

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

HOUSE BILL

1801

By: Representative Murphy

For An Act To Be Entitled

"AN ACT TO AMEND VARIOUS SECTIONS OF CHAPTER 112 OF TITLE 23 OF THE ARKANSAS CODE OF 1987 ANNOTATED TO REMOVE USED CAR DEALERS FROM THE JURISDICTION OF THE MOTOR VEHICLE COMMISSION, TO PREVENT THE COMMISSION FROM REGULATING ADVERTISING, TO PROVIDE FOR APPOINTMENT OF THE COMMISSION'S EXECUTIVE SECRETARY BY THE GOVERNOR AND TO SET HIS QUALIFICATIONS, TO ALLOW USED CAR DEALERS TO SELL NEW CARS WITHOUT BEING LICENSED, AND TO LIMIT THE COMMISSION'S AUTHORITY TO PROHIBIT NEW CAR DEALERS FROM SELLING NEW CARS FOR WHICH THEY DO NOT HOLD A FRANCHISE; AND FOR OTHER PURPOSES."

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

SECTION 1. Arkansas Code 23-112-102 is hereby amended to read as follows:

"23-112-102. Legislative findings - Purpose.

(a) The General Assembly finds and declares that the distribution and sale of motor vehicles in Arkansas vitally affects the general economy of the state and the public interest and the public welfare.

(b) The General Assembly further finds and declares that it is necessary, in the exercise of its police power, to regulate and to license motor vehicle manufacturers, factory branches and divisions, distributors, distributor branches and divisions, distributor representatives, wholesalers, wholesaler branches and divisions, dealers, and salesmen doing business in Arkansas in order to:

(1) Prevent frauds, unfair practices, discrimination, impositions, and other abuses upon the citizens of Arkansas;

(2) Avoid undue control of the independent motor vehicle dealer

by motor vehicle manufacturing and distributing organizations;

(3) Foster and keep alive vigorous and healthy competition;

(4) Prevent the creation or perpetuation of monopolies;

(5) Prevent the practice of requiring the buying of special features, accessories, special models, appliances, and equipment not desired by a motor vehicle dealer or the ultimate purchaser;

(6) Promote and keep alive a sound system of distribution of motor vehicles to the public; and

(7) Promote the public safety and welfare."

SECTION 2. Arkansas Code 23-112-103 is hereby amended to read as follows:

"23-112-103. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Motor vehicle" means any motor-driven vehicle of the sort and kind required to have an Arkansas motor vehicle license and having two (2) or more wheels.

(2) "Motor vehicle dealer" means any person engaged in the business of selling, offering to sell, soliciting, or advertising the sale of new motor vehicles, or possessing new motor vehicles, either on his own account or on behalf of another, either as his primary business or incidental thereto. The term "motor vehicle dealer" does not include:

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

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

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

(D) Specialty vehicle dealers; or

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

(3) "New motor vehicle" means any motor vehicle the legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser and any other motor vehicle defined as new by regulations promulgated by the commission;

(4) "Ultimate purchaser" means, with respect to any new motor vehicle, the first person, other than a motor vehicle dealer purchasing in his capacity as a dealer, who in good faith purchases the new motor vehicle for purposes other than resale. "Ultimate purchaser" shall not include a person who purchases a vehicle for purposes of altering or remanufacturing the motor vehicle for future resale;

(5) "Retail sale" or "sale at retail" means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a new motor vehicle to an ultimate purchaser for use as a consumer;

(6) "Motor vehicle salesman" means any person who is employed as a salesman by a motor vehicle dealer whose duties include the selling or offering for sale of new motor vehicles;

(7) "Commission" means the Arkansas Motor Vehicle Commission created by this chapter;

(8) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new motor vehicles;

(9) "Distributor" means any person, resident or nonresident, who in whole or in part sells or distributes new motor vehicles to motor vehicle dealers, or who maintains distributor representatives;

(10) "Factory branch" means a branch or division office maintained by a person, firm, association, corporation, or trust who manufactures or assembles new motor vehicles for sale to distributors, to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives;

(11) "Distributor branch" means a branch or division office similarly maintained by a distributor for the same purposes a factory branch or division is maintained;

(12) "Factory representative" means a representative employed by a person, firm, association, corporation, or trust who manufactures or assembles new motor vehicles, or employed by a factory branch, for the purpose of making or promoting the sale of his, its, or their new motor vehicles, or for supervising or contacting his, its, or their dealers or prospective dealers;

(13) "Distributor representative" means a representative similarly employed by a distributor or distributor branch;

(14) "Person" means and includes, individually and collectively, individuals, firms, partnerships, copartnerships, associations, corporations, trusts, or any other form of business enterprise, or any legal entity;

(15) "Good faith" means the duty of each party to any franchise, and all officers, employees, or agents thereof, to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation, from the other party. However, recommendation, endorsement, exposition, persuasion, urging, or argument shall not be deemed to constitute a lack of good faith;

(16) "Coerce" means the failure to act in good faith in performing or complying with any terms or provisions of the franchise or agreement. However, recommendation, exposition, persuasion, urging, or argument shall not be deemed to constitute a lack of good faith;

(17) "Broker" means a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle and who is not:

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

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

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

(D) At any point in the transaction, the bona fide owner of the vehicle involved in the transaction;

(18) "Motor vehicle lessor" means any person, not excluded by subdivision (2) of this section, engaged in the motor vehicle leasing or rental business;

(19) "Specialty vehicle" means a motor vehicle manufactured by a second stage manufacturer by purchasing motor vehicle components, e.g. frame and drive train, and completing the manufacture of finished motor vehicles for the purpose of resale, with the primary manufacturer warranty unimpaired, to a limited commercial market rather than the consuming public. "Specialty vehicles" includes garbage trucks, ambulances, fire trucks,

buses, limousines, hearses, and other similar limited-purpose vehicles as the commission may by regulation provide;

(20) "Auto auction" means:

(A) Any person who provides a place of business or facilities for the wholesale exchange of motor vehicles by and between duly licensed motor vehicle dealers; and

(B) Any person who provides the facilities for or is in the business of selling new motor vehicles in an auction format;

(21) "Relevant market area" means the area within a radius of twenty (20) miles around an existing dealer or the area of responsibility defined in the franchise, whichever is greater. However, where a manufacturer is seeking to establish an additional new motor vehicle dealer and there are one (1) or more existing new motor vehicle dealers of the same line make within a ten-mile radius of the proposed dealer site, the relevant market area shall in all instances be the area within a radius of ten (10) miles around an existing dealer;

(22) "Wholesaler" means any person, resident or nonresident, not excluded by subdivision (2) of this section, who, in whole or in part, purchases vehicles for the purpose of resale. However, motor vehicle dealers who, incidental to their primary business, sell motor vehicles to other dealers are not considered wholesalers because of the incidental sales."

SECTION 3. Subdivision (b) (2) of Arkansas Code 23-112-201 is hereby amended to read as follows:

"(2) (A) Six (6) members of the commission shall be licensees, or shall be qualified as licensees under the provisions of this chapter at the time of their appointment; and

(B) Three (3) members of the commission shall be appointed from the public at large, including the consumer representative and the elderly representative.

(C) No more than six (6) members of the commission shall at any time be licensees under this chapter or have any financial interest in, or be an officer or an employee of, a licensee of this chapter."

SECTION 4. Arkansas Code 23-112-203 is hereby amended to read as follows:

"23-112-203. Executive secretary - Employees - Office.

(a) (1)(A) The commission shall appoint a qualified person to serve as executive secretary thereof, to serve at the pleasure of the commission.

(B) Provided, however, beginning July 1, 1989, the executive secretary for the commission shall be appointed, with the confirmation of the Senate, by and shall serve at the pleasure of the Governor. Provided further, no person shall be qualified at any time to serve as executive secretary of the commission who has been actively engaged in, is retired from, or has ever been employed by any of the businesses regulated by this chapter.

(2) The duties of the executive secretary shall be defined and prescribed by the commission and his salary shall be fixed by law.

(3) The executive secretary shall be in charge of the commission's office and shall devote such time to the duties thereof as may be necessary.

(4) His duties shall include but shall not be limited to the collection of all fees and charges under the provisions of this chapter, keeping a record of all proceedings of the commission, and keeping an accurate account of all moneys received and disbursed by the commission, all of which records shall be considered as public records.

(b) The commission may employ such clerical and professional help and incur such expenses as may be reasonably necessary for the proper discharge of its duties under this chapter.

(c) The commission shall maintain its office and transact its business, except as provided in this chapter, at Little Rock, Arkansas."

SECTION 5. Arkansas Code 23-112-301 is hereby amended to read as follows:

"23-112-301. License required.

(a) (1) It shall be unlawful for any person to engage in business as, or serve in the capacity of, or act as a motor vehicle dealer, motor vehicle salesman, auto auction, motor vehicle lessor, manufacturer, distributor, wholesaler, factory branch or division, distributor branch or division, factory representative, or distributor representative, as such, in this state without first obtaining a license therefor as provided in this chapter, regardless of whether or not the person maintains or has a place of business in this state.

(2) Any person, firm, association, corporation, or trust engaging,

acting, or serving in more than one (1) of these capacities or having more than one (1) place where such business is carried on or conducted shall be required to obtain and hold a current license for each capacity and place of business.

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

(B) A motor vehicle lessor shall be required to obtain only one (1) motor vehicle lessor's license regardless of the number of leasing locations he owns and operates but shall list each location on his application and pay a fee of twenty-five dollars (\$25.00) for each location.

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

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

(b) Any person engaged primarily in the sale of used motor vehicles shall not be construed to have engaged in the unlicensed sale of new motor vehicles if the amount of his sales of new motor vehicles make up less than fifty percent (50%) of the amount of his gross sales during a calendar year.

(c) A willful violation of any provision of this section shall be a Class B misdemeanor."

SECTION 6. Subdivision (c) (1) of Arkansas Code 23-112-302 is hereby amended to read as follows:

"(c) (1) Applications for licenses as motor vehicle dealers, whether in new motor vehicles, wholesalers, and auto auctions must, in addition to the foregoing, also be accompanied by the filing with the commission of a corporate surety bond in the penal sum of twenty-five thousand dollars (\$25,000) on a bond form approved by the commission. However, an applicant for licenses at multiple locations may choose to provide a corporate surety bond in the penal sum of one hundred thousand dollars (\$100,000) covering all licensed locations of the same capacity in lieu of separate bonds for each individual location."

SECTION 7. Arkansas Code 23-112-307 is hereby amended to read as follows:

"23-112-307. Expiration of license.

(a) Unless the commission shall by regulation provide to the contrary, all licenses issued to manufacturers, distributors, factory or distributor branches, factory or distributor representatives, motor vehicle dealers, and motor vehicle salesmen of new motor vehicles shall expire December 31 following the date of issue.

(b) Unless the commission shall by regulation provide otherwise, all licenses issued to auto auctions, motor vehicle lessors and wholesalers shall expire June 30 following the date of issue.

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

SECTION 8. Arkansas Code 23-112-402 is hereby amended to read as follows:

" 23-112-402. Dealer and salesman.

It shall be unlawful for a motor vehicle dealer or a motor vehicle salesman:

(1) To require a purchaser of a new motor vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, equipment, parts, or accessories not desired or requested by the purchaser. However, this prohibition shall not apply as to special features, appliances, equipment, parts, or accessories which are already installed on the car when received by the dealer;

(2) To represent and sell as a new motor vehicle any motor vehicle which has been used and operated for demonstration purposes or which is otherwise a used motor vehicle."

SECTION 9. Arkansas Code 23-112-403 is hereby amended to read as follows:

"23-112-403. Manufacturers, distributors, etc.

(a) It shall be unlawful:

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

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

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

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

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

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

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

(B) To coerce, or attempt to coerce, any motor vehicle dealer to enter into any agreement with the manufacturer, distributor, distributor branch or division, or factory branch or division, or officer, agent, or other representative thereof, or to do any other act prejudicial to the dealer by threatening to cancel any franchise or any contractual agreement existing between the manufacturer, distributor, distributor branch or division, or factory branch or division, and the dealer. However, good

faith notice to any motor vehicle dealer of the dealer's violation of any terms or provisions of the franchise or contractual agreement shall not constitute a violation of this chapter;

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

(D) To offer to sell or to sell any new motor vehicle to any motor vehicle dealer at a lower actual price therefor than the actual price charged to any other motor vehicle dealer for the same model vehicle

similarly equipped or to utilize any device, including, but not limited to, sales promotion plans or programs, which results in a lesser actual price. However, the provisions of this subdivision (a) (2) (D) shall not apply to sales to a motor vehicle dealer for resale to any unit of federal, state, or local government. Further, nothing contained in this subdivision (a) (2) (D) shall be construed to prevent the utilization of sales promotion plans or programs or the offering of volume discounts through new motor vehicle dealers, for fleet or volume purchasers, if the program is available to all new motor vehicle dealers from the same manufacturer in this state. Further, the provisions of this subdivision (a) (2) (D) shall not apply to sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated, or used by the dealer in a driver education program. Further, the provisions of this subdivision (a) (2) (D) shall not apply so long as a manufacturer or distributor, or any agent thereof offers to sell or sells new motor vehicles to all motor vehicle dealers at the same price;

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

(F) To offer to sell or to sell parts and accessories to any new motor vehicle dealer for use in his own business for the purpose of repairing or replacing the parts and accessories, or comparable parts and accessories, at a lower actual price therefor than the actual price charged to any other new motor vehicle dealer for similar parts and accessories for use in his own business. However, it is recognized that certain motor vehicle dealers operate and serve as wholesalers of parts and accessories to retail outlets. Therefore, nothing contained in this subdivision shall be construed to prevent a manufacturer or distributor, or any agent thereof, from selling to a motor vehicle dealer who operates and serves as a wholesaler of parts and accessories such parts and accessories as may be ordered by the motor vehicle dealer for resale to retail outlets at a lower actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories;

(G) To prevent or attempt to prevent by contract or otherwise any motor vehicle dealer from changing the capital structure of his dealership

or the means by or through which he finances the operation of his dealership, provided the dealer at all times meets any capital standards agreed to between the dealership and the manufacturer or distributor and provided the standards are deemed reasonable by the commission;

(H) Notwithstanding the terms of any franchise agreement, to fail to give effect to or attempt to prevent any sale or transfer of a dealer, dealership, or franchise or interest therein or management thereof unless it is shown to the commission after hearing that the result of the sale or transfer will be detrimental to the public or the representation of the manufacturer or distributor;

(I) Notwithstanding the terms of any franchise agreement, to prevent, attempt to prevent, or refuse to honor the succession to a dealership by any legal heir or devisee under the will of a dealer or under the laws of descent and distribution applicable to the decedent's estate, unless it is shown to the commission, after notice and hearing, that the result of the succession will be detrimental to the public interest or to the representation of the manufacturer or distributor. However, nothing herein shall prevent a dealer, during his lifetime, from designating any person as his successor dealer by written instrument filed with the manufacturer or distributor.

(b) Concerning any sale of a motor vehicle or vehicles to the State of Arkansas, or to the several counties or municipalities thereof, or to any other political subdivision thereof, no manufacturer or distributor shall offer any discounts, refunds, or any other similar type inducements to any dealer without making the same offers to all other of its dealers within the state. If the inducements are made, the manufacturer or distributor shall give simultaneous notice thereof to all of its dealers within the state.

(c) Nothing in this section shall be construed to authorize the commission to regulate or to prohibit a motor vehicle dealer from selling any line-make or any model of new motor vehicle for which he does not hold a franchise."

SECTION 10. Arkansas Code 23-112-404 is hereby amended to read as follows:

"23-112-404. Motor vehicle lessors.

It shall be unlawful for a motor vehicle lessor or any agent, employee,

or representative thereof:

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

(2) To sell or offer to sell a motor vehicle from an unlicensed location."

SECTION 11. All provisions of this act of 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 12. All laws and parts of laws in conflict with this act are hereby repealed.