

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S2/22/99 H3/23/99

A Bill

SENATE BILL 484

5 By: Senator Fitch
6
7

For An Act To Be Entitled

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

Subtitle

13 "AN ACT TO AMEND VARIOUS SECTIONS OF THE
14 ARKANSAS MOTOR VEHICLE COMMISSION ACT."

15
16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18
19 SECTION 1. Arkansas Code 23-112-103 is amended to read as follows:
20 "23-112-103. Definitions.

21 As used in this chapter, unless the context otherwise requires:

22 (1) 'Motor vehicle' means any motor-driven vehicle of the sort
23 and kind required to have an Arkansas motor vehicle license or registration
24 and having two (2) or more wheels;

25 (2) 'Motor vehicle dealer' means any person engaged in the
26 business of selling, offering to sell, soliciting, or advertising the sale of
27 motor vehicles, or possessing motor vehicles for the purpose of resale, either
28 on his own account or on behalf of another, either as his primary business or
29 incidental thereto. The term 'motor vehicle dealer' shall include any person
30 engaged in the business of selling, offering to sell, soliciting, or
31 advertising the sale of commercial buses, school buses, or other
32 multipassenger motor vehicles, or possessing them for the purpose of resale.

33 The term 'motor vehicle dealer' does not include:

34 (A) Receivers, trustees, administrators, executors,
35 guardians, or other persons appointed by or acting under judgment, decree, or
36 order of any court;

1 (B) Public officers while performing their duties as
2 officers;

3 (C) Employees of persons, corporations, or associations
4 enumerated in subdivision (2)(A) of this section when engaged in the specific
5 performance of their duties as employees;

6 (D) Specialty vehicle dealers; or

7 (E) Financial institutions engaged in the leasing of motor
8 vehicles;

9 (3) 'New motor vehicle' means any motor vehicle, the legal title
10 to which has never been transferred by a manufacturer, distributor, or
11 franchised new motor vehicle dealer to an ultimate purchaser, and has not been
12 the subject of retail sale without regard to mileage and any other motor
13 vehicle defined as new by regulations promulgated by the commission;

14 (4) 'Ultimate Purchaser' means, with respect to any new motor
15 vehicle, the first person, other than a motor vehicle dealer purchasing in his
16 capacity as a dealer, who in good faith purchases the new motor vehicle for
17 purposes other than resale. 'Ultimate purchaser' shall not include a person
18 who purchases a vehicle for purposes of altering or remanufacturing the motor
19 vehicle for future resale;

20 (5) 'Retail sale' or 'sale at retail' means the act or attempted
21 act of selling, bartering, exchanging, or otherwise disposing of a new motor
22 vehicle to an ultimate purchaser for use as a consumer;

23 (6) 'Motor vehicle salesman' means any person who is employed as
24 a salesman by a motor vehicle dealer whose duties include the selling or
25 offering for sale of motor vehicles;

26 (7) 'Commission' means the Arkansas Motor Vehicle Commission
27 created by this chapter;

28 (8) 'Manufacturer' means any person, firm, association,
29 corporation, or trust, resident or nonresident, who manufactures or assembles
30 new motor vehicles;

31 (9) 'Distributor' means any person, resident or nonresident, who
32 in whole or in part sells or distributes new motor vehicles to motor vehicle
33 dealers, or who maintains distributor representatives;

34 (10) 'Factory branch' means a branch or division office
35 maintained by a person, firm, association, corporation, or trust who
36 manufactures or assembles new motor vehicles for sale to distributors, to

1 motor vehicle dealers, or for directing or supervising, in whole or in part,
2 its representatives;

3 (11) 'Distributor branch' means a branch or division office
4 similarly maintained by a distributor for the same purposes a factory branch
5 or division is maintained;

6 (12) 'Factory representative' means a representative employed by
7 a person, firm, association, corporation, or trust who manufactures or
8 assembles new motor vehicles, or by a factory branch for the purpose of making
9 or promoting the sale of his, its, or their new motor vehicles, or for
10 supervising or contacting his, its, or their dealers or prospective dealers;

11 (13) 'Distributor representative' means a representative
12 similarly employed by a distributor or distributor branch;

13 (14) 'Person' means and includes, individually and collectively,
14 individuals, firms, partnerships, copartnerships, associations, corporations,
15 trusts, or any other form of business enterprise, or any legal entity;

16 (15) 'Good faith' means the duty of each party to any franchise,
17 and all officers, employees, or agents thereof, to act in a fair and equitable
18 manner toward each other so as to guarantee the one party freedom from
19 coercion, intimidation, or threats of coercion or intimidation, from the other
20 party. ~~However, recommendation, endorsement, exposition, persuasion, urging,~~
21 ~~or argument shall not be deemed to constitute a lack of good faith;~~

22 (16) 'Coerce' means the failure to act in good faith in
23 performing or complying with any terms or provisions of the franchise or
24 agreement. ~~However, recommendation, exposition, persuasion, urging, or~~
25 ~~argument shall not be deemed to constitute a lack of good faith;~~

26 (17) 'Broker' means a person who for any valuable consideration,
27 whether received directly or indirectly, arranges or offers to arrange a
28 transaction involving the sale, for purposes other than resale, of a new motor
29 vehicle, and who is not:

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

32 (B) A representative or bona fide employee of a
33 manufacturer, factory branch, or factory representative when acting on behalf
34 of a manufacturer, factory branch, or factory representative;

35 (C) A representative or bona fide employee of a distributor
36 or distributor branch when acting on behalf of a distributor or distributor

1 branch; or

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

4 (18) 'Motor vehicle lessor' means any person, not excluded by
5 subdivision (2) of this section, engaged in the motor vehicle leasing or
6 rental business;

7 (19) 'Specialty vehicle' means a motor vehicle manufactured by a
8 second stage manufacturer by purchasing motor vehicle components, e.g., frame
9 and drive train, and completing the manufacture of finished motor vehicles for
10 the purpose of resale, with the primary manufacturer warranty unimpaired, to a
11 limited commercial market rather than the consuming public. 'Specialty
12 vehicles' includes garbage trucks, ambulances, fire trucks, limousines,
13 hearses, and other similar limited-purpose vehicles as the commission may by
14 regulation provide;

15 (20) 'Auto auction' means:

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

19 (B) Any motor vehicle dealer licensed to sell used motor
20 vehicles selling motor vehicles using an auction format but not on
21 consignment;

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

24 ~~(21) 'Relevant market area' means the area within a radius of~~
25 ~~twenty (20) miles around an existing dealer or the area of responsibility~~
26 ~~defined in the franchise, whichever is greater. However, where a manufacturer~~
27 ~~is seeking to establish an additional new motor vehicle dealer and there are~~
28 ~~one (1) or more existing new motor vehicle dealers of the same line make~~
29 ~~within a ten-mile radius of the proposed dealer site, the relevant market area~~
30 ~~shall in all instances be the area within a radius of ten (10) miles around an~~
31 ~~existing dealer. And further provided, that for motor vehicle dealers of the~~
32 ~~same like make authorized to sell motorcycles and motorized cycles, including~~
33 ~~two, three, and four-wheeled motorcycles and motor-driven all-terrain vehicles~~
34 ~~other than multipassenger vehicles sold by licensed motor vehicle dealers, the~~
35 ~~relevant market area shall in all instances be the area within a radius of~~
36 ~~thirty (30) miles around an existing dealer or the area of responsibility~~

1 ~~defined in the franchise, whichever is greater. Mileage shall be determined by~~
2 ~~using the closest commonly traveled roadway pursuant to the current highway~~
3 ~~map published by the Arkansas Highway and Transportation Department;~~

4 (21) 'Relevant Market Area' means the area within a radius
5 surrounding an existing dealer or the area of responsibility defined in the
6 franchise and on file in the commission office, whichever is greater.

7 (A) For all licensed dealers, excluding motorcycles,
8 motorized cycles, and motor-driven all-terrain vehicles, which include two
9 (2), three (3), four (4), six (6), or eight (8) wheeled motorcycles, motorized
10 cycles, and motor-driven all-terrain vehicles, the relevant market area shall
11 be a radius of twenty (20) miles. However, where a manufacturer is seeking to
12 establish an additional new motor vehicle dealer and there are one (1) or more
13 existing new motor vehicle dealers of the same line make within a ten (10)
14 mile radius of the proposed dealer site, the relevant market area shall in all
15 instances be the area within a radius of ten (10) miles around an existing
16 dealer.

17 (B) For all licensed dealers of motorcycles, motorized
18 cycles and motor-driven all-terrain vehicles, which include two (2), three
19 (3), four (4), six (6), or eight (8) wheeled motorcycles, motorized cycles,
20 and motor-driven all-terrain vehicles, the relevant market area shall in all
21 instances be the area within a radius of *thirty* (30) miles around an existing
22 dealer or the area of responsibility defined in the franchise and on file in
23 the commission office, whichever is greater.

24 (22) 'Wholesaler' means any person, resident or nonresident, not
25 excluded by subdivision (2) of this section, who, in whole or in part, sells
26 used motor vehicles to motor vehicle dealers or purchases vehicles for the
27 purpose of resale. However, motor vehicle dealers who, incidental to their
28 primary business, sell motor vehicles to other dealers are not considered
29 wholesalers because of the incidental sales.

30 (23) 'Franchise' means one (1) or more contracts between a
31 franchised dealer as franchisee, and either a manufacturer or a distributor as
32 franchiser under which:

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

35 (B) The franchisee as an independent business is a
36 component of franchiser's distribution system;

1 (C) The franchise is substantially associated with
2 franchiser's trademark, trade name and commercial symbol;

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

6 (E) Any right, duty, or obligation granted or imposed by
7 this act is affected. The term includes a written communication from a
8 franchiser to a franchisee by which a duty is imposed upon the franchisee;

9 (24) 'Second stage manufacturer' or 'converter' means a person,
10 firm or corporation who prior to retail sale of a motor vehicle, assembles,
11 installs or affixes a body, cab or special equipment to a chassis, or who
12 substantially adds to, subtracts from, or modifies a previously assembled or
13 manufactured motor vehicle;

14 (25) 'Conversion' means a motor vehicle other than an ambulance
15 or fire-fighting vehicle, which is substantially modified by a person, firm,
16 or corporation other than the manufacturer or distributor of the chassis of
17 the motor vehicle and which has not been the subject of a retail sale;

18 (26) 'Temporary permit' means a license issued for one (1) week
19 or less to a motor vehicle dealer who is licensed in another state for the
20 purpose of displaying, offering to sell, selling and soliciting the sales of
21 motor vehicles at the time and place designated by the commission and only at
22 an approved motor vehicle show in this state."
23

24 SECTION 2. Arkansas Code 23-112-301 is amended to read as follows:

25 "23-112-301. License required.

26 (a) The following acts are declared to be unlawful:

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

28 ~~(a)(1) It shall be unlawful for~~ (2) For any person to engage in
29 business as, or serve in the capacity of, or act as a new motor vehicle
30 dealer, motor vehicle salesman, motor vehicle lessor, manufacturer,
31 distributor, factory branch or division, distributor branch or division,
32 factory representative, or distributor representative, ~~second state~~ second-
33 stage manufacturer or converter, as such, in this state without first
34 obtaining a license therefor as provided in this chapter, regardless of
35 whether or not the person maintains or has a place of business in this state.

36 ~~(2)(b)~~ Any person, firm, association, corporation, or trust engaging,

1 acting, or serving in more than one (1) of these capacities or having more
2 than one (1) place where such business is carried on or conducted shall be
3 required to obtain and hold a current license for each capacity and place of
4 business.

5 ~~(3)(A)(c)(1)~~ However, any new licensed motor vehicle dealer shall not
6 be required to obtain a license as a motor vehicle lessor for any location
7 licensed as a motor vehicle dealer.

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

12 ~~(C)(3)~~ New lease locations opened after a license is issued
13 shall be approved by the commission but shall not require a new license.

14 ~~(D)(4)~~ A motor vehicle lessor shall sell or offer for sale
15 motor vehicles only from an established place of business and only after
16 application to, approval of, and licensure at each location by the commission.

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

21 (2) For purposes of this subsection, the term 'engage in the
22 business of buying, selling, or exchanging new motor vehicles' means:

23 (A) Displaying for sale new motor vehicles on a lot or
24 showroom;

25 (B) Advertising for sale new motor vehicles; or

26 (C) Regularly or actively soliciting buyers for new motor
27 vehicles.

28 (3) Subdivisions ~~(b)(d)(1)~~ and (2) of this subsection authorize
29 the practice of a licensed new automobile or truck dealer selling, on special
30 order, a new automobile or truck for which he does not hold a manufacturer's
31 franchise.

32 (4) When a new automobile or truck dealer secures a new
33 automobile or truck for a special order and the customer does not consummate
34 the transaction, the automobile or truck dealer may sell the vehicle to
35 another ultimate purchaser; provided, the automobile or truck dealer shall
36 document the name, address, and telephone number of the customer for whom the

1 truck or automobile was ordered ~~in~~ and a statement detailing why the
2 transaction was not consummated, such documentation to be held by the dealer
3 subject to inspection by the commission for a period of two (2) years after
4 the date the purchase was refused, and further provided that the automobile or
5 truck shall be deemed a used motor vehicle and the dealer shall not advertise
6 such automobile or truck as a new automobile or truck.

7 (5) The presence of more than one (1) such vehicle resulting from
8 such nonconsummated special-order transactions in said automobile or truck
9 dealer's inventories at the same time, ordered by the same customer, creates a
10 rebuttable presumption that subdivision ~~(b)-(d)~~(1) of this section has been
11 violated on those transactions.

12 (6) Notwithstanding any other provision of this subchapter,
13 including, but not limited to, § 23-112-308 or § 23-112-309, the sole and
14 exclusive remedy of the commission in the event a new automobile or truck
15 dealer violates or exceeds his authority under subdivisions ~~(b)-(d)~~(1), (2), or
16 (3) of this section shall be to seek an injunction prohibiting the challenged
17 transaction pursuant to § 23-112-104.

18 ~~(e)-(e)~~ A willful violation of subsection (a) of this section shall be a
19 Class B misdemeanor. "

20
21 SECTION 3. Arkansas Code 23-112-302 is amended to read as follows:

22 "23-112-302. Application for license.

23 (a) Applications for licenses required to be obtained under the
24 provisions of this chapter shall be verified by the oath or affirmation of the
25 applicants and shall be on forms prescribed by the commission and furnished to
26 the applicants. They shall contain such information as the commission deems
27 necessary to enable it to fully determine the qualifications and eligibility
28 of the several applicants to receive the licenses applied for.

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

31 (1) Information relating to:

32 (A) The applicant's financial standing;

33 (B) The applicant's business integrity;

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

1 (D) Whether the applicant has the proper facilities and is
2 able to properly conduct the business for which licenses are applied for; and

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

5 (c)(1) Applications for licenses as new motor vehicle dealers and motor
6 vehicle lessors must, in addition to the foregoing, also be accompanied by the
7 filing with the commission of a corporate surety bond in the penal sum of
8 twenty-five thousand dollars (\$25,000) on a bond form approved by the
9 commission. However, an applicant for licenses at multiple locations may
10 choose to provide a corporate surety bond in the penal sum of one hundred
11 thousand dollars (\$100,000) covering all licensed locations of the same
12 capacity in lieu of separate bonds for each individual location.

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

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

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

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

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

27 (d) In addition to the foregoing, applications for licenses as motor
28 vehicle dealers in new motor vehicles must also be accompanied by the filing
29 with the commission of a bona fide contract or franchise then in effect
30 between the applicant and a manufacturer or distributor of the new motor
31 vehicles proposed to be dealt in, unless the contract or franchise has already
32 been filed with the commission in connection with a previous application made
33 by the applicant, in which event the applicant shall, in lieu of again filing
34 the contract or franchise, identify the contract or franchise by appropriate
35 reference and file all revisions and additions, if any, which have been made
36 to the contract or franchise.

1 (e) The applicant for a license as a new motor vehicle dealer must
2 furnish satisfactory evidence that he or it maintains adequate space in the
3 building or structure wherein his or its established business is conducted for
4 the display of new motor vehicles, or that he or it will have the facilities
5 within a reasonable time after receiving a license, and that he or it has or
6 will have adequate facilities in the building or structure for the repair and
7 servicing of motor vehicles and the storage of new parts and accessories for
8 the motor vehicles."

9
10 SECTION 4. Arkansas Code 23-112-309 is amended to read as follows:

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

13 (a)(1) If, after notice and hearing, the commission finds that any
14 person holding a license under this chapter is guilty of any violation of this
15 chapter or regulations promulgated thereunder, it shall have the power and
16 authority to impose a monetary penalty upon the licensee in lieu of suspension
17 or revocation of license.

18 (2) The commission shall have the power and authority to require
19 the licensee to pay the monetary penalty with the sanction that the license
20 may be suspended until the penalty is paid, which time shall not exceed ninety
21 (90) days from entry of the commission's order or final order on appeal.

22 (3) The penalty in lieu of suspension or revocation may be
23 imposed only if the commission formally finds that the public interest would
24 not be impaired thereby and the payment of the penalty will achieve the
25 desired disciplinary results.

26 (b)(1) If the commission finds that there is sufficient cause upon
27 which to base the revocation of a license, the amount of the monetary penalty
28 in lieu of revocation shall not exceed ten thousand dollars (\$10,000).

29 (2) If the commission finds that there is sufficient cause upon
30 which to base the suspension of a license, the amount of the monetary penalty
31 in lieu of suspension shall not be less than fifty dollars (\$50.00) nor more
32 than five hundred dollars (\$500) per day for each day the license would
33 otherwise be suspended. However, the amount of the penalty shall not exceed
34 the aggregate of five thousand dollars (\$5,000).

35 (c) No penalty shall be imposed if the license has been revoked by the
36 commission for the violation.

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

3 (e) ~~Any penalties assessed by the commission remaining unpaid at the~~
4 ~~expiration of time for payment may be recovered by an action in the name of~~
5 ~~the commission brought by the Attorney General upon written request by the~~
6 ~~commission.~~ Unless the penalty assessed under this section is paid within
7 fifteen (15) days following the date for an appeal from the order, the
8 commission shall have the power to file suit in the Circuit Court of Pulaski
9 County to obtain a judgment for the amount of penalty not paid."

10
11 SECTION 5. Arkansas Code 23-112-310 is amended to read as follows:

12 "23-112-310. Delivery, preparation, and warranty obligations.

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

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

27 (c) Notwithstanding the terms of a franchise agreement or provision of
28 law in conflict with this subsection, the dealer's delivery, preparation, and
29 warranty obligations as filed with the commission shall constitute the
30 dealer's sole responsibility for product liability as between the dealer and
31 the manufacturer or distributor, and, except for a loss caused by the dealer's
32 negligence or intentional misconduct, or a loss caused by the dealer's
33 modification of a product without manufacturer authorization, the manufacturer
34 or distributor shall reimburse the dealer for all losses incurred by the
35 dealer, including legal fees, court costs, and damages, as a result of the
36 dealer having been named a party in a product liability action.

1 (d)(1) In no event shall any manufacturer, distributor, distributor
2 branch or division, or factory or division branch pay to any of its motor
3 vehicle dealers a labor rate per hour for warranty work less than that charged
4 by the dealer to its retail customers. Conversely, no dealer shall charge to
5 its manufacturer, distributor, distributor branch or division, or factory
6 branch or division a labor rate per hour in excess of the rate charged to its
7 retail customers.

8 (2) All claims made by motor vehicle dealers for the labor,
9 parts, or incidental expenses shall be paid within thirty (30) days following
10 their approval. All claims shall be either approved or disapproved within
11 thirty (30) days after their receipt, and when any claim is disapproved, the
12 motor vehicle dealer who submits it shall be notified in writing of its
13 disapproval within the period, and each notice shall state the specific
14 grounds upon which the disapproval is based.

15 (3) In no event shall any manufacturer, distributor, distributor
16 branch or division, or factory or division branch refuse to pay to any of its
17 motor vehicle dealers for any warranty work, as long as the work in question
18 was properly performed."

19
20 SECTION 6. Arkansas Code 23-112-311 is amended to read as follows:

21 "23-112-311. Addition or relocation of new motor vehicle dealer.

22 (a)(1) In all instances, ~~in the event that~~ a manufacturer or
23 distributor ~~seeks~~ seeking to enter into a franchise establishing an additional
24 new motor vehicle dealer or relocating an existing new motor vehicle dealer
25 within or into a relevant market area where the same line make is then
26 represented, the manufacturer or distributor shall in writing first notify the
27 Motor Vehicle Commission and each new motor vehicle dealer in that line make
28 in the relevant market area of the intention to establish an additional dealer
29 or to relocate an existing dealer within or into that market area.

30 (2) Within twenty (20) days of receiving the notice, or within
31 twenty (20) days after the end of any appeal procedure provided by the
32 manufacturer or distributor, any new motor vehicle dealer may file with the
33 Motor Vehicle Commission to protest the establishing or relocating of the new
34 motor vehicle dealer. When a protest is filed, the Motor Vehicle Commission
35 shall inform the manufacturer or distributor that a timely protest has been
36 filed, and that the manufacturer or distributor shall not establish or

1 relocate the proposed new motor vehicle dealer until the Motor Vehicle
2 Commission has held a hearing, nor thereafter if the Motor Vehicle Commission
3 has determined that there is good cause for not permitting the addition or
4 relocation of the new motor vehicle dealer. In the event that a protest is
5 filed with the Motor Vehicle Commission, the party desiring the addition or
6 relocation of a new motor vehicle dealer pursuant to this subsection shall pay
7 for and provide a copy of a survey showing the proposed location of the
8 additional or relocated new motor vehicle dealer in relation to other existing
9 dealers of the same line make in the relevant market area.

10 (b) This section does not apply:

11 (1) To the relocation of an existing dealer, other than a dealer
12 of motorcycles, motorized cycles, and all-terrain vehicles, within that
13 dealer's relevant market area, provided the relocation not be at a site within
14 seven (7) ten (10) miles of a licensed new motor vehicle dealer for the same
15 line make of motor vehicles; or

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

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

27 (c) In determining whether good cause has been established for not
28 entering into a franchise establishing or relocating an additional new motor
29 vehicle dealer for the same line make, the Motor Vehicle Commission shall take
30 into consideration the existing circumstances, including, but not limited to:

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

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

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

36 (4) Whether it is injurious or beneficial to the public welfare

1 for an additional new motor vehicle dealer to be established;

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

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

9 (d) The Motor Vehicle Commission must conduct the hearing and render
10 its final determination within one hundred twenty (120) days after a protest
11 is filed. Unless waived by the parties, failure to do so shall be deemed the
12 equivalent of a determination that good cause does not exist for refusing to
13 permit the proposed additional or relocated new motor vehicle dealer, unless
14 the delay is caused by acts of the manufacturer or distributor or the
15 relocating or additional dealer.

16 (e) Any parties to a hearing by the Motor Vehicle Commission concerning
17 the establishing or relocating of a new motor vehicle dealer shall have a
18 right of review of the decision in a court of competent jurisdiction pursuant
19 to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.”
20

21 SECTION 7. Arkansas Code 23-112-313 is amended to read as follows:

22 “23-112-313. Warranty agreements.

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

27 (b) In no event shall the compensation fail to include reasonable
28 compensation for diagnostic work, as well as repair service and labor. Time
29 allowances for the diagnosis and performance of warranty or recall work and
30 service shall be reasonable and adequate for the work to be performed. In the
31 determination of what constitutes reasonable compensation under this
32 subdivision, the principal factor to be given consideration shall be the
33 prevailing wage rates being paid by the dealer in the relevant market area in
34 which the motor vehicle dealer is doing business, and in no event shall the
35 compensation of a motor vehicle dealer for warranty or recall service be less
36 than the rates charged by the dealer for like service to retail customers for

1 nonwarranty service and repairs. All claims under this subdivision, either
2 original or resubmitted, made by motor vehicle dealers for the labor and parts
3 shall be either approved or disapproved within thirty (30) days following
4 their approval. The motor vehicle dealer who submits a claim which is
5 disapproved shall be notified in writing of the disapproval within the same
6 period, and each such notice shall state the specific grounds upon which the
7 disapproval is based. The motor vehicle dealer shall be permitted to correct
8 and resubmit such disapproved claims within thirty (30) days of receipt of
9 disapproval. Any claims not specifically disapproved in writing within thirty
10 (30) days from their submission shall be deemed approved and payment shall
11 follow within thirty (30) days. No claim shall be disapproved because of a
12 clerical error which does not render the amount of the claim incorrect. The
13 manufacturer or franchiser shall have the right to require documentation for
14 claims and to audit such claims within a one-year period from the date the
15 claim was paid or credit issued by the manufacturer or franchiser, and to
16 charge back any false or unsubstantiated claims. The audit and charge-back
17 provisions of this subdivision also apply to all other incentive and
18 reimbursement programs for a period of ~~eighteen (18)~~ twelve (12) months after
19 the date of the transactions that are subject to audit by the franchiser.
20 However, the manufacturer retains the right to charge back any fraudulent
21 claim if the manufacturer establishes in a court of competent jurisdiction in
22 this state that the claim is fraudulent within a period not to exceed two (2)
23 years from the date of the claim in question.

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

27 SECTION 8. The following section is inserted after Arkansas Code
28 section 23-112-313:

29 “23-112-314. Civil Penalty.

30 (a) If, after notice and hearing, the commission finds that any person
31 not holding a license under this chapter is guilty of any violation of this
32 chapter or regulations promulgated thereunder, it shall have the power and
33 authority to impose a monetary penalty upon said person not to exceed one
34 thousand dollars (\$1,000) per violation.

35 (b) Each day of violation of this chapter or of a regulation shall
36 constitute a separate violation subjecting the person to a separate civil

1 penalty.

2 (c) Unless the penalty assessed under this section is paid within
3 fifteen (15) days following the date for an appeal from the order, the
4 commission shall have the power to file suit in the Circuit Court of Pulaski
5 County to obtain a judgement for the amount of the penalty not paid.

6 (d) Repeated violations by any person not holding a license under this
7 chapter shall result in an increase in the penalty assessed by the commission.
8 The terms 'second' and 'subsequent' violation as used in this section mean a
9 violation, of the same nature as a previously remedied violation, that occurs
10 within five (5) years of the remedied violation by any person not holding a
11 license under this chapter. The commission shall have the power and authority
12 to impose a penalty not to exceed two thousand five hundred dollars (\$2,500)
13 for a second violation, with the penalty increasing in increments of two
14 thousand five hundred dollars (\$2,500) for each subsequent violation."

15
16 SECTION 9. Arkansas Code 23-112-403 is amended to read as follows:

17 "23-112-403. Manufacturers, distributors, etc.

18
19 (a) It shall be unlawful:

20 (1) For a manufacturer, a distributor, a distributor branch or
21 division, a factory branch or division, or officer, agent, or other
22 representative thereof, to coerce, or attempt to coerce, any motor vehicle
23 dealer:

24 (A) To order or accept delivery of any motor vehicles,
25 appliances, equipment, parts, or accessories therefor, or any other
26 commodities which shall not have been voluntarily ordered by the motor vehicle
27 dealer;

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

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

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

36 (E) To file for or to use a legal or 'd/b/a' name or

1 identification other than a name of choice by the dealer.

2 (2) For a manufacturer, a distributor, a distributor branch or
3 division, a factory branch or division, or officer, agent, or other
4 representative thereof:

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

18 (B) To coerce, or attempt to coerce, any motor vehicle
19 dealer to enter into any agreement with the manufacturer, distributor,
20 distributor branch or division, or factory branch or division, or officer,
21 agent, or other representative thereof, or to do any other act prejudicial to
22 the dealer by threatening to cancel any franchise or any contractual agreement
23 existing between the manufacturer, distributor, distributor branch or
24 division, or factory branch or division, and the dealer. However, good faith
25 notice to any motor vehicle dealer of the dealer's violation of any terms or
26 provisions of the franchise or contractual agreement shall not constitute a
27 violation of this chapter;

28 (C) To terminate or cancel the franchise or selling
29 agreement of any dealer without due cause. The nonrenewal of a franchise or
30 selling agreement, without due cause, shall constitute an unfair termination
31 or cancellation, regardless of the terms or provisions of the franchise or
32 selling agreement. The manufacturer, distributor, distributor branch or
33 division, or factory branch or division, or officer, agent, or other
34 representative thereof shall notify a motor vehicle dealer in writing and
35 forward a copy of the notice to the commission of the termination or
36 cancellation of the franchise or selling agreement of the dealer at least

1 sixty (60) days before the effective date thereof, stating the specific
2 grounds for the termination or cancellation. However, in the event that the
3 commission finds that the franchise or selling agreement has been abandoned by
4 the dealer, the commission, for good cause, may waive the sixty (60) day
5 notice requirement and allow for the immediate termination of the franchise or
6 selling agreement. The manufacturer, distributor, distributor branch or
7 division, or factory branch or division, or officer, agent, or other
8 representative thereof shall notify a motor vehicle dealer in writing and
9 forward a copy of the notice to the commission at least sixty (60) days before
10 the contractual term of his franchise or selling agreement expires that the
11 franchise or selling agreement will not be renewed, stating the specific
12 grounds for the nonrenewal in those cases where there is no intention to renew
13 it. In no event shall the contractual term of any franchise or selling
14 agreement expire, without the written consent of the motor vehicle dealer
15 involved, prior to the expiration of at least sixty (60) days following the
16 written notice. Any motor vehicle dealer who receives written notice that his
17 franchise or selling agreement is being terminated or cancelled or who
18 receives written notice that his franchise or selling agreement will not be
19 renewed may, within the sixty-day notice period, file with the commission a
20 verified complaint for its determination as to whether the termination or
21 cancellation or nonrenewal is unfair within the purview of this chapter. That
22 franchise or selling agreement shall continue in effect until final
23 determination of the issues raised in the complaint, notwithstanding anything
24 to the contrary contained in this chapter or in the franchise or selling
25 agreement. In the event of the termination or cancellation of the franchise or
26 selling agreement, the terminating or canceling party shall notify the
27 commission of the termination or cancellation of the franchise or selling
28 agreement at least sixty (60) days before the effective date thereof;

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

33 (E) To offer to sell or to sell any new motor vehicle to
34 any motor vehicle dealer at a lower actual price therefor than the actual
35 price charged to any other motor vehicle dealer for the same model vehicle
36 similarly equipped or to utilize any device, including, but not limited to,

1 sales promotion plans or programs, which results in a lesser actual price.
2 However, the provisions of this subdivision (a)(2)(E) shall not apply to sales
3 to a motor vehicle dealer for resale to any unit of federal, state, or local
4 government. Further, nothing contained in this subdivision (a)(2)(E) shall be
5 construed to prevent the utilization of sales promotion plans or programs or
6 the offering of volume discounts through new motor vehicle dealers, for fleet
7 or volume purchasers, if the program is available to all new motor vehicle
8 dealers from the same manufacturer in this state. Further, the provisions of
9 this subdivision (a)(2)(E) shall not apply to sales to a motor vehicle dealer
10 of any motor vehicle ultimately sold, donated, or used by the dealer in a
11 driver education program. Further, the provisions of this subdivision
12 (a)(2)(E) shall not apply so long as a manufacturer or distributor, or any
13 agent thereof, offers to sell or sells new motor vehicles to all motor vehicle
14 dealers at the same price;

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

20 (G) To offer to sell or to sell parts and accessories to
21 any new motor vehicle dealer for use in his own business for the purpose of
22 repairing or replacing the parts and accessories, or comparable parts and
23 accessories, at a lower actual price therefor than the actual price charged to
24 any other new motor vehicle dealer for similar parts and accessories for use
25 in his own business. However, it is recognized that certain motor vehicle
26 dealers operate and serve as wholesalers of parts and accessories to retail
27 outlets. Therefore, nothing contained in this subdivision shall be construed
28 to prevent a manufacturer or distributor, or any agent thereof, from selling
29 to a motor vehicle dealer who operates and serves as a wholesaler of parts and
30 accessories such parts and accessories as may be ordered by the motor vehicle
31 dealer for resale to retail outlets at a lower actual price than the actual
32 price charged a motor vehicle dealer who does not operate or serve as a
33 wholesaler of parts and accessories;

34 (H) To prevent or attempt to prevent by contract or
35 otherwise any motor vehicle dealer from changing the capital structure of his
36 dealership or the means by or through which he finances the operation of his

1 dealership, provided the dealer at all times meets any capital standards
2 agreed to between the dealership and the manufacturer or distributor and
3 provided the standards are deemed reasonable by the commission. If the dealer
4 of record requests consent from the manufacturer or distributor in writing on
5 the form, if any, generally utilized or required by the manufacturer or
6 distributor for such purposes and the manufacturer or distributor fails to
7 respond in writing, giving or withholding consent, within sixty (60) days of
8 receipt of the written request, consent is deemed to be given;

9 (I) Notwithstanding the terms of any franchise agreement,
10 to fail to give effect or to attempt to prevent any sale or transfer of a
11 dealer, dealership, or franchise or interest therein, or management thereof,
12 provided the manufacturer or distributor has received sixty (60) days' written
13 notice prior to the transfer or sale, and unless the transferee does not meet
14 the criteria generally applied by the manufacturer in approving new motor
15 vehicle dealers or agree to be bound by all the terms and conditions of the
16 dealer agreement, and the manufacturer so advises its dealer within sixty (60)
17 days of receipt of said notice, or it is shown to the commission after hearing
18 that the result of such sale or transfer will be detrimental to the public or
19 the representation of the manufacturer or distributor. If the franchisee of
20 record requests consent from the manufacturer or distributor in writing on the
21 form, if any, generally utilized or required by the manufacturer or
22 distributor for such purposes and the manufacturer or distributor fails to
23 respond in writing, giving or withholding consent, within sixty (60) days of
24 receipt of the written request, consent is deemed to be given;

25 (J) Notwithstanding the terms of any franchise agreement,
26 to prevent, attempt to prevent, or refuse to honor the succession to a
27 dealership by any legal heir or devisee under the will of a dealer or under
28 the laws of descent and distribution applicable to the decedent's estate,
29 provided the manufacturer or distributor has received sixty (60) days' written
30 notice prior to the transfer or sale, and unless the transferee does not meet
31 the criteria generally applied by the manufacturer in approving new motor
32 vehicle dealers or agree to be bound by all the terms and conditions of the
33 dealer agreement, and the manufacturer so advises its dealer within thirty
34 (30) days of receipt of said notice, or it is shown to the commission, after
35 notice and hearing, that the result of such succession will be detrimental to
36 the public interest or to the representation of the manufacturer or

1 distributor. However, nothing herein shall prevent a dealer, during his
2 lifetime, from designating any person as his successor dealer by written
3 instrument filed with the manufacturer or distributor. If the dealer's
4 successor, heir or devisee requests consent from the manufacturer or
5 distributor in writing on the form, if any, generally utilized or required by
6 the manufacturer or distributor for such purposes and the manufacturer or
7 distributor fails to respond in writing, giving or withholding consent, within
8 thirty (30) days of receipt of the written request, consent is deemed to be
9 given;

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, and
15 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. ~~The terms and conditions of this subdivision shall not~~
19 ~~apply to manufacturers of mobile homes and motor homes, as defined in § 27-14-~~
20 ~~207;~~

21 (ii) The dealer cost of each new, unused, undamaged,
22 and unsold part or accessory if the part or accessory is in the current parts
23 catalogue and ~~is still in the original, resalable merchandising package and in~~
24 ~~unbroken lots, except that in the case of sheet metal, a comparable substitute~~
25 ~~for the original package may be used, and if the part or accessory was~~
26 purchased by the dealer either directly from the manufacturer or distributor
27 or from an outgoing authorized dealer as a part of the dealer's initial
28 inventory;

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

34 (iv) The fair market value of all special tools and
35 automotive service equipment owned by the dealer which were recommended in
36 writing and designated as special tools and equipment and purchased from or

1 purchased at the request of the manufacturer, distributor, or representative,
 2 if the tools and equipment are in usable and good condition except for
 3 reasonable wear and tear;

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

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

9 ~~(vi)-(vii)~~ 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) -
 12 ~~(a)(2)(K)(v)~~ (a)(2)(K)(vi) of this section within ninety (90) days after
 13 termination of a franchise. As a condition of payment, the dealer is to comply
 14 with reasonable requirements with respect to the return of inventory as are
 15 set out in the terms of the franchise agreement. A manufacturer, distributor,
 16 or representative who fails to pay those sums within the prescribed time or at
 17 such time as the dealer and lienholder, if any, proffer good title prior to
 18 the prescribed time for 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.

24 (L) To fail or refuse to offer its same line make
 25 franchised dealers all models manufactured for that line make. No additional
 26 requirements, over the requirements originally required to initially obtain a
 27 dealership, may be required of existing franchised dealers to receive any
 28 model by that line make.

29 (M) To offer to sell or to sell any motor vehicle to a
 30 consumer, except through a licensed new motor vehicle dealer holding a
 31 franchise for the line make covering such new motor vehicle or as may
 32 otherwise be provided in paragraph (a)(3) of this section. This paragraph
 33 shall not apply to manufacturer sales of new motor vehicles to the Federal
 34 Government, charitable organizations, or employees of the manufacturer.

35 (N) To prohibit or require a dealer to enter into a
 36 franchise or sales agreement with third parties, regardless of the location of

1 the dealership or proposed dealership.

2 (3) For a manufacturer, a distributor, a distributor branch or
3 division, a factory branch or division, or officer, agent, or other
4 representative thereof:

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

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

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

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

22 (iv) The ownership, operation or control of a new
23 motor vehicle dealer by a manufacturer, if the commission determines, after a
24 hearing on the matter at the request of any party, that there is no
25 prospective new motor vehicle dealer available to own and operate the
26 franchise in a manner consistent with the public interest.

27 (4) For a manufacturer to unfairly compete with a motor vehicle
28 dealer of the same line make, operating under a franchise, in the relevant
29 market area. 'Unfairly compete' as used in this section includes, but is not
30 limited to, preferential treatment of manufacturer operated dealerships in the
31 supply of inventory, both as to quantity and availability of the latest models
32 of that line make, supply of parts, and payments for warranty and recall
33 claims. Ownership, operation or control of a new motor vehicle dealer by a
34 manufacturer under the conditions set forth in § 23-112-430(a)(3)(A)(i)
35 through (iv) above shall not constitute a violation of this paragraph.

36 (b) Concerning any sale of a motor vehicle or vehicles to the State of

1 Arkansas, or to the several counties or municipalities thereof, or to any
2 other political subdivision thereof, no manufacturer or distributor shall
3 offer any discounts, refunds, or any other similar type inducements to any
4 dealer without making the same offers to all other of its dealers within the
5 state. If the inducements are made, the manufacturer or distributor shall give
6 simultaneous notice thereof to all of its dealers within the state.”

7
8 SECTION 10. Arkansas Code 23-112-501 is amended to read as follows:

9 “23-112-501. Right to hearing.

10 The commission shall not:

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

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

19 (3) Impose a civil penalty pursuant to § 23-112-314 without first
20 giving the respondent a hearing pursuant to the Arkansas Administrative
21 Procedure Act.”

22
23 SECTION 11. Arkansas Code 23-112-502 is amended to read as follows:

24 “23-112-502. Call for hearing.

25 (a) Any interested party ~~shall have the right to have~~ may petition the
26 commission to call a hearing for the purpose of taking action in respect to
27 any matter within the commission's jurisdiction by filing with the commission
28 a *notarized* complaint setting forth grounds upon which the complaint is based.
29 Upon review of the complaint, the commission shall determine whether to call a
30 hearing.

31 (b) The commission may, on its own motion, call a hearing for the
32 purpose of taking action in respect to any matter within its jurisdiction.”

33
34 SECTION 12. Arkansas Code 23-112-504 is amended to read as following:

35 “23-112-504. Conduct of hearing.

36 ~~(a) All parties whose rights may be affected at any hearing before the~~

1 ~~commission shall have the right to appear personally and, by counsel, to~~
2 ~~cross-examine witnesses appearing against them and to produce evidence and~~
3 ~~witnesses in their own behalf.~~

4 ~~(b) The commission shall make and keep a record of each hearing and~~
5 ~~shall provide a transcript thereof to any interested party upon his request~~
6 ~~and at his expense.~~

7 ~~(c) Testimony taken at all hearings shall be taken either~~
8 ~~stenographically or by machine.~~

9 ~~(d) If any party who is notified of a hearing in accordance with the~~
10 ~~requirements of this chapter fails to appear at the hearing, either in person~~
11 ~~or by counsel, then, and in that event, the commission may make any decision~~
12 ~~and take any action it may deem necessary or appropriate with respect to any~~
13 ~~issue or question scheduled for hearing and decision by it at the hearing~~
14 ~~which affects, or may affect, the rights of the defaulting party.~~

15 All hearings shall be conducted pursuant to the provisions of the
16 Arkansas Administrative Procedure Act."

17
18 SECTION 13. All provisions of this act of a general and permanent
19 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
20 Code Revision Commission shall incorporate the same in the Code.

21
22 SECTION 14. If any provision of this act or the application thereof to
23 any person or circumstance is held invalid, such invalidity shall not affect
24 other provisions or applications of the act which can be given effect without
25 the invalid provision or application, and to this end the provisions of this
26 act are declared to be severable.

27
28 SECTION 15. All laws and parts of laws in conflict with this act are
29 hereby repealed.

30
31 SECTION 16. EMERGENCY CLAUSE. It is hereby found and determined by the
32 Eighty-second General Assembly that the provisions of this act are of
33 essential importance to correct the persistent unfair treatment of dealers by
34 manufacturers of the same line, in matters such as manufacturers' systematic
35 denial of dealers' warranty and recall claims, manufacturers' offering certain
36 models to their franchised dealers on an arbitrary and unfair basis; that this

1 act is essential to protect the stability and viability of these business
2 owners in this state and the ability of consumers to purchase automobiles
3 without undue interference from manufacturers; and other similar matters.
4 Therefore, an emergency is declared to exist and this act being immediately
5 necessary for the preservation of the public peace, health and safety shall
6 become effective on the date of its approval by the Governor. If the bill is
7 neither approved nor vetoed by the Governor, it shall become effective on the
8 expiration of the period of time during which the Governor may veto the bill.
9 If the bill is vetoed by the Governor and the veto is overridden, it shall
10 become effective on the date the last house overrides the veto.

11 */s/ Fitch*

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