

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: S4/22/21

A Bill

HOUSE BILL 1922

5 By: Representative Wardlaw
6 By: Senator Gilmore
7

For An Act To Be Entitled

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

Subtitle

14 TO AMEND THE LAW CONCERNING THE ARKANSAS
15 MOTOR VEHICLE COMMISSION ACT.
16

17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code § 23-112-103(14)(E)(ii), concerning the
21 definition of "franchise", is amended to read as follows:

22 (ii) "Franchise" includes:

23 (a) a written communication from a
24 franchiser to a franchisee by which a duty is imposed upon the franchisee; or

25 (b) Any separate written agreement between the
26 franchisee and the franchiser that materially affects the franchise, as
27 defined in this subdivision (14), whether entered into:

28 (1) Contemporaneously with the creation
29 of the franchise; or

30 (2) Subsequent to the date the franchise
31 was created;
32

33 SECTION 2. Arkansas Code § 23-112-103, concerning the definitions used
34 in the Arkansas Motor Vehicle Commission Act, is amended to add an additional
35 subdivision to read as follows:

36 (37) "Digital platforms" means an online exchange of



1 information, goods, and services between a dealer and a consumer that
2 facilitate retail commercial interactions.

3
4 SECTION 3. Arkansas Code § 23-112-301(c)(4), concerning a license
5 required to engage in certain motor vehicle business, is amended to read as
6 follows:

7 (4) A motor vehicle lessor shall sell or offer for sale used
8 motor vehicles only from an established place of business and only after
9 application to, approval of, and licensure at each location by the
10 commission.

11
12 SECTION 4. Arkansas Code § 23-112-310(d)(1), concerning delivery,
13 preparation, and warranty obligations, is amended to read as follows:

14 (d)(1)(A) A manufacturer, distributor, distributor branch or division,
15 or factory or division branch shall not pay to any of its motor vehicle
16 dealers a labor rate per hour or parts ~~price~~ rate for warranty work that is
17 less than that charged by the dealer to its retail customers, provided the
18 rate is reasonable compared to other same line-make dealers in the dealer's
19 relevant market area or the dealer's competitive market area.

20 (B) Conversely, a dealer shall not charge to its
21 manufacturer, distributor, distributor branch or division, or factory branch
22 or division a labor rate per hour or parts ~~price~~ rate in excess of the rate
23 charged to its retail customers.

24 (C) A manufacturer, distributor, distributor branch or
25 division, or factory branch or division of new motorcycles, motorized cycles,
26 and all-terrain vehicles shall not pay to any new motor vehicle dealers of
27 motorcycles, motorized cycles, and all-terrain vehicles a labor rate per hour
28 or parts ~~price~~ rate for warranty work that is less than that charged by the
29 new motor vehicle dealer to its retail customers, provided that the rate is
30 reasonable compared to other same line make motor vehicle dealers in the new
31 motor vehicle dealer's relevant market area or the new motor vehicle dealer's
32 competitive market area.

33 (D)(i) A motor vehicle dealer may request a change in the
34 labor rate per hour for warranty work or parts markup for warranty work, and
35 the manufacturer, distributor, distributor branch or division, or factory or
36 division branch shall approve or disapprove the request within forty-five

1 (45) days from the date the request is received.

2 (ii) A request submitted under subdivision
3 (d)(1)(D)(i) of this section is approved if a manufacturer, distributor,
4 distributor branch or division, or factory or division branch fails to
5 approve or disapprove the request within forty-five (45) days from the date
6 the request for a change in the labor rate per hour for warranty work or
7 parts markup for warranty work is received.

8 (iii) If the manufacturer or distributor determines,
9 from any set of repair orders submitted under subdivision (d)(1)(D)(i) of
10 this section that the labor rate per hour for warranty work or the parts
11 markup for warranty work is substantially higher or lower than the rate
12 currently on record with the manufacturer or distributor, then the
13 manufacturer or distributor may request additional documentation for a period
14 of either forty-five (45) days prior or forty-five (45) days subsequent to
15 the time period for which the repair orders were submitted.

16
17 SECTION 5. Arkansas Code § 23-112-313(a), concerning warranty
18 agreements, is amended to read as follows:

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

24
25 SECTION 6. Arkansas Code § 23-112-313(c), concerning warranty
26 agreements, is amended to read as follows:

27 (c)(1) Time allowances for the diagnosis and performance of warranty
28 or recall campaign work and service shall be reasonable and adequate for the
29 work to be performed.

30 (2) In the determination of what constitutes reasonable
31 compensation for warranty or recall campaign work and service under this
32 subsection subject to § 23-112-310(d)(1)(A), the principal factor to be
33 considered is the ~~prevailing wage rates, exclusive of routine maintenance,~~
34 ~~that are being charged by the dealers in the relevant market area in which~~
35 ~~the motor vehicle dealer is doing business~~ labor rate per hour or parts rate
36 that is charged by the motor vehicle dealer to the motor vehicle dealer's

1 retail customers, exclusive of routine maintenance performed on a vehicle.

2 (3) The compensation of a motor vehicle dealer for warranty or
3 recall campaign service and parts shall not be less than the rates charged by
4 *the motor vehicle dealer for like service to retail customers for nonwarranty*
5 *service and repairs and parts*, provided the rate is reasonable ~~comparable to~~
6 ~~the rate of other same line make dealers in an economically similar area or~~
7 ~~the dealer's competitive market area.~~

8 (4) The motor vehicle dealer shall calculate the labor rate by
9 dividing the amount of the motor vehicle dealer's total labor sales from any
10 qualified repair orders by the total labor hours that generated the labor
11 charges in the qualified repair orders.

12 (5) The motor vehicle dealer shall calculate the rate for parts
13 by:

14 (A) Determining the total charges for parts from the
15 qualified repair orders submitted; and

16 (B) Dividing the total charges under subdivision (c)(5)(A)
17 of this section by the motor vehicle dealer's total cost of the purchase of
18 those parts, subtracting one (1), and multiplying by one hundred (100) to
19 produce a percentage.

20 (6)(A) As used in this section, "qualified repair order" means a
21 customer pay repair order paid by a retail customer, exclusive of routine
22 maintenance performed on the vehicle.

23 (B) Qualified repair orders used to calculate the labor
24 rate and rate for parts under this section shall be qualified repair orders
25 from the lesser of a:

26 (i) Reasonable look-back period not to exceed one
27 hundred (100) sequential customer pay repair orders with repair dates
28 covering repairs made no more than one hundred eighty (180) days before the
29 submission of the qualified repair order request; or

30 (ii) Ninety-day look-back period with repair dates
31 covering repairs made no more than one hundred eighty (180) days before the
32 submission of the qualified repair order.

33 (C)(i) No repair order shall be excluded from the markup
34 computation solely because it contains repairs using nonoriginal equipment
35 manufacturer parts.

36 (ii) However, only the portion of the repair order

1 that uses original equipment manufacturer parts shall be included in the
2 computation of the motor vehicle dealer's rate for parts.

3 (7) For the purposes of this section, a motor vehicle dealer
4 shall submit a written request to be compensated under this section.

5
6 SECTION 7. Arkansas Code § 23-112-402(2), concerning unlawful
7 practices of a motor vehicle dealer or salesperson, is amended to read as
8 follows:

9 (2) To represent and sell as a new motor vehicle any motor
10 vehicle ~~which that has been used and operated for demonstration purposes or~~
11 ~~which is otherwise~~ a used motor vehicle; or
12

13 SECTION 8. Arkansas Code § 23-112-403(a)(2)(L), concerning unlawful
14 practices of manufacturers, distributors, second-stage manufacturers,
15 importers, or converters, is amended to read as follows:

16 (L)(i) To fail or refuse to offer its same line make
17 franchised dealers, on similar terms and without arbitrary discrimination,
18 all models manufactured for that line make and all trim level and model
19 variants regardless of differences in engine, technology, or vehicle options.

20 (ii) No additional requirements over the
21 requirements originally required to initially obtain a dealership may be
22 required of existing franchised dealers to receive allocation, place an
23 order, or take delivery of any model by that line make, provided that a
24 manufacturer or distributor may require special tools and equipment that are
25 reasonably necessary to sell or service a model or that are reasonably
26 necessary to comply with any law concerning health and safety.

27 (iii) A manufacturer or distributor shall not be in
28 violation of this subsection if the vehicle model required under this
29 subdivision (a)(2)(L) is unavailable due to production limitation, supplier
30 limitation, parts limitation, force majeure, or work stoppage;

31
32 SECTION 9. Arkansas Code § 23-112-403(a)(2)(R), concerning unlawful
33 practices of manufacturers, distributors, second-stage manufacturers,
34 importers, or converters, is amended to read as follows:

35 (R) To unreasonably withhold approval for a new motor
36 vehicle dealer to purchase ~~substantially similar~~ goods and services of

1 substantially similar quality, design, and functionality related to facility
2 changes, alterations, ~~or~~ remodels, equipment, or digital platforms that do
3 not contain or utilize a manufacturer's or distributor's intellectual
4 property or proprietary design from vendors the motor vehicle dealer chooses;

5
6 SECTION 10. Arkansas Code § 23-112-403(a)(2)(S), concerning unlawful
7 practices of manufacturers, distributors, second-stage manufacturers,
8 importers, or converters, is amended to read as follows:

9 (S) To require as a prerequisite to receiving a model or a
10 series of vehicles a motor vehicle dealer to:

11 (i) Pay an extra fee or remodel, renovate, or
12 recondition the motor vehicle dealer's existing facilities ~~unless justified~~
13 ~~by the technological requirements for the sale or service of a vehicle~~ unless
14 justified by the technological requirements for the sale or service of a
15 motor vehicle;

16 (ii) Purchase unreasonable advertising displays,
17 training, tools, or other materials;

18 (iii) Establish exclusive facilities; ~~or~~

19 (iv) Establish dedicated personnel;

20 (v) Utilize certain digital platforms; or

21 (vi) Enroll in a service loaner or demonstration
22 program;

23
24 SECTION 11. Arkansas Code § 23-112-403(a)(2)(U), concerning unlawful
25 practices of manufacturers, distributors, second-stage manufacturers,
26 importers, or converters, is amended to add additional subdivisions to read
27 as follows:

28 (vi) Fail to allow a motor vehicle dealer to
29 maintain and control the vehicle inventory and service provider for the motor
30 vehicle dealer's digital platforms; or

31 (vii)(a) Exercise control over a motor vehicle
32 dealer's digital platforms without the motor vehicle dealer's permission,
33 including without limitation control over the:

34 (1) Price paid by the motor vehicle
35 dealer to utilize the digital platforms, except as provided in a marketing
36 program in which the motor vehicle dealer participates or in a minimum

1 advertised price policy;

2 (2) Content exhibited on the digital

3 platforms; and

4 (3) Data feed that syndicates inventory

5 to digital platforms.

6 (b) This section does not prevent a

7 manufacturer or distributor from requiring that a motor vehicle dealer ensure

8 that the digital platforms and all information exhibited on or contained

9 within the digital platforms do not:

10 (1) Infringe upon or impair the

11 manufacturer's or distributor's intellectual property rights, usage policies,

12 or security requirements; and

13 (2) Disclose the manufacturer or

14 distributor's confidential information.

15 (c) This section does not:

16 (1) Require a manufacturer's or

17 distributor to consider, evaluate, or include a digital platform or digital

18 platform provider in the manufacturer's or distributor's list of approved

19 digital platforms or digital providers;

20 (2) Prohibit a manufacturer or

21 distributor from establishing digital platform requirements under a voluntary

22 program available to a motor vehicle dealer; or

23 (3) Prohibit minimum advertised pricing;

24
25 SECTION 12. Arkansas Code § 23-112-403(a)(3)(A), concerning unlawful
26 practices of manufacturers, distributors, second-stage manufacturers,
27 importers, or converters, is amended to read as follows:

28 (3)(A) For a manufacturer, distributor, distributor branch or
29 division, or factory branch or division, or an officer, agent, or other
30 representative thereof to own, operate, or control any motor vehicle dealer
31 or to directly lease a motor vehicle at retail leasing in this state.

32
33 /s/Wardlaw
34
35
36