

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- 23-112-401.** [Repealed.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 [Repealed.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.]
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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 [Repealed.]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 [Repealed.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This section, concerning penalties, was repealed by Acts 2001, No. 1053, §14.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 therefore or any other commodities which shall not have been voluntarily ordered by the motor vehicle dealer;
 - (B) To order or accept delivery of any motor vehicle with special features, appliances, accessories, or equipment not included in the list price of the motor vehicle as publicly advertised by the manufacturer thereof;

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

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

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

(2) For a manufacturer, a distributor, a distributor branch or division, a factory branch or division, or 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, within the sixty-day notice period, with the Commission a verified complaint for its 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 sell or sells new motor vehicles to all motor vehicle dealers at the same price.

(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 franchise 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 such new motor vehicle or as may otherwise be provided in paragraph (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;

(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 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 to the offer, grant or renewal of the franchise or 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.]
