale or other document that the motor vehicle, equipment, or
 35 machinery is at least two (2) years in age from the date of original
 36 manufacture or has been used a minimum of five hundred (500) hours or driven

1 a minimum of ten thousand (10,000) miles.

2 (ii) This statement shall be filed with the county
3 clerk at the time of purchase.

4

5 SECTION 22. Arkansas Code § 14-22-106 is amended to read as follows:
6 14-22-106. Purchases exempted from soliciting bids.

7 The following listed commodities may be purchased without soliciting
8 bids:

9 (1) Perishable foodstuffs for immediate use;

10 (2) Unprocessed feed for livestock and poultry;

11 (3) Advanced emergency medical services provided by a nonprofit
12 corporation and proprietary medicines when specifically requested by a
13 professional employee;

14 (4) Books, manuals, periodicals, films, and copyrighted
15 educational aids for use in libraries and other informational material for
16 institutional purposes;

17 (5) Scientific equipment and parts therefor;

18 (6) Replacement parts and labor for repairs of machinery and
19 equipment;

20 (7) Commodities available only from the federal government;

21 (8)(A) Any commodities needed in instances in which an
22 unforeseen and unavoidable emergency has arisen in which human life, health,
23 or public property is in jeopardy.

24 ~~(B) However, no such~~ An emergency purchase under
25 subdivision (8)(A) of this section shall not be approved unless a statement
26 in writing ~~shall be~~ is attached to the purchase order describing the
27 emergency necessitating the purchase of ~~such~~ the commodity without
28 competitive bidding;

29 (9) Utility services, the rates for which are subject to
30 regulation by a state agency or a federal regulatory agency;

31 (10) Sand, gravel, soil, lumber, used pipe, or used steel;

32 (11) Used or secondhand motor vehicles, machinery, or equipment,
33 except that a used or secondhand motor vehicle that has been under lease to a
34 county when the vehicle has fewer than ten thousand (10,000) miles of use ~~may~~
35 shall not be purchased by the county when it has been used ten thousand
36 (10,000) miles or more except upon competitive bids as provided ~~for~~ in this

1 chapter;

2 (12) Machinery, equipment, facilities, or other personal
3 property purchased or acquired for, or in connection with, the securing and
4 developing of industry under ~~or pursuant to the provisions of Arkansas~~
5 ~~Constitution, Amendment 49 [repealed], the~~ Municipalities and Counties
6 Industrial Development Revenue Bond Law, § 14-164-201 et seq., or any other
7 provision of law pertaining to the securing and developing of industry;

8 (13) Registered livestock to be used for breeding purposes;

9 (14) Motor fuels, oil, asphalt, asphalt oil, and natural gas;

10 (15) Motor vehicles, equipment, machinery, material, or supplies
11 offered for sale at public auction or through a process requiring sealed
12 bids; ~~and~~

13 (16) All goods and services that are regularly provided to state
14 agencies and county government by the Department of Correction's various
15 penal industries;

16 (17) New motor vehicles from a motor vehicle dealer licensed
17 under the Arkansas Motor Vehicle Commission Act, § 23-112-101 et seq., if the
18 motor vehicle is purchased for an amount not to exceed the fleet price
19 awarded by the Office of State Procurement and in effect at the time the
20 county submits the purchase order for the same make and model motor vehicle;
21 and

22 (18) The renewal or extension of the term of an existing
23 contract.

24
25 SECTION 23. Arkansas Code Title 14, Chapter 58, Subchapter 1 is
26 amended to add an additional section to read as follows:

27 14-58-104. Specific purchases and contracts.

28 (a) The municipal governing body of a city of the first class, city of
29 the second class, or an incorporated town may purchase the following
30 commodities without soliciting bids:

31 (1) Motor fuels, oil, asphalt, asphalt oil, and natural gas; and

32 (2) New motor vehicles from a motor vehicle dealer licensed
33 under the Arkansas Motor Vehicle Commission Act, § 23-112-101 et seq., if the
34 motor vehicle is purchased for an amount not to exceed the fleet price
35 awarded by the Office of State Procurement and in effect at the time the
36 municipal governing body of a city of the first class, city of the second

1 class, or an incorporated town submits the purchase order for the same make
2 and model motor vehicle.

3 (b) The municipal governing body of a city of the first class, city of
4 the second class, or an incorporated town may renew or extend the term of an
5 existing contract without soliciting bids.

6
7 SECTION 24. Arkansas Code § 14-58-303(b), regarding the power of
8 municipalities to make purchases and enter into contracts, is amended to read
9 as follows:

10 (b)(1)(A) ~~The~~ Except as provided under § 14-58-104, the municipal
11 governing body of any city of the first class shall provide by ordinance the
12 procedure for making all purchases which do not exceed the sum of twenty
13 thousand dollars (\$20,000).

14 (B) ~~The~~ Except as provided under § 14-58-104, the
15 municipal governing body of any city of the second class or incorporated town
16 may provide by ordinance the procedure for making all purchases.

17 (2)(A)(i) ~~In~~ Except as provided under § 14-58-104, in a city of
18 the first class where the amount of expenditure for any purpose or contract
19 exceeds the sum of twenty thousand dollars (\$20,000), the mayor or the
20 mayor's authorized representative shall invite competitive bidding on the
21 purpose or contract by legal advertisement in any local newspaper.

22 (ii) Bids received pursuant to the advertisement
23 shall be opened and read on the date set for receiving the bids in the
24 presence of the mayor or the mayor's authorized representative.

25 (iii) The mayor or the mayor's authorized
26 representative shall have exclusive power to award the bid to the lowest
27 responsible bidder, but may reject any and all bids received.

28 (B) The governing body by ordinance may waive the
29 requirements of competitive bidding in exceptional situations where this
30 procedure is deemed not feasible or practical or as provided under § 14-58-
31 104.

32
33 SECTION 25. EMERGENCY CLAUSE. It is found and determined by the
34 General Assembly of the State of Arkansas that motor vehicle dealers are
35 experiencing economic difficulties related to the state of the national
36 economy and the motor vehicle industry in particular; that an unprecedented

1 number of motor vehicle dealers may terminate their franchises as a result of
2 these economic conditions; and that this act is immediately necessary to
3 assist dealers that are facing possible termination of their franchise.
4 Therefore, an emergency is declared to exist and this act being immediately
5 necessary for the preservation of the public peace, health, and safety shall
6 become effective on:

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

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

11 (3) If the bill is vetoed by the Governor and the veto is
12 overridden, the date the last house overrides the veto.

13
14 */s/ Teague*

15
16 **APPROVED: 4/1/2009**