

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: S3/6/01 S3/8/01

A Bill

SENATE BILL 795

5 By: Senator Wooldridge
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS
10 MOTOR VEHICLE COMMISSION ACT; AND FOR OTHER
11 PURPOSES.
12

Subtitle

14 AN ACT TO AMEND VARIOUS SECTIONS OF THE
15 ARKANSAS MOTOR VEHICLE COMMISSION ACT.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code 23-112-103 is amended to read as follows:
21 23-112-103. Definitions.

22 As used in this chapter, notwithstanding any other statute and unless
23 the context otherwise requires:

24 (1) "Advertisement" means an oral, written, telecommunicated, graphic,
25 pictorial or other statement made in the course of soliciting business,
26 including without limitation a statement or representation made in a
27 newspaper, magazine, Internet, or other publication or contained in a notice,
28 sign, poster, display, circular, pamphlet, letter, or flyer, or via radio,
29 television or any other medium;

30 (2) "All-terrain vehicle" means a motor vehicle which:

31 (A) Is identified on a manufacturer's certificate or statement
32 of origin containing a seventeen (17) digit vehicle identification number;

33 (B) Is designed primarily for non-highway or all-terrain travel;

34 (C) Travels on three (3) or more wheels;

35 (D) Has a seat for the operator, and any passenger, and
36 handlebars or other steering mechanism for control; and

1 (E) Is used for any purpose including but not limited to off-
2 road, amphibious, or recreational travel;

3 ~~(1)~~(3) "Auto auction" means:

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

7 (B) Any motor vehicle dealer licensed to sell used motor
8 vehicles selling motor vehicles using an auction format but not on
9 consignment; and

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

12 (4) "Branch Location" means a secondary location:

13 (A) Identified in a license issued by the commission to a motor
14 vehicle dealer;

15 (B) Which is an established place of business other than the
16 licensed location;

17 ~~(2)~~(5) "Broker" means a person who for any valuable consideration,
18 whether received directly or indirectly, arranges or offers to arrange a
19 transaction involving the sale, for purposes other than resale, of a new
20 motor vehicle, and who is not:

21 (A) A dealer or bona fide employee of a new motor vehicle dealer
22 when acting on behalf of a new motor vehicle dealer;

23 (B) A representative or bona fide employee of a manufacturer,
24 factory branch, or factory representative when acting on behalf of a
25 manufacturer, factory branch, or factory representative;

26 (C) A representative or bona fide employee of a distributor or
27 distributor branch when acting on behalf of a distributor or distributor
28 branch; or

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

31 ~~(3)~~(6) "Coerce" means the failure to act in good faith in performing
32 or complying with any terms or provisions of the franchise or agreement;

33 ~~(4)~~(7) "Commission" means the Arkansas Motor Vehicle Commission
34 created by this chapter;

35 ~~(5)~~(8) "Conversion" means a motor vehicle other than an ambulance or
36 firefighiting vehicle which is substantially modified by a person, firm, or

1 corporation other than the manufacturer or distributor of the chassis of the
2 motor vehicle and which has not been the subject of a retail sale;

3 ~~(6)~~(9) "Distributor" means any person, resident or nonresident, who in
4 whole or in part sells or distributes new motor vehicles to motor vehicle
5 dealers, or who maintains distributor representatives;

6 ~~(7)~~(10) "Distributor branch" means a branch or division office
7 similarly maintained by a distributor for the same purposes a factory branch
8 or division is maintained;

9 ~~(8)~~(11) "Distributor representative" means a representative similarly
10 employed by a distributor or distributor branch;

11 ~~(9)~~(12) "Factory branch" means a branch or division office maintained
12 by a person, firm, association, corporation, or trust who manufactures or
13 assembles new motor vehicles for sale to distributors, to motor vehicle
14 dealers, or for directing or supervising, in whole or in part, its
15 representatives;

16 ~~(10)~~(13) "Factory representative" means a representative employed by a
17 person, firm, association, corporation, or trust who manufactures or
18 assembles new motor vehicles, or by a factory branch for the purpose of
19 making or promoting the sale of his, its, or their new motor vehicles, or for
20 supervising or contacting his, its, or their dealers or prospective dealers;

21 ~~(11)~~(14) "Franchise" means one (1) or more contracts between a
22 franchised dealer as franchisee and either a manufacturer or a distributor,
23 importer, second-stage manufacturer or converter as franchiser under which:

24 (A) The franchisee is granted the right to sell and service new
25 motor vehicles manufactured or distributed by the franchiser;

26 (B) The franchisee as an independent business is a component of
27 the franchiser's distribution system;

28 (C) The franchise is substantially associated with the
29 franchiser's trademark, trade name, ~~and~~ or commercial symbol;

30 (D) The franchisee's business is substantially reliant on the
31 franchiser for a continued supply of motor vehicles, parts, or accessories
32 for the conduct of its business; or

33 (E) Any right, duty, or obligation granted or imposed by this
34 chapter is affected. The term includes a written communication from a
35 franchiser to a franchisee by which a duty is imposed upon the franchisee;

36 ~~(12)~~(15) "Good faith" means the duty of each party to any franchise,

1 and all officers, employees, or agents thereof, to act in a fair and
 2 equitable manner toward each other so as to guarantee the one (1) party
 3 freedom from coercion, intimidation, or threats of coercion or intimidation,
 4 from the other party;

5 (16) "Licensed location" means the address designated as the primary
 6 business address of the motor vehicle dealer on the application submitted for
 7 approval of licensure;

8 ~~(13)~~(17) "Manufacturer" means any person, firm, association,
 9 corporation, or trust, resident or nonresident, who manufactures or assembles
 10 new motor vehicles;

11 ~~(14)~~(18) "Motor vehicle" means any motor-driven vehicle ~~of the sort~~
 12 ~~and kind required to have an Arkansas motor vehicle license or registration~~
 13 ~~and~~ having two (2) or more wheels, including but not limited to all-terrain
 14 vehicles, automobiles, trucks, motorcycles, motor driven cycles, and motor
 15 homes;

16 ~~(15)~~(19) "Motor vehicle dealer" means any person engaged in the
 17 business of selling, offering to sell, soliciting, or advertising the sale of
 18 motor vehicles, regardless of the medium used, or possessing motor vehicles
 19 for the purpose of resale, either on his own account or on behalf of another,
 20 either as his primary business or incidental thereto. The term "motor vehicle
 21 dealer" shall include any person engaged in the business of selling, offering
 22 to sell, soliciting, or advertising the sale, regardless of the medium used,
 23 of commercial buses, school buses, or other multipassenger motor vehicles, or
 24 possessing them for the purpose of resale. The term "motor vehicle dealer"
 25 does not include:

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

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

30 (C) Employees of persons, corporations, or associations
 31 enumerated in subdivision (15)(A) of this section when engaged in the
 32 specific performance of their duties as employees;

33 (D) Specialty vehicle dealers; ~~or~~

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

36 (F) Used motor vehicle dealers licensed by the state under Title 23,

1 Chapter 112, Subchapter 6:

2 ~~(16)~~(20) "Motor vehicle lessor" means any person, not excluded by
3 subdivision (15) of this section, engaged in the motor vehicle leasing or
4 rental business;

5 ~~(17)~~(21) "Motor vehicle ~~salesman~~ salesperson" means any person who:

6 (A) is employed as a salesman salesperson by a motor vehicle
7 dealer whose duties include the selling or offering for sale of motor
8 vehicles;

9 (B) For compensation of any kind acts as a salesperson, agent or
10 representative of a motor vehicle dealer;

11 (C) Attempts to or in fact negotiates a sale of a motor vehicle
12 owned partially or entirely by a motor vehicle dealer; and

13 (D) Uses the financial resources, line of credit, or floor plan
14 of a motor vehicle dealer to purchase, sell, or exchange any interest in a
15 motor vehicle;

16 ~~(18)~~(22) "New motor vehicle" means any motor vehicle, the legal title
17 to which has never been transferred by a manufacturer, distributor, or
18 franchised new motor vehicle dealer to an ultimate purchaser, ~~and has not~~
19 ~~been the subject of retail sale without regard to mileage and any other motor~~
20 ~~vehicle defined as new by regulations promulgated by the commission;~~

21 (23) "Off premises" means a location other than the address designated
22 as the licensed location;

23 ~~(19)~~(24) "Person" means and includes, individually and collectively,
24 individuals, firms, partnerships, copartnerships, associations, corporations,
25 trusts, or any other form of business enterprise, or any legal entity;

26 ~~(20)~~(A)(25)(A) "Relevant market area" means the area within a radius
27 surrounding an existing dealer or the area of responsibility defined in the
28 franchise and on file in the commission office, whichever is greater.

29 (B) For all licensed new motor vehicle dealers, excluding
30 motorcycles, motorized cycles, and motor-driven all-terrain vehicles, which
31 include two-wheeled, three-wheeled, four-wheeled, six-wheeled, or eight-
32 wheeled motorcycles, motorized cycles, and motor-driven all-terrain vehicles,
33 the relevant market area shall be a radius of twenty (20) miles. However,
34 where a manufacturer is seeking to establish an additional new motor vehicle
35 dealer and there are one (1) or more existing new motor vehicle dealers of
36 the same line make within a ten-mile radius of the proposed dealer site, the

1 relevant market area shall in all instances be the area within a radius of
2 ten (10) miles around an existing dealer.

3 (C) For all licensed new motor vehicle dealers of motorcycles,
4 motorized cycles, and motor-driven all-terrain vehicles, which include two-
5 wheeled, three-wheeled, four-wheeled, six-wheeled, or eight-wheeled
6 motorcycles, motorized cycles, and motor-driven all-terrain vehicles, the
7 relevant market area shall in all instances be the area within a radius of
8 thirty (30) miles around an existing dealer or the area of responsibility
9 defined in the franchise and on file in the commission office, whichever is
10 greater;

11 ~~(21)~~(26) "Retail sale" or "sale at retail" means the act or attempted
12 act of selling, bartering, exchanging, or otherwise disposing of a new motor
13 vehicle to an ultimate purchaser for use as a consumer;

14 ~~(22)~~(27) "Second stage manufacturer" or "converter" means a person,
15 firm, or corporation who prior to retail sale of a motor vehicle, assembles,
16 installs, or affixes a body, cab, or special equipment to a chassis, or who
17 substantially adds to, subtracts from, or modifies a previously assembled or
18 manufactured motor vehicle;

19 ~~(23)~~(28) "Specialty vehicle" means a motor vehicle manufactured by a
20 second stage manufacturer by purchasing motor vehicle components, e.g., frame
21 and drive train, and completing the manufacture of finished motor vehicles
22 for the purpose of resale, with the primary manufacturer warranty unimpaired,
23 to a limited commercial market rather than the consuming public. "Specialty
24 vehicles" includes garbage trucks, ambulances, fire trucks, limousines,
25 hearses, and other similar limited-purpose vehicles as the commission may by
26 regulation provide;

27 ~~(24)~~(29) "Temporary permit" means a license issued for one (1) week or
28 less to a motor vehicle dealer who is licensed in another state for the
29 purpose of displaying, offering to sell, selling, and soliciting the sales of
30 motor vehicles at the time and place designated by the commission and only at
31 an approved motor vehicle show in this state;

32 ~~(25)~~(30) "Ultimate purchaser" means, with respect to any new motor
33 vehicle, the first person, other than a motor vehicle dealer purchasing in
34 his capacity as a dealer, who in good faith purchases the new motor vehicle
35 for purposes other than resale. "Ultimate purchaser" shall not include a
36 person who purchases a vehicle for purposes of altering or remanufacturing

1 the motor vehicle for future resale; ~~and~~

2 (31) "Used motor vehicle" means any motor vehicle which has previously
3 been sold, bargained, exchanged, given away, or the title thereto transferred
4 from the person or corporation who first took title from the manufacturer,
5 distributor, dealer, or agents thereof. In the event of a transfer that is
6 reflected on the statement of origin from the original franchise dealer to
7 any other dealer, individual, or corporation other than a franchise dealer of
8 the same make of vehicle, the vehicle shall be considered a used motor
9 vehicle;

10 (32) "Used motor vehicle dealer" means any person, wholesaler, or auto
11 auctioneer who, for a commission or with the intent to make a profit or gain
12 of money or other thing of value:

13 (A) Sells, exchanges, rents, or leases with the option to
14 purchase or own, or attempts to negotiate a sale or exchange of an interest
15 in any used motor vehicle; or

16 (B) Is wholly or in part in the business of buying, selling,
17 trading, or exchanging used motor vehicles, whether or not such motor
18 vehicles are owned by such person; and

19 ~~(26)-(33)~~ "Wholesaler" means any person, resident or nonresident, not
20 excluded by subdivision (15) of this section, who, in whole or in part, sells
21 used motor vehicles to motor vehicle dealers or purchases used vehicles for
22 the purpose of resale. However, motor vehicle dealers who, incidental to
23 their primary business, sell motor vehicles to other dealers are not
24 considered wholesalers because of the incidental sales.

25
26 SECTION 2. Arkansas Codes 23-112-301 is amended to read as follows:
27 23-112-301. License required.

28 (a) ~~The~~ Notwithstanding any other statute, the following acts are
29 declared to be unlawful:

30 (1) The violation of any of the provisions of this chapter; and

31 (2) For any person to engage in business as, or serve in the
32 capacity of, or act as a new motor vehicle dealer, motor vehicle ~~salesman~~
33 salesperson, motor vehicle lessor, manufacturer, distributor, factory branch
34 or division, distributor branch or division, factory representative,
35 distributor representative, or second-stage manufacturer or converter, as
36 such, in this state without first obtaining a license therefor as provided in

1 this chapter, regardless of whether or not the person maintains or has a
2 place of business in this state.

3 (b) Any person, firm, association, corporation, or trust engaging,
4 acting, or serving in more than one (1) of these capacities or having more
5 than one (1) place where such business is carried on or conducted shall be
6 required to obtain and hold a separate and current license for each capacity
7 and place of business.

8 (c)(1) However, any ~~new~~ licensed motor vehicle dealer shall not be
9 required to obtain a license as a motor vehicle lessor for any location
10 licensed as a motor vehicle dealer.

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

15 (3) New lease locations opened after a license is issued shall
16 be approved by the Arkansas Motor Vehicle Commission but shall not require a
17 new license.

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

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

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

28 (A) Displaying for sale ~~new~~ motor vehicles on a lot or
29 showroom;

30 (B) Advertising for sale new motor vehicles regardless of
31 the medium used; or

32 (C) Regularly or actively soliciting buyers for ~~new~~ motor
33 vehicles.

34 ~~(3) Subdivisions (d)(1) and (2) of this subsection authorize the~~
35 ~~practice of a licensed new automobile or truck dealer selling, on special-~~
36 ~~order, a new automobile or truck for which he does not hold a manufacturer's~~

1 franchise.

2 ~~(4) When a new automobile or truck dealer secures a new~~
3 ~~automobile or truck for a special order and the customer does not consummate~~
4 ~~the transaction, the automobile or truck dealer may sell the vehicle to~~
5 ~~another ultimate purchaser, provided that:~~

6 ~~(A) The automobile or truck dealer shall document the~~
7 ~~name, address, and telephone number of the customer for whom the truck or~~
8 ~~automobile was ordered and a statement detailing why the transaction was not~~
9 ~~consummated, such documentation to be held by the dealer subject to~~
10 ~~inspection by the commission for a period of two (2) years after the date the~~
11 ~~purchase was refused; and~~

12 ~~(B) The automobile or truck shall be deemed a used motor~~
13 ~~vehicle and the dealer shall not advertise such automobile or truck as a new~~
14 ~~automobile or truck.~~

15 ~~(5) The presence of more than one (1) such vehicle resulting~~
16 ~~from such nonconsummated special order transactions in the automobile or~~
17 ~~truck dealer's inventories at the same time, ordered by the same customer,~~
18 ~~creates a rebuttable presumption that subdivision (d)(1) of this section has~~
19 ~~been violated on those transactions.~~

20 ~~(6) Notwithstanding any other provision of this subchapter,~~
21 ~~including, but not limited to, § 23-112-308 or § 23-112-309, the sole and~~
22 ~~exclusive remedy of the commission in the event that a new automobile or~~
23 ~~truck dealer violates or exceeds his authority under subdivisions (d)(1)-(3)~~
24 ~~of this section shall be to seek an injunction prohibiting the challenged~~
25 ~~transaction pursuant to § 23-112-104.~~

26 ~~(e) A willful violation of subsection (a) of this section shall be a~~
27 ~~Class B misdemeanor.~~

28

29 SECTION 3. Arkansas Code 23-112-302 is amended to read as follows:

30 23-112-302. Application for license.

31 (a) Applications for licenses required to be obtained under the
32 provisions of this chapter shall be verified by the oath or affirmation of
33 the applicants and shall be on forms prescribed by the Arkansas Motor Vehicle
34 Commission and furnished to the applicants. They shall contain such
35 information as the commission deems necessary to enable it to fully determine
36 the qualifications and eligibility of the several applicants to receive the

1 licenses applied for.

2 (b) The commission shall require that there be set forth in each
3 application:

4 (1) Information relating to:

5 ~~(A) The applicant's financial standing;~~

6 ~~(B)(A) The applicant's business integrity;~~

7 ~~(C)(B) Whether the applicant has an established place of
8 business in the State of Arkansas and is primarily engaged in the pursuit,
9 avocation, or business for which licenses are applied for; and~~

10 ~~(D)(C) Whether the applicant has the proper facilities and
11 is able to properly conduct the business for which licenses are applied for;
12 and~~

13 (2) Other pertinent information consistent with the safeguarding
14 of the public interest and public welfare.

15 (c)(1)(A) In addition to the foregoing provisions of this section,
16 applications for licenses as ~~new~~:

17 (i) New motor vehicle dealers must also be
18 accompanied by the filing with the commission of a corporate surety bond in
19 the penal sum of fifty thousand dollars (\$50,000) on a bond form approved by
20 the commission; and

21 (ii) New motorcycle dealers, new all-terrain vehicle
22 dealers and motor vehicle lessors must also be accompanied by the filing with
23 the commission of a corporate surety bond in the penal sum of twenty-five
24 thousand dollars (\$25,000) on a bond form approved by the commission.

25 ~~However, an applicant for licenses at multiple locations may choose to~~
26 ~~provide a corporate surety bond in the penal sum of one hundred thousand~~
27 ~~dollars (\$100,000) covering all licensed locations of the same capacity in~~
28 ~~lieu of separate bonds for each individual location.~~

29 (B) In each instance that a branch license is applied for,
30 each application shall be accompanied by the filing with the commission of a
31 corporate surety bond in the penal sum of twenty-five thousand dollars
32 (\$25,000) on a bond form approved by the commission.

33 (C) Motor vehicle dealers shall also provide proof of
34 liability insurance coverage on all vehicles to be offered for sale in an
35 amount equal to or greater than the amount required by the Motor Vehicle
36 Safety Responsibility Act, beginning at § 27-19-01.

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

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

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

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

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

15 (d) In addition to the foregoing provisions of this section,
16 applications for licenses as motor vehicle dealers in new motor vehicles must
17 also be accompanied by the filing with the commission of a bona fide contract
18 or franchise then in effect between the applicant and a manufacturer or
19 distributor of the new motor vehicles proposed to be dealt in, unless the
20 contract or franchise has already been filed with the commission in
21 connection with a previous application made by the applicant, in which event
22 the applicant shall, in lieu of again filing the contract or franchise,
23 identify the contract or franchise by appropriate reference and file all
24 revisions and additions, if any, which have been made to the contract or
25 franchise.

26 (e) The applicant for a license as a new motor vehicle dealer must
27 furnish satisfactory evidence that he or it maintains adequate space in the
28 building or structure wherein his or its established business is conducted
29 for the display of new motor vehicles, or that he or it will have the
30 facilities within a reasonable time after receiving a license, and that he or
31 it has or will have adequate facilities in the building or structure for the
32 repair and servicing of motor vehicles and the storage of new parts and
33 accessories for the motor vehicles.

34 (f)(1) Every licensed dealer shall maintain, for three (3) years after
35 the date of purchase, records of each vehicle transaction to which the dealer
36 was a party.

1 (2) Dealers shall maintain copies of all documents executed in
 2 connection with any transaction, which may include bills of sale, titles,
 3 odometer statements, invoices, affidavits of alteration, and reassignments,
 4 and shall be open to inspection by the executive director or commission
 5 representative acting in an official capacity during reasonable business
 6 hours and upon execution of subpoena.

7 (g)(1) The licensee applying for a branch license shall not utilize
 8 any portion of franchise name or product nameplates.

9 (2) A licensee applying for a branch license shall remain in the
 10 relevant market area as defined in the franchise or selling agreement
 11 approved by the franchiser and franchisee and on file in the commission
 12 office, or as defined in this subchapter pertaining to relevant market area,
 13 whichever is greater;

14
 15
 16 SECTION 4. Arkansas Code 23-112-303 is amended to read as follows:
 17 23-112-303. Application fees.

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

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

23 (c) The schedule of license fees to be charged and received by the
 24 Arkansas Motor Vehicle Commission for the licenses issued pursuant to this
 25 subchapter shall be as follows:

26 (1) For each manufacturer, distributor, factory branch and
 27 division, or distributor branch and division, second-stage manufacturer,
 28 importer, and converter, nine hundred dollars (\$900);

29 (2) For each motor vehicle dealer or motor vehicle lessor, one
 30 hundred dollars (\$100);

31 (3) For each manufacturer, distributor, or factory
 32 representative, four hundred dollars (\$400); ~~and~~

33 (4) For each motor vehicle ~~salesman~~ salesperson, ~~ten dollars~~
 34 ~~(\$10.00)~~ fifteen dollars (\$15.00);

35 (5) For each branch location, twenty-five dollars (\$25.00); and

36 (6) For each replacement certificate of license, ten dollars

1 (\$10.00).

2 (d) Any person, firm, or corporation required to be licensed under
3 this subchapter who fails to make application for the license at the time
4 required shall, in addition to the fees required to be paid pursuant to
5 subsection (c) of this section, pay a penalty of fifty percent (50%) of the
6 amount of the license fee for each thirty (30) days of default. The penalty,
7 however, may be waived in whole or in part within the discretion of the
8 commission. License applications for sales personnel shall be received in the
9 commission office within thirty (30) days of employment.

10

11 SECTION 5. Arkansas Code 23-112-304 is amended to read as follows:

12 23-112-304. Issuance of license - Change of location - Change of
13 business or corporate name, structure, or DBA name - Dealers, manufacturers,
14 distributors, etc.

15 (a) The license issued to each motor vehicle dealer, manufacturer,
16 distributor, factory branch or division, or distributor branch or division
17 shall specify the location of the factory, office, branch, or division
18 thereof.

19 (b) In case the location is changed, the Arkansas Motor Vehicle
20 Commission shall endorse the change of location on the license without charge
21 if it is within the same county.

22 (c) A change of location to another county shall require a new
23 license.

24 (d) Licensees shall notify the commission in writing of any change in
25 the business or corporate name, or structure and of any alternate name or
26 names in which the company will do business ("DBA names") and shall provide
27 the original issue license with the notification of name change or addition
28 of DBA name or names. The commission shall endorse the change on the license
29 without charge.

30

31 SECTION 6. Arkansas Code 23-112-305(c) is repealed:

32 ~~(c) A fee of five dollars (\$5.00) shall be charged by the commission~~
33 ~~for endorsing each change of employer on the licenses, and the fee shall~~
34 ~~accompany the application for change.~~

35

36 SECTION 7. Arkansas Code 23-112-306 is amended to read as follows:

1 23-112-306. Display of license - Change of employer - ~~Salesman~~
2 Sal esperson.

3 (a) Every motor vehicle ~~salesman~~ sal esperson shall have his license
4 upon his person or displayed at his place of employment, except as provided
5 in this section, when engaged in his business and shall display the license
6 upon request. The name and ~~business~~ address of the ~~employer of the salesman~~
7 applicant shall be stated on the license.

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

10 (1) The licensee shall, within three (3) days following the
11 change, ~~mail or deliver his license to~~ notify in writing the Arkansas Motor
12 Vehicle Commission for its endorsement ~~of the change thereon.~~ The license
13 ~~shall be accompanied by a fee of five dollars (\$5.00) for endorsing each~~
14 ~~change of employer and a written statement of the licensee setting forth the~~
15 ~~name and business address of his new employer, the date his employment~~
16 ~~terminated with his last employer, and the date his employment commenced with~~
17 ~~his new employer;~~

18 (2) The last employer of the licensee, within three (3) days
19 following the termination of employment of the licensee, shall make a report
20 to the commission setting forth the reasons why the services of the licensee
21 were terminated and such other information as may be required by the
22 commi ssi on;

23 (3) Upon receipt by the commission of the licensee's ~~license and~~
24 ~~fee and his~~ written notification and the last employer's report, the
25 commission shall ~~immediately make an appropriate endorsement on the license~~
26 ~~showing the change of employer and mail the license, as endorsed, to the~~
27 ~~licensee unless the commission~~ determine if it has grounds to believe and
28 does believe that the licensee is no longer qualified under the provisions of
29 this chapter as a motor vehicle ~~salesman~~ sal esperson. Under such
30 circumstances, the commission shall immediately notify him and his new
31 employer in writing that a hearing will be held for the purpose of
32 determining whether his license should be revoked or suspended, specifying
33 the grounds for revocation or suspension, as the case may be, and the time
34 and place for the hearing. The hearing and any and all appeals by the
35 licensee with respect thereto shall be in accordance with the provisions of
36 §§ 23-112-501 - 23-112-509; and

1 (4) If, after the commission receives the licensee's license and
2 fee and his last employer's report, the executive director of the commission
3 cannot for any reason endorse and mail to the licensee his license within a
4 period of three (3) days following the receipt by the commission of the
5 licensee's license and fee and his last employer's report, then and in that
6 event he shall mail to the licensee a permit in such form as the commission
7 shall prescribe, which permit shall serve in lieu of a license until such
8 time as the commission endorses and mails the license to the licensee or
9 until such time as the licensee's license is revoked or suspended in
10 accordance with the provisions of this chapter. If the license is ultimately
11 revoked or suspended, then immediately upon the revocation or suspension the
12 licensee shall return the permit to the commission for cancellation.

13 (c) The commission shall maintain a permanent file with respect to
14 each licensed motor vehicle ~~salesman~~ salesperson. Each file shall contain all
15 pertinent information with respect to the fitness and qualifications of each
16 licensee for the use by the commission in determining from time to time
17 whether his license should be revoked or suspended.

18 (d) There is no intent under this chapter to prevent a ~~salesman~~
19 salesperson who has not previously been licensed ~~or a transferee salesman as~~
20 a salesperson from selling during the time required to process his
21 application. The applicant shall be allowed to sell from the date of
22 employment as long as he and his dealer follow the procedure for license
23 application.

24

25 SECTION 8. Arkansas Code 23-112-307(a) and (b) are amended to read as
26 follows:

27 (a) Unless the Arkansas Motor Vehicle Commission shall by regulation
28 provide to the contrary, all licenses issued to manufacturers, distributors,
29 factory or distributor branches, ~~factory or distributor representatives,~~
30 importer, second-stage manufacturer, or converter and motor vehicle dealers,
31 ~~and motor vehicle salesmen of new motor vehicles~~ shall expire December 31
32 following the date of issue.

33 (b) Unless the commission shall by regulation provide otherwise, all
34 licenses issued to motor vehicle lessors, representatives, and motor vehicle
35 salespersons shall expire June 30 following the date of issue.

36

1 SECTION 9. Arkansas Code 23-112-308(a) is amended to read as follows:

2 (a) ~~The~~ Notwithstanding any other statute, the Arkansas Motor Vehicle
3 Commission may deny an application for a license, or revoke or suspend a
4 license after it has been granted, for any of the following reasons:

5 (1) For selling or soliciting sales of a motor vehicle without a
6 license issued by the commission. The unlawful sale or solicitation of each
7 motor vehicle shall constitute a separate offense;

8 ~~(1)(2)~~ (2) On satisfactory proof of the unfitness of the applicant
9 or the licensee, as the case may be, under the standards established and set
10 out in this chapter;

11 ~~(2)(3)~~ (3) For fraud practiced or any material misstatement made by
12 an applicant in any application for license under the provisions of this
13 chapter;

14 ~~(3)(4)~~ (4) For ~~any willful~~ failure to comply with any provision of
15 this chapter or with any rule or regulation promulgated by the commission
16 under authority vested in it by this chapter;

17 ~~(4)(5)~~ (5) Change of condition after license is granted or failure
18 to maintain the qualifications for license;

19 ~~(5)(6)~~ (6) Continued ~~or flagrant~~ violation of any of the provisions
20 of this chapter or of any of the rules or regulations of the commission;

21 ~~(6)(7)~~ (7) For any ~~willful~~ violation of any law relating to the
22 sale, distribution, or financing of motor vehicles;

23 ~~(7)(8)~~ (8) ~~Willfully defrauding~~ Defrauding any retail buyer to the
24 buyer's damage;

25 ~~(8)(9)~~ (9) ~~Willful failure~~ Failure to perform any written agreement
26 with any retail buyer;

27 (10) Selling, attempting to sell, or advertising for sale
28 vehicles from a location other than that set forth on the license;

29 (11) Falsifying, altering, or neglecting to endorse or deliver a
30 certificate of title to a transferee or lawful owner, or failing to properly
31 designate a transferee on a document of assignment or certificate of title;

32 (12) Knowingly purchasing, selling, or otherwise acquiring or
33 disposing of a stolen motor vehicle;

34 (13) Submitting a false affidavit setting forth that a title has
35 been lost or destroyed;

36 (14) Passing title or reassigning title as a dealer without a

1 dealer's license, or when the dealer's license has been suspended or revoked;

2 (15) For a person representing that he or she is a dealer or
3 salesperson, either verbally or in any advertisement, when the person is not
4 licensed as such;

5 (16) Assisting any person in the sale of a motor vehicle who is
6 not licensed as a dealer by the commission;

7 ~~(9)~~(17) Being a manufacturer who fails to specify the delivery
8 and preparation obligations of its motor vehicle dealers, as is required for
9 the protection of the buying public, prior to delivery of new motor vehicles
10 to retail buyers;

11 ~~(10)~~(18)(A) On satisfactory proof that any manufacturer,
12 distributor, distributor branch or division, or factory branch or division
13 has unfairly and without due regard to the equities of the parties or to the
14 detriment of the public welfare failed to properly fulfill any warranty
15 agreement or to adequately and fairly compensate any of its motor vehicle
16 dealers for labor, parts, or incidental expenses incurred by the dealer with
17 regard to factory warranty agreements performed by the dealer.

18 (B) Compensation for parts for two-wheeled, three-wheeled,
19 and four-wheeled motorcycles and motor-driven all-terrain vehicles must be at
20 the manufacturer's suggested retail price;

21 ~~(11)~~(19) For the commission of any act prohibited by §§ 23-112-
22 301 - 23-112-307, 23-112-402, and 23-112-403, or the failure to perform any
23 of the requirements of those sections;

24 ~~(12)~~(20) Using or permitting the use of special license plates
25 assigned to him for any other purpose than those permitted by law;

26 ~~(13)~~(21) Disconnecting, turning back, or resetting the odometer
27 of any motor vehicle in violation of state or federal law;

28 ~~(14)~~(22) Accepting an open assignment of title or bill of sale
29 for a motor vehicle which is not completed by identifying the licensee as the
30 purchaser or assignee of the motor vehicle;

31 ~~(15)~~(23) Failure to notify the commission of a change in
32 ownership, location, or franchise, or any other matters the commission may
33 require by regulation. The notification shall be in written form and
34 submitted to the commission at least fifteen (15) days prior to the effective
35 date of the change; or

36 ~~(16)~~(24) Failure to endorse and deliver an assignment and

1 warranty of title to the buyer pursuant to § 27-14-902.

2

3 SECTION 10. Arkansas Code 23-112-309(a)(1) is amended to read as
4 follows:

5 (a)(1) If, after alternative proceedings or notice and hearing, the
6 Arkansas Motor Vehicle Commission finds that any person holding a license
7 under this chapter is guilty of any violation of this chapter or regulations
8 promulgated thereunder, it shall have the power and authority to impose a
9 monetary penalty upon the licensee in lieu of suspension or revocation of
10 license.

11

12 SECTION 11. Arkansas Code 23-112-310(a) is amended to read as follows:

13 (a) Every licensed motor vehicle manufacturer ~~or~~ distributor, second-
14 stage manufacturer, importer, or converter shall file with the Arkansas Motor
15 Vehicle Commission with its initial application for a license, a copy of the
16 documents stating the delivery, preparation, and warranty obligations of its
17 motor vehicle dealers and a schedule of the compensation to be paid to its
18 motor vehicle dealers for the work and services they shall be required to
19 perform in connection with such delivery, preparation, and warranty
20 obligations. The documents shall constitute the dealer's only responsibility
21 for product liability as between the dealer and the manufacturer or
22 distributor. Any revisions to the delivery, preparation, and warranty
23 obligations or to the schedule of compensation shall be filed no later than
24 September 15 of each calendar year.

25

26 SECTION 12. Arkansas Code 23-112-311(a) and (b) are amended to read as
27 follows:

28 (a)(1) In all instances, when a manufacturer or distributor ~~seeking~~
29 seeks to enter into a franchise establishing an additional new motor vehicle
30 dealer or relocating an existing new motor vehicle dealer within or into a
31 relevant market area where the same line make is then represented, the
32 manufacturer or distributor shall in writing first notify the Arkansas Motor
33 Vehicle Commission and each new motor vehicle dealer in that line make in the
34 relevant market area of the intention to establish an additional dealer or to
35 relocate an existing dealer within or into that market area.

36 (2) Within twenty (20) days of receiving the notice or within

1 twenty (20) days after the end of any appeal procedure provided by the
2 manufacturer or distributor, any new motor vehicle dealer may file with the
3 commission to protest the establishing or relocating of the new motor vehicle
4 dealer. When a protest is filed, the commission shall inform the manufacturer
5 or distributor that a timely protest has been filed, and that the
6 manufacturer or distributor shall not establish or relocate the proposed new
7 motor vehicle dealer until the commission has held a hearing, nor thereafter
8 if the commission has determined that there is good cause for not permitting
9 the addition or relocation of the new motor vehicle dealer. In the event that
10 a protest is filed with the commission, the party desiring the addition or
11 relocation of a new motor vehicle dealer pursuant to this subsection shall
12 pay for and provide a copy of a survey showing the proposed location of the
13 additional or relocated new motor vehicle dealer in relation to other
14 existing dealers of the same line make in the relevant market area.

15 (b) This section does not apply:

16 (1) To the relocation of an existing new motor vehicle dealer,
17 other than a new motor vehicle dealer of motorcycles, motorized cycles, and
18 all-terrain vehicles, within that dealer's relevant market area, provided
19 that the relocation not be at a site within ten (10) miles of a licensed new
20 motor vehicle dealer for the same line make of motor vehicles;

21 (2) If the proposed new motor vehicle dealer, other than a new
22 motor vehicle dealer of motorcycles, motorized cycles, and all-terrain
23 vehicles, is to be established at or within two (2) miles of a location at
24 which a former licensed new motor vehicle dealer for the same line make of
25 new motor vehicle has ceased operating within the previous two (2) years; or

26 (3) To the relocation of an existing new motor vehicle dealer of
27 motorcycles, motorized cycles, and all-terrain vehicles within that dealer's
28 relevant market area, provided that the relocation not be at a site within
29 twenty-five (25) miles of a licensed new motor vehicle dealer for the same
30 line make of motor vehicles.

31
32 SECTION 13. Arkansas Code 23-112-314(a) is amended to read as follows:

33 (a) If, after request for alternative proceedings or notice and
34 hearing, the Arkansas Motor Vehicle Commission finds that any person not
35 holding a license under this chapter is guilty of any violation of this
36 chapter or regulations promulgated thereunder, it shall have the power and

1 authority to impose a monetary penalty upon the person not to exceed one
2 thousand dollars (\$1,000) per violation.

3
4 SECTION 14. Arkansas Code 23-112-401 is repealed:

5 ~~23-112-401. Penalty.~~

6 ~~A willful violation of any provision of this subchapter shall be a~~
7 ~~Class B misdemeanor.~~

8
9 SECTION 15. Arkansas Code 23-112-402 is amended to read as follows:

10 23-112-402. Dealer and ~~salesman~~ salesperson.

11 It shall be unlawful for a motor vehicle dealer or a motor vehicle
12 ~~salesman~~ salesperson:

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

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

22 (3) To resort to or use any false or misleading advertisement in
23 connection with his business as a motor vehicle dealer or motor vehicle
24 ~~salesman~~ salesperson.

25
26 SECTION 16. Arkansas Code 23-112-403 is amended to read as follows:

27 23-112-403. Manufacturers, distributors, ~~etc~~ second-stage
28 manufacturers, importers, or converters.

29 (a) It shall be unlawful:

30 (1) For a manufacturer, a distributor, a second-stage
31 manufacturer, an importer, a converter, a distributor branch or division, a
32 factory branch or division, or officer, agent, or other representative
33 thereof, to coerce, or attempt to coerce, any motor vehicle dealer:

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

1 vehicle dealer;

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

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

8 (D) To contribute or pay money or anything of value into
9 any cooperative or other advertising program or fund; or

10 (E) To file for or to use a legal or "d/b/a" name or
11 identification other than a name of choice by the dealer;

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

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

28 (B) To coerce, or attempt to coerce, any motor vehicle
29 dealer to enter into any agreement with the manufacturer, distributor,
30 distributor branch or division, or factory branch or division, or officer,
31 agent, or other representative thereof, or to do any other act prejudicial to
32 the dealer by threatening to cancel any franchise or any contractual
33 agreement existing between the manufacturer, distributor, distributor branch
34 or division, or factory branch or division, and the dealer. However, good
35 faith notice to any motor vehicle dealer of the dealer's violation of any
36 terms or provisions of the franchise or contractual agreement shall not

1 constitute a violation of this chapter;

2 (C)(i) To terminate or cancel the franchise or selling
3 agreement of any dealer without due cause. The nonrenewal of a franchise or
4 selling agreement without due cause shall constitute an unfair termination or
5 cancellation, regardless of the terms or provisions of the franchise or
6 selling agreement.

7 (ii) The manufacturer, distributor, distributor
8 branch or division, or factory branch or division, or officer, agent, or
9 other representative thereof shall notify a motor vehicle dealer in writing
10 and forward a copy of the notice to the Arkansas Motor Vehicle Commission of
11 the termination or cancellation of the franchise or selling agreement of the
12 dealer at least sixty (60) days before the effective date thereof, stating
13 the specific grounds for the termination or cancellation. However, in the
14 event that the commission finds that the franchise or selling agreement has
15 been abandoned by the dealer, the commission, for good cause, may waive the
16 sixty-day notice requirement and allow for the immediate termination of the
17 franchise or selling agreement.

18 (iii)(a) The manufacturer, distributor, distributor
19 branch or division, or factory branch or division, or officer, agent, or
20 other representative thereof shall notify a motor vehicle dealer in writing
21 and forward a copy of the notice to the commission at least sixty (60) days
22 before the contractual term of his franchise or selling agreement expires
23 that the franchise or selling agreement will not be renewed, stating the
24 specific grounds for the nonrenewal in those cases where there is no
25 intention to renew it.

26 (b) In no event shall the contractual term of
27 any franchise or selling agreement expire without the written consent of the
28 motor vehicle dealer involved prior to the expiration of at least sixty (60)
29 days following the written notice.

30 (iv) Any motor vehicle dealer who receives written
31 notice that his franchise or selling agreement is being terminated or
32 cancelled or who receives written notice that his franchise or selling
33 agreement will not be renewed may, within the sixty-day notice period, file
34 with the commission a verified complaint for its determination as to whether
35 the termination or cancellation or nonrenewal is unfair within the purview of
36 this chapter. That franchise or selling agreement shall continue in effect

1 until final determination of the issues raised in the complaint,
2 notwithstanding anything to the contrary contained in this chapter or in the
3 franchise or selling agreement.

4 (v) In the event of the termination or cancellation
5 of the franchise or selling agreement, the terminating or canceling party
6 shall notify the commission of the termination or cancellation of the
7 franchise or selling agreement at least sixty (60) days before the effective
8 date thereof;

9 (D) To resort to or use any false or misleading
10 advertisement in connection with his or its business as a manufacturer,
11 distributor, distributor branch or division, or factory branch or division,
12 or officer, agent, or other representative thereof;

13 (E) To offer to sell or to sell any new motor vehicle to
14 any motor vehicle dealer at a lower actual price therefor than the actual
15 price charged to any other motor vehicle dealer for the same model vehicle
16 similarly equipped or to utilize any device, including, but not limited to,
17 sales promotion plans or programs, which results in a lesser actual price.
18 However, the provisions of this subdivision (a)(2)(E) shall not apply to
19 sales to a motor vehicle dealer for resale to any unit of federal, state, or
20 local government. Nothing contained in this subdivision (a)(2)(E) shall be
21 construed to prevent the utilization of sales promotion plans or programs or
22 the offering of volume discounts through new motor vehicle dealers, for fleet
23 or volume purchasers, if the program is available to all new motor vehicle
24 dealers from the same manufacturer in this state. Further, the provisions of
25 this subdivision (a)(2)(E) shall not apply to sales to a motor vehicle dealer
26 of any motor vehicle ultimately sold, donated, or used by the dealer in a
27 driver education program. The provisions of this subdivision (a)(2)(E) shall
28 not apply so long as a manufacturer or distributor, or any agent thereof,
29 offers to sell or sells new motor vehicles to all motor vehicle dealers at
30 the same price;

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

36 (G) To offer to sell or to sell parts and accessories to

1 any new motor vehicle dealer for use in his own business for the purpose of
2 repairing or replacing the parts and accessories, or comparable parts and
3 accessories, at a lower actual price therefor than the actual price charged
4 to any other new motor vehicle dealer for similar parts and accessories for
5 use in his own business. However, it is recognized that certain motor vehicle
6 dealers operate and serve as wholesalers of parts and accessories to retail
7 outlets. Therefore, nothing contained in this subdivision shall be construed
8 to prevent a manufacturer or distributor, or any agent thereof, from selling
9 to a motor vehicle dealer who operates and serves as a wholesaler of parts
10 and accessories such parts and accessories as may be ordered by the motor
11 vehicle dealer for resale to retail outlets at a lower actual price than the
12 actual price charged a motor vehicle dealer who does not operate or serve as
13 a wholesaler of parts and accessories;

14 (H) To prevent or attempt to prevent by contract or
15 otherwise any motor vehicle dealer from changing the capital structure of his
16 dealership or the means by or through which he finances the operation of his
17 dealership, provided that the dealer at all times meets any capital standards
18 agreed to between the dealership and the manufacturer or distributor and
19 provided that the standards are deemed reasonable by the commission. If the
20 dealer of record requests consent from the manufacturer or distributor in
21 writing on the form, if any, generally utilized or required by the
22 manufacturer or distributor for such purposes and the manufacturer or
23 distributor fails to respond in writing, giving or withholding consent,
24 within sixty (60) days of receipt of the written request, consent is deemed
25 to be given;

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

1 franchisee of record requests consent from the manufacturer or distributor in
2 writing on the form, if any, generally utilized or required by the
3 manufacturer or distributor for such purposes and the manufacturer or
4 distributor fails to respond in writing, giving or withholding consent,
5 within sixty (60) days of receipt of the written request, consent is deemed
6 to be given;

7 (J) Notwithstanding the terms of any franchise agreement,
8 to prevent, attempt to prevent, or refuse to honor the succession to a
9 dealership by any legal heir or devisee under the will of a dealer or under
10 the laws of descent and distribution applicable to the decedent's estate,
11 provided that the manufacturer or distributor has received sixty (60) days'
12 written notice prior to the transfer or sale, and unless the transferee does
13 not meet the criteria generally applied by the manufacturer in approving new
14 motor vehicle dealers or agree to be bound by all the terms and conditions of
15 the dealer agreement, and the manufacturer so advises its dealer within
16 thirty (30) days of receipt of the notice, or it is shown to the commission,
17 after notice and hearing, that the result of such succession will be
18 detrimental to the public interest or to the representation of the
19 manufacturer or distributor. However, nothing herein shall prevent a dealer,
20 during his lifetime, from designating any person as his successor dealer by
21 written instrument filed with the manufacturer or distributor. If the
22 dealer's successor, heir, or devisee requests consent from the manufacturer
23 or distributor in writing on the form, if any, generally utilized or required
24 by the manufacturer or distributor for such purposes and the manufacturer or
25 distributor fails to respond in writing, giving or withholding consent,
26 within thirty (30) days of receipt of the written request, consent is deemed
27 to be given;

28 (K) Notwithstanding the terms of any franchise agreement,
29 to fail to pay to a dealer or any lienholder in accordance with their
30 respective interests after the termination of franchise:

31 (i) The dealer cost plus any charges by the
32 manufacturer, distributor, or a representative for distribution, delivery,
33 and taxes, less all allowances paid to the dealer by the manufacturer,
34 distributor, or representative for new, unsold, undamaged, and complete motor
35 vehicles of current model year and one (1) year prior model year in the
36 dealer's inventory;

1 (ii) The dealer cost of each new, unused, undamaged,
2 and unsold part or accessory if the part or accessory is in the current parts
3 catalogue and if the part or accessory was purchased by the dealer either
4 directly from the manufacturer or distributor or from an outgoing authorized
5 dealer as a part of the dealer's initial inventory;

6 (iii) The fair market value of each undamaged sign
7 owned by the dealer which bears a trademark or trade name used or claimed by
8 the manufacturer, distributor, or representative if the sign was purchased
9 from or purchased at the request of the manufacturer, distributor, or
10 representative;

11 (iv) The fair market value of all special tools and
12 automotive service equipment owned by the dealer which were recommended in
13 writing and designated as special tools and equipment and purchased from or
14 purchased at the request of the manufacturer, distributor, or representative,
15 if the tools and equipment are in usable and good condition except for
16 reasonable wear and tear;

17 (v) The cost of transporting, handling, packing, and
18 loading of motor vehicles, parts, signs, tools, and equipment subject to
19 repurchase;

20 (vi) The balance of all claims for warranty and
21 recall service and all other money owed by the manufacturer to the dealer; or

22 (vii) Compensation for the actual pecuniary loss
23 caused by the franchise termination, cancellation or nonrenewal unless for
24 due cause. In determining the actual pecuniary loss, the value of any
25 continued service or parts business available to the dealer for the line-make
26 covered by the franchise shall be considered. If the dealer and the
27 manufacturer, importer, or distributor cannot agree on the amount of
28 compensation to be paid under this subchapter, either party may file an
29 action in a court of competent jurisdiction;

30 ~~(vii)~~(viii) Any sums due as provided by subdivision
31 (a)(2)(K)(i) of this section within sixty (60) days after termination of a
32 franchise and any sums due as provided by subdivisions (a)(2)(K)(ii) ~~-(vi)~~
33 (vii) of this section within ninety (90) days after termination of a
34 franchise. As a condition of payment, the dealer is to comply with reasonable
35 requirements with respect to the return of inventory as are set out in the
36 terms of the franchise agreement. A manufacturer, distributor, or

1 representative who fails to pay those sums within the prescribed time or at
2 such time as the dealer and lienholder, if any, proffer good title prior to
3 the prescribed time for payment, is liable to the dealer for:

4 (a) The greatest of dealer cost, fair market
5 value, or current price of the inventory;

6 (b) Interest on the amount due calculated at
7 the rate applicable to a judgment of a court; and

8 (c) Reasonable attorney's fees and costs;

9 (L) To fail or refuse to offer its same line make
10 franchised dealers all models manufactured for that line make. No additional
11 requirements, over the requirements originally required to initially obtain a
12 dealership, may be required of existing franchised dealers to receive any
13 model by that line make;

14 (M) To offer to sell or to sell any motor vehicle to a
15 consumer, except through a licensed new motor vehicle dealer holding a
16 franchise for the line make covering such new motor vehicle or as may
17 otherwise be provided in subdivision (a)(3) of this section. This subdivision
18 (a)(2)(M) shall not apply to manufacturer sales of new motor vehicles to the
19 federal government, charitable organizations, or employees of the
20 manufacturer; ~~or~~

21 (N) To prohibit or require a dealer to enter into a
22 franchise or sales agreement with third parties, regardless of the location
23 of the dealership or proposed dealership; or

24 (O) To require, coerce, or attempt to coerce any
25 franchisee in this state to refrain from, or to terminate, cancel, or refuse
26 to continue any franchise based upon participation by the franchisee in the
27 management of, investment in or the acquisition of a franchise for the sale
28 of any other line of new motor vehicle or related products in the same or
29 separate facilities as those of the franchiser. This subdivision does not
30 apply unless the franchisee maintains a reasonable line of credit for each
31 make or line of new motor vehicle, the franchisee remains in compliance with
32 the franchise and any reasonable facilities requirement of the franchiser,
33 and no change is made in the principal management of the franchisee. The
34 reasonable facilities requirement shall not include any requirement that the
35 franchisee establish or maintain exclusive facilities, personnel, or display
36 space, when such requirements would not otherwise be justified by reasonable

1 business considerations. Before the addition of a line-make to the dealership
2 facilities, the franchisee must first request consent of the franchiser, if
3 required by the franchise agreement. Any decision of the franchiser with
4 regard to dualing of two (2) or more franchises shall be granted or denied
5 within sixty (60) days after a written request from the new motor vehicle
6 dealer. The franchiser's failure to respond timely to a dualing request shall
7 be deemed to be approval of the franchisee's request.

8 (3) For a manufacturer, a distributor, a distributor branch or
9 division, a factory branch or division, or officer, agent, or other
10 representative thereof:

11 (A) To own, operate, or control any motor vehicle dealer,
12 provided that this subsection shall not be construed to prohibit the
13 following:

14 (i) The operation by a manufacturer of a motor
15 vehicle dealer for a temporary period, not to exceed one (1) year, during the
16 transition from one owner or operator to another;

17 (ii) The ownership or control of a motor vehicle
18 dealer by a manufacturer during a period in which such motor vehicle dealer
19 is being sold under a bona fide contract or purchase option to the operator
20 of the dealership;

21 (iii) The ownership, operation, or control of a
22 motor vehicle dealer by a manufacturer, if such manufacturer has been engaged
23 in the retail sale of new motor vehicles at the location for a continuous
24 period of five (5) years prior to January 1, 1999, and if the commission
25 determines after a hearing on the matter at the request of any party, that
26 there is no prospective new motor vehicle dealer available to own and operate
27 the franchise in a manner consistent with the public interest; or

28 (iv) The ownership, operation or control of a new
29 motor vehicle dealer by a manufacturer, if the commission determines, after a
30 hearing on the matter at the request of any party, that there is no
31 prospective new motor vehicle dealer available to own and operate the
32 franchise in a manner consistent with the public interest; or

33 (4) For a manufacturer to unfairly compete with a motor vehicle
34 dealer of the same line make, operating under a franchise, in the relevant
35 market area. "Unfairly compete" as used in this section includes, but is not
36 limited to, Internet solicitations, preferential treatment of manufacturer-

1 operated dealerships in the supply of inventory, both as to quantity and
2 availability of the latest models of that line make, supply of parts, and
3 payments for warranty and recall claims. Ownership, operation, or control of
4 a new motor vehicle dealer by a manufacturer under the conditions set forth
5 in subdivisions (a)(3)(A)(i)-(iv) of this section shall not constitute a
6 violation of this subdivision (a)(4).

7 (b)(1) Notwithstanding the terms of any franchise, except a settlement
8 agreement voluntarily entered into, it shall be a violation for a motor
9 vehicle franchiser to require a motor vehicle franchisee to agree to a term
10 or condition in any franchise, or, as a condition to the offer, grant or
11 renewal of the franchise, or approving the sale, acquisition, or transfer of
12 the assets of a new motor vehicle dealer which:

13 (A) Requires the motor vehicle franchisee to waive trial
14 by jury in actions involving the motor vehicle franchiser; or

15 (B) Specifies the jurisdictions, venues, or tribunal in
16 which disputes arising with respect to the franchise, lease, or agreement
17 shall or shall not be submitted for resolution or otherwise prohibits a motor
18 vehicle franchisee from bringing an action in a particular forum otherwise
19 available under federal or state law; or

20 (C) Requires a new motor vehicle dealer to pay the
21 attorney fees of a manufacturer, importer, second-stage manufacturer,
22 converter, or distributor; or

23 (D) Requires the motor vehicle franchisee to waive any
24 remedy or defense available to the franchisee or other provision protecting
25 the interests of the franchisee under this chapter; or

26 (E) Requires that disputes between the motor vehicle
27 franchiser and motor vehicle franchisee be submitted to binding arbitration
28 or to any other binding alternative dispute resolution procedure provided by
29 franchiser; provided however, that any franchise, lease, or agreement may
30 authorize the submission of a dispute to arbitration or to binding
31 alternative dispute resolution if the motor vehicle franchiser and motor
32 vehicle franchisee voluntarily agree to submit the dispute to binding
33 arbitration or binding alternate dispute resolution after the dispute arises.

34 (2) If the franchiser and franchisee agree to binding
35 arbitration, the arbitrator shall apply the provisions of this chapter in
36 resolving the pertinent controversy and shall provide the parties to a

1 contract with a written explanation of the factual and legal basis for the
2 award. Either party may appeal to the commission a decision of an arbitrator
3 on the ground that the arbitrator failed to apply this chapter.

4 (3) For the purposes of this section, it shall be presumed that
5 a motor vehicle franchisee has been required to agree to a term or condition
6 in violation of this section as a condition of the offer, grant, or renewal
7 of a franchise or of any lease or agreement ancillary or collateral to a
8 franchise, if the motor vehicle franchisee, at the time of the offer, grant,
9 or renewal of the franchise, lease, or agreement or approving the sale,
10 acquisition, or transfer of the assets of a new motor vehicle dealer is not
11 offered the option of an identical franchise, lease, or agreement without the
12 terms or conditions prescribed by this section.

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

20
21 SECTION 17. Arkansas Code 23-112-406 is amended to read as follows:
22 23-112-406. Acting as broker.

23 (a) Notwithstanding any other statute, A a person may not act as,
24 offer to act as, or hold himself out to be a broker of new motor vehicles.

25 (b) To effectuate the Arkansas Motor Vehicle Commission Act, the
26 definition of "arranges or offers to arrange a transition" means soliciting
27 or referring buyers for new motor vehicles for a fee, commission, or other
28 valuable consideration. Advertising is not included in this definition as
29 long as the person's business primarily includes the business of
30 broadcasting, printing, publishing, or advertising for others in their own
31 names.

32 (c) Brokering – New Motor Vehicles.

33 (1) A buyer referral service, program, plan, club, or any other
34 entity that accepts fees for arranging a transaction involving the sale of a
35 new motor vehicle is a broker. The payment of a fee to such entity is aiding
36 and abetting brokering. However, any service, plan, program, club, or other

1 entity that forwards referrals to dealerships may lawfully operate if the
2 following conditions are met:

3 (A) There are no exclusive market areas offered to dealers
4 by the program and all dealers are allowed to participate on equal terms;

5 (B) Participation by dealers in the program is not
6 restricted by conditions such as limiting the number of franchise lines or
7 discrimination by size of dealership or location. Total number of
8 participants in the program may be restricted if the program is offered to
9 all dealers at the same time with no regard to the franchise;

10 (C) All participants pay the same fee for participation in
11 the program and that shall be a weekly, monthly, or annual fee, regardless of
12 the size, location, or line-make of the dealership;

13 (D) A person is not to be charged a fee on a per referral
14 basis or any other basis that could be considered a transaction-related fee;

15 (E) The program does not set or suggest to the dealer or
16 customer any price of vehicles or trade-ins; and

17 (F) The program does not advertise or promote its plan in
18 the manner that implies that the buyer, as a customer of that program,
19 receives a special discounted price that cannot be obtained unless the
20 customer is referred through that program.

21 (2) All programs must comply with Regulation 1 of the Arkansas
22 Motor Vehicle Commission Rules and Regulations.

23 (d) The provisions of this section do not apply to any person or
24 entity which is exempt from the Arkansas Motor Vehicle Commission Act.

25
26 SECTION 18. Arkansas Code 23-112-509(c)(1) is amended to read as
27 follows:

28 (c)(1) In case of failure or refusal on the part of any person to
29 comply with any summons, citation, or subpoena issued and served as
30 authorized, or in the case of the refusal of any person to testify or answer
31 to any matter regarding that which he may be lawfully interrogated, or the
32 refusal of any person to produce his record books and accounts relating to
33 any matter regarding that which he may be lawfully interrogated, then the
34 chancery court of any county of the State of Arkansas, or any chancellor of
35 the court in vacation, may, on application of the commission or of the
36 executive ~~secretary~~ director, issue an attachment for the person and compel

1 him to comply with the summons, citation, or subpoena and to attend before
2 the commission or its designated employee and to produce the documents
3 specified in any subpoena duces tecum and give his testimony upon such
4 matters as he may be lawfully required.

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/s/ Wool dridge