

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

592

By: Senator Bookout

For An Act To Be Entitled

"AN ACT TO AMEND ACT 388 OF 1975 TO CLARIFY THE RIGHTS
OF LICENSED NEW CAR DEALERS; AND FOR OTHER PURPOSES."

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

SECTION 1. Arkansas Code Annotated §23-112-301(b) is amended to read as follows:

"(b) (1) No person may engage in the business of buying, selling, or exchanging new motor vehicles unless he holds a valid license issued by the commission for the makes of new motor vehicles being bought, sold, or exchanged, or unless he is a bona fide employee or agent of the licensee.

(2) For purposes of this subsection, the term "engage in the business of buying, selling, or exchanging new motor vehicles" means:

- (A) Displaying for sale new motor vehicles on a lot or showroom;
- (B) Advertising for sale new motor vehicles; or
- (C) Regularly or actively soliciting buyers for new motor vehicles.

(3) Arkansas Code Annotated §23-112-301(b) (2) authorizes the practice of a licensed new car dealer selling, on special order, new motor vehicles for which he does not hold a manufacturer's franchise. When a dealer has secured a new motor vehicle on special order and the customer does not consummate the transaction, the dealer may sell the vehicle to an ultimate purchaser however the vehicle shall be deemed a used motor vehicle and the dealer shall not advertise or sell such motor vehicle as a new motor vehicle.

(4) Notwithstanding any other provision of this act, including but not limited to Arkansas Code Annotated §23-112-308 or §23-112-309 the sole and exclusive remedy of the Commission in the event a dealer violates (b) (2) or (b) (3) above shall be to seek an injunction prohibiting the challenged transaction pursuant to Arkansas Code Annotated §23-112-104.

(c) A willful violation of subsection (a) of this section shall be a class

B misdemeanor."

SECTION 2. Arkansas Code Annotated §23-112-505 is amended to read as follows:

"(a) All decisions of the commission with respect to the hearings provided for in this subchapter shall be incorporated into orders of the commission and spread upon its minutes.

(b) Six members of the commission shall constitute a quorum for purposes of rendering an order and no order will issue except upon at least six affirmative votes."

SECTION 3. Arkansas Code Annotated §23-112-105 is amended to read as follows:

"Any licensee suffering pecuniary loss because of any willful failure by any other licensee to comply with any provision of this chapter other than Arkansas Code Annotated §23-11-301(b) (2) and (b) (3) or with any rule or regulation promulgated by the commission under authority vested in it by this chapter may recover reasonable damages and attorney fees therefor in any court of competent jurisdiction."

SECTION 4. 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 5. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 6. It has been found and it is hereby declared by the General Assembly of the State of Arkansas that there is some question as to the ability of new car dealers in this state to meet the special order needs of their customers and therefore the availability and authority clarified and granted in this act is immediately necessary for the protection and preservation of the health, safety, and welfare of the people. 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.