

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: S4/22/21
A Bill

HOUSE BILL 1922

By: Representative Wardlaw
By: Senator Gilmore

For An Act To Be Entitled

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

Subtitle

TO AMEND THE LAW CONCERNING 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(14)(E)(ii), concerning the
definition of "franchise", is amended to read as follows:

(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;

SECTION 2. Arkansas Code § 23-112-103, concerning the definitions used in the Arkansas Motor Vehicle Commission Act, is amended to add an additional subdivision to read as follows:

(37) "Digital platforms" means an online exchange of



information, goods, and services between a dealer and a consumer that facilitate retail commercial interactions.

SECTION 3. Arkansas Code § 23-112-301(c)(4), concerning a license required to engage in certain motor vehicle business, is amended to read as follows:

(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.

SECTION 4. Arkansas Code § 23-112-310(d)(1), concerning delivery, preparation, and warranty obligations, is amended to read as follows:

(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 ~~price~~ 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 ~~price~~ 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 ~~price~~ 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.

SECTION 5. Arkansas Code § 23-112-313(a), concerning warranty agreements, is amended to read as follows:

(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 agreement~~ agreements and adequately and fairly compensate each of its motor vehicle dealers for labor and parts.

SECTION 6. Arkansas Code § 23-112-313(c), concerning warranty agreements, is amended to read as follows:

(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 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 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 ~~comparable to the rate of other same line make dealers in an economically similar area or the dealer's competitive market area.~~

(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.

(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.

SECTION 7. Arkansas Code § 23-112-402(2), concerning unlawful practices of a motor vehicle dealer or salesperson, is amended to read as follows:

(2) To represent and sell as a new motor vehicle any motor vehicle ~~which that has been used and operated for demonstration purposes or which is otherwise~~ a used motor vehicle; or

SECTION 8. Arkansas Code § 23-112-403(a)(2)(L), concerning unlawful practices of manufacturers, distributors, second-stage manufacturers, importers, or converters, is amended to read as follows:

(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;

SECTION 9. Arkansas Code § 23-112-403(a)(2)(R), concerning unlawful practices of manufacturers, distributors, second-stage manufacturers, importers, or converters, is amended to read as follows:

(R) To unreasonably withhold approval for a new motor vehicle dealer to purchase ~~substantially similar~~ goods and services of

substantially similar quality, design, and functionality related to facility changes, alterations, ~~or~~ 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;

SECTION 10. Arkansas Code § 23-112-403(a)(2)(S), concerning unlawful practices of manufacturers, distributors, second-stage manufacturers, importers, or converters, is amended to read as follows:

(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 vehicle~~ 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; ~~or~~

(iv) Establish dedicated personnel;

(v) Utilize certain digital platforms; or

(vi) Enroll in a service loaner or demonstration program;

SECTION 11. Arkansas Code § 23-112-403(a)(2)(U), concerning unlawful practices of manufacturers, distributors, second-stage manufacturers, importers, or converters, is amended to add additional subdivisions to read as follows:

(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 or distributor's confidential information.

(c) This section does not:

(1) Require a manufacturer's 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;

SECTION 12. Arkansas Code § 23-112-403(a)(3)(A), concerning unlawful practices of manufacturers, distributors, second-stage manufacturers, importers, or converters, is amended to read as follows:

(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.

/s/Wardlaw