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2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: S3/15/11

A Bill

SENATE BILL 765

5 By: Senator D. Wyatt
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS MOTOR VEHICLE COMMISSION
9 ACT; AND FOR OTHER PURPOSES.
10

Subtitle

11 TO AMEND THE ARKANSAS MOTOR VEHICLE
12 COMMISSION ACT.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code § 23-112-103(6), regarding the definition of
20 "coerce" under the Arkansas Motor Vehicle Commission Act, is amended to read
21 as follows:

22 (6)(A) "Coerce" means:

23 (i) the failure to act in good faith in Compelling
24 or attempting to compel by threatening, retaliating, using economic force, or
25 by not performing or complying with:

26 (a) any Any terms or provisions of the
27 franchise or sales and service agreement;

28 (b) The terms of this chapter; or

29 (c) The rules promulgated by the Arkansas
30 Motor Vehicle Commission; or

31 (ii) Threatening to withhold benefits available to
32 other same line make dealers in the state.

33 (B) "Coerce" does not mean recommending, exposing,
34 persuading, urging, or arguing;
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36 SECTION 2. Arkansas Code § 23-112-103(14)(A), regarding the definition



1 of "franchise" under the Arkansas Motor Vehicle Commission Act, is amended to
2 read as follows:

3 (A) The franchisee is granted the right to sell, ~~and~~
4 service, or sell and service new motor vehicles manufactured or distributed
5 by the franchiser;
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7 SECTION 3. Arkansas Code § 23-112-103(25)(B)(ii), regarding the
8 definition of "relevant market area" under the Arkansas Motor Vehicle
9 Commission Act, is amended to read as follows:

10 (ii) However, when a manufacturer is seeking to
11 establish an additional new motor vehicle dealer ~~and there is one (1) or more~~
12 ~~existing new motor vehicle dealers of the same line make within a ten-mile~~
13 ~~radius of the proposed dealer site~~, the relevant market area shall in all
14 instances be the area within a radius of ten (10) miles around an existing
15 dealer.
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17 SECTION 4. Arkansas Code § 23-112-105 is amended to read as follows:
18 23-112-105. Civil damages.

19 (a) Any A licensee suffering pecuniary loss because of any willful
20 failure by any other licensee to comply with ~~any provision~~ of this chapter,
21 other than a new automobile or truck dealer's failure to comply with § 23-
22 112-301(d)(1)-(3) or with any rule or regulation promulgated by the Arkansas
23 Motor Vehicle Commission under authority vested in it by this chapter, may
24 recover reasonable damages and attorney's fees therefor in any court of
25 competent jurisdiction.

26 (b)(1) Except as provided under subdivision (b)(2) of this section, if
27 a motor vehicle dealer prevails in an action against a manufacturer,
28 distributor, second-stage manufacturer, importer, converter, manufacturer
29 branch or division, or distributor branch or division under any provision of
30 this chapter, the motor vehicle dealer shall also have a cause of action
31 against the manufacturer, distributor, second-stage manufacturer, importer,
32 converter, manufacturer branch or division, or distributor branch or division
33 for attorney's fees, if none have been awarded in an earlier administrative
34 hearing.

35 (2) Subdivision (b)(1) of this section does not apply to motor
36 vehicle dealers, manufacturers, or distributors of motor homes.

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SECTION 5. Arkansas Code § 23-112-107(k), regarding motor vehicle data event recorders and data ownership, is amended to read as follows:

~~(k)(1)~~(1) The Arkansas Motor Vehicle Commission shall administer this section and may promulgate rules for the administration of this section.

SECTION 6. Arkansas Code § 23-112-107, regarding motor vehicle data event recorders and data ownership, is amended to add an additional subdivision to read as follows:

(k)(1) A new motor vehicle dealer, manufacturer, and distributor shall be immune and held harmless against liability for the privacy of information contained in motor vehicle databases, including without limitation recording devices, global-positioning systems, navigation devices, or any in-vehicle data not controlled by the dealer.

(2) This subsection does not affect the notice requirements under subsection (b) of this section.

SECTION 7. Arkansas Code § 23-112-310(d)(1), regarding labor rate per hour or parts price for warranty work, is amended to add an additional subdivision to read as follows:

(D) A manufacturer, distributor, distributor branch or division, or factory branch or division of new motorcycles, motorized cycles, and all-terrain vehicles shall not pay to any new motor vehicle dealers of motorcycles, motorized cycles, and all-terrain vehicles a labor rate per hour or parts price for warranty work that is less than that charged by the new motor vehicle dealer to its retail customers, provided that the rate is reasonable compared to other same line make motor vehicle dealers in the new motor vehicle dealer's relevant market area or the new motor vehicle dealer's competitive market area.

SECTION 8. Arkansas Code § 23-112-311(c) and (d), regarding the addition or relocation of a new motor vehicle dealer, are amended to read as follows:

(c)(1) In determining whether good cause has been established for not entering into a franchise establishing or relocating an additional new motor vehicle dealer for the same line make, the commission shall take into

1 consideration the existing circumstances, including without limitation:

2 ~~(1)(A)~~ Permanency of the investment of both the existing
3 and proposed new motor vehicle dealers;

4 ~~(2)(B)~~ Growth or decline in population and new motor
5 vehicle registrations in the relevant market area;

6 ~~(3)(C)~~ Effect on the consuming public in the relevant
7 market area;

8 ~~(4)(D)~~ Whether it is injurious or beneficial to the public
9 welfare for an additional new motor vehicle dealer to be established;

10 ~~(5)(E)~~ Whether the new motor vehicle dealers of the same
11 line make in that relevant market area are providing adequate competition and
12 convenient customer care for the motor vehicles of the line make in the
13 market area, which shall include the adequacy of motor vehicle sales and
14 service facilities, equipment, supply of motor vehicle parts, and qualified
15 service personnel; and

16 ~~(6)(F)~~ Whether the establishment of an additional new
17 motor vehicle dealer would increase competition and, therefore, be in the
18 public interest.

19 (2) In determining whether good cause has been established for
20 not entering into a franchise establishing or relocating an additional new
21 motor vehicle dealer for the same line make, the burden of proof is on the
22 manufacturer or distributor to show it has good cause for granting the new
23 franchise, except when an existing franchisee initiated the relocation.

24 (d)(1) The commission ~~must~~ shall conduct the hearing and render its
25 final determination within ~~one hundred twenty (120)~~ one hundred eighty (180)
26 days after a protest is filed.

27 (2) Unless waived by the parties, failure to do so shall be
28 deemed the equivalent of a determination that good cause does not exist for
29 refusing to permit the proposed additional or relocated new motor vehicle
30 dealer, unless the delay is caused by acts of the manufacturer or distributor
31 or the relocating or additional dealer.

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33 SECTION 9. Arkansas Code § 23-112-313(a), regarding warranty
34 agreements, is amended to read as follows:

35 (a)(1) Every manufacturer, distributor, wholesaler, distributor branch
36 or division, factory branch or division, or wholesale branch or division

1 shall properly fulfill any warranty or recall agreement and adequately and
2 fairly compensate each of its motor vehicle dealers for labor and parts.

3 (2)(A) Except as provided in subdivisions (b)(2)(B) and (C) of
4 this section, a manufacturer, distributor, wholesaler, distributor branch or
5 division, factory branch or division, or wholesale branch or division shall
6 not otherwise recover its costs from motor vehicle dealers within this state
7 by:

8 (i) Increasing the wholesale price of a vehicle
9 solely intended to recover the cost of reimbursing the motor vehicle dealer
10 for parts and labor under this chapter; or

11 (ii) Imposing a surcharge on a motor vehicle dealer
12 solely intended to recover the cost of reimbursing the motor vehicle dealer
13 for parts and labor under this chapter.

14 (B) A manufacturer or distributor shall not be prohibited
15 from increasing prices for vehicles or parts in the normal course of
16 business.

17 (C) Subdivisions (a)(2)(A) and (B) of this section do not
18 apply to motor vehicle dealers, manufacturers, or distributors of motor
19 homes.

20
21 SECTION 10. Arkansas Code § 23-112-313(e)(3)(A), regarding warranty
22 agreements, is amended to read as follows:

23 (3)(A) A claim shall not be disapproved because a clerical error
24 was made that does not render the amount of the claim incorrect, including
25 without limitation clerical errors that occur as a result of a manufacturer
26 or distributor's prior approval process.

27
28 SECTION 11. Arkansas Code § 23-112-403(a)(2), regarding manufacturers,
29 distributors, second-stage manufacturers, importers, or converters, is
30 amended to add additional subdivisions to read as follows:

31 (Q)(i)(a) Unless the manufacturer's, distributor's,
32 second-stage manufacturer's, importer's, converter's, manufacturer's branch
33 or division, distributor's branch or division requirements are reasonable and
34 justifiable in light of the current and reasonably foreseeable projections of
35 economic conditions, financial expectations, and the motor vehicle dealer's
36 market and notwithstanding the terms of a franchise agreement or sales and

1 service agreement, to require, coerce, or attempt to coerce any new motor
2 vehicle dealer by program, policy, standard, or otherwise to:

3 (1) Change location of the dealership;

4 (2) Make any substantial changes,
5 alterations, or remodeling to a motor vehicle dealer's sales or service
6 facilities; or

7 (3) Replace a motor vehicle dealer's
8 sales or service facilities,

9 (b) A manufacturer, distributor, second-stage
10 manufacturer, importer, converter, manufacturer branch or division, or
11 distributor branch or division shall have the burden of proving that changes,
12 alterations, remodeling, or replacement to a motor vehicle dealer's sales or
13 service facilities are reasonable and justifiable under this subchapter.

14 (ii)(a) However, a manufacturer, distributor,
15 second-stage manufacturer, importer, convertor, manufacturer branch or
16 division, or distributor branch or division may, consistent with its
17 allocation obligations at law and to its other same line-make motor vehicle
18 dealers, provide to a motor vehicle dealer a commitment to supply additional
19 vehicles or provide a loan or grant of money as an inducement for the motor
20 vehicle dealer to expand, improve, remodel, alter, or renovate its facilities
21 if the provisions of the commitment are contained in a writing voluntarily
22 agreed to by the dealer and are made available, on substantially similar
23 terms, to any of the licensee's other same line-make dealers who voluntarily
24 agree to make a substantially similar facility expansion, improvement,
25 remodeling, alteration, or renovation.

26 (b) Subdivisions (a)(2)(Q)(i) - (ii) do not
27 require a manufacturer, distributor, second-stage manufacturer, importer,
28 convertor, manufacturer branch or division, or distributor branch or division
29 to provide financial support for, or contribution to, the purchase sale of
30 the assets of or equity in a motor vehicle dealer or a relocation of a motor
31 vehicle dealer because such support has been provided to other purchases,
32 sales, or relocations.

33 (c) A manufacturer, distributor, second-stage
34 manufacturer, importer, convertor, manufacturer branch or division, or
35 distributor branch or division shall not take or threaten to take any action
36 that is unfair or adverse to a dealer who does not enter into an agreement

1 pursuant to subdivisions (a)(2)(Q)(i) – (ii).

2 (d) This subdivision does not affect any
3 contract between a licensee and any of its dealers regarding relocation,
4 expansion, improvement, remodeling, renovation, or alteration which exists on
5 the effective date of this act.

6 (iii) Subdivisions (a)(2)(Q)(i) – (ii) of this
7 section do not apply to motor vehicle dealers, manufacturers, or distributors
8 of motor homes.

9 (R)(i) To unreasonably withhold approval for a new motor
10 vehicle dealer to purchase substantially similar goods and services related
11 to facility changes, alterations, or remodels from vendors the dealer
12 chooses.

13 (ii) Subdivision (a)(2)(R)(i) of this section does
14 not apply to motor vehicle dealers, manufacturers, or distributors of motor
15 homes.

16 (S)(i) To require as a prerequisite to receiving a model
17 or a series of vehicles a dealer to:

18 (a) Pay an extra fee or remodel, renovate, or
19 recondition the dealer's existing facilities unless justified by the
20 technological requirements for the sale or service of a vehicle;

21 (b) Purchase unreasonable advertising
22 displays, training, tools, or other materials;

23 (c) Establish exclusive facilities; or

24 (d) Establish dedicated personnel.

25 (ii) Subdivision (a)(2)(S)(i) does not apply to
26 motor vehicle dealers, manufacturers, or distributors of motor homes.

27 (T)(i)(a) To use any written instrument, agreement, or
28 waiver, to attempt to nullify or modify any provision of this chapter or
29 prevent a new motor vehicle dealer from bringing an action in a
30 particular forum otherwise available under law.

31 (b) An instrument contrary to this
32 subdivision (a)(2)(T)(i) is void.

33 (c) However, this subdivision shall not apply
34 to:

35 (1) Voluntary agreements where separate
36 and valuable consideration has been offered and accepted; or

1 (2) Settlement agreements entered into
2 as a result of a dispute.

3 (ii)(a) Except as provided in subdivision
4 (a)(2)(Q)(ii)(b) of this section, a manufacturer, distributor, or factory
5 branch shall not directly or indirectly condition any of the following on
6 the willingness of a motor vehicle dealer, proposed new motor vehicle
7 dealer, or owner of an interest in the dealership facility to enter into
8 a site control agreement or exclusive use agreement:

9 (1) Awarding a franchise to a
10 prospective new motor vehicle dealer;

11 (2) Adding a line make or franchise to
12 an existing motor vehicle dealer;

13 (3) Renewing a franchise of an
14 existing motor vehicle dealer;

15 (4) Approving the relocation of an
16 existing motor vehicle dealer's facility; or

17 (5) Approving the sale or transfer of
18 the ownership of a franchise.

19 (b) This subdivision does not apply to a
20 site control agreement or an exclusive use agreement if the site control
21 agreement or an exclusive use agreement:

22 (1) Is voluntarily entered into by the
23 motor vehicle dealer or the motor vehicle dealer's lessor;

24 (2) Clearly and conspicuously
25 discloses that the site control agreement or an exclusive use agreement
26 is voluntary; and

27 (3) Provides for *separate and valuable*
28 consideration to the motor vehicle dealer or motor vehicle dealer's
29 lessor.

30 (iii) Any provision contained in any agreement
31 that is inconsistent with this subchapter is voidable at the election of
32 the affected motor vehicle dealer or owner of an interest in the
33 dealership facility.

34 (iv) Subdivisions (a)(2)(T)(i) – (iii) of this
35 section do not apply to motor vehicle dealers, manufacturers, or distributors
36 of motor homes.

1 (U)(i) To fail to offer to all of its franchisees of the
2 same line-make any consumer rebates, dealer incentives, price or interest
3 rate reduction, or finance terms that the franchisor offers or advertises;

4 (ii) To offer rebates, cash incentives, or other
5 promotional items for the sale of a vehicle by its franchisees unless the
6 same rebate, cash incentive, or promotion is offered to all of its
7 franchisees of the same line-make, and any rebate, cash incentive, or
8 promotion that is based on the sale of an individual vehicle is not increased
9 for meeting a performance standard;

10 (iii) To unreasonably discriminate among its
11 franchisees in any program that provides assistance to its franchisees,
12 including internet listings, sales leads, warranty policy adjustments,
13 marketing programs, or dealer recognition programs;

14 (iv) To fail to offer rebates, cash incentives, or
15 other promotional incentive programs in numbers based on the available
16 inventory, both on the ground and in transit, to its franchisees of the same
17 line-make.

18 (v) To require a motor vehicle dealer to improve the
19 dealer's facilities, including signs, or to replace factory required and
20 approved facility improvements completed within the last five (5) years in
21 order to qualify for a new vehicle sales incentive program.

22 (vi) Subdivisions (a)(2)(U)(i) – (v) of this section
23 do not apply to motor vehicle dealers, manufacturers, or distributors of
24 motor homes.

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26 SECTION 12. Arkansas Code § 23-112-403(a)(2)(A)(i), regarding
27 manufacturers, distributors, second-stage manufacturers, importers, or
28 converters, is amended to read as follows:

29 *(A)(i) To refuse to deliver, in reasonable quantities and*
30 *within a reasonable time after receipt of a dealer's order to any ~~duly~~*
31 *licensed motor vehicle dealer having a franchise or contractual arrangement*
32 *for the retail sale of new motor vehicles sold or distributed by the*
33 *manufacturer, distributor, distributor branch or division, or factory branch*
34 *or division, any motor vehicles ~~which~~ that are covered by the franchise or*
35 *contract specifically publicly advertised by the manufacturer, distributor,*
36 *distributor branch or division, or factory branch or division to be available*

1 for immediate delivery.

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3 SECTION 13. Arkansas Code § 23-112-403(a)(2)(B)(i), regarding
4 manufacturers, distributors, second-stage manufacturers, importers, or
5 converters, is amended to read as follows:

6 (B)(i) To engage in any of the following:

7 (a) To coerce or attempt to coerce any motor
8 vehicle dealer to enter into any agreement with the manufacturer,
9 distributor, distributor branch or division, factory branch or division, or
10 officer, agent, or other representative thereof; ~~or to~~

11 (b) To do any other act prejudicial to the
12 motor vehicle dealer by threatening to cancel any franchise or any
13 contractual agreement existing between the manufacturer, distributor,
14 distributor branch or division, or factory branch or division and the motor
15 vehicle dealer.

16

17 SECTION 14. Arkansas Code § 23-112-403(a)(2)(C)(i), regarding
18 manufacturers, distributors, second-stage manufacturers, importers, or
19 converters, is amended to read as follows:

20 (C)(i)(a) To terminate or cancel the franchise or selling
21 agreement of any dealer without due cause.

22 (b) The nonrenewal of a franchise or selling
23 agreement without due cause shall constitute an unfair termination or
24 cancellation, regardless of the terms or provisions of the franchise or
25 selling agreement.

26 (c) As used in this subchapter, tests for
27 determining what constitutes due cause for a manufacturer or distributor to
28 terminate a franchise or sales and service agreement include whether the
29 motor vehicle dealer:

30 (1) Has transferred a majority ownership
31 interest in the dealership without the manufacturer's or distributor's
32 consent;

33 (2) Has made a material misrepresentation,
34 committed a fraudulent act, or both in applying for or in acting under the
35 franchise agreement;

36 (3) Has filed a voluntary petition in

1 bankruptcy or has had an involuntary petition in bankruptcy filed against him
2 or her that has not been discharged within sixty (60) days after the filing,
3 is in default under a security agreement in effect with the manufacturer or
4 distributor or is in receivership;

5 (4) Has engaged in unfair business or trade
6 practices;

7 (5) Has failed to fulfill the warranty
8 obligations of the manufacturer or distributor required to be performed by
9 the motor vehicle dealer;

10 (6) Has inadequate motor vehicle sales and
11 service facilities, equipment, vehicle parts, and *unqualified* service
12 personnel to provide for the needs of the consumers for the motor vehicles
13 handled by the franchisee and is rendering inadequate service to the public;

14 (7) Has failed to comply with an applicable
15 federal, state, or local licensing law;

16 (8) Has been convicted of a crime, the effect
17 of which would be detrimental to the manufacturer, distributor, or
18 dealership;

19 (9) Has failed to operate in the normal course
20 of business for ten (10) consecutive business days or has terminated his or
21 her business;

22 (10) Has relocated his or her place of
23 business without the manufacturer's or distributor's consent; or

24 (11) Has failed to comply with the terms of
25 the franchise, the reasonableness and fairness of the franchise terms, and
26 the extent and materiality of the franchisee's failure to comply.

27 (d) A manufacturer, distributor, second-stage
28 manufacturer, importer, converter, manufacturer branch or division, or
29 distributor branch or division shall have the burden of proving whether
30 there is due cause to terminate a franchise or sales and service
31 agreement.

32
33 SECTION 15. Arkansas Code § 23-112-403(a)(2)(C)(iv), regarding
34 manufacturers, distributors, second-stage manufacturers, importers, or
35 converters, is amended to read as follows:

36 (iv)(a) ~~Any~~ A motor vehicle dealer who receives

1 written notice that its franchise or selling agreement is being terminated or
2 cancelled or who receives written notice that its franchise or selling
3 agreement will not be renewed may file with the commission within the sixty-
4 day notice period a verified complaint for the commission's determination as
5 to whether the termination or cancellation or nonrenewal is unfair ~~within the~~
6 ~~purview of~~ under this chapter.

7 (b) That franchise or selling agreement shall
8 continue in effect until final determination of the issues raised in the
9 complaint as allowed under the Arkansas Administrative Procedure Act, § 25-
10 15-201 et seq., notwithstanding anything to the contrary contained in this
11 chapter or in the franchise or selling agreement.

12 (c) A manufacturer, distributor, second-stage
13 manufacturer, importer, converter, manufacturer branch or division, or
14 distributor branch or division shall have the burden of proving whether there
15 is due cause to terminate a franchise or sales and service agreement.

16
17 SECTION 16. Arkansas Code § 23-112-403(a)(2)(K), regarding
18 manufacturers, distributors, second-stage manufacturers, importers, or
19 converters, is amended to read as follows:

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

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

29 (ii) The dealer cost of each new, unused, undamaged,
30 and unsold part or accessory if the part or accessory:

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

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

36 (c) Was purchased in the ordinary course of

1 business by the dealer from another authorized dealer so long as the
2 authorized dealer purchased the part or accessory directly from the
3 manufacturer or distributor or from an outgoing authorized dealer as part of
4 the dealer's initial inventory;

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

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

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

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

21 (vii)(a) Except as provided under subdivisions
22 (a)(2)(K)(vii)(b) and (c) of this section, the fair market value of the
23 franchise that is at least equivalent to the fair market value of the
24 franchise sixty (60) days before the manufacturer announces the action that
25 results in the termination or discontinuance of a line-make.

26 (b) If the termination, cancellation,
27 discontinuance, or nonrenewal is due to a manufacturer's change in
28 distributors or manufacturer, the manufacturer may avoid paying fair market
29 value to the new motor vehicle dealer if the distributor, manufacturer, new
30 distributor, or new manufacturer offers the new motor vehicle dealer a
31 franchise agreement with terms substantially similar to terms offered to
32 other same line-make new motor vehicle dealers.

33 (c) Subdivisions (a)(2)(K)(vii)(a) - (b) of
34 this section do not apply to motor vehicle dealers, manufacturers, or
35 distributors of motor homes.

36 ~~(vii)(a)(viii)(a)~~ Compensation for the actual

1 pecuniary loss caused by the franchise termination, cancellation, or
2 nonrenewal unless for due cause.

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

9 ~~(viii)~~(ix) Any sums due as provided by subdivision
10 (a)(2)(K)(i) of this section within sixty (60) days after termination of a
11 franchise and any sums due as provided by subdivisions (a)(2)(K)(ii)-(vii) of
12 this section within ninety (90) days after termination of a franchise. As a
13 condition of payment, the dealer shall comply with reasonable requirements
14 with respect to the return of inventory as are set out in the terms of the
15 franchise agreement. A manufacturer, distributor, or representative who fails
16 to pay those sums within the prescribed time or at such time as the dealer
17 and lienholder, if any, proffer good title before the prescribed time for
18 payment, is liable to the dealer for:

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

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

23 (c) Reasonable attorney's fees and costs; or

24 ~~(ix)~~(x) Obligations under this subdivision (a)(2)(K)
25 do not apply if the termination is a result of the conviction of the
26 franchisee in a court of competent jurisdiction of an offense that is
27 punishable by a term of imprisonment in excess of one (1) year and the
28 offense is substantially related to the business conducted pursuant to the
29 franchise;

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31 SECTION 17. Arkansas Code § 23-112-403(a), regarding manufacturers,
32 distributors, second-stage manufacturers, importers, or converters, is
33 amended to add additional subdivisions to read as follows:

34 (5)(A) To unreasonably reduce a motor vehicle dealer's area
35 of sales effectiveness, trade area, or similar designation without giving
36 a notice of at least thirty (30) days of the proposed reduction.

1 (B) The change shall not take effect if the dealer
2 commences an administrative action to determine whether there is good
3 cause for the change within the *thirty-day* notice period.

4 (C) The burden of proof in an action under this
5 subdivision (a)(5) shall be on the manufacturer, distributor, second-stage
6 manufacturer, importer, converter, manufacturer branch or division, or
7 distributor branch or division to prove that good cause exists to change the
8 motor vehicle dealer's area of sales effectiveness, trade area, or similar
9 designation.

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11 */s/D. Wyatt*
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