

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

As Engrossed: S3/15/11 S3/17/11

# 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.  
13  
14  
15  
16

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

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 ~~the failure to act in good faith in~~  
23 ~~compelling or attempting to compel by threatening, retaliating, using~~  
24 ~~economic force, or by not performing or complying with:~~

25 (i) ~~any~~ Any terms or provisions of the franchise or  
26 ~~sales and service agreement;~~

27 (ii) The terms of this chapter; or

28 (iii) The rules promulgated by the Arkansas Motor  
29 Vehicle Commission.

30 (B) "Coerce" does not mean recommending, exposing,  
31 persuading, urging, or arguing;  
32

33 SECTION 2. Arkansas Code § 23-112-103(14)(A), regarding the definition  
34 of "franchise" under the Arkansas Motor Vehicle Commission Act, is amended to  
35 read as follows:

36 (A) The franchisee is granted the right to sell, ~~and~~



1 service, or sell and service new motor vehicles manufactured or distributed  
2 by the franchiser;

3  
4 SECTION 3. Arkansas Code § 23-112-103(25)(B)(ii), regarding the  
5 definition of "relevant market area" under the Arkansas Motor Vehicle  
6 Commission Act, is amended to read as follows:

7 (ii) However, when a manufacturer is seeking to  
8 establish an additional new motor vehicle dealer ~~and there is one (1) or more~~  
9 ~~existing new motor vehicle dealers of the same line make within a ten-mile~~  
10 ~~radius of the proposed dealer site~~, the relevant market area shall in all  
11 instances be the area within a radius of ten (10) miles around an existing  
12 dealer.

13  
14 SECTION 4. Arkansas Code § 23-112-105 is amended to read as follows:  
15 23-112-105. Civil damages.

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

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

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

34  
35 SECTION 5. Arkansas Code § 23-112-107(k), regarding motor vehicle data  
36 event recorders and data ownership, is amended to read as follows:

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

3  
4       SECTION 6. Arkansas Code § 23-112-107, regarding motor vehicle data  
5 event recorders and data ownership, is amended to add an additional  
6 subdivision to read as follows:

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

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

14  
15       SECTION 7. Arkansas Code § 23-112-310(d)(1), regarding labor rate per  
16 hour or parts price for warranty work, is amended to add an additional  
17 subdivision to read as follows:

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

27  
28       SECTION 8. Arkansas Code § 23-112-311(c) and (d), regarding the  
29 addition or relocation of a new motor vehicle dealer, are amended to read as  
30 follows:

31       (c)(1) In determining whether good cause has been established for not  
32 entering into a franchise establishing or relocating an additional new motor  
33 vehicle dealer for the same line make, the commission shall take into  
34 consideration the existing circumstances, including without limitation:

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

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

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

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

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

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

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

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

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

29  
30                   SECTION 9. Arkansas Code § 23-112-313(a), regarding warranty  
31 agreements, is amended to read as follows:

32                   (a)~~(1)~~ Every manufacturer, distributor, wholesaler, distributor branch  
33 or division, factory branch or division, or wholesale branch or division  
34 shall properly fulfill any warranty or recall agreement and adequately and  
35 fairly compensate each of its motor vehicle dealers for labor and parts.

36                   (2)(A) Except as provided in subdivisions (b)(2)(B) and (C) of

1 this section, a manufacturer, distributor, wholesaler, distributor branch or  
2 division, factory branch or division, or wholesale branch or division shall  
3 not otherwise recover its costs from motor vehicle dealers within this state  
4 by imposing a surcharge on a motor vehicle dealer solely intended to recover  
5 the cost of reimbursing the motor vehicle dealer for parts and labor under  
6 this chapter.

7 (B) Subdivision (a)(2)(A) of this section does not apply  
8 to motor vehicle dealers, manufacturers, or distributors of motor homes.

9  
10 SECTION 10. Arkansas Code § 23-112-313(e)(3)(A), regarding warranty  
11 agreements, is amended to read as follows:

12 (3)(A) A claim shall not be disapproved because a clerical error  
13 was made that does not render the amount of the claim incorrect, including  
14 without limitation clerical errors that occur as a result of a manufacturer  
15 or distributor's prior approval process, provided the dealer receives  
16 preapproval pursuant to the established practices of the manufacturer or  
17 distributor for these programs.

18  
19 SECTION 11. Arkansas Code § 23-112-403(a)(2), regarding manufacturers,  
20 distributors, second-stage manufacturers, importers, or converters, is  
21 amended to add additional subdivisions to read as follows:

22 (Q)(i)(a) Unless the manufacturer's, distributor's,  
23 second-stage manufacturer's, importer's, converter's, manufacturer's branch  
24 or division, distributor's branch or division requirements are reasonable and  
25 justifiable in light of the current and reasonably foreseeable projections of  
26 economic conditions, financial expectations, and the motor vehicle dealer's  
27 market and notwithstanding the terms of a franchise agreement or sales and  
28 service agreement, to require, coerce, or attempt to coerce any new motor  
29 vehicle dealer by program, policy, standard, or otherwise to:

30 (1) Change location of the dealership;  
31 (2) Make any substantial changes,  
32 alterations, or remodeling to a motor vehicle dealer's sales or service  
33 facilities; or

34 (3) Replace a motor vehicle dealer's  
35 sales or service facilities,

36 (b) A manufacturer, distributor, second-stage

1 manufacturer, importer, converter, manufacturer branch or division, or  
2 distributor branch or division shall have the burden of proving that changes,  
3 alterations, remodeling, or replacement to a motor vehicle dealer's sales or  
4 service facilities are reasonable and justifiable under this subchapter.

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

17 (b) Subdivisions (a)(2)(Q)(i) – (ii) do not  
18 require a manufacturer, distributor, second-stage manufacturer, importer,  
19 convertor, manufacturer branch or division, or distributor branch or division  
20 to provide financial support for, or contribution to, the purchase sale of  
21 the assets of or equity in a motor vehicle dealer or a relocation of a motor  
22 vehicle dealer because such support has been provided to other purchases,  
23 sales, or relocations.

24 (c) A manufacturer, distributor, second-stage  
25 manufacturer, importer, convertor, manufacturer branch or division, or  
26 distributor branch or division shall not take or threaten to take any action  
27 that is unfair or adverse to a dealer who does not enter into an agreement  
28 pursuant to subdivisions (a)(2)(Q)(i) – (ii).

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

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

36 (R)(i) To unreasonably withhold approval for a new motor

1 vehicle dealer to purchase substantially similar goods and services related  
2 to facility changes, alterations, or remodels from vendors the dealer  
3 chooses.

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

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

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

12 (b) Purchase unreasonable advertising  
13 displays, training, tools, or other materials;

14 (c) Establish exclusive facilities; or

15 (d) Establish dedicated personnel.

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

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

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

24 (c) However, this subdivision shall not apply  
25 to:

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

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

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

36 (1) Awarding a franchise to a

1 prospective new motor vehicle dealer;

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

4 (3) Renewing a franchise of an  
5 existing motor vehicle dealer;

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

8 (5) Approving the sale or transfer of  
9 the ownership of a franchise.

10 (b) This subdivision does not apply to a  
11 site control agreement or an exclusive use agreement if the site control  
12 agreement or an exclusive use agreement:

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

15 (2) Clearly and conspicuously  
16 discloses that the site control agreement or an exclusive use agreement  
17 is voluntary; and

18 (3) Provides for *separate and valuable*  
19 consideration to the motor vehicle dealer or motor vehicle dealer's  
20 lessor.

21 (iii) Any provision contained in any agreement  
22 that is inconsistent with this subchapter is voidable at the election of  
23 the affected motor vehicle dealer or owner of an interest in the  
24 dealership facility.

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

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

31 (ii) To offer rebates, cash incentives, or other  
32 promotional items for the sale of a vehicle by its franchisees unless the  
33 same rebate, cash incentive, or promotion is offered to all of its  
34 franchisees of the same line-make, and any rebate, cash incentive, or  
35 promotion that is based on the sale of an individual vehicle is not increased  
36 for meeting a performance standard;

1                    (iii) To unreasonably discriminate among its  
 2 franchisees in any program that provides assistance to its franchisees,  
 3 including internet listings, sales leads, warranty policy adjustments,  
 4 marketing programs, or dealer recognition programs;

5                    (iv) To fail to offer rebates, cash incentives, or  
 6 other promotional incentive programs on a fair and equitable or  
 7 proportionally equivalent basis to its franchisees of the same line-make.

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

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

15  
 16            SECTION 12. Arkansas Code § 23-112-403(a)(2)(A)(i), regarding  
 17 manufacturers, distributors, second-stage manufacturers, importers, or  
 18 converters, is amended to read as follows:

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

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

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

33                    (a) To coerce or attempt to coerce any motor  
 34 vehicle dealer to enter into any agreement with the manufacturer,  
 35 distributor, distributor branch or division, factory branch or division, or  
 36 officer, agent, or other representative thereof; ~~or~~ ~~to~~

1                                   **(b)** To do any other act prejudicial to the  
2 motor vehicle dealer by threatening to cancel any franchise or any  
3 contractual agreement existing between the manufacturer, distributor,  
4 distributor branch or division, or factory branch or division and the motor  
5 vehicle dealer.

6  
7           SECTION 14. Arkansas Code § 23-112-403(a)(2)(C)(i), regarding  
8 manufacturers, distributors, second-stage manufacturers, importers, or  
9 converters, is amended to read as follows:

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

12                                   (b) The nonrenewal of a franchise or selling  
13 agreement without due cause shall constitute an unfair termination or  
14 cancellation, regardless of the terms or provisions of the franchise or  
15 selling agreement.

16                                   **(c)** As used in this subchapter, tests for  
17 determining what constitutes due cause for a manufacturer or distributor to  
18 terminate a franchise or sales and service agreement include whether the  
19 motor vehicle dealer:

20   **(1)** Has transferred a majority ownership  
21 interest in the dealership without the manufacturer's or distributor's  
22 consent;

23   **(2)** Has made a material misrepresentation,  
24 committed a fraudulent act, or both in applying for or in acting under the  
25 franchise agreement;

26   **(3)** Has filed a voluntary petition in  
27 bankruptcy or has had an involuntary petition in bankruptcy filed against him  
28 or her that has not been discharged within sixty (60) days after the filing,  
29 is in default under a security agreement in effect with the manufacturer or  
30 distributor or is in receivership;

31   **(4)** Has engaged in unfair business or trade  
32 practices;

33   **(5)** Has failed to fulfill the warranty  
34 obligations of the manufacturer or distributor required to be performed by  
35 the motor vehicle dealer;

36   **(6)** Has inadequate motor vehicle sales and

1 service facilities, equipment, vehicle parts, and *unqualified* service  
2 personnel to provide for the needs of the consumers for the motor vehicles  
3 handled by the franchisee and is rendering inadequate service to the public;

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

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

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

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

14 (11) Has failed to comply with the terms of  
15 the franchise, the reasonableness and fairness of the franchise terms, and  
16 the extent and materiality of the franchisee's failure to comply.

17 (d) A manufacturer, distributor, second-stage  
18 manufacturer, importer, converter, manufacturer branch or division, or  
19 distributor branch or division shall have the burden of proving whether  
20 there is due cause to terminate a franchise or sales and service  
21 agreement.

22  
23 SECTION 15. Arkansas Code § 23-112-403(a)(2)(C)(iv), regarding  
24 manufacturers, distributors, second-stage manufacturers, importers, or  
25 converters, is amended to read as follows:

26 (iv)(a) ~~Any~~ A motor vehicle dealer who receives  
27 written notice that its franchise or selling agreement is being terminated or  
28 cancelled or who receives written notice that its franchise or selling  
29 agreement will not be renewed may file with the commission within the sixty-  
30 day notice period a verified complaint for the commission's determination as  
31 to whether the termination or cancellation or nonrenewal is unfair ~~within the~~  
32 ~~purview of~~ under this chapter.

33 (b) That franchise or selling agreement shall  
34 continue in effect until final determination of the issues raised in the  
35 complaint as allowed under the Arkansas Administrative Procedure Act, § 25-  
36 15-201 et seq., notwithstanding anything to the contrary contained in this

1 chapter or in the franchise or selling agreement.

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

6  
7 SECTION 16. Arkansas Code § 23-112-403(a)(2)(K), regarding  
8 manufacturers, distributors, second-stage manufacturers, importers, or  
9 converters, is amended to read as follows:

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

13 (i) The dealer cost plus any charges by the  
14 manufacturer, distributor, or a representative for distribution, delivery,  
15 and taxes, less all allowances paid to the dealer by the manufacturer,  
16 distributor, or representative for new, unsold, undamaged, and complete motor  
17 vehicles of current model year and one (1) year prior model year in the  
18 dealer's inventory;

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

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

23 (b) Is identical to a part or accessory in the  
24 current parts catalogue except for the number assigned to the part or  
25 accessory; or

26 (c) Was purchased in the ordinary course of  
27 business by the dealer from another authorized dealer so long as the  
28 authorized dealer purchased the part or accessory directly from the  
29 manufacturer or distributor or from an outgoing authorized dealer as part of  
30 the dealer's initial inventory;

31 (iii) The fair market value of each undamaged sign  
32 owned by the dealer which bears a trademark or trade name used or claimed by  
33 the manufacturer, distributor, or representative, if the sign was purchased  
34 from or purchased at the request of the manufacturer, distributor, or  
35 representative;

36 (iv) The fair market value of all special tools and

1 automotive service equipment owned by the dealer that were recommended in  
2 writing and designated as special tools and equipment and purchased from or  
3 purchased at the request of the manufacturer, distributor, or representative,  
4 if the tools and equipment are in usable and good condition except for  
5 reasonable wear and tear;

6 (v) The cost of transporting, handling, packing, and  
7 loading of motor vehicles, parts, signs, tools, and equipment subject to  
8 repurchase;

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

11 (vii)(a) Except as provided under subdivisions  
12 (a)(2)(K)(vii)(b) and (c) of this section, the fair market value of the  
13 franchise that is at least equivalent to the fair market value of the  
14 franchise one (1) day before the manufacturer announces the action that  
15 results in the termination or discontinuance of a line-make.

16 (b) If the termination, cancellation,  
17 discontinuance, or nonrenewal is due to a manufacturer's change in  
18 distributors or manufacturer, the manufacturer may avoid paying fair market  
19 value to the new motor vehicle dealer if the distributor, manufacturer, new  
20 distributor, or new manufacturer offers the new motor vehicle dealer a  
21 franchise agreement with terms substantially similar to terms offered to  
22 other same line-make new motor vehicle dealers.

23 (c) Subdivisions (a)(2)(K)(vii)(a) – (b) of  
24 this section do not apply to motor vehicle dealers, manufacturers, or  
25 distributors of motor homes.

26 ~~(vii)(a)(viii)(a)~~ Compensation for the actual  
27 pecuniary loss caused by the franchise termination, cancellation, or  
28 nonrenewal unless for due cause.

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

35 ~~(viii)(ix)~~ Any sums due as provided by subdivision  
36 (a)(2)(K)(i) of this section within sixty (60) days after termination of a

1 franchise and any sums due as provided by subdivisions (a)(2)(K)(ii)-(vii) of  
2 this section within ninety (90) days after termination of a franchise. As a  
3 condition of payment, the dealer shall comply with reasonable requirements  
4 with respect to the return of inventory as are set out in the terms of the  
5 franchise agreement. A manufacturer, distributor, or representative who fails  
6 to pay those sums within the prescribed time or at such time as the dealer  
7 and lienholder, if any, proffer good title before the prescribed time for  
8 payment, is liable to the dealer for:

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

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

13 (c) Reasonable attorney's fees and costs; or  
14 ~~(ix)~~(x) Obligations under this subdivision (a)(2)(K)  
15 do not apply if the termination is a result of the conviction of the  
16 franchisee in a court of competent jurisdiction of an offense that is  
17 punishable by a term of imprisonment in excess of one (1) year and the  
18 offense is substantially related to the business conducted pursuant to the  
19 franchise;

20  
21 SECTION 17. Arkansas Code § 23-112-403(a), regarding manufacturers,  
22 distributors, second-stage manufacturers, importers, or converters, is  
23 amended to add additional subdivisions to read as follows:

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

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

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

36

*/s/D. Wyatt*

- 1
- 2
- 3
- 4
- 5
- 6
- 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