

## SUBCHAPTER 3.

### LICENSE AND RULE.

#### SECTIONS.

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#### 23-112-301. License Required.

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

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

(2) For any person to engage in business as, or serve in the capacity of, or act as a new motor vehicle dealer, motor vehicle salesperson, motor vehicle lessor, manufacturer, importer, distributor, factory branch or division, distributor branch or division, factory representative, distributor representative, second-stage manufacturer, or converter, as such, in Arkansas without first obtaining a license therefor as provided in this chapter, regardless of whether or not the person maintains or has a place of business in Arkansas.

(b) Any person, firm, association, corporation, or trust engaging, acting, or serving in more than one (1) of these capacities or having more than one (1) place where such a business is carried on or conducted shall be required to obtain and hold a separate and current license for each capacity and place of business.

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

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

(3) New lease locations opened after a license is issued shall be approved by the Arkansas Motor Vehicle Commission but shall not require a new license.

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

- (d) (1) No person may engage in the business of buying, selling, or exchanging motor vehicles, unless he or she;
- (A) Holds a valid license issued by the Commission for the makes of motor vehicles being bought, sold, or exchanged; or
  - (B) Is a bona fide employee or agent of the licensee.
- (2) For purposes of this subsection, “engage in the business of buying, selling, or exchanging motor vehicles” means:
- (A) Displaying for sale motor vehicles on a lot or showroom;
  - (B) Advertising for sale new motor vehicles regardless of the medium used; or
  - (C) Regularly or actively soliciting buyers for motor vehicles.

**History.** Acts 1975, No. 388, §§ 5, 8, 10; 1977, No. 838, § 2; 1985, No. 1032, §§ 3, 6; 1985, No. 1058, §§ 3, 6; A.S.A. 1947, §§ 75-2305, 75-2308, 75-2310; Acts 1989, No. 678, § 1; 1995, No. 568, § 4; 1997, No. 1154, § 9; 1999, No. 1042, § 2; 2001, No. 1053, § 2; 2009, No. 756, § 6.

### **23-112-302. Application for License.**

- (a) Applications for licenses required to be obtained under the provisions of this chapter shall:
- (1) Be verified by the oath or affirmation of the applicants;
  - (2) Be on forms prescribed by the Arkansas Motor Vehicle Commission and furnished to the applicants; and
  - (3) Contain such information as the Commission deems necessary to enable it too fully determine the qualifications and eligibility of the several applicants to receive the licenses applied for.
- (b) The Commission shall require that there be set forth in each application:
- (1) Information relating to:
    - (A) The applicant’s business integrity;
    - (B) Whether the applicant has an established place of business in the State of Arkansas and is primarily engaged in the pursuit, avocation, or business for which licenses are applied for; and
    - (C) Whether the applicant has the proper facilities and is able to properly conduct the business for which licenses are applied for; and
  - (2) Other pertinent information consistent with the safeguarding of the public interest and public welfare.

(c) (1) (A) In addition to the foregoing provisions of subsections (a) and (b) of this section, applications for licenses as:

(i) New motor vehicle dealers must also be accompanied by the filing with the Commission of a corporate surety bond in the penal sum of fifty thousand dollars (\$50,000) on a bond form approved by the Commission; and

(ii) New motorcycle dealers, new all-terrain vehicle dealers, and motor vehicle lessors must also be accompanied by the filing with the Commission of a corporate surety bond in the penal sum of twenty-five thousand dollars (\$25,000) on a bond form approved by the Commission.

(B) In each instance that a branch license is applied for, each application shall be accompanied by the filing with the Commission of a corporate surety bond in the penal sum of twenty-five thousand dollars (\$25,000) on a bond form approved by the Commission.

(C) Motor vehicle dealers shall also provide proof of liability insurance coverage on all vehicles to be offered for sale in an amount equal to or greater than the amount required by the Motor Vehicle Safety Responsibility Act, § 27-19-101et seq.

(2) The bond shall be in effect upon the applicant's being licensed and shall be conditioned upon the applicant's complying with the provisions of this chapter.

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

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

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

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

(d) (1) In addition to the provisions subsections (a)-(c) of this section, applications for licenses as motor vehicle dealers in new motor vehicles must also be accompanied by the filing with the Commission of a bona fide contract or franchise then in effect between the applicant and a manufacturer or distributor of the new motor vehicles proposed to be dealt in.

(2) However, if the contract or franchise has already been filed with the Commission in connection with a previous application made by the applicant, the applicant, in lieu of again filing the contract or franchise, shall identify the contract or franchise by appropriate reference and file all revisions and additions, if any, which have been made to the contract or franchise.

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

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

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

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

(f) (1) Every licensed dealer shall maintain for three (3) years after the date of purchase records of each vehicle transaction to which the dealer was a party.

(2) Dealers shall maintain copies of all documents executed in connection with any transaction, which may include bills of sale, titles, odometer statements, invoices, affidavits of alteration, and reassignments, and shall be open to inspection by the Executive Director of the Arkansas Motor Vehicle Commission or a Commission Representative acting in an official capacity during reasonable business hours and upon execution of subpoena.

(g) (1) The licensee applying for a branch license shall not utilize any portion of franchise name or product nameplates.

(2) A licensee applying for a branch license shall remain in the relevant market area, as defined in the franchise or selling agreement approved by the franchiser and franchisee and on file in the Commission office or as defined in this subchapter pertaining to relevant market area, whichever is greater.

**History.** Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1995, No. 568, § 5; 1999, No. 1042, § 3; 2001, No. 1053, § 3; 2009, No. 756, § 7.

### **23-112-303. Application Fees.**

(a) All applications for licenses shall be accompanied by the appropriate fees in accordance with the schedule set out in this subchapter.

(b) In the event any application is denied and the license applied for is not issued, the entire license fee shall be returned to the applicant.

(c) The schedule of license fees to be charged and received by the Arkansas Motor Vehicle Commission for the licenses issued pursuant to this subchapter shall be as follows:

(1) For each manufacturer, distributor, factory branch and division, or distributor branch and division, second-stage manufacturer, importer, and converter, nine hundred dollars (\$900);

(2) For each motor vehicle dealer or motor vehicle lessor, one hundred dollars (\$100);

(3) For each manufacturer, distributor or factory representative, four hundred dollars (\$400);

(4) For each motor vehicle salesperson, fifteen dollars (\$15.00);

(5) For each branch location, twenty-five dollars (\$25.00); and

(6) For each replacement certificate of license, ten dollars (\$10.00).

(d) (1) Any person, firm, or corporation required to be licensed under this subchapter who fails to make application for the license at the time required shall pay a penalty of fifty percent (50%) of the amount of the license fee for each thirty (30) days of default, in addition to the fees required to be paid pursuant to subsection (c) of this section. However, the penalty may be waived, in whole or in part, within the discretion of the Commission.

(2) License applications for sales personnel shall be received in the Commission office within thirty (30) days of employment.

**History.** Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1995, No. 568, § 6; 1997, No. 1154, § 14; 2001, No. 1053, § 4.

**23-112-304. Issuance of License – Change of Location – Change of Business or Corporate Name, Structure, or DBA name – Dealers, Manufacturers, Distributors, etc.**

(a) The license issued to each motor vehicle dealer, manufacturer, distributor, factory branch or division, or distributor branch or division shall specify the location of the factory, office, branch or division thereof.

(b) In case the location is changed, the Arkansas Motor Vehicle Commission shall endorse the change of location on the license without charge if it is within the same county.

(c) A change of location to another county shall require a new license.

(d) Licensees shall notify the Commission in writing of any change in the business or corporate name or structure and of any alternate name or names in which the company will do business, “DBA names”, and shall provide the original issue license with the notification of name change or addition of DBA name or names. The Commission shall endorse the change on the license without charge.

**History.** Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1995, No. 568, § 7; 1997, No. 1154, § 10; 2001, No. 1053, § 5.

**23-112-305. Display of License – Change of Employer – Factory Representative and Distributor Representative.**

(a) Every motor vehicle factory representative or distributor representative shall have his or her license upon his or her person when engaged in his or her business and shall display the license upon request.

(b) The name of the employer of the factory representatives or distributor representative shall be stated on the license, and, in case of a change of employer, the holder of the license shall immediately mail the license to the Arkansas Motor Vehicle Commission for its endorsement of the change thereon.

**History.** Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1995, No. 568, § 8; 2001, No. 1053, § 6.

**23-112-306. Display of License – Change of Employer – Salesperson.**

(a) Every motor vehicle salesperson shall have his or her license upon his or her person or displayed at his or her place of employment, except as provided in this section, when engaged in his or her business and shall display the license upon request. The name and address of the applicant shall be stated on the license.

(b) In case of a change of employer, the following procedure shall be adhered to:

(1) Within three (3) days following the change, the licensee shall notify in writing the Arkansas Motor Vehicle Commission for its endorsement;

(2) Within three (3) days following the termination of employment of the licensee, the last employer of the licensee shall make a report to the Commission setting forth the reasons why services of the licensee were terminated and such other information as may be required by the Commission;

(3) Upon receipt by the Commission of the licensee's written notification and the last employer's report, the Commission shall determine if it has grounds to believe, and does believe, that the licensee is no longer qualified under the provisions of this chapter as a motor vehicle salesperson. Under such circumstances, the Commission shall immediately notify the licensee and the licensee's new employer in writing that a hearing will be held for the purpose of determining whether his or her license should be revoked or suspended, specifying the grounds for revocation or suspension, as the case may be, and the time and place for the hearing. The hearing and any and all appeals by the licensee with respect thereto shall be in accordance with the provisions of §23-112-501 et seq.; and

(4) (A) If, after the Commission receives the licensee's license and fee and his or her last employer's report, the Executive Director of the Arkansas Motor Vehicle Commission cannot for any reason endorse and mail to the licensee his or her license within a period of three (3) days following the receipt by the Commission of the licensee's license and fee and his or her last employer's report, then and in that event the Executive Director shall mail to the licensee a permit in such form as the Commission shall prescribe.

(B) The permit shall serve in lieu of a license until such time as the Commission endorses and mails the license to the licensee, or until such time as the licensee's license is revoked or suspended in accordance with the provisions of this chapter.

(C) If the license is ultimately revoked or suspended, then immediately upon the revocation or suspension the licensee shall return the permit to the Commission for cancellation.

(c) The Commission shall maintain a permanent file with respect to each licensed motor vehicle salesperson. Each file shall contain all pertinent information with respect to the fitness and qualifications of each licensee for the use by the Commission in determining from time to time whether his or her license should be revoked or suspended.

(d) There is no intent under this chapter to prevent a salesperson who has not previously been licensed as a salesperson from selling during the time required to process his or her application. The applicant shall be allowed to sell from the date of employment as long as the applicant and his or her dealer follows the procedure for license application.

**History.** Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1995, No. 568, § 9; 2001, No. 1053, § 7.

### **23-112-307. Expiration of License.**

Unless the Arkansas Motor Vehicle Commission by rule provides to the contrary, all licenses issued to:

- (1) Manufacturers, distributors, factory or distributor branches, importers, second-stage manufacturers, converters, and their representatives expire June 30 following the date of issue; and
- (2) Motor vehicle dealers, motor vehicle salespersons, and motor vehicle lessors expire December 31 following the date of issue.

**History.** Acts. 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1987, No. 620, § 2; 1995, No. 568, § 10; 2001, No. 1053, § 8; 2009, No. 756, § 8.

### **23-112-308. Denial, Revocation, and Suspension.**

(a) Notwithstanding any other statute, the Arkansas Motor Vehicle Commission may deny an application for a license or revoke or suspend a license after it has been granted for any of the following reasons:

- (1) (A) For selling or soliciting sales of a motor vehicle without a license issued by the Commission.  
  
(B) The unlawful sale or solicitation of each motor vehicle shall constitute a separate offense;
- (2) On satisfactory proof of the unfitness of the applicant or the licensee, as the case may be, under the standards established and set out in this chapter;
- (3) For fraud practiced or any material misstatement made by an applicant in any application for license under the provisions of this chapter;
- (4) For failure to comply with any provision of this chapter or with any rule promulgated by the Commission under authority vested in it by this chapter;
- (5) Change of condition after license is granted or failure to maintain the qualifications for license;
- (6) Continued violation of any of the provisions of this chapter or of any of the rules of the Commission;
- (7) For any violation of any law relating to the sale, distribution, or financing of motor vehicles;
- (8) Defrauding any retail buyer to the buyer's damage;
- (9) Failure to perform any written agreement with any retail buyer;
- (10) Selling, attempting to sell, or advertising for sale vehicles from a location other than that set forth on the license;
- (11) Falsifying, altering, or neglecting to endorse or deliver a certificate of title to a transferee or lawful owner or failing to properly designate a transferee on a document of assignment or certificate of title;
- (12) Knowingly purchasing, selling, or otherwise acquiring or disposing of a stolen motor vehicle;

- (13) Submitting a false affidavit setting forth that a title has been lost or destroyed;
- (14) Passing title or reassigning title as a dealer without a dealer's license or when the dealer's license has been suspended or revoked;
- (15) For a person representing that he or she is a dealer or salesperson, either verbally or in any advertisement, when the person is not licensed as such;
- (16) Assisting any person in the sale of a motor vehicle who is not licensed as a dealer by the Commission;
- (17) Being a manufacturer who fails to specify the delivery and preparation obligations of its motor vehicle dealers, as is required for the protection of the buying public, prior to delivery of new motor vehicles to retail buyers;
- (18) (A) On satisfactory proof that any manufacturer, distributor, distributor branch or division, or factory branch or division has unfairly and without due regard to the equities of the parties or to the detriment of the public welfare failed to properly fulfill any warranty agreement or to adequately and fairly compensate any of its motor vehicle dealers for labor, parts, or incidental expenses incurred by the dealer with regard to factory warranty agreements performed by the dealer.
  - (B) Compensation for parts for two-wheeled, three-wheeled, and four-wheeled motorcycles and motor-driven all-terrain vehicles must be at the manufacturer's suggested retail price;
- (19) For the Commission of any act prohibited by §§23-112-301 – 23-112-307, 23-112-402, and 23-112-403, or the failure to perform any of the requirements of those sections;
- (20) Using or permitting the use of special license plates assigned to him or her for any other purpose than those permitted by law;
- (21) Disconnecting, turning back, or resetting the odometer of any motor vehicle in violation of state or federal law;
- (22) Accepting an open assignment of title or bill of sale for a motor vehicle which is not completed by identifying the licensee as the purchaser or assignee of the motor vehicle;
- (23) (A) Failure to notify the Commission of a change in ownership, location, or franchise, or any other matters the Commission may require by rule.
  - (B) The notification shall be in written form and submitted to the Commission at least fifteen (15) days prior to the effective date of the change.
- (24) Failure to endorse and deliver an assignment and warranty of title to the buyer pursuant to §27-14-902.
- (25) Using or permitting the use of a temporary cardboard buyer's tag assigned to the dealer for any purpose other than permitted under §27-14-1705; and
- (26) Failure of a dealer to submit or deliver a certificate of title or manufacturer's certificate of origin within a reasonable period of time.

(b) The revocation or suspension of the license of a manufacturer, factory branch or division, distributor, or distributor branch or division may be limited to:

(1) One (1) or more municipalities or counties;

(2) (A) The sales area of any dealer whose franchise is unfairly cancelled or terminated within the purview of this chapter or whose franchise is not renewed in violation of the provisions of this chapter.

(B) However, when a franchise is unfairly cancelled or terminated within the purview of this chapter or is not renewed in violation of the provisions of this chapter in a metropolitan area serviced by several motor vehicle dealers handling the same motor vehicles, the revocation or suspension shall not be applicable to the remaining motor vehicle dealers in the metropolitan area.

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

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

**History.** Acts 1975, No. 388, § 6; 1985, No. 1032, § 5; 1985, No. 1058, § 5; A.S.A. 1947, § 75-2306; Acts 1991, No. 411, § 1; 1993, No. 383, § 4; 2001, No. 1053, § 9; 2009, No. 756, § 9.

### **23-112-309. Monetary Penalty in Lieu of Suspension or Revocation of License.**

(a) (1) If after alternate proceedings or notice and hearing, the Arkansas Motor Vehicle Commission finds that any person holding a license under this chapter is guilty of any violation of this chapter or rules promulgated under this chapter, it shall have the power and authority to impose a monetary penalty upon the licensee in lieu of suspension or revocation of license.

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

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

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

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

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

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

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

**History.** Acts 1975, No. 388, § 6; 1985, No. 1032, § 5; 1985, No. 1058, § 5; A.S.A. 1947, § 75-2306; Acts 1999, No. 1042, § 4; 2001, No. 1053, § 10.

### **23-112-310. Delivery, Preparation, and Warranty Obligations.**

(a) (1) Every licensed motor vehicle manufacturer, distributor, second-stage manufacturer, importer, or converter shall file with the Arkansas Motor Vehicle Commission with its initial application for a license:

(A) A copy of the documents stating the delivery, preparation, and warranty obligations of its motor vehicle dealers; and

(B) A schedule of the compensation to be paid to its motor vehicle dealers for the work and services they shall be required to perform in connection with the delivery, preparation, and warranty obligations.

(2) The documents shall constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer or distributor.

(3) Any revisions to the delivery, preparation, and warranty obligations or to the schedule of compensation shall be filed no later than September 15 of each calendar year.

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

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

(d) (1) (A) A manufacturer, distributor, distributor branch or division, or factory or division branch shall not pay to any of its motor vehicle dealers a labor rate per hour or parts price for warranty work that is less than that charged by the dealer to its retail customers provided the rate is reasonable compared to other same line-make dealers in the dealer's relevant market area or the dealer's competitive market area.

(B) Conversely, a dealer shall not charge to its manufacturer, distributor, distributor branch or division, or factory branch or division a labor rate per hour or parts price in excess of the rate charged to its retail customers.

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

(2)(A) All claims made by motor vehicle dealers for the labor, parts, or incidental expenses shall be paid within thirty (30) days following their approval.

(B) All claims shall be either approved or disapproved within thirty (30) days after their receipt, and when any claim is disapproved, the motor vehicle dealer who submits it shall be notified in writing of its disapproval within the period, and each notice shall state the specific grounds upon which the disapproval is based.

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

**History.** Acts 1975, No. 388, § 5, 6; 1985, No. 1032, §§ 3, 5; 1985, No. 1058, §§ 3, 5; A.S.A. 1947, §§ 75-2305, 75-2306; Acts 1991, No. 411, § 2; 1997, No. 1154, § 11; 1999, No. 1042, § 5; 2001, No. 1053, § 11; 2009, No. 756, § 10.

### **23-112-311. Addition or Relocation of New Motor Vehicle Dealer.**

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

(2) (A) Within twenty (20) days of receiving the notice or within twenty (20) days after the end of any appeal procedure provided by the manufacturer or distributor, any new motor vehicle dealer may file with the Commission to protest the establishing or relocating of the new motor vehicle dealer.

(B) When a protest is filed, the Commission shall inform the manufacturer or distributor that a timely protest has been filed and that the manufacturer or distributor shall not establish or relocate the proposed new motor vehicle dealer until the Commission has held a hearing, nor thereafter if the Commission has determined that there is good cause for not permitting the addition or relocation of the new motor vehicle dealer.

(C) In the event that a protest is filed with the Commission, the party desiring the addition or relocation of a new motor vehicle dealer pursuant to this subsection shall pay for and provide a copy of a survey showing the proposed location of the additional or relocated new motor vehicle dealer in relation to other existing dealers of the same line make in the relevant market area.

(b) This section does not apply:

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

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

(3) To the relocation of an existing new motor vehicle dealer of motorcycles, motorized cycles, and all-terrain vehicles within that dealer's relevant market area, provided that the

relocation not be at a site within twenty-five (25) miles of a licensed new motor vehicle dealer for the same line make of motor vehicles.

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

- (1) Permanency of the investment of both the existing and proposed new motor vehicle dealers;
- (2) Growth or decline in population and new motor vehicle registrations in the relevant market area;
- (3) Effect on the consuming public in the relevant market area;
- (4) Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
- (5) Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the line make in the market area, which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel; and
- (6) Whether the establishment of an additional new motor vehicle dealer would increase competition and, therefore, be in the public interest.

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

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

**History.** Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1997, No. 1154, § 12; 1999, No. 1042, § 6; 2001, No. 1053, § 12; 2009, No. 756, § 11.

### **23-112-312. License Reciprocity with Other States.**

(a) The Arkansas Motor Vehicle Commission may enter into reciprocal agreements with the Motor Vehicle Commissions, or their equivalents, in other states to allow motor vehicle dealers who are licensed in those states to obtain a temporary permit in this state, pursuant to the rules promulgated by Arkansas Motor Vehicle Commission.

(b) Any person who is licensed under the laws of another state or territory of the United States to engage in business as a motor vehicle dealer may apply for a temporary permit in this state upon production of satisfactory proof that:

(1) The requirements for licensing in the particular state or territory were equivalent to the requirements in effect in this state at the date of the applicant's licensing;

(2) The applicant meets all the qualifications for the temporary permit and pays the fees specified for the permits pursuant to the rules of the Arkansas Motor Vehicle Commission; and

(3) The applicant meets other reasonable qualifications as may be adopted by the Arkansas Motor Vehicle Commission.

**History.** Acts 1997, No. 1154, § 1; 2007, No. 235, §2.

**23-112-313. Warranty Agreements.**

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

(b) The compensation shall not fail to include reasonable compensation for diagnostic work, repair service, labor, and parts.

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

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

(3) The compensation of a motor vehicle dealer for warranty or recall service shall not be less than the rates charged by the dealer for like service to retail customers for nonwarranty service and repairs, provided the rate is reasonable compared to other same line make dealers in the dealer's relevant market area or the dealer's competitive market area.

(d) (1) (A) The pricing for a recalled part shall not be reduced to an amount that is less than the original dealer cost or price for the same part unless the manufacturer obtains a discounted rate for the recalled part from a supplier.

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

(2) A part-by-part analysis is not required to determine the retail rate for parts.

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

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

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

(ii) The motor vehicle dealer may correct and resubmit the disapproved claims within thirty (30) days of receipt of disapproval.

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

(3) (A) A claim shall not be disapproved because a clerical error was made that does not render the amount of the claim incorrect.

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

(4) (A) The manufacturer or franchiser may:

(i) Require documentation for claims;

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

(iii) Charge back any false or unsubstantiated claims.

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

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

(D) (i) A dealer may file an appeal with the Arkansas Motor Vehicle Commission to protest any chargeback under this subdivision (e)(4) within ninety (90) days of notification by the manufacturer or distributor.

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

(iii) An appeal by the licensee under this subdivision (e)(4)(D) shall be in accordance with §23-112-501 et. seq.

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

**History.** Acts 1997, No. 1154, § 2; 1999, No. 1042, § 7; 2007, No. 746, §§1, 2; 2009, No. 756, § 12.

### **23-112-314. Civil Penalty.**

(a) If after request for alternative proceedings or notice and hearing the Arkansas Motor Vehicle Commission finds that any person not holding a license under this chapter is guilty of any violation of this chapter or rules promulgated thereunder, the Commission shall have the power and authority to impose a monetary penalty upon the person not to exceed one thousand dollars (\$1,000) per violation.

(b) Each day of violation of this chapter or of a rule shall constitute a separate violation subjecting the person to a separate civil penalty.

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

(d)(1) Repeated violations by any person not holding a license under this chapter shall result in an increase in the penalty assessed by the Commission.

(2) The terms “second” and “subsequent” violation as used in this section mean a violation of the same nature as a previously remedied violation that occurs within five (5) years of the remedied violation by any person not holding a license under this chapter.

(3) The Commission shall have the power and authority to impose a penalty not to exceed two thousand five hundred dollars (\$2,500) for a second violation, with the penalty increasing in increments of two thousand five hundred dollars (\$2,500) for each subsequent violation.

**History.** Acts 1999, No. 1042, § 8; 2001, No. 1053, § 13.

### **23-112-315. [Repealed. Motor Vehicle Dealer Documentary Fees - Disclosures.]**

**This section was repealed by Acts 2007, No. 366 § 3. The section was derived from Acts 2001, No. 1600, § 1. Acts 2003, No. 1722; § 1.**

### **23-112-316. Delivery Prior to Sale — Disclosures.**

(a) As used in this section:

(1)(A) “Contract for sale” means the final agreement between a new motor vehicle dealer and a consumer that:

(i) Includes all material terms of the sale of a motor vehicle; and

(ii) Is binding upon the seller, the buyer, and any necessary third-party financier.

(B) “Contract for sale” includes a financing agreement and all material financing terms if the motor vehicle is to be financed; and

(2) “Delivery prior to sale” means a delivery of a motor vehicle by a new motor vehicle dealer to a consumer prior to the completion and execution by both parties of a contract for sale.

(b) If a new motor vehicle dealer engages in a delivery prior to sale, then the new motor vehicle dealer shall provide the consumer with an agreement for delivery prior to sale at the time of delivery of the motor vehicle to the consumer.

(c)(1) The agreement for delivery prior to sale shall be:

(A) Printed in at least 12-point type; and

(B) Signed by the consumer and the new motor vehicle dealer or the dealer's representative.

(2) The agreement for delivery prior to sale shall not be considered a contract for sale.

(d) The agreement for delivery prior to sale shall include all of the following terms:

(1) Unless the consumer is approved for financing and both parties have executed a contract for sale, then the new motor vehicle dealer shall not:

(A) Deposit or cash any down payment provided by the consumer; and

(B) Sell any motor vehicle that is presented by the consumer as a trade-in;

(2) The consumer retains the right to cancel the purchase of a motor vehicle if:

(A) The new motor vehicle dealer changes any terms; or

(B) The consumer fails to obtain financing that meets the agreed upon interest rate; and

(3) If a consumer who executes an agreement for delivery prior to sale chooses not to execute a contract for sale or otherwise cancels the purchase as provided under this section, then:

(A) The new motor vehicle dealer shall not:

(i) Impose any charge or penalty against the consumer; or

(ii) Deposit or cash any down payment provided by the consumer;  
and

(B) The new motor vehicle dealer shall immediately return any motor vehicle that was presented by the consumer as a trade-in; and

(4) If the consumer decides to not purchase the motor vehicle, the consumer shall return the motor vehicle to the new motor vehicle dealer within forty-eight (48) hours after the consumer notifies the dealer.

(e) If a consumer fails to return a motor vehicle pursuant to subdivision (d)(4) of this section, then the new motor vehicle dealer may recover the vehicle without the necessity of judicial process if the recovery is possible without committing an act of breaking or entering or breach of the peace.

(f) The Arkansas Motor Vehicle Commission shall promulgate rules to implement, enforce, and administer this section.

**History.** 2005 No. 1687, § 1.

**23-112-317 Motor Vehicle Dealer Service and Handling Fees.**

(a) A motor vehicle dealer may fill in the blanks on standardized forms in connection with the sale or lease of a new or used motor vehicle if the motor vehicle dealer does not charge for the service of filling in the blanks or otherwise charge for preparing documents.

(b)(1) A motor vehicle dealer may charge a service and handling fee in connection with the sale or lease of a new or used motor vehicle for:

- (A) The handling, processing, and storage of documents; and
- (B) Other administrative and clerical services.

(2)(A) The service and handling fee may be charged to allow cost recovery for motor vehicle dealers.

(B) A portion of the service and handling fee may result in profit to the motor vehicle dealer.

(c)(1) The Arkansas Motor Vehicle Commission shall determine by rule the amount of the service and handling fee that may be charged by a motor vehicle dealer. The service and handling fee shall be no less than zero dollars (\$0.00) and no more than one hundred twenty-nine dollars (\$129).

(2) If a service and handling fee is charged under this section, the service and handling fee shall be:

- (A) Charged to all retail customers; and
- (B) Disclosed on the retail buyer's order form as a separate itemized charge.

(d) A preliminary worksheet on which a sale price is computed and that is shown to the purchaser, a retail buyer's order form from the purchaser, or a retail installment contract shall include in reasonable proximity to the place on the document where the service and handling fee authorized by this section is disclosed:

- (1) The amount of the service and handling fee; and
- (2) The following notice in type that is bold faced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material:

**“A SERVICE AND HANDLING FEE IS NOT AN OFFICIAL FEE. A SERVICE AND HANDLING FEE IS NOT REQUIRED BY LAW BUT MAY BE CHARGED TO THE CUSTOMER FOR PERFORMING SERVICES AND HANDLING DOCUMENTS RELATING TO THE CLOSING OF A SALE OR LEASE. THE SERVICE AND HANDLING FEE MAY RESULT IN PROFIT TO THE DEALER. THE SERVICE AND HANDLING FEE DOES NOT INCLUDE PAYMENT FOR THE PREPARATION OF LEGAL DOCUMENTS. THIS NOTICE IS REQUIRED BY LAW.”**

(e) The Arkansas Motor Vehicle Commission may promulgate rules to implement, enforce, and administer this section.

**History.** Acts 2007, No. 366, §1.

**23-112-318. Negative Equity Financing and Disclosures Permitted.**

A new or used motor vehicle dealer or a new or used motor vehicle lessor is not required to be licensed by the State Bank Department in order to:

(1)(A) Pay in connection with a credit sale transaction any amount necessary to satisfy a lease, a security interest, or a lien upon a motor vehicle that is either returned or traded in to the new or used motor vehicle dealer or the new or used motor vehicle lessor by the purchaser of a new or used motor vehicle.

(B) The amount paid by the new or used motor vehicle dealer or by the new or used motor vehicle lessor may be included and disclosed as part of the credit sale transaction; or

(2)(A) Pay in connection with a lease transaction, any amount necessary to satisfy a lease, a security interest, or a lien upon a motor vehicle that is either returned or traded in to the new or used motor vehicle dealer or the new or used motor vehicle lessor by the lessee of a new or used motor vehicle.

(B) The amount paid by the new or used motor vehicle dealer or by the new or used motor vehicle lessor may be included and disclosed as part of the amount to be paid by the lessee under the lease transaction.

**History.** Acts 2007, No. 649, §1.

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