

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

A Bill

SENATE BILL 481

For An Act To Be Entitled

8 "AN ACT TO AMEND THE ARKANSAS MOTOR VEHICLE COMMISSION ACT
9 TO INCREASE LICENSE FEES; TO REMOVE WHOLESALERS AND AUTO
10 AUCTIONS FROM THE PROVISIONS OF THE ACT; AND FOR OTHER
11 PURPOSES."

Subtitle

14 "AN ACT TO AMEND THE ARKANSAS MOTOR
15 VEHICLE COMMISSION ACT TO INCREASE
16 LICENSE FEES AND TO REMOVE WHOLESALERS
17 AND AUTO AUCTIONS FROM THE PROVISIONS OF
18 THE ACT."

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

22 SECTION 1. Arkansas Code § 23-112-102 is amended to read as follows:
23 "23-112-102. Legislative findings - Purpose.

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

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

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

34 (2) Avoid undue control of the independent motor vehicle dealer
35 by motor vehicle manufacturing and distributing organizations;

- 1 (3) Foster and keep alive vigorous and healthy competition;
- 2 (4) Prevent the creation or perpetuation of monopolies;
- 3 (5) Prevent the practice of requiring the buying of special
- 4 features, accessories, special models, appliances, and equipment not desired
- 5 by a motor vehicle dealer or the ultimate purchaser;
- 6 (6) Prevent false and misleading advertising;
- 7 (7) Promote and keep alive a sound system of distribution of
- 8 motor vehicles to the public; and
- 9 (8) Promote the public safety and welfare."

10

11 SECTION 2. Arkansas Code § 23-112-202 is amended to read as follows:

12 "§ 23-112-202. Proceedings - Bond.

13 (a) The commission shall meet at Little Rock and complete its

14 organization immediately after the entire membership thereof has been

15 appointed and has qualified.

16 (b) The chairman and each member of the commission, before entering

17 upon the discharge of the duties of his office, shall take and subscribe to

18 the oath of office prescribed by the Constitution of Arkansas and shall file

19 this oath in the office of the Secretary of State.

20 (c)(1) The commission shall purchase either a blanket position honesty

21 or faithful performance bond from some surety company authorized to do

22 business in this state. This bond shall be in the penal sum of ten thousand

23 dollars (\$10,000), made payable to the State of Arkansas, conditioned for the

24 honest and faithful performance of the duties of the chairman and each member

25 of the commission, the executive director of the commission, and all other

26 employees of the commission, said bond to be approved by the Governor and

27 filed in the office of the Secretary of State.

28 (2) The commission shall keep the bond in force at all times

29 from and after the date the commission is organized.

30 (d) A majority of the commission shall constitute a quorum for the

31 transaction of any business.

32 (e) The commission shall adopt and use a common seal for the

33 authentication of its records and orders.

34 (f) The commission shall hold all of its regular monthly meetings in

35 its office at Little Rock, Arkansas, but may, upon approval of a majority of

1 its members, hold special meetings and the hearings provided for under
2 §§ 23-112-501 - 23-112-509 at any time and place within the State of
3 Arkansas."

4

5 SECTION 3. Arkansas Code § 23-112-203 is amended to read as follows:
6 "23-112-203. Executive director - Employees - Office.

7 (a)(1) The commission shall appoint a qualified person to serve as
8 executive director thereof, to serve at the pleasure of the commission, and
9 shall fix his salary and shall define and prescribe the duties.

10 (2) The executive director shall be in charge of the
11 commission's office and shall devote such time to the duties thereof as may
12 be necessary.

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

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

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

23

24 SECTION 4. Arkansas Code § 23-112-301 is amended to read as follows:
25 "23-112-301. License required.

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

33 (2) Any person, firm, association, corporation, or trust
34 engaging, acting, or serving in more than one (1) of these capacities or
35 having more than one (1) place where such business is carried on or conducted

1 shall be required to obtain and hold a current license for each capacity and
2 place of business.

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

6 (B) A motor vehicle lessor shall be required to obtain
7 only one (1) motor vehicle lessor's license regardless of the number of
8 leasing locations he owns and operates but shall list each location on his
9 application and pay a fee of fifty dollars (\$50.00) for each location.

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

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

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

20 (2) For purposes of this subsection, the term _engage in the
21 business of buying, selling, or exchanging new motor vehicles_ means:

22 (A) Displaying for sale new motor vehicles on a lot or
23 showroom;

24 (B) Advertising for sale new motor vehicles; or

25 (C) Regularly or actively soliciting buyers for new motor
26 vehicles.

27 (3) Subdivisions (b)(1) and (2) of this subsection authorize the
28 practice of a licensed new automobile or truck dealer selling, on special
29 order, a new automobile or truck for which he does not hold a manufacturer's
30 franchise.

31 (4) When a new automobile or truck dealer secures a new
32 automobile or truck for a special order and the customer does not consummate
33 the transaction, the automobile or truck dealer may sell the vehicle to
34 another ultimate purchaser, provided, the automobile or truck dealer shall
35 document the name, address, and telephone number of the customer for whom the

1 truck or automobile was ordered in a statement detailing why the transaction
2 was not consummated, such documentation to be held by the dealer subject to
3 inspection by the commission for a period of two (2) years after the date the
4 purchase was refused; and further provided that the automobile or truck shall
5 be deemed a used motor vehicle; and the dealer shall not advertise such
6 automobile or truck as a new automobile or truck.

7 (5) The presence of more than one (1) such vehicle resulting
8 from such nonconsummated special-order transactions in said automobile or
9 truck dealers' inventories at the same time, ordered by the same customer,
10 creates a rebuttable presumption that (b)(1) of this section has been
11 violated on those transactions.

12 (6) Notwithstanding any other provision of this subchapter
13 including but not limited to § 23-112-308 or § 23-112-309, the sole and
14 exclusive remedy of the commission in the event a new automobile or truck
15 dealer violates or exceeds his authority under subsection (b)(1), (b)(2), or
16 (b)(3) of this section shall be to seek an injunction prohibiting the
17 challenged transaction pursuant to § 23-112-104.

18 (c) A willful violation of subsection (a) of this section shall be a
19 Class B misdemeanor."

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21 SECTION 5. Arkansas Code § 23-112-302 is amended to read as follows:
22 "23-112-302. Application for license.

23 (a) Applications for licenses required to be obtained under the
24 provisions of this chapter shall be verified by the oath or affirmation of
25 the applicants and shall be on forms prescribed by the commission and
26 furnished to the applicants. They shall contain such information as the
27 commission deems necessary to enable it to fully determine the qualifications
28 and eligibility of the several applicants to receive the licenses applied
29 for.

30 (b) The commission shall require that there be set forth in each
31 application information relating to the applicant's financial standing, the
32 applicant's business integrity, whether the applicant has an established
33 place of business and is primarily engaged in the pursuit, avocation, or
34 business for which licenses are applied for, whether the applicant has the
35 proper facilities and is able to properly conduct the business for which

1 licenses are applied for and other pertinent information consistent with the
2 safeguarding of the public interest and public welfare.

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

11 (2) The bond shall be in effect upon the applicant being
12 licensed and shall be conditioned upon his complying with the provisions of
13 this chapter.

14 (3) The bond shall be an indemnity for any loss sustained by any
15 person by reason of the acts of the person bonded when those acts constitute
16 grounds for the suspension or revocation of his license.

17 (4) The bond shall be executed in the name of the State of
18 Arkansas for the benefit of any aggrieved party.

19 (5) The aggregate liability of the surety for all claimants,
20 regardless of the number of years this bond is in force or has been in
21 effect, shall not exceed the amount of the bond.

22 (6) The proceeds of the bond shall be paid upon receipt by the
23 commission of a final judgment from an Arkansas court of competent
24 jurisdiction against the principal and in favor of an aggrieved party.

25 (d) In addition to the foregoing, applications for licenses as motor
26 vehicle dealers in new motor vehicles must also be accompanied by the filing
27 with the commission of a bona fide contract or franchise then in effect
28 between the applicant and a manufacturer or distributor of the new motor
29 vehicles proposed to be dealt in, unless the contract or franchise has
30 already been filed with the commission in connection with a previous
31 application made by the applicant, in which event the applicant shall, in
32 lieu of again filing the contract or franchise, identify the contract or
33 franchise by appropriate reference and file all revisions and additions, if
34 any, which have been made to the contract or franchise.

35 (e) The applicant must furnish satisfactory evidence that he or it

1 maintains adequate space in the building or structure wherein his or its
2 established business is conducted for the display of new motor vehicles, or
3 that he will have the facilities within a reasonable time after receiving a
4 license, and that he or it has or will have adequate facilities in the
5 building or structure for the repair and servicing of motor vehicles and the
6 storage of new parts and accessories for the motor vehicles."

7

8 SECTION 6. Arkansas Code § 23-112-303 is amended to read as follows:

9 "23-112-303. Application fees.

10 (a) All applications for licenses shall be accompanied by the
11 appropriate fees therefor in accordance with the schedule thereof set out in
12 this subchapter.

13 (b) In the event any application is denied and the license applied for
14 is not issued, the entire license fee shall be returned to the applicant.

15 (c) The schedule of license fees to be charged and received by the
16 commission for the licenses issued pursuant to this subchapter shall be as
17 follows:

18 (1) For each manufacturer, distributor, factory branch and
19 division, or distributor branch and division, four hundred dollars (\$400);

20 (2) For each motor vehicle dealer, motor vehicle lessor, factory
21 representative, and distributor representative, one hundred dollars (\$100);

22 (3) For each motor vehicle salesman, ten dollars (\$10.00).

23 (d) Any person, firm, or corporation required to be licensed under
24 this subchapter who fails to make application for the license at the time
25 required shall, in addition to the fees required to be paid pursuant to
26 subsection (c) of this section, pay interest at the rate of six percent (6%)
27 per annum for the period of time during which he shall operate without a
28 proper license, and, in addition thereto, shall pay a penalty of fifty
29 percent (50%) of the amount of the license fee. The penalty, however, may be
30 waived in whole or in part within the discretion of the commission."

31

32 SECTION 7. Arkansas Code § 23-112-304 is amended to read as follows:

33 "23-112-304. Issuance of license - Change of location - Dealers,
34 manufacturers, distributors, etc.

35 (a) The license issued to each motor vehicle dealer, manufacturer,

1 distributor, factory branch or division, or distributor branch or division
2 shall specify the location of the factory, office, branch, or division
3 thereof.

4 (b) In case the location is changed, the commission shall endorse the
5 change of location on the license without charge if it is within the same
6 county.

7 (c) A change of location to another county shall require a new
8 license."

9

10 SECTION 8. Arkansas Code § 23-112-305 is amended to read as follows:

11 "23-112-305. Display of license - Change of employer - Factory
12 representative and distributor representative.

13 (a) Every motor vehicle factory representative or distributor
14 representative shall have his license upon his person when engaged in his
15 business and shall display the license upon request.

16 (b) The name of the employer of the factory representative or
17 distributor representative shall be stated on the license, and, in case of a
18 change of employer, the holder of the license shall immediately mail the
19 license to the commission for its endorsement of the change thereon.

20 (c) A fee of five dollars (\$5.00) shall be charged by the commission
21 for endorsing each change of employer on the licenses, and the fee shall
22 accompany the application for change."

23

24 SECTION 9. Arkansas Code § 23-112-306 is amended to read as follows:

25 "23-112-306. Display of license - Change of employer - Salesman.

26 (a) Every motor vehicle salesman shall have his license upon his
27 person or displayed at his place of employment, except as provided in this
28 section, when engaged in his business and shall display the license upon
29 request. The name and business address of the employer of the salesman shall
30 be stated on the license.

31 (b) In case of a change of employer, the following procedure shall be
32 adhered to:

33 (1) The licensee shall, within three (3) days following the
34 change, mail or deliver his license to the commission for its endorsement of
35 the change thereon. The license shall be accompanied by a fee of five dollars

1 (\$5.00) for endorsing each change of employer and a written statement of the
2 licensee setting forth the name and business address of his new employer, the
3 date his employment terminated with his last employer, and the date his
4 employment commenced with his new employer;

5 (2) The last employer of the licensee, within three (3) days
6 following the termination of employment of the licensee, shall make a report
7 to the commission setting forth the reasons why the services of the licensee
8 were terminated and such other information as may be required by the
9 commission;

10 (3) Upon receipt by the commission of the licensee's license and
11 fee and his last employer's report, the commission shall immediately make an
12 appropriate endorsement on the license showing the change of employer and
13 mail the license, as endorsed, to the licensee unless the commission has
14 grounds to believe and does believe that the licensee is no longer qualified
15 under the provisions of this chapter as a motor vehicle salesman. Under such
16 circumstances, the commission shall immediately notify him and his new
17 employer in writing that a hearing will be held for the purpose of
18 determining whether his license should be revoked or suspended, specifying
19 the grounds for revocation or suspension, as the case may be, and the time
20 and place for the hearing. The hearing and any and all appeals by the
21 licensee with respect thereto shall be in accordance with the provisions of
22 §§ 23-112-501 - 23-112-509;

23 (4) If, after the commission receives the licensee's license and
24 fee and his last employer's report, the executive director of the commission
25 cannot for any reason endorse and mail to the licensee his license within a
26 period of three (3) days following the receipt by the commission of the
27 licensee's license and fee and his last employer's report, then and in that
28 event he shall mail to the licensee a permit in such form as the commission
29 shall prescribe, which permit shall serve in lieu of a license until such
30 time as the commission endorses and mails the license to the licensee or
31 until such time as the licensee's license is revoked or suspended in
32 accordance with the provisions of this chapter. If the license is ultimately
33 revoked or suspended, then immediately upon the revocation or suspension the
34 licensee shall return the permit to the commission for cancellation.

35 (c) The commission shall maintain a permanent file with respect to

1 each licensed motor vehicle salesman. Each file shall contain all pertinent
2 information with respect to the fitness and qualifications of each licensee
3 for the use by the commission in determining from time to time whether his
4 license should be revoked or suspended.

5 (d) There is no intent under this chapter to prevent a salesman who
6 has not previously been licensed or a transferee salesman from selling during
7 the time required to process his application. The applicant shall be allowed
8 to sell from the date of employment as long as he and his dealer follow the
9 procedure for license application."

10

11 SECTION 10. Arkansas Code § 23-112-307 is amended to read as follows:

12 "23-112-307. Expiration of license.

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

18 (b) Unless the commission shall by regulation provide otherwise, all
19 licenses issued to motor vehicle lessors shall expire June 30 following the
20 date of issue.

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

24

25 SECTION 11. Arkansas Code § 23-112-505 is amended to read as follows:

26 "23-112-505. Decisions and orders of commission - Quorum.

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

30 (b) A majority of the members of the commission shall constitute a
31 quorum for purposes of rendering an order and no order will issue except upon
32 the affirmative vote of a majority of the quorum of the members of the
33 commission as established under § 23-112-201."

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35 SECTION 12. Arkansas Code § 23-112-405 is repealed.

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SECTION 13. 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 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 15. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 16. EMERGENCY. It is hereby found and determined by the General Assembly that certain license fees charged by the Arkansas Motor Vehicle Commission need to be increased; that some of these fees are due on July 1 of each year; that unless this act is effective on July 1, 1995 those fees will not be increased; and that for the effective administration of this act an effective date of July 1, 1995 is necessary. 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 on July 1, 1995.

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