

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.

State of Arkansas
87th General Assembly
Regular Session, 2009

As Engrossed: S3/10/09

A Bill

SENATE BILL 781

By: Senator Teague

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS MOTOR VEHICLE
COMMISSION ACT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE ARKANSAS MOTOR VEHICLE
COMMISSION ACT.

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

SECTION 1. Arkansas Code § 23-112-103(8), regarding the definition of "conversion" under the Arkansas Motor Vehicle Commission Act, is amended to read as follows:

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

SECTION 2. Arkansas Code § 23-112-103(18), regarding the definition of "motor vehicle" under the Arkansas Motor Vehicle Commission Act, is amended to read as follows:

(18) "Motor vehicle" means ~~any motor-driven~~ a self-propelled vehicle having two (2) or more wheels that has as its primary purpose the transportation of a person, including, ~~but not limited to,~~ without limitation all-terrain vehicles, automobiles, trucks, motorcycles, motor-driven cycles, motor scooters, and motor homes;



1 SECTION 3. Arkansas Code § 23-112-103(19)(A)(i), regarding the
2 definition of "motor vehicle dealer" under the Arkansas Motor Vehicle
3 Commission Act, is amended to read as follows:

4 (19)(A)(i) "Motor vehicle dealer" means ~~any~~ a person that is:
5 (a) engaged ~~Engaged~~ in the business of selling,
6 offering to sell, soliciting, or advertising the sale of servicing or
7 repairing motor vehicles under a manufacturer's warranty, ~~regardless of the~~
8 ~~medium used, or possessing motor vehicles for the purpose of resale, either~~
9 ~~on his or her own account or on behalf of another, either as his or her~~
10 ~~primary business or incidental thereto; and~~
11 (b) Located at an established and permanent
12 place of business under a franchise, sales and service agreement, or a bona
13 fide contract in effect with a manufacturer or distributor.
14

15 SECTION 4. Arkansas Code § 23-112-103(31), regarding the definition of
16 "used motor vehicle" under the Arkansas Motor Vehicle Commission Act, is
17 amended to read as follows:

18 (31)(A) "Used motor vehicle" means ~~any~~ a motor vehicle:
19 (i) that has previously ~~For which title has been~~
20 ~~sold, bargained, exchanged, given away, or the title thereto transferred from~~
21 ~~the person or corporation who first took title~~ ownership ~~from the~~
22 ~~manufacturer, distributor, dealer, or agents thereof; or~~

23 (ii) So used as to have become what is commonly
24 known as a "second hand motor vehicle" or a "previously owned motor vehicle".

25 (B) ~~In the event of a transfer that is reflected on the~~
26 ~~statement of origin from the original franchise dealer to any other dealer,~~
27 ~~individual, or corporation other than a franchise dealer of the same make of~~
28 ~~vehicle, the vehicle shall be considered a used motor vehicle~~ A new motor
29 vehicle shall not be considered a used motor vehicle unless the motor vehicle
30 has been:

31 (i) Placed in actual operation; and
32 (ii) Not held for resale by an owner that has:
33 (a) Been granted a certificate of title; and
34 (b) Registered the motor vehicle under the
35 Uniform Motor Vehicle Administration, Certificate of Title, and Antitheft
36 Act, § 27-14-101 et seq.;

SECTION 5. Arkansas Code § 23-112-103, regarding definitions under the Arkansas Motor Vehicle Commission Act, is amended to add an additional subdivision to read as follows:

(34)(A) "Line make of a motor vehicle" means a group or series of motor vehicles that have the same brand identification or brand name, based upon the manufacturer's trademark, trade name, or logo.

(B) "Line make of a motor vehicle" does not include motor homes; and

(35) "Line make of a motor home" means a specific series of recreational vehicle products that:

(A) Are identified by a common series trade name or trademark;

(B) Are targeted to a particular market segment, as determined by their décor, features, equipment, size, weight, and price range;

(C) Have lengths and interior floor plans that distinguish the recreational vehicles with substantially the same decor, equipment, features, price, and weight;

(D) Belong to a single, distinct classification of recreational vehicle product type having a substantial degree of commonality in the construction of the chassis, frame, and body; and

(E) The manufacturer-dealer agreement authorizes a dealer to sell.

SECTION 6. Arkansas Code § 23-112-301(a), regarding the licensing of new motor vehicle dealers, is amended to read as follows:

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

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

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

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

SECTION 7. Arkansas Code § 23-112-302(e), regarding the application for license as a new motor vehicle dealer, is amended to read as follows:

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

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

(2) Has or will have adequate facilities in the building or structure ~~for the repair and servicing of~~ to perform repair and service work on motor vehicles and ~~the adequate space for~~ storage of new parts and accessories for the motor vehicles; and

(3) Will perform repair and warranty services on a motor vehicle at the licensed location.

SECTION 8. Arkansas Code § 23-112-307 is amended to read as follows:
23-112-307. Expiration of license.

~~(a) Unless the Arkansas Motor Vehicle Commission shall by regulation provide by rule provides~~ to the contrary, all licenses issued to:

(1) ~~manufacturers~~ Manufacturers, distributors, factory or distributor branches, importers, second-stage manufacturers, converters, and their representatives expire June 30 following the date of issue; and

(2) ~~motor~~ Motor vehicle dealers, motor vehicle salespersons, and motor vehicle lessors ~~shall~~ expire December 31 following the date of issue.

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

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

SECTION 9. Arkansas Code § 23-112-308(a), regarding the denial, revocation, and suspension of a new motor vehicle dealer license, is amended

1 to add additional subdivisions to read as follows:

2 (25) Using or permitting the use of a temporary cardboard
3 buyer's tag assigned to the dealer for any purpose other than permitted under
4 § 27-14-1705; and

5 (26) Failure of a dealer to submit or deliver a certificate of
6 title or manufacturer's certificate of origin within a reasonable period of
7 time.

8
9 SECTION 10. Arkansas Code § 23-112-310(d)(1), regarding delivery,
10 preparation, and warranty obligations, is amended to read as follows:

11 (d)(1)(A) ~~In no event shall any~~ A manufacturer, distributor,
12 distributor branch or division, or factory or division branch shall not pay
13 to any of its motor vehicle dealers a labor rate per hour or parts price for
14 warranty work that is less than that charged by the dealer to its retail
15 customers provided the rate is reasonable compared to other same line-make
16 dealers in the state.

17 (B) Conversely, ~~no~~ a dealer shall not charge to its
18 manufacturer, distributor, distributor branch or division, or factory branch
19 or division a labor rate per hour or parts price in excess of the rate
20 charged to its retail customers.

21 (C) In the case of a motor home, a warrantor shall
22 reimburse the dealer for warranty parts at the actual wholesale cost plus a
23 minimum thirty percent (30%) handling charge and the cost, if any, of freight
24 to return the warranty parts to the warrantor.

25
26 SECTION 11. Arkansas Code § 23-112-311(c) is amended to read as
27 follows:

28 (c) In determining whether good cause has been established for not
29 entering into a franchise establishing or relocating an additional new motor
30 vehicle dealer for the same line make, the commission shall take into
31 consideration the existing circumstances, including, ~~but not limited to~~
32 without limitation:

33 (1) Permanency of the investment of both the existing and
34 proposed new motor vehicle dealers;

35 (2) Growth or decline in population and new ~~car~~ motor vehicle
36 registrations in the relevant market area;

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

2 (4) Whether it is injurious or beneficial to the public welfare
3 for an additional new motor vehicle dealer to be established;

4 (5) Whether the new motor vehicle dealers of the same line make
5 in that relevant market area are providing adequate competition and
6 convenient customer care for the motor vehicles of the line make in the
7 market area which shall include the adequacy of motor vehicle sales and
8 service facilities, equipment, supply of motor vehicle parts, and qualified
9 service personnel; and

10 (6) Whether the establishment of an additional new motor vehicle
11 dealer would increase competition and, therefore, be in the public interest.
12

13 SECTION 12. Arkansas Code § 23-112-313 is amended to read as follows:

14 23-112-313. Warranty agreements.

15 (a) Every manufacturer, distributor, wholesaler, distributor branch or
16 division, factory branch or division, or wholesale branch or division shall
17 properly fulfill any warranty or recall agreement and adequately and fairly
18 compensate each of its motor vehicle dealers for labor and parts.

19 (b)(1) ~~In no event shall the~~ The compensation shall not fail to
20 include reasonable compensation for diagnostic work, ~~as well as repair~~
21 service, and labor, and parts.

22 (c)(1) Time allowances for the diagnosis and performance of warranty
23 or recall work and service shall be reasonable and adequate for the work to
24 be performed.

25 (2) In the determination of what constitutes reasonable
26 compensation for warranty or recall work and service under this subsection,
27 the principal factor to be ~~given consideration shall be~~ considered is the
28 *prevailing wage rates, exclusive of routine maintenance, that are being paid*
29 *charged by the dealer dealers in the relevant market area in which the motor*
30 *vehicle dealer is doing business, and.*

31 (3) ~~in no event shall the~~ The compensation of a motor vehicle
32 dealer for warranty or recall service shall not be less than the rates
33 charged by the dealer for like service to retail customers for nonwarranty
34 service and repairs provided the rate is reasonable compared to other same
35 line-make dealers in the state.

36 (d)(1)(A) The pricing for a recalled part shall not be reduced to an

1 amount that is less than the original dealer cost or price for the same part
2 unless the manufacturer obtains a discounted rate for the recalled part from
3 a supplier.

4 (B) A recalled part is considered the same part if it is
5 substantially the same part regardless of the part number.

6 (2) Additionally, there shall be no requirement for A part-by-
7 part analysis is not required in determining to determine the retail rate for
8 parts.

9 (3) The parts mark-up shall not be substituted for a handling
10 allowance or similar pricing amount that results in the reduction of
11 compensation for the dealer.

12 ~~(3)-(A)-(e)(1)~~ (1) All claims under this ~~subsection~~ section, either original
13 or resubmitted, made by motor vehicle dealers for the labor and parts shall
14 be either approved or disapproved within thirty (30) days following their
15 approval or disapproval.

16 ~~(B)-(i)-(2)(A)(i)~~ (i) The motor vehicle dealer who submits a claim
17 which is disapproved shall be notified in writing of the disapproval within
18 the same period, and ~~each such~~ the notice shall state the specific grounds
19 upon which the disapproval is based.

20 (ii) The motor vehicle dealer ~~shall be~~
21 ~~permitted to~~ may correct and resubmit ~~such the~~ disapproved claims within
22 thirty (30) days of receipt of disapproval.

23 ~~(ii)-(B)~~ (B) Any claims not specifically disapproved in writing
24 within thirty (30) days from their submission shall be deemed approved, and
25 payment shall follow within thirty (30) days.

26 ~~(iii)-(3)(A)~~ (3)(A) ~~No A~~ claim shall not be disapproved because ~~of~~ a
27 clerical error was made ~~which that~~ does not render the amount of the claim
28 incorrect.

29 (B) However, a dealer may contest the disapproval
30 through the manufacturer's appeals process.

31 ~~(C)-(i)-(4)(A)~~ (4)(A) The manufacturer or franchiser ~~shall have the right~~
32 ~~to~~ may:

33 (i) require Require documentation for claims;

34 (ii) and to audit Audit the claims within a
35 one-year period from the date the claim was paid or credit issued by the
36 manufacturer or franchiser; and

1 ~~(iii) to charge~~ Charge back any false or
2 unsubstantiated claims.

3 ~~(ii)(B)~~ The audit and charge-back provisions of this
4 ~~subdivision (b)(3)~~ subsection (e) also apply to all other incentive and
5 reimbursement programs for a period of twelve (12) months after the date of
6 the transactions that are subject to audit by the franchiser.

7 ~~(iii)(C)~~ However, the manufacturer retains the right to
8 charge back any fraudulent claim if the manufacturer establishes in a court
9 of competent jurisdiction in this state that the claim is fraudulent within a
10 period not to exceed two (2) years from the date of the claim in question.

11 ~~(iv)(a)(D)(i)~~ A dealer may file an appeal with the
12 Arkansas Motor Vehicle Commission to protest any chargeback under this
13 subdivision ~~(b)(3)(C)~~ (e)(4) within ~~thirty (30) days~~ ninety (90) days of
14 notification by the manufacturer or distributor.

15 ~~(b)(ii)~~ If a dealer files an appeal of the
16 chargeback with the commission, the manufacturer or distributor shall not
17 levy the chargeback until the appeal is resolved. The commission shall hold a
18 hearing on the matter no later than one hundred twenty (120) days from the
19 time the appeal is filed unless all parties have otherwise agreed to settle
20 the matter.

21 ~~(e)(iii)~~ An appeal by the licensee under this
22 subdivision ~~(b)(3)(C)(iv)~~ (e)(4)(D) shall be in accordance with ~~the~~
23 ~~provisions of~~ § 23-112-501 et seq.

24 ~~(e)(f)~~ This section ~~shall~~ does not apply to compensation for parts of
25 a motor home other than parts of a motorized chassis, engine, and power
26 train.

27
28 SECTION 13. Arkansas Code § 23-112-403(a)(2)(C)(v), regarding
29 manufacturers, distributors, second-stage manufacturers, importers, and
30 converters, is amended to read as follows:

31 ~~(v)(a) In the event of the termination or~~
32 ~~cancellation of~~ If the franchise agreement, sales and service agreement, or
33 bona fide contract or selling agreement is terminated or cancelled, the
34 terminating or canceling party shall notify the commission of the termination
35 or cancellation of the franchise or selling agreement at least sixty (60)
36 days before the effective date.

1 (b) For motor vehicles other than motor homes,
2 this subdivision (a)(2)(C)(v) applies to both voluntary and involuntary
3 termination or cancellation of the franchise or selling agreement.

4 (c)(1) For motor homes, this subdivision
5 (a)(2)(C)(v) applies to both the voluntary dealer-initiated termination or
6 cancellation of all motor home franchise or selling agreements and the
7 involuntary manufacturer-initiated termination or cancellation of any one (1)
8 or more motor home franchise or selling agreements.

9 (2) This subdivision only applies to the
10 voluntary dealer initiated termination of one (1) of two (2) or more line
11 makes of motor homes if the dealer can show due cause to terminate or cancel
12 the motor home franchise or selling agreement;

13 SECTION 14. Arkansas Code § 23-112-403(a)(2)(K), regarding
14 manufacturers, distributors, second-stage manufacturers, importers, and
15 converters, is amended to read as follows:

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

19 (i) The dealer cost plus any charges by the
20 manufacturer, distributor, or a representative for distribution, delivery,
21 and taxes, less all allowances paid to the dealer by the manufacturer,
22 distributor, or representative for new, unsold, undamaged, and complete motor
23 vehicles of current model year and one (1) year prior model year in the
24 dealer's inventory;

25 (ii) The dealer cost of each new, unused, undamaged,
26 and unsold part or accessory, ~~if the part or accessory is in the current~~
27 ~~parts catalogue, and if the part or accessory was purchased by the dealer~~
28 ~~either directly from the manufacturer or distributor or from an outgoing~~
29 ~~authorized dealer as a part of the dealer's initial inventory~~

30 (a) Was purchased from the manufacturer by the
31 dealer and is in the original package;

32 (b) Is identical to a part or accessory in the
33 current parts catalogue except for the number assigned to the part or
34 accessory; or

35 (c) Was purchased in the ordinary course of
36 business by the dealer from another authorized dealer so long as the

1 authorized dealer purchased the part or accessory directly from the
2 manufacturer or distributor or from an outgoing authorized dealer as part of
3 the dealer's initial inventory;

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

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

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

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

20 (vii)(a) Compensation for the actual pecuniary loss
21 caused by the franchise termination, cancellation, or nonrenewal unless for
22 due cause.

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

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

1 such time as the dealer and lienholder, if any, proffer good title ~~prior to~~
2 before the prescribed time for payment, is liable to the dealer for:

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

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

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

9 SECTION 15. Arkansas Code § 23-112-403(a)(2)(M), regarding
10 manufacturers, distributors, second-stage manufacturers, importers, and
11 converters, is amended to read as follows:

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

17 (ii) This subdivision (a)(2)(M) ~~shall~~ does not apply
18 to manufacturer sales of new motor vehicles to the federal government,
19 charitable organizations, or employees of the manufacturer;
20

21 SECTION 16. Arkansas Code § 23-112-404 is amended to read as follows:

22 23-112-404. Motor vehicle lessors.

23 It ~~shall be~~ is unlawful for a motor vehicle lessor or any agent,
24 employee, or representative thereof:

25 (1) To represent and to offer for sale or to sell as a new ~~or~~
26 ~~unused~~ motor vehicle ~~any~~ a motor vehicle ~~which~~ that has been used or was
27 intended to be used and operated for leasing or rental purposes or which is
28 otherwise a used motor vehicle;

29 (2) To resort to, use, or employ any false, fraudulent,
30 deceptive, or misleading advertising or representations in connection with
31 the business of leasing or renting motor vehicles; or

32 (3) To sell or offer to sell a motor vehicle from an unlicensed
33 location.
34

35 SECTION 17. Arkansas Code § 23-112-406(b), regarding requirements for
36 acting as a broker, is amended to read as follows:

1 (b)(1) To effectuate this chapter, ~~the definition of~~ “arranges or
2 offers to arrange a ~~transition~~ transaction” means soliciting or referring
3 buyers for new motor vehicles for a fee, commission, or other valuable
4 consideration.

5 (2) “Arranges or offers to arrange a transaction” does not
6 include Advertising is not included in this definition advertising as long as
7 the person’s business primarily includes the business of broadcasting,
8 printing, publishing, or advertising for others in their own names.

9
10 SECTION 18. Arkansas Code § 23-112-501 is amended to read as follows:
11 23-112-501. Right to hearing.

12 (a)(1) The Arkansas Motor Vehicle Commission shall not+ may
13 ~~(1) Deny deny~~ an application for a license ~~without first giving~~
14 ~~the applicant a hearing, or an opportunity to be heard, on the question of~~
15 ~~whether he or she is qualified under the provisions of this chapter to~~
16 ~~receive the license applied for; if the application is considered inadequate~~
17 after the initial review by the executive director.

18 (2) Within thirty (30) days after the executive director denies
19 an application under subdivision (a)(1) of this section, the affected
20 applicant may protest the executive director’s decision and request a hearing
21 before the commission.

22 (b) The Arkansas Motor Vehicle Commission shall not:

23 ~~(2)(1)~~ Revoke or suspend a license without first giving the
24 licensee a hearing, or an opportunity to be heard, on the question of whether
25 there are sufficient grounds under ~~the provisions of~~ this chapter upon which
26 to base the revocation or suspension; or

27 ~~(3)(2)~~ Impose a civil penalty pursuant to § 23-112-314 without
28 first giving the respondent a hearing pursuant to the Arkansas Administrative
29 Procedure Act, § 25-15-201 et seq.

30
31 SECTION 19. Arkansas Code § 23-112-503(d), regarding the notice and
32 location of a hearing before the Arkansas Motor Vehicle Commission, is
33 amended to read as follows:

34 ~~(d)(1) Any hearing shall be held in the county of the residence of the~~
35 ~~party whose rights may be affected thereby or the county of that party’s~~
36 ~~principal place of business.~~

1 ~~(2) If the party is a nonresident of the state, the hearing~~
2 ~~shall be held in the county~~ where the principal office of the commission is
3 located unless both parties agree to an alternate location.
4

5 SECTION 20. Arkansas Code § 27-14-1705 is amended to read as follows:

6 27-14-1705. Temporary cardboard buyer's tags.

7 (a) A dealer shall issue to a person who buys an unregistered vehicle
8 one (1) temporary cardboard buyer's tag for the vehicle.

9 (b)(1) The temporary cardboard buyer's tag is valid for the operation
10 of the vehicle until the earlier of:

11 (A) The date on which the vehicle is registered; or

12 (B) The thirtieth day after the date of purchase.

13 (2) If the date that a transferee of a motor vehicle must
14 register the vehicle is extended under § 27-14-903(a)(1), the dealer may
15 issue one (1) additional temporary cardboard buyer's tag to the transferee,
16 to expire thirty (30) days from the date that the additional temporary
17 cardboard buyer's tag was issued.

18 (3) A temporary cardboard buyer's tag also may be used for:

19 (A) A demonstration vehicle for a period of time not to
20 exceed seventy-two (72) hours for test drive purposes; or

21 (B) A loaner vehicle for a period of time not to exceed
22 fourteen (14) days to allow repairs on a vehicle.

23 (4) A temporary cardboard buyer's tag shall not be placed on
24 work or service vehicles owned by a dealer, manufacturer, or transporter.

25 (c)(1) The dealer shall show in ink on the temporary cardboard buyer's
26 tag the actual date of sale and any other information required by the
27 Director of the Department of Finance and Administration.

28 (2) The dealer ~~shall be~~ is responsible for affixing the
29 temporary cardboard buyer's tag to the vehicle as provided in this section.

30 (d) The temporary cardboard buyer's tag under this section shall be
31 placed at the location provided for the permanent motor vehicle license
32 plate.

33 (e) The dealer is responsible for the safekeeping and distribution of
34 each temporary cardboard buyer's tag that the dealer obtains from the
35 director.

36 (f) The director shall provide the specifications, form, and color of

1 the temporary cardboard buyer's tag.

2 (g)(1)(A) The dealer ~~shall be~~ is responsible for paying to the
3 director a fee to be set by the director, which shall not exceed one dollar
4 (\$1.00), for each temporary cardboard buyer's tag. The dealer shall pass this
5 fee on to the buyer to whom the tag was issued.

6 (B) The fee shall be collected by the director before
7 issuance of the temporary cardboard buyer's tag to the dealer.

8 (C) ~~No dealer shall be allowed to~~ A dealer shall not
9 charge a customer a fee for a temporary cardboard buyer's tag higher than
10 that charged to the dealer by the director.

11 (2) The gross receipts or gross proceeds derived from the sale
12 or issuance of temporary cardboard buyer's tags under this section ~~shall be~~
13 are exempt from the Arkansas gross receipts tax levied by the Arkansas Gross
14 Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas compensating use
15 tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.,
16 and any other state or local tax administered under those chapters.

17 (3) All fees collected by the director under this section shall
18 be deposited into the State Treasury, and the Treasurer of State shall credit
19 them as general revenues to the General Revenue Fund Account of the State
20 Apportionment Fund.

21 (h) For each temporary cardboard buyer's tag provided to a buyer by
22 the dealer, the dealer shall retain documentation containing:

- 23 (1) The dealer's name;
24 (2) The buyer's name;
25 (3) The date the temporary cardboard buyer's tag was issued;
26 (4) The vehicle's vehicle identification number;
27 (5) The make and model of the vehicle; and
28 (6) The expiration date of the temporary cardboard buyer's tag.

29 (i) To purchase temporary cardboard buyer's tags under this
30 subchapter, the person shall establish that he or she is a licensed:

- 31 (1) New motor vehicle dealer under § 23-112-301;
32 (2) Used motor vehicle dealer under § 23-112-607;
33 (3) Manufacturer of motor vehicles under this chapter; or
34 (4) Transporter of motor vehicles under this chapter.

35 ~~(i)(j)~~(1) Any dealer, manager, salesperson, or employee of the dealer
36 who pleads guilty or nolo contendere to or who is found guilty of the misuse

1 of a temporary cardboard buyer's tag or of allowing anyone else to misuse a
2 temporary cardboard buyer's tag is guilty of a violation under § 5-1-108 and
3 shall be fined not more than two hundred fifty dollars (\$250) for the first
4 offense, not more than five hundred dollars (\$500) for the second offense,
5 and not more than one thousand dollars (\$1,000) for the third and subsequent
6 offenses.

7 (2) In addition to criminal penalties under this subsection (j),
8 the use of temporary cardboard buyer's tags in a manner not authorized under
9 this section may result in the denial, revocation, or suspension of the
10 license of the new motor vehicle dealer, used motor vehicle dealer,
11 manufacturer, or transporter.

12 ~~(j)~~(k) This section ~~shall~~ does not apply to an owner or lessee of a
13 registered motor vehicle who elects to display a license plate on a
14 replacement motor vehicle under § 27-14-902(a)(3)(B).
15

16 SECTION 21. Arkansas Code § 14-22-101(8), regarding the definition of
17 "used or secondhand motor vehicles, equipment, or machinery" used for county
18 purchasing procedures, is amended to read as follows:

19 (8)(A) "Used or secondhand motor vehicles, equipment, or
20 machinery" means any motor vehicles, equipment, or machinery at least two (2)
21 years in age from the date of original manufacture or that has at least five
22 hundred (500) working hours' prior use or ten thousand (10,000) miles' prior
23 use.

24 (B)(i) Any purchase of a used motor vehicle, equipment, or
25 machinery shall be accompanied by a statement in writing from the vendor on
26 the bill of sale or other document that the motor vehicle, equipment, or
27 machinery is at least two (2) years in age from the date of original
28 manufacture or has been used a minimum of five hundred (500) hours or driven
29 a minimum of ten thousand (10,000) miles.

30 (ii) This statement shall be filed with the county
31 clerk at the time of purchase.
32

33 SECTION 22. Arkansas Code § 14-22-106 is amended to read as follows:
34 14-22-106. Purchases exempted from soliciting bids.

35 The following listed commodities may be purchased without soliciting
36 bids:

- 1 (1) Perishable foodstuffs for immediate use;
- 2 (2) Unprocessed feed for livestock and poultry;
- 3 (3) Advanced emergency medical services provided by a nonprofit
- 4 corporation and proprietary medicines when specifically requested by a
- 5 professional employee;
- 6 (4) Books, manuals, periodicals, films, and copyrighted
- 7 educational aids for use in libraries and other informational material for
- 8 institutional purposes;
- 9 (5) Scientific equipment and parts therefor;
- 10 (6) Replacement parts and labor for repairs of machinery and
- 11 equipment;
- 12 (7) Commodities available only from the federal government;
- 13 (8)(A) Any commodities needed in instances in which an
- 14 unforeseen and unavoidable emergency has arisen in which human life, health,
- 15 or public property is in jeopardy.
- 16 (B) ~~However, no such~~ An emergency purchase under
- 17 subdivision (8)(A) of this section shall not be approved unless a statement
- 18 in writing ~~shall be~~ is attached to the purchase order describing the
- 19 emergency necessitating the purchase of ~~such~~ the commodity without
- 20 competitive bidding;
- 21 (9) Utility services, the rates for which are subject to
- 22 regulation by a state agency or a federal regulatory agency;
- 23 (10) Sand, gravel, soil, lumber, used pipe, or used steel;
- 24 (11) Used or secondhand motor vehicles, machinery, or equipment,
- 25 except that a used or secondhand motor vehicle that has been under lease to a
- 26 county when the vehicle has fewer than ten thousand (10,000) miles of use ~~may~~
- 27 shall not be purchased by the county when it has been used ten thousand
- 28 (10,000) miles or more except upon competitive bids as provided ~~for~~ in this
- 29 chapter;
- 30 (12) Machinery, equipment, facilities, or other personal
- 31 property purchased or acquired for, or in connection with, the securing and
- 32 developing of industry under ~~or pursuant to the provisions of Arkansas~~
- 33 ~~Constitution, Amendment 49 [repealed],~~ the Municipalities and Counties
- 34 Industrial Development Revenue Bond Law, § 14-164-201 et seq., or any other
- 35 provision of law pertaining to the securing and developing of industry;
- 36 (13) Registered livestock to be used for breeding purposes;

(14) Motor fuels, oil, asphalt, asphalt oil, and natural gas;

(15) Motor vehicles, equipment, machinery, material, or supplies offered for sale at public auction or through a process requiring sealed bids; and

(16) All goods and services that are regularly provided to state agencies and county government by the Department of Correction's various penal industries;

(17) New motor vehicles from a motor vehicle dealer licensed under the Arkansas Motor Vehicle Commission Act, § 23-112-101 et seq., if the motor vehicle is purchased for an amount not to exceed the fleet price awarded by the Office of State Procurement and in effect at the time the county submits the purchase order for the same make and model motor vehicle; and

(18) The renewal or extension of the term of an existing contract.

SECTION 23. Arkansas Code Title 14, Chapter 58, Subchapter 1 is amended to add an additional section to read as follows:

14-58-104. Specific purchases and contracts.

(a) The municipal governing body of a city of the first class, city of the second class, or an incorporated town may purchase the following commodities without soliciting bids:

(1) Motor fuels, oil, asphalt, asphalt oil, and natural gas; and

(2) New motor vehicles from a motor vehicle dealer licensed under the Arkansas Motor Vehicle Commission Act, § 23-112-101 et seq., if the motor vehicle is purchased for an amount not to exceed the fleet price awarded by the Office of State Procurement and in effect at the time the municipal governing body of a city of the first class, city of the second class, or an incorporated town submits the purchase order for the same make and model motor vehicle.

(b) The municipal governing body of a city of the first class, city of the second class, or an incorporated town may renew or extend the term of an existing contract without soliciting bids.

SECTION 24. Arkansas Code § 14-58-303(b), regarding the power of municipalities to make purchases and enter into contracts, is amended to read

1 as follows:

2 (b)(1)(A) ~~The~~ Except as provided under § 14-58-104, the municipal
3 governing body of any city of the first class shall provide by ordinance the
4 procedure for making all purchases which do not exceed the sum of twenty
5 thousand dollars (\$20,000).

6 (B) ~~The~~ Except as provided under § 14-58-104, the
7 municipal governing body of any city of the second class or incorporated town
8 may provide by ordinance the procedure for making all purchases.

9 (2)(A)(i) ~~In~~ Except as provided under § 14-58-104, in a city of
10 the first class where the amount of expenditure for any purpose or contract
11 exceeds the sum of twenty thousand dollars (\$20,000), the mayor or the
12 mayor's authorized representative shall invite competitive bidding on the
13 purpose or contract by legal advertisement in any local newspaper.

14 (ii) Bids received pursuant to the advertisement
15 shall be opened and read on the date set for receiving the bids in the
16 presence of the mayor or the mayor's authorized representative.

17 (iii) The mayor or the mayor's authorized
18 representative shall have exclusive power to award the bid to the lowest
19 responsible bidder, but may reject any and all bids received.

20 (B) The governing body by ordinance may waive the
21 requirements of competitive bidding in exceptional situations where this
22 procedure is deemed not feasible or practical or as provided under § 14-58-
23 104.

24
25 SECTION 25. EMERGENCY CLAUSE. It is found and determined by the
26 General Assembly of the State of Arkansas that motor vehicle dealers are
27 experiencing economic difficulties related to the state of the national
28 economy and the motor vehicle industry in particular; that an unprecedented
29 number of motor vehicle dealers may terminate their franchises as a result of
30 these economic conditions; and that this act is immediately necessary to
31 assist dealers that are facing possible termination of their franchise.
32 Therefore, an emergency is declared to exist and this act being immediately
33 necessary for the preservation of the public peace, health, and safety shall
34 become effective on:

35 (1) The date of its approval by the Governor;

36 (2) If the bill is neither approved nor vetoed by the Governor,

1 the expiration of the period of time during which the Governor may veto the
2 bill; or

3 (3) If the bill is vetoed by the Governor and the veto is
4 overridden, the date the last house overrides the veto.

5
6 */s/ Teague*
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36