

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 85th General Assembly
3 Regular Session, 2005

A Bill

HOUSE BILL 2705

4
5 By: Representative Childers
6
7

For An Act To Be Entitled

8
9 AN ACT TO CREATE SEPARATE COUNCILS FOR THE
10 REGULATION OF USED MOTOR VEHICLE DEALERS AND NEW
11 MOTOR VEHICLE DEALERS UNDER THE ARKANSAS MOTOR
12 VEHICLE COMMISSION; AND FOR OTHER PURPOSES.
13

Subtitle

14
15 TO CREATE SEPARATE COUNCILS FOR THE
16 REGULATION OF USED MOTOR VEHICLE DEALERS
17 AND NEW MOTOR VEHICLE DEALERS UNDER THE
18 ARKANSAS MOTOR VEHICLE COMMISSION.
19
20

21 WHEREAS, the Eighty-Fifth General Assembly finds that it is imperative
22 that the new and used motor vehicle dealers in the State of Arkansas begin a
23 new era for the separate regulation of their respective industries under the
24 unified administration of one (1) commission; and
25

26 WHEREAS, this new beginning will expand the role of the Arkansas Motor
27 Vehicle Commission to include two councils that act separately and
28 distinctly, the Franchise Motor Vehicle Council for the regulation of new
29 motor vehicles and the Independent Motor Vehicle Council for the regulation
30 of used motor vehicles; and
31

32 WHEREAS, this legislation will empower the Arkansas Motor Vehicle
33 Commission to fully regulate the sale of motor vehicles in the State of
34 Arkansas, thereby enhancing their role and scope,
35

36 NOW THEREFORE,



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

2
 3 SECTION 1. Arkansas Code §§ 23-112-102 – 23-112-106 are amended to
 4 read as follows:

5 23-112-102. Legislative findings -- Purpose.

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

9 (b) The General Assembly further finds and declares that it is
 10 necessary, in the exercise of its police power, to regulate and to license
 11 motor vehicle manufacturers, factory branches and divisions, distributors,
 12 distributor branches and divisions, distributor representatives, ~~new~~
 13 franchise motor vehicle dealers, franchise motor vehicle salespersons,
 14 independent motor vehicle dealers, and independent motor vehicle salespersons
 15 doing business in Arkansas in order to:

- 16 (1) Prevent frauds, unfair practices, discrimination,
- 17 impositions, and other abuses upon the citizens of Arkansas;
- 18 (2) Avoid undue control of the independent motor vehicle dealer
- 19 by motor vehicle manufacturing and distributing organizations;
- 20 (3) Foster and keep alive vigorous and healthy competition;
- 21 (4) Prevent the creation or perpetuation of monopolies;
- 22 (5) Prevent the practice of requiring the buying of special
- 23 features, accessories, special models, appliances, and equipment not desired
- 24 by a motor vehicle dealer or the ultimate purchaser;
- 25 (6) Prevent false and misleading advertising;
- 26 (7) Promote and keep alive a sound system of distribution of
- 27 motor vehicles to the public; and
- 28 (8) Promote the public safety and welfare.

29
 30 23-112-103. Definitions.

31 As used in this chapter:

32 (1) "Advertisement" means an oral, written, telecommunicated,
 33 graphic, pictorial, or other statement made in the course of soliciting
 34 business, including, without limitation, a statement or representation made
 35 in a newspaper, magazine, Internet, or other publication or contained in a
 36 notice, sign, poster, display, circular, pamphlet, letter, or flyer, or made

1 via radio, television, or any other medium;

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

3 (A) Is an off-highway vehicle:

4 (i) Fifty inches (50") or less in width, having a
5 dry weight of eight hundred pounds (800 lbs.) or less, and traveling on three
6 (3) or more low pressure tires, with a seat designed to be straddled by the
7 operator, a Class 1 all-terrain vehicle; or

8 (ii) With a width that exceeds fifty inches (50") or
9 having a dry weight that exceeds eight hundred pounds (800 lbs.), traveling
10 on four (4) or more low-profile, low-pressure tires, and having a bench seat,
11 a Class 2 all-terrain vehicle;

12 (B) Has a seat for the operator and any passenger and
13 handlebars or other steering mechanism for control; and

14 (C) Is used for any purpose, including, but not limited
15 to, off-road, amphibious, or recreational travel;

16 (3) "Auto auction" means:

17 (A) Any person who operates or provides a place of
18 business or facilities for the wholesale exchange of motor vehicles by and
19 between duly licensed franchise motor vehicle dealers or independent motor
20 vehicle dealers;

21 (B) Any motor vehicle dealer licensed to sell used motor
22 vehicles, selling motor vehicles using an auction format but not on
23 consignment; and

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

26 (4) "Branch location" means a secondary location:

27 (A) Identified in a license issued by the Franchise Motor
28 Vehicle Council of the Arkansas Motor Vehicle Commission to a motor vehicle
29 dealer; and

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

32 (5) "Broker" means a person who for any valuable consideration,
33 whether received directly or indirectly, arranges or offers to arrange a
34 transaction involving the sale, for purposes other than resale, of a new
35 motor vehicle, and who is not:

36 (A) A dealer or bona fide employee of a ~~new~~ franchise

1 motor vehicle dealer when acting on behalf of a ~~new~~ franchise motor vehicle
2 dealer;

3 (B) A representative or bona fide employee of a
4 manufacturer, factory branch, or factory representative when acting on behalf
5 of a manufacturer, factory branch, or factory representative;

6 (C) A representative or bona fide employee of a
7 distributor or distributor branch when acting on behalf of a distributor or
8 distributor branch; or

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

11 (6) "Coerce" means the failure to act in good faith in
12 performing or complying with any terms or provisions of the franchise or
13 agreement;

14 (7) "Commission" means the Arkansas Motor Vehicle Commission
15 created by this chapter;

16 (8) "Conversion" means a motor vehicle other than an ambulance
17 or firefighting vehicle that is substantially modified by a person, firm, or
18 corporation other than the manufacturer or distributor of the chassis of the
19 motor vehicle and which has not been the subject of a retail sale;

20 (9) "Distributor" means any person, resident or nonresident,
21 who, in whole or in part, sells or distributes new motor vehicles to
22 franchise motor vehicle dealers or who maintains distributor representatives;

23 (10) "Distributor branch" means a branch or division office
24 similarly maintained by a distributor for the same purposes a factory branch
25 or division is maintained;

26 (11) "Distributor representative" means a representative
27 similarly employed by a distributor or distributor branch;

28 (12) "Factory branch" means a branch or division office
29 maintained by a person, firm, association, corporation, or trust who
30 manufactures or assembles new motor vehicles for sale to distributors, to
31 franchise motor vehicle dealers, or for directing or supervising, in whole or
32 in part, its representatives;

33 (13) "Factory representative" means a representative employed by
34 a:

35 (A) Person, firm, association, corporation, or trust who
36 manufactures or assembles new motor vehicles; or

1 (B) Factory branch, for the purpose of making or promoting
 2 the sale of its new motor vehicles or for supervising or contacting its
 3 dealers or prospective dealers;

4 (14) "Franchise" means one (1) or more contracts between a
 5 ~~franchised~~ franchise motor vehicle dealer as franchisee and either a
 6 manufacturer or a distributor, importer, second-stage manufacturer, or
 7 converter as franchiser under which:

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

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

12 (C) The franchise is substantially associated with the
 13 franchiser's trademark, trade name, or commercial symbol;

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

17 (E)(i) Any right, duty, or obligation granted or imposed
 18 by this chapter is affected.

19 (ii) "Franchise" includes a written communication
 20 from a franchiser to a franchisee by which a duty is imposed upon the
 21 franchisee;

22 (15) "Good faith" means the duty of each party to any franchise
 23 and all officers, employees, or agents thereof to act in a fair and equitable
 24 manner toward each other so as to guarantee the one (1) party freedom from
 25 coercion, intimidation, or threats of coercion or intimidation from the other
 26 party;

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

30 (17) "Manufacturer" means any person, firm, association,
 31 corporation, or trust, resident or nonresident, who manufactures or assembles
 32 new motor vehicles;

33 (18) "Motor vehicle" means any motor-driven vehicle having two
 34 (2) or more wheels, including, but not limited to, all-terrain vehicles,
 35 automobiles, trucks, motorcycles, motor-driven cycles, motor scooters, and
 36 motor homes;

1 (19)(A)(i) "~~Motor~~ Franchise motor vehicle dealer" means any
 2 person engaged in the business of selling, offering to sell, soliciting, or
 3 advertising the sale of new motor vehicles, regardless of the medium used, or
 4 possessing motor vehicles for the purpose of resale, either on his or her own
 5 account or on behalf of another, either as his or her primary business or
 6 incidental thereto.

7 (ii) "~~Motor~~ Franchise motor vehicle dealer" includes
 8 any person engaged in the business of selling, offering to sell, soliciting,
 9 or advertising the sale, regardless of the medium used, of commercial buses,
 10 school buses, or other multipassenger motor vehicles, or possessing them for
 11 the purpose of resale.

12 (B) "Franchise motor vehicle dealer" includes a person or
 13 entity in the business of selling, offering to sell, soliciting, or
 14 advertising the sale of used motor vehicles if the franchise motor vehicle
 15 dealer has a franchise to sell new motor vehicles.

16 ~~(B)(C)~~ "~~Motor~~ Franchise motor vehicle dealer" does not
 17 include:

18 (i) Receivers, trustees, administrators, executors,
 19 guardians, or other persons appointed by or acting under judgment, decree, or
 20 order of any court;

21 (ii) Public officers while performing their duties
 22 as officers;

23 (iii) Employees of persons, corporations, or
 24 associations enumerated in subdivision (19)(B)(i) of this section when
 25 engaged in the specific performance of their duties as employees;

26 (iv) Specialty vehicle dealers;

27 (v) Financial institutions engaged in the leasing of
 28 motor vehicles; or

29 (vi) ~~Used~~ Independent motor vehicle dealers licensed
 30 by the state under § 23-112-601 et seq.;

31 (20) "Motor vehicle lessor" means any person not excluded by
 32 subdivision (19) of this section engaged in the motor vehicle leasing or
 33 rental business;

34 (21) "~~Motor~~ Franchise motor vehicle salesperson" means any
 35 person who:

36 (A) Is employed as a salesperson by a franchise motor

1 vehicle dealer whose duties include the selling or offering for sale of motor
 2 vehicles;

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

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

7 (D) Uses the financial resources, line of credit, or floor
 8 plan of a franchise motor vehicle dealer to purchase, sell, or exchange any
 9 interest in a motor vehicle;

10 (22) "New motor vehicle" means any motor vehicle, the legal
 11 title to which has never been transferred by a manufacturer, distributor, or
 12 ~~franchised new~~ franchise motor vehicle dealer to an ultimate purchaser;

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

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

18 (25)(A) "Relevant market area" means the area within a radius
 19 surrounding an existing franchise motor vehicle dealer or the area of
 20 responsibility defined in the franchise and on file in the ~~commission~~
 21 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission
 22 office, whichever is greater.

23 (B)(i) For all licensed ~~new~~ franchise motor vehicle
 24 dealers, excluding motorcycles, motorized cycles, and motor-driven all-
 25 terrain vehicles, which include two-wheeled, three-wheeled, four-wheeled,
 26 six-wheeled, or eight-wheeled motorcycles, motorized cycles, and motor-driven
 27 all-terrain vehicles, the relevant market area shall be a radius of twenty
 28 (20) miles.

29 (ii) However, where a manufacturer is seeking to
 30 establish an additional ~~new~~ franchise motor vehicle dealer and there are one
 31 (1) or more existing ~~new~~ franchise motor vehicle dealers of the same line
 32 make within a ten-mile radius of the proposed dealer site, the relevant
 33 market area shall in all instances be the area within a radius of ten (10)
 34 miles around an existing dealer.

35 (C) For all licensed ~~new~~ franchise motor vehicle dealers
 36 of motorcycles, motorized cycles, and motor-driven all-terrain vehicles,

1 which include two-wheeled, three-wheeled, four-wheeled, six-wheeled, or
 2 eight-wheeled motorcycles, motorized cycles, and motor-driven all-terrain
 3 vehicles, the relevant market area shall in all instances be the area within
 4 a radius of thirty (30) miles around an existing dealer or the area of
 5 responsibility defined in the franchise and on file in the ~~commission's~~
 6 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission's
 7 office, whichever is greater;

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

11 (27) "Second-stage manufacturer" or "converter" means a person,
 12 firm, or corporation who, prior to retail sale of a motor vehicle:

13 (A) Assembles, installs, or affixes a body, cab, or
 14 special equipment to a chassis; or

15 (B) Substantially adds to, subtracts from, or modifies a
 16 previously assembled or manufactured motor vehicle;

17 (28)(A) "Specialty vehicle" means a motor vehicle manufactured
 18 by a second-stage manufacturer by purchasing motor vehicle components, for
 19 example, frame and drive train, and completing the manufacture of finished
 20 motor vehicles for the purpose of resale, with the primary manufacturer
 21 warranty unimpaired, to a limited commercial market rather than the consuming
 22 public.

23 (B) "Specialty vehicles" includes garbage trucks,
 24 ambulances, fire trucks, limousines, hearses, and other similar limited-
 25 purpose vehicles as the ~~commission~~ Franchise Motor Vehicle Council of the
 26 Arkansas Motor Vehicle Commission may by regulation provide;

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

33 (30)(A) "Ultimate purchaser" means, with respect to any new
 34 motor vehicle, the first person, other than a franchise motor vehicle dealer
 35 or independent motor vehicle dealer purchasing in his or her capacity as a
 36 dealer, who in good faith purchases the ~~new~~ motor vehicle for purposes other

1 than resale.

2 (B) "Ultimate purchaser" shall not include a person who
3 purchases a vehicle for purposes of altering or remanufacturing the motor
4 vehicle for future resale;

5 (31)(A) "Used motor vehicle" means any motor vehicle that has
6 previously been sold, bargained, exchanged, given away, or the title thereto
7 transferred from the person or corporation who first took title from the
8 manufacturer, distributor, dealer, or agents thereof.

9 (B) In the event of a transfer that is reflected on the
10 statement of origin from the original franchise motor vehicle dealer to any
11 other dealer, individual, or corporation other than a franchise motor vehicle
12 dealer of the same make of vehicle, the vehicle shall be considered a used
13 motor vehicle;

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

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

20 (B) Is wholly or in part in the business of buying,
21 selling, trading, or exchanging used motor vehicles, whether or not the used
22 motor vehicles are owned by the person; and

23 (33)(A) "Wholesaler" means any person, resident or nonresident,
24 not excluded by subdivision (19) of this section, who, in whole or in part,
25

26 (i) ~~sells~~ Sells used motor vehicles to franchise
27 motor vehicle dealers or independent motor vehicle dealers; or

28 (ii) ~~purchases~~ Purchases used vehicles for the
29 purpose of resale.

30 (B) However, franchise motor vehicle dealers who,
31 incidental to their primary business, sell motor vehicles to other dealers
32 are not considered wholesalers because of the incidental sales.

33 23-112-104. Injunction.

34 (a) The Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
35 Commission shall be entitled to seek an injunction upon affidavit in the
36 circuit court for the county in which the ~~commission~~ Franchise Motor Vehicle

1 Council of the Arkansas Motor Vehicle Commission's office is located to
 2 prevent any person, firm, partnership, association, corporation, or legal
 3 entity from violating any provision of this chapter or any rule or regulation
 4 promulgated by the ~~commission~~ Franchise Motor Vehicle Council of the Arkansas
 5 Motor Vehicle Commission.

6 (b) The ~~commission~~ Franchise Motor Vehicle Council of the Arkansas
 7 Motor Vehicle Commission shall not be required to execute or give bond for
 8 costs, indemnity, or stay or to give security as a condition to the issuance
 9 of a restraining order or injunction, either temporary or permanent.

10
 11 23-112-105. Civil damages.

12 Any licensee suffering pecuniary loss because of any willful failure by
 13 any other licensee to comply with any provision of this chapter, other than a
 14 ~~new automobile or truck dealer's~~ franchise motor vehicle dealer's failure to
 15 comply with § 23-112-301(d)(1)-(3) or with any rule or regulation promulgated
 16 by the Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
 17 Commission under authority vested in it by this chapter, may recover
 18 reasonable damages and attorney's fees therefor in any court of competent
 19 jurisdiction.

20
 21 23-112-106. Enforcement.

22 (a) The Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
 23 Commission may enter orders that direct and command compliance with this
 24 chapter and regulations under this chapter if any of the following conditions
 25 have been met:

26 (1) The ~~commission~~ Franchise Motor Vehicle Council of the
 27 Arkansas Motor Vehicle Commission has conducted a hearing within sixty (60)
 28 days on the matter;

29 (2) The ~~commission~~ Franchise Motor Vehicle Council of the
 30 Arkansas Motor Vehicle Commission has made written findings that the public
 31 interest and welfare require the person or entity against whom the ~~commission~~
 32 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission is
 33 acting to take the specified action; or

34 (3) The ~~commission~~ Franchise Motor Vehicle Council of the
 35 Arkansas Motor Vehicle Commission finds that the current civil or
 36 administrative penalties are insufficient.

1 (b) The ~~commission~~ Franchise Motor Vehicle Council of the Arkansas
 2 Motor Vehicle Commission may enforce its findings and conclusions upon entry
 3 of an order under subsection (a) of this section.

4
 5 SECTION 2. Arkansas Code Title 23, Chapter 112, Subchapter 2 is
 6 amended to read as follows:

7 23-112-201. Arkansas Motor Vehicle Commission - Creation - Members -
 8 Officers.

9 (a)(1) There is created a commission to be known as the "Arkansas
 10 Motor Vehicle Commission," hereinafter referred to as the ~~commission,~~ to be
 11 ~~composed of nine (9) members to be appointed by the Governor for terms of~~
 12 ~~seven (7) years, subject to confirmation by the Senate.~~

13 (2) The commission in effect before the effective date of this
 14 act shall continue and the members of the commission appointed before the
 15 effective date of this act shall continue to serve until one (1) day prior to
 16 the first Monday in October 2005.

17 (3) The members of the commission appointed after the effective
 18 date of this act shall be appointed no later than the third Monday in August
 19 2005 and shall begin to serve their terms on the first Monday in October
 20 2005.

21 (b)(1) ~~One (1) commissioner shall be appointed from each of the four~~
 22 ~~(4) congressional districts of the state as constituted July 1, 1975, and~~
 23 ~~five (5) members of the commission, including the consumer representative and~~
 24 ~~the representative of the elderly, shall be appointed from the state at~~
 25 ~~large.~~

26 (2)(A) ~~Four (4) members of the commission shall be licensees or~~
 27 ~~shall be qualified as licensees under the provisions of this chapter at the~~
 28 ~~time of their appointment.~~

29 (B) ~~Five (5) members of the commission shall be appointed~~
 30 ~~from the public at large, including the consumer representative and the~~
 31 ~~representative of the elderly.~~

32 (C) ~~No more than four (4) members of the commission shall~~
 33 ~~at any time be licensees under this chapter or have any financial interest~~
 34 ~~in, or be an officer or an employee of, a licensee of this chapter, and at~~
 35 ~~least one (1) of them shall be licensed as a dealer of franchise motorcycles.~~

36 (3) ~~The consumer representative and the representative of the~~

1 elderly shall not be actively engaged in or retired from the businesses
 2 regulated by this chapter. The two (2) positions may not be held by the same
 3 person. Both shall be full voting members. The representative of the elderly
 4 shall be sixty (60) years of age or older.

5 (4) Each of the members appointed shall be a citizen of the
 6 United States, a resident of the State of Arkansas, and a qualified elector
 7 of the jurisdiction from which appointed, and each shall be of good moral
 8 character.

9 (e) In the event a vacancy on the commission occurs due to death,
 10 resignation, or other reason, the vacancy shall be filled for the unexpired
 11 portion of the term by appointment of the Governor, subject to confirmation
 12 by the Senate, of a person meeting the same qualifications required for the
 13 initial appointment.

14 (d) Each commission member shall serve until his or her successor is
 15 appointed and qualified.

16 (e) The commission shall select by majority vote of its members one
 17 (1) of its members as a chair, one (1) as a vice chair, and one (1) as a
 18 secretary.

19 (f)(1) The Chair of the Arkansas Motor Vehicle Commission and members
 20 of the commission may receive expense reimbursement and stipends in
 21 accordance with § 25-16-901 et seq.

22 (2) The chair shall require itemized statements of all
 23 reimbursable expenses and shall audit the statements or cause them to be
 24 audited before approving them for payment.

25 (b) Beginning on the first Monday in October 2005, two councils under
 26 the Arkansas Motor Vehicle Commission are established to be known as:

27 (1) The Franchise Motor Vehicle Council; and

28 (2) The Independent Motor Vehicle Council.

29 (c) Beginning on the first Monday in October 2005, the Franchise Motor
 30 Vehicle Council shall be composed of seven (7) members as follows:

31 (1) One (1) person who represents the franchise motor vehicle
 32 dealer industry to be appointed by the Governor;

33 (2) One (1) person who represents the new motorcycle dealer
 34 industry to be appointed by the Governor;

35 (3) One (1) person who represents the recreational vehicle
 36 dealer industry to be appointed by the Governor;

1 (4) Two (2) persons who represent the consumers of new motor
2 vehicles to be appointed by the Governor;

3 (5) One (1) person who represents the consumers of new motor
4 vehicles to be appointed by the President Pro Tempore of the Senate; and

5 (6) One (1) person who represents the consumers of new motor
6 vehicles to be appointed by the Speaker of the House of Representatives.

7 (d) Beginning on the first Monday in October 2005, the Independent
8 Motor Vehicle Council shall be composed of seven (7) members as follows:

9 (1) Three (3) persons who represent the independent motor
10 vehicle dealer industry to be appointed by the Governor;

11 (2) Two (2) persons who represent the consumers of used motor
12 vehicles to be appointed by the Governor;

13 (3) One (1) person who represents the consumers of used motor
14 vehicles to be appointed by the President Pro Tempore of the Senate; and

15 (4) One (1) person who represents the consumers of used motor
16 vehicles to be appointed by the Speaker of the House of Representatives.

17 (e) The appointed members of both councils shall be residents of the
18 State of Arkansas at the time of appointment and throughout their terms.

19 (f)(1) If a vacancy occurs in an appointed position for any reason,
20 the vacancy shall be filled by appointment by the official who made the
21 appointment.

22 (2) The new appointee shall serve for the remainder of the
23 unexpired term.

24 (g) Each council of the commission shall elect a chair and vice-chair
25 at the first meeting of each calendar year.

26 (h)(1)(A) Each council of the commission shall meet separately on a
27 monthly basis in Pulaski County, Arkansas.

28 (B) Each council of the commission may hold special
29 meetings and the hearings at any time and place within the State of Arkansas
30 if the majority of its members approve the meeting's or hearing's location.

31 (2) A majority of the members of each council shall constitute a
32 quorum for the purpose of transacting business for each council.

33 (3) The actions of each council shall be by a majority vote of
34 at least the quorum of the council.

35 (i)(1) The Franchise Motor Vehicle Council shall have the exclusive
36 authority to hear matters pertaining to its licensees.

1 (2) The Independent Motor Vehicle Council shall have the
 2 exclusive authority to hear matters pertaining to its licensees.

3 (3) The action of the majority of at least a quorum of either
 4 council shall be considered the action of that council.

5 (j)(1) The members of the councils may receive expense reimbursement
 6 and stipends in accordance with § 25-16-901 through 25-16-908.

7 (2) The chair of each council shall require itemized statements
 8 of all reimbursable expenses and shall audit the statements or cause them to
 9 be audited before approving them for payment.

10 (k) The actions of the Franchise Motor Vehicle Council and the
 11 Independent Motor Vehicle Council shall bind the commission.

12
 13 23-112-202. Proceedings - Bond.

14 (a) The Franchise Motor Vehicle Council and the Independent Motor
 15 Vehicle Council of the Arkansas Motor Vehicle Commission shall meet at in
 16 Little Rock and complete ~~its~~ their organization immediately after the entire
 17 membership memberships thereof ~~has~~ have been appointed and has qualified.

18 (b) Before entering upon the discharge of the duties of his or her
 19 office, the Chair of the Franchise Motor Vehicle Council and the Chair of the
 20 Independent Motor Vehicle Council of the Arkansas Motor Vehicle Commission
 21 and each member of ~~the commission~~ the councils shall take and subscribe to
 22 the oath of office prescribed by the Constitution of Arkansas and shall file
 23 this oath in the office of the Secretary of State.

24 (c)(1) The ~~commission~~ Franchise Motor Vehicle Council and the
 25 Independent Motor Vehicle Council of the Arkansas Motor Vehicle Commission
 26 shall purchase either a blanket position honesty or faithful performance bond
 27 from some surety company authorized to do business in this state. This bond
 28 shall be in the penal sum of ten thousand dollars (\$10,000), made payable to
 29 the State of Arkansas, conditioned for the honest and faithful performance of
 30 the duties of ~~the~~ each chair and each member of the ~~commission~~ councils of
 31 the Arkansas Motor Vehicle Commission, the executive director of the
 32 ~~commission~~ the Arkansas Motor Vehicle Commission, and all other employees of
 33 the ~~commission~~ Arkansas Motor Vehicle Commission, the bond to be approved by
 34 the Governor and filed in the office of the Secretary of State.

35 (2) The ~~commission~~ Arkansas Motor Vehicle Commission shall keep
 36 the bond in force at all times from and after the date the ~~commission~~

1 Arkansas Motor Vehicle Commission is ~~organized~~ reorganized after the
 2 effective date of this act.

3 ~~(d) A majority of the commission shall constitute a quorum for the~~
 4 ~~transaction of any business.~~

5 ~~(e)(d)(1)~~ The Franchise Motor Vehicle Council of the
 6 Arkansas Motor Vehicle Commission shall adopt and use a common seal for the
 7 authentication of its records and orders.

8 (2) The Independent Motor Vehicle Council of the Arkansas Motor
 9 Vehicle Commission shall adopt and use a common seal for the authentication
 10 of its records and orders.

11 ~~(f) The commission shall hold all of its regular monthly meetings in~~
 12 ~~its office at Little Rock, but upon approval of a majority of its members,~~
 13 ~~may hold special meetings and the hearings provided for under §§ 23-112-501—~~
 14 ~~23-112-509 at any time and place within the State of Arkansas.~~

15
 16 23-112-203. Executive director - Employees - Office.

17 (a)(1)(A) The A majority of the quorum of the Franchise Motor Vehicle
 18 Council and the Independent Motor Vehicle Council of the Arkansas Motor
 19 Vehicle Commission shall appoint a one (1) qualified person to serve as
 20 executive director ~~thereof~~ of the commission, and the commission shall
 21 provide services to the Franchise Motor Vehicle Council and the Independent
 22 Motor Vehicle Council.

23 (B) The executive director of the commission shall ~~to~~
 24 ~~serve at the pleasure of the~~ a majority of the quorum of the Franchise Motor
 25 Vehicle Council and the Independent Motor Vehicle Council of the commission,
 26 ~~and.~~

27 (C) A majority of the quorum of the Franchise Motor
 28 Vehicle Council and the Independent Motor Vehicle Council of the commission
 29 shall ~~fix his or her~~ set the executive director's salary and shall ~~define~~
 30 review and prescribe the duties of the executive director.

31 (2) The Executive Director of the Arkansas Motor Vehicle
 32 Commission shall be in charge of the commission's office and shall devote
 33 such time to the duties thereof as may be necessary.

34 (3) The duties shall include, but ~~shall~~ not be limited to:

35 (A) the The collection of all fees and charges under the
 36 provisions of this chapter;

1 (a) All funds received by the Franchise Motor Vehicle Council and the
 2 Independent Motor Vehicle Council of the Arkansas Motor Vehicle Commission
 3 shall be deposited in the State Treasury as special revenues to the credit of
 4 a special fund to be known as the "Motor Vehicle Commission Fund".

5 (b) All expenses incurred in the organization, maintenance, and
 6 operation of the ~~commission~~ Arkansas Motor Vehicle Commission shall be paid
 7 from the special fund, and the expenditure of all funds shall be subject to
 8 the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., the
 9 Arkansas Procurement Law, § 19-11-201 et seq., and other applicable fiscal
 10 laws.

11 (c) The receipts and disbursements of the ~~commission~~ Arkansas Motor
 12 Vehicle Commission shall be audited annually by the Legislative Auditor.

13
 14 SECTION 3. Arkansas Code Title 23, Chapter 112, Subchapter 2 is
 15 amended to add additional sections to read as follows:

16 23-112-206. Duties and powers of the Franchise Motor Vehicle Council -
 17 Transfer of authority.

18 (a) The Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
 19 Commission shall perform the duties and be responsible for the enforcement of
 20 this chapter that were performed by the Arkansas Motor Vehicle Commission
 21 before the effective date of this act.

22 (b) The Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
 23 Commission shall perform the duties and be responsible for the enforcement of
 24 this chapter as it relates to the following:

- 25 (1) Distributors;
- 26 (2) Distributor branch;
- 27 (3) Distributor representative;
- 28 (4) Factory branch;
- 29 (5) Factory representative;
- 30 (6) Franchise motor vehicle dealers;
- 31 (7) Franchise motor vehicle salespersons;
- 32 (8) Manufacturers;
- 33 (9) Second-stage manufacturer or converter;
- 34 (10) New motorcycle dealers;
- 35 (11) Recreational vehicle dealers; and
- 36 (12) Any dealers of new motor vehicles, new motorcycles, or

1 recreational vehicles that also sell used vehicles.

2 (c) Beginning on the first Monday in October 2005, the personnel,
3 records, property, leases, unexpended balances of appropriations,
4 allocations, or other funds of the Arkansas Motor Vehicle Commission that
5 existed before the effective date of this act shall be transferred to the
6 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission
7 created by this act.

8 (d) Beginning on the first Monday in October 2005, the rules,
9 licensing authority, rates for licensing, standards for licensing, findings,
10 orders, and adjudications of the Arkansas Motor Vehicle Commission that
11 existed before the effective date of this act shall be transferred to the
12 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission
13 created by this act.

14
15 23-112-207. Duties and powers of the Independent Motor Vehicle Council
16 - Transfer of authority.

17 (a) The Independent Motor Vehicle Council of the Arkansas Motor
18 Vehicle Commission shall perform the duties performed by the Arkansas
19 Department of State Police before the effective date of this act with respect
20 to the licensure and regulation of independent motor vehicle dealers and the
21 sale of used motor vehicles.

22 (b) The Independent Motor Vehicle Council of the Arkansas Motor
23 Vehicle Commission shall be responsible for the enforcement of this chapter
24 as it relates to independent motor vehicle dealers that are not also licensed
25 as franchise motor vehicle dealers.

26 (c) Beginning on the first Monday in October 2005, the records,
27 unexpended balances of appropriations, allocations, or other funds of the
28 Department of Arkansas State Police related to the licensing and regulation
29 of independent motor vehicle dealers that existed before the effective date
30 of this act shall be transferred to the Independent Motor Vehicle Council of
31 the Arkansas Motor Vehicle Commission created by this act.

32 (d) Beginning on the first Monday in October 2005, the rules,
33 licensing authority, rates for licensing, standards for licensing, findings,
34 orders, and adjudications of the Department of Arkansas State Police related
35 to the licensing and regulation of independent motor vehicle dealers that
36 existed before the effective date of this act shall be transferred to the

1 Independent Motor Vehicle Council of the Arkansas Motor Vehicle Commission
 2 created by this act.

3
 4 SECTION 4. Arkansas Code Title 23, Chapter 112, Subchapter 3 is
 5 amended to read as follows:

6 23-112-301. License required.

7 (a) Notwithstanding any other statute, the following acts are declared
 8 to be unlawful as related to franchise motor vehicle dealers:

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

10 (2) For any person to engage in business as, or serve in the
 11 capacity of, or act as a ~~new~~ franchise motor vehicle dealer, franchise motor
 12 vehicle salesperson, motor vehicle lesser, manufacturer, distributor, factory
 13 branch or division, distributor branch or division, factory representative,
 14 distributor representative, second-stage manufacturer, or converter, as such,
 15 in this state without first obtaining a license therefor as provided in this
 16 chapter, regardless of whether or not the person maintains or has a place of
 17 business in this state.

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

23 (c)(1) However, any licensed franchise motor vehicle dealer shall not
 24 be required to obtain a license as a motor vehicle lessor for any location
 25 licensed as a franchise motor vehicle dealer.

26 (2) A motor vehicle lessor shall be required to obtain only one
 27 (1) motor vehicle lessor's license, regardless of the number of leasing
 28 locations he or she owns and operates but shall list each location on his or
 29 her application and pay a fee of fifty dollars (\$50.00) for each location.

30 (3) New lease locations opened after a license is issued shall
 31 be approved by the Franchise Motor Vehicle Council of the Arkansas Motor
 32 Vehicle Commission but shall not require a new license.

33 (4) A motor vehicle lessor shall sell or offer for sale motor
 34 vehicles only from an established place of business and only after
 35 application to, approval of, and licensure at each location by the ~~commission~~
 36 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission.

1 (d)(1) No person may engage in the business of buying, selling, or
2 exchanging new motor vehicles, unless he or she:

3 (A) Holds a valid license issued by the ~~commission~~
4 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission for
5 the makes of motor vehicles being bought, sold, or exchanged; or

6 (B) Is a bona fide employee or agent of the licensee.

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

9 (A) Displaying for sale motor vehicles on a lot or
10 showroom;

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

13 (C) Regularly or actively soliciting buyers for motor
14 vehicles.

15
16 23-112-302. Application for license.

17 (a) Applications for licenses required to be obtained by franchise
18 motor vehicle dealers under the provisions of this chapter shall:

19 (1) Be verified by the oath or affirmation of the applicants;

20 (2) Be on forms prescribed by the Franchise Motor Vehicle
21 Council of the Arkansas Motor Vehicle Commission and furnished to the
22 applicants; and

23 (3) Contain ~~such~~ information as the ~~commission~~ Franchise Motor
24 Vehicle Council of the Arkansas Motor Vehicle Commission deems necessary to
25 enable it to fully determine the qualifications and eligibility of the
26 several applicants to receive the licenses applied for.

27 (b) The ~~commission~~ Franchise Motor Vehicle Council of the Arkansas
28 Motor Vehicle Commission shall require that there be set forth in each
29 application:

30 (1) Information relating to:

31 (A) The applicant's business integrity;

32 (B) Whether the applicant has an established place of
33 business in the State of Arkansas and is primarily engaged in the pursuit,
34 avocation, or business for which licenses are applied for; and

35 (C) Whether the applicant has the proper facilities and is
36 able to properly conduct the business for which licenses are applied for; and

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

3 (c)(1)(A) In addition to the provisions of subsections (a) and (b) of
4 this section, applications for licenses as:

5 (i) ~~New~~ Franchise motor vehicle dealers must also be
6 accompanied by the filing with the ~~commission~~ Franchise Motor Vehicle Council
7 of the Arkansas Motor Vehicle Commission of a corporate surety bond in the
8 penal sum of fifty thousand dollars (\$50,000) on a bond form approved by the
9 ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
10 Commission; and

11 (ii) New motorcycle dealers, new all-terrain vehicle
12 dealers, and motor vehicle lessors must also be accompanied by the filing
13 with the ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor
14 Vehicle Commission of a corporate surety bond in the penal sum of twenty-five
15 thousand dollars (\$25,000) on a bond form approved by the ~~commission~~
16 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission.

17 (B) In each instance that a branch license is applied for,
18 each application shall be accompanied by the filing with the ~~commission~~
19 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission of a
20 corporate surety bond in the penal sum of twenty-five thousand dollars
21 (\$25,000) on a bond form approved by the ~~commission~~ Franchise Motor Vehicle
22 Council of the Arkansas Motor Vehicle Commission.

23 (C) ~~Motor~~ Franchise motor vehicle dealers shall also
24 provide proof of liability insurance coverage on all vehicles to be offered
25 for sale in an amount equal to or greater than the amount required by the
26 Motor Vehicle Safety Responsibility Act, § 27-19-101 et seq.

27 (2) The bond shall be in effect upon the applicant's being
28 licensed and shall be conditioned upon the applicant's complying with the
29 provisions of this chapter.

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

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

35 (5) The aggregate liability of the surety for all claimants,
36 regardless of the number of years this bond is in force or has been in

1 effect, shall not exceed the amount of the bond.

2 (6) The proceeds of the bond shall be paid upon receipt by the
 3 ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
 4 Commission of a final judgment from an Arkansas court of competent
 5 jurisdiction against the principal and in favor of an aggrieved party.

6 (d)(1) In addition to the provisions of subsections (a)-(c) of this
 7 section, applications for licenses as franchise motor vehicle dealers in new
 8 motor vehicles must also be accompanied by the filing with the ~~commission~~
 9 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission of a
 10 bona fide contract or franchise then in effect between the applicant and a
 11 manufacturer or distributor of the new motor vehicles proposed to be dealt
 12 in.

13 (2) However, if the contract or franchise has already been filed
 14 with the ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor
 15 Vehicle Commission in connection with a previous application made by the
 16 applicant, the applicant, in lieu of again filing the contract or franchise,
 17 shall identify the contract or franchise by appropriate reference and file
 18 all revisions and additions, if any, which have been made to the contract or
 19 franchise.

20 (e) The applicant for a license as a ~~new~~ franchise motor vehicle
 21 dealer must furnish satisfactory evidence that the applicant:

22 (1) Maintains adequate space in the building or structure
 23 wherein the applicant's established business is conducted for the display of
 24 new motor vehicles, or will have the facilities within a reasonable time
 25 after receiving a license; and

26 (2) Has or will have adequate facilities in the building or
 27 structure for the repair and servicing of motor vehicles and the storage of
 28 new parts and accessories for the motor vehicles.

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

32 (2)(A) Dealers shall maintain copies of all documents executed
 33 in connection with any transaction, which may include the following:

- 34 (i) ~~bills~~ Bills of sale;
- 35 (ii) ~~titles~~, Titles;
- 36 (iii) ~~odometer~~ Odometer statements;

- (iv) ~~invoices,~~ Invoices;
- (v) ~~affidavits~~ Affidavits of alteration; and
- (vi) ~~reassignments,~~ Reassignments.

(B) ~~and shall~~ The documents listed in this subsection shall be open to inspection by the Executive Director of the Arkansas Motor Vehicle Commission or a commission representative acting in an official capacity during reasonable business hours and upon execution of a subpoena.

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

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

23-112-303. Application fees.

(a) All applications for licenses for franchise motor vehicle dealers shall be accompanied by the appropriate fees in accordance with the schedule set out in this subchapter.

(b) In the event any application for a franchise motor vehicle dealer is denied and the license applied for is not issued, the entire license fee shall be returned to the applicant.

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

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

(2) For each franchise motor vehicle dealer or motor vehicle lessor, ~~one hundred dollars (\$100)~~ two hundred fifty dollars (\$250);

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

(4) For each franchise motor vehicle salesperson, ~~fifteen dollars (\$15.00)~~ twenty-five dollars (\$25.00);

(5) For each branch location of a franchise motor vehicle dealer, ~~twenty five dollars (\$25.00)~~ one hundred dollars (\$100); and

1 (6) For each replacement certificate of license for a franchise
2 motor vehicle dealer, ten dollars (\$10.00).

3 (d)(1)(A) Any person, firm, or corporation required to be licensed as
4 a franchise motor vehicle dealer under this subchapter who fails to make
5 application for the license at the time required shall pay a penalty of fifty
6 percent (50%) of the amount of the license fee for each thirty (30) days of
7 default, in addition to the fees required to be paid pursuant to subsection
8 (c) of this section.

9 (B) However, the penalty may be waived, in whole or
10 in part, within the discretion of the ~~commission~~ Franchise Motor Vehicle
11 Council of the Arkansas Motor Vehicle Commission.

12 (2) License applications for sales personnel shall be received
13 in the commission office within thirty (30) days of employment.

14
15 23-112-304. Issuance of license - Change of location - Change of
16 business or corporate name, structure, or DBA name - Dealers, manufacturers,
17 distributors, etc.

18 (a) The license issued to each franchise motor vehicle dealer,
19 manufacturer, distributor, factory branch or division, or distributor branch
20 or division shall specify the location of the factory, office, branch, or
21 division thereof.

22 (b) ~~In case~~ If the location is changed, the Franchise Motor Vehicle
23 Council of the Arkansas Motor Vehicle Commission shall endorse the change of
24 location on the license without charge if it is within the same county.

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

27 (d)(1) Licensees shall notify the ~~commission~~ Franchise Motor Vehicle
28 Council of the Arkansas Motor Vehicle Commission in writing of any change in
29 the business or corporate name or structure and of any alternate name or
30 names in which the company will do business, "DBA names", and shall provide
31 the original issue license with the notification of name change or addition
32 of DBA name or names.

33 (2) The ~~commission~~ Franchise Motor Vehicle Council of the
34 Arkansas Motor Vehicle Commission shall endorse the change on the license
35 without charge.

36

1 23-112-305. Display of license - Change of employer - Factory
 2 representative and distributor representative.

3 (a) Every motor vehicle factory representative or distributor
 4 representative shall have his or her license upon his or her person when
 5 engaged in his or her business and shall display the license upon request.

6 (b) The name of the employer of the factory representative or
 7 distributor representative shall be stated on the license, and, in case of a
 8 change of employer, the holder of the license shall immediately mail the
 9 license to the Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
 10 Commission for its endorsement of the change thereon.

11
 12 23-112-306. Display of license - Change of employer - Salesperson.

13 (a) Every franchise motor vehicle salesperson shall have his or her
 14 license upon his or her person or displayed at his or her place of
 15 employment, except as provided in this section, when engaged in his or her
 16 business and shall display the license upon request. The name and address of
 17 the applicant shall be stated on the license.

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

20 (1) Within three (3) days following the change, the licensee
 21 shall notify in writing the Franchise Motor Vehicle Council of the Arkansas
 22 Motor Vehicle Commission for its endorsement;

23 (2) Within three (3) days following the termination of
 24 employment of the licensee, the last employer of the licensee shall make a
 25 report to the ~~commission~~ Franchise Motor Vehicle Council of the Arkansas
 26 Motor Vehicle Commission setting forth the reasons why the services of the
 27 licensee were terminated and such other information as may be required by the
 28 ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
 29 Commission;

30 (3)(A) Upon receipt by the ~~commission~~ Franchise Motor Vehicle
 31 Council of the Arkansas Motor Vehicle Commission of the licensee's written
 32 notification and the last employer's report, the ~~commission~~ Franchise Motor
 33 Vehicle Council of the Arkansas Motor Vehicle Commission shall determine if
 34 it has grounds to believe, and does believe, that the licensee is no longer
 35 qualified under the provisions of this chapter as a franchise motor vehicle
 36 salesperson.

1 (B) Under such circumstances, the ~~commission~~ Franchise
 2 Motor Vehicle Council of the Arkansas Motor Vehicle Commission shall
 3 immediately notify the licensee and the licensee's new employer in writing
 4 that a hearing will be held for the purpose of determining whether his or her
 5 license should be revoked or suspended, specifying the grounds for revocation
 6 or suspension, as the case may be, and the time and place for the hearing.
 7 The hearing and any and all appeals by the licensee with respect thereto
 8 shall be in accordance with the provisions of § 23-112-501 et seq.; and

9 (4)(A) If, after the ~~commission~~ Franchise Motor Vehicle Council
 10 of the Arkansas Motor Vehicle Commission receives the licensee's license and
 11 fee and his or her last employer's report, the Executive Director of the
 12 Arkansas Motor Vehicle Commission cannot for any reason endorse and mail to
 13 the licensee his or her license within a period of three (3) days following
 14 the receipt by the ~~commission~~ Franchise Motor Vehicle Council of the Arkansas
 15 Motor Vehicle Commission of the licensee's license and fee and his or her
 16 last employer's report, then and in that event the executive director shall
 17 mail to the licensee a permit in such form as the ~~commission~~ Franchise Motor
 18 Vehicle Council of the Arkansas Motor Vehicle Commission shall prescribe.

19 (B) The permit shall serve in lieu of a license until such
 20 time as the ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor
 21 Vehicle Commission endorses and mails the license to the licensee, or until
 22 such time as the licensee's license is revoked or suspended in accordance
 23 with the provisions of this chapter.

24 (C) If the license is ultimately revoked or suspended,
 25 then immediately upon the revocation or suspension the licensee shall return
 26 the permit to the ~~commission~~ Franchise Motor Vehicle Council of the Arkansas
 27 Motor Vehicle Commission for cancellation.

28 (c)(1) The ~~commission~~ Franchise Motor Vehicle Council of the Arkansas
 29 Motor Vehicle Commission shall maintain a permanent file with respect to each
 30 licensed franchise motor vehicle salesperson.

31 (2) Each file shall contain all pertinent information with
 32 respect to the fitness and qualifications of each licensee for the use by the
 33 ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
 34 Commission in determining from time to time whether his or her license should
 35 be revoked or suspended.

36 (d)(1) There is no intent under this chapter to prevent a salesperson

1 who has not previously been licensed as a franchise motor vehicle salesperson
 2 from selling during the time required to process his or her application.

3 (2) The applicant shall be allowed to sell from the date of
 4 employment as long as the applicant and his or her franchise motor vehicle
 5 dealer follow the procedure for license application.

6
 7 23-112-307. Expiration of license.

8 (a) Unless the Franchise Motor Vehicle Council of the Arkansas Motor
 9 Vehicle Commission shall by regulation provide to the contrary, all licenses
 10 issued to manufacturers, distributors, factory or distributor branches,
 11 importers, second-stage manufacturers, converters, and franchise motor
 12 vehicle dealers shall expire on December 31 following the date of issue.

13 (b) Unless the ~~commission~~ Franchise Motor Vehicle Council of the
 14 Arkansas Motor Vehicle Commission shall by regulation provide otherwise, all
 15 licenses issued to motor vehicle lessors, representatives, and franchise
 16 motor vehicle salespersons shall expire on June 30 following the date of
 17 issue.

18 (c) Unless the ~~commission~~ Franchise Motor Vehicle Council of the
 19 Arkansas Motor Vehicle Commission by regulation provides to the contrary,
 20 licenses relating to motor vehicles having fewer than four (4) wheels shall
 21 expire on December 31 following the date of issue.

22
 23 23-112-308. Denial, revocation, and suspension.

24 (a) Notwithstanding any other statute, the Franchise Motor Vehicle
 25 Council of the Arkansas Motor Vehicle Commission may deny an application for
 26 a license or revoke or suspend a license after it has been granted for any of
 27 the following reasons:

28 (1)(A) For selling or soliciting sales of a motor vehicle
 29 without a license issued by the ~~commission~~ Franchise Motor Vehicle Council of
 30 the Arkansas Motor Vehicle Commission.

31 (B) The unlawful sale or solicitation of each motor
 32 vehicle shall constitute a separate offense;

33 (2) On satisfactory proof of the unfitness of the applicant or
 34 the licensee, as the case may be, under the standards established and set out
 35 in this chapter;

36 (3) For fraud practiced or any material misstatement made by an

1 applicant in any application for license under the provisions of this
 2 chapter;

3 (4) For failure to comply with any provision of this chapter or
 4 with any rule or regulation promulgated by the ~~commission~~ Franchise Motor
 5 Vehicle Council of the Arkansas Motor Vehicle Commission under authority
 6 vested in it by this chapter;

7 (5) Change of condition after license is granted or failure to
 8 maintain the qualifications for license;

9 (6) Continued violation of any of the provisions of this chapter
 10 or of any of the rules or regulations of the ~~commission~~ Franchise Motor
 11 Vehicle Council of the Arkansas Motor Vehicle Commission;

12 (7) For any violation of any law relating to the sale,
 13 distribution, or financing of motor vehicles;

14 (8) Defrauding any retail buyer to the buyer's damage;

15 (9) Failure to perform any written agreement with any retail
 16 buyer;

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

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

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

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

26 (14) Passing title or reassigning title as a dealer without a
 27 dealer's license or when the dealer's license has been suspended or revoked;

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

31 (16) Assisting any person in the sale of a motor vehicle, who is
 32 not licensed as a franchise motor vehicle dealer by the ~~commission~~ Franchise
 33 Motor Vehicle Council of the Arkansas Motor Vehicle Commission;

34 (17) Being a manufacturer who fails to specify the delivery and
 35 preparation obligations of its franchise motor vehicle dealers, as is
 36 required for the protection of the buying public, prior to delivery of new

1 motor vehicles to retail buyers;

2 (18)(A) On satisfactory proof that any manufacturer,
 3 distributor, distributor branch or division, or factory branch or division
 4 has unfairly and without due regard to the equities of the parties or to the
 5 detriment of the public welfare failed to properly fulfill any warranty
 6 agreement or to adequately and fairly compensate any of its franchise motor
 7 vehicle dealers for labor, parts, or incidental expenses incurred by the
 8 dealer with regard to factory warranty agreements performed by the dealer.

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

12 (19) For the commission of any act prohibited by §§ 23-112-301 –
 13 23-112-307, 23-112-402, and 23-112-403, or the failure to perform any of the
 14 requirements of those sections;

15 (20) Using or permitting the use of special license plates
 16 assigned to him or her for any other purpose than those permitted by law;

17 (21) Disconnecting, turning back, or resetting the odometer of
 18 any motor vehicle in violation of state or federal law;

19 (22) Accepting an open assignment of title or bill of sale for a
 20 motor vehicle which is not completed by identifying the licensee as the
 21 purchaser or assignee of the motor vehicle;

22 (23)(A) Failure to notify the ~~commission~~ Franchise Motor Vehicle
 23 Council of the Arkansas Motor Vehicle Commission of a change in ownership,
 24 location, or franchise, or any other matters the ~~commission~~ Franchise Motor
 25 Vehicle Council of the Arkansas Motor Vehicle Commission may require by
 26 regulation.

27 (B) The notification shall be in written form and
 28 submitted to the ~~commission~~ Franchise Motor Vehicle Council of the Arkansas
 29 Motor Vehicle Commission at least fifteen (15) days prior to the effective
 30 date of the change; or

31 (24) Failure to endorse and deliver an assignment and warranty
 32 of title to the buyer pursuant to § 27-14-902.

33 (b) The revocation or suspension of the license of a manufacturer,
 34 factory branch or division, distributor, or distributor branch or division
 35 may be limited to:

36 (1) One (1) or more municipalities or counties;

1 (2)(A) The sales area of any franchise motor vehicle dealer
 2 whose franchise is unfairly cancelled or terminated within the purview of
 3 this chapter or whose franchise is not renewed in violation of the provisions
 4 of this chapter.

5 (B) However, when a franchise is unfairly cancelled or
 6 terminated within the purview of this chapter or is not renewed in violation
 7 of the provisions of this chapter in a metropolitan area serviced by several
 8 franchise motor vehicle dealers handling the same motor vehicles, the
 9 revocation or suspension shall not be applicable to the remaining franchise
 10 motor vehicle dealers in the metropolitan area.

11
 12 23-112-309. Monetary penalty in lieu of suspension or revocation of
 13 license.

14 (a)(1) If after alternative proceedings or notice and hearing the
 15 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission
 16 finds that any person holding a license under this chapter is guilty of any
 17 violation of this chapter or regulations promulgated under this chapter, it
 18 shall have the power and authority to impose a monetary penalty upon the
 19 licensee in lieu of suspension or revocation of license.

20 (2) The ~~commission~~ Franchise Motor Vehicle Council of the
 21 Arkansas Motor Vehicle Commission shall have the power and authority to
 22 require the licensee to pay the monetary penalty with the sanction that the
 23 license may be suspended until the penalty is paid, which time shall not
 24 exceed ninety (90) days from entry of the ~~commission's~~ Franchise Motor
 25 Vehicle Council of the Arkansas Motor Vehicle Commission's order or final
 26 order on appeal.

27 (3) The penalty in lieu of suspension or revocation may be
 28 imposed only if the ~~commission~~ Franchise Motor Vehicle Council of the
 29 Arkansas Motor Vehicle Commission formally finds that the public interest
 30 would not be impaired thereby and the payment of the penalty will achieve the
 31 desired disciplinary results.

32 (b)(1) If the ~~commission~~ Franchise Motor Vehicle Council of the
 33 Arkansas Motor Vehicle Commission finds that there is sufficient cause upon
 34 which to base the revocation of a license, the amount of the monetary penalty
 35 in lieu of revocation shall not exceed ten thousand dollars (\$10,000).

36 (2)(A) If the ~~commission~~ Franchise Motor Vehicle Council of the

1 Arkansas Motor Vehicle Commission finds that there is sufficient cause upon
2 which to base the suspension of a license, then the amount of the monetary
3 penalty in lieu of suspension shall not be less than fifty dollars (\$50.00)
4 nor more than five hundred dollars (\$500) per day for each day the license
5 would otherwise be suspended.

6 (B) However, the amount of the penalty shall not exceed
7 the aggregate of five thousand dollars (\$5,000).

8 (c) No penalty shall be imposed if the license has been revoked by the
9 ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
10 Commission for the violation.

11 (d) Each instance when this chapter or a regulation is violated shall
12 constitute a separate violation.

13 (e) Unless the penalty assessed under this section is paid within
14 fifteen (15) days following the date for an appeal from the order, the
15 ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
16 Commission shall have the power to file suit in the Pulaski County Circuit
17 Court to obtain a judgment for the amount of penalty not paid.

18

19 23-112-310. Delivery, preparation, and warranty obligations.

20 (a)(1) Every licensed motor vehicle manufacturer, distributor, second-
21 stage manufacturer, importer, or converter shall file with the Franchise
22 Motor Vehicle Council of the Arkansas Motor Vehicle Commission with its
23 initial application for a license:

24 (A) A copy of the documents stating the delivery,
25 preparation, and warranty obligations of its franchise motor vehicle dealers;
26 and

27 (B) A schedule of the compensation to be paid to its
28 franchise motor vehicle dealers for the work and services they shall be
29 required to perform in connection with the delivery, preparation, and
30 warranty obligations.

31 (2) The documents shall constitute the franchise motor vehicle
32 dealer's only responsibility for product liability as between the dealer and
33 the manufacturer or distributor.

34 (3) Any revisions to the delivery, preparation, and warranty
35 obligations or to the schedule of compensation shall be filed no later than
36 September 15 of each calendar year.

1 (b) Any mechanical, body, or parts defects arising from any express or
 2 implied warranties of any manufacturer shall constitute the manufacturer's
 3 product or warranty liability.

4 (c) Notwithstanding the terms of a franchise agreement or provision of
 5 law in conflict with this subsection, the franchise motor vehicle dealer's
 6 delivery, preparation, and warranty obligations as filed with the ~~commission~~
 7 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission
 8 shall constitute the dealer's sole responsibility for product liability as
 9 between the dealer and the manufacturer or distributor, and, except for a
 10 loss caused by the dealer's negligence or intentional misconduct or a loss
 11 caused by the dealer's modification of a product without manufacturer
 12 authorization, the manufacturer or distributor shall reimburse the dealer for
 13 all losses incurred by the dealer, including legal fees, court costs, and
 14 damages, as a result of the dealer's having been named a party in a product
 15 liability action.

16 (d)(1)(A) In no event shall any manufacturer, distributor, distributor
 17 branch or division, or factory or division branch pay to any of its franchise
 18 motor vehicle dealers a labor rate per hour for warranty work less than that
 19 charged by the dealer to its retail customers.

20 (B) Conversely, no franchise motor vehicle dealer shall
 21 charge to its manufacturer, distributor, distributor branch or division, or
 22 factory branch or division a labor rate per hour in excess of the rate
 23 charged to its retail customers.

24 (2)(A) All claims made by franchise motor vehicle dealers for
 25 the labor, parts, or incidental expenses shall be paid within thirty (30)
 26 days following their approval.

27 (B) All claims shall be either approved or disapproved
 28 within thirty (30) days after their receipt, and when any claim is
 29 disapproved, the franchise motor vehicle dealer who submits it shall be
 30 notified in writing of its disapproval within the period, and each notice
 31 shall state the specific grounds upon which the disapproval is based.

32 (3) In no event shall any manufacturer, distributor, distributor
 33 branch or division, or factory or division branch refuse to pay to any of its
 34 franchise motor vehicle dealers for any warranty work, as long as the work in
 35 question was properly performed.

36

23-112-311. Addition or relocation of ~~new~~ franchise motor vehicle dealer.

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

(2)(A) Within twenty (20) days of receiving the notice or within twenty (20) days after the end of any appeal procedure provided by the manufacturer or distributor, any ~~new~~ franchise motor vehicle dealer may file with the ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission to protest the establishing or relocating of the ~~new~~ franchise motor vehicle dealer.

(B) When a protest is filed, the ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission shall inform the manufacturer or distributor that a timely protest has been filed, and that the manufacturer or distributor shall not establish or relocate the proposed ~~new~~ franchise motor vehicle dealer until the ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission has held a hearing, nor thereafter if the ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission has determined that there is good cause for not permitting the addition or relocation of the ~~new~~ franchise motor vehicle dealer.

(C) In the event that a protest is filed with the ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission, the party desiring the addition or relocation of a ~~new~~ franchise motor vehicle dealer pursuant to this subsection shall pay for and provide a copy of a survey showing the proposed location of the additional or relocated ~~new~~ franchise motor vehicle dealer in relation to other existing dealers of the same line make in the relevant market area.

(b) This section does not apply:

(1) To the relocation of an existing ~~new~~ franchise motor vehicle

1 dealer, other than a ~~new~~ franchise motor vehicle dealer of motorcycles,
 2 motorized cycles, and all-terrain vehicles, within that dealer's relevant
 3 market area, provided that the relocation not be at a site within ten (10)
 4 miles of a licensed ~~new~~ franchise motor vehicle dealer for the same line make
 5 of motor vehicles;

6 (2) If the proposed ~~new~~ franchise motor vehicle dealer, other
 7 than a ~~new~~ franchise motor vehicle dealer of motorcycles, motorized cycles,
 8 and all-terrain vehicles, is to be established at or within two (2) miles of
 9 a location at which a former licensed ~~new~~ franchise motor vehicle dealer for
 10 the same line make of new motor vehicle has ceased operating within the
 11 previous two (2) years; or

12 (3) To the relocation of an existing ~~new~~ franchise motor vehicle
 13 dealer of motorcycles, motorized cycles, and all-terrain vehicles within that
 14 dealer's relevant market area, provided that the relocation not be at a site
 15 within twenty-five (25) miles of a licensed ~~new~~ franchise motor vehicle
 16 dealer for the same line make of motor vehicles.

17 (c) In determining whether good cause has been established for not
 18 entering into a franchise establishing or relocating an additional ~~new~~
 19 franchise motor vehicle dealer for the same line make, the ~~commission~~
 20 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission
 21 shall take into consideration the existing circumstances, including, but not
 22 limited to:

23 (1) Permanency of the investment of both the existing and
 24 proposed ~~new~~ franchise motor vehicle dealer;

25 (2) Growth or decline in population and new car registrations in
 26 the relevant market area;

27 (3) Effect on the consuming public in the relevant market area;

28 (4) Whether it is injurious or beneficial to the public welfare
 29 for an additional ~~new~~ franchise motor vehicle ~~dealers~~ dealer to be
 30 established;

31 (5) Whether the ~~new~~ franchise motor vehicle dealer of the same
 32 line make in that relevant market area are providing adequate competition and
 33 convenient customer care for the motor vehicles of the line make in the
 34 market area which shall include the adequacy of motor vehicle sales and
 35 service facilities, equipment, supply of motor vehicle parts, and qualified
 36 service personnel; and

1 (6) Whether the establishment of an additional ~~new~~ franchise
 2 motor vehicle dealer would increase competition and, therefore, be in the
 3 public interest.

4 (d)(1) The ~~commission~~ Franchise Motor Vehicle Council of the Arkansas
 5 Motor Vehicle Commission must conduct the hearing and render its final
 6 determination within one hundred twenty (120) days after a protest is filed.

7 (2) Unless waived by the parties, failure to do so shall be
 8 deemed the equivalent of a determination that good cause does not exist for
 9 refusing to permit the proposed additional or relocated ~~new~~ franchise motor
 10 vehicle dealer, unless the delay is caused by acts of the manufacturer or
 11 distributor or the relocating or additional dealer.

12 (e) Any parties to a hearing by the ~~commission~~ Franchise Motor Vehicle
 13 Council of the Arkansas Motor Vehicle Commission concerning the establishing
 14 or relocating of a ~~new~~ franchise motor vehicle dealer shall have a right of
 15 review of the decision in a court of competent jurisdiction pursuant to the
 16 Arkansas Administrative Procedure Act, § 25-15-201 et seq.

17
 18 23-112-312. License reciprocity with other states.

19 (a) The Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
 20 Commission is authorized to enter into reciprocal agreements with motor
 21 vehicle commission, or their equivalents, in other states to allow franchise
 22 motor vehicle dealers who are licensed in those states to obtain a temporary
 23 permit in this state, pursuant to the rules and regulations promulgated by
 24 the Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission.

25 (b) Any person who is licensed under the laws of another state or
 26 territory of the United States to engage in business as a franchise motor
 27 vehicle dealer may apply for a temporary permit in this state upon production
 28 of satisfactory proof that:

29 (1) The other state or territory grants similar reciprocity to
 30 license holders of this state;

31 (2) The requirements for licensing in the particular state or
 32 territory were, at the date of the applicant's licensing, substantially
 33 equivalent to the requirements in effect in this state;

34 (3) The applicant meets all the qualifications for the temporary
 35 permit and pays the fees specified for the permits pursuant to the rules and
 36 regulations of the Franchise Motor Vehicle Council of the Arkansas Motor

1 Vehicle Commission; and

2 (4) The applicant meets other reasonable qualifications as may
 3 be adopted by the Franchise Motor Vehicle Council of the Arkansas Motor
 4 Vehicle Commission for reciprocity.

5
 6 23-112-313. Warranty agreements.

7 (a) Every manufacturer, distributor, wholesaler, distributor branch or
 8 division, factory branch or division, or wholesale branch or division shall
 9 properly fulfill any warranty or recall agreement and adequately and fairly
 10 compensate each of its franchise motor vehicle dealers for labor and parts.

11 (b)(1)(A) In no event shall the compensation fail to include
 12 reasonable compensation for diagnostic work, as well as repair service and
 13 labor.

14 (B) Time allowances for the diagnosis and performance of
 15 warranty or recall work and service shall be reasonable and adequate for the
 16 work to be performed.

17 (2) In the determination of what constitutes reasonable
 18 compensation under this subsection, the principal factor to be given
 19 consideration shall be the prevailing wage rates being paid by the franchise
 20 motor vehicle dealer in the relevant market area in which the franchise motor
 21 vehicle dealer is doing business, and in no event shall the compensation of a
 22 franchise motor vehicle dealer for warranty or recall service be less than
 23 the rates charged by the franchise motor vehicle dealer for like service to
 24 retail customers for nonwarranty service and repairs.

25 (3)(A) All claims under this subsection, either original or
 26 resubmitted, made by franchise motor vehicle dealers for the labor and parts
 27 shall be either approved or disapproved within thirty (30) days following
 28 their approval.

29 (B)(i) The franchise motor vehicle dealer who submits a
 30 claim which is disapproved shall be notified in writing of the disapproval
 31 within the same period, and each such notice shall state the specific grounds
 32 upon which the disapproval is based. The franchise motor vehicle dealer shall
 33 be permitted to correct and resubmit such disapproved claims within thirty
 34 (30) days of receipt of disapproval.

35 (ii) Any claims not specifically disapproved in
 36 writing within thirty (30) days from their submission shall be deemed

1 approved, and payment shall follow within thirty (30) days.

2 (iii) No claim shall be disapproved because of a
 3 clerical error which does not render the amount of the claim incorrect.

4 (C)(i) The manufacturer or franchiser shall have the right
 5 to require documentation for claims and to audit the claims within a one-year
 6 period from the date the claim was paid or credit issued by the manufacturer
 7 or franchiser and to charge back any false or unsubstantiated claims.

8 (ii) The audit and charge-back provisions of this
 9 subdivision (b)(3) also apply to all other incentive and reimbursement
 10 programs for a period of twelve (12) months after the date of the
 11 transactions that are subject to audit by the franchiser.

12 (iii) However, the manufacturer retains the right to
 13 charge back any fraudulent claim if the manufacturer establishes in a court
 14 of competent jurisdiction in this state that the claim is fraudulent within a
 15 period not to exceed two (2) years from the date of the claim in question.

16 (c) This section shall not apply to compensation for parts of a motor
 17 home other than parts of a motorized chassis, engine, and power train.

18
 19 23-112-314. Civil penalty.

20 (a) If after request for alternative proceedings or notice and hearing
 21 the Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission
 22 finds that any person not holding a license under this chapter is guilty of
 23 any violation of this chapter or regulations promulgated thereunder, the
 24 ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
 25 Commission shall have the power and authority to impose a monetary penalty
 26 upon the person not to exceed one thousand dollars (\$1,000) per violation.

27 (b) Each day of violation of this chapter or of a regulation shall
 28 constitute a separate violation subjecting the person to a separate civil
 29 penalty.

30 (c) Unless the penalty assessed under this section is paid within
 31 fifteen (15) days following the date for an appeal from the order, the
 32 ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
 33 Commission shall have the power to file suit in the Pulaski County Circuit
 34 Court to obtain a judgment for the amount of the penalty not paid.

35 (d)(1) Repeated violations by any person not holding a license under
 36 this chapter shall result in an increase in the penalty assessed by the

1 ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
2 Commission.

3 (2) The terms "second" and "subsequent" violation as used in
4 this section mean a violation of the same nature as a previously remedied
5 violation that occurs within five (5) years of the remedied violation by any
6 person not holding a license under this chapter.

7 (3) The ~~commission~~ Franchise Motor Vehicle Council of the
8 Arkansas Motor Vehicle Commission shall have the power and authority to
9 impose a penalty not to exceed two thousand five hundred dollars (\$2,500) for
10 a second violation, with the penalty increasing in increments of two thousand
11 five hundred dollars (\$2,500) for each subsequent violation.

12

13 23-112-315. ~~Motor~~ Franchise motor vehicle dealer documentary fees -
14 Disclosures.

15 (a) A franchise motor vehicle dealer may charge a documentary fee for
16 services rendered to, for, or on behalf of a purchaser in preparing,
17 handling, and processing documents relating to, and closing a retail
18 installment transaction involving, a new motor vehicle.

19 (b) If a documentary fee is charged under this section, the fee must
20 be:

21 (1) Charged to all purchasers, cash buyers, and credit buyers;
22 and

23 (2) Disclosed on the buyer's order form as a separate itemized
24 charge.

25 (c) A preliminary work sheet on which a sale price is computed and
26 that is shown to the purchaser, a buyers' order form from the purchaser, or a
27 retail installment contract shall include in reasonable proximity to the
28 place on the document where the documentary fee is disclosed:

29 (1) The amount of the fee; and

30 (2) The following notice in type that is bold-faced,
31 capitalized, or underlined or otherwise conspicuously set out from the
32 surrounding written material:

33 "A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT
34 REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS AND
35 PERFORMING SERVICES RELATING TO THE CLOSING OF A SALE. THIS NOTICE IS
36 REQUIRED BY LAW."

1 (d) The Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
2 Commission is authorized to promulgate rules and regulations to set a
3 reasonable limit on the amount to be charged for a documentary fee under
4 subsection (a) of this section and to implement, enforce, and administer this
5 section.

6
7 SECTION 5. Arkansas Code §§ 23-112-402 – 23-112-403 is amended to read
8 as follows:

9 23-112-402. Dealer and salesperson.

10 It shall be unlawful for a franchise motor vehicle dealer or a
11 franchise motor vehicle salesperson:

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

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

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

24
25 23-112-403. Manufacturers, distributors, second-state manufacturers,
26 importers, or converters.

27 (a) It shall be unlawful:

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

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

36 (B) To order or accept delivery of any motor vehicle with

1 special features, appliances, accessories, or equipment not included in the
 2 list price of the motor vehicle as publicly advertised by the manufacturer
 3 thereof;

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

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

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

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

14 (A)(i) To refuse to deliver, in reasonable quantities and
 15 within a reasonable time after receipt of a franchise motor vehicle dealer's
 16 order to any duly licensed franchise motor vehicle dealer having a franchise
 17 or contractual arrangement for the retail sale of new motor vehicles sold or
 18 distributed by the manufacturer, distributor, distributor branch or division,
 19 or factory branch or division, any motor vehicles which are covered by the
 20 franchise or contract specifically publicly advertised by the manufacturer,
 21 distributor, distributor branch or division, or factory branch or division to
 22 be available for immediate delivery.

23 (ii) However, the failure to deliver any motor
 24 vehicle shall not be considered a violation of this chapter if the failure is
 25 due to 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)(i) To coerce or attempt to coerce any franchise motor
 29 vehicle dealer to enter into any agreement with the manufacturer,
 30 distributor, distributor branch or division, factory branch or division, or
 31 officer, agent, or other representative thereof, or to do any other act
 32 prejudicial to the dealer by threatening to cancel any franchise or any
 33 contractual agreement existing between the manufacturer, distributor,
 34 distributor branch or division, or factory branch or division and the dealer.

35 (ii) However, good faith notice to any franchise
 36 motor vehicle dealer of the dealer's violation of any terms or provisions of

1 the franchise or contractual agreement shall not constitute a violation of
2 this chapter;

3 (C)(i)(a) To terminate or cancel the franchise or selling
4 agreement of any franchise motor vehicle dealer without due cause.

5 (b) The nonrenewal of a franchise or selling
6 agreement without due cause shall constitute an unfair termination or
7 cancellation, regardless of the terms or provisions of the franchise or
8 selling agreement.

9 (ii)(a) The manufacturer, distributor, distributor
10 branch or division, factory branch or division, or officer, agent, or other
11 representative thereof shall notify a franchise motor vehicle dealer in
12 writing and forward a copy of the notice to the Franchise Motor Vehicle
13 Council of the Arkansas Motor Vehicle Commission of the termination or
14 cancellation of the franchise or selling agreement of the franchise motor
15 vehicle dealer at least sixty (60) days before the effective date thereof,
16 stating the specific grounds for the termination or cancellation.

17 (b) However, in the event that the ~~commission~~
18 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission
19 finds that the franchise or selling agreement has been abandoned by the
20 franchise motor vehicle dealer, the ~~commission~~ Franchise Motor Vehicle
21 Council of the Arkansas Motor Vehicle Commission, for good cause, may waive
22 the sixty-day notice requirement and allow for the immediate termination of
23 the franchise or selling agreement.

24 (iii)(a) The manufacturer, distributor, distributor
25 branch or division, factory branch or division, or officer, agent, or other
26 representative thereof shall notify a franchise motor vehicle dealer in
27 writing and forward a copy of the notice to the ~~commission~~ Franchise Motor
28 Vehicle Council of the Arkansas Motor Vehicle Commission at least sixty (60)
29 days before the contractual term of its franchise or selling agreement
30 expires that the franchise or selling agreement will not be renewed, stating
31 the specific grounds for the nonrenewal in those cases in which there is no
32 intention to renew it.

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

1 (iv) Any franchise motor vehicle dealer who receives
 2 written notice that its franchise or selling agreement is being terminated or
 3 cancelled or who receives written notice that its franchise or selling
 4 agreement will not be renewed may file with the ~~commission~~ Franchise Motor
 5 Vehicle Council of the Arkansas Motor Vehicle Commission within the sixty-day
 6 notice period a verified complaint for the ~~commission's~~ Franchise Motor
 7 Vehicle Council of the Arkansas Motor Vehicle Commission's determination as
 8 to whether the termination or cancellation or nonrenewal is unfair within the
 9 purview of this chapter. That franchise or selling agreement shall continue
 10 in effect until final determination of the issues raised in the complaint,
 11 notwithstanding anything to the contrary contained in this chapter or in the
 12 franchise or selling agreement.

13 (v) In the event of the termination or cancellation
 14 of the franchise or selling agreement, the terminating or canceling party
 15 shall notify the ~~commission~~ Franchise Motor Vehicle Council of the Arkansas
 16 Motor Vehicle Commission of the termination or cancellation of the franchise
 17 or selling agreement at least sixty (60) days before the effective date;

18 (D) To resort to or use any false or misleading
 19 advertisement in connection with its business as a manufacturer, distributor,
 20 distributor branch or division, factory branch or division, or officer,
 21 agent, or other representative thereof;

22 (E)(i) To offer to sell or to sell any new motor vehicle
 23 to any franchise motor vehicle dealer at a lower actual price therefor than
 24 the actual price charged to any other franchise motor vehicle dealer for the
 25 same model vehicle similarly equipped or to utilize any device, including,
 26 but not limited to, sales promotion plans or programs, which results in a
 27 lesser actual price.

28 (ii) However, the provisions of this subdivision
 29 (a)(2)(E) shall not apply:

30 (a) To sales to a franchise motor vehicle
 31 dealer for resale to any unit of federal, state, or local government;

32 (b) To sales to a franchise motor vehicle
 33 dealer of any motor vehicle ultimately sold, donated, or used by the dealer
 34 in a driver education program; or

35 (c) So long as a manufacturer or distributor,
 36 or any agent thereof, offers to sell or sells new motor vehicles to all

1 franchise motor vehicle dealers at the same price.

2 (iii) Nothing contained in this subdivision

3 (a)(2)(E) shall be construed to prevent the utilization of sales promotion
 4 plans or programs or the offering of volume discounts through ~~new~~ franchise
 5 motor vehicle dealers, for fleet or volume purchasers, if the program is
 6 available to all ~~new~~ franchise motor vehicle dealers from the same
 7 manufacturer in this state;

8 (F) To offer to sell or to sell any new motor vehicle to
 9 any person, except a wholesaler or distributor, at a lower actual price than
 10 the actual price offered and charged to a franchise motor vehicle dealer for
 11 the same model vehicle similarly equipped or to utilize any device which
 12 results in a lesser actual price;

13 (G)(i) To offer to sell or to sell parts and accessories
 14 to any ~~new~~ franchise motor vehicle dealer for use in his or her own business
 15 for the purpose of repairing or replacing the parts and accessories, or
 16 comparable parts and accessories, at a lower actual price than the actual
 17 price charged to any other ~~new~~ franchise motor vehicle dealer for similar
 18 parts and accessories for use in its own business.

19 (ii) However, it is recognized that certain
 20 franchise motor vehicle dealers operate and serve as wholesalers of parts and
 21 accessories to retail outlets. Therefore, nothing contained in this
 22 subdivision (a)(2)(G) shall be construed to prevent a manufacturer or
 23 distributor, or any agent thereof, from selling to a franchise motor vehicle
 24 dealer who operates and serves as a wholesaler of parts and accessories such
 25 parts and accessories as may be ordered by the franchise motor vehicle dealer
 26 for resale to retail outlets at a lower actual price than the actual price
 27 charged a franchise motor vehicle dealer who does not operate or serve as a
 28 wholesaler of parts and accessories;

29 (H)(i) To prevent or attempt to prevent by contract or
 30 otherwise any franchise motor vehicle dealer from changing the capital
 31 structure of its dealership or the means by or through which it finances the
 32 operation of the dealership, provided that:

33 (a) The dealer at all times meets any capital
 34 standards agreed to between the dealership and the manufacturer or
 35 distributor; and

36 (b) The standards are deemed reasonable by the

1 ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
 2 Commission.

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

9 (I)(i) Notwithstanding the terms of any franchise
 10 agreement, to fail to give effect or to attempt to prevent any sale or
 11 transfer of a franchise motor vehicle dealer, dealership, or franchise or
 12 interest therein, or management thereof, provided that the manufacturer or
 13 distributor has received sixty-days' written notice prior to the transfer or
 14 sale, and unless:

15 (a) The transferee does not meet the criteria
 16 generally applied by the manufacturer in approving ~~new~~ franchise motor
 17 vehicle dealers or agree to be bound by all the terms and conditions of the
 18 franchise motor vehicle dealer agreement, and the manufacturer so advises its
 19 franchise motor vehicle dealer within sixty (60) days of receipt of the
 20 notice; or

21 (b) It is shown to the ~~commission~~ Franchise
 22 Motor Vehicle Council of the Arkansas Motor Vehicle Commission after a
 23 hearing that the result of such a sale or transfer will be detrimental to the
 24 public or the representation of the manufacturer or distributor.

25 (ii) If the franchisee of record requests consent
 26 from the manufacturer or distributor in writing on the form, if any,
 27 generally utilized or required by the manufacturer or distributor for such
 28 purposes and the manufacturer or distributor fails to respond by giving or
 29 withholding consent in writing, within sixty (60) days of receipt of the
 30 written request, consent is deemed to be given;

31 (J)(i) Notwithstanding the terms of any franchise
 32 agreement, to prevent, attempt to prevent, or refuse to honor the succession
 33 to a dealership by any legal heir or devisee under the will of a dealer or
 34 under the laws of descent and distribution applicable to the decedent's
 35 estate, provided that the manufacturer or distributor has received sixty (60)
 36 days' written notice prior to the transfer or sale, and unless:

1 (a) The transferee does not meet the criteria
 2 generally applied by the manufacturer in approving ~~new~~ franchise motor
 3 vehicle dealers or agree to be bound by all the terms and conditions of the
 4 franchise motor vehicle dealer agreement, and the manufacturer so advises its
 5 franchise motor vehicle dealer within thirty (30) days of receipt of the
 6 notice; or

7 (b) It is shown to the ~~commission~~ Franchise
 8 Motor Vehicle Council of the Arkansas Motor Vehicle Commission, after notice
 9 and hearing, that the result of such a succession will be detrimental to the
 10 public interest or to the representation of the manufacturer or distributor.

11 (ii) However, nothing in this subdivision (a)(2)(J)
 12 shall prevent a franchise motor vehicle dealer, during his or her lifetime,
 13 from designating any person as his or her successor dealer by written
 14 instrument filed with the manufacturer or distributor.

15 (iii) If the franchise motor vehicle dealer's
 16 successor, heir, or devisee requests consent from the manufacturer or
 17 distributor in writing on the form, if any, generally utilized or required by
 18 the manufacturer or distributor for such purposes and the manufacturer or
 19 distributor fails to respond by giving or withholding consent in writing,
 20 within thirty (30) days of receipt of the written request, consent is deemed
 21 to be given;

22 (K) Notwithstanding the terms of any franchise agreement,
 23 to fail to pay to a franchise motor vehicle dealer or any lienholder in
 24 accordance with their respective interests after the termination of
 25 franchise:

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

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

1 (iii) The fair market value of each undamaged sign
 2 owned by the dealer which bears a trademark or trade name used or claimed by
 3 the manufacturer, distributor, or representative, if the sign was purchased
 4 from or purchased at the request of the manufacturer, distributor, or
 5 representative;

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

12 (v) The cost of transporting, handling, packing, and
 13 loading of motor vehicles, parts, signs, tools, and equipment subject to
 14 repurchase;

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

17 (vii)(a) Compensation for the actual pecuniary loss
 18 caused by the franchise termination, cancellation, or nonrenewal unless for
 19 due cause.

20 (b) In determining the actual pecuniary loss,
 21 the value of any continued service or parts business available to the dealer
 22 for the line make covered by the franchise shall be considered. If the dealer
 23 and the manufacturer, importer, or distributor cannot agree on the amount of
 24 compensation to be paid under this subchapter, either party may file an
 25 action in a court of competent jurisdiction; or

26 (viii) Any sums due as provided by subdivision
 27 (a)(2)(K)(i) of this section within sixty (60) days after termination of a
 28 franchise and any sums due as provided by subdivisions (a)(2)(K)(ii)-(vii) of
 29 this section within ninety (90) days after termination of a franchise. As a
 30 condition of payment, the dealer is to comply with reasonable requirements
 31 with respect to the return of inventory as are set out in the terms of the
 32 franchise agreement. A manufacturer, distributor, or representative who fails
 33 to pay those sums within the prescribed time or at such time as the dealer
 34 and lienholder, if any, proffer good title prior to the prescribed time for
 35 payment, is liable to the dealer for:

36 (a) The greatest of dealer cost, fair market

1 value, or current price of the inventory;

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

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

5 (L)(i) To fail or refuse to offer its same line make
6 ~~franchised~~ franchise motor vehicle dealers all models manufactured for that
7 line make.

8 (ii) No additional requirements over the
9 requirements originally required to initially obtain a dealership may be
10 required of existing ~~franchised~~ franchise motor vehicle dealers to receive
11 any model by that line make;

12 (M)(i) To offer to sell or to sell any motor vehicle to a
13 consumer, except through a licensed ~~new~~ franchise motor vehicle dealer
14 holding a franchise for the line make covering the new motor vehicle or as
15 may otherwise be provided in subdivision (a)(3) of this section.

16 (ii) This subdivision (a)(2)(M) shall not apply to
17 manufacturer sales of new motor vehicles to the federal government,
18 charitable organizations, or employees of the manufacturer;

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

22 (O)(i) To require, coerce, or attempt to coerce any
23 franchisee in this state to refrain from, or to terminate, cancel, or refuse
24 to continue any franchise based upon participation by the franchisee in the
25 management of, investment in, or the acquisition of a franchise for the sale
26 of any other line of new motor vehicle or related products in the same or
27 separate facilities as those of the franchiser.

28 (ii) This subdivision (a)(2)(O) does not apply
29 unless:

30 (a) The franchisee maintains a reasonable line
31 of credit for each make or line of new motor vehicle;

32 (b) The franchisee remains in compliance with
33 the franchise and any reasonable facilities requirement of the franchiser;
34 and

35 (c) No change is made in the principal
36 management of the franchisee.

1 (iii) The reasonable facilities requirement shall
 2 not include any requirement that the franchisee establish or maintain
 3 exclusive facilities, personnel, or display space, when such requirements
 4 would not otherwise be justified by reasonable business considerations.

5 (iv)(a) Before the addition of a line make to the
 6 dealership facilities, the franchisee must first request consent of the
 7 franchiser, if required by the franchise agreement.

8 (b) Any decision of the franchiser with regard
 9 to dualing of two (2) or more franchises shall be granted or denied within
 10 sixty (60) days after a written request from the ~~new~~ franchise motor vehicle
 11 dealer. The franchiser's failure to respond timely to a dualing request shall
 12 be deemed to be approval of the franchisee's request;

13 (3) For a manufacturer, distributor, distributor branch or
 14 division, or factory branch or division, or an officer, agent, or other
 15 representative thereof:

16 (A) To own, operate, or control any franchise motor
 17 vehicle dealer, provided that this subdivision (a)(3)(A) shall not be
 18 construed to prohibit the following:

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

22 (ii) The ownership or control of a franchise motor
 23 vehicle dealer by a manufacturer during a period in which the franchise motor
 24 vehicle dealer is being sold under a bona fide contract or purchase option to
 25 the operator of the dealership;

26 (iii) The ownership, operation, or control of a
 27 franchise motor vehicle dealer by a manufacturer, if:

28 (a) The manufacturer has been engaged in the
 29 retail sale of new motor vehicles at the location for a continuous period of
 30 five (5) years prior to January 1, 1999; and

31 (b) The ~~commission~~ Franchise Motor Vehicle
 32 Council of the Arkansas Motor Vehicle Commission determines after a hearing
 33 on the matter at the request of any party, that there is no prospective ~~new~~
 34 franchise motor vehicle dealer available to own and operate the franchise in
 35 a manner consistent with the public interest; or

36 (iv) The ownership, operation, or control of a ~~new~~

1 franchise motor vehicle dealer by a manufacturer, if the ~~commission~~ Franchise
 2 Motor Vehicle Council of the Arkansas Motor Vehicle Commission determines
 3 after a hearing on the matter at the request of any party, that there is no
 4 prospective ~~new~~ franchise motor vehicle dealer available to own and operate
 5 the franchise in a manner consistent with the public interest; or

6 (4)(A) For a manufacturer to unfairly compete with a motor
 7 vehicle dealer of the same line make, operating under a franchise, in the
 8 relevant market area.

9 (B) "Unfairly compete" as used in this section, includes,
 10 but is not limited to:

- 11 (i) Internet solicitations; and
- 12 (ii) Preferential treatment of manufacturer-operated
 13 dealerships in the supply of inventory, both as to quantity and availability
 14 of the latest models of that line make, supply of parts, and payments for
 15 warranty and recall claims.

16 (C) Ownership, operation, or control of a ~~new~~ franchise
 17 motor vehicle dealer by a manufacturer under the conditions set forth in
 18 subdivisions (a)(3)(A)(i)-(iv) of this section shall not constitute a
 19 violation of this subdivision (a)(4).

20 (b)(1) Notwithstanding the terms of any franchise except a settlement
 21 agreement voluntarily entered into, it shall be a violation for a motor
 22 vehicle franchiser to require a motor vehicle franchisee to agree to a term
 23 or condition in any franchise as a condition of the offer, grant, or renewal
 24 of the franchise or the approval of the sale, acquisition, or transfer of the
 25 assets of a ~~new~~ franchise motor vehicle dealer, which:

26 (A) Requires the motor vehicle franchisee to waive trial
 27 by jury in actions involving the motor vehicle franchiser;

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

33 (C) Requires a ~~new~~ franchise motor vehicle dealer to pay
 34 the attorney's fees of a manufacturer, importer, second-stage manufacturer,
 35 converter, or distributor;

36 (D) Requires the motor vehicle franchisee to waive any

1 remedy or defense available to the franchisee or other provision protecting
 2 the interests of the franchisee under this chapter; or

3 (E)(i) Requires that disputes between the motor vehicle
 4 franchiser and motor vehicle franchisee be submitted to binding arbitration
 5 or to any other binding alternative dispute resolution procedure provided by
 6 the franchiser.

7 (ii) However, any franchise, lease, or agreement may
 8 authorize the submission of a dispute to arbitration or to binding
 9 alternative dispute resolution if the motor vehicle franchiser and motor
 10 vehicle franchisee voluntarily agree to submit the dispute to binding
 11 arbitration or binding alternative dispute resolution after the dispute
 12 arises.

13 (iii) If the franchiser and franchisee agree to
 14 binding arbitration, the arbitrator shall apply the provisions of this
 15 chapter in resolving the pertinent controversy and shall provide the parties
 16 to a contract with a written explanation of the factual and legal basis for
 17 the award. Either party may appeal to the ~~commission~~ Franchise Motor Vehicle
 18 Council of the Arkansas Motor Vehicle Commission a decision of an arbitrator
 19 on the ground that the arbitrator failed to apply this chapter.

20 (2) For the purposes of this section, it shall be presumed that
 21 a motor vehicle franchisee has been required to agree to a term or condition
 22 in violation of this section as a condition of the offer, grant, or renewal
 23 of a franchise or of any lease or agreement ancillary or collateral to a
 24 franchise, if the motor vehicle franchisee, at the time of the offer, grant,
 25 or renewal of the franchise, lease, or agreement or the approval of the sale,
 26 acquisition, or transfer of the assets of a ~~new~~ franchise motor vehicle
 27 dealer, is not offered the option of an identical franchise, lease, or
 28 agreement without the terms or conditions prescribed by this section.

29 (c) Concerning any sale of a motor vehicle or vehicles to the State of
 30 Arkansas or to the several counties or municipalities thereof or to any other
 31 political subdivision thereof, no manufacturer or distributor shall offer any
 32 discounts, refunds, or any other similar type inducements to any dealer
 33 without making the same offers to all other of its dealers within the state.
 34 If the inducements are made, the manufacturer or distributor shall give
 35 simultaneous notice thereof to all of its dealers within the state.

36

1 SECTION 6. Arkansas Code § 23-112-406 is amended to read as follows:
 2 23-112-406. Acting as broker.

3 (a) Notwithstanding any other statute, a person may not act as, offer
 4 to act as, or hold himself or herself out to be a broker of new motor
 5 vehicles.

6 (b) To effectuate this chapter, the definition of "arranges or offers
 7 to arrange a transition" means soliciting or referring buyers for new motor
 8 vehicles for a fee, commission, or other valuable consideration. Advertising
 9 is not included in this definition as long as the person's business primarily
 10 includes the business of broadcasting, printing, publishing, or advertising
 11 for others in their own names.

12 (c) Brokering New Motor Vehicles.

13 (1) A buyer referral service, program, plan, club, or any other
 14 entity that accepts fees for arranging a transaction involving the sale of a
 15 new motor vehicle is a broker. The payment of a fee to such an entity is
 16 aiding and abetting brokering. However, any service, plan, program, club, or
 17 other entity that forwards referrals to dealerships may lawfully operate if
 18 the following conditions are met:

19 (A) There are no exclusive market areas offered to
 20 franchise motor vehicle dealers by the program and all franchise motor
 21 vehicle dealers are allowed to participate on equal terms;

22 (B)(i) Participation by franchise motor vehicle dealers in
 23 the program is not restricted by conditions such as limiting the number of
 24 franchise lines or discrimination by size of dealership or location.

25 (ii) Total number of participants in the program may
 26 be restricted if the program is offered to all franchise motor vehicle
 27 dealers at the same time with no regard to the franchise;

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

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

33 (E) The program does not set or suggest to the franchise
 34 motor vehicle dealer or customer any price of vehicles or trade-ins; and

35 (F) The program does not advertise or promote its plan in
 36 the manner that implies that the buyer, as a customer of that program,

1 receives a special discounted price that cannot be obtained unless the
 2 customer is referred through that program.

3 (2) All programs must comply with Regulation 1 of the Franchise
 4 Motor Vehicle Council of the Arkansas Motor Vehicle Commission Rules and
 5 Regulations.

6 (d) The provisions of this section do not apply to any person or
 7 entity which is exempt from this chapter.

8

9 SECTION 7. Arkansas Code Title 23, Chapter 112, Subchapter 5 is
 10 amended to read as follows:

11 23-112-501. Right to hearing.

12 The Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
 13 Commission shall not:

14 (1) Deny an application for a license without first giving the
 15 applicant a hearing, or an opportunity to be heard, on the question of
 16 whether he or she is qualified under the provisions of this chapter to
 17 receive the license applied for;

18 (2) Revoke or suspend a license without first giving the
 19 licensee a hearing, or an opportunity to be heard, on the question of whether
 20 there are sufficient grounds under the provisions of this chapter upon which
 21 to base the revocation or suspension; or

22 (3) Impose a civil penalty pursuant to § 23-112-314 without
 23 first giving the respondent a hearing pursuant to the Arkansas Administrative
 24 Procedure Act, § 25-15-201 et seq.

25

26 23-112-502. Call for hearing.

27 (a) Any interested party may petition the Franchise Motor Vehicle
 28 Council of the Arkansas Motor Vehicle Commission to call a hearing for the
 29 purpose of taking action with respect to any matter within the ~~commission's~~
 30 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission's
 31 jurisdiction by filing with the ~~commission~~ Franchise Motor Vehicle Council of
 32 the Arkansas Motor Vehicle Commission a notarized complaint setting forth
 33 grounds upon which the complaint is based. Upon review of the complaint, the
 34 ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
 35 Commission shall determine whether to call a hearing.

36 (b) On its own motion, the ~~commission~~ Franchise Motor Vehicle Council

1 of the Arkansas Motor Vehicle Commission may call a hearing for the purpose
 2 of taking action in respect to any matter within its jurisdiction.

3
 4 23-112-503. Notice - Location of hearing.

5 (a) When a hearing is to be held before the Franchise Motor Vehicle
 6 Council of the Arkansas Motor Vehicle Commission, the ~~commission~~ Franchise
 7 Motor Vehicle Council of the Arkansas Motor Vehicle Commission shall give
 8 written notice to all parties whose rights may be affected thereby.

9 (b) The notice shall set forth the reason for the hearing, the
 10 questions or issues to be decided by the ~~commission~~ Franchise Motor Vehicle
 11 Council of the Arkansas Motor Vehicle Commission at the hearing, and the time
 12 and the place of the hearing.

13 (c) All notices shall be mailed to all parties whose rights may be
 14 affected by the hearing by registered or certified mail and addressed to
 15 their last known address.

16 (d)(1) Any hearing shall be held in the county of the residence of the
 17 party whose rights may be affected thereby or the county of that party's
 18 principal place of business.

19 (2) If the party is a nonresident of the state, the hearing
 20 shall be held in the county where the principal office of the ~~commission~~
 21 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission is
 22 located.

23
 24 23-112-504. Conduct of hearing.

25 All hearings shall be conducted pursuant to the provisions of the
 26 Arkansas Administrative Procedure Act, § 25-15-201 et seq.

27
 28 23-112-505. Decisions and orders of ~~commission~~ Franchise Motor Vehicle
 29 Council of the Arkansas Motor Vehicle Commission - Quorum.

30 (a) All decisions of the Franchise Motor Vehicle Council of the
 31 Arkansas Motor Vehicle Commission with respect to the hearings provided for
 32 in this subchapter shall be incorporated into orders of the ~~commission~~
 33 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission and
 34 spread upon its minutes.

35 (b) A majority of the members of the ~~commission~~ Franchise Motor
 36 Vehicle Council of the Arkansas Motor Vehicle Commission shall constitute a

1 quorum for purposes of rendering an order, and no order will issue except
 2 upon the affirmative vote of a majority of the quorum of the members of the
 3 ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
 4 Commission as established under § 23-112-201.

5
 6 23-112-506. Appeals.

7 Appeals shall be governed by the terms of the Arkansas Administrative
 8 Procedure Act, § 25-15-201 et seq.

9
 10 23-112-507. Exhaustion of remedies required - Exception.

11 (a) No decision of the Franchise Motor Vehicle Council of the Arkansas
 12 Motor Vehicle Commission made as a result of a hearing under the provisions
 13 of this subchapter shall become final with respect to any party affected and
 14 aggrieved by the decision until the party has exhausted, or shall have had an
 15 opportunity to exhaust, all of his or her remedies provided for by this
 16 subchapter.

17 (b) However, any decision may be made final if the ~~commission~~
 18 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission
 19 finds that failure to do so would be detrimental to the public interest or
 20 public welfare, but the finality of the decision shall not prevent any party
 21 affected and aggrieved thereby to appeal the decision in accordance with the
 22 appellate procedure set forth in this subchapter.

23
 24 23-112-508. Rules of order or procedure.

25 (a) The Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
 26 Commission shall prescribe its rules of order or procedure in hearings, or
 27 other proceedings before it, under this chapter.

28 (b) However, rules of order or procedure shall not be in conflict or
 29 contrary to the provisions of this subchapter.

30
 31 23-112-509. Summons, citation, and subpoena.

32 (a) It shall be the duty of the sheriffs and constables of the
 33 counties of this state and of any employee of the Franchise Motor Vehicle
 34 Council of the Arkansas Motor Vehicle Commission, when so directed by the
 35 ~~commission~~ Franchise Motor Vehicle Council of the Arkansas Motor Vehicle
 36 Commission, to execute any summons, citation, or subpoena that the ~~commission~~

1 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission may
 2 cause to be issued and to make their return thereof to the ~~commission~~
 3 Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission.

4 (b)(1) The sheriffs and constables serving and returning any summons,
 5 citation, or subpoena shall be paid the same fees as provided for the
 6 services in the circuit court.

7 (2) Any person who appears before the ~~commission~~ Franchise Motor
 8 Vehicle Council of the Arkansas Motor Vehicle Commission, or a duly
 9 designated employee thereof, in response to a summons, citation, or subpoena
 10 shall be paid the same witness fee and mileage allowance as witnesses in the
 11 circuit court.

12 (c)(1) In case of failure or refusal on the part of any person to
 13 comply with any summons, citation, or subpoena issued and served as
 14 authorized, or in the case of the refusal of any person to testify or answer
 15 to any matter regarding that which he or she may be lawfully interrogated, or
 16 the refusal of any person to produce his or her record books and accounts
 17 relating to any matter regarding that which he or she may be lawfully
 18 interrogated, the circuit court of any county of the State of Arkansas, on
 19 application of the ~~commission~~ Franchise Motor Vehicle Council of the Arkansas
 20 Motor Vehicle Commission or of the Executive Director of the Arkansas Motor
 21 Vehicle Commission, may:

22 (A) Issue an attachment for the person; and

23 (B) Compel the person to:

24 (i) Comply with the summons, citation, or subpoena;

25 (ii) Attend before the ~~commission~~ Franchise Motor
 26 Vehicle Council of the Arkansas Motor Vehicle Commission or its designated
 27 employee;

28 (iii) Produce the documents specified in any
 29 subpoena duces tecum; and

30 (iv) Give his or her testimony upon such matters as
 31 he or she may be lawfully required.

32 (2) Any circuit court shall have the power to punish for
 33 contempt as in the case of disobedience of like process issued from or by any
 34 circuit court, or by refusal to testify therein in response to the process,
 35 and the person shall be taxed with the costs of the proceedings.

36

1 SECTION 8. Arkansas Code Title 23, Chapter 112, Subchapter 6 is
 2 amended to read as follows:

3 23-112-601. Necessity for regulation - Legislative findings -
 4 Legislative declaration.

5 (a) The General Assembly declares that the public interest is affected
 6 by the sale and distribution of used motor vehicles, and it is recognized
 7 that a significant factor of the inducement in making a sale of a used motor
 8 vehicle to a member of the general public is the trust and confidence of the
 9 purchaser in the retail dealer from whom the purchase is made, with the
 10 expectancy that the dealer will remain in business to stand behind and
 11 provide service for the motor vehicle purchased.

12 (b) It is therefore found to be necessary to license ~~used~~ independent
 13 motor vehicle dealers and to prohibit certain acts and set penalties for
 14 violations and perpetration of certain acts by ~~used~~ independent motor vehicle
 15 dealers who are not licensed as ~~new~~ franchise motor vehicle dealers selling
 16 used cars incidental to their ~~new~~ franchise motor vehicle dealers operations,
 17 salespersons, agents, representatives, and employees of used motor vehicle
 18 dealers in order to:

- 19 (1) Prevent fraud, improper impositions, and other abuses upon
 20 the citizens of this state;
- 21 (2) Protect and preserve the investments and properties of the
 22 citizens of this state; and
- 23 (3) Foster and keep alive vigorous and healthy competition by
 24 prohibiting unfair practices by which fair and honest competition is
 25 destroyed or prevented.

26
 27 23-112-602. Definitions.

28 As used in this subchapter:

29 (1)(A) "Auto auction" means any person who operates or provides
 30 a place of business or facilities for the wholesale exchange of independent
 31 motor vehicles using an auction format or on consignment:

32 (i) ~~by~~ By and between duly licensed:

33 (a) Franchise motor vehicle dealers; ~~or~~

34 (b) Independent motor vehicle dealers; or

35 (ii) ~~from used~~ From independent motor vehicle dealers
 36 to individuals, ~~or~~;

1 that is so used as to have become what is commonly known as a secondhand or
 2 previously owned motor vehicle.

3 (B) In the event of a transfer reflected on the statement
 4 of origin from the original franchise motor vehicle dealer to any other
 5 dealer, individual, or corporation other than a franchise motor vehicle
 6 dealer of the same make of vehicle, the vehicle shall be considered a used
 7 motor vehicle;

8 (9)(A)(i) "~~Used~~ Independent motor vehicle dealer", ~~hereinafter~~
 9 ~~referred to as "dealer"~~, means any person, wholesaler, or auto auction who,
 10 for a commission or with intent to make a profit or gain of money or other
 11 thing of value, sells, brokers, exchanges, rents, or leases with the option
 12 to purchase or own, or attempts to negotiate a sale or exchange of an
 13 interest in any used motor vehicle, or who is wholly or in part in the
 14 business of buying, selling, trading, or exchanging used motor vehicles,
 15 whether or not such motor vehicles are owned by such a person.

16 (ii) The sale or attempted sale of three (3) or more
 17 used motor vehicles in any one (1) calendar year shall be prima facie
 18 evidence and shall constitute a rebuttable presumption that a person is
 19 engaged in the business of selling used motor vehicles.

20 (B) ~~Used~~ Independent motor vehicle dealer shall not
 21 include:

22 (i) A receiver, trustee, administrator, executor,
 23 guardian, or other person appointed by or acting pursuant to a judgment or
 24 order of any court;

25 (ii) A public officer, while performing his or her
 26 official duties;

27 (iii) A mortgagee or secured party as to sales of
 28 motor vehicles constituting collateral on a mortgage or security agreement,
 29 if the mortgagee or secured leasing party shall not realize for their own
 30 account from such sales any moneys in excess of the outstanding balance
 31 secured by the mortgage or security agreement after consideration of the
 32 costs of collection;

33 (iv) A lienholder, artisan, mechanic, or garage
 34 selling repaired items pursuant to a lien granted by Arkansas law;

35 (v) A person selling a motor vehicle titled in his
 36 or her own name and used exclusively as a personal vehicle, or a motor

1 vehicle titled in a business name and used exclusively as a business vehicle,
 2 or a person engaged in leasing or renting vehicles; or

3 (vi) A ~~new~~ franchise motor vehicle dealer selling a
 4 used motor vehicle in conjunction with his or her ~~new~~ franchise motor vehicle
 5 dealer operations who is licensed under this chapter;

6 (10) "~~Used~~ Independent motor vehicle salesperson", ~~hereinafter~~
 7 ~~referred to as "salesperson", is anyone~~ means a person who for compensation
 8 of any kind operates as a salesperson, broker, agent, or representative of a
 9 ~~used~~ an independent motor vehicle dealer, or any person who attempts to or in
 10 fact negotiates a sale of a vehicle owned partially or entirely by a ~~used~~ an
 11 independent motor vehicle dealer, or a person or drafter using the financial
 12 resources, line of credit, or floor plan of a ~~used~~ an independent motor
 13 vehicle dealer to purchase, sell, or exchange an interest in a used motor
 14 vehicle; and

15 (11)(A) "Wholesaler" means any person, resident or nonresident,
 16 who, in whole or in part, primarily sells used motor vehicles to ~~new~~
 17 franchise motor vehicle dealers.

18 (B) ~~Used~~ Independent motor vehicle dealers who, incidental
 19 to their primary business, sell motor vehicles to other dealers are not
 20 considered wholesalers because of their incidental sales.

21
 22 23-112-603. Penalty for violation and disbursement of fines ~~-~~ Canceling
 23 license.

24 ~~(a) In addition to any other penalty prescribed by existing laws, the~~
 25 ~~penalties for violation of this subchapter and the disbursement of fines~~
 26 ~~shall be as follows:~~

27 ~~(1) A first violation of this subchapter by any person shall~~
 28 ~~constitute a Class A misdemeanor;~~

29 ~~(2) A second violation of this subchapter by any person shall~~
 30 ~~constitute a Class D felony; and~~

31 ~~(3) Conviction of a third or subsequent violation shall~~
 32 ~~constitute a Class D felony, and the dealer's license shall be suspended for~~
 33 ~~three (3) years for each respective third or subsequent violation.~~

34 ~~(b) Any person found guilty of selling a used motor vehicle as a used~~
 35 ~~dealer or salesperson while his or her used motor vehicle dealer's or~~
 36 ~~salesperson's license is suspended or revoked shall be guilty of a Class C~~

1 felony.

2 ~~(c)(1) If the arresting officer is an officer of the Department of~~
 3 ~~Arkansas State Police, one half (1/2) of the fine collected shall be remitted~~
 4 ~~by the tenth day of each month to the Administration of Justice Fund Section~~
 5 ~~of the Office of Administrative Services of the Department of Finance and~~
 6 ~~Administration on a form provided by that office, for deposit in the~~
 7 ~~Department of Arkansas State Police Fund to be used for the purchase and~~
 8 ~~maintenance of state police vehicles.~~

9 ~~(2) If the arresting officer is a county law enforcement~~
 10 ~~officer, one half (1/2) of the fine collected shall be deposited in that~~
 11 ~~county fund used for the purchase and maintenance of rescue, emergency~~
 12 ~~medical, and law enforcement vehicles, communications equipment, animals~~
 13 ~~owned or used by law enforcement agencies, life saving medical apparatus, and~~
 14 ~~law enforcement apparatus to be used for those purposes.~~

15 ~~(3) If the arresting officer is a municipal law enforcement~~
 16 ~~officer, one half (1/2) of the fine collected shall be deposited in that~~
 17 ~~municipal fund used for the purchase and maintenance of rescue, emergency~~
 18 ~~medical, and law enforcement vehicles, communications equipment, animals~~
 19 ~~owned or used by law enforcement agencies, life saving medical apparatus, and~~
 20 ~~law enforcement apparatus to be used for those purposes.~~

21 (a) If after a request for alternative proceedings or notice and
 22 hearing the Independent Motor Vehicle Council of the Arkansas Motor Vehicle
 23 Commission finds that any person not holding a license under this chapter is
 24 guilty of any violation of this chapter or rules promulgated thereunder, the
 25 Independent Motor Vehicle Council of the Arkansas Motor Vehicle Commission
 26 shall have the power and authority to impose a monetary penalty upon the
 27 person not to exceed two thousand five hundred dollars (\$2,500) per
 28 violation.

29 (b) Each day of violation of this chapter or of a rule shall
 30 constitute a separate violation subjecting the person to a separate civil
 31 penalty.

32 (c) Unless the penalty assessed under this section is paid within
 33 fifteen (15) days following the date for an appeal from the order, the
 34 Independent Motor Vehicle Council of the Arkansas Motor Vehicle Commission
 35 shall have the power to file suit in the Circuit Court of Pulaski County to
 36 obtain a judgment for the amount of the penalty not paid.

1 (d)(1) Repeated violations by any person not holding a license under
 2 this chapter shall result in an increase in the penalty assessed by the
 3 Independent Motor Vehicle Council of the Arkansas Motor Vehicle Commission.

4 (2) The terms "second" and "subsequent" violation as used in
 5 this section mean a violation of the same nature as a previously remedied
 6 violation that occurs within five (5) years of the remedied violation by any
 7 person not holding a license under this chapter.

8 (e) The Independent Motor Vehicle Council of the Arkansas Motor
 9 Vehicle Commission may cancel a license if the respective independent motor
 10 vehicle dealer fails to keep and maintain the requirements set forth in § 23-
 11 112-607(a) and (b) or upon conviction of a third violation of this
 12 subchapter.

13 (f)(1) An independent motor vehicle dealer licensed under this
 14 subchapter shall maintain a licensed location.

15 (2)(A) When an independent motor vehicle dealer changes or moves
 16 his or her license location, the independent motor vehicle dealer shall
 17 notify the Independent Motor Vehicle Council of the Arkansas Motor Vehicle
 18 Commission in writing of the dealership name, the previous location, and the
 19 new location.

20 (B) The independent motor vehicle dealer shall notify the
 21 Independent Motor Vehicle Council of the Arkansas Motor Vehicle Commission
 22 within fifteen (15) calendar days of the relocation of his or her business.

23 (3)(A) If the Independent Motor Vehicle Council of the Arkansas
 24 Motor Vehicle Commission determines that the independent motor vehicle
 25 dealer's business location has moved and notification to the department has
 26 not been properly made, the department shall levy a penalty equal to the
 27 amount of the license fee.

28 (B) The penalty shall be remitted to Independent Motor
 29 Vehicle Council of the Arkansas Motor Vehicle Commission and shall be
 30 deposited in the State Treasury as special revenue to the credit of the
 31 Motor Vehicle Commission Fund.

32
 33 23-112-604. Power to promulgate rules and regulations.

34 ~~(a) The Department of Arkansas State Police~~ Independent Motor Vehicle
 35 Council of the Arkansas Motor Vehicle Commission shall have the power to
 36 promulgate, issue, amend, and rescind such rules and regulations as are

1 necessary to implement, enforce, and administer this subchapter.

2 ~~(b) The Department of Arkansas State Police may cancel a license if~~
 3 ~~the respective dealer fails to keep and maintain the requirements set forth~~
 4 ~~in § 23-112-607(a) and (b) or upon conviction of a third violation of this~~
 5 ~~subchapter.~~

6
 7 23-112-605. Violations.

8 It shall be a violation of this subchapter to knowingly or
 9 intentionally:

10 (1)(A) Sell or solicit a sale of a used motor vehicle without a
 11 an independent motor vehicle dealer license.

12 (B) The sale of each used vehicle shall constitute a
 13 separate offense;

14 (2) Commit a fraudulent act in selling, purchasing, or otherwise
 15 dealing in used motor vehicles;

16 (3) Fail to maintain the conditions and requirements necessary
 17 to qualify for the issuance of a license;

18 (4) Sell, attempt to sell, or advertise for sale used vehicles
 19 from a location other than that set forth on the independent motor vehicle
 20 dealer license, except:

21 (A) As a participating independent motor vehicle dealer in
 22 a state trade association promotion or exhibit;

23 (B) With a ~~special sale permit~~ an approved off-premise
 24 sale form or as provided by rule; or

25 (C) At an auto auction;

26 (5) Falsify, alter, or neglect to endorse or deliver a
 27 certificate of title to a transferee or lawful owner, or fail to properly
 28 designate a transferee on a document of assignment or certificate of title;

29 (6) Knowingly purchase, sell, or otherwise acquire or dispose of
 30 a stolen motor vehicle;

31 (7) Submit a false affidavit setting forth that a title has been
 32 lost or destroyed;

33 (8) Pass title or reassign title as a an independent motor
 34 vehicle dealer without a an independent motor vehicle dealer's license or
 35 when his or her independent motor vehicle dealer's license has been
 36 suspended;

1 (9) To represent oneself as a an independent motor vehicle
2 dealer or as a an independent motor vehicle salesperson, either verbally or
3 in any advertisement, when not licensed as such;

4 (10) Violate any provision or requirement in this subchapter; or

5 (11) Knowingly assist an unlicensed independent motor vehicle
6 dealer in the sale of a motor vehicle.

7
8 23-112-606. License required.

9 It shall be unlawful for any person to engage in business as a ~~used~~ an
10 independent motor vehicle dealer or to sell a vehicle not his or her own
11 without obtaining a ~~used~~ an independent motor vehicle dealer's license,
12 except that a person defined as a an independent motor vehicle salesperson in
13 § 23-112-602 may act on behalf of the dealer by whom such a person is
14 employed.

15
16 23-112-607. Independent motor vehicle dealer license.

17 (a)(1) Persons wishing to obtain a ~~used~~ an independent motor vehicle
18 dealer's license shall submit a fully executed application on such ~~used~~
19 independent motor vehicle dealer application forms as may be prescribed by
20 the ~~Department of Arkansas State Police~~ Independent Motor Vehicle Council of
21 the Arkansas Motor Vehicle Commission.

22 (2) The application shall be verified by the oath or affirmation
23 of the applicant.

24 (b) The ~~Department of Arkansas State Police~~ Independent Motor Vehicle
25 Council of the Arkansas Motor Vehicle Commission shall require in relation to
26 the application the following information and verification prior to issuing a
27 license certificate:

28 (1) A photograph of the business location;

29 (2) A corporate surety bond in the sum of at least ~~twenty-five~~
30 ~~thousand dollars (\$25,000)~~ fifty thousand dollars (\$50,000);

31 (3) Proof of liability insurance coverage on all vehicles to be
32 offered for sale in an amount equal to or greater than the amount required by
33 the Motor Vehicle Safety Responsibility Act, § 27-19-101 et seq.;

34 (4) A list of the persons or entities having any ownership
35 interest in the used vehicle dealership;

36 (5) A list of salespersons to be employed;

1 (6) That the applicant has a bona fide established place of
 2 business used primarily for the sale of used motor vehicles;

3 (7) That the applicant has a telephone number listed in the name
 4 of the business;

5 (8) That the applicant has a sign identifying the establishment
 6 as a used motor vehicle dealership legible from the street, road, or highway,
 7 and a picture thereof;

8 (9) That the applicant has a filing cabinet or other repository
 9 adequate to secure the business records of the establishment under lock and
 10 key or combination;

11 (10) Whether the applicant has ever been issued ~~a~~ an independent
 12 motor vehicle dealer's license, and if the applicant has ever had ~~a~~ an
 13 independent motor vehicle dealer's license suspended or revoked;

14 (11) An affidavit from ~~a Department of Arkansas State Police~~
 15 ~~officer stating that the officer~~ a representative of the Independent Motor
 16 Vehicle Council of the Arkansas Motor Vehicle Commission that states that the
 17 representative has inspected the facility and found it to be in compliance
 18 with the requirements for application; and

19 (12) The name, address, and telephone number of the person
 20 designated to receive legal process in the event of the commencement of any
 21 legal action in any court against the applicant.

22 (c)(1)(A) Each applicant shall obtain a corporate surety bond in the
 23 penal sum of ~~twenty five thousand dollars (\$25,000)~~ fifty thousand dollars
 24 (\$50,000) on a bond form approved by the state.

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

29 (2) The bond shall be an indemnity for any loss and reasonable
 30 attorney's fees sustained by a retail buyer by reason of the acts of the
 31 person bonded when such an act constitutes a violation of this law.

32 (3) However, the surety shall in no event be liable for more
 33 than ~~twenty five thousand dollars (\$25,000)~~ fifty thousand dollars (\$50,000).

34 (4) The bond shall be executed in the name of the State of
 35 Arkansas or any aggrieved party.

36 (5) The proceeds of the bonds shall be paid either to the State

1 of Arkansas or to the retail buyer upon a judgment from an Arkansas court of
 2 competent jurisdiction against the principal and in favor of the aggrieved
 3 party or the State of Arkansas.

4 (6) However, the surety shall in no event be required to pay any
 5 judgment obtained by fraud or collusion, as between the independent motor
 6 vehicle dealer and the retail buyer, or which was rendered against a person
 7 bonded for an act that does not constitute a violation of this subchapter.
 8 These defenses may be raised at any time, subject to the applicable statute
 9 of limitations.

10
 11 23-112-608. License certificate fees.

12 (a)(1) The fee for a license certificate shall be ~~one hundred dollars~~
 13 ~~(\$100)~~ two hundred fifty dollars (\$250) per year for each used motor vehicle
 14 dealer licensed.

15 (2) The fee shall be for the licensing period beginning on
 16 January 1 of each year and ending on December 31 of each year and shall be
 17 renewable during the month of January following its expiration, unless the
 18 Independent Motor Vehicle Council of the Arkansas Motor Vehicle Commission
 19 provides by rule a staggered method of annual renewal.

20 (3) A dealer having more than one (1) location will receive an
 21 additional certificate for each second and subsequent location for ~~twenty-~~
 22 ~~five dollars (\$25.00)~~ one hundred dollars (\$100) each.

23 (b)(1) If a license certificate has expired for at least thirty-one
 24 (31) days but less than six (6) months, then the independent motor vehicle
 25 dealer shall remit a late fee of thirty-five dollars (\$35.00) before the
 26 dealer's application shall be accepted.

27 (2)(A) A license which is not renewed within six (6) months of
 28 its expiration date shall be terminated without the necessity of a hearing.

29 (B) If an independent motor vehicle dealer license has
 30 permanently expired, then the independent motor vehicle dealer may reapply
 31 for licensure provided that the independent motor vehicle dealer completes an
 32 application for licensure and remits all fees pursuant to this section.

33 (c)(1) The fee for a license certificate shall be twenty-five dollars
 34 (\$25.00) for each independent motor vehicle salesperson.

35 (2) License applications for an independent motor vehicle
 36 salesperson shall be received by the commission no later than thirty (30)

1 days after employment.

2 (d) The replacement fee for a license certificate issued under this
 3 subchapter shall be ten dollars (\$10.00).

4 (e) No personal checks will be accepted for any license fees, fines,
 5 or penalties.

6 (f)(1) If a check, draft, or money order is presented to the Arkansas
 7 Motor Vehicle Commission for any obligation or fee due the Arkansas Motor
 8 Vehicle Commission and is dishonored, refused payment, or nonpayable upon
 9 presentation, then any licensee checks submitted and returned as nonpayable
 10 must be cleared with a money order or cashier's check.

11 (2) If a licensee has a payment issue described under subsection
 12 (f)(1) of this section, then for a period of one (1) year after the payment
 13 issue, the Arkansas Motor Vehicle Commission shall only accept payment from
 14 the licensee by money order or cashier's check.

15 ~~(b)(g)~~ Only ~~used~~ independent motor vehicle dealers licensed under this
 16 section shall qualify for ~~used~~ independent motor vehicle dealer license
 17 plates from the Arkansas Department of Finance and Administration.

18 ~~(e)(h)~~ All fees for the issuance of a license certificate under the
 19 provisions of this section shall be remitted to the ~~Department of Arkansas~~
 20 ~~State Police~~ Independent Motor Vehicle Council of the Arkansas Motor Vehicle
 21 Commission and shall be deposited in the State Treasury as special revenues
 22 to the credit of the ~~Department of Arkansas State Police Fund~~ Motor Vehicle
 23 Commission Fund.

24
 25 23-112-609. Issuance of license certificate.

26 Upon satisfactory submission and verification of a fully executed
 27 application as required by § 23-112-607(a) and (b), payment of the fee
 28 provided for by § 23-112-608, and receipt of the corporate surety bond as
 29 required by § 23-112-607(c), the ~~Department of Arkansas State Police~~
 30 Independent Motor Vehicle Council of the Arkansas Motor Vehicle Commission
 31 shall issue the applicant a license certificate.

32 (a)(1) The license issued to each independent motor vehicle dealer
 33 shall specify the location of the office of the independent motor vehicle
 34 dealer.

35 (2) If the location changes, then the Independent Motor Vehicle
 36 Council of the Arkansas Motor Vehicle Commission shall endorse the change of

1 location on the license without charge if it is within the same county.

2 (3) A change of location to another county shall require a new
3 license.

4 (b)(1) Licensees shall notify the Independent Motor Vehicle Council of
5 the Arkansas Motor Vehicle Commission in writing of any change in the
6 business or corporate name or structure and any alternate name or names in
7 which the company will do business, including DBA names, and shall return the
8 originally issued license with the notification of name change or addition of
9 DBA name or names.

10 (2) The Independent Motor Vehicle Council of the Arkansas Motor
11 Vehicle Commission shall endorse the change on the license without charge.

12 (c)(1) The license issued to each independent motor vehicle dealer
13 salesperson shall specify the location of the business.

14 (2) The license number of the employer of the independent motor
15 vehicle salesperson shall be stated on the license, and in case of a change
16 of employer, the holder of the license shall immediately notify the
17 Independent Motor Vehicle Council of the Arkansas Motor Vehicle Commission
18 regarding the change of employer.

19 (d)(1) Every independent motor vehicle salesperson shall have his or
20 her original license displayed at the salesperson's place of employment when
21 engaged in business and shall present the license upon request.

22 (2) The name and license number of the applicant shall be stated
23 on the license.

24 (e) If an independent motor vehicle salesperson changes employment,
25 then within three (3) days of employment, the independent motor vehicle
26 dealer by whom the salesperson is employed shall submit a transfer
27 application to the Independent Motor Vehicle Council of the Arkansas Motor
28 Vehicle Commission if employee is currently active.

29 (f)(1) The Independent Motor Vehicle Council of the Arkansas Motor
30 Vehicle Commission shall maintain a permanent file with respect to each
31 licensed independent motor vehicle salesperson.

32 (2) Each file shall contain all pertinent information with
33 respect to the fitness and qualifications of each licensee for the use by the
34 Independent Motor Vehicle Council of the Arkansas Motor Vehicle Commission in
35 determining from time to time whether his or her license should be revoked or
36 suspended.

1 (g)(1) There is no intent under this chapter to prevent a salesperson
2 who has not previously been licensed as a salesperson for a franchise or
3 independent motor vehicle dealer from selling during the time required to
4 process his or her application.

5 (2) The applicant shall be allowed to sell from the date of
6 employment as long as the applicant and his or her independent motor vehicle
7 dealer follow the procedure for license application.

8
9 23-112-610. Display of independent motor vehicle dealer license.

10 (a) Each independent motor vehicle dealer licensed under this
11 subchapter shall maintain for display, in a conspicuous place at the
12 independent motor vehicle dealer's business location, the license certificate
13 issued by the ~~Department of Arkansas State Police~~ Independent Motor Vehicle
14 Council of the Arkansas Motor Vehicle Commission.

15 (b)(1) Each independent motor vehicle dealer shall also have his or
16 her ~~used~~ independent motor vehicle dealer license name conspicuously
17 displayed on all signage.

18 (2) All printed advertisements shall contain the independent
19 motor vehicle dealer's name or the words "AR DLR" with the ~~Department of~~
20 ~~Arkansas State Police~~ Independent Motor Vehicle Council of the Arkansas Motor
21 Vehicle Commission dealer license number assigned to the independent motor
22 vehicle dealer.

23
24 23-112-611. Records to be maintained.

25 (a) Every person required to have a license shall maintain, for three
26 (3) years from the date of purchase, records of each vehicle transaction to
27 which the person was a party.

28 (b) ~~Dealers~~ Independent motor vehicle dealers shall maintain copies of
29 all documents executed in conjunction with any transaction, which may include
30 bills of sale, titles, odometer statements, invoices, affidavits of
31 alteration, and reassignments, and shall be open to inspection to any
32 ~~Department of Arkansas State Police officer~~ employee of the Independent Motor
33 Vehicle Council of the Arkansas Motor Vehicle Commission acting in an
34 official capacity during reasonable business hours.

35
36 23-112-612. ~~Used~~ Independent motor vehicle dealer documentary fees -

1 Disclosures.

2 (a) ~~A used~~ An independent motor vehicle dealer may charge a
 3 documentary fee for services rendered to, for, or on behalf of a purchaser in
 4 preparing, handling, and processing documents relating to, and closing a
 5 retail installment transaction involving, a used motor vehicle.

6 (b) If a documentary fee is charged under this section, the fee must
 7 be:

8 (1) Charged to all purchasers, cash buyers, and credit buyers;
 9 and

10 (2) Disclosed on the buyers' order form as a separate itemized
 11 charge.

12 (c) A preliminary work sheet on which a sale price is computed and
 13 that is shown to the purchaser, a buyers' order form from the purchaser, or a
 14 retail installment contract shall include in reasonable proximity to the
 15 place on the document where the documentary fee is disclosed:

16 (1) The amount of the fee; and

17 (2) The following notice in type that is bold-faced,
 18 capitalized, or underlined or otherwise conspicuously set out from the
 19 surrounding written material:

20 "A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT
 21 REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS AND
 22 PERFORMING SERVICES RELATING TO THE CLOSING OF A SALE. THIS NOTICE IS
 23 REQUIRED BY LAW."

24 (d) ~~The Department of Arkansas State Police~~ Independent Motor Vehicle
 25 Council of the Arkansas Motor Vehicle Commission is authorized to promulgate
 26 rules and regulations to implement, enforce, and administer this section.

27
 28 SECTION 9. Arkansas Code Title 23, Chapter 112, Subchapter 6 is
 29 amended to add additional sections to read as follows:

30 23-112-613. Civil penalty.

31 (a)(1) Except as provided under subdivision (a)(2), if after a request
 32 for alternative proceedings or notice and hearing the Independent Motor
 33 Vehicle Council of the Arkansas Motor Vehicle Commission finds that any
 34 person who is not a licensee under this subchapter is guilty of a violation
 35 of this subchapter or rules promulgated under this subchapter, then the
 36 Independent Motor Vehicle Council of the Arkansas Motor Vehicle Commission

1 may impose a monetary penalty against the person in an amount not to exceed
2 two thousand five hundred dollars (\$2,500) per violation.

3 (2) If a person is found to have violated this subchapter or
4 rules promulgated under this subchapter more than three (3) times within five
5 (5) years of the first violation, then the commission may impose a monetary
6 penalty against the person in an amount not to exceed five thousand dollars
7 (\$5,000).

8 (b) Each day that a violation of this subchapter or a rule promulgated
9 under this subchapter continues is a separate violation that shall subject
10 the person to additional civil penalties.

11 (c) If a civil penalty imposed under this section is not paid within
12 fifteen (15) days after the date for the appeal from the decision, then the
13 Independent Motor Vehicle Council of the Arkansas Motor Vehicle Commission
14 may petition the Pulaski County Circuit Court to obtain a judgment in the
15 amount of the civil penalty.

16
17 23-112-614. Accountability.

18 An independent motor vehicle dealer shall be responsible and be subject
19 to civil penalties for the actions of the following if those actions are
20 violations of this subchapter or rules promulgated under this subchapter:

21 (1) The independent motor vehicle dealer's employee if the
22 action performed is within the scope of the employee's employment; and

23 (2) Any entity that the independent motor vehicle dealer
24 authorizes or contracts with to prepare sales materials, promotional
25 materials, or advertising;

26
27 SECTION 10. Arkansas Code § 27-14-601(a)(6)(B)(i) and (ii), concerning
28 fees for registration and licensing of motor vehicles, is amended to read as
29 follows:

30 (B)(i) As a condition precedent to obtaining dealer's
31 license plates, the dealer shall furnish the director a certification that
32 the applicant is a vehicle dealer and has a bona fide, established place of
33 business used for the sale of vehicles, an office used for that business, a
34 telephone listed in the name of the business, and a sign identifying the
35 establishment. Certification shall be required for all renewals of dealer
36 license plates. This dealer certification shall not apply to dealers

1 licensed by the ~~Department of Arkansas State Police, the~~ Franchise Motor
 2 Vehicle Council or the Independent Motor Vehicle Council of the Arkansas
 3 Motor Vehicle Commission, or the Arkansas Manufactured Home Commission and
 4 who are regulated by those authorities. The dealer certification shall
 5 consist of completion of a self-certification form prepared by the Office of
 6 Motor Vehicle.

7 (ii) Upon furnishing the certification to the
 8 director, or a copy of the dealer's license from either the ~~Department of~~
 9 ~~Arkansas State Police or the~~ Franchise Motor Vehicle Council or the
 10 Independent Motor Vehicle Council of the Arkansas Motor Vehicle Commission
 11 and the payment of a fee of ~~one hundred dollars (\$100)~~ two hundred fifty
 12 dollars (\$250), the dealer shall be issued a master license plate and upon
 13 the payment of a fee of ~~twenty five dollars (\$25.00)~~ one hundred dollars
 14 (\$100) shall be issued a dealer's extra license plate. There is no limit to
 15 the number of dealer's extra license plates that may be purchased by a
 16 dealer. However, the dealer must secure a master license plate for each
 17 separate place of business.

18
 19 SECTION 11. Arkansas Code § 27-14-904(b), concerning transfers of
 20 titles by dealers, is amended to read as follows:

21 (b) No one in this state other than a dealer licensed by the Franchise
 22 Motor Vehicle Council of the Arkansas Motor Vehicle Commission as a dealer in
 23 new motor vehicles, shall enter an assignment, or reassignment, of ownership
 24 on a manufacturer's certificate of origin to a motor vehicle. Any dealer in
 25 this state not licensed by the Franchise Motor Vehicle Council of the
 26 Arkansas Motor Vehicle Commission as a dealer in new motor vehicles who
 27 acquires a motor vehicle through an assignment or reassignment of ownership
 28 on a manufacturer's certificate of origin shall deliver the manufacturer's
 29 certificate of origin to the Office of Motor Vehicle and apply for
 30 registration and issuance of a certificate of title to the motor vehicle as
 31 required by § 27-14-903. A first violation of this section by any person
 32 shall constitute a Class A misdemeanor. A second violation of this section by
 33 any person shall constitute a Class D felony. A licensed ~~used~~ independent
 34 motor vehicle dealer, who violates the provisions of this section shall also
 35 be deemed to have violated the provisions of the Used Motor Vehicle Buyers
 36 Protection Act, § 23-112-601 et seq.

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SECTION 12. Arkansas Code § 4-99-406 is amended to read as follows:
4-99-406. Applicability of subchapter.

The provisions of this subchapter shall not apply to:

(1) Any person who is a licensee, as defined by § 17-42-103(10)(A), who is a resident of the State of Arkansas and whose telephone call to the consumer is for the sole purpose of selling, exchanging, purchasing, renting, listing for sale or rent, or leasing real estate in accordance with the provisions for which he or she was licensed and not in conjunction with any other offer;

(2) Any motor vehicle dealer, as that term is defined in § 23-112-103(19), who is a resident of the State of Arkansas, and who maintains a current motor vehicle dealer's license issued by the Franchise Motor Vehicle Council of the Arkansas Motor Vehicle Commission, whose call to the consumer is for the sole purpose of selling, offering to sell, soliciting, or advertising the sale of motor vehicles in accordance with the provisions for which they were licensed and not in conjunction with any other offer;

(3) Any agent, as that term is defined in § 23-64-102(2), who maintains a current license as an insurance agent whose call to the consumer is for the purpose of soliciting, consulting, advising, or adjusting in the business of insurance;

(4) Any broker-dealer, agent, or investment advisor registered by the Securities Commissioner pursuant to the provisions of § 23-42-301 et seq., whose telephone call to the consumer is for the purpose of effecting or attempting to effect the purchase or sale of securities or has the purpose of providing or seeking to provide investment or financial advice;

(5) Any person calling on behalf of a charitable organization as that term is defined in § 4-99-403(2), whose call to the consumer is for the sole purpose of soliciting for the charitable organization and who receives no compensation as a result of his or her solicitation activities on behalf of the charitable organization;

(6) Any person calling on behalf of a newspaper of general circulation whose call to the consumer is for the purpose of soliciting a subscription to the newspaper from the consumer or soliciting advertising from the consumer;

(7)(A) Telephone calls made on behalf of any federally chartered

1 or state-chartered bank if the call to the consumer relates to banking
2 services other than credit card offers.

3 (B) In no event shall the telephone calls made pursuant to
4 this subdivision (7) ~~of this section~~ reference any form of credit card offer;
5 and

6 (8) Telephone calls made on behalf of a funeral establishment
7 properly licensed pursuant to § 17-29-301 et seq., if the purpose of the
8 telephone call relates to services provided by the funeral establishment in
9 its ordinary course of business.

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