
Arkansas Motor Vehicle Commission Act

A.C.A. Tit. 23, Subtitle. 4, Ch. 112 Note

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*** CURRENT THROUGH THE 2011 REGULAR SESSION AND UPDATES ***
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*** 2015 Legislative Session ***

Title 23 Public Utilities and Regulated Industries
Subtitle 4. Miscellaneous Regulated Industries
Chapter 112 Arkansas Motor Vehicle Commission Act

Ark. Code Ann. § 23-112-101 *et seq.* (2015)

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Every effort has been made to make this annotated combination of past and current laws as accurate as possible. The Arkansas Motor Vehicle Commission is not responsible for changes accidentally or willfully made to this document by third parties. For a complete history and the official acts visit the State of Arkansas web page.

SUBCHAPTER 1.

GENERAL PROVISIONS.

SECTIONS.

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23-112-101. Title.

This chapter shall be known and may be cited as the "Arkansas Motor Vehicle Commission Act".

HISTORY: Acts 1975, No. 388, § 1; A.S.A. 1947, § 75-2301.

23-112-102. Legislative findings -- Purpose.

(a) The General Assembly finds and declares that the distribution and sale of motor vehicles in Arkansas vitally affects the general economy of the state and the public interest and the public welfare.

(b) The General Assembly further finds and declares that it is necessary, in the exercise of its police power, to regulate and to license motor vehicle manufacturers, factory branches and divisions, distributors, distributor branches and divisions, distributor representatives, new motor vehicle dealers, and salespersons doing business in Arkansas in order to:

- (1)** Prevent frauds, unfair practices, discrimination, impositions, and other abuses upon the citizens of Arkansas;
- (2)** Avoid undue control of the independent motor vehicle dealer by motor vehicle manufacturing and distributing organizations;
- (3)** Foster and keep alive vigorous and healthy competition;
- (4)** Prevent the creation or perpetuation of monopolies;
- (5)** Prevent the practice of requiring the buying of special features, accessories, special models, appliances, and equipment not desired by a motor vehicle dealer or the ultimate purchaser;
- (6)** Prevent false and misleading advertising;
- (7)** Promote and keep alive a sound system of distribution of motor vehicles to the public; and
- (8)** Promote the public safety and welfare.

HISTORY: Acts 1975, No. 388, § 2; A.S.A. 1947, § 75-2302; Acts 1995, No. 568, § 1.

23-112-103. Definitions.

As used in this chapter:

(1) "Advertisement" means an oral, written, telecommunicated, graphic, pictorial, or other statement made in the course of soliciting business, including without limitation, a statement or representation made in a newspaper, magazine, Internet, or other publication or contained in a notice, sign, poster, display, circular, pamphlet, letter, or flyer, or made via radio, television, or any other medium;

(2) "All-terrain vehicle" means a motor vehicle that:

(A) Is an off-highway vehicle:

(i) Fifty inches (50") or less in width, having a dry weight of nine hundred pounds (900 lbs.) or less, and traveling on three (3) or more low pressure tires, with a seat designed to be straddled by the operator, a Class 1 all-terrain vehicle; or

(ii) With a width that exceeds forty-five inches (45") or having a dry weight that exceeds six hundred pounds (600 lbs.), traveling on four (4) or more low-profile, low-pressure tires, and having a bench seat or one (1) or more bucket seats, a Class 2 all-terrain vehicle;

(B) Has a seat for the operator and any passenger and handlebars or other steering mechanism for control; and

(C) Is used for any purpose, including, but not limited to, off-road, amphibious, or recreational travel;

(3) "Auto auction" means:

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

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

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

(4) "Branch location" means a secondary location:

(A) Identified in a license issued by the Arkansas Motor Vehicle Commission to a motor vehicle dealer; and

(B) Which is an established place of business other than the licensed location;

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

- (A)** A dealer or bona fide employee of a new motor vehicle dealer when acting on behalf of a new motor vehicle dealer;
 - (B)** A representative or bona fide employee of a manufacturer, factory branch, or factory representative when acting on behalf of a manufacturer, factory branch, or factory representative;
 - (C)** A representative or bona fide employee of a distributor or distributor branch when acting on behalf of a distributor or distributor branch; or
 - (D)** At any point in the transaction, the bona fide owner of the vehicle involved in the transaction;
- (6) (A)** "Coerce" means compelling or attempting to compel by threatening, retaliating, using economic force, or by not performing or complying with:
- (i)** Any terms or provisions of the franchise or sales and service agreement;
 - (ii)** The terms of this chapter; or
 - (iii)** The rules promulgated by the Arkansas Motor Vehicle Commission.
- (B)** "Coerce" does not mean recommending, exposing, persuading, urging, or arguing;
- (7)** "Commission" means the Arkansas Motor Vehicle Commission created by this chapter;
- (8)** "Conversion" means a motor vehicle other than an exempted specialty vehicle that is substantially modified by a person, firm, or corporation other than the manufacturer or distributor of the chassis of the motor vehicle and that has not been the subject of a retail sale;
- (9)** "Distributor" means any person, resident or nonresident, who, in whole or in part, sells or distributes new motor vehicles to motor vehicle dealers or who maintains distributor representatives;
- (10)** "Distributor branch" means a branch or division office similarly maintained by a distributor for the same purposes a factory branch or division is maintained;
- (11)** "Distributor representative" means a representative similarly employed by a distributor or distributor branch;
- (12)** "Factory branch" means a branch or division office maintained by a person, firm, association, corporation, or trust who manufactures or assembles new motor vehicles for sale to distributors, to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives;
- (13)** "Factory representative" means a representative employed by a:
- (A)** Person, firm, association, corporation, or trust that manufactures or assembles new motor vehicles; or

- (B)** Factory branch, for the purpose of making or promoting the sale of its new motor vehicles or for supervising or contacting its dealers or prospective dealers;
- (14)** "Franchise" means one (1) or more contracts between a franchised dealer as franchisee and either a manufacturer or a distributor, importer, second-stage manufacturer, or converter as franchiser under which:
- (A)** The franchisee is granted the right to sell, service, or sell and service new motor vehicles manufactured or distributed by the franchiser;
 - (B)** The franchisee as an independent business is a component of the franchiser's distribution system;
 - (C)** The franchise is substantially associated with the franchiser's trademark, trade name, or commercial symbol;
 - (D)** The franchisee's business is substantially reliant on the franchiser for a continued supply of motor vehicles, parts, or accessories for the conduct of its business; or
 - (E)** **(i)** Any right, duty, or obligation granted or imposed by this chapter is affected.
(ii) "Franchise" includes a written communication from a franchiser to a franchisee by which a duty is imposed upon the franchisee;
- (15)** "Good faith" means the duty of each party to any franchise and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party;
- (16)** "Licensed location" means the address designated as the primary business address of the motor vehicle dealer on the application submitted for approval of licensure;
- (17)** "Line make of a motor vehicle" means a group or series of motor vehicles that have the same brand identification or brand name, based upon the manufacturer's trademark, trade name, or logo.
- (18)** "Low speed vehicle" means a motor vehicle:
- (A)** This is a four (4) wheeled;
 - (B)** Whose speed attainable in one (1) mile is more than twenty miles per hour (20 mph) and not more than twenty-five miles per hour (25 m.p.h.) on a paved level surface; and
 - (C)** With a gross vehicle weight of less than three thousand pound (3,000 lbs.).
- (19)** "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, that manufactures or assembles new motor vehicles;
- (20)** "Motor vehicle" means a self-propelled vehicle having two (2) or more wheels that has as its primary purpose the transportation of a person, including without limitation all-terrain vehicles, automobiles, trucks, motorcycles, motor-driven cycles, motor scooters, and

low speed vehicles;

(21) (A) (i) "Motor vehicle dealer" means a person that is:

(a) Engaged in the business of selling, offering to sell, soliciting, or advertising the sale of servicing or repairing motor vehicles under a manufacturer's warranty; and

(b) Located at an established and permanent place of business under a franchise, sales and service agreement, or a bona fide contract in effect with a manufacturer or distributor.

(ii) "Motor vehicle dealer" includes any person engaged in the business of selling, offering to sell, soliciting, or advertising the sale, regardless of the medium used, of commercial buses, school buses, or other multi-passenger motor vehicles, or possessing them for the purpose of resale.

(B) "Motor vehicle dealer" does not include:

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

(ii) Public officers while performing their duties as officers;

(iii) Employees of persons, corporations, or associations enumerated in subdivision (19)(B)(i) of this section when engaged in the specific performance of their duties as employees;

(iv) Specialty vehicle dealers;

(v) Financial institutions engaged in the leasing of motor vehicles; or

(vi) Used motor vehicle dealers licensed by the state under § 23-112-601 et. seq.;

(22) "Motor vehicle lessor" means any person not excluded by subdivision (19) of this section engaged in the motor vehicle leasing or rental business;

(23) "Motor vehicle salesperson" means any person who:

(A) Is employed as a salesperson by a motor vehicle dealer whose duties include the selling or offering for sale of motor vehicles;

(B) For compensation of any kind, acts as a salesperson, agent, or representative of a motor vehicle dealer;

(C) Attempts to or in fact negotiates a sale of a motor vehicle owned partially or entirely by a motor vehicle dealer; and

(D) Uses the financial resources, line of credit, or floor plan of a motor vehicle dealer to purchase, sell, or exchange any interest in a motor vehicle;

(24) "New motor vehicle" means any motor vehicle, the legal title to which has never been

transferred by a manufacturer, distributor, or franchised new motor vehicle dealer to an ultimate purchaser;

(25) "Off premises" means a location other than the address designated as the licensed location;

(26) "Person" means and includes, individually and collectively, individuals, firms, partnerships, co-partnerships, associations, corporations, trusts, or any other form of business enterprise, or any legal entity;

(27) (A) "Relevant market area" means the area within a radius surrounding an existing dealer or the area of responsibility defined in the franchise and on file in the commission office, whichever is greater.

(B) (i) For all licensed new motor vehicle dealers, excluding motorcycles, motorized cycles, and motor-driven all-terrain vehicles, which include two-wheeled, three-wheeled, four-wheeled, six-wheeled, or eight-wheeled motorcycles, motorized cycles, and motor-driven all-terrain vehicles, the relevant market area shall be a radius of twenty (20) miles.

(ii) However, when a manufacturer is seeking to establish an additional new motor vehicle dealer, the relevant market area shall in all instances be the area within a radius of ten (10) miles around an existing dealer.

(C) For all licensed new motor vehicle dealers of motorcycles, motorized cycles, and motor-driven all-terrain vehicles, which include two-wheeled, three-wheeled, four-wheeled, six-wheeled, or eight-wheeled motorcycles, motorized cycles, and motor-driven all-terrain vehicles, the relevant market area shall in all instances be the area within a radius of thirty (30) miles around an existing dealer or the area of responsibility defined in the franchise and on file in the commission office, whichever is greater;

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

(29) "Second-stage manufacturer" or "converter" means a person, firm, or corporation that, prior to retail sale of a motor vehicle:

(A) Assembles, installs, or affixes a body, cab, or special equipment to a chassis; or

(B) Substantially adds to, subtracts from, or modifies a previously assembled or manufactured motor vehicle;

(30) (A) "Specialty vehicle" means a motor vehicle manufactured by a second-stage manufacturer by purchasing motor vehicle components, for example, frame and drive train, and completing the manufacture of finished motor vehicles for the purpose of resale, with the primary manufacturer warranty unimpaired, to a limited commercial market rather than the consuming public.

(B) "Specialty vehicles" includes garbage trucks, ambulances, fire trucks, limousines, hearses, and other similar limited-purpose vehicles as the commission may by

rule provide;

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

(32) (A) "Ultimate purchaser" means, with respect to any new motor vehicle, the first person, other than a motor vehicle dealer purchasing in his or her capacity as a dealer, who in good faith purchases the new motor vehicle for purposes other than resale.

(B) "Ultimate purchaser" shall not include a person who purchases a vehicle for purposes of altering or remanufacturing the motor vehicle for future resale;

(33) (A) "Used motor vehicle" means a motor vehicle:

(i) For which title has been sold, bargained, exchanged, given away, or transferred from the person or corporation who first took ownership from the manufacturer, distributor, dealer, or agents thereof; or

(ii) So used as to have become what is commonly known as a "second hand motor vehicle" or a "previously owned motor vehicle".

(B) A new motor vehicle shall not be considered a used motor vehicle unless the motor vehicle has been:

(i) Placed in actual operation; and

(ii) Not held for resale by an owner that has:

(a) Been granted a certificate of title; and

(b) Registered the motor vehicle under the Uniform Motor Vehicle Administration, Certificate of Title, and Antitheft Act, § 27-14-101 et seq.;

(34) "Used motor vehicle dealer" means any person, wholesaler, or auto auctioneer who, for a commission or with the intent to make a profit or gain of money or other thing of value:

(A) Sells, exchanges, rents, or leases with the option to purchase or own, or attempts to negotiate a sale or exchange of an interest in any used motor vehicle; or

(B) Is wholly or in part in the business of buying, selling, trading, or exchanging used motor vehicles, whether or not the used motor vehicles are owned by the person;

(35) (A) "Wholesaler" means any person, resident or nonresident, not excluded by subdivision (19) of this section, who, in whole or in part, sells used motor vehicles to motor vehicle dealers or purchases used vehicles for the purpose of resale.

(B) However, motor vehicle dealers who, incidental to their primary business, sell motor vehicles to other dealers are not considered wholesalers because of the

(36) "Stop-sale order" or "do-not-drive order" means a notification issued by a manufacturer to the manufacturer's franchised new motor vehicle dealers stating that certain used motor vehicles in inventory shall not be sold or leased, at either retail or wholesale prices, due to a:

(A) Federal safety recall for a defect or noncompliance;

Or

(B) Federal emissions recall.

HISTORY: Acts 1975, No. 388, § 3; 1985, No. 1032, § 1; 1985, No. 1058, § 1; A.S.A. 1947, § 75-2303; Acts 1987, No. 620, § 1; 1987, No. 645, §§ 1, 2; 1989, No. 65, §§ 1-3; 1989, No. 509, § 1; 1991, No. 411, § 3; 1991, No. 890, §§ 1-3; 1993, No. 383, § 5; 1997, No. 1154, §§ 3-7; 1999, No. 1042, § 1; 2001, No. 1053, § 1; 2003, No. 1098, §§ 1, 2; 2009, No. 756, §§ 1-5; 2011, No. 1005, §§ 1-3; 2013, No. 561, §§ 1, 2; 2013, No. 1043, §§ 1, 2; 2015, No. 1055, §§ 1, 2; 2015, No. 1164, § 7.

23-112-104. Injunction.

(a) The Arkansas Motor Vehicle Commission shall be entitled to seek an injunction upon affidavit in the circuit court for the county in which the commission's office is located to prevent any person, firm, partnership, association, corporation, or legal entity from violating any provision of this chapter or any rule promulgated by the commission.

(b) The commission shall not be required to execute or give bond for costs, indemnity, or stay or to give security as a condition to the issuance of a restraining order or injunction, either temporary or permanent.

HISTORY: Acts 1977, No. 838, § 1; A.S.A. 1947, § 75-2312; Acts 1997, No. 1154, § 8.

23-112-105. Civil damages.

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

(b) If a motor vehicle dealer prevails in an action against a manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division under any provision of this chapter, the motor vehicle dealer shall also have a cause of action against the manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division for attorney's fees, if none have been awarded in an earlier administrative hearing.

HISTORY: Acts 1975, No. 388, § 9; A.S.A. 1947, § 75-2309; Acts 1989, No. 678, § 3; 2011, No. 1005, § 4; 2013, No. 1043, § 3.

23-112-106. Enforcement.

(a) The Arkansas Motor Vehicle Commission may enter orders that direct and command compliance with this chapter and rules under this chapter if any of the following conditions have been met:

(1) The commission has conducted a hearing within sixty (60) days on the matter;

(2) The commission has made written findings that the public interest and welfare require the person or entity against whom the commission is acting to take the specified action; or

(3) The commission finds that the current civil or administrative penalties are insufficient.

(b) The commission may enforce its findings and conclusions upon entry of an order under subsection (a) of this section.

HISTORY: Acts 2003 (2nd Ex. Sess.), No. 62, § 1.

23-112-107. Motor vehicle event data recorder -- Data ownership.

(a) As used in this section:

(1) "Authorized representative" means a person who is the attorney-in-fact for an owner or a person who has been appointed the administrator or personal representative of the estate of the owner;

(2) "Motor vehicle event data recorder" means a factory-installed feature in a motor vehicle that does one (1) or more of the following:

(A) Records, stores, transmits, or dispenses any of the following information for the purpose of retrieval after a crash:

(i) Vehicle speed;

(ii) Vehicle direction;

(iii) Vehicle location;

(iv) Steering performance; or

(v) Seat belt restraint status;

(B) Has the capacity to transmit information concerning a crash in which the motor vehicle has been involved to a central communications system when a crash occurs; or

(C) Includes a sensing and diagnostic module, restraint control module, electronic throttle control, or other similar component; and

(3) "Owner" means a person or entity:

(A) In whose name a motor vehicle is registered or titled;

(B) Who leases a motor vehicle for at least three (3) months;

(C) Who is entitled to possession of the motor vehicle as the purchaser under a security agreement; or

(D) Who is the authorized representative of the owner.

(b) At the time of a new vehicle purchase by a consumer from a dealership, an owner of a motor vehicle shall be given written notice by the seller or manufacturer that includes the following:

- (1)** The presence of the motor vehicle event data recorder in the motor vehicle;
- (2)** The type of motor vehicle event data recorder in the motor vehicle; and
- (3)** The type of data that is recorded, stored, or transmitted on the motor vehicle event data recorder.

(c) Except as specifically provided under subsections (d) and (f)-(I) of this section, the data on a motor vehicle event data recorder:

- (1)** Is private;
- (2)** Is exclusively owned by the owner of the motor vehicle; and
- (3)** Shall not be retrieved or used by another person or entity.

(d) (1) If a motor vehicle is owned by one (1) owner, then the owner of a motor vehicle may provide written consent in the form of a release signed by the owner that authorizes a person or entity to retrieve or use the data.

(2) If a motor vehicle is owned by more than one (1) person or entity and if all owners agree to release the data, then all owners must consent in writing by signing a release to authorize a person or entity to retrieve or use the data.

(3) A release to a person or entity under this subsection shall be limited to permission for data collection and compilation only and shall not authorize the release of information that identifies the owner of the vehicle.

(e) (1) (A) If a motor vehicle is equipped with a motor vehicle event data recorder and is involved in an accident in Arkansas, the owner of the motor vehicle at the time that the data is created shall own and retain exclusive ownership rights to the data.

(B) The ownership of the data shall not pass to a lienholder or to an insurer because the lienholder or insurer succeeds in ownership to the vehicle as a result of the accident.

(2) The data shall not be used by a lienholder or an insurer for any reason without a written consent in the form of a release signed by the owner of the motor vehicle at the time of the accident that authorizes the lienholder or insurer to retrieve or use the data.

(3) A lienholder or insurer shall not make the owner's consent to the retrieval or use of the data conditioned upon the payment or settlement of an obligation or claim. However, the insured is required to comply with all policy provisions, including any provision that requires the insured to cooperate with the insurer.

(4) An insurer or lessor of a motor vehicle shall not require an owner to provide written permission for the access or retrieval of information from a motor vehicle event data recorder as a condition of the policy or lease.

(f) Except as specifically provided under subsections (d) and (g)-(i) of this section, the data from a motor vehicle event data recorder shall only be produced without the consent of the owner at the time of the accident if:

(1) A court of competent jurisdiction in Arkansas orders the production of the data;

(2) A law enforcement officer obtains the data based on probable cause of an offense under the laws of the State of Arkansas; or

(3) A law enforcement officer, a firefighter, or an emergency medical services provider obtains the data in the course of responding to or investigating an emergency involving physical injury or the risk of physical injury to any person.

(g) The Arkansas State Highway and Transportation Department may retrieve data from a motor vehicle event data recorder if the data is used for the following purposes:

(1) Preclearing weigh stations;

(2) Automating driver records of duty status as authorized by the United States Department of Transportation;

(3) Replacing handwritten reports for any fuel tax reporting or other mileage reporting purpose; or

(4) Complying with a state or federal law.

(h) To protect the public health, welfare, and safety, the following exceptions shall be allowed regarding the retrieval of data from a motor vehicle event data recorder:

(1) To determine the need or to facilitate emergency medical care for the driver or passenger of a motor vehicle that is involved in a motor vehicle crash or other emergency, including obtaining data from a company that provides subscription services to the owners of motor vehicles for in-vehicle safety and security communications systems;

(2) To facilitate medical research of the human body's reaction to motor vehicle crashes if:

(A) The identity of the owner or driver is not disclosed in connection with the retrieved data; and

(B) The last four (4) digits of the vehicle identification number are not disclosed; or

(3) To diagnose, service, or repair a motor vehicle.

(i) Notwithstanding any other provision of this section, the use of data from a motor vehicle event data recorder shall not be permitted into evidence in a civil or criminal matter pending before a court in the State of Arkansas unless it is shown to be relevant and reliable pursuant to the Arkansas Rules of Evidence.

(j) (1) If a motor vehicle is equipped with a motor vehicle event data recorder that is capable of recording, storing, transmitting, or dispensing information as described in this section and that capability is part of a subscription service, then the information that may be recorded, stored, transmitted, or dispensed shall be disclosed in the subscription agreement.

(2) Subsections (c), (d), and (f)-(h) of this section shall not apply to subscription services that meet the requirements of this subsection.

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

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

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

HISTORY: Acts 2005, No. 1419, § 1; 2009, No. 148, § 1; 2011, No. 1005, §§ 5, 6.

SUBCHAPTER 2.

MOTOR VEHICLE COMMISSION

SECTIONS.

23-112-201. Arkansas Motor Vehicle Commission-Creation-Members-Officers.

23-112-202. Proceedings -- Bond.

23-112-203. Executive director -- Employees -- Office.

23-112-204. Rules and regulations.

23-112-205. Disposition of funds.

23-112-206. Repealed.

23-112-201. Arkansas Motor Vehicle Commission -- Creation -- Members -- Officers.

(a) There is created the Arkansas Motor Vehicle Commission, hereinafter referred to as the commission, to be composed of nine (9) members to be appointed by the Governor for terms of seven (7) years, subject to confirmation by the Senate.

(b) (1) One (1) commissioner shall be appointed from each of the four (4) congressional districts of the state as constituted July 1, 1975, and five (5) members of the commission, including the consumer representative and the representative of the elderly, shall be appointed from the state at large.

(2) (A) Four (4) members of the commission shall be licensees or shall be qualified as licensees under the provisions of this chapter at the time of their appointment.

(B) Five (5) members of the commission shall be appointed from the public at large, including the consumer representative and the representative of the elderly.

(C) (i) No more than four (4) members of the commission shall at any time:

(a) Be licensees under this chapter;

(b) Have any financial interest in or be an officer or an employee of a licensee under this chapter; or

(c) Be employed by or own a business or organization that directly or indirectly profits from the sale of new motor vehicles.

(ii) At least one (1) of the members shall be licensed as a dealer of franchise motorcycles.

(3) (A) The consumer representative and the representative of the elderly shall not

be actively engaged in or retired from the businesses regulated by this chapter.

(B) The two (2) positions may not be held by the same person.

(C) Both shall be full voting members.

(D) The representative of the elderly shall:

(i) Be sixty (60) years of age or older;

(ii) Not be employed by or own any business or organization that directly or indirectly profits from the sale of new motor vehicles; and

(iii) Only have experiences with the sale of a new motor vehicle as a consumer.

(E) The consumer representative shall:

(i) Not be employed by or own any business or organization that directly or indirectly profits from the sale of new motor vehicles; and

(ii) Only have experiences with the sale of a new motor vehicle as a consumer.

(4) Each of the members appointed shall be a citizen of the United States, a resident of the State of Arkansas, and a qualified elector of the jurisdiction from which appointed, and each shall be of good moral character.

(c) In the event a vacancy on the commission occurs due to death, resignation, or other reason, the vacancy shall be filled for the unexpired portion of the term by appointment of the Governor, subject to confirmation by the Senate, of a person meeting the same qualifications required for the initial appointment.

(d) Each commission member shall serve until his or her successor is appointed and qualified.

(e) The commission shall select by majority vote of its members one (1) of its members as a chair, one (1) as a vice chair, and one (1) as a secretary.

(f) (1) The Chair of the Arkansas Motor Vehicle Commission and members of the commission may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(2) The chair shall require itemized statements of all reimbursable expenses and shall audit the statements or cause them to be audited before approving them for payment.

HISTORY: Acts 1975, No. 388, § 4; 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; 1985, No. 747, § 1; 1985, No. 1032, § 2; 1985, No. 1058, § 2; A.S.A. 1947, §§ 6-617 -- 6-619, 6-623 -- 6-626, 75-2304; Acts 1989 (1st Ex. Sess.), No. 169, § 6; 1993, No. 383, § 1; 1997, No. 250, § 227; 2005, No. 2311, § 3.

23-112-202. Proceedings -- Bond.

(a) The Arkansas Motor Vehicle Commission shall meet at Little Rock and complete its organization immediately after the entire membership thereof has been appointed and has

qualified.

(b) Before entering upon the discharge of the duties of his or her office, the Chair of the Arkansas Motor Vehicle Commission and each member of the commission shall take and subscribe to the oath of office prescribed by the Constitution of Arkansas and shall file this oath in the office of the Secretary of State.

(c) (1) The commission shall purchase either a blanket position honesty or faithful performance bond from some surety company authorized to do business in this state. This bond shall be in the penal sum of ten thousand dollars (\$10,000), made payable to the State of Arkansas, conditioned for the honest and faithful performance of the duties of the chair and each member of the commission, the director of the commission, and all other employees of the commission, the bond to be approved by the Governor and filed in the office of the Secretary of State.

(2) The commission shall keep the bond in force at all times from and after the date the commission is organized.

(d) A majority of the commission shall constitute a quorum for the transaction of any business.

(e) The commission shall adopt and use a common seal for the authentication of its records and orders.

(f) The commission shall hold all of its regular monthly meetings in its office at Little Rock, but upon approval of a majority of its members, may hold special meetings and the hearings provided for under §§ 23-112-501 -- 23-112-509 at any time and place within the State of Arkansas.

HISTORY: Acts 1975, No. 388, § 4; A.S.A. 1947, § 75-2304; Acts 1993, No. 383, § 2; 1995, No. 568, § 2.

23-112-203. Executive director -- Employees -- Office.

(a) (1) The Arkansas Motor Vehicle Commission shall appoint a qualified person to serve as director thereof, to serve at the pleasure of the commission, and shall fix his or her salary and shall define and prescribe the duties.

(2) The Director of the Arkansas Motor Vehicle Commission shall be in charge of the commission's office and shall devote such time to the duties thereof as may be necessary.

(3) The duties shall include, but shall not be limited to, the collection of all fees and charges under the provisions of this chapter, keeping a record of all proceedings of the commission, and keeping an accurate account of all moneys received and disbursed by the commission, all of which records shall be considered as public records.

(b) The commission may employ such clerical and professional help and incur such expenses as may be reasonably necessary for the proper discharge of its duties under this chapter.

(c) Except as provided in this chapter, the commission shall maintain its office and transact its business at Little Rock.

HISTORY: Acts 1975, No. 388, § 4; A.S.A. 1947, § 75-2304; Acts 1995, No. 568, § 3.

23-112-204. Rules and regulations.

The Arkansas Motor Vehicle Commission shall have power to prescribe, issue, amend, and rescind, pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., such reasonable rules as may be reasonably necessary or appropriate to carry out the provisions of this chapter.

HISTORY: Acts 1975, No. 388, § 4; 1985, No. 1032, § 2; 1985, No. 1058, § 2; A.S.A. 1947, § 75-2304.

23-112-205. Disposition of funds.

(a) All funds received by the Arkansas Motor Vehicle Commission shall be deposited into the State Treasury as special revenues to the credit of a special fund to be known as the "Motor Vehicle Commission Fund".

(b) All expenses incurred in the organization, maintenance, operation, and motor vehicle education and training of the commission shall be paid from the special fund, and the expenditure of all funds shall be subject to the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., the Arkansas Procurement Law, § 19-11-201 et seq., and other applicable fiscal laws.

(c) The receipts and disbursements of the commission shall be audited annually by the Legislative Auditor.

HISTORY: Acts 1975, No. 388, § 4; A.S.A. 1947, § 75-2304; Acts 2007, No. 530, § 6.

23-112-206. Fund transfer -- Motor vehicle education and training.-Repealed

HISTORY: Act 2013, No. 561, § 3.

SUBCHAPTER 3.

LICENSE AND RULE

SECTIONS.

- 23-112-301. License required.**
 - 23-112-302. Application for license.**
 - 23-112-303. Application fees.**
 - 23-112-304. Issuance of License-Change of Location-Change of business or corporate name, structure, or DBA Name-Dealers, manufacturers, distributors, etc.**
 - 23-112-305. Display of License-Change of Employer-Factory representative and distributor representative.**
 - 23-112-306. Display of license -- Change of employer -- Salesperson.**
 - 23-112-307. Expiration of license.**
 - 23-112-308. Denial, revocation, and suspension.**
 - 23-112-309. Monetary penalty in lieu of suspension or revocation of license.**
 - 23-112-310. Delivery, preparation, and warranty obligations.**
 - 23-112-311. Addition or relocation of new motor vehicle dealer.**
 - 23-112-312. License reciprocity with other states.**
 - 23-112-313. Warranty agreements.**
 - 23-112-314. Civil penalty.**
 - 23-112-315. [Repealed.]**
 - 23-112-316. Delivery prior to sale -- Disclosures.**
 - 23-112-317. Motor vehicle dealer service and handling fees.**
 - 23-112-318. Negative equity financing and disclosures permitted.**
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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 provisions of this chapter; and

(2) For any person to engage in business as, 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 therefore 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 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 lessors 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 to 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 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, new low speed vehicle dealers, and motor vehicle lessors shall 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, § 27-19-101 et 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 of 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 licensed 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 Director of the Arkansas Motor Vehicle Commission or a commission representative acting in an official capacity during reasonable business hours and upon execution of a subpoena.

(g) (1) The licensee applying for a branch license shall not utilize any portion of a 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; 2013, No. 561 § 4.

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 representative 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 the 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 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 even the 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 follow 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 regulation.

(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.

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

(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) (A)** A manufacturer, distributor, distributor branch or division, or factory or division branch shall pay a motor vehicle dealer for warranty work, as long as the work in question was properly performed in accordance with requirements of the manufacturer, distributor, distributor branch or division, or factory or division branch.

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; 2011, No. 1005, § 7; 2013, No. 1043 § 4; 2015, No. 1055, § 3.

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

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

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

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

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

(E) Whether the new motor vehicle dealers of the same line make in that relevant market area is 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

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

(2) 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 burden of proof is on the manufacturer or distributor to show it has good cause for granting the new franchise, except when an existing franchisee initiated the relocation.

(d) (1) The commission shall conduct the hearing and render its final determination within one hundred eighty (180) days after a protest is filed.

(2) 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; 2011, No. 1005, § 8.

23-112-312. License reciprocity with other states.

(a) The Arkansas Motor Vehicle Commission may enter into reciprocal agreements with 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 the 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 motor vehicle dealer for like service to retail customers for no warranty service and repairs, provided the rate is comparable to the rate of other same line make dealers in an economically similar 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, including without limitation clerical errors that occur as a result of a manufacturer or distributor's prior approval process.

(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 the 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 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) As used in this section, "routine maintenance" means motor vehicle upkeep not covered under the manufacturer's warranty, including without limitation tire rotations and the replacement of:

- (1)** Tires;
- (2)** Fluids;
- (3)** Filters;
- (4)** Batteries;
- (5)** Belts;
- (6)** Windshield wipers; and
- (7)** Brake pads.

HISTORY: Acts 1997, No. 1154, § 2; 1999, No. 1042, § 7; 2007, No. 746, §§ 1, 2; 2009, No. 756, § 12; 2011, No. 1005, § 9; 2013, No. 1043, § 5; 2015, No. 1055, §§ 4, 5.

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 regulation 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.]

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;

(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 not to 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: Acts 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 a 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 a 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.

(3) If a service and handling fee is charged under this section, the service and handling fee is not required to be charged to all fleet sales.

(4) If a service and handling fee is charged under this section:

(A) A motor vehicle dealer may charge a purchaser of a motor vehicle a different service and handling fee if the purchaser utilizes:

(i) A manufacturer's sales plan or program; or

(ii) Financing through a finance company that caps a service and handling fee;

(B) The service and handling fee charged under this section shall be consistent with the service and handling fee authorized under:

(i) The manufacturer's sales plan or program;

(ii) The finance company policy; or

(iii) The laws of a foreign state with subject-matter jurisdiction.

(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; 2013, No. 561, § 5; 2015, No. 1055, § 6..

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.

23-112-319. Reimbursement claim by motor vehicle dealer.

(A) (1) A manufacturer shall compensate its new motor vehicle dealers for all labor and parts required by the manufacturer to perform recall repairs.

(2) The compensation for recall repairs required under subdivision of this section shall be reasonable.

(3) If recall parts or a remedy is not reasonably available to perform a recall service or repair on a used motor vehicle held for a sale by a dealer authorized to sell and service new motor vehicles of the same line make of a motor vehicle within thirty (30) days of the manufacturer's issuing the initial notice of recall, and the manufacturer has issued a stop-sale order or do-not-drive order on the used motor vehicle, the manufacturer shall compensate the dealer at a prorated rate of at least one and twenty-five-hundredths percent (1.25%) of the value of the used motor vehicle per month beginning thirty (30) days from the date on which the stop-sale order or do-not-drive order was provided to the dealer until the earlier of:

(A) The date the recall parts or a remedy is made available; or

(B) The date the dealer sells, trades, or disposes of the affected used motor vehicle.

(B) This section applies only to a:

(1) Used motor vehicle subject to a safety or emissions recall in accordance with federal law and regulations and a stop-sale order or do-not-drive order has been issued and repair parts or a remedy remains unavailable for thirty (30) days or longer; and

(2) New motor vehicle dealer having an affected used motor vehicle;

(a) In inventory for sale at the time the stop-sale order or do-not-drive order was issued;

(b) For sale as a used motor vehicle as a consumer trade-in, incident to the purchase of a new motor vehicle from the dealer after the stop-sale order or do-not-drive order was issued; or

(c) For sale that is a line make of a used motor vehicle the dealer is franchised to sell or on which the dealer is authorized to perform recall repairs.

(1) It is a violation of this section for a manufacturer to reduce the amount of compensation otherwise owed to a new motor vehicle dealer because the new

motor vehicle dealer has submitted a claim for reimbursement under this section, including without limitation compensation owed through:

- (A) A chargeback;
 - (B) Removal of the dealer from an incentive program; or
 - (C) A reduction in the amount owed under an incentive program.
- (2) However, subdivision (c) (1) of this section does not apply to a reduction in the amount of compensation owed to a new motor vehicle dealer by a manufacturer if the reduction is applied uniformly to all new motor vehicle dealers of the same line make in the state.
- (d) A reimbursement claim made by a new motor vehicle dealer for a recall remedy or repair or for compensation when no part or repair is reasonably available and the motor vehicle is subject to a stop-sale order or do-not-drive order:
- (1) Is subject to the same limitations and requirements as a warranty reimbursement claim made under § 23-112-313; or
 - (2) May be compensated to a franchised dealer by a manufacturer under a national recall compensation program if the compensation under the program is equal to or greater than the compensation under subsection (a) of this section or the manufacturer and dealer otherwise agree to the amount of compensation.
- (e) A manufacturer may direct the manner and method in which a dealer demonstrates the inventory status of an affected used motor vehicle to determine eligibility for compensation under this section if the manner and method are not unduly burdensome to obtain.
- (f) This section does not require that a manufacturer provide total compensation to a dealer that exceeds the total average trade-in value of the used motor vehicle.
- (g) If a recall remedy for a used motor vehicle is available under federal law or federal regulation, a dealer may choose to be compensated under federal statute or under this section but may not combine the recall remedies.
- (h) The value of a used motor vehicle shall be the average trade-in value for used motor vehicles as indicated in an independent third-party guide for the year, make, and model of the affected used motor vehicle.

HISTORY: Acts 2007, No. 649, § 1.

SUBCHAPTER 4.

UNLAWFUL PRACTICES

SECTIONS.

23-112-401. [Repealed.]

23-112-402. Dealer and salesperson.

23-112-403. Manufacturers, distributors, second-stage manufacturers, importers, or converters. 23-112-304. Issuance of License-Change of location-Change of business or corporate name, structure, or DBA name-Dealers, manufacturers, distributors, etc.

23-112-404. Motor vehicle lessors.

23-112-405. [Repealed.]

23-112-406. Acting as broker.

23-112-407. [Repealed.]

23-112-401. [Repealed.]

23-112-402. Dealer and salesperson.

It shall be unlawful for a motor vehicle dealer or a motor vehicle salesperson:

- (1)** To require a purchaser of a motor vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, equipment, parts, or accessories not desired or requested by the purchaser. However, this prohibition shall not apply as to special features, appliances, equipment, parts, or accessories which are already installed on the car when received by the dealer;
- (2)** To represent and sell as a new motor vehicle any motor vehicle which has been used and operated for demonstration purposes or which is otherwise a used motor vehicle; or
- (3)** To resort to or use any false or misleading advertisement in connection with his or her business as a motor vehicle dealer or motor vehicle salesperson.

HISTORY: Acts 1975, No. 388, § 5; A.S.A. 1947, § 75-2305; Acts 2001, No. 1053, § 15.

23-112-403. Manufacturers, distributors, second-stage manufacturers, importers, or converters.

(a) It shall be unlawful:

(1) For a manufacturer, distributor, second-stage manufacturer, importer, converter, distributor branch or division, or factory branch or division, or an officer, agent, or other representative thereof, to coerce or attempt to coerce any motor vehicle dealer:

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

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

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

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

(E) To file for or to use a legal or "d/b/a" name or identification other than a name of choice by the dealer;

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

(A) (i) To refuse to deliver, in reasonable quantities and within a reasonable time after receipt of a dealer's order to any licensed motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new motor vehicles sold or distributed by the manufacturer, distributor, distributor branch or

division, or factory branch or division, any motor vehicles that are covered by the franchise or contract specifically publicly advertised by the manufacturer, distributor, distributor branch or division, or factory branch or division to be available for immediate delivery.

(ii) However, the failure to deliver any motor vehicle shall not be considered a violation of this chapter if the failure is due to forces of nature, work stoppages or delays due to strikes or labor difficulties, freight, embargoes, or other causes over which the manufacturer or distributor, or any agent thereof, has no control;

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

(a) To coerce or attempt to coerce a motor vehicle dealer to enter into an agreement with the manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative;

(b) To coerce or attempt to coerce a motor vehicle dealer to use a Manufacturer vehicle purchase add-on product or service; or

(c) To do an act prejudicial to the motor vehicle dealer by threatening to cancel a franchise or a contractual agreement existing between the manufacturer, distributor, distributor branch or division, or factory branch or division and the motor vehicle dealer.

(ii) However, good faith notices to any motor vehicle dealer of the dealer's violation of any terms or provisions of the franchise or contractual agreement shall not constitute a violation of this chapter;

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

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

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

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

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

(3) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against him or her that has not been discharged within sixty (60) days after the filing, is in default

under a security agreement in effect with the manufacturer or distributor, or is in receivership;

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

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

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

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

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

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

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

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

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

(ii) (a) The manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative thereof shall notify a motor vehicle dealer in writing and forward a copy of the notice to the Arkansas Motor Vehicle Commission of the termination or cancellation of the franchise or selling agreement of the dealer at least sixty (60) days before the effective date thereof, stating the specific grounds for the termination or cancellation.

(b) However, in the event that the commission finds that the franchise or selling agreement has been abandoned by the dealer, the commission, for good cause, may waive the sixty-day notice requirement and allow for the immediate termination of the franchise or selling agreement.

(iii) (a) The manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative thereof shall notify a motor vehicle dealer in writing and forward a copy of the notice to the commission at least sixty (60) days before the contractual term of its franchise or selling agreement expires that the franchise or selling agreement will not be renewed, stating the specific grounds for the nonrenewal in those cases in which there is no intention to renew it.

(b) In no event shall the contractual term of any franchise or selling agreement expire without the written consent of the motor vehicle dealer involved prior to the expiration of at least sixty (60) days following the written notice.

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

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

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

(v) (a) If the franchise agreement, sales and service agreement, or bona fide contract is terminated or cancelled, the terminating or canceling party shall notify the commission of the termination or cancellation of the franchise or selling agreement at least sixty (60) days before the effective date.

(b) For motor vehicles other than motor homes, this subdivision (a)(2)(C)(v) applies to both voluntary and involuntary termination or cancellation of the franchise or selling agreement.

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

(E) (i) To offer to sell or to sell any new motor vehicle to any motor vehicle dealer at a lower actual price therefore than the actual price charged to any other motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device, including, but not limited to, sales promotion plans or programs, which results in a lesser actual price.

(ii) However, the provisions of this subdivision (a)(2)(E) shall not apply:

(a) To sales to a motor vehicle dealer for resale to any unit of federal, state, or local government;

(b) To sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated, or used by the dealer in a driver education program; or

(c) So long as a manufacturer or distributor, or any agent thereof, offers to piggyback bid allowances to all motor vehicle dealers of the same line make at the same allowance for sales to a local government in that dealer's relevant market area.

(iii) Nothing contained in this subdivision (a)(2)(E) shall be construed to prevent the utilization of sales promotion plans or programs or the offering of volume discounts through new motor vehicle dealers, for fleet or volume purchasers, if the program is available to all new motor vehicle dealers from the same manufacturer in this state;

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

(G) (i) To offer to sell or to sell parts and accessories to any new motor vehicle dealer for use in his or her own business for the purpose of repairing or replacing the parts and accessories, or comparable parts and accessories, at a lower actual price than the actual price charged to any other new motor vehicle dealer for similar parts and accessories for use in its own business.

(ii) However, it is recognized that certain motor vehicle dealers operate and serve as wholesalers of parts and accessories to retail outlets. Therefore, nothing contained in this subdivision (a)(2)(G) shall be construed to prevent a manufacturer or distributor, or any agent thereof, from selling to a motor vehicle dealer who operates and serves as a wholesaler of parts and accessories such parts and accessories as may be ordered by the motor vehicle dealer for resale to retail outlets at a lower actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories;

(H) (i) To prevent or attempt to prevent by contract or otherwise any motor vehicle dealer from changing the capital structure of its dealership or the means by or through which it finances the operation of the dealership, provided that:

(a) The dealer at all times meets any capital standards agreed to between the dealership and the manufacturer or distributor; and

(b) The standards are deemed reasonable by the commission.

(ii) If the dealer of record requests consent from the manufacturer or distributor in writing on the form, if any, generally utilized or required by the manufacturer or distributor for such purposes and the manufacturer or distributor fails to respond in writing, giving or withholding consent, within sixty (60) days of receipt of the written request, consent is deemed to be given;

(I) (i) Notwithstanding the terms of any franchise agreement, to fail to give effect or to attempt to prevent any sale or transfer of a dealer, dealership, or franchise or interest therein, or management thereof, provided that the manufacturer or distributor has received sixty (60) days' written notice prior to the transfer or

sale, and unless:

(a) The transferee does not meet the criteria generally applied by the manufacturer in approving new motor vehicle dealers or agree to be bound by all the terms and conditions of the dealer agreement, and the manufacturer so advises its dealer within sixty (60) days of receipt of the notice; or

(b) It is shown to the commission after a hearing that the result of such a sale or transfer will be detrimental to the public or the representation of the manufacturer or distributor.

(ii) If the franchisee of record requests consent from the manufacturer or distributor in writing on the form, if any, generally utilized or required by the manufacturer or distributor for such purposes and the manufacturer or distributor fails to respond by giving or withholding consent in writing within sixty (60) days of receipt of the written request consent is deemed to be given;

(J) (i) Notwithstanding the terms of any franchise agreement, to prevent, attempt to prevent, or refuse to honor the succession to a dealership by any legal heir or devisee under the will of a dealer or under the laws of descent and distribution applicable to the decedent's estate, provided that the manufacturer or distributor has received sixty (60) days' written notice prior to the transfer or sale, and unless:

(a) The transferee does not meet the criteria generally applied by the manufacturer in approving new motor vehicle dealers or agree to be bound by all the terms and conditions of the dealer agreement, and the manufacturer so advises its dealer within thirty (30) days of receipt of the notice; or

(b) It is shown to the commission, after notice and hearing, that the result of such a succession will be detrimental to the public interest or to the representation of the manufacturer or distributor.

(ii) However, nothing in this subdivision (a)(2)(J) shall prevent a dealer, during his or her lifetime, from designating any person as his or her successor dealer by written instrument filed with the manufacturer or distributor.

(iii) If the dealer's successor, heir, or devisee requests consent from the manufacturer or distributor in writing on the form, if any, generally utilized or required by the manufacturer or distributor for such purposes and the manufacturer or distributor fails to respond by giving or withholding consent in writing, within thirty (30) days of receipt of the written request, consent is deemed to be given;

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

(i) The dealer cost plus any charges by the manufacturer, distributor, or a

representative for distribution, delivery, and taxes, less all allowances paid to the dealer by the manufacturer, distributor, or representative for new, unsold, undamaged and complete motor vehicles of current model year and one (1) year prior model year in the dealer's inventory;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(L) (i) To fail or refuse to offer its same line make franchised dealers all models manufactured for that line make.

(ii) No additional requirements over the requirements originally required to initially obtain a dealership may be required of existing franchised dealers to receive any model by that line make;

(M) (i) To offer to sell or to sell any motor vehicle to a consumer, except through a licensed new motor vehicle dealer holding a franchise, a sales and service agreement, or a bona fide contract for the line make covering the new motor vehicle or as may otherwise be provided in subdivision (a)(3) of this section.

(ii) This subdivision (a)(2)(M) does not apply to manufacturer sales of new motor vehicles to the federal government, charitable organizations, or employees of the manufacturer;

- (N)** To prohibit or require a dealer to enter into a franchise or sales agreement with third parties, regardless of the location of the dealership or proposed dealership;
- (O) (i)** To require, coerce, or attempt to coerce any franchisee in this state to refrain from or to terminate, cancel, or refuse to continue any franchise based upon participation by the franchisee in the management of, investment in, or the acquisition of a franchise for the sale of any other line of new motor vehicle or related products in the same or separate facilities as those of the franchiser.
- (ii)** This subdivision (a)(2)(O) does not apply unless:
- (a)** The franchisee maintains a reasonable line of credit for each make or line of new motor vehicle;
 - (b)** The franchisee remains in compliance with the franchise and any reasonable facilities requirement of the franchiser; and
 - (c)** No change is made in the principal management of the franchisee.
- (iii)** The reasonable facilities requirement shall not include any requirement that the franchisee establish or maintain exclusive facilities, personnel, or display space when such requirements would not otherwise be justified by reasonable business considerations.
- (iv) (a)** Before the addition of a line make to the dealership facilities, the franchisee must first request consent of the franchiser, if required by the franchise agreement.
- (b)** Any decision of the franchiser with regard to dualing of two (2) or more franchises shall be granted or denied within sixty (60) days after a written request from the new motor vehicle dealer. The franchiser's failure to respond timely to a dualing request shall be deemed to be approval of the franchisee's request;
- (P) (i)** To fail to continue in full force and operation a motor vehicle dealer franchise agreement, notwithstanding a change, in whole or in part, of an established plan or system of distribution or ownership of the manufacturer of the motor vehicles offered for sale under the franchise agreement.
- (ii)** The appointment of a new importer or distributor for motor vehicles offered for sale under a franchise agreement described in subdivision (a)(2)(P)(i) of this section shall be deemed to be a change of an established plan or system of distribution;
- (Q) (i) (a)** Unless the manufacturer's, distributor's, second-stage manufacturer's, importer's, converter's, manufacturer's branch or division, or distributor's branch or division requirements are reasonable and justifiable in light of the current and reasonably foreseeable projections of economic conditions, financial expectations, and the motor vehicle dealer's market and notwithstanding the terms of a franchise agreement or sales and service agreement, to require, coerce, or attempt to coerce any new motor vehicle dealer by program, policy, standard, or otherwise to:

- (1) Change location of the dealership;
- (2) Make any substantial changes, alterations, or remodeling to a motor vehicle dealer's sales or service facilities; or
- (3) Replace a motor vehicle dealer's sales or service facilities.

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

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

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

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

(d) This subdivision does not affect any contract between a licensee and any of its dealers regarding relocation, expansion, improvement, remodeling, renovation or alteration which exists on July 27, 2011.

- (R) To unreasonably withhold approval for a new motor vehicle dealer to purchase substantially similar goods and services related to facility changes, alterations, or remodels from vendors the dealer chooses.
- (S) To require as a prerequisite to receiving a model or a series of vehicles a dealer to:

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

(ii) Purchase unreasonable advertising displays, training, tools, or other materials;

(iii) Establish exclusive facilities; or

(iv) Establish dedicated personnel.

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

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

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

(1) Voluntary agreements in which separate and valuable consideration has been offered and accepted; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) To own, operate, or control any motor vehicle dealer, provided that this subdivision (a)(3)(A) shall not be construed to prohibit the following:

(i) The operation by a manufacturer or distributor of a motor vehicle dealer for a temporary period, not to exceed one (1) year, during the transition from one (1) owner or operator to another, provided that the Commission may extend the one (1) year period if the transition is not complete;

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

(iii) The ownership, operation, or control of a motor vehicle dealer by a manufacturer, if:

(a) The manufacturer has been engaged in the retail sale of new motor vehicles at the location for a continuous period of five (5) years prior to January 1, 1999; and

(b) The commission determines after a hearing on the matter at the request of any party that there is no prospective new motor vehicle dealer available to own and operate the franchise in a manner consistent with the public interest; or

(v) The manufacturer is:

(a) A manufacturer of specialty vehicles, such as unassembled kits, and does not sell more than ten (10) assembled vehicles annually; or

(b) A custom motorcycle builder and does not sell more than five (5) assembled motorcycles annually; or

(4) (A) For a manufacturer to unfairly compete with a motor vehicle dealer of the same line make, operating under a franchise, in the relevant market area.

(B) "Unfairly compete", as used in this section, includes, but is not limited to:

(i) Internet solicitations; and

(ii) Preferential treatment of manufacturer-operated dealerships in the supply of inventory, both as to quantity and availability of the latest models of that line make, supply of parts and payments for warranty and recall claims.

(C) Ownership, operation, or control of a new motor vehicle dealer by a manufacturer under the conditions set forth in subdivisions (a)(3)(A)(i)-(iv) of this section shall not constitute a violation of this subdivision (a)(4).

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

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

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

(b) (1) Notwithstanding the terms of any franchise except a settlement agreement voluntarily entered into, it shall be a violation for a motor vehicle franchiser to require a motor vehicle franchisee to agree to a term or condition in any franchise as a condition of the offer, grant, or renewal of the franchise or the approval of the sale, acquisition, or transfer of the assets of a new motor vehicle dealer, which:

(A) Requires the motor vehicle franchisee to waive trial by jury in actions involving the motor vehicle franchiser;

(B) Specifies the jurisdictions, venues, or tribunal in which disputes arising with

respect to the franchise, lease, or agreement shall or shall not be submitted for resolution, or otherwise prohibits a motor vehicle franchisee from bringing an action in a particular forum otherwise available under federal or state law;

(C) Requires a new motor vehicle dealer to pay the attorney's fees of a manufacturer, importer, second-stage manufacturer, converter, or distributor;

(D) Requires the motor vehicle franchisee to waive any remedy or defense available to the franchisee or other provision protecting the interests of the franchisee under this chapter; or

(E) (i) Requires that disputes between the motor vehicle franchiser and motor vehicle franchisee be submitted to binding arbitration or to any other binding alternative dispute resolution procedure provided by the franchiser.

(ii) However, any franchise, lease, or agreement may authorize the submission of a dispute to arbitration or to binding alternative dispute resolution if the motor vehicle franchiser and motor vehicle franchisee voluntarily agree to submit the dispute to binding arbitration or binding alternative dispute resolution after the dispute arises.

(iii) If the franchiser and franchisee agree to binding arbitration, the arbitrator shall apply the provisions of this chapter in resolving the pertinent controversy and shall provide the parties to a contract with a written explanation of the factual and legal basis for the award. Either party may appeal to the commission a decision of an arbitrator on the ground that the arbitrator failed to apply this chapter.

(2) For the purposes of this section, it shall be presumed that a motor vehicle franchisee has been required to agree to a term or condition in violation of this section as a condition of the offer, grant, or renewal of a franchise or of any lease or agreement ancillary or collateral to a franchise, if the motor vehicle franchisee, at the time of the offer, grant, or renewal of the franchise, lease, or agreement or the approval of the sale, acquisition, or transfer of the assets of a new motor vehicle dealer, is not offered the option of an identical franchise, lease, or agreement without the terms or conditions prescribed by this section.

(c) Concerning any sale of a motor vehicle or vehicles to the State of Arkansas or to the several counties or municipalities thereof or to any other political subdivision thereof, no manufacturer or distributor shall offer any discounts, refunds, or any other similar type inducements to any dealer without making the same offers to all other of its dealers within the state. If the inducements are made, the manufacturer or distributor shall give simultaneous notice thereof to all of its dealers within the state.

HISTORY: Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1987, No. 663, § 1; 1989, No. 65, §§ 4, 5; 1991, No. 411, § 4; 1991, No. 730, § 1; 1997, No. 1154, § 13; 1999, No. 1042, § 9; 2001, No. 1053, § 16; 2007, No. 746, §§ 3, 4; 2009, No. 756, §§ 13-15; 2011, No. 800, § 1; 2011, No. 1005, §§ 10-16; 2013, No. 561, § 6; 2013, No. 1043 §§ 6-8; 2013, No. 1133 §§ 9, 10; 2015, No. 1055, § 7.

23-112-404. Motor vehicle lessors.

It is unlawful for a motor vehicle lessor or any agent, employee, or representative thereof:

(1) To represent and to offer for sale or to sell as a new motor vehicle a motor vehicle that has been used or was intended to be used and operated for leasing or rental purposes or which is otherwise a used motor vehicle;

(2) To resort to, use, or employ any false, fraudulent, deceptive, or misleading advertising or representations in connection with the business of leasing or renting motor vehicles; or

(3) To sell or offer to sell a motor vehicle from an unlicensed location.

HISTORY: Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 2009, No. 756, § 16.

23-112-405. [Repealed.]

23-112-406. Acting as broker.

(a) Notwithstanding any other statute, a person may not act as, offer to act as, or hold himself or herself out to be a broker of new motor vehicles.

(b) (1) To effectuate this chapter, "arranges or offers to arrange a transaction" means soliciting or referring buyers for new motor vehicles for a fee, commission, or other valuable consideration.

(2) "Arranges or offers to arrange a transaction" does not include advertising so long as the person's business primarily includes the business of broadcasting, printing, publishing, or advertising for others in their own names.

(c) Brokering New Motor Vehicles.

(1) A buyer referral service, program, plan, club, or any other entity that accepts fees for arranging a transaction involving the sale of a new motor vehicle is a broker. The payment of a fee to such an entity is aiding and abetting brokering. However, any service, plan, program, club, or other entity that forwards referrals to dealerships may lawfully operate if the following conditions are met:

(A) There are no exclusive market areas offered to dealers by the program and all dealers are allowed to participate on equal terms;

(B) (i) Participation by dealers in the program is not restricted by conditions such as limiting the number of franchise lines or discrimination by size of dealership or location.

(ii) Total number of participants in the program may be restricted if the program is offered to all dealers at the same time with no regard to the franchise;

(C) All participants pay the same fee for participation in the program and that shall be a weekly, monthly, or annual fee, regardless of the size, location, or line make of the dealership;

(D) A person is not to be charged a fee on a per-referral basis or any other basis

that could be considered a transaction-related fee;

(E) The program does not set or suggest to the dealer or customer any price of vehicles or trade-ins; and

(F) The program does not advertise or promote its plan in the manner that implies that the buyer, as a customer of that program, receives a special discounted price that cannot be obtained unless the customer is referred through that program.

(2) All programs must comply with Regulation 1 of the Arkansas Motor Vehicle Commission Rules.

(d) The provisions of this section do not apply to any person or entity which is exempt from this chapter.

HISTORY: Acts 1975, No. 388, § 10; 1985, No. 1032, § 6; 1985, No. 1058, § 6; A.S.A. 1947, § 75-2310; Acts 2001, No. 1053, § 17; 2009, No. 756, § 17.

23-112-407. [Repealed.]

SUBCHAPTER 5.

HEARINGS AND APPEALS.

SECTIONS.

23-112-501. Right to hearing.

23-112-502. Call for hearing.

23-112-503. Notice -- Location of hearing.

23-112-504. Conduct of hearing.

23-112-506. Appeals.

23-112-507. Exhaustion of remedies required -- Exception.

23-112-508. Rules of order or procedure.

23-112-509. Summons, citation, and subpoena.

23-112-501. Right to hearing.

(a) (1) The Arkansas Motor Vehicle Commission may deny an application for a license if the application is considered inadequate after the initial review by the Director of the Arkansas Motor Vehicle Commission.

(2) Within thirty (30) days after the director denies an application under subdivision (a)(1) of this section, the affected applicant may protest the executive director's decision and request a hearing before the commission.

(b) The commission shall not:

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

(2) Impose a civil penalty pursuant to § 23-112-314 and 23-112-1020 without first giving the respondent a hearing pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

HISTORY: Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307; Acts 1999, No. 1042, § 10; 2009, No. 756, § 18; 2013, No. 1043, § 9.

23-112-502. Call for hearing.

(a) Any interested party may petition the Arkansas Motor Vehicle Commission to call a hearing for the purpose of taking action with respect to any matter within the commission's jurisdiction by filing with the commission a notarized complaint setting forth grounds upon which the complaint is based. Upon review of the complaint, the commission shall determine whether to call a hearing.

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

HISTORY: Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307; Acts 1989, No. 65, § 7; 1999, No. 1042, § 11.

23-112-503. Notice -- Location of hearing.

(a) When a hearing is to be held before the Arkansas Motor Vehicle Commission, the commission shall give written notice to all parties whose rights may be affected thereby.

(b) The notice shall set forth the reason for the hearing, the questions or issues to be decided by the commission at the hearing, and the time and the place of the hearing.

(c) All notices shall be mailed to all parties whose rights may be affected by the hearing by registered or certified mail and addressed to their last known address.

(d) Any hearing shall be held in the county where the principal office of the commission is located unless both parties agree to an alternate location.

HISTORY: Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307; Acts 2009, No. 756, § 19.

23-112-504. Conduct of hearing.

All hearings shall be conducted pursuant to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

HISTORY: Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307; Acts 1999, No. 1042, § 12.

23-112-505. Decisions and orders of commission -- Quorum.

(a) All decisions of the Arkansas Motor Vehicle Commission with respect to the hearings provided for in this subchapter shall be incorporated into orders of the commission and spread upon its minutes.

(b) A majority of the members of the commission shall constitute a quorum for purposes of rendering an order, and no order will issue except upon the affirmative vote of a majority of the quorum of the members of the commission as established under § 23-112-201.

HISTORY: Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307; Acts 1989, No. 678, § 2; 1995, No. 568, § 11.

23-112-506. Appeals.

Appeals shall be governed by the terms of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

HISTORY: Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307; Acts 1993, No. 383, § 3.

23-112-507. Exhaustion of remedies required -- Exception.

No decision of the Arkansas Motor Vehicle Commission made as a result of a hearing under the provisions of this subchapter shall become final with respect to any party affected and aggrieved by the decision until the party has exhausted, or shall have had an opportunity to exhaust, all of his or her remedies provided for by this subchapter. However, any decision may be made final if the commission finds that failure to do so would be detrimental to the public interest or public welfare, but the finality of the decision shall not prevent any party affected and aggrieved thereby to appeal the decision in accordance with the appellate procedure set forth in this subchapter.

HISTORY: Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307.

23-112-508. Rules of order or procedure.

(a) The Arkansas Motor Vehicle Commission shall prescribe its rules of order or procedure in hearings, or other proceedings before it, under this chapter.

(b) However, rules of order or procedure shall not be in conflict or contrary to the provisions of this subchapter.

HISTORY: Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307.

23-112-509. Summons, citation, and subpoena.

(a) It shall be the duty of the sheriffs and constables of the counties of this state and of any employee of the Arkansas Motor Vehicle Commission, when so directed by the commission, to execute any summons, citation, or subpoena that the commission may cause to be issued and to make their return thereof to the commission.

(b) (1) The sheriffs and constables serving and returning any summons, citation, or subpoena shall be paid the same fees as provided for the services in the circuit court.

(2) Any person other than an employee of the commission who appears before the commission in response to a summons, citation, or subpoena shall be paid the same witness fee and mileage allowance as witnesses in the circuit court.

(c) (1) In case of failure or refusal on the part of any person to comply with any summons, citation, or subpoena issued and served as authorized, or in the case of the refusal of any person to testify or answer to any matter regarding that which he or she may be lawfully interrogated, or the refusal of any person to produce his or her record books and accounts relating to any matter regarding that which he or she may be lawfully interrogated, the circuit court of any county of the State of Arkansas, on application of the commission or of the Director of the Arkansas Motor Vehicle Commission, may:

(A) Issue an attachment for the person; and

(B) Compel the person to:

(i) Comply with the summons, citation, or subpoena;

(ii) Attend before the commission or its designated employee;

(iii) Produce the documents specified in any subpoena duces tecum; and

(iv) Give his or her testimony upon such matters as he or she may be lawfully required.

(2) Any circuit court shall have the power to punish for contempt as in the case of disobedience of like process issued from or by any circuit court, or by refusal to testify therein in response to the process, and the person shall be taxed with the costs of the proceedings.

HISTORY: Acts 1975, No. 388, § 7; A.S.A. 1947, § 75-2307; Acts 2001, No. 1053, § 18; 2003, No. 1185, § 265; 2005, No. 1845, § 4.

FOR INFORMATION PURPOSES ONLY

This section is regulated by the Arkansas State Police Department

Title 23 Public Utilities and Regulated Industries
Subtitle 4. Miscellaneous Regulated Industries
Chapter 112 Arkansas Motor Vehicle Commission Act
Subchapter 6 -- Used Motor Vehicle Buyers Protection

SUBCHAPTER 6.

USED MOTOR VEHICLE BUYERS PROTECTION

SECTIONS.

23-112-601. Necessity for regulation -- Legislative findings -- Legislative declaration.

23-112-602. Definitions.

23-112-603. Penalty for violation and disbursal of fines.

23-112-604. Powers generally.

- 23-112-605. Violations.**
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 - 23-112-611. Records to be maintained.**
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 - 23-112-613. Delivery prior to sale -- Disclosures.**
 - 23-112-614. Auto auction fees for salvage-titled or parts-only titled vehicles.**
 - 23-112-615 [Repealed.]**
 - 23-112-616. [Repealed.]**
 - 23-112-617. Used motor vehicle dealer service and handling fee.**
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23-112-601. Necessity for rule -- Legislative findings -- Legislative declaration.

(a) The General Assembly declares that the public interest is affected by the sale and distribution of used motor vehicles, and it is recognized that a significant factor of the inducement in making a sale of a used motor vehicle to a member of the general public is the trust and confidence of the purchaser in the retail dealer from whom the purchase is made, with the expectancy that the dealer will remain in business to stand behind and provide service for the motor vehicle purchased.

(b) It is therefore found to be necessary to license used motor vehicle dealers and to prohibit certain acts and set penalties for violations and perpetration of certain acts by used motor vehicle dealers who are not licensed as new motor vehicle dealers selling used cars incidental to their new motor vehicle dealership operations, salespersons, agents, representatives, and employees of used motor vehicle dealers in order to:

- (1)** Prevent fraud, improper impositions, and other abuses upon the citizens of this state;
- (2)** Protect and preserve the investments and properties of the citizens of this state; and
- (3)** Foster and keep alive vigorous and healthy competition by prohibiting unfair practices by which fair and honest competition is destroyed or prevented.

HISTORY: Acts 1993, No. 490, § 1.

23-112-602. Definitions.

As used in this subchapter:

- (1) (A)** "Auto auction" means any person who operates or provides a place of business or facilities for the wholesale exchange of motor vehicles by and between duly licensed motor vehicle dealers, or from used motor vehicle dealers to individuals, or individuals to used motor vehicle dealers, or any combination thereof, or any motor vehicle dealer licensed to sell used motor vehicles, selling used motor vehicles using an auction format or on consignment.
- (B)** "Auto auction" also applies to any person who provides the facilities for or is in

the business of selling motor vehicles in an auction format;

(2) "Designee" means a person or entity that:

(A) Agrees to perform inspections of used motor vehicle dealers under this subchapter on behalf of the department; and

(B) The department determines is appropriately suited for serving as a designee under this subchapter;

(3) "Drafter" means any person who obtains financing for the purchase and resale of vehicles of another person or a used motor vehicle dealer through the use of the account of or based on the extension of credit by presenting at the time of purchase of the subject vehicles a documentary draft for purchase of the vehicle or who otherwise promises to pay through the accounts or credit of another person or a used motor vehicle dealer;

(4) "Licensed location" means the address designated as the business address of the used motor vehicle dealer on his or her application for a used motor vehicle dealer's license;

(5) "Motor vehicle" means any motor-driven vehicle having two (2) or more wheels of the sort and kind required to have an Arkansas motor vehicle license, certificate, or permit for operation in the State of Arkansas;

(6) "Off-premises" means a location other than the address designated as the licensed address;

(7) "Person" means and includes, individually and collectively, individuals, firms, partnerships, associations, corporations, trusts, or any other form of business, individual enterprise, or entity;

(8) "Sale" or "sell" means the actual sale of a motor vehicle, the attempted sale, or the offering or advertising of a motor vehicle for sale;

(9) [**Repealed.**]

(10) (A) "Used motor vehicle" means any motor vehicle which has previously been sold, bargained, exchanged, given away, or the title thereto transferred from the person or corporation who first took title from the manufacturer, importer, dealer, or agent of the manufacturer or importer, or that is so used as to have become what is commonly known as a secondhand or previously owned motor vehicle.

(B) In the event of a transfer reflected on the statement of origin from the original franchise dealer to any other dealer, individual, or corporation other than a franchise dealer of the same make of vehicle, the vehicle shall be considered a used motor vehicle;

(11) (A) (i) "Used motor vehicle dealer", hereinafter referred to as "dealer", means any person, wholesaler, or auto auction who, for a commission or with intent to make a profit or gain of money or other thing of value, sells, brokers, exchanges, rents, or leases with the option to purchase or own, or attempts to negotiate a sale or exchange of an interest in any used motor vehicle, or who is wholly or in part in the business of buying, selling, trading, or exchanging used motor vehicles, whether or not such motor vehicles are owned by the person.

(ii) The sale or attempted sale of five (5) or more used motor vehicles in any one (1) calendar year shall be prima facie evidence and shall constitute a rebuttable presumption that a person is engaged in the business of selling used motor vehicles.

(B) "Used motor vehicle dealer" shall not include:

(i) A receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to a judgment or order of any court;

(ii) A public officer, while performing his or her official duties;

(iii) A mortgagee or secured party as to sales of motor vehicles constituting collateral on a mortgage or security agreement, if the mortgagee or secured leasing party shall not realize for their own account from such sales any moneys in excess of the outstanding balance secured by the mortgage or security agreement after consideration of the costs of collection;

(iv) A lienholder, artisan, mechanic, or garage selling repaired items pursuant to a lien granted by Arkansas law;

(v) A person selling a motor vehicle titled in his or her own name and used exclusively as a personal vehicle, or a motor vehicle titled in a business name and used exclusively as a business vehicle, or a person engaged in leasing or renting vehicles; or

(vi) A new motor vehicle dealer selling a used motor vehicle in conjunction with his or her new motor vehicle dealer operations who is licensed under this chapter;

(12) "Used motor vehicle salesperson", hereinafter referred to as "salesperson", is anyone who for compensation of any kind operates as a salesperson, broker, agent, or representative of a used motor vehicle dealer, or any person who attempts to or in fact negotiates a sale of a vehicle owned partially or entirely by a used motor vehicle dealer, or a person or drafter using the financial resources, line of credit, or floor plan of a used motor vehicle dealer to purchase, sell, or exchange an interest in a used motor vehicle; and

(13) (A) "Wholesaler" means any person, resident or nonresident, who, in whole or in part, primarily sells used motor vehicles to motor vehicle dealers.

(B) Used motor vehicle dealers who, incidental to their primary business, sell motor vehicles to other dealers are not considered wholesalers because of their incidental sales.

HISTORY: Acts 1993, No. 490, § 2; 1995, No. 357, § 1; 2005, No. 1416, §§ 1, 2; 2005, No. 1780, § 1; 2011, No. 265, § 1.

23-112-603. Penalty for violation and disbursement of fines.

(a) In addition to any other penalty prescribed by existing laws, the penalties for violation

of this subchapter and the disbursement of fines shall be as follows:

- (1)** A first violation of this subchapter by any person shall constitute a Class A misdemeanor;
 - (2)** A second violation of this subchapter by any person shall constitute a Class D felony; and
 - (3)** Conviction of a third or subsequent violation shall constitute a Class D felony, and the dealer's license shall be suspended for three (3) years for each respective third or subsequent violation.
- (b)** Any person found guilty of selling a used motor vehicle as a dealer or salesperson while his or her used motor vehicle dealer's or salesperson's license is suspended or revoked shall be guilty of a Class C felony.
- (c)** **(1)** If the arresting officer is an officer of the Department of Arkansas State Police, one-half (1/2) of the fine collected shall be remitted by the tenth day of each month to the Administration of Justice Funds Section of the Office of Administrative Services of the Department of Finance and Administration on a form provided by that office, for deposit into the Department of Arkansas State Police Fund to be used for the purchase and maintenance of state police vehicles.
- (2)** If the arresting officer is a county law enforcement officer, one-half (1/2) of the fine collected shall be deposited into that county fund used for the purchase and maintenance of rescue, emergency medical, and law enforcement vehicles, communications equipment, animals owned or used by law enforcement agencies, life-saving medical apparatus, and law enforcement apparatus to be used for those purposes.
- (3)** If the arresting officer is a municipal law enforcement officer, one-half (1/2) of the fine collected shall be deposited into that municipal fund used for the purchase and maintenance of rescue, emergency medical, and law enforcement vehicles, communications equipment, animals owned or used by law enforcement agencies, life-saving medical apparatus, and law enforcement apparatus to be used for those purposes.
- (d)** **(1)** A used motor vehicle dealer licensed under this subchapter shall maintain a licensed location.
- (2)** When a used motor vehicle dealer changes or moves his or her licensed location, within fifteen (15) calendar days of the relocation, the used motor vehicle dealer shall notify the department in writing of the dealership name, the previous location, and the new location.
- (3)** **(A)** If the department determines that the used motor vehicle dealer's business location has moved and notification to the department has not been properly made, the department shall levy a fine equal to the amount of the license fee.
- (B)** The fine collected pursuant to subdivision (d)(3)(A) of this section shall be

remitted to the department and shall be deposited into the State Treasury as special revenue to the credit of the department.

HISTORY: Acts 1993, No. 490, § 12; 2001, No. 1408, § 1; 2003, No. 1765, § 30; 2005, No. 1416, § 3.

23-112-604. Powers generally.

(a) The Department of Arkansas State Police may promulgate rules that are necessary to implement, enforce, and administer this subchapter.

(b) The department may cancel a dealer's license if the dealer:

(1) Fails to keep and maintain the requirements of § 23-112-607(a) and (c); or

(2) Pleads guilty or nolo contendere to or has been found guilty of a violation of § 23-112-605.

HISTORY: Acts 1993, No. 490, § 13; 2011, No. 201, § 1.

23-112-605. Violations.

It shall be a violation of this subchapter to knowingly or intentionally:

(1) (A) Sell a vehicle without a dealer license.

(B) The sale of each vehicle shall constitute a separate offense;

(2) Commit a fraudulent act in selling, purchasing, or otherwise dealing in motor vehicles;

(3) Fail to maintain the conditions and requirements necessary to qualify for the issuance of a license;

(4) Sell, attempt to sell, or advertise for sale vehicles from a location other than that set forth on the dealer license, except:

(A) As a participating dealer in a state trade association promotion or exhibit;

(B) With a special sale permit; or

(C) At an auto auction;

(5) Falsify, alter, or neglect to endorse or deliver a certificate of title to a transferee or lawful owner, or fail to properly designate a transferee on a document of assignment or certificate of title;

(6) Knowingly purchase, sell, or otherwise acquire or dispose of a stolen motor vehicle;

(7) Submit a false affidavit setting forth that a title has been lost or destroyed;

(8) Pass title or reassign title as a dealer without a dealer's license or when his or her dealer's license has been suspended;

(9) To represent oneself as a dealer or as a salesperson, either verbally or in any

advertisement, when not licensed as such;

(10) Violate any provision or requirement in this subchapter; or

(11) Knowingly assist an unlicensed dealer in the sale of a motor vehicle.

HISTORY: Acts 1993, No. 490, § 11; 1995, No. 357, § 2.

23-112-606. License required.

It shall be unlawful for any person to engage in business as a used motor vehicle dealer or to sell a vehicle not his or her own without obtaining a used motor vehicle dealer's license, except that a person defined as a salesperson in § 23-112-602 may act on behalf of the dealer by whom such a person is employed.

HISTORY: Acts 1993, No. 490, § 3.

23-112-607. Dealer license.

(a) (1) Persons wishing to obtain a used motor vehicle dealer's license shall submit a fully executed application on such used motor vehicle dealer application forms as may be prescribed by the Department of Arkansas State Police.

(2) The application shall be verified by the oath or affirmation of the applicant.

(b) An applicant for a used motor vehicle dealer license or a licensee seeking to renew a used motor vehicle dealer license shall establish that he or she has sold at least five (5) used motor vehicles during the previous calendar year.

(c) The department shall require in relation to the application the following information and verification prior to issuing a license certificate:

(1) A photograph of the business location;

(2) A corporate surety bond in the sum of at least twenty-five thousand dollars (\$25,000);

(3) 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, § 27-19-101 et seq.;

(4) A list of the persons or entities having any ownership interest in the used vehicle dealership;

(5) A list of salespersons to be employed;

(6) That the applicant has a bona fide established place of business used primarily for the sale of used motor vehicles;

(7) That the applicant has a telephone number listed in the name of the business;

(8) That the applicant has a sign identifying the establishment as a used motor

vehicle dealership legible from the street, road, or highway, and a picture thereof;

(9) That the applicant has a filing cabinet or other repository adequate to secure the business records of the establishment under lock and key or combination.

(10) Whether the applicant has ever been issued a motor vehicle dealer's license, and if the applicant has ever had a motor vehicle dealer's license suspended or revoked;

(11) (A) Except as provided in subdivision (c) (11) (B) of this section, an affidavit from

a department officer or a designee of the department stating that the officer or a designee of the department has inspected the facility within thirty (30) days before issuance or renewal of a license and found it to be in compliance with the requirements for application.

(B) If a licensee has been continuously licensed at the same facility for ten (10) years or more, then the licensee shall only be required to comply with subdivision (c)(11)(A) of this section one (1) time every other year; and

(12) The name, address, and telephone number of the person designated to receive legal process in the event of the commencement of any legal action in any court against the applicant.

(d) (1) (A) Each applicant shall obtain a corporate surety bond in the penal sum of twenty-five thousand dollars (\$25,000) on a bond form approved by the state.

(B) However, an applicant for a license at multiple locations may provide a corporate surety bond in the penal sum of one hundred thousand dollars (\$100,000) covering all licensed locations in lieu of separate bonds for each individual location.

(2) The bond shall be an indemnity for any loss and reasonable attorney's fees sustained by a retail buyer by reason of the acts of the person bonded when such an act constitutes a violation of this law.

(3) However, the surety shall in no event be liable for more than twenty-five thousand dollars (\$25,000).

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

(5) The proceeds of the bonds shall be paid either to the State of Arkansas or to the retail buyer upon a judgment from an Arkansas court of competent jurisdiction against the principal and in favor of the aggrieved party or the State of Arkansas.

(6) However, the surety shall in no event be required to pay any judgment obtained by fraud or collusion, as between the dealer and the retail buyer, or which was rendered against a person bonded for an act that does not constitute a violation of this subchapter. These defenses may be raised at any time, subject to the applicable

statute of limitations.

HISTORY: Acts 1993, No. 490, §§ 4, 6; 1997, No. 705, § 1; 1999, No. 1040, § 1; 2001, No. 93, § 1; 2005, No. 1416, § 4.

23-112-608. License certificate fees.

- (a) (1)** The fee for a license certificate shall be two hundred fifty dollars (\$250) per year for each used motor vehicle dealer licensed.
- (2) (A)** The fee shall be for the licensing period beginning on January 1 of each year and ending on December 31 of each year and shall be renewable during the month of January following its expiration, unless the Department of Arkansas State Police provides by rule a staggered method of annual renewal.
- (B) (i)** If a license certificate has been expired for at least thirty-one (31) days but less than six (6) months, then the used motor vehicle dealer shall remit a late fee of thirty-five dollars (\$35.00) before the used motor vehicle dealer's application shall be accepted.
- (ii) (a)** A license that is not renewed within six (6) months of its expiration date shall be deemed permanently expired.
- (b)** If a used motor vehicle dealer license has permanently expired, then the used motor vehicle dealer may reapply for licensure, provided that the used motor vehicle dealer completes an application for licensure and remits all fees pursuant to this section.
- (3)** A dealer having more than one (1) location will receive an additional certificate for each second and subsequent location for one hundred twenty-five dollars (\$125) each.
- (b)** Only used motor vehicle dealers licensed under this section shall qualify for used motor vehicle dealer license plates from the Department of Finance and Administration.
- (c)** All fees for the issuance of a license certificate under the provisions of this section shall be remitted to the Department of Arkansas State Police and shall be deposited into the State Treasury as special revenues to the credit of the Department of Arkansas State Police Fund.

HISTORY: Acts 1993, No. 490, § 5; 2005, No. 1416, § 5.

23-112-609. Issuance of license certificate.

Upon satisfactory submission and verification of a fully executed application as required by § 23-112-607(a) and (b), payment of the fee provided for by § 23-112-608, and receipt of the corporate surety bond as required by § 23-112-607(c), the Department of Arkansas State Police shall issue the applicant a license certificate.

HISTORY: Acts 1993, No. 490, § 8.

23-112-610. Display of dealer license.

- (a)** Each dealer licensed under this subchapter shall maintain for display, in a conspicuous

place at the dealer's business location, the license certificate issued by the Department of Arkansas State Police.

(b) (1) Each dealer shall also have his or her used motor vehicle dealer license name conspicuously displayed on all signage.

(2) All printed advertisements shall contain the dealer's name or the words "AR DLR" with the Department of Arkansas State Police dealer license number assigned to the dealer.

HISTORY: Acts 1993, No. 490, § 9; 1995, No. 357, § 3.

23-112-611. Records to be maintained.

(a) Every person required to have a license shall maintain, for three (3) years from the date of purchase, records of each vehicle transaction to which the person was a party.

(b) Dealers shall maintain copies of all documents executed in conjunction with any transaction, which may include bills of sale, titles, odometer statements, invoices, affidavits of alteration, and reassignments, and shall be open to inspection to any Department of Arkansas State Police officer or designated employee of the department acting in an official capacity during reasonable business hours.

HISTORY: Acts 1993, No. 490, § 10; 1995, No. 357, § 4; 2011, No. 201, § 2.

23-112-612. [Repealed.]

23-112-613. Delivery prior to sale -- Disclosures.

(a) As used in this section:

(1) (A) "Contract for sale" means the final agreement between a used 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 used motor vehicle dealer to a consumer prior to the completion and execution by both parties of a contract for sale.

(b) If a used motor vehicle dealer engages in a delivery prior to sale, then the used 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 used 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 used 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 used motor vehicle dealer changes any terms; or

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

(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 used 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 used 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 used 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 used 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 Department of Arkansas State Police shall promulgate rules to implement, enforce, and administer this section.

HISTORY: Acts 2005, No. 1687, § 2.

23-112-614. Auto auction fees for salvage-titled or parts-only titled vehicles.

(a) A five-dollar (\$5.00) fee shall be charged to the buyer of each item at an auto auction

that is sold on a certificate of title that is labeled "salvage" or "parts-only".

(b) The fee is special revenue and shall be deposited into the State Treasury.

(c) The Treasurer of State shall transfer the special revenues received under this section on the last business day of each month as follows:

(1) Fifty percent (50%) for the Arkansas Department of Environmental Quality to be used for inspection and oversight of auto auctions to enforce all laws and rules administered by the Arkansas Department of Environmental Quality; and

(2) Fifty percent (50%) for the Department of Arkansas State Police to be used for inspection and oversight of auto auctions.

HISTORY: Acts 2005, No. 1780, § 2; 2007, No. 827, § 191; 2009, No. 639, § 1; 2011, No. 265, § 2.

23-112-615, 23-112-616. [Repealed.]

23-112-617. Used motor vehicle dealer service and handling fee.

(a) A used motor vehicle dealer may fill in the blanks on standardized forms in connection with the sale or lease of used motor vehicles 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 used motor vehicle dealer may charge a service and handling fee in connection with the sale or lease of a 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 used motor vehicle dealers.

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

(c) (1) The Department of Arkansas State Police shall determine by rule the amount of the service and handling fee that may be charged by a used 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 work sheet 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 Department of Arkansas State Police may promulgate rules to implement, enforce, and administer this section.

HISTORY: Acts 2007, No. 366, § 2.

SUBCHAPTER 7.

DAMAGE TO MOTOR VEHICLES WHILE IN TRANSIT

SECTIONS.

23-112-701. When delivery accomplished.

23-112-702. Damage prior to delivery to the dealer -- Notice.

23-112-703. Failure to repair.

23-112-704. Computing time.

23-112-705. Disclosure of damage to consumer -- Certification.

23-112-706. Damage after delivery to the dealer -- Disclosure to the consumer -- Certification.

23-112-707. Manufacturer required to indemnify franchised dealers.

23-112-701. When delivery accomplished.

"Delivery" of a motor vehicle to a dealer by a manufacturer or distributor for the purposes of this section shall be accomplished by the:

- (1) Tender of the motor vehicle and any documents necessary to enable the dealer to obtain title and possession of the motor vehicle at the dealer's place of business or designated place of delivery; and
- (2) Giving of notice of the tender of the motor vehicle and documents to the dealer.

HISTORY: Acts 1991, No. 952, § 1.

23-112-702. Damage prior to delivery to the dealer -- Notice.

(a) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:

- (1) Notify the manufacturer or distributor of such damage within three (3) working days of the occurrence of the delivery of the motor vehicle; and
- (2) Request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.

(b) The notification of damage by the dealer must be by certified mail, with a notice of delivery requested to be returned to the dealer, and shall be presumed to have occurred upon deposit of the notice with the United States Postal Service.

HISTORY: Acts 1991, No. 952, § 2.

23-112-703. Failure to repair.

In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of any such damage within three (3) working days of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligations, financial or otherwise, for the damage to the motor vehicle.

In determining when the notification of the damage by the dealer to the manufacturer or distributor occurs, the date the notice is received by the manufacturer or distributor by the United States Postal Service indicated on the notice of delivery returned to the dealer shall be controlling.

HISTORY: Acts 1991, No. 952, § 3.

23-112-704. Computing time.

In computing the lapse of three (3) working days under this subchapter, the day of the occurrence of delivery of the motor vehicle to the dealer by the manufacturer or distributor or the day of notification of the damage to the manufacturer or distributor by the dealer, as described in § 23-112-703, is not to be included, but the last working day of the period so computed is to be included.

HISTORY: Acts 1991, No. 952, § 4.

23-112-705. Disclosure of damage to consumer -- Certification.

(a) Prior to the sale of any motor vehicle damaged prior to delivery to the dealer as described in § 23-112-702, excluding damage to glass, tires, and bumpers when replaced by identical manufacturer's original equipment, and any damage not exceeding six percent (6%) of the sticker price of the vehicle, the occurrence and extent of such damage must be disclosed by the dealer to the consumer, and, upon repair of the damage sustained, or replacement of the parts or accessories damaged, the manufacturer or dealer must certify to the consumer that the motor vehicle has been repaired or remanufactured to the manufacturer's standards.

(b) (1) If the dealer makes the certification, the dealer shall be indemnified by the manufacturer.

(2) Upon such certification, liability for any concealed damages then remaining with the motor vehicle shall lie with the manufacturer.

HISTORY: Acts 1991, No. 952, § 5.

23-112-706. Damage after delivery to the dealer -- Disclosure to the consumer -- Certification.

(a) Whenever a motor vehicle is damaged after delivery to the dealer by the manufacturer or distributor but before sale by the dealer to the consumer, and the occurrence and extent of such damage is in excess of six percent (6%) of the sticker price of the vehicle, it must be disclosed by the dealer to the consumer prior to the sale, and upon repair of the damage sustained, or replacement of parts or accessories damaged, the dealer must certify to the consumer that this motor vehicle has been repaired or remanufactured according to the manufacturer's standards.

(b) Upon such certification, liability for any concealed damages then remaining with the motor vehicle shall lie with the dealer.

HISTORY: Acts 1991, No. 952, § 6.

23-112-707. Manufacturer required to indemnify franchised dealers.

Notwithstanding the terms of any franchise agreement, it shall be a violation of this subchapter for any new motor vehicle manufacturer to fail to indemnify and hold harmless its franchised dealers against any judgment or settlement agreed to in writing by the manufacturer for damages, including, but not limited to, court costs and reasonable attorney's fees of the new motor vehicle dealer, arising out of complaints, claims, or lawsuits, including, but not limited to, strict liability, negligence, misrepresentation, or warranty to the extent that the judgment or settlement agreed to in writing by the manufacturer relates to the alleged defective or negligent manufacture, assembly, or design of new motor vehicles, parts, or accessories, or other functions by the manufacturer, beyond the control of the dealer.

HISTORY: Acts 1991, No. 952, § 7.

SUBCHAPTER 8.

SPECIAL MOTORCYCLE EVENTS

SECTIONS.

23-112-801. Findings.

23-112-802. Definitions.

23-112-803. Statements of estimated positive economic impact.

23-112-804. Significant positive economic impact determinations.

23-112-805. Authority to waive relevant market area and rules.

23-112-806. Established and ongoing special motorcycle events.

23-112-801. Findings.

The General Assembly finds that:

- (1)** A special motorcycle event sponsored by a city, county, nonprofit entity, or motorcycle owners' organization draws people from all over the state, other states, and even other countries;
- (2)** A special motorcycle event can provide a valuable increase in tourism for the state; and
- (3)** The laws and rules related to the display and sale of motorcycles at a special motorcycle event must be modified to lessen the restrictions that are hampering economic growth.

HISTORY: Acts 2007, No. 235, § 1.

23-112-802. Definitions.

As used in this subchapter:

- (1)** "Motorcycle owners' organization" means an entity that is organized as a nonprofit entity or for-profit entity and in good standing with the Secretary of State;
- (2)** "Nonprofit entity" means an entity that has received tax exempt status from the Internal Revenue Service pursuant to section 501(c)(3) or section (501) (c)(4) of the Internal Revenue Code of 1986, as it existed on January 1, 2007;
- (3)** "Public venue" means a location that:
 - (A)** Is open to the general public; and
 - (B)** Is not the address designated as the primary business address of a new motor vehicle dealer licensed by the Arkansas Motor Vehicle Commission or a used motor vehicle dealer licensed by the Department of Arkansas State Police;
- (4)** "Significant positive economic impact" means an economic benefit of at least three million dollars (\$3,000,000) to the state or a region of the state; and
- (5)** "Special motorcycle event" means an event held at a public venue with or without an admission fee that:
 - (A)** Is sponsored by a city, a county, a nonprofit entity, or a motorcycle owners' organization;
 - (B)** Occurs not more than one (1) time each year for no more than seven (7) consecutive days; and
 - (C)** Includes any of the following that are invited to attend:
 - (i)** New motor vehicle dealers to display and sell motorcycles; or
 - (ii)** New motor vehicle manufacturers or distributors to display motorcycles.

HISTORY: Acts 2007, No. 235, § 1.

23-112-803. Statements of estimated positive economic impact.

A statement of the estimated positive economic impact of a proposed special motorcycle event shall be submitted to the Arkansas Motor Vehicle Commission from an independent source such as a university, chamber of commerce, or other entity that regularly engages in the estimation of the economic benefit of an occurrence for businesses and industries.

HISTORY: Acts 2007, No. 235, § 1.

23-112-804. Significant positive economic impact determinations.

(a) If the statement of estimated positive economic impact that is submitted to the Arkansas Motor Vehicle Commission establishes that a special motorcycle event has a significant positive economic impact, the special motorcycle event is exempt from the rule by the commission as provided under § 23-112-805.

(b) If the statement of estimated positive economic impact that is presented to the commission establishes that a special motorcycle event will not have a significant positive economic impact, then the commission shall determine whether the special motorcycle event is exempt from the provisions of this chapter and any rules promulgated by the commission.

HISTORY: Acts 2007, No. 235, § 1.

23-112-805. Authority to waive relevant market area and rules.

(a) The Arkansas Motor Vehicle Commission shall waive the following for a special motorcycle event that has a significant positive economic impact or is determined by the commission to otherwise qualify for an exemption under § 23-112-804(b) if no franchised motor vehicle dealer of a licensed manufacturer is represented in the host county of the special motorcycle event or the counties contiguous to the host county:

- (1)** The provisions of this chapter regarding relevant market area; and
- (2)** The rules regarding motor vehicle dealers in contiguous counties.

(b) (1) The commission may promulgate rules for the issuance of a temporary permit to out-of-state motor vehicle dealers and manufacturers to participate in a special motorcycle event under this subchapter.

(2) No rule shall be promulgated that puts a greater burden on out-of-state motor vehicle dealers and manufacturers to obtain a temporary permit than the requirements necessary for a motor vehicle dealer or manufacturer to obtain a license from the commission.

(3) If the commission establishes fees for a temporary permit under this subsection, the fees shall not exceed:

- (A)** For an out-of-state motor vehicle dealer, one hundred dollars (\$100);
- (B)** For a manufacturer or distributor, two hundred fifty dollars (\$250);

(C) For an out-of-state salesperson, fifteen dollars (\$15.00); and

(D) For a factory representative or distributor representative, fifty dollars (\$50.00).

HISTORY: Acts 2007, No. 235, § 1.

23-112-806. Established and ongoing special motorcycle events.

(a) A special motorcycle event that has been ongoing for five (5) years or more before July 31, 2007, and has had a significant positive economic impact in the past shall be:

(1) Considered an established and ongoing special motorcycle event; and

(2) Eligible to a presumption of a significant positive economic impact by the Arkansas Motor Vehicle Commission.

(b) Notwithstanding any provision of law to the contrary, an established and ongoing special motorcycle event under this section may continue to invite motor vehicle dealers and manufacturers that have participated in the special motorcycle event for the previous three (3) years.

HISTORY: Acts 2007, No. 235, § 1.

SUBCHAPTER 9.

RECREATIONAL VEHICLE SPECIAL EVENTS

SECTIONS.

23-112-901. Findings.

23-112-902. Definitions.

23-112-903. Statements of estimated positive economic impact.

23-112-904. Significant positive economic impact determinations.

23-112-905. Authority to waive relevant market area and rules.

23-112-901. Findings.

The General Assembly finds that:

(1) A recreational vehicle special event sponsored by a city, county, nonprofit entity, or recreational vehicle owners' organization draws people from all over the state and other states;

(2) A recreational vehicle special event can provide a valuable increase in tourism for the state; and

(3) The laws and rules related to the display and sale of recreational vehicles at a recreational vehicle special event must be modified to lessen the restrictions that are hampering economic growth.

HISTORY: Acts 2011, No. 263, § 1.

23-112-902. Definitions.

As used in this subchapter:

(1) "Nonprofit entity" means an entity that has received tax exempt status from the Internal Revenue Service under section 501(c)(3) or section (501)(c)(4) of the Internal Revenue Code of 1986, as it existed on January 1, 2011;

(2) "Public venue" means a location that:

(A) Is open to the general public; and

(B) Is not the address designated as the primary business address of a new motor vehicle dealer licensed by the Arkansas Motor Vehicle Commission or a used motor vehicle dealer licensed by the Department of Arkansas State Police;

(3) "Recreational vehicle owners' organization" means an entity that is organized as a nonprofit entity or for-profit entity and in good standing with the Secretary of State;

(4) "Recreational vehicle special event" means an event held at a public venue with or without an admission fee that:

(A) Is sponsored by a city, a county, a nonprofit entity, or a recreational vehicle owners' organization;

(B) Occurs for no more than seven (7) consecutive days; and

(C) Includes any of the following that are invited to attend:

(i) New recreational vehicle dealers to display and sell recreational vehicles; or

(ii) New recreational vehicle manufacturers or distributors to display recreational vehicles; and

(5) "Significant positive economic impact" means an economic benefit of at least two million dollars (\$2,000,000) to the state or a region of the state.

HISTORY: Acts 2011, No. 263, § 1.

23-112-903. Statements of estimated positive economic impact.

A statement of the estimated positive economic impact of a proposed recreational vehicle special event shall be submitted to the Arkansas Motor Vehicle Commission from an independent source such as a university, chamber of commerce, or other entity that regularly engages in the estimation of the economic benefit of an occurrence for businesses and industries.

HISTORY: Acts 2011, No. 263, § 1.

23-112-904. Significant positive economic impact determinations.

(a) If the statement of estimated positive economic impact that is submitted to the Arkansas Motor Vehicle Commission establishes that a recreational vehicle special event has a significant positive economic impact, the recreational vehicle special event is exempt from regulation by the commission as provided under § 23-112-905.

(b) If the statement of estimated positive economic impact that is presented to the commission establishes that a recreational vehicle special event will not have a significant positive economic impact, then the commission shall determine whether the recreational vehicle special event is exempt from this chapter and any rules promulgated by the commission.

HISTORY: Acts 2011, No. 263, § 1.

23-112-905. Authority to waive relevant market area and rules.

(a) The Arkansas Motor Vehicle Commission shall waive the following for a recreational vehicle special event that has a significant positive economic impact or is determined by the commission to otherwise qualify for an exemption under § 23-112-904(b) if no franchised motor vehicle dealer of a licensed manufacturer is represented in the host county of the recreational vehicle special event or the counties contiguous to the host county:

- (1)** The provisions of this chapter regarding relevant market area; and
- (2)** The rules regarding motor vehicle dealers in contiguous counties.

(b) (1) The commission may promulgate rules for the issuance of a temporary permit to out-of-state motor vehicle dealers and manufacturers to participate in a recreational vehicle special event under this subchapter.

(2) The commission shall not promulgate a rule that puts a greater burden on out-of-state motor vehicle dealers and manufacturers to obtain a temporary permit than the requirements necessary for a motor vehicle dealer or manufacturer to obtain a license from the commission.

(3) If the commission establishes fees for a temporary permit under this subsection, the fees shall not exceed:

- (A)** For an out-of-state motor vehicle dealer, one hundred dollars (\$100);

- (B) For a manufacturer or distributor, two hundred fifty dollars (\$250);
- (C) For an out-of-state salesperson, fifteen dollars (\$15.00); and
- (D) For a factory representative or distributor representative, fifty dollars (\$50.00).

HISTORY: Acts 2011, No. 263, § 1.

SUBCHAPTER 10.

RECREATIONAL VEHICLE FRANCHISE ACT

SECTIONS.

- 23-112-1001. Title.**
 - 23-112-1002. Legislative findings.**
 - 23-112-1003. Definitions**
 - 23-112-1004. License requirements and application fees.**
 - 23-112-1005. Application for license.**
 - 23-112-1006. Issuance of license — Change of location — Change of business or corporate name, structure, or DBA name — Dealers, manufacturers, and distributors.**
 - 23-112-1006. Issuance of license — Change of location — Change of business or corporate name, structure, or DBA name — Dealers, manufacturers,**
-

and distributors.

- 23-112-1007. Display of license – Change of employer – Factory representative and distributor representative.**
 - 23-112-1008. Display of license – Change of employer – Salesperson.**
 - 23-112-1009. Expiration of license.**
 - 23-112-1010. Area of sales responsibility.**
 - 23-112-1011. Renewal of dealer agreement.**
 - 23-112-1012. Termination, cancellations, or nonrenewal of dealer agreement.**
 - 23-112-1013. Repurchase of inventory.**
 - 23-112-1014. Sale of remaining inventory after termination.**
 - 23-112-1015. Change of ownership of dealer.**
 - 23-112-1016. Warranty obligation.**
 - 23-112-1017. Damage to recreational vehicles before arrival at dealership.**
 - 23-112-1018. Prohibited activity of a manufacturer or distributor – Coercion.**
 - 23-112-1019. License – Denial, revocation, and suspension.**
 - 23-112-1020. Monetary penalty in lieu of suspension or revocation of license – Civil penalty.**
 - 23-112-1021. Enforcement.**
 - 23-112-1022. Civil action and mediation.**
 - 23-112-1023. Injunction.**
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23-112-1001. Title

This subchapter shall be known and may be cited as the "Recreational Vehicle Franchise Act."

HISTORY. Acts 2013, No. 1043, § 1.

23-112-1002. Legislative findings.

The General Assembly finds that:

- (1)** The distribution and sale of recreational vehicles vitally affects the general economy, the public interest, and the public welfare; and
- (2)** It is necessary, in the exercise of the General Assembly's police power, to regulate and to license recreational vehicle manufacturers, factory branches and divisions, distributors, distributor branches and divisions, distributor representatives, dealers, and salespersons doing business in Arkansas to:
 - (A)** Prevent fraud, unfair practices, discrimination, impositions, and other abuses upon the citizens of Arkansas;
 - (B)** Foster and keep alive vigorous and healthy competition;
 - (C)** Prevent the creation or perpetuation of monopolies;
 - (D)** Prevent the practice of requiring the buying of special features, accessories, special models, appliances, and equipment not desired by a recreational vehicle dealer or the ultimate purchaser;
 - (E)** Prevent false and misleading advertising;

(F) Promote and keep alive a sound system of distribution of recreational vehicles to the public; and

(G) Promote the public safety and welfare.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1003. Definitions.

As used in this subchapter:

(1) "Area of sales responsibility" means the geographical area agreed to by the dealer and the manufacturer or distributor in a dealer agreement where the dealer has the exclusive right to display or sell the manufacturer or distributor's new recreational vehicles of a particular line-make to the retail public;

(2) "Dealer" means a person, firm, corporation, or business entity that is:

(A) Engaged in the business of selling or offering to sell, selling and servicing, soliciting, or advertising the selling or selling and servicing of recreational vehicles under a manufacturer's warranty; and

(B) Located at an established and permanent place of business under a dealer agreement;

(3) "Dealer agreement" means a written agreement, contract, franchise agreement, or sales and service agreement that:

(A) Is entered into between a manufacturer or distributor and a dealer;

(B) Establishes the rights, responsibilities, and obligations of the manufacturer or distributor and a dealer; and

(C) Authorizes the dealer to sell new recreational vehicles;

(4) "Distributor" means a person, firm, corporation, or business entity that purchases new recreational vehicles for resale to dealers;

(5) "Factory campaign" means an effort on the part of a warrantor to contact recreational vehicle owners or dealers to address a part or equipment issue;

(6) "Factory representative" means a representative employed by a person, firm, association, corporation, or trust that manufactures, assembles, or distributes new recreational vehicles;

(7) "Family member" means:

(A) A spouse;

(B) A child, grandchild, parent, sibling, niece, or nephew; or

(C) The spouse of a child, grandchild, parent, sibling, niece, or nephew;

(8) "Fifth wheel travel trailer" means a recreational vehicle designed to be towed by a motorized vehicle by means of a towing mechanism that is mounted above or forward of the tow vehicle's rear axle;

(9) "Folding camping trailer" means a recreational vehicle designed to be towed by a motorized vehicle that is constructed with partially collapsible side walls that fold for travel and unfold and extend in the set-up mode;

(10) Line-makell means a specific series of recreational vehicle products that:

(A) Are identified by a common series trade name or trademark;

(B) Are targeted to a particular market segment, as determined by their decor, features, equipment, size, weight, and price range;

(C) Have lengths and interior floor plans that distinguish the recreational vehicles from other recreational vehicles with substantially the same decor, equipment, features, price, and weight;

(D) Belong to a single, distinct classification of recreational vehicle product type having a substantial degree of commonality in the construction of the chassis, frame, and body; and

(E) The dealer agreement authorizes a dealer to sell;

(11) "Manufacturer" means a person, firm, corporation, or business entity that engages in the manufacturing of recreational vehicles;

(12) "Motor home" means a recreational vehicle built on a self-propelled motor vehicle chassis that contains at least four (4) of the following permanently installed independent life support systems:

(A) A cooking facility with an on-board fuel source;

(B) A potable water supply system that includes at least a sink, faucet, and water tank with an exterior service supply connection;

(C) A toilet with exterior evacuation;

(D) A gas or electric refrigerator;

(E) A heating or air conditioning system with an on-board power or fuel source separate from the vehicle engine; or

(F) An electric power supply of one hundred ten to one hundred twenty-five volts (110-125 V);

(13) "Person" means, individually and collectively, individuals, firms, partnerships, co-partnerships, associations, corporations, trusts, or any other form of business enterprise or other legal entity;

(14) "Proprietary part" means a recreational vehicle part:

(A) Manufactured by or for a manufacturer; and

(B) Sold exclusively by the manufacturer;

(15) "Recreational vehicle":

(A) Means a vehicle that:

(i) Has its own motor power or is towed by another vehicle;

(ii) Is primarily designed as a temporary living quarters for noncommercial recreation or camping use;

(iii) Complies with all applicable federal vehicle regulations as existing on January 1, 2013; and

(iv) Does not require a special-movement permit to legally use the highways; and

(B) Includes without limitation a:

(I) Motor home;

(ii) Travel trailer;

(iii) Fifth wheel travel trailer; and

(iv) Folding camping trailer;

(16) "Recreational vehicle salesperson" means a person who:

(A) Is employed by a dealer as a salesperson whose duties include the selling or offering for sale of recreational vehicles;

(B) For compensation of any kind acts as a salesperson, agent, or representative of a dealer;

(C) Attempts to or in fact negotiates a sale of a recreational vehicle owned partially or entirely by a dealer; and

(D) Uses the financial resources, line of credit, or floor plan of a dealer to purchase, sell, or exchange an interest in a recreational vehicle;

(17) "Supplier" means a person, firm, corporation, or business entity that engages in the manufacturing of recreational vehicle parts, accessories, or components;

(18) "Transient customer" means a person who:

(A) Owns a recreational vehicle;

(B) Is temporarily traveling through a dealer's area of sales responsibility;

(C) Engages a dealer to perform service work on that recreational vehicle; and

(D) Requires repairs that relate to the safe operation of that recreational vehicle that if not undertaken are of a nature that would render that recreational vehicle unusable for its intended purpose;

(19) "Travel trailer" means a recreational vehicle designed to be towed by a motorized vehicle; and

(20) (A) "Warrantor" means a person, firm, corporation, or business entity, including without limitation a manufacturer or supplier, that provides a written warranty to the consumer in connection with a new recreational vehicle or accessories, parts, or components of a new recreational vehicle.

(B) "Warrantor" does not include service contracts, mechanical or other insurance, or extended warranties sold for separate consideration by a dealer or other person not controlled by a manufacturer.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1004. License requirements and application fees.

(a) The following acts are unlawful:

(1) The violation of any of the provisions of this subchapter;

(2) Engaging in the business as, serving in the capacity of, or acting as a new recreational vehicle dealer, recreational vehicle salesperson, recreational vehicle manufacturer, recreational vehicle distributor, recreational vehicle factory representative, or recreational vehicle manufacturer representative in this state without first obtaining a license as provided in this subchapter; or

(3) Offering to sell or selling a recreational vehicle to a consumer except through a licensed new recreational vehicle dealer holding a dealer agreement for the line-make covering the new recreational vehicle or as may otherwise be provided in § 23-112-403(a)(3).

(b) A person, firm, association, corporation, or trust engaging, acting, or serving in more than one (1) of the capacities under subdivision (a)(2) of this section or having more than one (1) place where one (1) or more of the actions under subdivision (a)(2) of this section is carried on or conducted shall obtain and hold a separate and current license for each capacity and place of business.

(c)(1) A person shall not engage in the business of buying, selling, or exchanging new recreational vehicles unless the person:

(A) Holds a valid license issued by the Arkansas Motor Vehicle Commission for the make of recreational vehicles being bought, sold, or exchanged; or

(B) Is a bona fide employee or agent of the licensee.

(2) As used in this subsection, engage in the business of buying, selling, or exchanging recreational vehicles means:

(A) Displaying for sale new recreational vehicles on a lot or in a showroom;

- (B) Advertising for sale new recreational vehicles regardless of the medium used; or
- (C) Regularly or actively soliciting buyers for new recreational vehicles.

(d)(1) An application for a license shall be accompanied by the appropriate fees in accordance with the schedule under this subchapter.

(2) If an application is denied and the license applied for is not issued, the entire license fee shall be returned to the applicant.

(3) The license fees to be charged and received by the commission for the licenses issued under this subchapter shall be as follows:

(A) For each manufacturer, distributor, factory branch and division, or distributor branch and division, nine hundred dollars (\$900);

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

(C) For each recreational vehicle dealer, one hundred dollars (\$100);

(D) For each recreational vehicle salesperson, fifteen dollars (\$15.00);

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

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

(4)(A)(I) A person, firm, or corporation required to be licensed under this subchapter that 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 under this subsection.

(ii) The penalty under subdivision (d)(4)(A)(i) of this section may be waived, in whole or in part, within the discretion of the commission.

(B) A license application for sales personnel shall be received in the commission office within thirty (30) days of employment.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1005. Application for license.

(a) An application for a license required under this subchapter shall:

(1) Be verified by the oath or affirmation of the applicant;

(2) Be on a form prescribed by the Arkansas Motor Vehicle Commission and furnished to the applicant; and

(3) Contain such information as the commission deems necessary to enable it to fully determine the qualifications and eligibility of the applicant to receive the license 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 the license is applied for; and

(C) Whether the applicant has the proper facilities and is able to properly conduct the business for which the license is 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 provisions of subsections (a) and (b) of this section, an application for a license as a new recreational vehicle dealer shall 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.

(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.

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

(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 the 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) A recreational vehicle dealer shall 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, § 27-19-101 et seq.

(e)(1) In addition to the provisions of subsections (a)-(d) of this section, an application for a license as a recreational vehicle dealer shall also be accompanied by the filing with the commission of a dealer agreement then in effect between the applicant and a manufacturer or distributor of the new recreational vehicles proposed to be dealt in.

(2) However, if the dealer agreement 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 dealer agreement, shall identify the contract or franchise by appropriate reference and file all revisions and additions, if any, that have been made to the contract or franchise.

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

(1) Maintains adequate space in the building or structure wherein the applicant conducts the business of selling recreational vehicles;

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

(3) Will perform repair and warranty services on recreational vehicles at the licensed location, if the dealer provides such services.

(g)(1) A 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) A dealer shall:

(A) Maintain copies of all documents executed in connection with a transaction, including without limitation bills of sale, titles, odometer statements, invoices, affidavits of alteration, and reassignments; and

(B) Be open to inspection by the Director of the Arkansas Motor Vehicle Commission or a commission representative acting in an official capacity during reasonable business hours and upon execution of a subpoena.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1006. Issuance of license — Change of location — Change of business or corporate name, structure, or DBA name — Dealers, manufacturers, and distributors.

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

(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 in this state for a dealership or if it is within this state for a manufacturer or distributor.

(c) The change of a dealership location to another county in this state or of a manufacturer or distributor to another state requires a new license.

(d)(1) A licensee 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, otherwise known as —DBA namesll, and shall provide the original issue license with the notification of name change or addition of a DBA name or names.

(2) The commission shall endorse the change on the license without charge.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1007. Display of license — Change of employer — Factory representative and distributor representative.

(a) A recreational vehicle factory 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)(1) The name of the employer of the factory representative shall be stated on the license.

(2) 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 on the license of the change of employer.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1008. Display of license — Change of employer — Salesperson.

(a)(1) Except as provided in this section, a recreational vehicle salesperson shall have his or her license upon his or her person or displayed at his or her place of employment when engaged in his or her business and shall display the license upon request.

(2) 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 followed:

(1) Within three (3) days following the change of employer, 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 that the services of the licensee were terminated and such other information as may be required by the commission;

(3)(A) 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 this subchapter as a recreational vehicle salesperson.

(B) 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.

(C) The hearing and any appeal by the licensee with respect to the hearing shall comply with § 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 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 the 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:

- (i) Commission endorses and mails the license to the licensee; or
- (ii) Licensee's license is revoked or suspended in accordance with this subchapter.

(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)(1) The commission shall maintain a permanent file with respect to each licensed recreational vehicle salesperson.

(2) Each file shall contain all pertinent information with respect to the fitness and qualifications of each licensee for use by the commission in determining whether his or her license should be revoked or suspended.

(d)(1) There is no intent under this subchapter 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.

(2) The applicant shall be allowed to sell from the date of employment as long as the applicant and his or her dealer follow the procedure for license application.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1009. Expiration of license.

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

(1) Recreational vehicle manufacturers, distributors, and their representatives expire June 30 following the date of issue; and

(2) Recreational vehicle dealers and salespersons expire December 31 following the date of issue.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1010. Area of sales responsibility.

(a) The following conditions shall apply to the area of sales responsibility of a dealer included in a dealer agreement:

- (1)** The manufacturer shall designate in the dealer agreement the area of sales responsibility exclusively assigned to the dealer;
- (2)** The manufacturer shall not change the area of sales responsibility of a dealer or establish another dealer for the same line-make in that area during the term of the dealer agreement; and
- (3)** The area of sales responsibility shall not be reviewed or changed without the consent of both parties until one (1) year after the execution of the dealer agreement.

(b) A dealer shall not conduct sales activity or display for sale recreational vehicles outside of its designated area of sales responsibility except as provided under § 23-112-901 et seq. and commission rules.

(c) A dealer may sell off-premise or display recreational vehicles within the area of sales responsibility as provided by commission rule.

(d) The dealer shall notify the commission of any change in ownership in accordance with § 23-112-1019.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1011. Renewal of a dealer agreement.

In a renewal of a dealer agreement, the manufacturer shall not impose on the dealer stocking requirements or retail sales targets that are inconsistent with market growth or contraction in the area of sales responsibility of the dealer.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1012. Termination, cancellation, or nonrenewal of dealer agreement.

(a)(1) A manufacturer or distributor, directly or through any authorized officer, agent, or employee, may terminate, cancel, or fail to renew a dealer agreement with or without good cause.

(2) If the manufacturer or distributor terminates, cancels, or fails to renew the dealer agreement without good cause, the manufacturer or distributor shall comply with § 23-112-1013.

(3) If the manufacturer or distributor terminates, cancels, or fails to renew the dealer agreement with good cause, the terms of § 23-112-1013 do not apply.

(b)(1) When terminating or cancelling for good cause, the manufacturer or distributor has the burden of showing good cause for terminating or cancelling a dealer agreement with a dealer.

(2) For purposes of determining whether there is good cause for the proposed action, any of the following factors may be considered:

(A) The extent of the affected dealer's penetration in the area of sales responsibility;

(B) The nature and extent of the dealer's investment in its business;

(C) The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel;

(D) The effect of the proposed action on the community;

(E) The extent and quality of the dealer's service under warranties associated with recreational vehicles;

(F) The failure to follow agreed-upon procedures or standards related to the overall operation of the dealership; and

(G) The performance of the dealer under the terms of its dealer agreement.

(c)(1) Except as otherwise provided in this section, a manufacturer or distributor shall provide a dealer with at least ninety (90) days' prior written notice of termination, cancellation, or nonrenewal of the dealer agreement if the dealer is being terminated for good cause.

(2) The notice shall state:

(A) All reasons for the proposed termination, cancellation, or nonrenewal of the dealer agreement; and

(B)(i) That if within thirty (30) days following receipt of the notice the dealer provides to the manufacturer or distributor a written notice of intent to cure all claimed deficiencies, the dealer will then have ninety (90) days following receipt of the original notice to rectify the deficiencies.

(ii) If the deficiencies are rectified within ninety (90) days following receipt of the original notice, the manufacturer's or distributor's notice is voided.

(iii) If the dealer fails to provide the notice of intent to cure the deficiencies in the prescribed time period, the termination, cancellation, or nonrenewal takes effect thirty (30) days after the dealer's receipt of the original notice from the manufacturer. If the dealer has new and untitled recreational vehicle inventory, the inventory may be sold under § 23-112-1014.

(3) The notice period may be reduced to thirty (30) days if the manufacturer's or distributor's grounds for termination, cancellation, or nonrenewal are due to any of the following good-cause factors:

(A) A dealer's or one (1) of its owners' being convicted of, or entering a plea of nolo contendere to, a felony;

(B) The abandonment or closing of the business operations of the dealer for ten (10) consecutive business days unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the dealer has no control;

(C) A misrepresentation by the dealer materially affecting the business relationship;

(D) A suspension or revocation of the dealer's license or refusal to renew the dealer's license by the commission; or

(E) A material violation of this subchapter that is not cured within thirty (30) days after the written notice by the manufacturer.

(4) The notice provisions of this subsection do not apply if the reason for termination, cancellation, or nonrenewal is:

(A) The dealer's insolvency;

(B) The occurrence of an assignment for the benefit of creditors; or

(C) Bankruptcy.

(d)(1) A dealer may terminate or cancel its dealer agreement with a manufacturer or distributor with or without good cause by giving ninety (90) days' written notice.

(2) If the termination or cancellation is for good cause, the notice shall state:

(A) All reasons for the proposed termination or cancellation; and

(B) That if within thirty (30) days following receipt of the notice the manufacturer or distributor provides to the dealer a written notice of intent to cure all claimed deficiencies, the manufacturer or distributor will then have ninety (90) days following receipt of the original notice to rectify the deficiencies.

(3)(A) If the deficiencies are rectified within ninety (90) days from receipt of the original notice, the dealer's notice is voided.

(B) If the manufacturer or distributor fails to provide the notice of intent to cure the deficiencies in the time period prescribed in the original notice of termination or cancellation, the pending termination or cancellation shall take effect thirty (30) days after the manufacturer's or distributor's receipt of the original notice.

(4)(A) If the dealer terminates, cancels, or fails to renew the dealer agreement without good cause, the terms of § 23-112-1013 do not apply.

(B) If the dealer terminates, cancels, or fails to renew the dealer agreement with good cause, the terms of § 23-112-1013 do apply.

(C) The dealer has the burden of showing good cause.

(D) Any of the following items shall be deemed good cause for the proposed termination, cancellation, or nonrenewal action by a dealer:

(i) A manufacturer's being convicted of, or entering a plea of nolo contendere to, a felony;

(ii) The business operations of the manufacturer having been abandoned or closed for ten (10) consecutive business days, unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the manufacturer has no control;

(iii) A significant misrepresentation by the manufacturer materially affecting the business relationship;

(iv) A material violation of this subchapter which is not cured by the manufacturer within thirty (30) days after written notice; or

(v) A declaration by the manufacturer of bankruptcy, insolvency, or the occurrence of an assignment for the benefit of creditors or bankruptcy.

(e) If the dealer agreement is terminated or cancelled with or without cause, the terminating or cancelling party shall notify the commission of the termination or cancellation within ten (10) days of sending the termination or cancellation notice and include a copy of the notice.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1013. Repurchase of inventory.

If the dealer agreement is terminated, canceled, or not renewed by the manufacturer or distributor without good cause under § 23-112-1011 or by the dealer for good cause as defined in § 23-112-1011 and the manufacturer fails to cure the claimed deficiencies under § 23-112-1011, the manufacturer, at the election of the dealer and within forty-five (45) days after termination, cancellation, or nonrenewal, shall repurchase:

(1)(A) All new, untitled recreational vehicles that were acquired from the manufacturer or distributor within twelve (12) months before the effective date of the notice of termination, cancellation, or nonrenewal that have not been used, except for demonstration purposes, and that have not been altered or damaged, at one hundred percent (100%) of the net invoice cost, including transportation, less applicable rebates and discounts to the dealer.

(B) If any of the vehicles repurchased under this subchapter are damaged but do not trigger a consumer disclosure requirement, the amount due the dealer shall be reduced by the cost to repair the vehicle.

(C) Damage to a recreational vehicle before delivery to a dealer that is disclosed at the time of delivery shall not disqualify its repurchase under this subdivision (1);

(2) All undamaged accessories and proprietary parts sold to the dealer for resale within the twelve (12) months before termination, cancellation, or nonrenewal, if accompanied by the original invoice, at one hundred five percent (105%) of the original net price paid to the manufacturer or distributor to compensate the dealer for handling, packing, and shipping the parts; and

(3) Any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery at one hundred percent (100%) of the dealer's net cost plus freight, destination, delivery, and distribution charges and sales taxes, if any, if:

(A) The diagnostic equipment, special tools, current signage, and other equipment and machinery were purchased by the dealer within five (5) years before termination, cancellation, or nonrenewal upon the manufacturer's or distributor's request; and

(B) The dealer meets the burden of establishing that the diagnostic equipment, special tools, current signage, and other equipment and machinery can no longer be used in the normal course of the dealer's ongoing business.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1014. Sale of remaining inventory after termination.

(a) A dealer is not prohibited from selling the remaining in-stock inventory of a particular line-make after a dealer agreement has been terminated or not renewed under § 23-112-1012.

(b) If recreational vehicles of a line-make are not returned or required to be returned to the manufacturer or distributor, the dealer may continue to sell all line-makes that were subject to the dealer agreement and are currently in stock until those line-makes are no longer in the dealer's inventory.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1015. Change of ownership of dealer — Family succession.

(a) The following conditions apply to a proposed sale of the business assets, transfer of the stock, or other transaction that will result in a change of ownership of a dealer, except a transaction described in subsection (b) of this section:

(1) The dealer shall:

(A) Provide written notice to the manufacturer within sixty (60) days before the proposed closing of the transaction; and

(B) Include all supporting documentation as may be reasonably required by the manufacturer or distributor to determine if an objection to the sale may be made;

(2) In the absence of a breach by the selling dealer of its dealer agreement or a failure to comply with subdivision (a)(1) of this section, the manufacturer or distributor shall not object to the proposed change in ownership unless the prospective transferee meets one (1) or more of the following:

- (A)** The prospective transferee has previously been terminated by the manufacturer for breach of its dealer agreement;
- (B)** The prospective transferee has been convicted of a felony or any crime of fraud, deceit, or moral turpitude in the preceding ten (10) years;
- (C)** The prospective transferee does not have:
 - (i)** An application for a recreational vehicle dealer's license pending; or
 - (ii)** A tentative dealer agreement with a recreational vehicle manufacturer to conduct business as a dealer in this state;
- (D)** The prospective transferee does not have an active line of credit sufficient to purchase a manufacturer's product; or
- (E)** In the preceding ten (10) years the prospective transferee has undergone:
 - (i)** Bankruptcy;
 - (ii)** Insolvency;
 - (iii)** A general assignment for the benefit of creditors; or
 - (iv)** The appointment of a receiver, trustee, or conservator to take possession of the transferee's business or property; and

(3)(A) If the manufacturer or distributor objects to a proposed change of ownership, the manufacturer or distributor shall give written notice of its reasons to the dealer within fifteen (15) business days after receipt of the dealer's notification and complete documentation.

(B) If the manufacturer or distributor does not give timely notice of its objection, the change or sale shall be deemed approved.

(C) The manufacturer or distributor has the burden of proof when objecting to the proposed change of ownership.

(b) The following conditions apply concerning the death, incapacity, or retirement of the designated dealer principal:

(1) It is unlawful for a manufacturer or distributor:

(A) To fail to provide a dealer an opportunity to designate in writing a family member as a successor to the dealership; and

(B) To prevent or refuse to honor the succession to a dealership by a family member unless the manufacturer or distributor has provided to the dealer written notice of its objections within thirty (30) days after receipt of the dealer's modification of the dealer's succession plan;

(2) In the absence of a breach of the dealer agreement, the manufacturer or distributor may object to the succession for the following reasons:

- (A)** Conviction of the successor of a felony or any crime of fraud, deceit, or moral turpitude in the preceding ten (10) years;
- (B)** Bankruptcy or insolvency of the successor in the preceding ten (10) years;
- (C)** Prior termination by the manufacturer or distributor of the successor for breach of a dealer agreement;
- (D)** The lack of an active line of credit for the successor sufficient to purchase the manufacturer's product; or
- (E)** The lack of:
 - (i)** A pending application for a recreational vehicle dealer's license; or
 - (ii)** A tentative dealer agreement with a recreational vehicle manufacturer to conduct business as a dealer in this state;
- (3)** The manufacturer or distributor has the burden of proof regarding its objection to the succession to a dealership by a family member; and
- (4)** The consent of the manufacturer or distributor is required for the succession to a dealership by a family member if the succession involves a relocation of the business or an alteration of the terms and conditions of the dealer agreement.

(c) The dealer shall notify the commission of any change in ownership in accordance with § 23-112-1019.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1016. Warranty obligation.

(a) Each warrantor shall:

(1) Specify in writing to each of its dealers the obligations for preparation, delivery, and warranty service on its products;

(2) Compensate the dealer for warranty service required of the dealer by the warrantor;

(3)(A) Provide the dealer:

(i) The schedule of compensation to be paid; and

(ii) The time allowances for the performance of any work or service.

(B) The schedule of compensation shall include:

(i) Reasonable compensation for diagnostic work as well as warranty labor; and

(ii) Reasonable time allowances in the schedule for the diagnosis and performance of warranty labor.

(C) In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration are:

(i) The actual wage rates being paid by the dealer; and

(ii) The actual retail labor rate being charged by the recreational vehicle dealers in the community in which the dealer is doing business;

(4) Compensate a dealer for warranty labor not less than the lowest retail labor rates actually charged by the dealer for like non-warranty labor as long as such rates are reasonable;

(5) For individual warranty parts, reimburse the dealer at actual wholesale cost plus a minimum handling charge of thirty percent (30%) and the cost, if any, of freight to return warranty parts to the warrantor;

(6) For complete components or accessories, provide the dealer with the new complete component or accessory plus the cost, if any, of freight to return the defective complete component or accessory to the warrantor; and

(7)(A) Approve or disapprove warranty claims in writing within thirty (30) days after the date of submission by the dealer in the manner and form prescribed by the warrantor.

(B) Claims not specifically disapproved in writing within thirty (30) days shall be considered to be approved.

(C) A claim that is approved or considered to be approved under this section shall be paid within sixty (60) days of submission.

(b)(1) Warranty audits of dealer records may be conducted by the warrantor on a reasonable basis.

(2) Dealer claims for warranty compensation shall not be denied except for cause, including without limitation:

(A) Performance of non-warranty repairs;

(B) Material noncompliance with the warrantor's published policies and procedures;

(C) Lack of material documentation;

(D) Fraud; or

(E) Misrepresentation.

(c) A dealer shall:

(1) Submit warranty claims within thirty (30) days after completing work; and

(2) Notify the warrantor in writing if the dealer is unable to perform any warranty repairs within ten (10) days of receipt of a written complaint from a consumer.

(d)(1) A warrantor shall not:

(A) Fail to perform any of its warranty obligations with respect to its warranted products;

(B)(i) Fail to include, in written notices of factory campaigns to recreational vehicle owners and dealers, the expected date by which necessary parts and equipment, including tires and chassis or chassis parts, will be available to dealers to perform the factory campaign work.

(ii) The warrantor may ship parts to the dealer to effect the factory campaign work, and if the parts are in excess of the dealer's requirements, the dealer may return unused undamaged parts to the warrantor for credit after completion of the factory campaign;

(C) Fail to compensate any of its dealers for authorized repairs effected by the dealer of merchandise damaged in manufacture or transit to the dealer, if the carrier is designated by the warrantor, factory branch, or distributor;

(D) Fail to compensate any of its dealers in accordance with the schedule of compensation provided to the dealer under this section if performed in a timely and competent manner;

(E) Intentionally misrepresent in any way to purchasers of recreational vehicles that warranties with respect to the manufacture, performance, or design of the vehicle are made by the dealer as warrantor or co-warrantor; or

(F) Require the dealer to make warranties to customers in any manner related to the manufacture of the recreational vehicle.

(2)(A) Notwithstanding the terms of any dealer agreement, it is a violation of this subchapter for a warrantor to fail to indemnify and hold harmless its new recreational vehicle dealer against any losses or damages to the extent that the losses or damages are caused by the negligence or willful misconduct of the warrantor.

(B) A new recreational vehicle dealer shall not be denied indemnification for failing to discover, disclose, or remedy a defect in the design or manufacturing of a new recreational vehicle.

(C) A new recreational vehicle dealer may be denied indemnification if the new recreational vehicle dealer fails to remedy a known and announced defect in accordance with the written instructions of a warrantor for whom the new recreational vehicle dealer is obligated to perform warranty service.

(D)(i) A new recreational vehicle dealer shall provide to a warrantor written notice of a pending lawsuit in which allegations are made that are covered by this subchapter within ten (10) business days after the dealer receives written notice of the lawsuit.

(ii) Written notice to the warrantor shall be by any method that provides a receipt for delivery.

(E) Subdivision (d)(2) of this section applies even after the new recreational vehicle is titled.

(e)(1) It is a violation of this subchapter for any dealer to:

(A) Fail to perform pre-delivery inspection functions, as specified by the warrantor, in a competent and timely manner;

(B) Fail to perform warranty service work authorized by the warrantor in a competent and reasonably timely manner on a transient customer's vehicle of a line-make sold and serviced or serviced by that dealer;

(C) Fail to accurately document the:

(i) Time spent completing each repair;

(ii) Total number of repair attempts conducted on a single unit; and

(iii) Total number of repair attempts for the same repair conducted on a single vehicle;

(D) Fail to maintain written records, including a consumer's signature, regarding the amount of time a unit is stored for the consumer's convenience during a repair;

(E) Make fraudulent warranty claims; or

(F) Misrepresent the terms of a warranty.

(2)(A) Notwithstanding the terms of any dealer agreement, it is a violation of this subchapter for a new recreational vehicle dealer to fail to indemnify and hold harmless its warrantor against any losses or damages to the extent that the losses or damages are caused by the negligence or willful misconduct of the new recreational vehicle dealer.

(B) A warrantor shall provide to a new recreational vehicle dealer a copy of any pending lawsuit or similar proceeding in which allegations are made that come within the provisions of this subsection within ten (10) days after receiving such suit.

(C) This subdivision (e)(2) applies even after the new recreational vehicle is titled.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1017. Damage to recreational vehicles before arrival at dealership.

(a) All the following apply if a new recreational vehicle is damaged before transit to the dealer or is damaged in transit to the dealer when the carrier or means of transportation has been selected by the manufacturer or distributor:

(1) The dealer shall notify the manufacturer or distributor of the damage within the time frame specified in the dealer agreement and:

(A) Request authorization from the manufacturer or distributor to replace the components, parts, and accessories damaged or otherwise correct the damage; or

(B) Reject the vehicle within the time frame specified in the dealer agreement;

(2) If the manufacturer or distributor refuses or fails to authorize repair of the damage within ten (10) days after receipt of notification or if the dealer rejects the recreational vehicle because of damage, ownership of the new recreational vehicle reverts to the manufacturer or distributor; and

(3) The dealer shall exercise due care in custody of the damaged recreational vehicle, but the dealer has no other obligations, financial or otherwise, with respect to that recreational vehicle.

(b)(1) A dealer agreement shall include a time frame for inspection and rejection by the dealer.

(2) The time frame shall not be less than three (3) business days after the physical delivery of the recreational vehicle.

(c) As used in this section, —damaged before transitll and —damaged in transitll do not include inspection or warranty repairs or service.

(d)(1) A recreational vehicle that has at the time of delivery to the dealer an unreasonable number of miles on its odometer, as determined by the dealer, may be subject to rejection by the dealer and reversion of the vehicle to the manufacturer or distributor.

(2) However, if the number of miles on the odometer of the recreational vehicle is less than the sum of the distance in miles between the dealer and the factory of the manufacturer or point of distribution plus one hundred (100) miles, the dealer shall not consider the number of miles on the odometer unreasonable.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1018. Prohibited activity of a manufacturer or distributor — Coercion.

(a) A manufacturer or distributor shall not coerce or attempt to coerce a dealer to:

(1) Purchase a product that the dealer did not order;

(2) Enter into an agreement with the manufacturer or distributor; or

(3) Enter into an agreement that requires the dealer to submit its disputes to binding arbitration or otherwise waive rights or responsibilities provided under this subchapter.

(b) As used in this subchapter, —coerce includes without limitation:

(1) Threatening to terminate, cancel, or not renew a dealer agreement without good cause;

(2) Threatening to withhold product lines the dealer is entitled to purchase under the dealer agreement; or

(3) Delaying delivery of recreational vehicles as an inducement to amend the dealer

agreement.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1019. License — Denial, revocation, and suspension.

(a) For any of the following reasons, the Arkansas Motor Vehicle Commission may deny an application for a license required by this subchapter or revoke or suspend a license after it has been granted:

(1)(A) Selling or soliciting sales of a recreational vehicle without a license issued by the commission.

(B) The unlawful sale or solicitation of each recreational vehicle constitutes 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 subchapter;

(3) Fraud practiced or any material misstatement made by an applicant in an application for license under this subchapter;

(4) Failure to comply with any provision of this subchapter or with any rule promulgated by the commission under authority vested in it by this subchapter;

(5) Change of condition after a license is granted or failure to maintain the qualifications for license;

(6) Continued violation of any of the provisions of this subchapter or of any of the rules of the commission;

(7) Violation of any law relating to the sale, distribution, or financing of recreational vehicles;

(8) Defrauding a retail buyer to the buyer's damage;

(9) Failure to perform a written agreement with a retail buyer;

(10) Selling, attempting to sell, or advertising for sale vehicles from a location other than that set forth on the license except as provided under § 23-112-901;

(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 recreational 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 an advertisement, when the person is not licensed as a dealer or salesperson;

(16) Assisting a person in the sale of a recreational 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 recreational vehicle dealers, as is required for the protection of the buying public, before delivery of new recreational vehicles to retail buyers;

(18) On satisfactory proof that a 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 a warranty agreement or to adequately and fairly compensate any of its recreational vehicle dealers for labor or parts expenses incurred by the dealer with regard to factory warranty agreements performed by the dealer;

(19) For the commission of any act prohibited by this subchapter or the failure to perform any of the requirements of this subchapter;

(20) Using or permitting the use of special license plates assigned to a licensee for any other purpose than those permitted by law;

(21) Disconnecting, turning back, or resetting the odometer of a motor home in violation of state or federal law;

(22) Accepting an open assignment of title or bill of sale for a recreational vehicle that does not identify the licensee as the purchaser or assignee of the recreational vehicle;

(23) (A) Failing to notify the commission of a change in ownership, location, or dealer agreement or any other matters the commission may require by rule.

(B) The notification shall be in writing and submitted to the commission at least fifteen (15) days before the effective date of the change;

(24) Failing to endorse and deliver an assignment and warranty of title to the buyer under § 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 what is 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 to a buyer 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; or

(2)(A) The sales area of a dealer whose franchise is unfairly cancelled or terminated under this subchapter or whose franchise is not renewed in violation of this subchapter.

(B) However, when a franchise is unfairly cancelled or terminated under this subchapter or is not renewed in violation of this subchapter in a metropolitan area serviced by several recreational vehicle dealers handling the same recreational vehicles, the revocation or suspension does not apply to the remaining recreational vehicle dealers in the metropolitan area.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1020. Monetary penalty in lieu of suspension or revocation of license — Civil penalty.

(a) For a monetary penalty in lieu of suspension or revocation of a license, the following apply:

(1)(A) If after alternative proceedings or notice and hearing the Arkansas Motor Vehicle Commission finds that a person holding a license under this subchapter is guilty of a violation of this subchapter or rules promulgated under this subchapter, the commission may impose a monetary penalty upon the licensee in lieu of suspension or revocation of a license.

(B)(i) The commission may require the licensee to pay the monetary penalty with the sanction that the license shall be suspended until the penalty is paid.

(ii) The period of suspension shall not exceed ninety (90) days from entry of the commission's order or final order on appeal.

(C) The penalty in lieu of suspension or revocation of a license may be imposed only if the commission formally finds that the public interest would not be impaired by the imposition of the penalty and the payment of the penalty will achieve the desired disciplinary results;

(2)(A) 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).

(B)(i) If the commission finds that there is sufficient cause upon which to base the 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.

(ii) However, the amount of the penalty shall not exceed the aggregate of five thousand dollars (\$5,000);

(3) If the commission has revoked the license because of the violation, the commission shall not impose a penalty;

(4) Each instance when this subchapter or a rule is violated constitutes a separate violation; and

(5) 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 Pulaski County Circuit Court to obtain a judgment for the amount of penalty not paid.

(b) The following apply to a civil penalty:

(1) If after request for alternative proceedings or notice and hearing the Arkansas Motor Vehicle Commission finds that a person not holding a license under this subchapter is guilty of a violation of this subchapter or rules promulgated under this subchapter, the commission may impose a monetary penalty upon the person not to exceed one thousand dollars (\$1,000) per violation;

(2) Each day of violation of this subchapter or of a rule constitutes a separate violation subjecting the person to a separate civil penalty;

(3) Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the commission may file suit in Pulaski County Circuit Court to obtain a judgment for the amount of the penalty not paid; and

(4)(A) Repeated violations by a person not holding a license under this subchapter shall result in an increase in the penalty assessed by the commission.

(B) As used in this subdivision (b)(4), —second violation and —subsequent violation mean a violation of the same nature as a previously remedied violation that occurs within five (5) years of the remedied violation by a person not holding a license under this subchapter.

(C) The commission may 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 2013, No. 1043, § 10.

23-112-1021. Enforcement.

(a) The Arkansas Motor Vehicle Commission may enter orders that direct compliance with this subchapter and rules under this subchapter if any of the following conditions have been met:

(1) The commission has conducted a hearing within sixty (60) days on the matter;

(2) The commission has made written findings that the public interest and welfare require the person or entity against whom the commission is acting to take the specified action; or

(3) The commission finds that the current civil or administrative penalties are insufficient.

(b) The commission may enforce its findings and conclusions upon entry of an order under subsection (a) of this section.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1022. Civil action and mediation.

(a)(1) A dealer, manufacturer, distributor, or warrantor injured by another party's violation of this subchapter may bring a civil action in circuit court to recover actual damages.

(2) The court shall award attorney's fees and costs to the prevailing party in such an action.

(b)(1) Venue for a civil action under this section is in the county in which the dealer's business is located.

(2) In an action involving more than one (1) dealer, venue may be in any county in which any dealer that is party to the action is located.

(c)(1) Before bringing suit under this section, the party bringing suit for an alleged violation shall serve a written demand for mediation upon the offending party.

(2) The demand for mediation shall:

(A) Be served upon the other party via certified mail at the address stated within the dealer agreement between the parties; and

(B) Contain a brief statement of the dispute and the relief sought by the party filing the demand.

(3)(A) Within twenty (20) days after the date on which a demand for mediation is served, the parties shall:

(i) Mutually select an independent certified mediator; and

(ii) Meet with the mediator to attempt to resolve the dispute.

(B) The meeting place shall be in this state in a location selected by the mediator.

(C) The mediator may extend the date of the meeting for good cause shown by either party or upon stipulation of both parties.

(4)(A) The service of a demand for mediation under this section tolls the time for the filing of a complaint, petition, protest, or other action under this subchapter until representatives of both parties have met with a mutually selected mediator to attempt to resolve the dispute.

(B) If a complaint, petition, protest, or other action is filed before that meeting, the court:

(i) Shall enter an order suspending the proceeding or action until the mediation meeting has occurred; and

(ii) Upon written stipulation of all parties to the proceeding or action that they wish to continue to mediate under this section, may enter an order suspending the proceeding or action for as long as the court considers appropriate.

- (5) The parties to the mediation shall:
- (A) Bear their own costs for attorney's fees; and
 - (B) Divide equally the cost of the mediator.

HISTORY. Acts 2013, No. 1043, § 10.

23-112-1023. Injunction.

(a) In addition to any remedy provided in this subchapter or otherwise available by law, a manufacturer, distributor, warrantor, or a dealer may apply to a court of competent jurisdiction for the issuance, upon a hearing and for cause shown, of a temporary or permanent injunction or other equitable relief restraining a person from doing any of the following:

- (1) Acting as a dealer without being properly licensed;
- (2) Committing a single act or multiple acts in violation of this subchapter; or
- (3) Failing or refusing to comply with any requirement of this subchapter.

(b) The Arkansas Motor Vehicle Commission may seek an injunction upon affidavit in the circuit court for the county in which the commission's office is located to prevent a person, firm, partnership, association, corporation, or legal entity from violating a provision of this subchapter or a rule promulgated by the commission.

(c) The commission shall not be required to:

- (1) Execute or give bond for costs, indemnity, or stay; or
- (2) Give security as a condition to the issuance of a restraining order or injunction, either temporary or permanent.

HISTORY. Acts 2013, No. 1043, § 10.

FOR INFORMATION PURPOSES ONLY

This section is regulated by the Department of Finance and Administration-Office of Motor

27 Vehicles

Title Transportation

Subtitle 2. Motor Vehicle Registration and Licensing

Chapter 14 Uniform Motor Vehicle Administration, Certificate of Title, and Antitheft Act

Subchapter 17 -- Plates for Manufacturers, Transporters, and Dealers

A.C.A. § **27-14-1705** (2011)

27-14-1705. Temporary preprinted paper buyer's tags.

(a) (1) (A) A person who buys a motor vehicle from a licensed dealer shall be required to obtain one (1) temporary preprinted paper buyer's tag for the vehicle and any correlating sticker that is to be placed on the tag.

(B) The preprinted paper buyer's tag may be issued by an approved licensed dealer, vendor, or the Office of Motor Vehicle.

(2) (A) A person who buys a motor vehicle from a licensed dealer that cannot issue temporary preprinted paper buyer's tags shall:

(i) Obtain the preprinted paper buyer's tag and sticker within ten (10) calendar days after the date of purchase of the vehicle from an approved vendor or the Office of Motor Vehicle;

(ii) Provide to the vendor or the Office of Motor Vehicle a copy of the bill of sale or other documentation necessary to verify the dealer's name, the buyer's name, the date of sale, the motor vehicle's vehicle identification number, and the make, color, and model of the vehicle; and

(iii) Maintain a copy of the bill of sale for the motor vehicle in the vehicle until the buyer obtains the preprinted paper buyer's tag and sticker.

(B) A person who fails to obtain a preprinted paper buyer's tag and sticker within ten (10) calendar days of the date of purchase of the vehicle is subject to the fines in this section.

(b) (1) The temporary preprinted paper buyer's tag is valid for the operation of the vehicle until the earlier of:

(A) The date on which the vehicle is registered; or

(B) The thirtieth calendar day after the date of purchase.

(2) (A) If the date that a transferee of a motor vehicle must register the vehicle is extended under § 27-14-903(a)(2), the dealer may issue one (1) additional temporary preprinted paper buyer's tag and sticker to the transferee, to expire thirty (30) calendar days from the date that the additional temporary preprinted paper buyer's tag was issued.

(B) (i) If the dealer cannot issue preprinted paper buyer's tags, the transferee may obtain a temporary preprinted paper buyer's tag from the Office of Motor Vehicle.

(ii) The additional preprinted paper buyer's tag expires thirty (30) calendar days from the date the additional tag was issued.

(c) (1) (A) The following information shall be printed by the dealer, the vendor, or the Office of Motor Vehicle on the face of the temporary preprinted paper buyer's tags:

(i) The actual date of sale;

(ii) The date of expiration;

(iii) The vehicle year, make, and model;

(iv) The vehicle identification number;

(v) The name of the issuing dealer; and

(vi) Other information required by the Office of Motor Vehicle.

(B) The expiration date of the preprinted paper buyer's tag shall be shown in ink on the preprinted paper buyer's tag in a place to be determined by the Office of Motor Vehicle, and the date shall be covered by a sticker for added security.

(2) A dealer that issues a temporary preprinted paper buyer's tag shall indicate on the bill of sale that a temporary preprinted paper buyer's tag was issued in order to facilitate collection of the fees required by this subchapter.

(d) (1) (A) The temporary preprinted paper buyer's tag issued under this section shall be placed at the location provided for the permanent motor vehicle license plate.

(B) (i) The temporary preprinted paper buyer's tag shall be covered by a translucent material that protects the temporary tag until the tag's expiration.

(ii) The translucent material covering the tag shall be approved by the Office of Motor Vehicle.

(C) (i) The information on the tag shall be visible and readable when viewing the temporary tag covered with the translucent material.

(ii) The translucent material shall cover the tag in the manner approved by the Office of Motor Vehicle.

(D) A dealer that issues a temporary preprinted paper buyer's tag shall insert the tag into the translucent material and attach the tag to each vehicle the dealer sells to keep the tag in place and readable when the vehicle is in use.

(2) If a preprinted paper buyer's tag placed at the location provided for the permanent motor vehicle license plate becomes damaged or destroyed, the motor vehicle purchaser shall be required to register the vehicle under § 27-14-705 or obtain a replacement preprinted paper buyer's tag from the original issuing dealer or from the Office of Motor Vehicle.

(3) The replacement preprinted paper buyer's tag shall expire on the expiration date of the original preprinted paper buyer's tag.

(e) The Director of the Department of Finance and Administration shall provide the specifications, form, and color of the temporary preprinted paper buyer's tag.

(f) (1) (A) The buyer shall be responsible for paying to the director a fee to be set by the director, which shall not exceed four dollars (\$4.00), for each temporary preprinted paper buyer's tag and any correlating sticker the buyer receives.

(B) This fee shall be collected at the time the buyer registers the vehicle under § 27-14-705.

(2) The gross receipts or gross proceeds derived from the sale or issuance of temporary preprinted paper buyer's tags under this section shall be exempt from the Arkansas gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and

the Arkansas compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., and any other state or local tax administered under those chapters.

(3) (A) Except as provided in subdivision (f)(3)(B) of this section, all fees collected by the director under this section shall be deposited into the State Treasury, and the Treasurer of State shall credit them as general revenues to the General Revenue Fund Account of the State Apportionment Fund.

(B) All amounts in excess of the first two dollars and fifty cents (\$2.50) of the fee collected under subdivision (f)(1)(A) of this section shall be deposited into the State Treasury, and the Treasurer of State shall credit them as cash revenue to the credit of the Revenue Division of the Department of Finance and Administration to offset administrative costs.

(g) (1) For each temporary preprinted paper buyer's tag provided to a buyer, the issuer shall retain documentation containing:

(A) The dealer's name and master license plate number;

(B) The buyer's name;

(C) The date the temporary preprinted paper buyer's tag was issued;

(D) The vehicle's vehicle identification number;

(E) The make and model of the vehicle; and

(F) The expiration date of the temporary preprinted paper buyer's tag.

(2) An issuer of preprinted paper buyer's tags shall provide the documentation required to be retained by subdivision (g)(1) of this section to the Office of Motor Vehicle on the date of sale for entry into the vehicle temporary tag database provided in § 27-14-1708.

(h) (1) (A) In addition to any other penalty prescribed by this section, the director may suspend or terminate a dealer's authority to issue temporary preprinted paper buyer's tags if the director determines that the dealer, manager, salesperson, or employee of the dealer:

(i) Issues more than one (1) temporary preprinted paper buyer's tag to the same buyer for the same motor vehicle, except as authorized under subdivision (b)(2) or subdivision (d)(2) of this section; or

(ii) Utilizes a temporary preprinted paper buyer's tag for any use other than a use authorized by subsections (b) and (d) of this section.

(B) In addition to any other penalty prescribed by this section, if the director determines that the dealer, or a manager, salesperson, or employee of the dealer, has violated this subsection, the director may impose a penalty equal to ten dollars (\$10.00) for each inappropriately issued temporary preprinted paper buyer's tag.

(2) The director shall:

(A) Notify the dealer in writing of the imposition of a penalty or of a suspension or termination of the dealer's authority to issue temporary preprinted paper buyer's tags under this section; and

(B) Provide information in the notice regarding the prohibited activity upon which the suspension or termination is based.

(3) The dealer's authority to issue temporary preprinted paper buyer's tags may be suspended for:

(A) Six (6) months for the first occurrence under subdivision (h)(1) of this section; or

(B) One (1) year for the second occurrence under subdivision (h)(1) of this section.

(4) The dealer's authority to issue temporary preprinted paper buyer's tags may be terminated for a third or subsequent occurrence under subdivision (h)(1) of this section.

(5) (A) A dealer who desires a hearing on the imposition of a penalty, or of the suspension or termination of the dealer's authority to issue temporary tags under this section, shall notify the director in writing within twenty (20) days after receipt of the notice of imposition of a penalty, or of the suspension or termination.

(B) A hearing officer appointed by the director shall schedule a hearing in an office of the Revenue Division of the Department of Finance and Administration in the county of the dealer's principal place of business, unless the director and the dealer agree to another location for the hearing or agree that the hearing shall be held by telephone.

(C) Hearings conducted under this section shall be subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(D) The hearing officer shall render his or her decision in writing to modify, reverse, or affirm the imposition of a penalty, or of the suspension or termination of the dealer's authority to issue temporary preprinted paper buyer's tags based upon the evidence presented at the hearing and shall serve a copy of the decision on the dealer.

(6) (A) If the decision sustains, in whole or in part, the suspension or termination of the dealer's authority to issue temporary preprinted paper buyer's tags, the dealer may file suit within thirty (30) days of receipt of the decision in the Pulaski County Circuit Court or the circuit court of the county of the dealer's principal place of business.

(B) The dealer shall serve a copy of the petition on the director.

(C) The appeal shall not stay the order of suspension or termination, and the order shall remain in effect and be terminated only in the event a decision reversing the suspension or termination is issued by the circuit court.

(7) An appeal from the circuit court shall be in accordance with the laws governing appeals.

(i) (1) Any dealer or approved vendor or any manager, salesperson, or employee of the dealer or vendor who pleads guilty or nolo contendere to or is found guilty of the misuse of a temporary preprinted paper buyer's tag or of allowing anyone else to misuse a temporary preprinted paper buyer's tag shall be fined not more than:

(A) Two hundred fifty dollars (\$250) for the first offense;

(B) Five hundred dollars (\$500) for the second offense; and

(C) One thousand dollars (\$1,000) for the third and subsequent offenses.

(2) A buyer who pleads guilty or nolo contendere to or is found guilty of failing to obtain a temporary buyer's tag shall be fined not more than twenty-five dollars (\$25.00).

(3) A buyer who pleads guilty or nolo contendere to or is found guilty of altering a preprinted paper buyer's tag or the fraudulent use of a preprinted paper buyer's tag shall be fined not more than:

(A) Two hundred fifty dollars (\$250) for the first offense;

(B) Five hundred dollars (\$500) for the second offense; and

(C) One thousand dollars (\$1,000) for the third and subsequent offenses.

(j) This section does not apply to an owner or lessee of a registered motor vehicle who elects to display a license plate on a replacement motor vehicle under § 27-14-902(a)(3)(B).

HISTORY: Acts 2005, No. 1929, § 4; 2009, No. 484, § 5; 2009, No. 756, § 20; 2009, No. 780, § 1; 2011, No. 351, § 1; 2013, No. 747, § 2; 2015, No. 705, §§ 2-4.

