

A.C.A. § 23-112-101

Current through all acts of the 2021 Regular Session, First Extraordinary Session, Extended Session, Second Extraordinary Session, and the 2022 Fiscal Session including corrections and edits by the Arkansas Code Revision Commission.

AR - Arkansas Code Annotated > Title 23 Public Utilities and Regulated Industries > Subtitle 4. Miscellaneous Regulated Industries > Chapter 112 Arkansas Motor Vehicle Commission Act > Subchapter 1 — General Provisions

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.

Annotations

Case Notes

Applicability.

Where a truck dealer and franchisee asserted that a truck manufacturer and franchisor granted greater price concessions to the dealer's competitors, the dealer was not limited to the remedies provided by the Arkansas Motor Vehicle Commission Act, § 23-112-101 et seq., and could pursue remedies under the Arkansas Franchise Practices Act, § 4-72-201 et seq. Reeder-Simco GMC, Inc. v. Volvo GM Heavy Truck Corp., 374 F.3d 701 (8th Cir. 2004), rev'd, Volvo Trucks N. Am., Inc. v. Reeder-Simco GMC, Inc., 546 U.S. 164 (2006).

Cited:

Arkansas Motor Vehicle Comm'n v.
Cliff Peck Chevrolet, Inc., 277 Ark. 185, 640 S.W.2d 453 (1982) ;
Hankins v. McElroy, 313 Ark. 394, 855 S.W.2d 310 (1993) .

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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, and new motor vehicle dealers 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; 2021, No. 504, § 2.

Annotations

Notes

Amendments.

The 2021 amendment deleted “and salespersons” following “motor vehicle dealers” in the introductory language of (b).

Case Notes

Cited:

Arkansas Motor Vehicle Comm'n v.
Cliff Peck Chevrolet, Inc., 277 Ark. 185, 640 S.W.2d 453 (1982) ;
Crain Family Holdings, LLC v. Ford Motor Co., 2021 Ark. App. 361, 635 S.W.3d 346 (2021)
.

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23-112-103. Definitions.

As used in this chapter:

- (1)** “Advertisement” means an oral, written, telecommunicated, graphic, pictorial, or other statement made in the course of soliciting business, including without limitation, a statement or representation made in a newspaper, magazine, internet, or other publication or contained in a notice, sign, poster, display, circular, pamphlet, letter, or flyer, or made via radio, television, or any other medium;
- (2)** “All-terrain vehicle” means a motor vehicle that:
 - (A)** Is an off-highway vehicle:
 - (i)** Fifty inches (50”) or less in width, having a dry weight of nine hundred pounds (900 lbs.) or less, and traveling on three (3) or more low-pressure tires, with a seat designed to be straddled by the operator, a Class 1 all-terrain vehicle; or
 - (ii)** With a width that exceeds forty-five inches (45”) or having a dry weight that exceeds six hundred pounds (600 lbs.), traveling on four (4) or more low-profile, low-pressure tires, and having a bench seat or one (1) or more bucket seats, a Class 2 all-terrain vehicle;
 - (B)** Has a seat for the operator and any passenger and handlebars or other steering mechanism for control; and
 - (C)** Is used for any purpose, including, but not limited to, off-road, amphibious, or recreational travel;
- (3)** “Auto auction” means:
 - (A)** Any person who operates or provides a place of business or facilities for the wholesale exchange of motor vehicles by and between duly licensed motor vehicle dealers;
 - (B)** Any motor vehicle dealer licensed to sell used motor vehicles, selling motor vehicles using an auction format but not on consignment; and
 - (C)** Any person who provides the facilities for or is in the business of selling motor vehicles in an auction format;
- (4)** “Branch location” means a secondary location:

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

(B) Factory branch, for the purpose of making or promoting the sale of its new motor vehicles or for supervising or contacting its dealers or prospective dealers;

(14) “Franchise” means one (1) or more contracts between a franchised dealer as franchisee and either a manufacturer or a distributor, importer, second-stage manufacturer, or converter as franchiser under which:

(A) The franchisee is granted the right to sell, service, or sell and service new motor vehicles manufactured or distributed by the franchiser;

(B) The franchisee as an independent business is a component of the franchiser's distribution system;

(C) The franchise is substantially associated with the franchiser's trademark, trade name, or commercial symbol;

(D) The franchisee's business is substantially reliant on the franchiser for a continued supply of motor vehicles, parts, or accessories for the conduct of its business; or

(E)

(i) Any right, duty, or obligation granted or imposed by this chapter is affected.

(ii) “Franchise” includes:

(a)

A written communication from a franchiser to a franchisee by which a duty is imposed upon the franchisee; or

(b)

Any separate written agreement between the franchisee and the franchiser that materially affects the franchise, as defined in this subdivision (14), whether entered into:

(1)

Contemporaneously with the creation of the franchise; or

(2)

Subsequent to the date the franchise was created;

(15) “Good faith” means the duty of each party to any franchise and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party;

(16) “Licensed location” means the address designated as the primary business address of the motor vehicle dealer on the application submitted for approval of licensure;

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

(18) “Low speed vehicle” means a motor vehicle:

(A) That is four-wheeled;

(B) That has an attainable speed in one (1) mile of more than twenty miles per hour (20 m.p.h.) but not more than twenty-five miles per hour (25 m.p.h.) on a paved level surface; and

(C) With a gross vehicle weight of less than three thousand pounds (3,000 lbs.);

(19) “Manufacturer” means any person, firm, association, corporation, or trust, resident or nonresident, that manufactures or assembles new motor vehicles;

(20) “Motor vehicle” means a self-propelled vehicle having two (2) or more wheels that has as its primary purpose the transportation of a person, including without limitation all-terrain vehicles, automobiles, trucks, motorcycles, motor-driven cycles, motor scooters, and low speed vehicles;

(21)

(A)

(i) “Motor vehicle dealer” means a person that is:

(a)

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

(b)

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

(ii) “Motor vehicle dealer” includes any person engaged in the business of selling, offering to sell, soliciting, or advertising the sale, regardless of the medium used, of commercial buses, school buses, or other 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 (21)(B)(i) of this section when engaged in the specific performance of their duties as employees;

(iv) Specialty vehicle dealers;

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

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

(22) “Motor vehicle lessor” means any person not excluded by subdivision (21) of this section engaged in the motor vehicle leasing or rental business;

(23) [Repealed.]

(24) “New motor vehicle” means any motor vehicle, the legal title to which has never been transferred by a manufacturer, distributor, or franchised new motor vehicle dealer to an ultimate purchaser;

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

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

(27)

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

(B)

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

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

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

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

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

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

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

(30)

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

(B) “Specialty vehicle” includes garbage trucks, ambulances, fire trucks, limousines, hearses, and other similar limited-purpose vehicles as the commission may by rule provide;

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

(32)

- (A)** "Ultimate purchaser" means, with respect to any new motor vehicle, the first person, other than a motor vehicle dealer purchasing in his or her capacity as a dealer, who in good faith purchases the new motor vehicle for purposes other than resale.
- (B)** "Ultimate purchaser" shall not include a person who purchases a vehicle for purposes of altering or remanufacturing the motor vehicle for future resale;

(33)

- (A)** "Used motor vehicle" means a motor vehicle:
- (i)** For which title has been sold, bargained, exchanged, given away, or transferred from the person or corporation who first took ownership from the manufacturer, distributor, dealer, or agents thereof; or
 - (ii)** So used as to have become what is commonly known as a "second hand motor vehicle" or a "previously owned motor vehicle".
- (B)** A new motor vehicle shall not be considered a used motor vehicle unless the motor vehicle has been:
- (i)** Placed in actual operation; and
 - (ii)** Not held for resale by an owner that has:
 - (a)**
Been granted a certificate of title; and
 - (b)**
Registered the motor vehicle under the Motor Vehicle Administration, Certificate of Title, and Antitheft Act, § 27-14-101 et seq.;

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

- (A)** Sells, exchanges, rents, or leases with the option to purchase or own, or attempts to negotiate a sale or exchange of an interest in any used motor vehicle; or
- (B)** Is wholly or in part in the business of buying, selling, trading, or exchanging used motor vehicles, whether or not the used motor vehicles are owned by the person;

(35)

- (A)** "Wholesaler" means any person, resident or nonresident, not excluded by subdivision (21) 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;

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

- (A)** Federal safety recall for a defect or noncompliance; or
- (B)** Federal emissions recall; and

(37) “Digital platforms” means an online exchange of information, goods, and services between a dealer and a consumer that facilitates retail commercial interactions.

History

Acts 1975, No. 388, § 3; 1985, No. 1032, § 1; 1985, No. 1058, § 1; A.S.A. 1947, § 75-2303; Acts 1987, No. 620, § 1; 1987, No. 645, §§ 1, 2; 1989, No. 65, §§ 1-3; 1989, No. 509, § 1; 1991, No. 411, § 3; 1991, No. 890, §§ 1-3; 1993, No. 383, § 5; 1997, No. 1154, §§ 3-7; 1999, No. 1042, § 1; 2001, No. 1053, § 1; 2003, No. 1098, §§ 1, 2; 2009, No. 756, §§ 1-5; 2011, No. 1005, §§ 1-3; 2013, No. 561, §§ 1, 2; 2013, No. 1043, §§ 1, 2; 2015, No. 1055, §§ 1, 2; 2015, No. 1164, § 7; 2019, No. 315, § 2825; 2019, No. 924, § 1; 2021, No. 504, § 3; 2021, No. 1077, §§ 1, 2.

Annotations

Notes

Amendments.

The 2009 amendment substituted “exempted specialty vehicle” for “ambulance or firefighting vehicle” in (8); rewrote (18), (19)(A)(i), and (31); added (34) and (35); and made related and minor stylistic changes.

The 2011 amendment rewrote (6); inserted “or sell and service” preceding “new motor” in (14)(A); and deleted “and there is one (1) or more existing new motor vehicle dealers of the same line make within a ten-mile radius of the proposed dealer site” preceding “the relevant” in (25)(B)(ii).

The 2013 amendment by No. 561 substituted “motor homes, and low speed vehicles” for “and motor homes” in (18); and added present (35).

The 2013 amendment by No. 1043 deleted “motor homes” from the end of (18); and deleted (34)(B) and former (35).

The 2015 amendment by No. 1055 substituted “nine hundred pounds (900 lbs.)” for “eight hundred pounds (800 lbs.)” in (2)(A)(i); in (2)(A)(ii), substituted “forty-five inches (45”)” for “fifty inches (50”)” and “six hundred pounds (600 lbs.)” for “eight hundred pounds (800 lbs.)” and inserted “or one (1) or more bucket seats”; and added (23)(E).

The 2015 amendment by No. 1164, in (18)(B), substituted “That has an attainable speed” for “Whose speed attainable,” substituted “of more than” for “is more than,” and substituted “but not more” for “and not more.”

The 2019 amendment by No. 315 substituted “rule” for “regulation” in (30)(B).

The 2019 amendment by No. 924 added (36).

The 2021 amendment by No. 504 deleted the definition for “Motor vehicle salesperson”.

The 2021 amendment by No. 1077 added (14)(E)(ii)(b) and (37); and made stylistic changes.

Case Notes

Motor Vehicles.

School buses are “motor vehicles” within the meaning of subdivision (1).
Walt Bennett Ford, Inc. v. Pulaski County Special Sch. Dist., 274 Ark. 208, 624 S.W.2d 426 (1981)

Cited:

Arkansas Motor Vehicle Comm'n v.
Cantrell Marine, Inc., 305 Ark. 449, 808 S.W.2d 765 (1991)

Research References & Practice Aids

U. Ark. Little Rock L.J.

Survey, Contracts, 12 U. Ark. Little Rock L.J. 611.

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Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

Survey of Legislation, 2003 Arkansas General Assembly, Insurance Law, All-Terrain Vehicles, 26 U. Ark. Little Rock L. Rev. 483.

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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; 2019, No. 315, § 2826.

Annotations

Notes

Amendments.

The 2019 amendment deleted “or regulation” following “rule” in (a).

Case Notes

Cited:

GM Heavy Truck Corp., 374 F.3d 701 (8th Cir. 2004)

Reeder-Simco GMC, Inc. v. Volvo
.

Research References & Practice Aids

Cross References.

Injunctions, procedure, § 16-113-301 et seq.

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23-112-105. Civil damages.

(a) A licensee suffering pecuniary loss because of any willful failure by any other licensee to comply with this chapter, other than a new automobile or truck dealer's failure to comply with § 23-112-301(d)(1) and (2) 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.

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

History

Acts 1975, No. 388, § 9; A.S.A. 1947, § 75-2309; Acts 1989, No. 678, § 3; 2011, No. 1005, § 4; 2013, No. 1043, § 3; 2019, No. 315, § 2827.

Annotations

Notes

Amendments.

The 2011 amendment added the (a) designation; deleted “any provision of” following “comply with” in (a); and added (b).

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The 2013 amendment deleted “Except as provided under subdivision (b)(2) of this section” in (b) and deleted (b)(2).

The 2019 amendment deleted “or regulation” following “rule” in (a).

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23-112-106. Enforcement.

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

- (1) The commission has conducted a hearing within sixty (60) days on the matter;
- (2) The commission has made written findings that the public interest and welfare require the person or entity against whom the commission is acting to take the specified action; or
- (3) The commission finds that the current civil or administrative penalties are insufficient.

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

History

Acts 2003 (2nd Ex. Sess.), No. 62, § 1; 2019, No. 315, § 2828.

Annotations

Notes

Amendments.

The 2019 amendment substituted “rules” for “regulations” in the introductory language of (a).

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

(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 subsection (d) of this section and subsections (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 subsection (d) of this section and subsections (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 Department of Transportation 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 department;
 - (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) and (d) of this section and subsections (f)-(h) of this section shall not apply to subscription services that meet the requirements of this subsection.
- (k)**
- (1)** A new motor vehicle dealer, manufacturer, and distributor shall be immune and held harmless against liability for the privacy of information contained in motor vehicle databases, including without limitation recording devices, global-positioning systems, navigation devices, or any in-vehicle data not controlled by the dealer.
 - (2)** This subsection does not affect the notice requirements under subsection (b) of this section.
- (l)** The Arkansas Motor Vehicle Commission shall administer this section and may promulgate rules for the administration of this section.

History

Acts 2005, No. 1419, § 1; 2009, No. 148, § 1; 2011, No. 1005, §§ 5, 6; 2017, No. 707, § 266.

Annotations

Notes

A.C.R.C. Notes.

This section was formerly codified as § 27-37-103.

Acts 2009, No. 148, § 2, provided:

“For administrative convenience, the Arkansas Code Revision Commission shall remove Arkansas Code § 27-37-103 including the amendment made in this act from Title 27 and recodify the provision under the ‘Arkansas Motor Vehicle Commission Act’, Arkansas Code § 23-112-101 et seq.”

Amendments.

The 2009 amendment added (k).

The 2011 amendment inserted present (k) and redesignated former (k) as (l).

The 2017 amendment substituted “Department of Transportation” for “State Highway and Transportation Department” in (g).

End of Document

A.C.A. § 23-112-301

Current through all acts of the 2021 Regular Session, First Extraordinary Session, Extended Session, Second Extraordinary Session, and the 2022 Fiscal Session including corrections and edits by the Arkansas Code Revision Commission.

AR - Arkansas Code Annotated > Title 23 Public Utilities and Regulated Industries > Subtitle 4. Miscellaneous Regulated Industries > Chapter 112 Arkansas Motor Vehicle Commission Act > Subchapter 3 — Licensing and Regulation

23-112-301. License required — Definition.

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

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

(2) For any person to engage in business as, serve in the capacity of, or act as a new motor vehicle dealer, motor vehicle lessor, manufacturer, importer, distributor, factory branch or division, distributor branch or division, factory representative, distributor representative, second-stage manufacturer, or converter, as such, in Arkansas without first obtaining a license therefor as provided in this chapter, regardless of whether or not the person maintains or has a place of business in Arkansas.

(b) Any person, firm, association, corporation, or trust engaging, acting, or serving in more than one (1) of these capacities or having more than one (1) place where such a business is carried on or conducted shall be required to obtain and hold a separate and current license for each capacity and place of business.

(c)

(1) However, any licensed motor vehicle dealer shall not be required to obtain a license as a motor vehicle lessor for any location licensed as a motor vehicle dealer.

(2) A motor vehicle lessor shall be required to obtain only one (1) motor vehicle lessor's license, regardless of the number of leasing locations he or she owns and operates but shall list each location on his or her application and pay a fee of fifty dollars (\$50.00) for each location.

(3) New lease locations opened after a license is issued shall be approved by the Arkansas Motor Vehicle Commission but shall not require a new license.

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

(d)

(1) A person shall not engage in the business of buying, selling, or exchanging motor vehicles unless he or she:

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

(B) Is a bona fide employee or agent of the licensed motor vehicle dealer.

A.C.A. § 23-112-301

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

- (A) Displaying for sale motor vehicles on a lot or showroom;
- (B) Advertising for sale new motor vehicles regardless of the medium used; or
- (C) Regularly or actively soliciting buyers for motor vehicles.

History

Acts 1975, No. 388, §§ 5, 8, 10; 1977, No. 838, § 2; 1985, No. 1032, §§ 3, 6; 1985, No. 1058, §§ 3, 6; A.S.A. 1947, §§ 75-2305, 75-2308, 75-2310; Acts 1989, No. 678, § 1; 1995, No. 568, § 4; 1997, No. 1154, § 9; 1999, No. 1042, § 2; 2001, No. 1053, § 2; 2009, No. 756, § 6; 2021, No. 504, §§ 5, 6; 2021, No. 1077, § 3.

Annotations

Notes

A.C.R.C. Notes.

Acts 1987, No. 620, § 2, provided, in part, that auto auctions, motor vehicle lessors and motor vehicle dealers, motor vehicle salesmen, and wholesalers, in used motor vehicles, shall be licensed pursuant to § 23-112-101 et seq. beginning July 1, 1985, and licenses relating to motor vehicles having fewer than four wheels shall be required beginning July 1, 1987.

Publisher's Notes.

Acts 1985, No. 1032, § 7, and No. 1058, § 7, which were identical, provided that auto auctions, motor vehicle lessors and motor vehicle dealers, motor vehicle salesmen, and wholesalers, in used motor vehicles, must be licensed pursuant to this chapter beginning July 1, 1985.

Acts 1975, No. 388, § 8, as amended, is also codified as § 23-112-401.

Amendments.

The 2009 amendment inserted “importer” in (a)(2), and made related and minor stylistic changes.

The 2021 amendment by No. 504 deleted “motor vehicle salesperson” following “motor vehicle dealer” in (a)(2); substituted “A person shall not” for “No person may” at the beginning of the introductory language of (d)(1); inserted “motor vehicle dealer” in (d)(1)(A); substituted “licensed motor vehicle dealer” for “licensee” in (d)(1)(B); and substituted “As used in” for “For purposes of” in the introductory language of (d)(2).

The 2021 amendment by No. 1077 inserted “used” in (c)(4).

Research References & Practice Aids

U. Ark. Little Rock L. Rev.

Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

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A.C.A. § 23-112-304

Current through all acts of the 2021 Regular Session, First Extraordinary Session, Extended Session, Second Extraordinary Session, and the 2022 Fiscal Session including corrections and edits by the Arkansas Code Revision Commission.

AR - Arkansas Code Annotated > Title 23 Public Utilities and Regulated Industries > Subtitle 4. Miscellaneous Regulated Industries > Chapter 112 Arkansas Motor Vehicle Commission Act > Subchapter 3 — Licensing and Regulation

23-112-304. Issuance of license — Change of location — Change of business or corporate name, structure, or DBA name — Dealers, manufacturers, distributors, etc.

- (a)** The license issued to each motor vehicle dealer, manufacturer, distributor, factory branch or division, or distributor branch or division shall specify the location of the factory, office, branch, or division thereof.
- (b)** In case the location is changed, the Arkansas Motor Vehicle Commission shall endorse the change of location on the license without charge if it is within the same county.
- (c)** A change of location to another county shall require a new license.
- (d)** Licensees shall notify the commission in writing of any change in the business or corporate name or structure and of any alternate name or names in which the company will do business, “DBA names”, and shall provide the original issue license with the notification of name change or addition of DBA name or names. The commission shall endorse the change on the license without charge.

History

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

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A.C.A. § 23-112-305

Current through all acts of the 2021 Regular Session, First Extraordinary Session, Extended Session, Second Extraordinary Session, and the 2022 Fiscal Session including corrections and edits by the Arkansas Code Revision Commission.

AR - Arkansas Code Annotated > Title 23 Public Utilities and Regulated Industries > Subtitle 4. Miscellaneous Regulated Industries > Chapter 112 Arkansas Motor Vehicle Commission Act > Subchapter 3 — Licensing and Regulation

23-112-305. Display of license — Change of employer — Factory representative and distributor representative.

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

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

History

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

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A.C.A. § 23-112-310

Current through all acts of the 2021 Regular Session, First Extraordinary Session, Extended Session, Second Extraordinary Session, and the 2022 Fiscal Session including corrections and edits by the Arkansas Code Revision Commission.

AR - Arkansas Code Annotated > Title 23 Public Utilities and Regulated Industries > Subtitle 4. Miscellaneous Regulated Industries > Chapter 112 Arkansas Motor Vehicle Commission Act > Subchapter 3 — Licensing and Regulation

23-112-310. Delivery, preparation, and warranty obligations.

(a)

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

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

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

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

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

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

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

(d)

(1)

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

(B) Conversely, a dealer shall not charge to its manufacturer, distributor, distributor branch or division, or factory branch or division a labor rate per hour or parts rate in excess of the rate charged to its retail customers.

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

(D)

(i) A motor vehicle dealer may request a change in the labor rate per hour for warranty work or parts markup for warranty work, and the manufacturer, distributor, distributor branch or division, or factory or division branch shall approve or disapprove the request within forty-five (45) days from the date the request is received.

(ii) A request submitted under subdivision (d)(1)(D)(i) of this section is approved if a manufacturer, distributor, distributor branch or division, or factory or division branch fails to approve or disapprove the request within forty-five (45) days from the date the request for a change in the labor rate per hour for warranty work or parts markup for warranty work is received.

(iii) If the manufacturer or distributor determines, from any set of repair orders submitted under subdivision (d)(1)(D)(i) of this section, that the labor rate per hour for warranty work or the parts markup for warranty work is substantially higher or lower than the rate currently on record with the manufacturer or distributor, then the manufacturer or distributor may request additional documentation for a period of either forty-five (45) days prior or forty-five (45) days subsequent to the time period for which the repair orders were submitted.

(2)

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

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

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

History

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

2009, No. 756, § 10; 2011, No. 1005, § 7; 2013, No. 1043, § 4; 2015, No. 1055, § 3; 2019, No. 924, § 2; 2021, No. 1077, § 4.

Annotations

Notes

Amendments.

The 2009 amendment subdivided (d)(1), inserted “provided the rate is reasonable compared to other same line-make dealers in the dealer's relevant market area or the dealer's competitive market area” in (d)(1)(A), inserted “or parts price” in (d)(1)(A) and (d)(1)(B), inserted (d)(1)(C), and made minor stylistic changes.

The 2011 amendment added (d)(1)(D).

The 2013 amendment deleted former (d)(1)(C) and redesignated former (d)(1)(D) as present (d)(1)(C).

The 2015 amendment added the (d)(3)(A) designation; in (d)(3)(A), substituted “dealer” for “dealers” and added “in accordance with safety and repair specifications, bulletins, and requirements of the manufacturer, distributor, distributor branch or division, or factory or division branch”; and added (d)(3)(B) through (D).

The 2019 amendment deleted the (d)(3)(A) designation; in (d)(3), substituted “A manufacturer” for “In no event shall a manufacturer”, substituted “shall pay” for “refuse to pay”, and deleted “safety and repair specifications, bulletins, and” preceding “requirements”; and deleted (d)(3)(B) through (d)(3)(D).

The 2021 amendment substituted “parts rate” for “parts price” in (d)(1)(A), (d)(1)(B) and (d)(1)(C); and added (d)(1)(D).

A.C.A. § 23-112-311

Current through all acts of the 2021 Regular Session, First Extraordinary Session, Extended Session, Second Extraordinary Session, and the 2022 Fiscal Session including corrections and edits by the Arkansas Code Revision Commission.

AR - Arkansas Code Annotated > Title 23 Public Utilities and Regulated Industries > Subtitle 4. Miscellaneous Regulated Industries > Chapter 112 Arkansas Motor Vehicle Commission Act > Subchapter 3 — Licensing and Regulation

23-112-311. Addition or relocation of new motor vehicle dealer.

(a)

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

(2)

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

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

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

(b) This section does not apply:

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

(2) If the proposed new motor vehicle dealer, other than a new motor vehicle dealer of motorcycles, motorized cycles, and all-terrain vehicles, is to be established at or within two (2)

miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle has ceased operating within the previous two (2) years; or

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

(c)

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

- (A)** Permanency of the investment of both the existing and proposed new motor vehicle dealers;
- (B)** Growth or decline in population and new motor vehicle registrations in the relevant market area;
- (C)** Effect on the consuming public in the relevant market area;
- (D)** Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
- (E)** Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the line make in the market area, which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel; and
- (F)** Whether the establishment of an additional new motor vehicle dealer would increase competition and, therefore, be in the public interest.

(2) In determining whether good cause has been established for not entering into a franchise establishing or relocating an additional new motor vehicle dealer for the same line make, the burden of proof is on the manufacturer or distributor to show it has good cause for granting the new franchise, except when an existing franchisee initiated the relocation.

(d)

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

(2) Unless waived by the parties, failure to do so shall be deemed the equivalent of a determination that good cause does not exist for refusing to permit the proposed additional or relocated new motor vehicle dealer, unless the delay is caused by acts of the manufacturer or distributor or the relocating or additional dealer.

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

History

Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1997, No. 1154, § 12; 1999, No. 1042, § 6; 2001, No. 1053, § 12; 2009, No. 756, § 11; 2011, No. 1005, § 8.

Annotations

Notes

Amendments.

The 2009 amendment substituted “motor vehicle” for “car” in (c)(2), and made a minor stylistic change in the introductory language.

The 2011 amendment added the (c)(1) designation; redesignated former (c)(1) through (c)(6) as (c)(1)(A) through (c)(1)(F); added (c)(2); added the (d)(1) designation; substituted “one hundred eighty (180)” for “one hundred twenty (120)” in (d)(1); and added the (d)(2) designation.

Case Notes

Applicability.
Regulations.

Applicability.

The the notice, protest, and hearing requirement of this section does not apply to dealers of motorcycles and all terrain vehicles. Yamaha Motor Corp., U.S.A. v. Richard's
Honda Yamaha, 344 Ark. 44, 38 S.W.3d 356 (2001) .

Regulations.

Arkansas Motor Vehicle Commission Regulation 3-4 was held invalid as contrary to this section where it gave the commission the authority to hold a hearing on every new dealer application, while this section permits hearings on only some applications, i.e., not applications for new motor vehicle dealers of motorcycles or all terrain vehicles, for new dealerships only when a protest has been filed with the commission; in addition, the regulation placed the burden of proving good cause to grant a license on the party applying for the license, whereas this section places the burden of establishing good cause to deny the application on the protesting party.

U.S.A. v. Richard's Honda Yamaha, 344 Ark. 44, 38 S.W.3d 356 (2001)

Cited:

Auto Co., 939 F.2d 538 (8th Cir. 1991)

Chrysler Motors Corp. v. Thomas

A.C.A. § 23-112-312

Current through all acts of the 2021 Regular Session, First Extraordinary Session, Extended Session, Second Extraordinary Session, and the 2022 Fiscal Session including corrections and edits by the Arkansas Code Revision Commission.

AR - Arkansas Code Annotated > Title 23 Public Utilities and Regulated Industries > Subtitle 4. Miscellaneous Regulated Industries > Chapter 112 Arkansas Motor Vehicle Commission Act > Subchapter 3 — Licensing and Regulation

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

- (a) The Arkansas Motor Vehicle Commission may enter into reciprocal agreements with motor vehicle commissions or their equivalents in other states to allow motor vehicle dealers who are licensed in those states to obtain a temporary permit in this state, pursuant to the rules promulgated by the Arkansas Motor Vehicle Commission.
- (b) Any person who is licensed under the laws of another state or territory of the United States to engage in business as a motor vehicle dealer may apply for a temporary permit in this state upon production of satisfactory proof that:
- (1) The requirements for licensing in the particular state or territory were equivalent to the requirements in effect in this state at the date of the applicant's licensing;
 - (2) The applicant meets all the qualifications for the temporary permit and pays the fees specified for the permits pursuant to the rules of the Arkansas Motor Vehicle Commission; and
 - (3) The applicant meets other reasonable qualifications as may be adopted by the Arkansas Motor Vehicle Commission.

History

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

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A.C.A. § 23-112-313

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AR - Arkansas Code Annotated > Title 23 Public Utilities and Regulated Industries > Subtitle 4. Miscellaneous Regulated Industries > Chapter 112 Arkansas Motor Vehicle Commission Act > Subchapter 3 — Licensing and Regulation

23-112-313. Warranty agreements — Definitions.

- (a)** Every manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division shall properly fulfill any warranty or recall campaign agreements and adequately and fairly compensate each of its motor vehicle dealers for labor and parts.
- (b)** The compensation shall not fail to include reasonable compensation for diagnostic work, repair service, labor, and parts.
- (c)**
 - (1)** Time allowances for the diagnosis and performance of warranty or recall campaign work and service shall be reasonable and adequate for the work to be performed.
 - (2)** In the determination of what constitutes reasonable compensation for warranty or recall campaign work and service under this subsection subject to § 23-112-310(d)(1)(A), the principal factor to be considered is the labor rate per hour or parts rate that is charged by the motor vehicle dealer to the motor vehicle dealer's retail customers, exclusive of routine maintenance performed on a vehicle.
 - (3)** The compensation of a motor vehicle dealer for warranty or recall campaign service and parts shall not be less than the rates charged by the motor vehicle dealer for like service to retail customers for nonwarranty service and repairs and parts, provided the rate is reasonable.
 - (4)** The motor vehicle dealer shall calculate the labor rate by dividing the amount of the motor vehicle dealer's total labor sales from any qualified repair orders by the total labor hours that generated the labor charges in the qualified repair orders.
 - (5)** The motor vehicle dealer shall calculate the rate for parts by:
 - (A)** Determining the total charges for parts from the qualified repair orders submitted; and
 - (B)** Dividing the total charges under subdivision (c)(5)(A) of this section by the motor vehicle dealer's total cost of the purchase of those parts, subtracting one (1), and multiplying by one hundred (100) to produce a percentage.
- (6)**
 - (A)** As used in this section, "qualified repair order" means a customer pay repair order paid by a retail customer, exclusive of routine maintenance performed on the vehicle.

A.C.A. § 23-112-313

(B) Qualified repair orders used to calculate the labor rate and rate for parts under this section shall be qualified repair orders from the lesser of a:

- (i)** Reasonable look-back period not to exceed one hundred (100) sequential customer pay repair orders with repair dates covering repairs made no more than one hundred eighty (180) days before the submission of the qualified repair order request; or
- (ii)** Ninety-day look-back period with repair dates covering repairs made no more than one hundred eighty (180) days before the submission of the qualified repair order.

(C)

- (i)** No repair order shall be excluded from the markup computation solely because it contains repairs using nonoriginal equipment manufacturer parts.
- (ii)** However, only the portion of the repair order that uses original equipment manufacturer parts shall be included in the computation of the motor vehicle dealer's rate for parts.

(7) For the purposes of this section, a motor vehicle dealer shall submit a written request to be compensated under this section.

(d)

(1)

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

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

(2) A part-by-part analysis is not required to determine the retail rate for parts.

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

(e)

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

(2)

(A)

(i) The motor vehicle dealer who submits a claim which is disapproved shall be notified in writing of the disapproval within the same period, and the notice shall state the specific grounds upon which the disapproval is based.

(ii) The motor vehicle dealer may correct and resubmit the disapproved claims within thirty (30) days of receipt of disapproval.

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

(3)

A.C.A. § 23-112-313

(A) A claim shall not be disapproved because a clerical error was made that does not render the amount of the claim incorrect, including without limitation clerical errors that occur as a result of a manufacturer or distributor's prior approval process.

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

(4)

(A) The manufacturer or franchiser may:

(i) Require documentation for claims;

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

(iii) Charge back any false or unsubstantiated claims.

(B) The audit and charge-back provisions of this subsection also apply to all other incentive and reimbursement programs for a period of twelve (12) months after the date of the transactions that are subject to audit by the franchiser.

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

(D)

(i) A dealer may file an appeal with the Arkansas Motor Vehicle Commission to protest any chargeback under this subdivision (e)(4) within ninety (90) days of notification by the manufacturer or distributor.

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

(iii) An appeal by the licensee under this subdivision (e)(4)(D) shall be in accordance with § 23-112-501 et seq.

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

(1) Tires;

(2) Fluids;

(3) Filters;

(4) Batteries;

(5) Belts;

(6) Windshield wipers; and

(7) Brake pads.

History

Acts 1997, No. 1154, § 2; 1999, No. 1042, § 7; 2007, No. 746, §§ 1, 2; 2009, No. 756, § 12; 2011, No. 1005, § 9; 2013, No. 1043, § 5; 2015, No. 1055, §§ 4, 5; 2019, No. 924, § 3; 2021, No. 1077, §§ 5, 6.

Annotations

Notes

Amendments.

The 2009 amendment redesignated the subsections and subdivisions; inserted present (d)(1), (d)(3), and (e)(3)(B); inserted “and parts” in (b); inserted “provided the rate is reasonable compared to other same line-make dealers in the dealer's relevant market area or the dealer's competitive market area” in (c)(3); substituted “section” for “subsection” in (e)(1) and substituted “ninety (90) days” for “thirty (30) days” in (e)(4)(D)(i); and made related and minor stylistic changes throughout the section.

The 2011 amendment inserted “including without limitation ... distributor for these programs” in (e)(3)(A).

The 2013 amendment deleted (f).

The 2015 amendment, in (c)(3), inserted “motor vehicle” following “charged by the,” substituted “comparable to the rate of” for “reasonable compared to,” and substituted “in an economically similar area” for “in the motor vehicle dealer's relevant market area”; and deleted “provided the dealer received preapproval pursuant to the established practices of the manufacturer or distributor for these programs” at the end of (e)(3)(A).

The 2019 amendment added (f).

The 2021 amendment substituted “recall campaign agreements” for “recall agreement” in (a); substituted “recall campaign” for “recall” throughout (c); in (c)(2), inserted “subject to § 23-112-310 (d)(1)(A)” and substituted “labor rate per hour or parts rate that is charged by the motor vehicle dealer to the motor vehicle dealer's retail customers, exclusive of routine maintenance performed on a vehicle” for “prevailing wage rates, exclusive of routine maintenance, that are being charged by the dealers in the relevant market area in which the motor vehicle dealer is doing business”; in (c)(3), inserted “and parts” twice and substituted “reasonable” for “comparable to the rate of other same line make dealers in an economically similar area or the dealer's competitive market area”; and added (c)(4) through (c)(7).

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End of Document

A.C.A. § 23-112-319

Current through all acts of the 2021 Regular Session, First Extraordinary Session, Extended Session, Second Extraordinary Session, and the 2022 Fiscal Session including corrections and edits by the Arkansas Code Revision Commission.

AR - Arkansas Code Annotated > Title 23 Public Utilities and Regulated Industries > Subtitle 4. Miscellaneous Regulated Industries > Chapter 112 Arkansas Motor Vehicle Commission Act > Subchapter 3 — Licensing and Regulation

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

(a)

- (1)** A manufacturer shall compensate its new motor vehicle dealers for all labor and parts required by the manufacturer to perform recall repairs.
- (2)** The compensation for recall repairs required under subdivision (a)(1) of this section shall be reasonable.
- (3)** If recall parts or a remedy is not reasonably available to perform a recall service or repair on a used motor vehicle held for sale by a dealer authorized to sell and service new motor vehicles of the same line make of a motor vehicle within thirty (30) days of the manufacturer's issuing the initial notice of recall, and the manufacturer has issued a stop-sale order or do-not-drive order on the used motor vehicle, the manufacturer shall compensate the dealer at a prorated rate of at least one and twenty-five-hundredths percent (1.25%) of the value of the used motor vehicle per month beginning thirty (30) days from the date on which the stop-sale order or do-not-drive order was provided to the dealer until the earlier of:
 - (A)** The date the recall parts or a remedy is made available; or
 - (B)** The date the dealer sells, trades, or disposes of the affected used motor vehicle.

(b) This section applies only to a:

- (1)** Used motor vehicle subject to a safety or emissions recall in accordance with federal law and regulations and a stop-sale order or do-not-drive order has been issued and repair parts or a remedy remains unavailable for thirty (30) days or longer; and
- (2)** New motor vehicle dealer having an affected used motor vehicle:
 - (A)** In inventory for sale at the time the stop-sale order or do-not-drive order was issued;
 - (B)** For sale as a used motor vehicle as a consumer trade-in, incident to the purchase of a new motor vehicle from the dealer after the stop-sale order or do-not-drive order was issued; or
 - (C)** For sale that is a line make of a used motor vehicle the dealer is franchised to sell or on which the dealer is authorized to perform recall repairs.

(c)

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

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

- (A) A chargeback;
- (B) Removal of the dealer from an incentive program; or
- (C) A reduction in the amount owed under an incentive program.

(2) However, subdivision (c)(1) of this section does not apply to a reduction in the amount of compensation owed to a new motor vehicle dealer by a manufacturer if the reduction is applied uniformly to all new motor vehicle dealers of the same line make in the state.

(d) A reimbursement claim made by a new motor vehicle dealer for a recall remedy or repair or for compensation when no part or repair is reasonably available and the motor vehicle is subject to a stop-sale order or do-not-drive order:

- (1) Is subject to the same limitations and requirements as a warranty reimbursement claim made under § 23-112-313; or
- (2) May be compensated to a franchised dealer by a manufacturer under a national recall compensation program if the compensation under the program is equal to or greater than the compensation under subsection (a) of this section or the manufacturer and dealer otherwise agree to the amount of compensation.

(e) A manufacturer may direct the manner and method in which a dealer demonstrates the inventory status of an affected used motor vehicle to determine eligibility for compensation under this section if the manner and method are not unduly burdensome and do not require that the dealer provide information that may be unduly burdensome to obtain.

(f) This section does not require that a manufacturer provide total compensation to a dealer that exceeds the total average trade-in value of the used motor vehicle.

(g) If a recall remedy for a used motor vehicle is available under federal law or federal regulation, a dealer may choose to be compensated under the federal statute or under this section but may not combine the recall remedies.

(h) The value of a used motor vehicle shall be the average trade-in value for used motor vehicles as indicated in an independent third-party guide for the year, make, and model of the affected used motor vehicle.

History

Acts 2019, No. 924, § 4.

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A.C.A. § 23-112-403

Current through all acts of the 2021 Regular Session, First Extraordinary Session, Extended Session, Second Extraordinary Session, and the 2022 Fiscal Session including corrections and edits by the Arkansas Code Revision Commission.

AR - Arkansas Code Annotated > Title 23 Public Utilities and Regulated Industries > Subtitle 4. Miscellaneous Regulated Industries > Chapter 112 Arkansas Motor Vehicle Commission Act > Subchapter 4 — Unlawful Practices

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

(a) It shall be unlawful:

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

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

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

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

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

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

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

(A)

(i) To refuse to deliver, in reasonable quantities and within a reasonable time after receipt of a dealer's order to any licensed motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new motor vehicles sold or distributed by the manufacturer, distributor, distributor branch or division, or factory branch or division, any motor vehicles that are covered by the franchise or contract specifically publicly advertised by the manufacturer, distributor, distributor branch or division, or factory branch or division to be available for immediate delivery.

(ii) However, the failure to deliver any motor vehicle shall not be considered a violation of this chapter if the failure is due to forces of nature, work stoppages or

delays due to strikes or labor difficulties, freight, embargoes, or other causes over which the manufacturer or distributor, or any agent thereof, has no control;

(B)

(i) To engage in any of the following:

(a)

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

(b)

To coerce or attempt to coerce a motor vehicle dealer to use a manufacturer vehicle purchase add-on product or service; or

(c)

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

(ii) However, good faith 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.

(c)

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

(1)

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

(2)

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

(3)

Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against him or her that has not been discharged within sixty (60) days after the filing, is in default under a security agreement in effect with the manufacturer or distributor, or is in receivership;

(4)

Has engaged in unfair business or trade practices;

(5)

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

(6)

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

(7)

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

(8)

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

(9)

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

(10)

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

(11)

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

(d)

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

(ii)**(a)**

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

(b)

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

(iii)

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

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

(iv)

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

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

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

(v)

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

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

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

(E)

(i) To offer to sell or to sell any new motor vehicle to any motor vehicle dealer at a lower actual price therefor than the actual price charged to any other motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device, including,

but not limited to, sales promotion plans or programs, which results in a lesser actual price.

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

(a)

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

(b)

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

(c)

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

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

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

(G)

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

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

(H)

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

(a)

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

(b)

The standards are deemed reasonable by the commission.

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

(I)

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

(a)

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

(b)

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

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

(J)

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

(a)

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

(b)

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

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

(iii) If the dealer's successor, heir, or devisee requests consent from the manufacturer or distributor in writing on the form, if any, generally utilized or required by the manufacturer or distributor for such purposes and the manufacturer or distributor fails

to respond by giving or withholding consent in writing, within thirty (30) days of receipt of the written request, consent is deemed to be given;

(K)

(i) 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:

(a)

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;

(b)

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

(1)

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

(2)

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

(3)

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

(c)

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;

(d)

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

(e)

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

(f)

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

(g)

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

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

(h)

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

(2) 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

(i)

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

(1)

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

(2)

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

(3)

Reasonable attorney's fees and costs.

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

(L)

(i) To fail or refuse to offer its same line make franchised dealers, on similar terms and without arbitrary discrimination, all models manufactured for that line make and all trim level and model variants regardless of differences in engine, technology, or vehicle options.

(ii) No additional requirements over the requirements originally required to initially obtain a dealership may be required of existing franchised dealers to receive allocation, place an order, or take delivery of any model by that line make, provided that a manufacturer or distributor may require special tools and equipment that are reasonably necessary to sell or service a model or that are reasonably necessary to comply with any law concerning health and safety.

(iii) A manufacturer or distributor shall not be in violation of this subsection if the vehicle model required under this subdivision (a)(2)(L) is unavailable due to production limitation, supplier limitation, parts limitation, force majeure, or work stoppage;

(M)

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

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

(N) To prohibit or require a dealer to enter into a franchise or sales agreement with third parties, regardless of the location of the dealership or proposed dealership;

(O)

(i) To require, coerce, or attempt to coerce any franchisee in this state to refrain from or to terminate, cancel, or refuse to continue any franchise based upon participation by the franchisee in the management of, investment in, or the acquisition of a franchise for the sale of any other line of new motor vehicle or related products in the same or separate facilities as those of the franchiser.

(ii) This subdivision (a)(2)(O) does not apply unless:

(a)

The franchisee maintains a reasonable line of credit for each make or line of new motor vehicle;

(b)

The franchisee remains in compliance with the franchise and any reasonable facilities requirement of the franchiser; and

(c)

No change is made in the principal management of the franchisee.

(iii) The reasonable facilities requirement shall not include any requirement that the franchisee establish or maintain exclusive facilities, personnel, or display space when such requirements would not otherwise be justified by reasonable business considerations.

(iv)

(a) Before the addition of a line make to the dealership facilities, the franchisee must first request consent of the franchiser, if required by the franchise agreement.

(b)

Any decision of the franchiser with regard to dualing of two (2) or more franchises shall be granted or denied within sixty (60) days after a written request from the new motor vehicle dealer. The franchiser's failure to respond timely to a dualing request shall be deemed to be approval of the franchisee's request;

(P)

- (i)** To fail to continue in full force and operation a motor vehicle dealer franchise agreement, notwithstanding a change, in whole or in part, of an established plan or system of distribution or ownership of the manufacturer of the motor vehicles offered for sale under the franchise agreement.
- (ii)** The appointment of a new importer or distributor for motor vehicles offered for sale under a franchise agreement described in subdivision (a)(2)(P)(i) of this section shall be deemed to be a change of an established plan or system of distribution;

(Q)

(i)

(a) Unless the manufacturer's, distributor's, second-stage manufacturer's, importer's, converter's, manufacturer's branch or division, or distributor's branch or division requirements are reasonable and justifiable in light of the current and reasonably foreseeable projections of economic conditions, financial expectations, and the motor vehicle dealer's market and notwithstanding the terms of a franchise agreement or sales and service agreement, to require, coerce, or attempt to coerce any new motor vehicle dealer by program, policy, standard, or otherwise to:

(1)

Change location of the dealership;

(2)

Make any substantial changes, alterations, or remodeling to a motor vehicle dealer's sales or service facilities; or

(3)

Replace a motor vehicle dealer's sales or service facilities.

(b)

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

(ii)

(a) However, a manufacturer, distributor, second-stage manufacturer, importer, converter, manufacturer branch or division, or distributor branch or division, consistent with its allocation obligations at law and to its other same line make motor vehicle dealers, may provide to a

motor vehicle dealer a commitment to supply additional vehicles or provide a loan or grant of money as an inducement for the motor vehicle dealer to expand, improve, remodel, alter, or renovate its facilities if the provisions of the commitment are contained in a writing voluntarily agreed to by the dealer and are made available, on substantially similar terms, to any of the licensee's other same line make dealers who voluntarily agree to make a substantially similar facility expansion, improvement, remodeling, alteration, or renovation.

(b)

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

(c)

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

(d)

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

(R) To unreasonably withhold approval for a new motor vehicle dealer to purchase goods and services of substantially similar quality, design, and functionality related to facility changes, alterations, remodels, equipment, or digital platforms that do not contain or utilize a manufacturer's or distributor's intellectual property or proprietary design from vendors the motor vehicle dealer chooses;

(S) To require as a prerequisite to receiving a model or a series of vehicles a motor vehicle dealer to:

- (i)** Pay an extra fee or remodel, renovate, or recondition the motor vehicle dealer's existing facilities unless justified by the technological requirements for the sale or service of a motor vehicle;
- (ii)** Purchase unreasonable advertising displays, training, tools, or other materials;
- (iii)** Establish exclusive facilities;
- (iv)** Establish dedicated personnel;
- (v)** Utilize certain digital platforms; or
- (vi)** Enroll in a service loaner or demonstration program;

(T)

(i)

(a)

To use any written instrument, agreement, or waiver, to attempt to nullify or modify any provision of

this chapter or prevent a new motor vehicle dealer from bringing an action in a particular forum otherwise available under law.

(b)

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

(c)

However, this subdivision shall not apply to:

(1)

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

(2)

Settlement agreements entered into as a result of a dispute.

(ii)

(a)

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

(1)

Awarding a franchise to a prospective new motor vehicle dealer;

(2)

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

(3)

Renewing a franchise of an existing motor vehicle dealer;

(4)

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

(5)

Approving the sale or transfer of the ownership of a franchise.

(b)

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

(1)

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

(2)

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

(3)

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

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

(U) To do any of the following:

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

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

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

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

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

(vi) Fail to allow a motor vehicle dealer to maintain and control the vehicle inventory and service provider for the motor vehicle dealer's digital platforms; or

(vii)

(a) Exercise control over a motor vehicle dealer's digital platforms without the motor vehicle dealer's permission, including without limitation control over the:

(1)

Price paid by the motor vehicle dealer to utilize the digital platforms, except as provided in a marketing program in which the motor vehicle dealer participates or in a minimum advertised price policy;

(2)

Content exhibited on the digital platforms; and

(3)

Data feed that syndicates inventory to digital platforms.

(b)

This section does not prevent a manufacturer or distributor from requiring that a motor vehicle dealer ensure that the digital platforms and all information exhibited on or contained within the digital platforms do not:

(1)

Infringe upon or impair the manufacturer's or distributor's intellectual property rights, usage policies, or security requirements; and

(2)

Disclose the manufacturer's or distributor's confidential information.

(c)

This section does not:

(1)

Require a manufacturer or distributor to consider, evaluate, or include a digital platform or digital platform provider in the manufacturer's or distributor's list of approved digital platforms or digital providers;

(2)

Prohibit a manufacturer or distributor from establishing digital platform requirements under a voluntary program available to a motor vehicle dealer; or

(3)

Prohibit minimum advertised pricing;

(3)

(A) For a manufacturer, distributor, distributor branch or division, or factory branch or division, or an officer, agent, or other representative thereof to own, operate, or control any motor vehicle dealer or to directly lease a motor vehicle at retail leasing in this state.

(B) Subdivision (a)(3)(A) of this section does not prohibit:

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

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

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

(a)

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

(b)

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

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

(a)

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

(b)

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

(4)

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

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

(i) Internet solicitations; and

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

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

(5)

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

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

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

(b)

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

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

(B) Specifies the jurisdictions, venues, or tribunal in which disputes arising with respect to the franchise, lease, or agreement shall or shall not be submitted for resolution, or otherwise prohibits a motor vehicle franchisee from bringing an action in a particular forum otherwise available under federal or state law;

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

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

(E)

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

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

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

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

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

History

Acts 1975, No. 388, § 5; 1985, No. 1032, § 3; 1985, No. 1058, § 3; A.S.A. 1947, § 75-2305; Acts 1987, No. 663, § 1; 1989, No. 65, §§ 4, 5; 1991, No. 411, § 4; 1991, No. 730, § 1; 1997, No. 1154, § 13; 1999, No. 1042, § 9; 2001, No. 1053, § 16; 2007, No. 746, §§ 3, 4; 2009, No. 756, §§ 13-15; 2011, No. 800, § 1; 2011, No. 1005, §§ 10-16; 2013, No. 561, § 6; 2013, No. 1043, §§ 6-8; 2013, No. 1133, §§ 9, 10; 2015, No. 1055, § 7; 2019, No. 391, § 15; 2019, No. 924, §§ 5-7; 2021, No. 1077, §§ 8-12.

Annotations

Notes

Amendments.

A.C.A. § 23-112-403

The 2009 amendment rewrote (a)(2)(C)(v) and (a)(2)(K)(ii), inserted (a)(2)(K)(ix), inserted “a sales and service agreement, or a bona fide contract” in (a)(2)(M), and made related and minor stylistic changes.

The 2011 amendment by No. 800 added (a)(3)(A)(v).

The 2011 amendment by No. 1005 deleted “duly” preceding “licensed motor vehicle dealer” in (a)(2)(A)(i); subdivided (a)(2)(B)(i), added the present introductory language, and inserted “motor vehicle” preceding “dealer” twice in (a)(2)(B)(i)(b); added (a)(2)(C)(i)(c); added the (a)(2)(C)(iv)(a) and (b) designations; inserted “as allowed under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.” in (a)(2)(C)(iv)(b); added (a)(2)(C)(iv)(c); added present (a)(2)(K)(vii) and redesignated former (a)(2)(K)(vii) through (ix) as present (a)(2)(K)(viii) through (x); added (a)(2)(Q) and (a)(5); and made stylistic changes.

The 2013 amendment by No. 561 substituted “seven (7) years to qualify” for “five (5) years in order to qualify” in (a)(2)(U)(v) (now (a)(2)(U)(i)(e)).

The 2013 amendment by No. 1043 deleted (a)(2)(C)(v)(c), (a)(2)(K)(vii)(c), (a)(2)(Q)(iii), (a)(2)(R)(ii), (a)(2)(S)(ii), (a)(2)(T)(iv) and (a)(2)(U)(iv) which referred to mobile homes.

The 2013 amendment by No. 1133 made redesignations throughout former (a)(2)(K); substituted “(a)(2)(K)(i)(g)(2)” for “(a)(2)(K)(vii)(b)” in present (a)(2)(K)(i)(g)(1); in present (a)(2)(K)(i)(i), inserted “(a)” following “(a)(2)(K)(i)” and substituted “(a)(2)(K)(i)(b) - (g)” for “(a)(2)(K)(ii) – (vii)”;

redesignated former (a)(2)(U)(i) as present (a)(2)(U)(a); inserted “To do any of the following” as the introductory language of (a)(2)(U); redesignated former (a)(2)(U)(ii) through (a)(2)(U)(v) as present (a)(2)(U)(b) through (a)(2)(U)(e).

The 2015 amendment inserted (a)(2)(B)(i)(b); and redesignated former (a)(2)(B)(i)(b) as (a)(2)(B)(i)(c).

The 2019 amendment by No. 391 redesignated the introductory language of (a)(3) and (a)(3)(A) as (a)(3)(A) and (a)(3)(B), respectively; rewrote the introductory language of (a)(3)(B); inserted “ownership, operation, or control of a motor vehicle dealer by a manufacturer, if the” preceding “manufacturer” in (a)(3)(B)(v); and made stylistic changes.

The 2019 amendment by No. 924 substituted “ten (10) years” for “seven (7) years” in (a)(2)(U)(v); in (a)(3)(B)(i), inserted “or distributor” and added “provided that the commission may extend the one (1) year period if the transition is not complete”; repealed (a)(3)(A)(iv); redesignated (a)(3)(A)(v) as (a)(3)(A)(iv); and made stylistic changes.

The 2021 amendment, in (a)(2)(L)(i), inserted “on similar terms and without arbitrary discrimination” and “and all trim level and model variants regardless of differences in engine, technology, or vehicle options”; inserted “allocation, place an order, or take delivery of” and “provided that a manufacturer or distributor may require special tools and equipment that are reasonably necessary to sell or service a model or that are reasonably necessary to comply with any law concerning health and safety” in (a)(2)(L)(ii); added (a)(2)(L)(iii); in (a)(2)(R), deleted “substantially similar” preceding “goods and services”, inserted “of substantially similar quality, design, and functionality” and “equipment, or digital platforms that do not contain or utilize a manufacturer’s or distributor’s intellectual property or proprietary design”, and inserted “motor vehicle” preceding “dealer chooses”; inserted “motor vehicle” in the introductory paragraph of (a)(2)(S) and (a)(2)(S)(i); substituted “unless justified by the technological requirements for the sale or service of a motor vehicle” for “unless justified by the technological requirements for the sale or service of a vehicle” in (a)(2)(S)(i); added (a)(2)(S)(v), (a)(2)(S)(vi), (a)(2)(U)(vi) and (a)(2)(U)(vii); and inserted “or to directly lease a motor vehicle at retail leasing in this state” in (a)(3)(A).

Case Notes

Construction.
Capital Structure.
New Dealer.
Sale.
Termination.

Construction.

The legislative intent expresses the need to oversee the manufacturer-dealership relationship, and this section provides protections from manufacturers for motor vehicle dealers, not prospective purchasers; this section does not contain a provision specifically prohibiting a contractual right of first refusal. *Crain Family Holdings, LLC v. Ford Motor Co.*, 2021 Ark. App. 361, 635 S.W.3d 346 (2021)

Capital Structure.

Subdivision (a)(2)(H) of this section does not prohibit the manufacturer from requiring certain levels of working capital or investment under the franchise agreement. Zeno

Buick-GMC, Inc. v. GMC Truck & Coach, 844 F. Supp. 1340 (E.D. Ark. 1992)
 , aff'd without op., 9 F.3d 115 (8th Cir. 1993)

New Dealer.

Arkansas Motor Vehicle Commission exceeded the scope of its duty under subdivision (a)(2)(I) of this section and acted arbitrarily in substituting its own analysis for a manufacturer's evaluation of its generally applied criteria regarding whether a prospective buyer was qualified to buy a dealership. Ford Motor Co. v. Ark. Motor Vehicle Comm'n, 357 Ark. 125, 161 S.W.3d 788 (2004)

Sale.

Arkansas Motor Vehicle Commission erred by finding that a car manufacturer violated subdivision (a)(2)(I)(i) of this section when it exercised its right of first refusal in its contract with a car dealership, and thus the circuit court properly reversed the decision; the manufacturer did not prohibit the car dealership from selling its dealership, but in exercising its contractual right of first refusal, the manufacturer merely prevented the purchaser from buying the dealership. Crain Family Holdings, LLC v. Ford Motor Co., 2021 Ark. App. 361, 635 S.W.3d 346 (2021)

Termination.

The prohibition in subdivision (a)(2)(C) of this section goes to actual termination of the franchise rather than to constructive termination.

Truck & Coach, 844 F. Supp. 1340 (E.D. Ark. 1992) Zeno Buick-GMC, Inc. v. GMC
op., 9 F.3d 115 (8th Cir. 1993) , aff'd without
.

Because the Arkansas Motor Vehicle Commission failed in its obligation to make sufficient findings of fact relevant to the contested issue of what constituted the current model year, the supreme court could not determine whether the Commission had resolved that issue in conformity with the law.
Voltage Vehicles v. Arkansas Motor Vehicle Comm'n, 2012 Ark. 386, 424 S.W.3d 281 (2012)
.

Cited:

Auto Co., 939 F.2d 538 (8th Cir. 1991) Chrysler Motors Corp. v. Thomas
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End of Document

A.C.A. § 23-112-703

Current through all acts of the 2021 Regular Session, First Extraordinary Session, Extended Session, Second Extraordinary Session, and the 2022 Fiscal Session including corrections and edits by the Arkansas Code Revision Commission.

AR - Arkansas Code Annotated > Title 23 Public Utilities and Regulated Industries > Subtitle 4. Miscellaneous Regulated Industries > Chapter 112 Arkansas Motor Vehicle Commission Act > Subchapter 7 — Damage to Motor Vehicles While in Transit

23-112-703. Failure to repair.

In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of any such damage within three (3) working days of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligations, financial or otherwise, for the damage to the motor vehicle. In determining when the notification of the damage by the dealer to the manufacturer or distributor occurs, the date the notice is received by the manufacturer or distributor by the United States Postal Service indicated on the notice of delivery returned to the dealer shall be controlling.

History

Acts 1991, No. 952, § 3.

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A.C.A. § 23-112-704

Current through all acts of the 2021 Regular Session, First Extraordinary Session, Extended Session, Second Extraordinary Session, and the 2022 Fiscal Session including corrections and edits by the Arkansas Code Revision Commission.

AR - Arkansas Code Annotated > Title 23 Public Utilities and Regulated Industries > Subtitle 4. Miscellaneous Regulated Industries > Chapter 112 Arkansas Motor Vehicle Commission Act > Subchapter 7 — Damage to Motor Vehicles While in Transit

23-112-704. Computing time.

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

History

Acts 1991, No. 952, § 4.

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A.C.A. § 23-112-705

Current through all acts of the 2021 Regular Session, First Extraordinary Session, Extended Session, Second Extraordinary Session, and the 2022 Fiscal Session including corrections and edits by the Arkansas Code Revision Commission.

AR - Arkansas Code Annotated > Title 23 Public Utilities and Regulated Industries > Subtitle 4. Miscellaneous Regulated Industries > Chapter 112 Arkansas Motor Vehicle Commission Act > Subchapter 7 — Damage to Motor Vehicles While in Transit

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

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

(b)

- (1) If the dealer makes the certification, the dealer shall be indemnified by the manufacturer.
- (2) Upon such certification, liability for any concealed damages then remaining with the motor vehicle shall lie with the manufacturer.

History

Acts 1991, No. 952, § 5.

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A.C.A. § 23-112-707

Current through all acts of the 2021 Regular Session, First Extraordinary Session, Extended Session, Second Extraordinary Session, and the 2022 Fiscal Session including corrections and edits by the Arkansas Code Revision Commission.

AR - Arkansas Code Annotated > Title 23 Public Utilities and Regulated Industries > Subtitle 4. Miscellaneous Regulated Industries > Chapter 112 Arkansas Motor Vehicle Commission Act > Subchapter 7 — Damage to Motor Vehicles While in Transit

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

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

History

Acts 1991, No. 952, § 7.

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