

Senate Engrossed

State of Arizona  
Senate  
Forty-fifth Legislature  
Second Regular Session  
2002

CHAPTER 21

# SENATE BILL 1096

AN ACT

AMENDING SECTION 28-4460, ARIZONA REVISED STATUTES; RELATING TO FRANCHISE REGULATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)



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

2 Section 1. Section 28-4460, Arizona Revised Statutes, is amended to  
3 read:

4 28-4460. Factories; competition or unfair discrimination  
5 prohibited; definitions

6 A. A factory shall not directly or indirectly compete with or unfairly  
7 discriminate among its dealers.

8 B. Competing with or unfair discrimination includes any one of the  
9 following:

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

13 (a) A factory is not prohibited from owning or operating as a new  
14 motor vehicle dealer for a temporary period of IF EITHER OF THE FOLLOWING  
15 APPLY:

16 (i) THE TEMPORARY PERIOD IS not more than twelve months during the  
17 transition from one dealer to another dealer if the dealership is for sale  
18 and is being actively marketed by the factory at a bona fide reasonable price  
19 and on reasonable terms and conditions to any independent qualified buyer.

20 (ii) THE FACTORY SUBMITS EVIDENCE THAT DISPOSITION OF ITS INTEREST  
21 WILL RESULT IN FINANCIAL LOSS TO THE FACTORY OR DEALERSHIP.

22 ~~On good cause shown by the factory, the temporary period may be extended by~~  
23 ~~up to six months. For recreational vehicle manufacturers, The temporary~~  
24 ~~period may be extended in one year increments for a maximum total extension~~  
25 ~~of not more than five years, if good cause is shown IF EITHER OF THE~~  
26 ~~REQUIREMENTS OF THIS SUBDIVISION ARE MET.~~

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

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

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

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

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

42 (v) The qualified person can expect to acquire and retain full and  
43 complete ownership of the dealership within a reasonable period of time that  
44 is not longer than ten years and on reasonable terms and conditions that are

1 consistent with standard business practices. The ten year acquisition period  
2 may be extended for good cause shown by the qualified person.

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

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

10 (i) The interest owned by the factory is not more than forty-five per  
11 cent or the percentage interest actually owned by the factory on January 1,  
12 2000, whichever is less.

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

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

19 (iv) All dealerships in which the factory owns the interest shall sell  
20 or lease the same line-make of new motor vehicles and parts manufactured by  
21 the factory. The dealerships may also sell or lease new motor vehicles and  
22 parts of a line-make manufactured by a factory that does not have an  
23 ownership interest in the dealership.

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

28 (vi) The factory must have owned the interest in at least one  
29 dealership selling the line-make manufactured by the factory on January 1,  
30 2000.

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

34 (viii) All automotive related services and financing related to the  
35 line-make or the factory owning the interest shall be sold or provided only  
36 to owners of vehicles of the line-make, regardless of where the vehicle was  
37 purchased, or to any purchasers of any new or used motor vehicles purchased  
38 from a dealership in which the factory has an interest. This item shall not  
39 preclude that dealership from selling or providing any nonwarranty repairs  
40 or maintenance on motor vehicles of any line-make or warranty repairs or  
41 maintenance of any line-make of new motor vehicles sold by the dealership and  
42 not manufactured by the factory.

43 (ix) All used motor vehicles of a line-make manufactured by the  
44 factory, other than the line-make that the dealership sells or leases new,  
45 acquired by the dealership, directly or indirectly from the factory, shall

1 be acquired only at wholesale auction open to dealers of all line-makes  
2 manufactured by the factory.

3 2. The factory selling, leasing or providing, or offering to sell,  
4 lease or provide, vehicles or products, services or financing to any retail  
5 consumer or lead. This paragraph does not:

6 (a) Prohibit a factory from advertising to sell, lease or provide  
7 vehicles or products, services or financing through its dealers.

8 (b) Prohibit a factory from selling, leasing or providing or offering  
9 to sell, lease or provide vehicles or products, services or financing through  
10 its dealers.

11 (c) Prohibit a factory from providing vehicles for occasional  
12 promotional or charitable uses.

13 (d) Prohibit a factory from selling, leasing or providing vehicles or  
14 products, services or financing to an agency of the federal government.

15 (e) Prohibit a factory from selling or leasing vehicles or products,  
16 services or financing through its dealers to retail consumers who qualify for  
17 any reasonable factory sponsored factory employee, factory retiree or factory  
18 vendor new vehicle purchase program or any other reasonable similar factory  
19 related new vehicle purchase program.

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

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

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

30 3. The factory controlling any aspect of the final amount charged, the  
31 final sales price or the final lease price for any of the vehicles or  
32 products, trade-ins, services or financing offered, offered for sale or  
33 offered for lease to retail consumers in a dealer's area of responsibility  
34 without the written consent of the dealer. The dealer's consent may be  
35 withdrawn on thirty days' notice without retribution or the threat of  
36 retribution from the factory. This paragraph does not prohibit a factory  
37 from:

38 (a) Changing dealer cost or establishing manufacturer's suggested  
39 retail price pursuant to 15 United States Code section 1232.

40 (b) Establishing from time to time reasonable sales, lease or  
41 financing promotions of reasonable and limited duration.

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

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

1 (e) Establishing reasonable sales, lease or financing terms through  
2 its dealers to retail consumers who qualify for any reasonable factory  
3 sponsored factory employee, factory retiree or factory vendor new vehicle  
4 purchase program or any other reasonable similar factory related new vehicle  
5 purchase program.

6 4. The factory refusing to unconditionally offer and provide to its  
7 same line-make dealers all models or series manufactured and publicly  
8 advertised for that line-make at prices that are, or by the effect of any  
9 device or program at prices that are, no greater than any other dealer in the  
10 United States would pay for the same model vehicle that is similarly  
11 equipped. The failure to deliver any motor vehicles shall not be considered  
12 a violation of this paragraph if the failure is caused by a condition over  
13 which the factory has no control. A factory may require a dealer to purchase  
14 reasonable quantities of advertising materials, purchase reasonable  
15 quantities of special tools required to properly service a motor vehicle and  
16 undertake reasonable salesperson or service person training related to the  
17 motor vehicle as a condition of receiving a motor vehicle. This paragraph  
18 does not:

19 (a) Apply to recreational vehicle manufacturers.

20 (b) Prohibit a factory from establishing from time to time reasonable  
21 sales, lease or financing promotions of reasonable and limited duration.

22 (c) Prohibit a factory from providing monetary, financial or optional  
23 equipment incentives to fleet purchasers for new motor vehicles not for  
24 resale.

25 5. The factory providing or directing less than all leads of  
26 prospective retail consumers of vehicles or products, services or financing  
27 of a particular line-make to the dealer of the same line-make in whose  
28 assigned area of responsibility the lead resides or, in the event of a  
29 commercial lead, the primary local business address. The factory is only  
30 responsible for providing to the dealer information that it possesses  
31 concerning the lead. The factory is not precluded from providing or  
32 directing leads to other dealers of the same line-make. All leads shall be  
33 provided or directed in a fair, nondiscriminatory, equitable and timely  
34 manner and without charging a fee for those leads.

35 C. For the purposes of this section:

36 1. "Controlling" means dictating, limiting, establishing, setting or  
37 influencing through any means.

38 2. "Dealer" or "dealership" means a new motor vehicle dealer or  
39 franchisee.

40 3. "Factory":

41 (a) Means a distributor, distributor branch, factory branch,  
42 franchisor, importer or manufacturer.

43 (b) Includes agents and wholly or partially owned affiliates,  
44 representatives and subsidiaries of a distributor, distributor branch,  
45 factory branch, franchisor, importer or manufacturer that have a direct

1 relationship to the sale, leasing or providing of new motor vehicles, used  
2 motor vehicles, parts, accessories, services or financing to retail  
3 consumers.

4 (c) Excludes any new motor vehicle dealer, used motor vehicle dealer  
5 or trailer manufacturer.

6 (d) Excludes any agent, affiliate, representative or subsidiary that  
7 is primarily engaged in the business of rental of passenger and commercial  
8 motor vehicles and industrial and construction equipment and activities  
9 incidental to that business if all of the following conditions are satisfied:

10 (i) Passenger and commercial motor vehicles sold by the agent,  
11 affiliate, representative or subsidiary are limited to used passenger and  
12 commercial motor vehicles that have been previously used exclusively and  
13 regularly by the agent, affiliate, representative or subsidiary in the  
14 conduct of business and used passenger and commercial motor vehicles traded  
15 in on motor vehicles sold by the agent, affiliate, representative or  
16 subsidiary.

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

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

25 4. "Financing" means the financial service of providing retail  
26 consumers the ability to pay for a purchase or lease of a new or used motor  
27 vehicle, parts or services over an extended period of time.

28 5. "Parts" means motor vehicle related parts or accessories.

29 6. "Vehicle or product" means a new or used motor vehicle, parts or  
30 any other goods sold, leased or provided to retail consumers and directly  
31 related to the ownership or leasing of a new or used motor vehicle.

APPROVED BY THE GOVERNOR APRIL 15, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 15, 2002.



Passed the House April 8, 2002,

by the following vote: 52 Ayes,

0 Nays, 8 Not Voting

[Signature]  
Speaker of the House

[Signature]  
Chief Clerk of the House

Passed the Senate February 11, 2002,

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting

[Signature]  
President of the Senate

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

9 day of April, 2002,

at 11:59 o'clock A M.

[Signature]  
Secretary to the Governor

Approved this 15<sup>th</sup> day of

April, 2002,

at 11:29 o'clock A M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 15 day of April, 2002

at 4:28 o'clock P M.

[Signature]  
Secretary of State

S.B. 1096