

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 756 of the Regular Session

As Engrossed: S3/10/09 S3/17/09

A Bill

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009

SENATE BILL 781

4  
5 By: Senator Teague  
6  
7

8 **For An Act To Be Entitled**

9 AN ACT TO AMEND THE ARKANSAS MOTOR VEHICLE  
10 COMMISSION ACT; AND FOR OTHER PURPOSES.  
11

12 **Subtitle**

13 TO AMEND THE ARKANSAS MOTOR VEHICLE  
14 COMMISSION ACT.  
15

16  
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
18

19 SECTION 1. Arkansas Code § 23-112-103(8), regarding the definition of  
20 "conversion" under the Arkansas Motor Vehicle Commission Act, is amended to  
21 read as follows:

22 (8) "Conversion" means a motor vehicle other than an ~~ambulance~~  
23 ~~or firefighting vehicle~~ exempted specialty vehicle that is substantially  
24 modified by a person, firm, or corporation other than the manufacturer or  
25 distributor of the chassis of the motor vehicle and ~~which~~ that has not been  
26 the subject of a retail sale;  
27

28 SECTION 2. Arkansas Code § 23-112-103(18), regarding the definition of  
29 "motor vehicle" under the Arkansas Motor Vehicle Commission Act, is amended  
30 to read as follows:

31 (18) "Motor vehicle" means ~~any motor-driven~~ a self-propelled  
32 vehicle having two (2) or more wheels that has as its primary purpose the  
33 transportation of a person, including, but not limited to, without limitation  
34 all-terrain vehicles, automobiles, trucks, motorcycles, motor-driven cycles,  
35 motor scooters, and motor homes;



1  
2 SECTION 3. Arkansas Code § 23-112-103(19)(A)(i), regarding the  
3 definition of "motor vehicle dealer" under the Arkansas Motor Vehicle  
4 Commission Act, is amended to read as follows:

5 (19)(A)(i) "Motor vehicle dealer" means ~~any~~ a person that is:  
6 (a) engaged Engaged in the business of selling,  
7 offering to sell, soliciting, or advertising the sale of servicing or  
8 repairing motor vehicles under a manufacturer's warranty, regardless of the  
9 medium used, or possessing motor vehicles for the purpose of resale, either  
10 on his or her own account or on behalf of another, either as his or her  
11 primary business or incidental thereto; and  
12 (b) Located at an established and permanent  
13 place of business under a franchise, sales and service agreement, or a bona  
14 fide contract in effect with a manufacturer or distributor.

15  
16 SECTION 4. Arkansas Code § 23-112-103(31), regarding the definition of  
17 "used motor vehicle" under the Arkansas Motor Vehicle Commission Act, is  
18 amended to read as follows:

19 (31)(A) "Used motor vehicle" means ~~any~~ a motor vehicle:  
20 (i) that has previously For which title has been  
21 sold, bargained, exchanged, given away, or the title thereto transferred from  
22 the person or corporation who first took title ownership from the  
23 manufacturer, distributor, dealer, or agents thereof; or

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

26 (B) ~~In the event of a transfer that is reflected on the~~  
27 ~~statement of origin from the original franchise dealer to any other dealer,~~  
28 ~~individual, or corporation other than a franchise dealer of the same make of~~  
29 ~~vehicle, the vehicle shall be considered a used motor vehicle~~ A new motor  
30 vehicle shall not be considered a used motor vehicle unless the motor vehicle  
31 has been:

32 (i) Placed in actual operation; and

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

34 (a) Been granted a certificate of title; and

35 (b) Registered the motor vehicle under the  
36 Uniform Motor Vehicle Administration, Certificate of Title, and Antitheft

1 Act, § 27-14-101 et seq.;

2

3 SECTION 5. Arkansas Code § 23-112-103, regarding definitions under the  
4 Arkansas Motor Vehicle Commission Act, is amended to add an additional  
5 subdivision to read as follows:

6 (34)(A) "Line make of a motor vehicle" means a group or series  
7 of motor vehicles that have the same brand identification or brand name,  
8 based upon the manufacturer's trademark, trade name, or logo.

9 (B) "Line make of a motor vehicle" does not include motor  
10 homes; and

11 (35) "Line make of a motor home" means a specific series of  
12 recreational vehicle products that:

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

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

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

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

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

26

27 SECTION 6. Arkansas Code § 23-112-301(a), regarding the licensing of  
28 new motor vehicle dealers, is amended to read as follows:

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

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

32 (2) For any person to engage in business as, or serve in the  
33 capacity of, or act as a new motor vehicle dealer, motor vehicle salesperson,  
34 motor vehicle lessor, manufacturer, importer, distributor, factory branch or  
35 division, distributor branch or division, factory representative, distributor  
36 representative, second-stage manufacturer, or converter, as such, in ~~this~~

1 ~~state~~ Arkansas without first obtaining a license therefor as provided in this  
2 chapter, regardless of whether or not the person maintains or has a place of  
3 business in ~~this state~~ Arkansas.

4  
5 SECTION 7. Arkansas Code § 23-112-302(e), regarding the application  
6 for license as a new motor vehicle dealer, is amended to read as follows:

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

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

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

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

19  
20 SECTION 8. Arkansas Code § 23-112-307 is amended to read as follows:

21 23-112-307. Expiration of license.

22 ~~(a) Unless the Arkansas Motor Vehicle Commission shall by regulation~~  
23 ~~provide~~ by rule provides to the contrary, all licenses issued to:

24 (1) ~~manufacturers~~ Manufacturers, distributors, factory or  
25 distributor branches, importers, second-stage manufacturers, converters, and  
26 their representatives expire June 30 following the date of issue; and

27 (2) ~~motor~~ Motor vehicle dealers, motor vehicle salespersons, and  
28 motor vehicle lessors shall expire December 31 following the date of issue.

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

32 ~~(c) Unless the commission by regulation provides to the contrary,~~  
33 ~~licenses relating to motor vehicles having fewer than four (4) wheels shall~~  
34 ~~expire December 31 following the date of issue.~~

35  
36 SECTION 9. Arkansas Code § 23-112-308(a), regarding the denial,

1 revocation, and suspension of a new motor vehicle dealer license, is amended  
2 to add additional subdivisions to read as follows:

3 (25) Using or permitting the use of a temporary cardboard  
4 buyer's tag assigned to the dealer for any purpose other than permitted under  
5 § 27-14-1705; and

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

9  
10 SECTION 10. Arkansas Code § 23-112-310(d)(1), regarding delivery,  
11 preparation, and warranty obligations, is amended to read as follows:

12 (d)(1)(A) ~~In no event shall any~~ A manufacturer, distributor,  
13 distributor branch or division, or factory or division branch shall not pay  
14 to any of its motor vehicle dealers a labor rate per hour or parts price for  
15 warranty work that is less than that charged by the dealer to its retail  
16 customers provided the rate is reasonable compared to other same line-make  
17 dealers in the dealer's relevant market area or the dealer's competitive  
18 market area.

19 (B) Conversely, ~~no~~ a dealer shall not charge to its  
20 manufacturer, distributor, distributor branch or division, or factory branch  
21 or division a labor rate per hour or parts price in excess of the rate  
22 charged to its retail customers.

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

27  
28 SECTION 11. Arkansas Code § 23-112-311(c) is amended to read as  
29 follows:

30 (c) In determining whether good cause has been established for not  
31 entering into a franchise establishing or relocating an additional new motor  
32 vehicle dealer for the same line make, the commission shall take into  
33 consideration the existing circumstances, including, ~~but not limited to~~  
34 without limitation:

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

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

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

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

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

12 (6) Whether the establishment of an additional new motor vehicle  
13 dealer would increase competition and, therefore, be in the public interest.  
14

15 SECTION 12. Arkansas Code § 23-112-313 is amended to read as follows:  
16 23-112-313. Warranty agreements.

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

21 (b)~~(1)~~ ~~In no event shall the~~ The compensation shall not fail to  
22 include reasonable compensation for diagnostic work, ~~as well as repair~~  
23 ~~service, and labor, and parts.~~

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

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

33 (3) ~~in no event shall the~~ The compensation of a motor vehicle  
34 dealer for warranty or recall service shall not be less than the rates  
35 charged by the dealer for like service to retail customers for nonwarranty  
36 service and repairs provided the rate is reasonable compared to other same

1 line-make dealers in the dealer's relevant market area or the dealer's  
 2 competitive market area.

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

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

9 (2) Additionally, there shall be no requirement for a part-by-  
 10 part analysis is not required in determining to determine the retail rate for  
 11 parts.

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

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

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

23 (ii) The motor vehicle dealer ~~shall be~~  
 24 ~~permitted to~~ may correct and resubmit ~~such the~~ disapproved claims within  
 25 thirty (30) days of receipt of disapproval.

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

29 ~~(iii)(3)(A)~~ (3)(A) ~~No~~ A claim shall not be disapproved because ~~of~~  
 30 clerical error was made ~~which that~~ does not render the amount of the claim  
 31 incorrect.

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

34 ~~(C)(i)(4)(A)~~ (4)(A) The manufacturer or franchiser ~~shall have the right~~  
 35 ~~to~~ may:

36 (i) require Require documentation for claims;

1                                    ~~(ii) and to audit~~ Audit the claims within a  
 2 one-year period from the date the claim was paid or credit issued by the  
 3 manufacturer or franchiser; and

4                                    ~~(iii) to charge~~ Charge back any false or  
 5 unsubstantiated claims.

6                                    ~~(ii)(B)~~ (B) The audit and charge-back provisions of this  
 7 ~~subdivision (b)(3)~~ subsection (e) also apply to all other incentive and  
 8 reimbursement programs for a period of twelve (12) months after the date of  
 9 the transactions that are subject to audit by the franchiser.

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

14                                   ~~(iv)(a)(D)(i)~~ (i) A dealer may file an appeal with the  
 15 Arkansas Motor Vehicle Commission to protest any chargeback under this  
 16 subdivision ~~(b)(3)(C)~~ (e)(4) within ~~thirty (30) days~~ ninety (90) days of  
 17 notification by the manufacturer or distributor.

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

24                                   ~~(e)(iii)~~ (iii) An appeal by the licensee under this  
 25 subdivision ~~(b)(3)(C)(iv)~~ (e)(4)(D) shall be in accordance with ~~the~~  
 26 ~~provisions of~~ § 23-112-501 et seq.

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

30  
 31                                   SECTION 13. Arkansas Code § 23-112-403(a)(2)(C)(v), regarding  
 32 manufacturers, distributors, second-stage manufacturers, importers, and  
 33 converters, is amended to read as follows:

34                                   ~~(v)(a) In the event of the termination or~~  
 35 ~~cancellation of~~ If the franchise agreement, sales and service agreement, or  
 36 bona fide contract or selling agreement is terminated or cancelled, the

1 terminating or canceling party shall notify the commission of the termination  
 2 or cancellation of the franchise or selling agreement at least sixty (60)  
 3 days before the effective date.

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

7 (c)(1) For motor homes, this subdivision  
 8 (a)(2)(C)(v) applies to both the voluntary dealer-initiated termination or  
 9 cancellation of all motor home franchise or selling agreements and the  
 10 involuntary manufacturer-initiated termination or cancellation of any one (1)  
 11 or more motor home franchise or selling agreements.

12 (2) This subdivision only applies to the  
 13 voluntary dealer initiated termination of one (1) of two (2) or more line  
 14 makes of motor homes if the dealer can show due cause to terminate or cancel  
 15 the motor home franchise or selling agreement;

16 SECTION 14. Arkansas Code § 23-112-403(a)(2)(K), regarding  
 17 manufacturers, distributors, second-stage manufacturers, importers, and  
 18 converters, is amended to read as follows:

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

22 (i) The dealer cost plus any charges by the  
 23 manufacturer, distributor, or a representative for distribution, delivery,  
 24 and taxes, less all allowances paid to the dealer by the manufacturer,  
 25 distributor, or representative for new, unsold, undamaged, and complete motor  
 26 vehicles of current model year and one (1) year prior model year in the  
 27 dealer's inventory;

28 (ii) The dealer cost of each new, unused, undamaged,  
 29 and unsold part or accessory, ~~if the part or accessory is in the current~~  
 30 ~~parts catalogue, and if the part or accessory was purchased by the dealer~~  
 31 ~~either directly from the manufacturer or distributor or from an outgoing~~  
 32 ~~authorized dealer as a part of the dealer's initial inventory~~

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

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

1 accessory; or

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

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

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

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

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

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

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

32 (viii) Any sums due as provided by subdivision  
33 (a)(2)(K)(i) of this section within sixty (60) days after termination of a  
34 franchise and any sums due as provided by subdivisions (a)(2)(K)(ii)-(vii) of  
35 this section within ninety (90) days after termination of a franchise. As a  
36 condition of payment, the dealer ~~is to~~ shall comply with reasonable

1 requirements with respect to the return of inventory as are set out in the  
 2 terms of the franchise agreement. A manufacturer, distributor, or  
 3 representative who fails to pay those sums within the prescribed time or at  
 4 such time as the dealer and lienholder, if any, proffer good title ~~prior to~~  
 5 before the prescribed time for payment, is liable to the dealer for:

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

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

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

11 (ix) Obligations under this subdivision (a)(2)(K) do  
 12 not apply if the termination is a result of the conviction of the franchisee  
 13 in a court of competent jurisdiction of an offense that is punishable by a  
 14 term of imprisonment in excess of one (1) year and the offense is  
 15 substantially related to the business conducted pursuant to the franchise;  
 16

17 SECTION 15. Arkansas Code § 23-112-403(a)(2)(M), regarding  
 18 manufacturers, distributors, second-stage manufacturers, importers, and  
 19 converters, is amended to read as follows:

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

25 (ii) This subdivision (a)(2)(M) ~~shall~~ does not apply  
 26 to manufacturer sales of new motor vehicles to the federal government,  
 27 charitable organizations, or employees of the manufacturer;  
 28

29 SECTION 16. Arkansas Code § 23-112-404 is amended to read as follows:

30 23-112-404. Motor vehicle lessors.

31 It ~~shall be~~ is unlawful for a motor vehicle lessor or any agent,  
 32 employee, or representative thereof:

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

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

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

6  
7           SECTION 17. Arkansas Code § 23-112-406(b), regarding requirements for  
8 acting as a broker, is amended to read as follows:

9           (b)(1) To effectuate this chapter, ~~the definition of~~ “arranges or  
10 offers to arrange a ~~transition~~ transaction” means soliciting or referring  
11 buyers for new motor vehicles for a fee, commission, or other valuable  
12 consideration.

13           (2) “Arranges or offers to arrange a transaction” does not  
14 include Advertising is not included in this definition advertising as long as  
15 the person’s business primarily includes the business of broadcasting,  
16 printing, publishing, or advertising for others in their own names.

17  
18           SECTION 18. Arkansas Code § 23-112-501 is amended to read as follows:  
19           23-112-501. Right to hearing.

20           (a)(1) The Arkansas Motor Vehicle Commission ~~shall not~~ may  
21           ~~(1) Deny deny~~ an application for a license ~~without first giving~~  
22 ~~the applicant a hearing, or an opportunity to be heard, on the question of~~  
23 ~~whether he or she is qualified under the provisions of this chapter to~~  
24 ~~receive the license applied for;~~ if the application is considered inadequate  
25 after the initial review by the executive director.

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

30           (b) The Arkansas Motor Vehicle Commission shall not:

31           ~~(2)(1)~~ Revoke or suspend a license without first giving the  
32 licensee a hearing, or an opportunity to be heard, on the question of whether  
33 there are sufficient grounds under ~~the provisions of~~ this chapter upon which  
34 to base the revocation or suspension; or

35           ~~(3)(2)~~ Impose a civil penalty pursuant to § 23-112-314 without  
36 first giving the respondent a hearing pursuant to the Arkansas Administrative

1 Procedure Act, § 25-15-201 et seq.

2

3 SECTION 19. Arkansas Code § 23-112-503(d), regarding the notice and  
4 location of a hearing before the Arkansas Motor Vehicle Commission, is  
5 amended to read as follows:

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

9 ~~(2) If the party is a nonresident of the state, the hearing~~  
10 ~~shall be held in the county where the principal office of the commission is~~  
11 ~~located unless both parties agree to an alternate location.~~

12

13 SECTION 20. Arkansas Code § 27-14-1705 is amended to read as follows:

14 27-14-1705. Temporary cardboard buyer's tags.

15 (a) A dealer shall issue to a person who buys an unregistered vehicle  
16 one (1) temporary cardboard buyer's tag for the vehicle.

17 (b)(1) The temporary cardboard buyer's tag is valid for the operation  
18 of the vehicle until the earlier of:

19 (A) The date on which the vehicle is registered; or

20 (B) The thirtieth day after the date of purchase.

21 (2) If the date that a transferee of a motor vehicle must  
22 register the vehicle is extended under § 27-14-903(a)(1), the dealer may  
23 issue one (1) additional temporary cardboard buyer's tag to the transferee,  
24 to expire thirty (30) days from the date that the additional temporary  
25 cardboard buyer's tag was issued.

26 (3) A temporary cardboard buyer's tag also may be used for:

27 (A) A demonstration vehicle for a period of time not to  
28 exceed seventy-two (72) hours for test drive purposes; or

29 (B) A loaner vehicle for a period of time not to exceed  
30 fourteen (14) days to allow repairs on a vehicle.

31 (4) A temporary cardboard buyer's tag shall not be placed on  
32 work or service vehicles owned by a dealer, manufacturer, or transporter.

33 (c)(1) The dealer shall show in ink on the temporary cardboard buyer's  
34 tag the actual date of sale and any other information required by the  
35 Director of the Department of Finance and Administration.

36 (2) The dealer ~~shall be~~ is responsible for affixing the

1 temporary cardboard buyer's tag to the vehicle as provided in this section.

2 (d) The temporary cardboard buyer's tag under this section shall be  
3 placed at the location provided for the permanent motor vehicle license  
4 plate.

5 (e) The dealer is responsible for the safekeeping and distribution of  
6 each temporary cardboard buyer's tag that the dealer obtains from the  
7 director.

8 (f) The director shall provide the specifications, form, and color of  
9 the temporary cardboard buyer's tag.

10 (g)(1)(A) The dealer ~~shall be~~ is responsible for paying to the  
11 director a fee to be set by the director, which shall not exceed one dollar  
12 (\$1.00), for each temporary cardboard buyer's tag. The dealer shall pass this  
13 fee on to the buyer to whom the tag was issued.

14 (B) The fee shall be collected by the director before  
15 issuance of the temporary cardboard buyer's tag to the dealer.

16 (C) ~~No dealer shall be allowed to~~ A dealer shall not  
17 charge a customer a fee for a temporary cardboard buyer's tag higher than  
18 that charged to the dealer by the director.

19 (2) The gross receipts or gross proceeds derived from the sale  
20 or issuance of temporary cardboard buyer's tags under this section ~~shall be~~  
21 are exempt from the Arkansas gross receipts tax levied by the Arkansas Gross  
22 Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas compensating use  
23 tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.,  
24 and any other state or local tax administered under those chapters.

25 (3) All fees collected by the director under this section shall  
26 be deposited into the State Treasury, and the Treasurer of State shall credit  
27 them as general revenues to the General Revenue Fund Account of the State  
28 Apportionment Fund.

29 (h) For each temporary cardboard buyer's tag provided to a buyer by  
30 the dealer, the dealer shall retain documentation containing:

- 31 (1) The dealer's name;  
32 (2) The buyer's name;  
33 (3) The date the temporary cardboard buyer's tag was issued;  
34 (4) The vehicle's vehicle identification number;  
35 (5) The make and model of the vehicle; and  
36 (6) The expiration date of the temporary cardboard buyer's tag.

1           (i) To purchase temporary cardboard buyer's tags under this  
2 subchapter, the person shall establish that he or she is a licensed:

3           (1) New motor vehicle dealer under § 23-112-301;

4           (2) Used motor vehicle dealer under § 23-112-607;

5           (3) Manufacturer of motor vehicles under this chapter; or

6           (4) Transporter of motor vehicles under this chapter.

7           ~~(i)~~(j)(1) Any dealer, manager, salesperson, or employee of the dealer  
8 who pleads guilty or nolo contendere to or who is found guilty of the misuse  
9 of a temporary cardboard buyer's tag or of allowing anyone else to misuse a  
10 temporary cardboard buyer's tag is guilty of a violation under § 5-1-108 and  
11 shall be fined not more than two hundred fifty dollars (\$250) for the first  
12 offense, not more than five hundred dollars (\$500) for the second offense,  
13 and not more than one thousand dollars (\$1,000) for the third and subsequent  
14 offenses.

15           (2) In addition to criminal penalties under this subsection (j),  
16 the use of temporary cardboard buyer's tags in a manner not authorized under  
17 this section may result in the denial, revocation, or suspension of the  
18 license of the new motor vehicle dealer, used motor vehicle dealer,  
19 manufacturer, or transporter.

20           ~~(j)~~(k) This section ~~shall~~ does not apply to an owner or lessee of a  
21 registered motor vehicle who elects to display a license plate on a  
22 replacement motor vehicle under § 27-14-902(a)(3)(B).  
23

24           SECTION 21. Arkansas Code § 14-22-101(8), regarding the definition of  
25 "used or secondhand motor vehicles, equipment, or machinery" used for county  
26 purchasing procedures, is amended to read as follows:

27           (8)(A) "Used or secondhand motor vehicles, equipment, or  
28 machinery" means any motor vehicles, equipment, or machinery at least two (2)  
29 years in age from the date of original manufacture or that has at least five  
30 hundred (500) working hours' prior use or ten thousand (10,000) miles' prior  
31 use.

32           (B)(i) Any purchase of a used motor vehicle, equipment, or  
33 machinery shall be accompanied by a statement in writing from the vendor on  
34 the bill of sale or other document that the motor vehicle, equipment, or  
35 machinery is at least two (2) years in age from the date of original  
36 manufacture or has been used a minimum of five hundred (500) hours or driven

1 a minimum of ten thousand (10,000) miles.

2 (ii) This statement shall be filed with the county  
3 clerk at the time of purchase.

4

5 SECTION 22. Arkansas Code § 14-22-106 is amended to read as follows:  
6 14-22-106. Purchases exempted from soliciting bids.

7 The following listed commodities may be purchased without soliciting  
8 bids:

9 (1) Perishable foodstuffs for immediate use;

10 (2) Unprocessed feed for livestock and poultry;

11 (3) Advanced emergency medical services provided by a nonprofit  
12 corporation and proprietary medicines when specifically requested by a  
13 professional employee;

14 (4) Books, manuals, periodicals, films, and copyrighted  
15 educational aids for use in libraries and other informational material for  
16 institutional purposes;

17 (5) Scientific equipment and parts therefor;

18 (6) Replacement parts and labor for repairs of machinery and  
19 equipment;

20 (7) Commodities available only from the federal government;

21 (8)(A) Any commodities needed in instances in which an  
22 unforeseen and unavoidable emergency has arisen in which human life, health,  
23 or public property is in jeopardy.

24 ~~(B) However, no such~~ An emergency purchase under  
25 subdivision (8)(A) of this section shall not be approved unless a statement  
26 in writing ~~shall be~~ is attached to the purchase order describing the  
27 emergency necessitating the purchase of ~~such~~ the commodity without  
28 competitive bidding;

29 (9) Utility services, the rates for which are subject to  
30 regulation by a state agency or a federal regulatory agency;

31 (10) Sand, gravel, soil, lumber, used pipe, or used steel;

32 (11) Used or secondhand motor vehicles, machinery, or equipment,  
33 except that a used or secondhand motor vehicle that has been under lease to a  
34 county when the vehicle has fewer than ten thousand (10,000) miles of use ~~may~~  
35 shall not be purchased by the county when it has been used ten thousand  
36 (10,000) miles or more except upon competitive bids as provided ~~for~~ in this

1 chapter;

2 (12) Machinery, equipment, facilities, or other personal  
3 property purchased or acquired for, or in connection with, the securing and  
4 developing of industry under ~~or pursuant to the provisions of Arkansas~~  
5 ~~Constitution, Amendment 49 [repealed], the~~ Municipalities and Counties  
6 Industrial Development Revenue Bond Law, § 14-164-201 et seq., or any other  
7 provision of law pertaining to the securing and developing of industry;

8 (13) Registered livestock to be used for breeding purposes;

9 (14) Motor fuels, oil, asphalt, asphalt oil, and natural gas;

10 (15) Motor vehicles, equipment, machinery, material, or supplies  
11 offered for sale at public auction or through a process requiring sealed  
12 bids; ~~and~~

13 (16) All goods and services that are regularly provided to state  
14 agencies and county government by the Department of Correction's various  
15 penal industries;

16 (17) New motor vehicles from a motor vehicle dealer licensed  
17 under the Arkansas Motor Vehicle Commission Act, § 23-112-101 et seq., if the  
18 motor vehicle is purchased for an amount not to exceed the fleet price  
19 awarded by the Office of State Procurement and in effect at the time the  
20 county submits the purchase order for the same make and model motor vehicle;  
21 and

22 (18) The renewal or extension of the term of an existing  
23 contract.

24  
25 SECTION 23. Arkansas Code Title 14, Chapter 58, Subchapter 1 is  
26 amended to add an additional section to read as follows:

27 14-58-104. Specific purchases and contracts.

28 (a) The municipal governing body of a city of the first class, city of  
29 the second class, or an incorporated town may purchase the following  
30 commodities without soliciting bids:

31 (1) Motor fuels, oil, asphalt, asphalt oil, and natural gas; and

32 (2) New motor vehicles from a motor vehicle dealer licensed  
33 under the Arkansas Motor Vehicle Commission Act, § 23-112-101 et seq., if the  
34 motor vehicle is purchased for an amount not to exceed the fleet price  
35 awarded by the Office of State Procurement and in effect at the time the  
36 municipal governing body of a city of the first class, city of the second

1 class, or an incorporated town submits the purchase order for the same make  
2 and model motor vehicle.

3 (b) The municipal governing body of a city of the first class, city of  
4 the second class, or an incorporated town may renew or extend the term of an  
5 existing contract without soliciting bids.

6  
7 SECTION 24. Arkansas Code § 14-58-303(b), regarding the power of  
8 municipalities to make purchases and enter into contracts, is amended to read  
9 as follows:

10 (b)(1)(A) ~~The~~ Except as provided under § 14-58-104, the municipal  
11 governing body of any city of the first class shall provide by ordinance the  
12 procedure for making all purchases which do not exceed the sum of twenty  
13 thousand dollars (\$20,000).

14 (B) ~~The~~ Except as provided under § 14-58-104, the  
15 municipal governing body of any city of the second class or incorporated town  
16 may provide by ordinance the procedure for making all purchases.

17 (2)(A)(i) ~~In~~ Except as provided under § 14-58-104, in a city of  
18 the first class where the amount of expenditure for any purpose or contract  
19 exceeds the sum of twenty thousand dollars (\$20,000), the mayor or the  
20 mayor's authorized representative shall invite competitive bidding on the  
21 purpose or contract by legal advertisement in any local newspaper.

22 (ii) Bids received pursuant to the advertisement  
23 shall be opened and read on the date set for receiving the bids in the  
24 presence of the mayor or the mayor's authorized representative.

25 (iii) The mayor or the mayor's authorized  
26 representative shall have exclusive power to award the bid to the lowest  
27 responsible bidder, but may reject any and all bids received.

28 (B) The governing body by ordinance may waive the  
29 requirements of competitive bidding in exceptional situations where this  
30 procedure is deemed not feasible or practical or as provided under § 14-58-  
31 104.

32  
33 SECTION 25. EMERGENCY CLAUSE. It is found and determined by the  
34 General Assembly of the State of Arkansas that motor vehicle dealers are  
35 experiencing economic difficulties related to the state of the national  
36 economy and the motor vehicle industry in particular; that an unprecedented

1 number of motor vehicle dealers may terminate their franchises as a result of  
2 these economic conditions; and that this act is immediately necessary to  
3 assist dealers that are facing possible termination of their franchise.  
4 Therefore, an emergency is declared to exist and this act being immediately  
5 necessary for the preservation of the public peace, health, and safety shall  
6 become effective on:

7 (1) The date of its approval by the Governor;

8 (2) If the bill is neither approved nor vetoed by the Governor,  
9 the expiration of the period of time during which the Governor may veto the  
10 bill; or

11 (3) If the bill is vetoed by the Governor and the veto is  
12 overridden, the date the last house overrides the veto.

13  
14 */s/ Teague*

15  
16 **APPROVED: 4/1/2009**