A Bill

For An Act To Be Entitled

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

Subtitle

TO AMEND THE ARKANSAS MOTOR VEHICLE COMMISSION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 23-112-103(6), regarding the definition of "coerce" under the Arkansas Motor Vehicle Commission Act, is amended to read as follows:

(6) (A) "Coerce" means the failure to act in good faith in 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;

SECTION 2. Arkansas Code § 23-112-103(14)(A), regarding the definition of "franchise" under the Arkansas Motor Vehicle Commission Act, is amended to read as follows:

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

SECTION 3. Arkansas Code § 23-112-103(25)(B)(ii), regarding the
definition of "relevant market area" under the Arkansas Motor Vehicle
Commission Act, is amended to read as follows:
(ii) However, when a manufacturer is seeking to
establish an additional new motor vehicle dealer 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, the relevant market area shall in all
instances be the area within a radius of ten (10) miles around an existing
dealer.

SECTION 4. Arkansas Code § 23-112-105 is amended to read as follows:
23-112-105. Civil damages.
(a) Any A licensee suffering pecuniary loss because of any willful
failure by any other licensee to comply with any provision of this chapter,
other than a new automobile or truck dealer's failure to comply with § 23-
112-301(d)(1)-(3) or with any rule or regulation 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)(1) Except as provided under subdivision (b)(2) of this section, 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.
(2) Subdivision (b)(1) of this section does not apply to motor
vehicle dealers, manufacturers, or distributors of motor homes.

SECTION 5. Arkansas Code § 23-112-107(k), regarding motor vehicle data
event recorders and data ownership, is amended to read as follows:
The Arkansas Motor Vehicle Commission shall administer this section and may promulgate rules for the administration of this section.

SECTION 6. Arkansas Code § 23-112-107, regarding motor vehicle data event recorders and data ownership, is amended to add an additional subdivision to read as follows:

(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.

SECTION 7. Arkansas Code § 23-112-310(d)(1), regarding labor rate per hour or parts price for warranty work, is amended to add an additional subdivision to read as follows:

(D) 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 price 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.

SECTION 8. Arkansas Code § 23-112-311(c) and (d), regarding the addition or relocation of a new motor vehicle dealer, are amended to read as follows:

(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;
(2) (B) Growth or decline in population and new motor vehicle registrations in the relevant market area;
(3) (C) Effect on the consuming public in the relevant market area;
(4) (D) Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
(5) (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
(6) (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 must conduct the hearing and render its final determination within one hundred twenty (120) 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.

SECTION 9. Arkansas Code § 23-112-313(e)(3)(A), regarding warranty agreements, is amended to read as follows:

(3)(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, provided the dealer receives preapproval pursuant to the established practices of the manufacturer or
distributor for these programs.

SECTION 10. Arkansas Code § 23-112-403(a)(2), regarding manufacturers, distributors, second-stage manufacturers, importers, or converters, is amended to add additional subdivisions to read as follows:

(Q)(i)(a) Unless the manufacturer's, distributor's, second-stage manufacturer's, importer’s, converter’s, manufacturer’s branch or division, 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 may, consistent with its allocation obligations at law and to its other same line-make motor vehicle dealers, 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) Subdivisions (a)(2)(Q)(i) – (ii) 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 subdivisions (a)(2)(Q)(i) – (ii).

(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 the effective date of this act.

(iii) Subdivisions (a)(2)(Q)(i) – (ii) of this section do not apply to motor vehicle dealers, manufacturers, or distributors of motor homes.

(R)(i) To unreasonably withhold approval for a new motor vehicle dealer to purchase substantially similar goods and services related to facility changes, alterations, or remodels from vendors the dealer chooses.

(ii) Subdivision (a)(2)(R)(i) of this section does not apply to motor vehicle dealers, manufacturers, or distributors of motor homes.

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

(a) Pay an extra fee or remodel, renovate, or recondition the dealer’s existing facilities unless justified by the technological requirements for the sale or service of a vehicle;

(b) Purchase unreasonable advertising displays, training, tools, or other materials;

(c) Establish exclusive facilities; or

(d) Establish dedicated personnel.

(ii) Subdivision (a)(2)(S)(i) does not apply to
motor vehicle dealers, manufacturers, or distributors of motor homes.

(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 where 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.

(iv) Subdivisions (a)(2)(T)(i) – (iii) of this section do not apply to motor vehicle dealers, manufacturers, or distributors of motor homes.

(U)(i) To 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) To 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) To 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) To 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) To 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 five (5) years in order to qualify for a new vehicle sales incentive program.

(vi) Subdivisions (a)(2)(U)(i) – (v) of this section do not apply to motor vehicle dealers, manufacturers, or distributors of motor homes.

SECTION II. Arkansas Code § 23-112-403(a)(2)(A)(i), regarding
manufacturers, distributors, second-stage manufacturers, importers, or converters, is amended to read as follows:

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

SECTION 12. Arkansas Code § 23-112-403(a)(2)(B)(i), regarding manufacturers, distributors, second-stage manufacturers, importers, or converters, is amended to read as follows:

(B)(i) To engage in any of the following:

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

(b) To do any other act prejudicial to the motor vehicle dealer by threatening to cancel any franchise or any contractual agreement existing between the manufacturer, distributor, distributor branch or division, or factory branch or division and the motor vehicle dealer.

SECTION 13. Arkansas Code § 23-112-403(a)(2)(C)(i), regarding manufacturers, distributors, second-stage manufacturers, importers, or converters, is amended to read as follows:

(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,
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.

SECTION 14. Arkansas Code § 23-112-403(a)(2)(C)(iv), regarding manufacturers, distributors, second-stage manufacturers, importers, or converters, is amended to read as follows:

(iv)(a) Any 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 within the purview of 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.

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

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

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

(ii) The dealer cost of each new, unused, undamaged,
and unsold part or accessory if the part or accessory:
  (a) Was purchased from the manufacturer by the
dealer and is in the original package;
  (b) Is identical to a part or accessory in the
current parts catalogue except for the number assigned to the part or
accessory; or
  (c) 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;

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

(iv) The fair market value of all special tools and
automotive service equipment owned by the dealer 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;

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

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

(vii)(a) Except as provided under subdivisions
(a)(2)(K)(vii)(b) and (c) 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.

(b) If the termination, cancellation,
discontinuance, or nonrenewal is due to a manufacturer's change in

Manufacturers 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.

(c) Subdivisions (a)(2)(K)(vii)(a) – (b) of
this section do not apply to motor vehicle dealers, manufacturers, or
distributors of motor homes.

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

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

(viii)(ix) Any sums due as provided by subdivision
(a)(2)(K)(i) of this section within sixty (60) days after termination of a
franchise and any sums due as provided by subdivisions (a)(2)(K)(ii)-(vii) of
this section within ninety (90) days after termination of a franchise. As a
condition of payment, the dealer 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:

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

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

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

(ix)(x) 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;

SECTION 16. Arkansas Code § 23-112-403(a), regarding manufacturers,
distributors, second-stage manufacturers, importers, or converters, is
amended to add additional subdivisions to read as follows:

(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.

/s/D. Wyatt

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