

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Representative Angel

A Bill

HOUSE BILL 1519

For An Act To Be Entitled

8 "AN ACT TO RECODIFY ODOMETER FRAUD; TO PROVIDE FOR THE
9 REQUIREMENT OF RECORDKEEPING AND INSPECTION; TO INCREASE
10 THE CRIMINAL PENALTIES PERTAINING TO ODOMETER FRAUD; AND
11 FOR OTHER PURPOSES."

Subtitle

14 "TO RECODIFY ODOMETER FRAUD AND TO
15 INCREASE THE CRIMINAL PENALTIES
16 PERTAINING TO ODOMETER FRAUD."

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

20 SECTION 1. Legislative Intent and Purpose. The Arkansas General
21 Assembly recognizes that a motor vehicle is a major consumer acquisition and
22 that buyers of motor vehicles rely heavily on the odometer reading as an
23 index of the condition and value of a vehicle. The Arkansas General Assembly
24 further recognizes that buyers are entitled to rely on the odometer reading
25 as an accurate indication of the mileage of the motor vehicle and that an
26 accurate indication of the mileage assists a buyer in deciding on the safety
27 and reliability of the vehicle. The purposes of this Act are to prohibit
28 tampering with motor vehicle odometers and to provide safeguards to protect
29 purchasers in the sale of motor vehicles with altered or reset odometers. It
30 is the intent of the Arkansas General Assembly that this Act incorporate
31 certain provisions of newly codified federal law to supplement existing
32 Arkansas law. To that end, any rule or regulation in effect under a law
33 replaced by this Act continues in effect under the corresponding provision
34 enacted by this Act until repealed, amended, or superseded. In addition,
35 where no substantive change in law has occurred, an action taken or an

1 offense committed under a law replaced by a section of this Act is deemed to
2 have been taken or committed under the corresponding provision enacted by
3 this Act.

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5 SECTION 2. Definitions.

6 As used in this act, unless the context otherwise requires:

7 (1) "auction company" means a person taking possession of a motor
8 vehicle owned by another to sell at an auction.

9 (2) "dealer" means a person that sold at least five (5) motor vehicles
10 during the prior twelve (12) months to buyers that in good faith bought the
11 vehicles other than for resale.

12 (3) "distributor" means a person that sold at least five (5) motor
13 vehicles during the prior twelve (12) months for resale.

14 (4) "leased motor vehicle" means a motor vehicle leased to a person for
15 at least four (4) months by a lessor that leased at least five (5) vehicles
16 during the prior twelve (12) months.

17 (5) "motor vehicle" means any self-propelled vehicle not operated
18 exclusively upon railroad tracks, except snowmobiles and other devices
19 designed and used primarily for the transportation of persons over natural
20 terrain, snow, or ice and propelled by wheels, skis, tracks, runners, or
21 whatever other means.

22 (6) "odometer" means an instrument for measuring and recording the
23 distance a motor vehicle is driven, but does not include an auxiliary
24 instrument designed to be reset by the operator of the vehicle to record
25 mileage of a trip.

26 (7) "person" means an individual, firm, partnership, incorporated and
27 unincorporated association, or any other legal or commercial entity.

28 (8) "repair" and "replace" mean to restore to a sound working condition
29 by replacing any part of an odometer or by correcting any inoperative part of
30 an odometer.

31 (9) "title" means the certificate of title or other document issued by
32 this state or other state and indicating ownership and includes a
33 manufacturer's statement or certificate of origin.

34 (10) "transfer" means to change ownership by sale, gift, or other
35 means.

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2 SECTION 3. Preventing tampering.

3 A person may not:

4 (1) advertise for sale, sell, use, install, or have installed, a device
5 that makes an odometer of a motor vehicle register a mileage different from
6 the mileage the vehicle was driven, as registered by the odometer within the
7 designed tolerance of the manufacturer of the odometer;

8 (2) disconnect, reset, alter, or have disconnected, reset, or altered,
9 an odometer of a motor vehicle intending to change the mileage registered by
10 the odometer;

11 (3) with the intent to defraud, operate a motor vehicle on a public
12 street, road, or highway if the person knows that the odometer of the vehicle
13 is disconnected or not operating; or

14 (4) conspire to violate any provision of this act.

15

16 SECTION 4. Service, repair, and replacement.

17 (a) A person may service, repair, or replace an odometer of a motor
18 vehicle if the mileage registered by the odometer remains the same as before
19 the service, repair, or replacement. If the mileage cannot remain the same:

20 (1) the person shall adjust the odometer to zero; and

21 (2) the owner of the vehicle or agent of the owner shall attach a
22 written notice to the left door frame of the vehicle specifying the mileage
23 before the service, repair, or replacement and the date of the service,
24 repair, or replacement.

25 (b) A person may not, with the intent to defraud, remove or alter a
26 notice attached to a motor vehicle as required by this section.

27

28 SECTION 5. Disclosure requirements on transfer of a motor vehicle.

29 (a)(1) A person transferring *his* ownership of a motor vehicle shall
30 give the transferee a written disclosure:

31 (A) of the cumulative mileage registered by the odometer;

32 or

33 (B) that the mileage is unknown if the transferor knows
34 that the mileage registered by the odometer is incorrect.

35 (2) A person making a written disclosure required by a regulation

1 prescribed under paragraph (1) of this subsection may not make a false
2 statement in the disclosure.

3 (3) A person acquiring a motor vehicle for resale may accept a
4 disclosure under this section only if it is complete.

5 (4) The Director of the Department of Finance and Administration
6 shall adopt, pursuant to the Arkansas Administrative Procedure Act, (Ark.
7 Code Ann. § 25-15-201 et seq.) rules not inconsistent with this act or Title
8 49, Chapter 327 of the United States Code or any rules promulgated thereunder
9 prescribing the manner in which the written disclosure shall be made.

10 (b)(1) A motor vehicle, the ownership of which is transferred, may not
11 be licensed for use in this state unless the transferee, in submitting an
12 application for the title on which the license will be issued, includes with
13 the application the transferor's title and, if that title contains the
14 appropriate space, the transferor's disclosure of the mileage at the time of
15 transfer and the signature and date the disclosure.

16 (2)(A) If the title to a motor vehicle issued to a transferor is
17 in the possession of a lienholder when the transferor transfers ownership of
18 the vehicle, the transferor may use a written power of attorney in making the
19 mileage disclosure required under subsection (a) of this section.

20 (B) The Director of the Department of Finance and
21 Administration shall adopt, pursuant to the Arkansas Administrative Procedure
22 Act, (Ark. Code Ann. § 25-15-201 et seq.) rules not inconsistent with this
23 act or Title 49, Chapter 327 of the United States Code or any rules
24 promulgated thereunder prescribing the form of the power of attorney.

25 (C) The provisions of Section 6 and Section 7 of this act
26 apply to a person granting or granted a power of attorney under this
27 subsection.

28 (c)(1) For a leased motor vehicle, the lessee shall provide the written
29 disclosure required by subsection (a) of this section to the lessor when the
30 lessor transfers ownership of that vehicle.

31 (2) The lessor shall provide written notice to the lessee of:

32 (A) the mileage disclosure requirements of subsection (a)
33 of this section; and

34 (B) the penalties for failure to comply with those
35 requirements.

1 (3) The lessor shall retain the disclosures made by a lessee
2 under paragraph (1) of this subsection for at least four (4) years following
3 the date the lessor transfers the leased motor vehicle.

4 (4) If the lessor transfers ownership of a leased motor vehicle
5 without obtaining possession of the vehicle, the lessor, in making the
6 disclosure required by subsection (a) of this section, may indicate on the
7 title the mileage disclosed by the lessee under paragraph (1) of this
8 subsection unless the lessor has reason to believe that the disclosure by the
9 lessee does not reflect the actual mileage of the vehicle.

10 (d) If a motor vehicle is sold at an auction, the auction company
11 conducting the auction shall maintain the following records for at least four
12 (4) years after the date of the sale:

13 (1) the name and address of the most recent owner of the motor
14 vehicle (except the auction company) and the name and address of the buyer of
15 the motor vehicle.

16 (2) the vehicle identification number of the motor vehicle.

17 (3) the odometer reading on the date the auction company took
18 possession of the motor vehicle.

19

20 SECTION 6. Penalties and enforcement.

21 (a)(1) When a person violates this act or a regulation prescribed under
22 this act, such violation shall constitute an unfair or deceptive act or
23 practice as defined by the Deceptive Trade Practices Act, A.C.A. § 4-88-101
24 et seq. All remedies, penalties, and authority granted to the Attorney
25 General under the Deceptive Trade Practices Act shall be available to the
26 Attorney General for the enforcement of this act, including but not limited
27 to an action to:

28 (A) enjoin the violation;

29 (B) to recover amounts for which the person is liable under
30 Section 7 of this act to each private person; and

31 (C) costs, investigative costs, and reasonable attorneys'
32 fees.

33 (2) An action under this subsection may be brought in an
34 appropriate court of competent jurisdiction in the county in which the person
35 resides or transacts business or in the judicial district in which the State

1 Capitol is located. The action must be brought not later than five (5) years
2 after the claim accrues.

3 (b) Any person who is found to have violated this act shall be guilty
4 of a felony and imprisoned not more than three (3) years and subject to a
5 fine of not more than fifty thousand dollars (\$50,000) for each violation.
6 If the person is a corporation, the penalties of this subsection also apply
7 to a director, officer, or individual agent of a corporation who knowingly
8 and willfully authorizes, orders, or performs an act in violation of this act
9 or a regulation prescribed or order issued under this act without regard to
10 penalties imposed on the corporation.

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12 SECTION 7. Civil actions by private persons.

13 (a) A person that violates this act or a regulation prescribed under
14 this act, with intent to defraud, is liable for three (3) times the actual
15 damages or one thousand five hundred dollars (\$1,500), whichever is greater.

16 (b) A person may bring a civil action to enforce a claim under this
17 section in an appropriate court of competent jurisdiction. The action must
18 be brought not later than five (5) years after the claim accrues. The court
19 shall award costs and a reasonable attorney's fee to the person when a
20 judgment is entered for that person.

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22 SECTION 8. *Nothing in this act, however, shall in any way limit any*
23 *other statutory or common law rights, causes of actions, or remedies which*
24 *are otherwise available to a person, including but not limited to, actions*
25 *for: breach of warranty, fraud, negligent misrepresentation, intentional*
26 *misrepresentation, deceptive trade practices actions, rescission, or*
27 *revocation of acceptance.*

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29 SECTION 9. All provisions of this act of a general and permanent
30 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
31 Code Revision Commission shall incorporate the same in the Code.

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33 SECTION 10. If any provision of this act or the application thereof to
34 any person or circumstance is held invalid, such invalidity shall not affect
35 other provisions or applications of the act which can be given effect without

1 the invalid provision or application, and to this end the provisions of this
2 act are declared to be severable.

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4 *SECTION 11.* Arkansas Code Annotated §§ 4-90-201, 4-90-202, 4-90-203,
5 4-90-204, 4-90-205, and 4-90-206 are specifically repealed, and all other
6 laws and parts of laws in conflict with this act are hereby repealed.

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/s/Rep. Angel