

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 182
HOUSE BILL 2305

AN ACT

AMENDING SECTIONS 28-4458 AND 28-4460, ARIZONA REVISED STATUTES; RELATING
TO MOTOR VEHICLE DEALERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-4458, Arizona Revised Statutes, is amended to
3 read:

4 28-4458. Coercion prohibited

5 A. A manufacturer of new motor vehicles, factory branch,
6 distributor, distributor branch, field representative, officer or agent or
7 any representative of a manufacturer of new motor vehicles, factory
8 branch, distributor, distributor branch, field representative, officer or
9 agent shall not coerce or attempt to coerce a new motor vehicle dealer to

10 ~~either~~ DO ANY OF THE FOLLOWING:

11 1. Accept delivery of a new motor vehicle or vehicles, parts or
12 accessories for the vehicle or vehicles or any other commodities that the
13 dealer has not ordered.

14 2. Enter into an agreement with the manufacturer, factory branch,
15 distributor, distributor branch or representative of the manufacturer,
16 factory branch, distributor or distributor branch.

17 3. Do any other act unfair to the dealer by threatening to cancel
18 or not renew a franchise existing between the manufacturer, factory
19 branch, distributor, distributor branch or representative of the
20 manufacturer, factory branch, distributor or distributor branch and the
21 dealer.

22 4. Construct, renovate or make substantial alterations to the
23 dealer's facilities unless the manufacturer, factory branch, distributor,
24 distributor branch or representative of the manufacturer, factory branch,
25 distributor or distributor branch is able to demonstrate that the changes
26 are reasonable and justifiable in light of current and reasonably
27 foreseeable economic conditions, the availability of additional vehicle
28 allocation and the dealer's market for the sale of vehicles or unless the
29 alteration is reasonably required to effectively display and service a
30 vehicle based on the technology of the vehicle.

31 5. Enter into a real property use or site control agreement as a
32 condition of awarding a franchise, adding a line-make or dealer agreement
33 to an existing new motor vehicle dealer, renewing a dealer agreement,
34 approving the sale or transfer of the ownership of a dealership or
35 approving the relocation of a dealership. This paragraph does not apply
36 to a real property use or site control agreement if either of the
37 following is offered to and accepted by the dealer without coercion or
38 condition in exchange for a real property use or site control agreement:

39 (a) Fair and reasonable monetary consideration.

40 (b) Separate and valuable consideration that may be calculated to a
41 sum certain.

42 6. IN CONNECTION WITH THE SALE OF A USED MOTOR VEHICLE, OTHER THAN
43 A USED MOTOR VEHICLE SOLD PURSUANT TO A FACTORY'S CERTIFIED PRE-OWNED
44 PROGRAM, REQUIRE THE USE OF ONLY PARTS AND ACCESSORIES MANUFACTURED BY THE
45 MANUFACTURER, FACTORY BRANCH, DISTRIBUTOR, DISTRIBUTOR BRANCH OR IMPORTER.

1 THIS PARAGRAPH DOES NOT APPLY TO PARTS USED TO PERFORM REPAIRS PURSUANT TO
2 A RECALL OR REPAIRS PERFORMED PURSUANT TO A MANUFACTURER, FACTORY BRANCH,
3 DISTRIBUTOR, DISTRIBUTOR BRANCH OR IMPORTER'S WARRANTY.

4 B. A manufacturer, factory branch, distributor, distributor branch
5 or field representative or an officer, agent or representative of a
6 manufacturer, factory branch, distributor, distributor branch or field
7 representative shall not require, coerce or attempt to coerce any new
8 motor vehicle dealer in this state to refrain from participation in the
9 management of, investment in or acquisition of any other line-make of new
10 motor vehicle or related products unless justified by reasonable business
11 considerations.

12 C. A manufacturer, factory branch, distributor, distributor branch,
13 field representative or officer shall not coerce or attempt to coerce a
14 motor vehicle dealer and a manufacturer shall not do either of the
15 following:

16 1. Release to any outside party any confidential financial
17 information of the dealer that may be provided from time to time by the
18 dealer.

19 2. Release to the general public average or composite prices,
20 identified as such, based in whole or in part on such financial
21 information.

22 D. Information described in subsection C, paragraphs 1 and 2 OF
23 THIS SECTION shall not be released without the express written consent of
24 the dealer, except that it may be released:

25 1. Pursuant to subpoena or as otherwise required by law in any
26 administrative, judicial or arbitration proceeding or in any law
27 enforcement investigation.

28 2. To a law enforcement agency, except that this exception does not
29 apply to personal financial information.

30 E. A manufacturer, importer or distributor shall not adopt, change,
31 establish or implement a plan or system for the allocation, scheduling or
32 delivery of new motor vehicles, parts or accessories to its motor vehicle
33 dealers that is not fair, reasonable and equitable or modify an existing
34 plan or system for the allocation, scheduling or delivery of new motor
35 vehicles, parts or accessories in a manner that causes the plan or system
36 to be unreasonable, unfair or inequitable. On the request of a
37 franchisee, a manufacturer, importer or distributor shall disclose in
38 writing to the franchisee the basis on which new motor vehicles, parts and
39 accessories are allocated, scheduled and delivered among the
40 manufacturer's, importer's or distributor's dealers of the same line-make.

41 F. A manufacturer, factory branch, distributor, distributor branch
42 or field representative or an officer, agent or representative of a
43 manufacturer, factory branch, distributor, distributor branch or field
44 representative shall not require a dealer or condition the awarding of a
45 franchise, the addition of a line-make, the renewal of a franchise, the

1 approval of the relocation of a franchise or the approval of a sale or
 2 transfer of a franchise on the willingness of a dealer or a proposed
 3 dealer or owner of an interest in the dealership facility to construct,
 4 renovate or maintain exclusive facilities, personnel or showroom area
 5 dedicated to a particular line-make if the imposition of such a
 6 requirement would be unreasonable in light of the existing circumstances,
 7 including the manufacturer's reasonable business considerations, present
 8 economic and market conditions and forecasts for future economic and
 9 market conditions in the dealer's retail territory. The manufacturer,
 10 factory branch, distributor, distributor branch or field representative
 11 has the burden of proof to demonstrate that its demand for exclusivity is
 12 justified by reasonable business considerations and is reasonable in light
 13 of the dealer's circumstances. This subsection does not apply to a
 14 voluntary agreement between a dealer and a manufacturer if separate and
 15 valuable consideration was offered and accepted. The renewal of a
 16 franchise agreement does not, by itself, constitute separate and valuable
 17 consideration. The manufacturer has the burden of proof to show by a
 18 preponderance of the evidence that the dealer entered into a voluntary
 19 agreement regarding exclusivity.

20 G. Any condition, stipulation or provision in a franchise or
 21 distributorship agreement purporting to bind any person acquiring or
 22 holding a franchise or distributorship to waive compliance with any
 23 provision of this chapter or any other law of this state is void except
 24 that a person who is acquiring or holding a franchise or distributorship
 25 is not prohibited under this section from electing in writing, at or after
 26 the time a dispute arises, from using any voluntary dispute resolution
 27 procedure, from entering into any voluntary agreement to settle legitimate
 28 disputes between the disputed parties or from entering into any agreement
 29 waiving any provision of this chapter or any other law of this state for
 30 which the franchisee receives separate and valid consideration at the time
 31 of the execution of the waiver.

32 Sec. 2. Section 28-4460, Arizona Revised Statutes, is amended to
 33 read:

34 28-4460. Factories; competition or unfair discrimination
 35 prohibited; definitions

36 A. A factory shall not directly or indirectly compete with or
 37 unfairly discriminate among its dealers.

38 B. Competing with or unfair discrimination includes any one of the
 39 following:

40 1. The factory having an ownership interest or franchise interest
 41 in, or operating or acting in the capacity of, a new motor vehicle dealer
 42 or a used motor vehicle dealer, except that:

43 (a) A factory is not prohibited from owning or operating as a new
 44 motor vehicle dealer for a temporary period if either of the following

45 ~~apply~~ APPLIES:

1 (i) The temporary period is not more than twelve months during the
2 transition from one dealer to another dealer if the dealership is for sale
3 and is being actively marketed by the factory at a bona fide reasonable
4 price and on reasonable terms and conditions to any independent qualified
5 buyer.

6 (ii) The factory submits evidence that disposition of its interest
7 will result in financial loss to the factory or dealership.

8 The temporary period may be extended in one year increments if either of
9 the requirements of this subdivision are met.

10 (b) A factory is not prohibited from temporarily owning a
11 dealership while in a bona fide relationship with a qualified person. A
12 bona fide relationship with a person who is qualified requires that:

13 (i) The total sales price of the dealership is not less than an
14 amount that is consistent with standard business practices.

15 (ii) The independent qualified person make a substantial
16 unencumbered bona fide initial investment in the dealership that is
17 reasonable and consistent with standard business practices.

18 (iii) The bona fide initial investment of the qualified person is
19 subject to potential loss. The qualified person's percentage share of any
20 potential dealership losses shall not be less than the person's percentage
21 share of ownership of the dealership at the time of the loss.

22 (iv) The qualified person buy substantial portions of the factory's
23 remaining ownership interest in substantial regular periodic payments
24 throughout the acquisition period.

25 (v) The qualified person can expect to acquire and retain full and
26 complete ownership of the dealership within a reasonable period of time
27 that is not longer than ten years and on reasonable terms and conditions
28 that are consistent with standard business practices. The ~~ten year~~
29 **TEN-YEAR** acquisition period may be extended for good cause shown by the
30 qualified person.

31 (vi) During the acquisition period if the qualified person is paid
32 a management fee, the management fee shall be reasonable and consistent
33 with standard business practices for an individual managing a franchise of
34 similar size and volume of sales and leases of vehicles or products.

35 (c) A factory is not prohibited from owning on a permanent basis a
36 minority interest in a dealership if all of the following conditions are
37 satisfied:

38 (i) The interest owned by the factory is not more than forty-five
39 percent or the percentage interest actually owned by the factory on
40 January 1, 2000, whichever is less.

41 (ii) Any dealership in which the factory owns the interest shall
42 not be less than seventy-five miles from the nearest dealership of the
43 same line-make in which the factory does not own the interest.

1 (iii) All dealerships in which the factory owns the interest shall
2 not sell or lease more than one of the line-makes of new motor vehicles
3 and parts manufactured by the factory.

4 (iv) All dealerships in which the factory owns the interest shall
5 sell or lease the same line-make of new motor vehicles and parts
6 manufactured by the factory. The dealerships may also sell or lease new
7 motor vehicles and parts of a line-make manufactured by a factory that
8 does not have an ownership interest in the dealership.

9 (v) The factory or an entity in which the factory has the interest
10 must have been licensed in this state as a new motor vehicle dealer on
11 January 1, 2000 selling the line-make of new motor vehicle manufactured by
12 the factory.

13 (vi) The factory must have owned the interest in at least one
14 dealership selling the line-make manufactured by the factory on January 1,
15 2000.

16 (vii) The factory or an entity in which the factory has the
17 interest shall not sell any line-make of new motor vehicle that it was not
18 selling in this state before January 1, 2000.

19 (viii) All automotive related services and financing related to the
20 line-make or the factory owning the interest shall be sold or provided
21 only to owners of vehicles of the line-make, regardless of where the
22 vehicle was purchased, or to any purchasers of any new or used motor
23 vehicles purchased from a dealership in which the factory has an interest.
24 This item shall not preclude that dealership from selling or providing any
25 nonwarranty repairs or maintenance on motor vehicles of any line-make or
26 warranty repairs or maintenance of any line-make of new motor vehicles
27 sold by the dealership and not manufactured by the factory.

28 (ix) All used motor vehicles of a line-make manufactured by the
29 factory, other than the line-make that the dealership sells or leases new,
30 acquired by the dealership, directly or indirectly from the factory, shall
31 be acquired only at wholesale auction open to dealers of all line-makes
32 manufactured by the factory.

33 2. The factory selling, leasing or providing, or offering to sell,
34 lease or provide, a vehicle or product, service or financing to any retail
35 consumer or lead. This paragraph does not:

36 (a) Prohibit a factory from advertising to sell, lease or provide a
37 vehicle or product, service or financing through its dealers.

38 (b) Prohibit a factory from selling, leasing or providing or
39 offering to sell, lease or provide a vehicle or product, service or
40 financing through its dealers.

41 (c) Prohibit a factory from providing a vehicle or product or
42 service for occasional promotional or charitable uses.

43 (d) Prohibit a factory from selling, leasing or providing a vehicle
44 or product, service or financing to an agency of the federal government.

1 (e) Prohibit a factory from selling or leasing a vehicle or
2 product, service or financing through its dealers to retail consumers who
3 qualify for any reasonable factory sponsored factory employee, factory
4 retiree or factory vendor new vehicle purchase program or any other
5 reasonable similar factory related new vehicle purchase program.

6 (f) Prohibit a factory from providing financing to retail consumers
7 through any used motor vehicle dealer or new motor vehicle dealer of any
8 line-make.

9 (g) Prohibit a factory from providing a loan directly to a person
10 or entity if the loan is for a purpose unrelated to the ownership or
11 leasing of a new motor vehicle or a used motor vehicle not for resale.

12 (h) Prohibit a factory from providing loans directly to used motor
13 vehicle dealers or new motor vehicle dealers of any line-make for any
14 purpose, including working capital, real estate, construction or motor
15 vehicle or parts inventories.

16 (i) Prohibit a factory from arranging or providing emergency
17 roadside service.

18 (j) Prohibit a factory from offering factory sponsored extended
19 service contracts to purchasers of new motor vehicles, provided that:

20 (i) Such offers shall not take place less than ninety days after
21 the date the retail consumer takes delivery of the new motor vehicle.

22 (ii) Such offers are made to retail consumers only at the
23 manufacturer's suggested retail price.

24 (k) Prohibit a factory from selling a lease vehicle to the original
25 lessee pursuant to a purchase option set forth in the lease. Such sale
26 may be a credit sale with the factory as the credit seller and may include
27 the direct sale of extended service contracts at the manufacturer's
28 suggested retail price.

29 (l) Prohibit a factory, at the request of a motor vehicle lessee,
30 from extending a lease of a motor vehicle.

31 (m) Prohibit a factory from offering and approving a retail
32 consumer credit application for the financing or leasing of a motor
33 vehicle ~~provided that~~ IF both of the following apply:

34 (i) The final transaction takes place through a licensed motor
35 vehicle dealer.

36 (ii) The factory does not establish or quote any interest rate,
37 finance rate or lease rate in association with a credit application.

38 (n) Prohibit a factory from renewing or charging any subscription
39 or connection fees for any in-vehicle electronic wireless communication,
40 information or entertainment services.

41 3. The factory controlling any aspect of the final amount charged,
42 the final sales price or the final lease price for any vehicle or product,
43 trade-in or service offered to retail consumers in a dealer's area of
44 responsibility without the written consent of the dealer. The dealer's
45 consent may be withdrawn on forty-five days' notice without retribution or

1 the threat of retribution from the factory. This paragraph does not
2 prohibit a factory from:

3 (a) Changing dealer cost or establishing any of the following:

4 (i) Manufacturer's suggested retail price pursuant to 15 United
5 States Code section 1232.

6 (ii) Factory's suggested retail price for parts.

7 (iii) Factory's suggested retail price for service.

8 (b) Establishing from time to time reasonable sales, lease or
9 financing promotions of reasonable and limited duration. ~~; provided that~~
10 Programs up to a year are presumed to be of reasonable and limited
11 duration.

12 (c) Establishing reasonable standard feature option packages or
13 vehicle option content in any way.

14 (d) Establishing the terms of any vehicle warranty.

15 (e) Establishing reasonable sales, lease or financing terms through
16 its dealers to retail consumers who qualify for any reasonable factory
17 sponsored factory employee, factory retiree or factory vendor new vehicle
18 purchase program or any other reasonable similar factory related new
19 vehicle purchase program.

20 (f) Linking the factory's internet site to internet sites
21 maintained by its dealers or third parties, or to internet sites
22 maintained jointly by the factory and its dealers and made available to
23 all of the factory's dealers of the same line-make, provided that the
24 factory shall not dictate, limit, establish, set or endorse as a basis for
25 a retail transaction any price other than the manufacturer's suggested
26 retail price.

27 (g) Establishing the price at which the lessee of a motor vehicle
28 may purchase or re-lease that motor vehicle on expiration or termination
29 of that lessee's lease.

30 (h) Operating or facilitating a program or system through which
31 individual dealers may provide quotes or offers to individual consumers.

32 4. The factory refusing to unconditionally offer and provide to its
33 same line-make dealers all models, series and editions of new motor
34 vehicles that are publicly advertised for that line-make in ~~Arizona~~ **THIS**
35 **STATE**. The failure to deliver any new motor vehicles shall not be
36 considered a violation of this paragraph if the failure is caused by a
37 lack of manufacturing capacity, labor strike, shortage of materials or
38 trade embargo or any other condition over which the factory has no
39 control. A factory may require a dealer to purchase reasonable quantities
40 of advertising materials, purchase reasonable quantities of special tools
41 required to properly service a motor vehicle and undertake reasonable
42 salesperson or service person training related to the motor vehicle as a
43 condition of receiving a motor vehicle. This paragraph does not:

44 (a) Apply to recreational vehicle manufacturers.

1 (b) Prohibit a factory from providing monetary, financial or
2 optional equipment incentives to fleet purchasers for new motor vehicles
3 not for resale.

4 5. The factory denying to any dealer any price reduction, rebate,
5 incentive payment or similar pricing device relating to the sale or offer
6 to sell a new motor vehicle to a dealer, pursuant to a program that
7 discriminates among dealers of the same line-make in ~~Arizona~~ THIS STATE,
8 when the dealer cannot qualify or receive the benefits of the program for
9 reasons other than the dealer's failure to use reasonable effort to
10 qualify and the terms of the program are such that a failure to qualify or
11 receive its benefits would constitute the constructive termination of the
12 dealer.

13 6. The factory failing to provide or direct a lead relating to a
14 particular line-make either:

15 (a) To the dealer with whom the lead has a preexisting
16 relationship.

17 (b) To the dealer of the same line-make that is located closest to
18 where the lead resides, or to the local business address if the lead is a
19 business.

20 (c) To the dealer of the same line-make in whose assigned area of
21 responsibility the lead resides, or the local business address if the lead
22 is a business.

23 (d) According to the lead's voluntary preference.

24 C. Under subsection B, paragraph 6 OF THIS SECTION:

25 1. The factory need not provide or direct a lead to a dealer who
26 does not sell the vehicle or product, service or financing in which the
27 lead expresses an interest.

28 2. The factory is responsible only for providing to the dealer
29 information that it possesses concerning the lead.

30 3. The factory is not precluded from providing or directing leads
31 to any other dealer of the same line-make.

32 4. All leads ~~shall be~~ ARE provided or directed in a fair,
33 nondiscriminatory, equitable and timely manner to dealers and, except as
34 provided in subsection D OF THIS SECTION, without charging a fee for those
35 leads.

36 D. Subsection B, paragraph 6 OF THIS SECTION does not apply to any
37 factory sponsored internet-based program specifically designed to provide
38 retail consumers with internet access to dealer quotations on vehicles,
39 products, financing or services, ~~provided that~~ IF:

40 1. Fees for the program are reasonable and consistent with industry
41 standards.

42 2. Dealer participation is not conditioned on participation in any
43 other program or on ratings derived from customer surveys.

44 E. A manufacturer or distributor may not recover all or any portion
45 of its costs for compensating a dealer for warranty parts and service,

1 including parts and service associated with vehicle recalls, either by
2 reduction in the amount due the dealer or by separate charge, surcharge,
3 administrative fee or other imposition. This subsection does not prohibit
4 a manufacturer or distributor from increasing the wholesale price of a
5 vehicle or part in the ordinary course of business.

6 F. For the purposes of this section:

7 1. "Controlling" means dictating, limiting, establishing, setting
8 or endorsing as a basis for a retail transaction any price other than the
9 manufacturer's suggested retail price.

10 2. "Dealer" or "dealership" means a new motor vehicle dealer or
11 franchisee.

12 3. "Factory":

13 (a) Means a manufacturer, importer or distributor or any legal
14 entity in which a manufacturer, importer or distributor owns a majority
15 interest or has direct or indirect power to direct or cause the direction
16 of the management whether through voting securities, contract or
17 otherwise.

18 (b) INCLUDES SUCCESSORS IN INTEREST TO ALL ENTITIES DESCRIBED IN
19 SUBDIVISION (a) OF THIS PARAGRAPH THAT CONTINUE RETAIL OPERATIONS SELLING
20 OR SERVICING THE SAME LINE-MAKE AS ANY MOTOR VEHICLE DEALER THAT HAS, AS
21 OF THE EFFECTIVE DATE OF SUCH SUCCESSION, A FRANCHISE TO SELL AND SERVICE
22 SUCH LINE-MAKE, INCLUDING SUCCESSORS THAT ACQUIRE THE INTERESTS BY
23 PURCHASE, MERGER OR CONVERSION.

24 ~~(b)~~ (c) Excludes any new motor vehicle dealer, used motor vehicle
25 dealer or trailer manufacturer.

26 ~~(c)~~ (d) Excludes any agent, affiliate, representative or
27 subsidiary that is primarily engaged in the business of rental of
28 passenger and commercial motor vehicles and industrial and construction
29 equipment and activities incidental to that business if all of the
30 following conditions are satisfied:

31 (i) Passenger and commercial motor vehicles sold by the agent,
32 affiliate, representative or subsidiary are limited to used passenger and
33 commercial motor vehicles that have been previously used exclusively and
34 regularly by the agent, affiliate, representative or subsidiary in the
35 conduct of business and used passenger and commercial motor vehicles
36 traded in on motor vehicles sold by the agent, affiliate, representative
37 or subsidiary.

38 (ii) Warranty repairs performed by the agent, affiliate,
39 representative or subsidiary on passenger and commercial motor vehicles
40 are limited to those passenger and commercial motor vehicles that it owns,
41 previously owned or takes in trade.

42 (iii) Motor vehicle financing provided by the agent, affiliate,
43 representative or subsidiary to retail consumers for passenger and
44 commercial motor vehicles is limited to vehicles sold by the agent,
45 affiliate, representative or subsidiary in the conduct of business.

1 4. "Financing":

2 (a) Means the financial service of providing retail consumers the
3 ability to pay for a purchase or lease of a new or used motor vehicle,
4 parts or services over an extended period of time.

5 (b) Does not include the furnishing of credit cards capable of
6 general use in retail transactions or the provision of any loans secured
7 by real estate.

8 5. "Parts":

9 (a) Means all items that are designed to be incorporated within or
10 attached to or used to operate, maintain or service a motor vehicle.

11 (b) Does not include any of the following:

12 (i) Parts purchased or provided for use by professional racing
13 enterprises.

14 (ii) Parts no longer included in the current factory price
15 schedule.

16 (iii) Specialized parts for research vehicles or other similar uses
17 of limited application.

18 (iv) Owners' manuals or repair manuals.

19 (v) Parts that are provided by an automotive recycler in the normal
20 course of business for an automotive recycler.

21 (vi) Motor vehicle keys.

22 6. "Service" means either of the following:

23 (a) Motor vehicle warranty and nonwarranty repairs or maintenance,
24 including both parts and labor.

25 (b) Extended warranties, vehicle mechanical maintenance insurance
26 and similar vehicle repair service contracts.

27 7. "Vehicle or product" means a new motor vehicle, a used motor
28 vehicle or parts.

APPROVED BY THE GOVERNOR APRIL 11, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 2018.