

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

105

By: Senator Allen

For An Act To Be Entitled

"AN ACT TO AMEND THE ARKANSAS MOTOR VEHICLE COMMISSION ACT OF 1975 TO INCLUDE A PERSON WHO IMPORTS OR PURCHASES FOR SALE TO DISTRIBUTORS WITHIN THE DEFINITIONS OF 'MANUFACTURER', 'FACTORY BRANCH', AND 'FACTORY REPRESENTATIVE'; TO AMEND ARKANSAS CODE §23-112-403 TO GRANT THE MOTOR VEHICLE COMMISSION THE AUTHORITY TO CONTROL THE TRANSFER OF DEALERSHIP FRANCHISES; TO REGULATE THE SALE OF MOTOR VEHICLES BETWEEN MANUFACTURERS AND DISTRIBUTORS; AND FOR OTHER PURPOSES."

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

SECTION 1. Arkansas Code §23-112-103(8) is hereby amended to read as follows:

"(8) 'Manufacturer' means any person, firm, association, corporation, or trust, resident or non-resident, who manufactures, assembles, imports or purchases for sale to distributors new motor vehicles;"

SECTION 2. Arkansas Code §23-112-103(10) is hereby amended to read as follows:

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

SECTION 3. Arkansas Code §23-112-103(12) is hereby amended to read as follows:

"(12) 'Factory representative' means a representative employed by a

person, firm, association, corporation, or trust who manufactures, assembles, imports or purchases for sale to distributors new motor vehicles, or 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 distributors, dealers or prospective dealers;"

SECTION 4. Arkansas Code §23-112-403(a)(2)(I) is hereby amended to read as follows:

"(I) Notwithstanding the terms of any franchise agreement, to fail to give effect or attempt to prevent any sale or transfer of a dealer, dealership, or franchise or interest therein, or management thereof, provided the manufacturer or distributor has received sixty (60) days written notice prior to the transfer or sale and unless the transferee does not meet the criteria generally applied by the manufacturer in approving new motor vehicle dealers and/or agree to be bound by all the terms and conditions of the dealer agreement and the manufacturer so advises its dealer within sixty (60) days of receipt of said notice, or it is shown to the commission after hearing that the result of such sale or transfer will be detrimental to the public or the representation of the manufacturer or distributor;"

SECTION 5. Arkansas Code §23-112-403(a)(2)(J) is hereby amended to read as follows:

"(J) 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, provided the manufacturer or distributor has received sixty (60) days written notice prior to the transfer or sale and unless the transferee does not meet the criteria generally applied by the manufacturer in approving new motor vehicle dealers and/or agree to be bound by all the terms and conditions of the dealer agreement and the manufacturer so advises its dealer within thirty (30) days of receipt of said notice, or it is shown to the commission, after notice and hearing, that the result of such 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."

SECTION 6. Title 23, Chapter 112, Subchapter 4 of the Arkansas Code is hereby amended by adding a new section to read as follows:

"23-112-407. It shall be unlawful:

(a) For a manufacturer, a factory branch or division, or officer, agent or other representative thereof, to coerce, attempt to coerce, or require any distributor:

(1) To order or accept delivery of any motor vehicle or vehicles, appliances, equipment, parts or accessories therefor, or any other commodity or commodities which shall be in excess of the market requirements of such distributor, as determined by such distributor.

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

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

(4) To contribute or pay money or anything of value into any cooperative or other advertising program or fund.

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

(1) To refuse to deliver in reasonable time after receipt of any order from a duly licensed motor vehicle distributor having a franchise or a contractual arrangement for the sale of new motor vehicles sold by such manufacturer or factory branch or division any such motor vehicles as are covered by such franchise or contract specifically publicly advertised by such manufacturer, factory branch or division to be available for immediate delivery. Provided, however, the failure to deliver any motor vehicle shall not be considered a violation of this Act if such failure to be 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 agent thereof, shall have no control.

(2) To coerce, or attempt to coerce any distributor to enter into any agreement with such manufacturer, factory branch or division, or officer, agent or other representative thereof, or to do any other act prejudicial to said distributor by threatening to cancel any franchise or contractual

agreement existing between such manufacturer, factory branch or division, and said distributor. Provided, however, that good faith notice to any distributor of said distributor's violation of any terms or provisions of such franchise or contractual agreement shall not constitute a violation of this Act.

(3) To terminate or cancel the franchise or selling agreement of any distributor 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 such franchise or agreement. Such manufacturer, a factory branch or division, or officer, agent or other representative thereof shall notify a distributor in writing, and forward a copy of such notice to the Commission, of the termination, cancellation or nonrenewal of the franchise or selling agreement of such distributor at least sixty (60) days before the effective date thereof, stating the specific grounds for such termination, cancellation or nonrenewal; and in no event shall the contractual term of any such franchise or agreement terminate or expire, without the written consent of the distributor involved, prior to the expiration of at least sixty (60) days following such written notice. Any distributor who receives written notice that his franchise or selling agreement is being terminated, cancelled or not renewed, may, within such sixty (60) day written notice period, file with the Commission a verified complaint for its determination as to whether such termination, cancellation or nonrenewal is unfair within the purview of the Act, and any such franchise or agreement shall continue in effect until final determination of the issues raised in such complaint, notwithstanding anything to the contrary contained in this Act or in such franchise or agreement.

(4) To prevent or attempt to prevent by contract or otherwise any distributor from changing the capital structure of his distributorship or the means by or through which he finances the operation of his distributorship provided the distributor at all times meets any capital standards agreed to between the distributor and the manufacturer, provided such standards are deemed reasonable by the Commission.

(5) Notwithstanding the terms of any franchise or selling agreement, to fail to give effect to or attempt to prevent any sale or transfer of a distributor, distributorship or franchise or interest therein, or management thereof unless it is shown to the Commission after hearing that

the result of such sale or transfer will be detrimental to the public or the representation of the manufacturer.

(6) Notwithstanding the terms of any franchise or selling agreement, to prevent, attempt to prevent or refuse to honor the succession to a distributorship by any legal heir or devisee under the will of a distributor 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 such succession will be detrimental to the public interest or to the representation of the manufacturer, provided, however, nothing herein shall prevent a distributor during his lifetime, from designating any person as his successor distributor by written instrument filed with the manufacturer.

(7) Notwithstanding the terms of a franchise or selling agreement or provision of law in conflict with this section, supervision of the dealer's delivery preparation and warranty obligations as filed with the Commission shall constitute the distributor's sole responsibility for product liability as between the distributor and the manufacturer and except for a loss caused by the distributor's modification of a product without manufacturer authorization, the manufacturer shall reimburse the distributor for all losses incurred by the distributor, including legal fees, court costs and damages, as a result of the distributor having been named a party in product liability action."

SECTION 7. Arkansas Code §23-112-502(a) is hereby amended to read as follows:

"(a) Any interested party shall have the right to have the commission call a hearing for the purpose of taking action in respect to any matter within the commission's jurisdiction by filing with the commission a complaint setting forth grounds upon which the complaint is based."

SECTION 8. Arkansas Code §23-112-503(d) is hereby amended to read as follows:

"(d) (1) Any hearing shall be held in the county where principal office of the commission is located.

(2) If the party is a non-resident of the state, the hearing shall be held in the county where the principal office of the commission is

located."

SECTION 9. Act 593 of 1973 is hereby repealed.

SECTION 10. 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 11. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 12. EMERGENCY. It is hereby found and determined by the General Assembly that the Arkansas Motor Vehicle Commission Act does not adequately regulate the actions of certain importers and others who purchase motor vehicles for sale to distributors and that such regulations are needed to protect distributors and the public from unfair, discriminatory and coercive practices. 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.