

Arkansas Motor Vehicle Commission Act

I N D E X

Subchapter Listing	1
<u>SUBCHAPTER 1. GENERAL PROVISIONS.</u>	
23-112-101. Title	2
23-112-102. Legislative Findings – Purpose	2
23-112-103. Definitions	3-8
23-112-104. Injunction	8
23-112-105. Civil Damages	8
23-112-106. Enforcement	8
<u>SUBCHAPTER 2. MOTOR VEHICLE COMMISSION.</u>	
23-112-201. Arkansas Motor Vehicle Commission- Creation – Officers	9-10
23-112-202. Proceedings – Bond	10-11
23-112-203. Executive Director - Employees – Office	11
23-112-204. Rules	11
23-112-205. Disposition of Funds	11-12
<u>SUBCHAPTER 3. LICENSE AND RULE.</u>	
23-112-301. License Required	13-14
23-112-302. Application for License	14-16
23-112-303. Application Fees	16-17
23-112-304. Issuance of License-Change of Location-Change of Business or Corporate Name, Structure, or DBA Name-Dealers, Manufacturers, Dist., etc	17
23-112-305. Display of License – Change of Employer – Factory Representative and Distributor Representative	17
23-112-306. Display of License - Change of Employer – Salesperson	17-18
23-112-307. Expiration of License	18-19
23-112-308. Denial, Revocation, and Suspension	19-21
23-112-309. Monetary Penalty in Lieu of Suspension or Revocation of License	21
23-112-310. Delivery, Preparation, and Warranty Obligations	21-22
23-112-311. Addition or Relocation of New Motor Vehicle Dealer	22-24
23-112-312. License Reciprocity with Other States	24
23-112-313. Warranty Agreements	24-25
23-112-314. Civil Penalty	26

Arkansas Motor Vehicle Commission Act

INDEX — Continued

SUBCHAPTER 3. LICENSE AND RULE (Continued).

23-112-315.	[Repealed. Motor Vehicle Dealer Documentary Fees- Disclosures.] _____	26
23-112-316.	Delivery Prior to Sale-Disclosures _____	26-28
23-112-317.	Motor Vehicle Dealer Service and Handling Fees _____	28-29
23-112-318.	Negative Equity Financing and Disclosures Permitted _____	29

SUBCHAPTER 4. UNLAWFUL PRACTICES.

23-112-401.	[Repealed. Penalty.] _____	30
23-112-402.	Dealer and Salesperson _____	30
23-112-403.	Manufacturers, Distributors, Second State Mfg. Importers, or Converters _____	30-38
23-112-404.	Motor Vehicle Lessor _____	38-39
23-112-405.	[Repealed. Auto Auctions.] _____	39
23-112-406.	Acting as a Broker _____	39-40
23-112-407.	[Repealed] _____	40

SUBCHAPTER 5. HEARINGS AND APPEALS.

23-112-501.	Right to Hearing _____	41
23-112-502.	Call for Hearing _____	41
23-112-503.	Notice - Location of Hearing _____	41-42
23-112-504.	Conduct of Hearing _____	42
23-112-505.	Decisions and Orders of Commission – Quorum _____	42
23-112-506.	Appeals _____	42
23-112-507.	Exhaustion of Remedies Required – Exception _____	42
23-112-508.	Rules of Order or Procedure _____	43
23-112-509.	Summons, Citation, and Subpoena _____	43

SUBCHAPTER 6. USED MOTOR VEHICLE BUYERS PROTECTION

(This section is provided for reference only)

Subchapter Listing _____	45	
23-112-601.	Necessity for Regulation - Legislative Findings - Legislative Declaration _____	46
23-112-602.	Definitions _____	47-49
23-112-603.	Penalty for Violation and Disbursal of fines _____	49-50

Arkansas Motor Vehicle Commission Act

I N D E X — *Continued*

SUBCHAPTER 6. USED MOTOR VEHICLE BUYERS

PROTECTION(continued)

(This section is provided for reference only)

23-112-604.	Power to Promulgate Rules_____	49
23-112-605.	Violations_____	49-50
23-112-606.	License Required_____	50
23-112-607.	Dealer License_____	50-52
23-112-608.	License Certificate Fees_____	52-53
23-112-609.	Issuance of License Certificate_____	53
23-112-610.	Display of Dealer License_____	53
23-112-611.	Records to be Maintained_____	54
23-112-612.	[Repealed. Motor Vehicle Dealer Documentary Fees disclosures.]_____	54
23-112-613.	Delivery Prior to Sale-Disclosures_____	54-55
23-112-614.	Salvage Auction Buyers Identification Card_____	56-58
23-112-615.	Prohibition_____	58
23-112-616.	Dealers from Other States_____	58
23-112-617.	Used Motor Vehicle Dealer Service and Handling Fee_____	59

SUBCHAPTER 7. DAMAGE TO MOTOR VEHICLES WHILE IN TRANSIT.

23-112-701.	When Delivery Accomplished_____	60
23-112-702.	Damage Prior to Delivery to the Dealer – Notice_____	60
23-112-703.	Failure to Repair_____	61
23-112-704.	Computing Time_____	61
23-112-705.	Disclosure of Damage to Consumer – Certification_____	61
23-112-706.	Damage after Delivery to the Dealer –Disclosure to the Consumer-Certification_____	61
23-112-707.	Manufacturer Required to Indemnify Franchised Dealers____	62

SUBCHAPTER 8-SPECIAL MOTORCYCLE EVENTS

23-112-801.	Findings_____	63
23-112-802.	Definitions_____	63-64
23-112-803.	Statements of Positive Impact_____	64
23-112-804.	Significant Positive Economic Impact Determinations_____	64
23-112-805.	Authority to Waive Relevant Market Area and Rules_____	65
23-112-806.	Established and Ongoing Special Motorcycle Events_____	65-66

Arkansas Motor Vehicle Commission Act

Arkansas Code Annotated §23-112-101 et seq.

CHAPTER 112

MOTOR VEHICLE MANUFACTURERS, DEALERS, ETC.

SUBCHAPTERS.

1. GENERAL PROVISIONS.
2. MOTOR VEHICLE COMMISSION.
3. LICENSE AND RULE.
4. UNLAWFUL PRACTICES.
5. HEARINGS AND APPEALS.
6. USED MOTOR VEHICLE BUYERS PROTECTION.
7. DAMAGE TO MOTOR VEHICLES WHILE IN TRANSIT.

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 http://170.94.58.9/data/ar_code.asp or (click here) [Arkansas Code Online](#).

SUBCHAPTER 1.
GENERAL PROVISIONS.

SECTIONS.

- 23-112-101. Title.**
23-112-102. Legislative Findings – Purpose.
23-112-103. Definitions.
23-112-104. Injunction.
23-112-105. Civil Damages.
23-112-106. Enforcement

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 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 eight hundred pounds (800 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 which exceeds fifty inches (50") or having a dry weight that exceeds eight hundred pounds (800 lbs.), traveling on four (4) or more low-profile, low-pressure tires and having a bench seat, 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) "Coerce" means the failure to act in good faith in performing or complying with any terms or provisions of the franchise or agreement;
- (7) "Commission" means the Arkansas Motor Vehicle Commission created by this chapter;
- (8) "Conversion" means a motor vehicle other than an ambulance or fire fighting 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 which 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 who 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 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 (1) 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) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new motor vehicles;

(18) "Motor vehicle" means any motor-driven vehicle having two (2) or more wheels, including, but not limited to, all-terrain vehicles, automobiles, trucks, motorcycles, motor-driven cycles, motor scooters, and motor homes;

(19)(A)(i) "Motor vehicle dealer" means any person engaged in the business of selling, offering to sell, soliciting, or advertising the sale of motor vehicles, regardless of the medium used or possessing motor vehicles for the purpose of resale, either on his or her own account or on behalf of another, either as his or her primary business or incidental thereto.

(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 multipassenger 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.;

- (20) "Motor vehicle lessor" means any person not excluded by subdivision (19) of this section engaged in the motor vehicle leasing or rental business;
- (21) "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;
- (22) "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;
- (23) "Off premises" means a location other than the address designated as the licensed location;
- (24) "Person" means and includes, individually and collectively, individuals, firms, partnerships, copartnerships, associations, corporations, trusts, or any other form of business enterprise, or any legal entity;
- (25) (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, where a manufacturer is seeking to establish an additional new motor vehicle dealer and there are one (1) or more existing new motor vehicle dealers of the same line make within a ten-mile radius of the proposed dealer site, 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;
- (26) "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;

(27) "Second-stage manufacturer" or "converter" means a person, firm, or corporation who, 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;

(28) (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;

(29) "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;

(30) (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;

(31) (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, distributor, dealer, or agents thereof.

(B) In the event of a transfer that is 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;

(32) "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.

(33) (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 incidental sales.

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.

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.

Any licensee suffering pecuniary loss because of any willful failure by any other licensee to comply with any provision of 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 therefor in any court of competent jurisdiction.

History. Acts 1975, No. 388, § 9; A.S.A. 1947, § 75-2309; Acts 1989, No. 678, § 3.

23-112-106. Enforcement.

(a)The Arkansas Motor Vehicle Commission may enter orders that direct and command compliance with this chapter and regulations 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 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 of this section.

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

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.
23-112-205. Disposition of Funds.

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 them 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 Chairman, 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 Executive 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 may, 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 Executive 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 Executive Director 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.

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 in 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.

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. Motor Vehicle Dealer Documentary Fees-Disclosures.]**
- 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.**

23-112-301. License Required.

- (a) Notwithstanding any other statute, the following acts are declared to be unlawful:
 - (1) The violation of any of the provision of this chapter; and
 - (2) For any person to engage in business as, or serve in the capacity of, or act as a new motor vehicle dealer, motor vehicle salesperson, motor vehicle lessor, manufacturer, distributor, factory branch or division, distributor branch or division, factory representative, distributor representative, second-stage manufacturer, or converter, as such, in this state without first obtaining a license therefor as provided in this chapter, regardless of whether or not the person maintains or has a place of business in this state.
- (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 business is carried on or conducted shall be required to obtain and hold a separate and current license for each capacity and place of business.
- (c) (1) However, any new licensed motor vehicle dealer shall not be required to obtain a license as a motor vehicle lessor for any location licensed as a motor vehicle dealer.
 - (2) A motor vehicle lessor shall be required to obtain only one (1) motor vehicle lessor's license, regardless of the number of leasing locations he or she owns and operates but shall list each location on his or her application and pay a fee of fifty dollars (\$50.00) for each location.
 - (3) New lease locations opened after a license is issued shall be approved by the Arkansas Motor Vehicle Commission but shall not require a new license.

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

(d) (1) No person may engage in the business of buying, selling, or exchanging motor vehicles, unless he or she;

(A) Holds a valid license issued by the Commission for the makes of motor vehicles being bought, sold, or exchanged; or

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

(2) For purposes of this subsection, “engage in the business of buying, selling, or exchanging motor vehicles” means:

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

(B) Advertising for sale new motor vehicles regardless of the medium used; or

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

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

23-112-302. Application for License.

(a) Applications for licenses required to be obtained under the provisions of this chapter shall:

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

(2) Be on forms prescribed by the Arkansas Motor Vehicle Commission and furnished to the applicants; and

(3) Contain such information as the Commission deems necessary to enable it too fully determine the qualifications and eligibility of the several applicants to receive the licenses applied for.

(b) The Commission shall require that there be set forth in each application:

(1) Information relating to:

(A) The applicant’s business integrity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) The applicant for a license as a new motor vehicle dealer must 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; and

(2) Has or will have adequate facilities in the building or structure for the repair and servicing of motor vehicles and the storage of new parts and accessories for the motor vehicles.

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

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

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

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

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

23-112-303. Application Fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23-112-307. Expiration of License.

(a) Unless the Arkansas Motor Vehicle Commission shall by rule provide to the contrary, all licenses issued to manufacturers, distributors, factory or distributor branches, importers, second-stage manufacturers, converters, and motor vehicle dealers shall expire December 31 following the date of issue.

(b) Unless the Commission shall by rule provide otherwise, all licenses issued to motor vehicle lessors, representatives, and motor vehicle salespersons shall expire June 30 following the date of issue.

(c) Unless the Commission by rule provides to the contrary, licenses relating to motor vehicles having fewer than four (4) wheels shall 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.

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

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

- (1) (A) For selling or soliciting sales of a motor vehicle without a license issued by the Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) This section does not apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23-112-313. Warranty Agreements.

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

(b) (1) In no event shall the compensation fail to include reasonable compensation for diagnostic work, as well as repair service and labor. 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 under this subsection, the principal factor to be given consideration shall be the prevailing wage rates, exclusive of routine maintenance, being paid by the dealer in the relevant market area in which the motor

vehicle dealer is doing business, and in no event shall the compensation of a motor vehicle dealer for warranty or recall service be less than the rates charged by the dealer for like service to retail customers for nonwarranty service and repairs. Additionally, there shall be no requirement for part-by-part analysis in determining the retail rate for parts.

(3) (A) All claims under this subsection, 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.

(B)(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 each such notice shall state the specific grounds upon which the disapproval is based. The motor vehicle dealer shall be permitted to correct and resubmit such disapproved claims within thirty (30) days of receipt of disapproval.

(ii) 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.

(iii) No claim shall be disapproved because of a clerical error which does not render the amount of the claim incorrect.

(C) (i) The manufacturer or franchiser shall have the right to require documentation for claims and to audit such claims within a one-year period from the date the claim was paid or credit issued by the manufacturer or franchiser and to charge back any false or unsubstantiated claims.

(ii) The audit and charge-back provisions of this subdivision (b)(3) 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.

(iii) 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.

(iv)(a) A dealer may file an appeal with the Arkansas Motor Vehicle Commission to protest any chargeback under this subdivision (b)(3)(c) within thirty (30) days of notification by the manufacturer or distributor.

(b) 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.

(c) An appeal by the licensee under this subdivision (b)(3)(C)(iv) shall be in accordance with the provisions of §23-112-501 et. seq.

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

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

23-112-314. Civil Penalty.

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

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

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

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

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

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

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

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

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

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

(a) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The new motor vehicle dealer shall not:

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

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

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

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

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

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

History. 2005 No. 1687, § 1.

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

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

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

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

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

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

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

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

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

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

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

“A SERVICE AND HANDLING FEE IS NOT AN OFFICIAL FEE. A SERVICE AND HANDLING FEE IS NOT REQUIRED BY LAW BUT MAY BE CHARGED TO THE CUSTOMER FOR PERFORMING SERVICES AND HANDLING DOCUMENTS RELATING TO THE CLOSING OF A SALE OR LEASE. THE SERVICE AND HANDLING FEE MAY RESULT IN PROFIT TO THE DEALER. THE SERVICE AND

HANDLING FEE DOES NOT INCLUDE PAYMENT FOR THE PREPARATION OF LEGAL DOCUMENTS. THIS NOTICE IS REQUIRED BY LAW.”

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

History. Acts 2007, No. 366, §1.

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

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

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

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

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

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

History. Acts 2007, No. 649, §1.

SUBCHAPTER 4.
UNLAWFUL PRACTICES.

SECTIONS.

- 23-112-401.** [Repealed. Penalty.]
23-112-402. Dealer and Salesperson.
23-112-403. Manufacturers, Distributors, Second-Stage Manufacturers, Importers or Converters.
23-112-404. Motor Vehicle Lessors.
23-112-405. [Repealed. Auto Auctions.]
23-112-406. Acting as Broker.
23-112-407. [Repealed.]

23-112-401. [Repealed. Penalty.]

This section, concerning penalties, was repealed by Acts 2001, No. 1053, §14. The section was derived from Acts 1975, No. 388, § 8; 1977, No. 838, § 2; A.S.A. 1947, § 75-2308.

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, a distributor, a second-stage manufacturer, importer, converter, distributor branch or division, a factory branch or division, or 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 therefor 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, a distributor, a distributor branch or division, a 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 duly 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 which 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 coerce or attempt to coerce any motor vehicle dealer to enter into any agreement with the manufacturer, distributor, distributor branch or division, factory branch or division, or officer, agent, or other representative thereof, or to do any other act prejudicial to the dealer by threatening to cancel any franchise or any contractual agreement existing between the manufacturer, distributor, distributor branch or division, or factory branch or division and the dealer.

(ii) However, good faith notice 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.

(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 where 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) Any 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 within the purview of this chapter. That franchise or selling agreement shall continue in effect until final determination of the issues raised in the complaint, notwithstanding anything to the contrary contained in this chapter or in the franchise or selling agreement.

(v) In the event of the termination or cancellation of the franchise or selling agreement, 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;

(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 therefor 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-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 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 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 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 is in the current parts catalogue, and if the part or accessory was purchased by the dealer either directly from the manufacturer or distributor or from an outgoing authorized dealer as a 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 which 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) 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; or

(viii) 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 is to 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 prior to 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;

(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 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) shall 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; or

(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 vehicle 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.

(3) For a manufacturer, a distributor, a distributor branch or division, a 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 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;

(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

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

(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 (a)(3)(A)(i) - (iv) of this section shall not constitute a violation of this subdivision (a)(4).

(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 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 alternate 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.

23-112-404. Motor Vehicle Lessors.

It shall be 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 or unused motor vehicle any motor vehicle which 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.

23-112-405. [Repealed – Auto Auctions.]

23-112-406. Acting as a 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) To effectuate this chapter, the definition of “arranges or offers to arrange a transition” means soliciting or referring buyers for new motor vehicles for a fee, commission, or other valuable consideration. Advertising is not included in this definition as 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 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 Rule 3 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.

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.**
- 23-112-505. Decisions and Orders of Commission - Quorum.**
- 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.

The Arkansas Motor Vehicle Commission shall not:

- (1) Deny an application for a license without first giving the applicant a hearing, or an opportunity to be heard, on the question of whether he or she is qualified under the provisions of this chapter to receive the license applied for;
- (2) 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 the provisions of this chapter upon which to base the revocation or suspension; or
- (3) Impose a civil penalty pursuant to §23-112-314 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.

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 in 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) (1) Any hearing shall be held in the county of the residence of the party whose rights may be affected thereby or the county of that party's principal place of business.

(2) If the party is a nonresident of the state, the hearing shall be held in the county where the principal office of the Commission is located.

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

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 which 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, then the circuit court of any county of the State of Arkansas, on application of the Commission or of the Executive 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 may be lawfully required.

(2) Any circuit court shall have the power to punish for contempt as in 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.

CHAPTER 6.
USED MOTOR VEHICLE BUYERS PROTECTION.

THIS SUBCHAPTER IS CURRENTLY UNDER THE JURISDICTION OF THE ARKANSAS STATE POLICE.

Their address is: ARKANSAS STATE POLICE
Special Services Division
#1 State Police Plaza
Little Rock, AR 72209

Their telephone number is: (501) 618-8606 or (501) 618-8603.

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. Power to Promulgate Rules.**
- 23-112-605. Violations.**
- 23-112-606. License Required.**
- 23-112-607. Dealer License.**
- 23-112-608. License Certificate Fees.**
- 23-112-609. Issuance of License Certificate.**
- 23-112-610. Display of Dealer License.**
- 23-112-611. Records to be Maintained.**
- 23-112-612. [Repealed. Used Motor Vehicle Dealer Documentary Fees - Disclosures.]**
- 23-112-613. Delivery Prior to Sale-Disclosures.**
- 23-112-614. Salvage Auction Buyer’s Identification Card.**
- 23-112-615. Prohibition.**
- 23-112-616. Dealers from Other States.**
- 23-112-617. Used Motor Vehicle Dealer Service and Handling Fees.**

(This section is provided for reference only)

SUBCHAPTER 6

USED MOTOR BUYERS VEHICLE 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. Power to Promulgate Rules.**
- 23-112-605. Violations.**
- 23-112-606. License Required.**
- 23-112-607. Dealer License.**
- 23-112-608. License Certificate Fees.**
- 23-112-609. Issuance of License Certificate.**
- 23-112-610. Display of Dealer License.**
- 23-112-611. Records to be Maintained.**
- 23-112-612. Used Motor Vehicle Dealer Documentary Fees – Disclosures.**
- 23-112-613. Delivery Prior to Sale-Disclosures.**
- 23-112-614. Salvage Auction Buyer’s Identification Card.**
- 23-112-615. Prohibition.**
- 23-112-616. Dealers from Other States.**

23-112-601. Necessity for Regulation - 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, sales persons, agents, representatives, and employees of used motor vehicle dealers in order to;

- (1) Prevent fraud, improper impositions, and other abuses upon the citizens of the 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) “Salvage auction” means an auto auction that provides for the wholesale exchange or sale of wrecked, salvaged, damaged, or water-damaged motor vehicles using an auction format;

(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 such 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 rebuttal 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 official duties;

(iii) A mortgagee or secured party as to sales of motor vehicles constituting collateral on a mortgage or security agreement, if such 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 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 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.

23-112-603. Penalty for Violation and Disbursal 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 Fund Section of the Office of Administrative Services of the Department of Finance and Administration on a form provided by that office, for deposit in 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 in 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 in 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 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 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, 1416 §3.

23-112-604. Power to Promulgate Rules.

(a) The Department of Arkansas State Police shall have the power to promulgate such rules as are necessary to implement, enforce, and administer this subchapter.

(b) The department may cancel a license if the respective dealer fails to keep and maintain the requirements set forth in § 23-112-607(a) and (b) or upon conviction of a third violation of this subchapter.

History. Acts 1993, No. 490, § 13.

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 dealer's license has been suspended;
- (9) To represent oneself as a dealer or as a salesperson, either verbally or in any advertisement, when said person is 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 own without obtaining a used motor vehicle dealer's license, except that a person defined as a salesperson in § 23-112-602(10) may act on behalf of the dealer by whom such 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) 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 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 (\$125.00) 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 in 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 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 said 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 acting in an official capacity during reasonable business hours.

History. Acts 1993, No. 490, § 10; 1995, No. 357, § 4.

23-112-612. [Repealed. Used Motor Vehicle Dealer Documentary Fees – Disclosures.]

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

23-112-613. 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; and

(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; and
- (3) If a consumer who executes an agreement for delivery prior to sale chooses not to execute a contract for sale or otherwise cancels the purchase as provided under this section, then:
- (A) The 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 (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. Salvage Auction Buyer's Identification Card.

(a) On and after January 1, 2006, sales of motor vehicles at a salvage auction in the State of Arkansas shall be open only to persons who possess an Arkansas salvage auction buyer's identification card issued under this section.

(b)(1)(A) The salvage auction buyer's identification card authorizing persons to bid or buy motor vehicles at a salvage auction shall be available to any person, business, or corporation, or an employee thereof, that:

(i) Possesses a valid new motor vehicle dealer license under § 23-112-301, a used motor vehicle dealer license under § 23-112-607, a valid wrecker license under § 27-14-2001, or is a licensed motor vehicle dealer from another state under § 23-112-616; and

(ii) Registers with the Department of Arkansas State Police.

(B) Salvage auction buyer's identification cards shall be issued by the department on a form prescribed by the department and shall contain at a minimum.

(i) The name, address, driver's license number, any dealer's or wrecker's license numbers, physical description, and signature of the applicant; and

(ii) The name and address of the employer of the applicant.

(2) The department shall issue the salvage auction buyer's identification card at a fee not to exceed:

(A) Thirty-five dollars (\$35.00) for the first card issued to the cardholder and fifty dollars (\$50.00) for the second card issued to the cardholder if the cardholder is:

(i) An Arkansas resident dealer or wrecker; and

(ii) At least one (1) of the following:

- (a) A licensed new motor vehicle dealer;
- (b) A licensed used motor vehicle dealer; or
- (c) A wrecker licensed as required under § 27-14-2001; or

(B) Three hundred fifty dollars (\$350) for the first card issued to the cardholder and two hundred fifty dollars (\$250) for the second card issued to the cardholder if the cardholder is:

(i) An out-of-state resident; and

(ii) Licensed by another state as a motor vehicle dealer or wrecker and meets the requirements of the department.

(3) A person or entity who is a cardholder under this section shall be limited to being issued no more than two (2) salvage auction buyer's identification cards under this section.

(4) The salvage auction buyer's identification card shall be renewable each year for a fee of the same amount.

(5) The fees collected under this subsection shall be remitted to the State Treasury, there to be deposited as special revenues to the credit of the Department of Arkansas State Police Fund, to be used to offset the administrative costs for issuance of the salvage auction buyer's identification card under this section.

(c)(1) The owner, manager, or person in charge of a salvage auction shall:

(A) Prohibit the bidding by any person who does not possess a salvage auction buyer's identification card;

(B) Refuse to sell a motor vehicle to any person if the person does not possess a valid salvage auction buyer's identification card; and

(C) Prohibit any person who intends to purchase without a salvage auction buyer's identification card from being present at the salvage auction site during a sale, except as provided under subdivision (c)(2) of this section.

(2) Each holder of a salvage auction buyer's identification cardholder may be accompanied at the salvage auction by anyone in accordance with that salvage auction's guidelines.

(d)(1) A salvage auction buyer's identification card may be cancelled if the person pleads guilty, or nolo contendere to or is found guilty of:

(A) Unauthorized use of a vehicle;

(B) Theft of property or theft by receiving if a stolen motor vehicle or stolen vehicle parts were involved; or

(C) Violating any provision of this subchapter.

(2) A salvage auction buyer's identification card issued to a licensed motor vehicle dealer or salesperson or to a licensed wrecker may be cancelled if:

(A) The person's license is cancelled; or

(B) The license is no longer valid.

(e)(1) The owner, manager, or person in charge of a salvage auction shall keep a register of all sales of motor vehicles for three (3) years from the date of the sale.

(2) The sales transaction register shall include the:

- (A) Make;
- (B) Model;
- (C) Year;
- (D) Body style;
- (E) Vehicle identification number;
- (F) Name and address of the seller and buyer; and
- (G) Salvage auction buyer's identification card number.

(3) The register shall be made available for inspection by law enforcement officers of the state, county, or municipality during regular business hours on business days at the salvage auction's business location.

History. Acts 2005 No.1780, § 2.

23-112-615. Prohibition.

(a) It is unlawful for the owner, manager, or person in charge of a salvage auction to:

- (1) Fail to prohibit the bidding by any person who does not possess a salvage auction buyer's identification card;
- (2) Fail to refuse to sell a motor vehicle to any person if the person does not possess a valid salvage auction buyer's identification card; or
- (3) Fail to prohibit any person who intends to purchase without a salvage auction buyer's identification card from being present at the salvage auction site during a sale, except as provided under § 23-112-614(c)(2).

(b) A violation of subsection (a) of this section is a Class B misdemeanor.

History. Acts 2005, No.1780, § 2.

23-112-616. Dealers from Other States.

Nothing in § 23-112-614 shall prohibit a motor vehicle dealer from another state from buying a motor vehicle at a salvage auction in the State of Arkansas if;

- (1) The state in which the dealer is licensed extends the same privilege to a dealer licensed in Arkansas; and
- (2) The out-of-state motor vehicle dealer obtains a salvage auction buyer's identification card as required in § 23-112-614.

History. Acts 2005 No.1780, § 2.

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 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 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 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 such 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 dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligations, financial or otherwise, for such 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, he 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 such 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 judgement or settlement agreed to in writing by the manufacturer for damages, including, but not limited to, court costs and reasonable attorneys' 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 judgement or settlement agreed to in writing by the manufacturer relates to the alleged defective or negligent manufacture, assembly, or design of new motor vehicle, 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 Positive 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 (\$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 Positive 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 regulation by the Arkansas Motor Vehicle Commission as provided under §23-112-805.

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