

1 State of Arkansas
2 84th General Assembly
3 Second Extraordinary Session, 2003
4

A Bill

Call Item 19

HOUSE BILL 1027

5 By: Representative Petrus
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7

For An Act To Be Entitled

9 AN ACT TO REVISE VARIOUS PROVISIONS OF THE
10 ARKANSAS MOTOR VEHICLE COMMISSION ACT FOR
11 ENFORCEMENT, WARRANTY AGREEMENTS, AND UNLAWFUL
12 ACTIVITIES FOR MANUFACTURERS; AND FOR OTHER
13 PURPOSES.
14

Subtitle

15 TO REVISE VARIOUS PROVISIONS OF THE
16 ARKANSAS MOTOR VEHICLE COMMISSION ACT.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code Title 23, Chapter 112, Subchapter 1 is
23 amended to add an additional section to read as follows:

24 23-112-106. Enforcement.

25 (a) If the Arkansas Motor Vehicle Commission finds that failure to do
26 so would be detrimental to the public interest or public welfare, the
27 commission shall have the authority:

28 (1) To enter orders directing and commanding compliance with the
29 Arkansas Motor Vehicle Commission Act; and

30 (2) To enforce the findings and conclusions of the commission's
31 orders upon entry.

32 (b) Commission orders shall be subject to a person's right to appeal.

33 SECTION 2. Arkansas Code § 23-112-403(a)(2)(K), concerning the
34 unlawful activities for manufacturers, distributors, second-stage
35 manufacturers, importers, and converters under the Arkansas Motor Vehicle
36 Commission Act, is amended to read as follows:



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

4 (i) The dealer cost plus any charges by the
 5 manufacturer, distributor, or a representative for distribution, delivery,
 6 and taxes, less all allowances paid to the dealer by the manufacturer,
 7 distributor, or representative for new, unsold, undamaged, and complete motor
 8 vehicles of current model year and one (1) year prior model year in the
 9 dealer's inventory;

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

15 (iii) The fair market value of each undamaged sign
 16 owned by the dealer which bears a trademark or trade name used or claimed by
 17 the manufacturer, distributor, or representative, if the sign was purchased
 18 from or purchased at the request of the manufacturer, distributor, or
 19 representative;

20 (iv) The fair market value of all special tools and
 21 automotive service equipment owned by the dealer which were recommended in
 22 writing and designated as special tools and equipment and purchased from or
 23 purchased at the request of the manufacturer, distributor, or representative,
 24 if the tools and equipment are in usable and good condition except for
 25 reasonable wear and tear;

26 (v) The cost of transporting, handling, packing, and
 27 loading of motor vehicles, parts, signs, tools, and equipment subject to
 28 repurchase;

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

31 (vii)(a) Compensation for the actual pecuniary loss
 32 caused by the franchise termination, cancellation, or nonrenewal unless for
 33 due cause.

34 (b) In determining the actual pecuniary loss,
 35 the value of any continued service or parts business available to the dealer
 36 for the line make covered by the franchise shall be considered. If the dealer

1 and the manufacturer, importer, or distributor cannot agree on the amount of
 2 compensation to be paid under this subchapter, either party may file an
 3 action in a court of competent jurisdiction; or

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

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

16 (b) Interest on the amount due calculated at
 17 the greater of either the rate applicable to a judgment of a court, or the
 18 motor vehicle dealer's floor plan interest rate; and

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

20 (ix)(a)(1) If a motor home manufacturer terminates,
 21 cancels, or nonrenews a franchise for cause, the motor home dealer may elect,
 22 within thirty (30) days of termination, cancellation, or nonrenewal of his or
 23 her franchise, to have the manufacturer repurchase the following:

24 (A) All new, untitled current
 25 model year motor home inventory that was acquired from the manufacturer and
 26 has not been altered, used, or damaged; or

27 (B) All new, untitled prior model
 28 year recreation vehicle inventory that meets the following requirements:

29 (i) Was acquired from the
 30 manufacturer and has not been altered, used, or damaged; and

31 (ii) Was drafted on the
 32 dealer's financing source or paid for within one hundred twenty (120) days
 33 before the effective date of the termination, cancellation, or nonrenewal.

34 (2) For the purposes of subdivision

35 (ix)(a)(1):

36 (A) "Used" does not include use

1 related to demonstration of the motor home; and

2 (B) "Damaged" does not include
3 damage that triggers the consumer disclosure requirement.

4 (3) The manufacturer shall repurchase
5 the inventory based on the following calculation:

6 (A) One hundred percent (100%) of
7 the net invoice cost;

8 (B) Plus transportation costs; and

9 (C) Less applicable rebates.

10 (b)(1) In the event any of the motor homes
11 repurchased under this subdivision (a)(2)(K)(ix) are damaged, but do not
12 trigger the consumer disclosure requirement, the amount due the dealer shall
13 be reduced by the cost to repair the vehicle.

14 (2) Damage before delivery to the dealer
15 that is disclosed at the time of delivery shall not disqualify the repurchase
16 under this subdivision (a)(2)(K)(ix).

17 (c) The manufacturer shall repurchase all
18 current and undamaged manufacturer's accessories and proprietary parts sold
19 to the dealer for resale, if accompanied by the original invoice, at one
20 hundred five percent (105%) of the original net price paid to the
21 manufacturer to compensate the dealer for handling, packing, and shipping the
22 parts.

23 (d)(1) If the item meets the conditions under
24 this subdivision (a)(2)(K)(ix)(d), the manufacturer shall also repurchase the
25 following items:

26 (A) Diagnostic equipment;

27 (B) Special tools;

28 (C) Current signage; and

29 (D) Other equipment and machinery.

30 (2) The manufacturer shall only have the
31 duty to repurchase the items in this subdivision (a)(2)(K)(ix)(d)(1) if the
32 following criteria are met for each item that the dealer claims should be
33 repurchased by the manufacturer:

34 (A) The item fully and correctly
35 functions;

36 (B) The item was purchased by the

1 dealer and from the manufacturer within five (5) years before termination,
2 cancellation, or nonrenewal of the franchise;

3 (C) The manufacturer has requested
4 to repurchase the item; and

5 (D) The item can no longer be used
6 in the normal course of the dealer's ongoing business.

7 (3)(A) The manufacturer shall repurchase
8 items under this subdivision (a)(2)(K)(ix)(d) at one hundred percent (100%)
9 of the dealer's net cost plus freight, destination, delivery, and
10 distribution charges and sales taxes, if any.

11 (B) The manufacturer shall submit
12 payment to the dealer within thirty (30) days of receipt of the returned
13 items.

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15 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
16 General Assembly of the State of Arkansas that motor vehicle manufacturers
17 are terminating certain makes and models of motor vehicles in Arkansas and in
18 the United States; that motor vehicle manufacturers are placing a burden on
19 the motor vehicle dealers to contend with this problem; that the Arkansas
20 Motor Vehicle Commission Act needs to be amended to contend with these
21 events; and that this act is immediately necessary because the financial
22 wellbeing of Arkansas motor vehicle dealers is at stake. Therefore, an
23 emergency is declared to exist and this act being immediately necessary for
24 the preservation of the public peace, health, and safety shall become
25 effective on:

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

27 (2) If the bill is neither approved nor vetoed by the Governor,
28 the expiration of the period of time during which the Governor may veto the
29 bill; or

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

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