

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 121

HOUSE BILL 2124

AN ACT

AMENDING TITLE 28, CHAPTER 10, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 28-4415 THROUGH 28-4421; AMENDING SECTION 28-4333, ARIZONA REVISED STATUTES; RELATING TO MOTOR VEHICLE BROKERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)



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

2 Section 1. Title 28, chapter 10, article 4, Arizona Revised Statutes,
3 is amended by adding sections 28-4415, 28-4416, 28-4417, 28-4418, 28-4419,
4 28-4420 and 28-4421, to read:

5 28-4415. Advertising

6 A. A BROKER SHALL NOT ADVERTISE OR OFFER FOR SALE OR EXCHANGE ANY
7 SPECIFIC MOTOR VEHICLE.

8 B. A MOTOR VEHICLE DEALER SHALL NOT ADVERTISE OR OFFER FOR SALE OR
9 EXCHANGE ANY SPECIFIC MOTOR VEHICLE UNLESS ONE OF THE FOLLOWING APPLIES:

10 1. THE MOTOR VEHICLE IS FOR SALE AND LOCATED AT THE MOTOR VEHICLE
11 DEALER'S ESTABLISHED PLACE OF BUSINESS.

12 2. THE MOTOR VEHICLE DEALER DISCLOSES IN THE ADVERTISEMENT THE
13 SPECIFIC STREET ADDRESS AND BUSINESS HOURS WHERE THE MOTOR VEHICLE MAY BE
14 INSPECTED BY A RETAIL CONSUMER.

15 3. THE MOTOR VEHICLE IS AVAILABLE TO THE MOTOR VEHICLE DEALER DIRECTLY
16 FROM THE MANUFACTURER OR DISTRIBUTOR OF THE MOTOR VEHICLE AT THE TIME OF THE
17 ADVERTISEMENT OR OFFER.

18 C. A BROKER OR MOTOR VEHICLE DEALER MAY ADVERTISE THE BROKER'S OR
19 MOTOR VEHICLE DEALER'S SERVICE OF ARRANGING OR ASSISTING IN EFFECTING THE
20 PURCHASE OF A NEW MOTOR VEHICLE FROM A NEW MOTOR VEHICLE DEALER AND SPECIFY
21 THE LINE MAKES AND MODELS OF THE NEW VEHICLES.

22 D. A BROKER MAY NOT ADVERTISE THE PRICE OF OR PAYMENT TERMS FOR ANY
23 MOTOR VEHICLE. A BROKER SHALL DISCLOSE THAT THE ADVERTISER IS A BROKER AND
24 SHALL CLEARLY AND CONSPICUOUSLY STATE THE FOLLOWING:

25 ALL MOTOR VEHICLES ARRANGED FOR SALE ARE SUBJECT TO PRICE AND
26 AVAILABILITY FROM THE SELLING MOTOR VEHICLE DEALER.

27 28-4416. Deposits

28 A BROKER SHALL ONLY ACCEPT A PURCHASE DEPOSIT THAT IS MADE PAYABLE TO A
29 MOTOR VEHICLE DEALER. A BROKER SHALL NOT ACCEPT A PURCHASE DEPOSIT RELATING
30 TO THE SALE OF A MOTOR VEHICLE UNLESS THE MOTOR VEHICLE IS AVAILABLE TO THE
31 BROKER AT THE BROKER'S LICENSED PLACE OF BUSINESS OR IS AVAILABLE AS
32 PRESCRIBED IN SECTION 28-4415 AT THE TIME EITHER THE BROKER OR MOTOR VEHICLE
33 DEALER ACCEPTS THE DEPOSIT.

34 28-4417. Required disclosures on sales contracts

35 A MOTOR VEHICLE DEALER SHALL DISCLOSE IN A CLEAR AND CONSPICUOUS MANNER
36 ON ANY CONTRACT FOR THE SALE OF A MOTOR VEHICLE TO A RETAIL CONSUMER EACH OF
37 THE FOLLOWING:

38 1. WHETHER OR NOT THE TRANSACTION IS SUBJECT TO A FEE RECEIVED BY A
39 BROKER FROM THE SELLING MOTOR VEHICLE DEALER.

40 2. THE NAME OF THE BROKER, IF APPLICABLE.

41 28-4418. Warranties and rebates in broker transactions

42 A. A MANUFACTURER OR DISTRIBUTOR SHALL NOT DISHONOR A WARRANTY, REBATE
43 OR OTHER INCENTIVE OFFERED TO THE PUBLIC OR A MOTOR VEHICLE DEALER IN
44 CONNECTION WITH THE SALE OF A NEW MOTOR VEHICLE TO A RETAIL CONSUMER BASED
45 SOLELY ON THE FACT THAT A BROKER ARRANGED OR NEGOTIATED THE SALE.

1 B. THIS SECTION DOES NOT PROHIBIT THE DISALLOWANCE OF THE WARRANTY,
2 REBATE OR INCENTIVE IF THE RETAIL CONSUMER OR MOTOR VEHICLE DEALER IS
3 INELIGIBLE TO RECEIVE THE REBATE OR INCENTIVE PURSUANT TO ANY OTHER TERM OR
4 CONDITION OF A REBATE OR INCENTIVE PROGRAM.

5 28-4419. Required and prohibited activities

6 IF PROVIDING A SERVICE OF ARRANGING OR ASSISTING IN EFFECTING THE
7 PURCHASE OF A MOTOR VEHICLE BY A RETAIL CONSUMER, A BROKER OR MOTOR VEHICLE
8 DEALER LICENSED PURSUANT TO THIS CHAPTER:

9 1. SHALL:

10 (a) EXECUTE A WRITTEN BROKERING AGREEMENT AND PROVIDE A COMPLETED COPY
11 TO BOTH OF THE FOLLOWING:

12 (i) THE RETAIL CONSUMER ENTERING INTO THE BROKERING AGREEMENT. THE
13 COMPLETED COPY SHALL BE PROVIDED BEFORE THE RETAIL CONSUMER SIGNS AN
14 AGREEMENT FOR THE PURCHASE OF THE MOTOR VEHICLE DESCRIBED IN THE BROKERING
15 AGREEMENT OR BEFORE THE BROKER OR MOTOR VEHICLE DEALER ACCEPTS ONE HUNDRED
16 DOLLARS OR MORE FROM THE RETAIL CONSUMER, WHICHEVER OCCURS FIRST.

17 (ii) THE SELLING MOTOR VEHICLE DEALER. THE COMPLETED COPY SHALL BE
18 PROVIDED BEFORE THE SELLING MOTOR VEHICLE DEALER ENTERS INTO A PURCHASE
19 AGREEMENT WITH THE RETAIL CONSUMER.

20 (b) ON DEMAND OF A RETAIL CONSUMER, REFUND ANY PURCHASE MONEY,
21 INCLUDING PURCHASE DEPOSITS, AT ANY TIME BEFORE THE RETAIL CONSUMER SIGNS A
22 MOTOR VEHICLE PURCHASE AGREEMENT WITH A SELLING MOTOR VEHICLE DEALER OF THE
23 MOTOR VEHICLE DESCRIBED IN THE BROKERING AGREEMENT.

24 (c) ON DEMAND OF A RETAIL CONSUMER, CANCEL A BROKERING AGREEMENT AND
25 REFUND ANY MONIES PAID BY A RETAIL CONSUMER, INCLUDING A BROKERAGE FEE, UNDER
26 ANY OF THE FOLLOWING CIRCUMSTANCES:

27 (i) IF THE FINAL PRICE OF THE BROKERED MOTOR VEHICLE EXCEEDS THE
28 PURCHASE PRICE LISTED IN THE BROKERING AGREEMENT.

29 (ii) IF THE MOTOR VEHICLE DELIVERED IS NOT AS DESCRIBED IN THE
30 BROKERING AGREEMENT.

31 (iii) IF THE BROKERING AGREEMENT EXPIRES BEFORE THE RETAIL CONSUMER IS
32 PRESENTED WITH A PURCHASE AGREEMENT FROM A SELLING MOTOR VEHICLE DEALER THAT
33 IS ARRANGED THROUGH THE BROKER AND THAT CONTAINS A PURCHASE PRICE AT OR BELOW
34 THE PRICE LISTED IN THE BROKERING AGREEMENT.

35 (d) DISCLOSE TO THE RETAIL CONSUMER AND SELLING MOTOR VEHICLE DEALER
36 AS SOON AS PRACTICABLE WHETHER THE BROKER RECEIVES OR DOES NOT RECEIVE A FEE
37 OR OTHER COMPENSATION, REGARDLESS OF THE FORM OR TIME OF PAYMENT, FROM THE
38 SELLING MOTOR VEHICLE DEALER AND THE DOLLAR AMOUNT OF ANY FEE THAT THE RETAIL
39 CONSUMER IS OBLIGATED TO PAY TO THE BROKER. THIS ARRANGEMENT SHALL BE
40 CONFIRMED IN A BROKERING AGREEMENT.

41 (e) MAINTAIN RECORDS PURSUANT TO SECTION 28-4403.

42 (f) MAINTAIN FOR A MINIMUM OF THREE YEARS A COPY OF THE EXECUTED
43 BROKERING AGREEMENT AND OTHER NOTICES AND DOCUMENTS RELATED TO EACH BROKERED
44 TRANSACTION.

1 (g) ADVISE THE RETAIL CONSUMER, BEFORE ACCEPTING ANY MONEY, THAT A
2 FULL REFUND WILL BE GIVEN IF THE MOTOR VEHICLE ORDERED THROUGH THE BROKER IS
3 NOT OBTAINED FOR THE RETAIL CONSUMER OR IF THE SERVICE CONTRACTED FOR IS NOT
4 PROVIDED.

5 2. SHALL NOT:

6 (a) ACCEPT A PURCHASE DEPOSIT FROM ANY RETAIL CONSUMER THAT EXCEEDS
7 TWO AND ONE-HALF PER CENT OF THE SELLING PRICE OF THE MOTOR VEHICLE DESCRIBED
8 IN THE BROKERING AGREEMENT.

9 (b) RECEIVE A FEE FROM MORE THAN ONE SOURCE IF PROVIDING SERVICES TO A
10 RETAIL CONSUMER AS EITHER A BROKER OR MOTOR VEHICLE DEALER IN THE SAME
11 TRANSACTION.

12 28-4420. Contents of brokering agreement

13 A BROKERING AGREEMENT SHALL CONTAIN THE FOLLOWING TERMS, CONDITIONS,
14 REQUIREMENTS AND DISCLOSURES:

15 1. THE NAME, ADDRESS, LICENSE NUMBER AND TELEPHONE NUMBER OF THE
16 BROKER.

17 2. A COMPLETE DESCRIPTION, INCLUDING LINE MAKE, MODEL, YEAR AND COLOR
18 OF THE MOTOR VEHICLE AND THE DESIRED OPTIONS.

19 3. THE FOLLOWING STATEMENT:

20 THE FOLLOWING INFORMATION SHALL BE COMPLETED BEFORE THE
21 SIGNING OF THIS BROKERING AGREEMENT:

22 (a) THE DOLLAR PURCHASE PRICE OF VEHICLE:
23 _____.

24 (b) THE DATE THIS AGREEMENT WILL EXPIRE IF A PURCHASE
25 AGREEMENT FROM A SELLING DEALER IS NOT PRESENTED FOR YOUR
26 SIGNATURE: _____.

27 (c) THE FEE THAT YOU ARE OBLIGATED TO PAY, IF ANY:
28 _____.

29 4. A NOTICE THAT IS PRINTED IN CONSPICUOUS TYPE, THAT IS PLACED
30 IMMEDIATELY BELOW THE STATEMENT REQUIRED BY PARAGRAPH 3 AND THAT STATES
31 WHETHER OR NOT A FEE IS RECEIVED FROM THE SELLING DEALER.

32 5. THE FOLLOWING NOTICE ON THE FACE OF THE BROKERING AGREEMENT IN
33 CONSPICUOUS TYPE, CIRCUMSCRIBED BY A LINE, THAT READS AS FOLLOWS:

34 NOTICE

35 THIS IS AN AGREEMENT TO PROVIDE SERVICES. THIS IS NOT AN
36 AGREEMENT FOR THE PURCHASE OF A VEHICLE. ARIZONA LAW GIVES YOU
37 THE FOLLOWING RIGHTS AND PROTECTION:

38 ONCE YOU HAVE SIGNED THIS AGREEMENT, YOU HAVE THE RIGHT TO
39 CANCEL IT AND RECEIVE A FULL REFUND OF ANY MONIES PAID,
40 INCLUDING ANY BROKERAGE FEE YOU MAY HAVE PAID, UNDER ANY OF THE
41 FOLLOWING CIRCUMSTANCES:

1 (a) THE FINAL PRICE OF THE VEHICLE EXCEEDS THE PURCHASE
2 PRICE LISTED ABOVE.

3 (b) THE VEHICLE IS NOT AS DESCRIBED ABOVE ON DELIVERY.

4 (c) THIS AGREEMENT EXPIRES BEFORE YOU ARE PRESENTED WITH
5 A SELLING DEALER'S PURCHASE AGREEMENT.

6 IF YOU HAVE PAID A PURCHASE DEPOSIT, YOU HAVE THE RIGHT TO
7 RECEIVE A REFUND OF THAT DEPOSIT AT ANY TIME BEFORE YOU SIGN A
8 VEHICLE PURCHASE AGREEMENT WITH A SELLING DEALER. PURCHASE
9 DEPOSITS ARE LIMITED BY LAW TO NO MORE THAN 2.5 PER CENT OF THE
10 PURCHASE PRICE OF A VEHICLE. IF YOU ARE UNABLE TO RESOLVE A
11 DISPUTE WITH YOUR BROKER OR AUTO BUYING SERVICE, PLEASE CONTACT
12 AN INVESTIGATOR OF THE DEPARTMENT OF TRANSPORTATION.

13 6. THE DATE THE AGREEMENT IS EXECUTED.

14 7. THE SIGNATURE OF THE BROKER AND THE RETAIL CONSUMER.

15 28-4421. Selling dealer's duties

16 A. FOR PURPOSES OF TITLE, REGISTRATION, WARRANTIES, REBATES AND
17 INCENTIVES IN A BROKERED SALE OF A NEW MOTOR VEHICLE TO A RETAIL CONSUMER,
18 THE SELLING NEW MOTOR VEHICLE DEALER AND NOT THE BROKER IS RESPONSIBLE FOR:

19 1. APPLYING FOR TITLE IN THE NAME OF THE PURCHASER AND SECURING
20 VEHICLE REGISTRATION AND THE LICENSE PLATES FOR THE PURCHASER.

21 2. SECURING THE MANUFACTURER'S WARRANTY IN THE NAME OF THE PURCHASER.

22 3. MAKING ALL APPLICATIONS FOR ANY MANUFACTURER'S REBATES AND
23 INCENTIVES DUE THE PURCHASER.

24 B. IF THERE IS A MANUFACTURER'S RECALL, THE RETAIL CONSUMER SHALL BE
25 NOTIFIED DIRECTLY BY THE MANUFACTURER.

26 Sec. 2. Section 28-4333, Arizona Revised Statutes, is amended to read:

27 28-4333. Licensing requirement; exemptions

28 A. A new motor vehicle shall not be sold in this state unless either
29 the manufacturer on direct dealerships of domestic vehicles, the importer of
30 foreign manufactured vehicles on direct dealerships or the distributor on
31 indirect dealerships of either domestic or foreign vehicles is licensed as
32 provided in this chapter. Obtaining the license conclusively establishes
33 that the manufacturer, distributor or importer is subject to the laws of this
34 state regulating manufacturers, importers and distributors.

35 B. An organization that has qualified for an exemption from taxation
36 of income under section 43-1201, paragraph 1, 2, 4, 5, 6, 7, 10 or 11 may
37 sell a donated used motor vehicle without obtaining a license under this
38 chapter, subject to the following:

39 1. The nonprofit organization shall maintain the tax exempt status
40 until any monies received from the sale of the used motor vehicle have been
41 expended and a member, director, officer, employee or agent of the nonprofit
42 organization shall not receive any direct or indirect pecuniary benefit from
43 the sale of the used motor vehicle.

1 2. The nonprofit organization shall have been in existence
2 continuously in this state for a five year period immediately before the sale
3 of the used motor vehicle.

4 3. The nonprofit organization shall sell the used motor vehicle by
5 consignment using a licensed motor vehicle dealer.

6 4. Notwithstanding section 28-2058, the nonprofit organization is not
7 required to obtain a new certificate of title or registration for the donated
8 motor vehicle but shall assign the certificate of title to the licensed motor
9 vehicle dealer for ultimate assignment to the retail purchaser of the motor
10 vehicle.

11 5. The nonprofit organization shall maintain the motor vehicle
12 financial responsibility requirements prescribed by chapter 9, article 4 of
13 this title if operating the motor vehicle including operating the motor
14 vehicle to the place of consignment.

15 6. The nonprofit organization may operate the donated motor vehicle to
16 the place of consignment without purchasing the one trip registration permit
17 required by section 28-2155.

18 C. Notwithstanding any other provision of this chapter, a person who
19 receives OR DOES NOT RECEIVE consideration for providing a purchaser the
20 opportunity to purchase a motor vehicle from a licensed new motor vehicle
21 dealer at a price that does not exceed a certain amount is not required to be
22 licensed as a motor vehicle dealer or broker under this chapter if the person
23 does not participate in the negotiation of the actual price paid, the
24 delivery terms or any other terms related to the purchase of the vehicle.

APPROVED BY THE GOVERNOR APRIL 18, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2005.



Passed the House March 7, 2005

Passed the Senate April 6, 2005

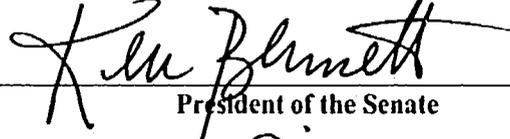
by the following vote: 54 Ayes,

by the following vote: 27 Ayes,

0 Nays, 6 Not Voting

1 Nays, 2 Not Voting


Speaker of the House


President of the Senate


Chief Clerk of the House


Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
_____ day of _____, 20____,
at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of _____,
_____, 20____,
at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this _____ day of _____, 20____,
at _____ o'clock _____ M.

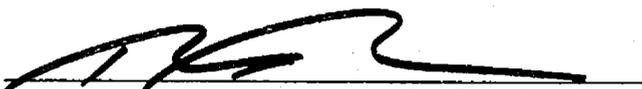
Secretary of State

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 12, 2005,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting


Speaker of the House
Pro Tempore
Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

13th day of April, 2005

at 12:00 o'clock P. M.

Jennifer Ybarra
Secretary to the Governor

Approved this 18 day of

April, 2005,

at 1:45 o'clock P. M.

John R. Rowland
Governor of Arizona

H.B. 2124

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 18 day of April, 2005,

at 4:42 o'clock P. M.

Janice K. Brewer
Secretary of State