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
23-112-107. Motor Vehicle Event Data Recorder – Data Ownership.

23-112-101.Title.

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

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

23-112-102. Legislative Findings – Purpose.

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

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

(1) Prevent frauds, unfair practices, discrimination, impositions, and other abuses upon the citizens of Arkansas;

(2) Avoid undue control of the independent motor vehicle dealer by motor vehicle manufacturing and distributing organizations;

(3) Foster and keep alive vigorous and healthy competition;

(4) Prevent the creation or perpetuation of monopolies;

(5) Prevent the practice of requiring the buying of special features, accessories, special models, appliances, and equipment not desired by a motor vehicle dealer or the ultimate purchaser;

(6) Prevent false and misleading advertising;

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

(8) Promote the public safety and welfare.

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

23-112-103. Definitions.

As used in this chapter:

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

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

(A) Is an off-highway vehicle:

(i) Fifty inches (50”) or less in width, having a dry weight of 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 that 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 exempted specialty vehicle that is substantially modified by a person, firm, or corporation other than the manufacturer or distributor of the chassis of the motor vehicle and that has not been the subject of a retail sale;

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

(10) "Distributor branch" means a branch or division office similarly maintained by a distributor for the same purposes a factory branch or division is maintained;

(11) "Distributor representative" means a representative similarly employed by a distributor or distributor branch;

(12) "Factory branch" means a branch or division office maintained by a person, firm, association, corporation, or trust who manufactures or assembles new motor vehicles for sale to distributors, to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives;

(13) "Factory representative" means a representative employed by a:

(A) Person, firm, association, corporation, or trust 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 a self-propelled vehicle having two (2) or more wheels that has as its primary purpose the transportation of a person, including without limitation all-terrain vehicles, automobiles, trucks, motorcycles, motor-driven cycles, motor scooters, and motor homes;

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

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

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

(ii) "Motor vehicle dealer" includes any person engaged in the business of selling, offering to sell, soliciting, or advertising the sale, regardless of the medium used, of commercial buses, school buses, or other 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 that, prior to retail sale of a motor vehicle:

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

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

(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 a motor vehicle:

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

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

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

(i) Placed in actual operation: and

(ii) Not held for resale by an owner that has:
(a) Been granted a certificate of title; and
(b) Registered the motor vehicle under the Uniform Motor Vehicle Administration, Certificate of Title, and Antitheft Act, §27-14-101 et seq.;

(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;

(34) (A) “Line make of motor vehicle” means a group or series of motor vehicles that have the same brand identification or brand name, based upon the manufacturer’s trademark, trade name, or logo.

(B) “Line make of a motor vehicle” does not include motor homes; and

(35) “Line make of a motor home” means a specific series of recreational vehicle products that:

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

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

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

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

(E) The manufacturer-dealer agreement authorizes a dealer to sell.

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; Acts 2009, No. 756, §§ 1-5.

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 (a) of this section.

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

23-112-107. Motor Vehicle Event Data Recorder — Data Ownership.

(a) As used in this section:

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

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

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

(i) Vehicle speed;

(ii) Vehicle direction;

(iii) Vehicle location;

(iv) Steering performance; or

(v) Seat belt restraint status;

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

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

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

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

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

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

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

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

(1) The presence of the motor vehicle event data recorder in the motor vehicle;

(2) The type of motor vehicle event data recorder in the motor vehicle; and

(3) The type of data that is recorded, stored, or transmitted on the motor vehicle event data recorder.

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

(1) Is private;

(2) Is exclusively owned by the owner of the motor vehicle; and

(3) Shall not be retrieved or used by another person or entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Preclearing weigh stations;

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

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

(4) Complying with a state or federal law.

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

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

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

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

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

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

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

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

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

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

History. Acts 2005, No. 1419, § 1; 2009, No. 148, § 1.