

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT Department of Public Safety - Arkansas State Police Division
BOARD/COMMISSION _____
BOARD/COMMISSION DIRECTOR _____
CONTACT PERSON Tess Bradford and Joan Shipley
ADDRESS 1 State Police Plaza Drive
PHONE NO. (501) 618-8583 **EMAIL** tess.bradford@asp.arkansas.gov
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING
Lieutenant Dustin Morgan and Nicole Roper
PRESENTER EMAIL(S) tess.bradford@asp.arkansas.gov

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?
Penalties for violations concerning the selling of used motor vehicles
2. What is the subject of the proposed rule? Amended rule for new legislation from the 2023 legislative session
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☒

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☒

4. Is this rule being filed for permanent promulgation? Yes ☒ No ☐

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☒

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes ☐ No ☒

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes ☒ No ☐

If yes, please provide the state statute and/or rule citation.

Arkansas Code Annotated § 23-112-603

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes ☐ No ☒

If yes, please list the rules being repealed.

If no, please explain.

No rules are being repealed in accord with Executive Order 23-02.

8. Is this a new rule? Yes ☐ No ☒

Does this repeal an existing rule? Yes ☐ No ☒

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes ☒ No ☐

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

N/A

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes ☒ No ☐

If yes, please provide the year of the act(s) and act number(s).

House Bill 1671, 94th General Assembly, Regular Session, 2023, by Representative Pearce and by Senator J. Petty

11. What is the reason for this proposed rule? Why is it necessary?

To allow the Arkansas State Police to issue a fine of up to one thousand dollars (\$1,000) for violations concerning the selling of used motor vehicles so as to bring the amended rule within the new legislation.

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

<https://dps.arkansas.gov/law-enforcement/Arkansas-state-police>

13. Will a public hearing be held on this proposed rule? Yes ☐ No ☒

If yes, please complete the following:

Date: _____

Time: _____

Place: Unknown - Following the expiration of the public comment period

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. 11/14/2023

15. What is the proposed effective date for this rule? January 1, 2024

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes ☐ No ☒

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Arkansas Department of Public Safety - Arkansas State Police Division

BOARD/COMMISSION _____

PERSON COMPLETING THIS STATEMENT Tess Bradford

TELEPHONE NO. (501) 618-8583 **EMAIL** tess.bradford@asp.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE Penalties for violations concerning the selling of used motor vehicles

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation? N/A

Current Fiscal Year

General Revenue N/A
 Federal Funds N/A
 Cash Funds N/A
 Special Revenue N/A
 Other (Identify) N/A
 Total _____

Next Fiscal Year

General Revenue N/A
 Federal Funds N/A
 Cash Funds N/A
 Special Revenue N/A
 Other (Identify) N/A
 Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue N/A
 Federal Funds N/A
 Cash Funds N/A
 Special Revenue N/A
 Other (Identify) N/A
 Total _____

Next Fiscal Year

General Revenue N/A
 Federal Funds N/A
 Cash Funds N/A
 Special Revenue N/A
 Other (Identify) N/A
 Total _____

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ 0.00

Next Fiscal Year

\$ 0.00

Unknown how many Used Motor Vehicle Dealers will violate the laws and/or rules and be subject to this fine

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 0.00

Next Fiscal Year

\$ 0.00

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.



Mike A. Hagar
Secretary

State of Arkansas
Governor Sarah Huckabee Sanders



Mike A. Hagar
Director

ARKANSAS STATE POLICE

1 State Police Plaza Drive Little Rock, Arkansas 72209-4822 www.asp.arkansas.gov

"SERVING WITH PRIDE AND DISTINCTION SINCE 1935"

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Bella Vista

Mike Akin
Monticello

August 23, 2023

**Office of Sarah Huckabee Sanders
State of Arkansas**

RE: UMVD Rule Change Summary

Arkansas State Police Used Motor Vehicle Dealer ("UMVD") Licensing Rule 2.12 was revised to pursuant to the legislation passed by House Bill 1671, 94th General Assembly, Regular Session, 2023 by Representative Pearce and by Senator J. Petty.

Specifically, the Rule 2.12 has been revised to fix grammatical errors and to add the language contained in Arkansas Code Annotated § 23-112-603. ACA § 23-112-603 has been updated to provide the Arkansas State Police the ability to fine an applicant or licensee in an amount not to exceed one thousand dollars (\$1,000) for each violation of that subchapter.

The first change is the addition of the title "Violations and Penalties" to Rule 2.12. The language "A." has been added and addresses the Director's ability to charge an applicant criminally pursuant to Arkansas Code Annotated § 23-112-603(a)(1) - (3). The second change addresses the Director's ability to fine an applicant or licensee in an amount not to exceed one thousand dollars (\$1,000.00) for each violation of Arkansas Code Annotated § 23-112-605. The third change added the language allowing the Director to enter into consent judgments with applicants or licensees providing for the payment of agreed upon fines not to exceed one thousand dollars (\$1,000.00) per violation in lieu of a hearing and/or other administrative action.

The fourth change added the language "B." has been added to introduce the subsection regarding applications for certificates of licenses or their renewal.

The final change to Rule 2.21 corrected a grammatical error in the last sentence of the Rule.

In addition to the above noted changes, UMVD Licensing Rule 4 has also been stricken in its entirety from the UMVD Licensing Rules. Because Rule 4 has been stricken, the Rules have been revised to reflect the correct numbering because of the stricken language. Specifically, UMVD Rule 4 is now titled "Reciprocal, Temporary, and Expedited Licensure", which was previously Rule 5 before this revision.

Sincerely,

Tess Bradford, Attorney
Arkansas Department
of Public Safety
Arkansas State Police
1 State Police Plaza
Drive
Little Rock, Arkansas
72209

UMVD RULE 2.12. Violations and Penalties

- A. For violations of this Act and/or these Rules, the Director may charge an applicant or licensee criminally as prescribed by Arkansas Code Annotated § 23-112-603(a)(1) - (3). In addition to or instead of charging the applicant or licensee criminally pursuant Arkansas Code Annotated § 23-112-603(a)(1) - (3), the Director may issue a fine in an amount not to exceed one thousand dollars (\$1,000.00) for each violation of Arkansas Code Annotated § 23-112-605. If the Director fines an applicant or licensee, the Director may enter into consent judgments with the applicant or licensee providing for the payment of agreed upon fines not to exceed one thousand dollars (\$1,000.00) per violation in lieu of a hearing and/or other administrative action.
- B. The Director may deny an application for a certificate of license or its renewal ~~or~~ Ssuspend or revoke a license if it is determined the applicant or licensee has:
1. Made a material misstatement in the application for or the renewal of a license.
 2. Practiced fraud, deceit, or misrepresentation.
 3. Demonstrated incompetence or untrustworthiness in their actions.
 4. Violated any provisions of the “Act” and/or these rules.

Rule 4. Mandatory Educational Seminar

4.1. ~~All applicants for a license as a used motor vehicle dealer, as described in Ark. Code Ann. Section 23-112-601 et seq. prior to obtaining a license, are required to attend a Department approved educational seminar.~~

4.2. ~~In order to be approved by the Department, a seminar must meet the following criteria to the satisfaction of the Department:~~

- ~~A. The seminar must be sponsored by a non-profit corporation, authorized to conduct business in Arkansas, that develops and presents educational programs which enhance the knowledge and competence of used motor vehicle dealers, their sales persons and service personnel for the benefit of the public; and~~
- ~~B. The names of the individuals who will be conducting the seminar must be submitted with the application for approval of the seminar. Said individuals shall demonstrate knowledge of these rules and general provisions by having at least one year of experience with the used motor vehicle industry in Arkansas or a related area as determined by the Department; and~~
- ~~C. The proposal for approval of a seminar shall include a course outline, along with proposed materials to be used in the instruction. The course outline must provide for, at a minimum, instruction in each of the following areas:~~
- ~~i. Requirements of Act 490 of 1993, as amended, for obtaining a license as a used motor vehicle dealer;~~
 - ~~ii. Overview of related state statutes, regulations and Department rules;~~
 - ~~iii. Laws concerning titles, tags, and taxes;~~
 - ~~iv. Applicable laws and rules concerning required record keeping;~~
 - ~~v. The Deceptive Trade Practices Act, including, but not~~

~~limited to, advertising, unfair and deceptive sales practices and odometer requirements;~~

~~vi. Such general discussion items as may be determined by the Department to be of significance or concern.~~

~~D. The course of instruction of the required seminar shall be no less than three (3) hours.~~

~~E. The course of instruction shall be attended by a bona fide, full-time employee of the applicant used motor vehicle dealership. The attendee shall attend the full time of the prescribed course. Failure of the attendee to attend the full time of the prescribed course shall cause the applicant's license to be delayed until such time as the course requirement is fulfilled.~~

~~F. In the event the employee attending the required course as a representative of the licensee shall cease employment with the licensee company for any reason, the licensee company shall within ten (10) days notify the Department. The licensee shall then designate another bona fide, full-time employee who must complete the mandatory course within 120 days of the date of such notification.~~

4.3. ~~The corporation administering the mandatory course shall be certified by the Department. Application for certification shall be on a form prescribed by the Department, and shall include the following:~~

~~A. Names and addresses of all individuals who will be utilized in any manner during the course of instruction; and~~

~~B. Names and addresses of all officers of the corporation; and~~

~~C. Documentation to demonstrate the experience and qualifications of all persons who will instruct any portion of the mandatory course; and~~

~~D. A list of the times, dates and locations of all courses to be taught, provided such list may be changed or updated if notification of such change or updating is provided to the Department a minimum of seven (7) days prior to the course being presented.~~

~~E. Such application shall be accompanied by material prescribed in Rule 4.2 (B) and Rule 4.2 (C) of these Rules and shall be in typewritten or computer generated form.~~

4.4. ~~A corporation certified by the Department to conduct the mandatory training course may utilize video equipment for the presentation of portions of the course in lieu of live instructors, provided that a copy of the video has been presented to the Department and the Department has provided written approval of the contents; provided that when such video is utilized, the certified corporation shall provide a proctor or proctors to assure attendance of the applicants for licensing. Such manner for proctoring shall be approved by the Department prior to implementation of the use of video equipment as an alternative to live instructors.~~

4.5. ~~A corporation certified by the Department to conduct the mandatory training course shall, within five (5) days of the completion of such course, provide to the Department on a form prescribed by the Department a list of all persons completing the course and, in the case of a renewal of license, the Department assigned control number of the license.~~

4.6. ~~Failure of any corporation certified by the Department, or any licensee, to fulfill the requirements of this Rule shall result in suspension or revocation of the certification of the corporation or the license of the licensee. Provided, the corporation or licensee shall have the~~

~~right to appeal such suspension or revocation as provided in Rule 3 of these Rules.~~

Rule 45. Reciprocal, Temporary, and Expedited Licensure

5.1.4.1. An applicant who holds a Used Motor Vehicle Dealer License in another state, territory, or district of the United States may obtain a reciprocal Arkansas license if he or she meets the requirements set forth in Ark. Code Ann. § 23-112-607. The reciprocity applicant must submit the required forms and applicable fees.

5.2.4.2. An applicant for a reciprocal Arkansas license who resides in a state, territory, or district of the United States that does not require licensure to sell used motor vehicles may obtain a reciprocal Arkansas license if he or she meets the requirements set forth in Ark. Code Ann. § 23-112-607. The reciprocity applicant must submit the required forms and applicable fees.

5.3.4.3. An applicant for a temporary Arkansas license may obtain a six (6) month temporary Arkansas license if he or she meets the requirements set forth in Ark. Code Ann. § 23-112-607. The temporary applicant must submit the required forms and applicable fees.

5.4.4.4. The Division will expedite the licensure process for:

- A. A uniformed service member stationed in the State of Arkansas;
- B. A uniformed service veteran who resides in or establishes residency in the State of Arkansas;
- C. The spouse of:
 - i. A person listed in subdivision (a) or (b) of this Rule;
 - ii. A uniformed service member who is assigned a tour of duty that excludes the uniformed service member's spouse from accompanying the uniformed service member and the spouse relocates to this state; and
 - iii. A uniformed service member who is killed or succumbs to his or her injuries or illness in the line of duty if the spouse establishes a residency in this state.

To qualify for expedited licensure, the applicant must notate his or her status on the application and provide the Division with a copy of the active duty orders or DD214.

UMVD RULE 2.12. Violations and Penalties

- A.** For violations of this Act and/or these Rules, the Director may charge an applicant or licensee criminally as prescribed by Arkansas Code Annotated § 23-112-603(a)(1) - (3). In addition to or instead of charging the applicant or licensee criminally pursuant Arkansas Code Annotated § 23-112-603(a)(1) - (3), the Director may issue a fine in an amount not to exceed one thousand dollars (\$1,000.00) for each violation of Arkansas Code Annotated § 23-112-605. If the Director fines an applicant or licensee, the Director may enter into consent judgments with the applicant or licensee providing for the payment of agreed upon fines not to exceed one thousand dollars (\$1,000.00) per violation in lieu of a hearing and/or other administrative action.
- B.** The Director may deny an application for a certificate of license or its renewal or suspend or revoke a license if it is determined the applicant or licensee has:
 - 1. Made a material misstatement in the application for or the renewal of a license.
 - 2. Practiced fraud, deceit, or misrepresentation.
 - 3. Demonstrated incompetence or untrustworthiness in their actions.
 - 4. Violated any provisions of the “Act” and/or these rules.

Rule 4. Reciprocal, Temporary, and Expedited Licensure

4.1. An applicant who holds a Used Motor Vehicle Dealer License in another state, territory, or district of the United States may obtain a reciprocal Arkansas license if he or she meets the requirements set forth in Ark. Code Ann. § 23-112-607. The reciprocity applicant must submit the required forms and applicable fees.

4.2. An applicant for a reciprocal Arkansas license who resides in a state, territory, or district of the United States that does not require licensure to sell used motor vehicles may obtain a reciprocal Arkansas license if he or she meets the requirements set forth in Ark. Code Ann. § 23-112-607. The reciprocity applicant must submit the required forms and applicable fees.

4.3. An applicant for a temporary Arkansas license may obtain a six (6) month temporary Arkansas license if he or she meets the requirements set forth in Ark. Code Ann. § 23-112-607. The temporary applicant must submit the required forms and applicable fees.

4.4. The Division will expedite the licensure process for:

- A. A uniformed service member stationed in the State of Arkansas;
- B. A uniformed service veteran who resides in or establishes residency in the State of Arkansas;
- C. The spouse of:
 - i. A person listed in subdivision (a) or (b) of this Rule;
 - ii. A uniformed service member who is assigned a tour of duty that excludes the uniformed service member’s spouse from accompanying the uniformed service member and the spouse relocates to this state; and
 - iii. A uniformed service member who is killed or succumbs to his or her injuries or illness in the line of duty if the spouse establishes a residency in this state.

To qualify for expedited licensure, the applicant must notate his or her status on the application and provide the Division with a copy of the active duty orders or DD214.

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

HOUSE BILL 1671

By: Representative Pearce
By: Senator J. Petty

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING THE PENALTIES
IMPOSED ON A USED MOTOR VEHICLE DEALER FOR A
VIOLATION OF THE REQUIRED LICENSING LAWS; AND FOR
OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING THE PENALTIES
IMPOSED ON A USED MOTOR VEHICLE DEALER
FOR A VIOLATION OF THE REQUIRED LICENSING
LAWS.

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

SECTION 1. Arkansas Code § 23-112-603(a), concerning the penalties and
disbursement of fines for a violation concerning the selling of used motor
vehicles, is amended to read as follows:

(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 ~~by any person shall~~
~~constitute~~ is a Class A misdemeanor;

(2) A second violation of this subchapter ~~by any person shall~~
~~constitute~~ is a Class D felony; ~~and~~

(3) ~~Conviction of a~~ A third or subsequent violation ~~shall~~
~~constitute~~ 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



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

Pursuant to Arkansas Code Annotated §25-15-201 et seq., notice is hereby given that the Arkansas Department of Public Safety is enacting a new rule to address legislation establishing penalties for violations concerning the selling of used motor vehicle that was passed during the 2023 legislative session. The proposed rules can be obtained through our website at https://bit.ly/ASP_Proposed_Rules. Written comments from the public will be accepted from October 15, 2023 to November 14, 2023, and should be mailed to the Arkansas Department of Public Safety, #1 State Police Plaza Drive, Att: Tess Bradford, Little Rock, Arkansas 72209.