

Used Motor Vehicle Buyers Protection

23-112-601. Necessity for regulation -- Legislative findings -- Legislative declaration.

(a) The General Assembly declares that the public interest is affected by the sale and distribution of used motor vehicles, and it is recognized that a significant factor of the inducement in making a sale of a used motor vehicle to a member of the general public is the trust and confidence of the purchaser in the retail dealer from whom the purchase is made, with the expectancy that the dealer will remain in business to stand behind and provide service for the motor vehicle purchased.

(b) It is therefore found to be necessary to license used motor vehicle dealers and to prohibit certain acts and set penalties for violations and perpetration of certain acts by used motor vehicle dealers who are not licensed as new motor vehicle dealers selling used cars incidental to their new motor vehicle dealership operations, salespersons, agents, representatives, and employees of used motor vehicle dealers in order to:

- (1)** Prevent fraud, improper impositions, and other abuses upon the citizens of this state;
- (2)** Protect and preserve the investments and properties of the citizens of this state; and
- (3)** Foster and keep alive vigorous and healthy competition by prohibiting unfair practices by which fair and honest competition is destroyed or prevented.

23-112-602. Definitions.

As used in this subchapter:

(1) (A) "Auto auction" means 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, or from used motor vehicle dealers to individuals, or individuals to used motor vehicle dealers, or any combination thereof, or any motor vehicle dealer licensed to sell used motor vehicles, selling used motor vehicles using an auction format or on consignment.

(B) "Auto auction" also applies to any person who provides the facilities for or is in the business of selling motor vehicles in an auction format;

(2) "Designee" means a person or entity that:

(A) Agrees to perform inspections of used motor vehicle dealers under this subchapter on behalf of the department; and

(B) The department determines is appropriately suited for serving as a designee under this subchapter;

(3) "Drafter" means any person who obtains financing for the purchase and resale of vehicles of another person or a used motor vehicle dealer through the use of the account of or based on the extension of credit by presenting at the time of purchase of the subject vehicles a documentary draft for purchase of the vehicle or who otherwise promises to pay through the accounts or credit of another person or a used motor vehicle dealer;

(4) "Licensed location" means the address designated as the business address of the used motor vehicle dealer on his or her application for a used motor vehicle dealer's license;

(5) "Motor vehicle" means any motor-driven vehicle having two (2) or more wheels of the sort and kind required to have an Arkansas motor vehicle license, certificate, or permit for operation in the State of Arkansas;

(6) "Off-premises" means a location other than the address designated as the licensed address;

(7) "Person" means and includes, individually and collectively, individuals, firms, partnerships, associations, corporations, trusts, or any other form of business, individual enterprise, or entity;

(8) "Sale" or "sell" means the actual sale of a motor vehicle, the attempted sale, or the offering or advertising of a motor vehicle for sale;

(9) (A) "Used motor vehicle" means any motor vehicle which has previously been sold, bargained, exchanged, given away, or the title thereto transferred from the person or corporation who first took title from the manufacturer, importer, dealer, or agent of the manufacturer or importer, or that is so used as to have become what is commonly known as a secondhand or previously owned motor vehicle.

(B) In the event of a transfer reflected on the statement of origin from the original franchise dealer to any other dealer, individual, or corporation other than a franchise dealer of the same make of vehicle, the vehicle shall be considered a used motor vehicle;

(10) (A) (i) "Used motor vehicle dealer", hereinafter referred to as "dealer", means any person, wholesaler, or auto auction who, for a commission or with intent to make a profit or gain of money or other thing of value, sells, brokers, 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 who is wholly or in part in the business of buying, selling, trading, or exchanging used motor vehicles, whether or not such motor vehicles are owned by the person.

(ii) The sale or attempted sale of five (5) or more used motor vehicles in any one (1) calendar year shall be prima facie evidence and shall constitute a rebuttable presumption that a person is engaged in the business of selling used motor vehicles.

(B) "Used motor vehicle dealer" shall not include:

(i) A receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to a judgment or order of any court;

(ii) A public officer, while performing his or her official duties;

(iii) A mortgagee or secured party as to sales of motor vehicles constituting collateral on a mortgage or security agreement, if the mortgagee or secured leasing party shall not realize for their own account from such sales any moneys in excess of the outstanding balance secured by the mortgage or security agreement after consideration of the costs of collection;

(iv) A lienholder, artisan, mechanic, or garage selling repaired items pursuant to a lien granted by Arkansas law;

(v) A person selling a motor vehicle titled in his or her own name and used exclusively as a personal vehicle, or a motor vehicle titled in a business name and used exclusively as a business vehicle, or a person engaged in leasing or renting vehicles; or

(vi) A new motor vehicle dealer selling a used motor vehicle in conjunction with his or her new motor vehicle dealer operations who is licensed under this chapter;

(11) "Used motor vehicle salesperson", hereinafter referred to as "salesperson", is anyone who for compensation of any kind operates as a salesperson, broker, agent, or representative of a used motor vehicle dealer, or any person who attempts to or in fact negotiates a sale of a vehicle owned partially or entirely by a used motor vehicle dealer, or a person or drafter using the financial resources, line of credit, or floor plan of a used motor vehicle dealer to purchase, sell, or exchange an interest in a used motor vehicle; and

(12) (A) "Wholesaler" means any person, resident or nonresident, who, in whole or in part, primarily sells used motor vehicles to motor vehicle dealers.

(B) Used motor vehicle dealers who, incidental to their primary business, sell motor vehicles to other dealers are not considered wholesalers because of their incidental sales.

23-112-603. Penalty for violation and disbursement of fines.

(a) In addition to any other penalty prescribed by existing laws, the penalties for violation of this subchapter and the disbursement of fines shall be as follows:

(1) A first violation of this subchapter is a Class A misdemeanor;

(2) A second violation of this subchapter is a Class D felony;

(3) A third or subsequent violation is a Class D felony, and the dealer's license shall be suspended for three (3) years for each respective third or subsequent violation; and

(4) In addition to or instead of the penalties listed under subdivisions (a) (1) – (3) of this section, the Director of the Division of Arkansas State Police may issue a fine in an amount not to exceed one thousand dollars (\$1,000) for each violation of this subchapter.

(b) Any person found guilty of selling a used motor vehicle as a dealer or salesperson while his or her used motor vehicle dealer's or salesperson's license is suspended or revoked shall be guilty of a Class C felony.

(c) (1) If the arresting officer is an officer of the Department of Arkansas State Police, one-half (1/2) of the fine collected shall be remitted by the tenth day of each month to the Administration of Justice Funds Section of the Office of Administrative Services of the Department of Finance and Administration on a form provided by that office, for deposit into the Department of Arkansas State Police Fund to be used for the purchase and maintenance of state police vehicles.

(2) If the arresting officer is a county law enforcement officer, one-half (1/2) of the fine collected shall be deposited into that county fund used for the purchase and maintenance of rescue, emergency medical, and law enforcement vehicles, communications equipment, animals owned or used by law enforcement agencies, life-saving medical apparatus, and law enforcement apparatus to be used for those purposes.

(3) If the arresting officer is a municipal law enforcement officer, one-half (1/2) of the fine collected shall be deposited into that municipal fund used for the purchase and maintenance of rescue, emergency medical, and law enforcement vehicles, communications equipment, animals owned or used by law enforcement agencies, life-saving medical apparatus, and law enforcement apparatus to be used for those purposes.

(d) (1) A used motor vehicle dealer licensed under this subchapter shall maintain a licensed location.

(2) When a used motor vehicle dealer changes or moves his or her licensed location, within fifteen (15) calendar days of the relocation, the used motor vehicle dealer shall notify the department in writing of the dealership name, the previous location, and the new location.

(3) (A) If the department determines that the used motor vehicle dealer's business location has moved and notification to the department has not been properly made, the department shall levy a fine equal to the amount of the license fee.

(B) The fine collected pursuant to subdivision (d)(3)(A) of this section shall be remitted to the department and shall be deposited into the State Treasury as special revenue to the credit of the department.

23-112-604. Powers generally.

(a) The Department of Arkansas State Police may promulgate rules that are necessary to implement, enforce, and administer this subchapter.

(b) The department may cancel a dealer's license if the dealer:

- (1) Fails to keep and maintain the requirements of § 23-112-607(a) and (c); or
- (2) Pleads guilty or nolo contendere to or has been found guilty of a violation of § 23-112-605.

23-112-605. Violations.

It shall be a violation of this subchapter to knowingly or intentionally:

- (1) (A) Sell a vehicle without a dealer's license.
(B) The sale of each vehicle shall constitute a separate offense;
- (2) Commit a fraudulent act in selling, purchasing, or otherwise dealing in motor vehicles;
- (3) Fail to maintain the conditions and requirements necessary to qualify for the issuance of a license;
- (4) Sell, attempt to sell, or advertise for sale vehicles from a location other than that set forth on the dealer's license, except:
 - (A) As a participating dealer in a state trade association promotion or exhibit;
 - (B) With a special sale permit; or
 - (C) At an auto auction;
- (5) Falsify, alter, or neglect to endorse or deliver a certificate of title to a transferee or lawful owner, or fail to properly designate a transferee on a document of assignment or certificate of title;
- (6) Knowingly purchase, sell, or otherwise acquire or dispose of a stolen motor vehicle;
- (7) Submit a false affidavit setting forth that a title has been lost or destroyed;
- (8) Pass title or reassign title as a dealer without a dealer's license or when his or her dealer's license has been suspended;
- (9) To represent oneself as a dealer or as a salesperson, either verbally or in any advertisement, when not licensed as such;
- (10) Violate any provision or requirement in this subchapter; or
- (11) Knowingly assist an unlicensed dealer in the sale of a motor vehicle.

23-112-606. License required.

It shall be unlawful for any person to engage in business as a used motor vehicle dealer or to sell a vehicle not his or her own without obtaining a used motor vehicle dealer's license, except that a person defined as a salesperson in § 23-112-602 may act on behalf of the dealer by whom such a person is employed.

23-112-607. Dealer's license.

(a)(1) Persons wishing to obtain a used motor vehicle dealer's license shall submit a fully executed application on such used motor vehicle dealer application forms as may be prescribed by the Department of Arkansas State Police.

(2) The application shall be verified by the oath or affirmation of the applicant.

(b) An applicant for a used motor vehicle dealer's license or a licensee seeking to renew a used motor vehicle dealer's license shall establish that he or she has sold at least five (5) used motor vehicles during the previous calendar year.

(c) The department shall require in relation to the application the following information and verification prior to

issuing a license certificate:

- (1) A photograph of the business location;
 - (2) A corporate surety bond in the sum of at least twenty-five thousand dollars (\$25,000);
 - (3) Proof of liability insurance coverage on all vehicles to be offered for sale in an amount equal to or greater than the amount required by the Motor Vehicle Safety Responsibility Act, § 27-19-101 et seq.;
 - (4) A list of the persons or entities having any ownership interest in the used vehicle dealership;
 - (5) A list of salespersons to be employed;
 - (6) That the applicant has a bona fide established place of business used primarily for the sale of used motor vehicles;
 - (7) That the applicant has a telephone number listed in the name of the business;
 - (8) That the applicant has a sign identifying the establishment as a used motor vehicle dealership legible from the street, road, or highway, and a picture thereof;
 - (9) That the applicant has a filing cabinet or other repository adequate to secure the business records of the establishment under lock and key or combination;
 - (10) Whether the applicant has ever been issued a motor vehicle dealer's license, and if the applicant has ever had a motor vehicle dealer's license suspended or revoked;
 - (11) (A) Except as provided in subdivision (c)(11)(B) of this section, an affidavit from a department officer or a designee of the department stating that the officer or a designee of the department has inspected the facility within thirty (30) days before issuance or renewal of a license and found it to be in compliance with the requirements for application.

(B) If a licensee has been continuously licensed at the same facility for ten (10) years or more, then the licensee shall only be required to comply with subdivision (c)(11)(A) of this section one (1) time every other year; and
 - (12) The name, address, and telephone number of the person designated to receive legal process in the event of the commencement of any legal action in any court against the applicant.
- (d) (1) (A) Each applicant shall obtain a corporate surety bond in the penal sum of twenty-five thousand dollars (\$25,000) on a bond form approved by the state.

(B) However, an applicant for a license at multiple locations may provide a corporate surety bond in the penal sum of one hundred thousand dollars (\$100,000) covering all licensed locations in lieu of separate bonds for each individual location.
- (2) The bond shall be an indemnity for any loss and reasonable attorney's fees sustained by a retail buyer by reason of the acts of the person bonded when such an act constitutes a violation of this law.
 - (3) However, the surety shall in no event be liable for more than twenty-five thousand dollars (\$25,000).
 - (4) The bond shall be executed in the name of the State of Arkansas or any aggrieved party.
 - (5) The proceeds of the bonds shall be paid either to the State of Arkansas or to the retail buyer upon a judgment from an Arkansas court of competent jurisdiction against the principal and in favor of the aggrieved party or the State of Arkansas.

(6) However, the surety shall in no event be required to pay any judgment obtained by fraud or collusion, as between the dealer and the retail buyer, or which was rendered against a person bonded for an act that does not constitute a violation of this subchapter. These defenses may be raised at any time, subject to the applicable statute of limitations.

23-112-608. License certificate fees.

(a) (1) The fee for a license certificate shall be two hundred fifty dollars (\$250) per year for each used motor vehicle dealer licensed.

(2)(A) The fee shall be for the licensing period beginning on January 1 of each year and ending on December 31 of each year and shall be renewable during the month of January following its expiration, unless the Department of Arkansas State Police provides by rule a staggered method of annual renewal.

(B) (i) If a license certificate has been expired for at least thirty-one (31) days but less than six (6) months, then the used motor vehicle dealer shall remit a late fee of thirty-five dollars (\$35.00) before the used motor vehicle dealer's application shall be accepted.

(ii) (a) A license that is not renewed within six (6) months of its expiration date shall be deemed permanently expired.

(b) If a used motor vehicle dealer's license has permanently expired, then the used motor vehicle dealer may reapply for licensure, provided that the used motor vehicle dealer completes an application for licensure and remits all fees pursuant to this section.

(3) A dealer having more than one (1) location will receive an additional certificate for each second and subsequent location for one hundred twenty-five dollars (\$125) each.

(b) Only used motor vehicle dealers licensed under this section shall qualify for used motor vehicle dealer's license plates from the Department of Finance and Administration.

(c) All fees for the issuance of a license certificate under the provisions of this section shall be remitted to the Department of Arkansas State Police and shall be deposited into the State Treasury as special revenues to the credit of the Department of Arkansas State Police Fund.

23-112-609. Issuance of license certificate.

Upon satisfactory submission and verification of a fully executed application as required by § 23-112-607(a) and (b), payment of the fee provided for by § 23-112-608, and receipt of the corporate surety bond as required by § 23-112-607(c), the Department of Arkansas State Police shall issue the applicant a license certificate.

23-112-610. Display of dealer's license.

(a) Each dealer licensed under this subchapter shall maintain for display, in a conspicuous place at the dealer's business location, the license certificate issued by the Department of Arkansas State Police.

(b) (1) Each dealer shall also have his or her used motor vehicle dealer's license name conspicuously displayed on all signage.

(2) All printed advertisements shall contain the dealer's name or the words "AR DLR" with the Department of Arkansas State Police dealer's license number assigned to the dealer.

23-112-611. Records to be maintained.

(a) Every person required to have a license shall maintain, for three (3) years from the date of purchase, records of each vehicle transaction to which the person was a party.

(b) Dealers shall maintain copies of all documents executed in conjunction with any transaction, which may include

bills of sale, titles, odometer statements, invoices, affidavits of alteration, and reassignments, and shall be open to inspection to any Department of Arkansas State Police officer or designated employee of the department acting in an official capacity during reasonable business hours.

23-112-612. [Repealed.]

23-112-613. Delivery prior to sale -- Disclosures.

(a) As used in this section:

(1) (A) "Contract for sale" means the final agreement between a used motor vehicle dealer and a consumer that:

(i) Includes all material terms of the sale of a motor vehicle; and

(ii) Is binding upon the seller, the buyer, and any necessary third-party financier.

(B) "Contract for sale" includes a financing agreement and all material financing terms if the motor vehicle is to be financed; and

(2) "Delivery prior to sale" means a delivery of a motor vehicle by a used motor vehicle dealer to a consumer prior to the completion and execution by both parties of a contract for sale.

(b) If a used motor vehicle dealer engages in a delivery prior to sale, then the used motor vehicle dealer shall provide the consumer with an agreement for delivery prior to sale at the time of delivery of the motor vehicle to the consumer.

(c)(1) The agreement for delivery prior to sale shall be:

(A) Printed in at least 12-point type; and

(B) Signed by the consumer and the used motor vehicle dealer or the dealer's representative.

(2) The agreement for delivery prior to sale shall not be considered a contract for sale.

(d) The agreement for delivery prior to sale shall include all of the following terms:

(1) Unless the consumer is approved for financing and both parties have executed a contract for sale, then the used motor vehicle dealer shall not:

(A) Deposit or cash any down payment provided by the consumer; and

(B) Sell any motor vehicle that is presented by the consumer as a trade-in;

(2) The consumer retains the right to cancel the purchase of a motor vehicle if:

(A) The used motor vehicle dealer changes any terms; or

(B) The consumer fails to obtain financing that meets the agreed-upon interest rate;

(3) If a consumer who executes an agreement for delivery prior to sale chooses not to execute a contract for sale or otherwise cancels the purchase as provided under this section, then:

(A) The used motor vehicle dealer shall not:

(i) Impose any charge or penalty against the consumer; or

(ii) Deposit or cash any down payment provided by the consumer; and

(B) The used motor vehicle dealer shall immediately return any motor vehicle that was presented by the consumer as a trade-in; and

(4) If the consumer decides not to purchase the motor vehicle, the consumer shall return the motor vehicle to the used motor vehicle dealer within forty-eight (48) hours after the consumer notifies the dealer.

(e) If a consumer fails to return a motor vehicle pursuant to subdivision (d)(4) of this section, then the used motor vehicle dealer may recover the vehicle without the necessity of judicial process if the recovery is possible without committing an act of breaking or entering or breach of the peace.

(f) The Department of Arkansas State Police shall promulgate rules and regulations to implement, enforce, and administer this section.

23-112-614. Auto auction fees for salvage-titled or parts-only titled vehicles.

(a) A five-dollar (\$5.00) fee shall be charged to the buyer of each item at an auto auction that is sold on a certificate of title that is labeled "salvage" or "parts-only".

(b) The fee is special revenue and shall be deposited into the State Treasury.

(c) The Treasurer of State shall transfer the special revenues received under this section on the last business day of each month as follows:

(1) Fifty percent (50%) for the Arkansas Department of Environmental Quality to be used for inspection and oversight of auto auctions to enforce all laws and rules administered by the Arkansas Department of Environmental Quality; and

(2) Fifty percent (50%) for the Department of Arkansas State Police to be used for inspection and oversight of auto auctions.

23-112-615, 23-112-616. [Repealed.]

23-112-617. Used motor vehicle dealer service and handling fee.

(a) A used motor vehicle dealer may fill in the blanks on standardized forms in connection with the sale or lease of used motor vehicles if the motor vehicle dealer does not charge for the service of filling in the blanks or otherwise charge for preparing documents.

(b) (1) A used motor vehicle dealer may charge a service and handling fee in connection with the sale or lease of a used motor vehicle for:

(A) The handling, processing, and storage of documents; and

(B) Other administrative and clerical services.

(2) (A) The service and handling fee may be charged to allow cost recovery for used motor vehicle dealers.

(B) A portion of the service and handling fee may result in profit to the used motor vehicle dealer.

(c) (1) The Department of Arkansas State Police shall determine by rule the amount of the service and handling fee that may be charged by a used motor vehicle dealer. The service and handling fee shall be no less than zero dollars (\$0.00) and no more than one hundred twenty-nine dollars (\$129).

(2) If a service and handling fee is charged under this section, the service and handling fee shall be:

(A) Charged to all retail customers; and

(B) Disclosed on the retail buyer's order form as a separate itemized charge.

(d) A preliminary work sheet on which a sale price is computed and that is shown to the purchaser, a retail buyer's order form from the purchaser, or a retail installment contract shall include in reasonable proximity to the place on the document where the service and handling fee authorized by this section is disclosed:

(1) The amount of the service and handling fee; and

(2) The following notice in type that is bold-faced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material:

"A SERVICE AND HANDLING FEE IS NOT AN OFFICIAL FEE. A SERVICE AND HANDLING FEE IS NOT REQUIRED BY LAW BUT MAY BE CHARGED TO THE CUSTOMER FOR PERFORMING SERVICES AND HANDLING DOCUMENTS RELATING TO THE CLOSING OF A SALE OR LEASE. THE SERVICE AND HANDLING FEE MAY RESULT IN PROFIT TO THE DEALER. THE SERVICE AND HANDLING FEE DOES NOT INCLUDE PAYMENT FOR THE PREPARATION OF LEGAL DOCUMENTS. THIS NOTICE IS REQUIRED BY LAW."

(e) The Department of Arkansas State Police may promulgate rules to implement, enforce, and administer this section.