

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

CHAPTER 123

# HOUSE BILL 2129

AN ACT

AMENDING SECTION 28-4301, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2004, CHAPTER 188, SECTION 26; AMENDING SECTIONS 28-4308, 28-4531 AND 28-4532, ARIZONA REVISED STATUTES; RELATING TO USED 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 28-4301, Arizona Revised Statutes, as amended by  
3 Laws 2004, chapter 188, section 26, is amended to read:

4 28-4301. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Area of responsibility" means the area surrounding an individual  
7 dealer that the factory designates as that dealer's individual primary  
8 geographic territory for the purpose of marketing, promoting, selling and  
9 leasing new motor vehicles. In the absence of the factory designated area,  
10 the area of responsibility is that geographical area surrounding a dealer  
11 that lies closer to that dealer than to other dealers of the same  
12 line-make.

13 2. "Automotive recycler" means a person who is engaged in the business  
14 of buying or acquiring a motor vehicle solely for the purpose of dismantling,  
15 selling or otherwise disposing of the parts or accessories and who dismantles  
16 six or more vehicles in a calendar year.

17 3. "Branch license" means a license that is issued by the director to  
18 a licensed motor vehicle dealer and that permits the licensee to sell motor  
19 vehicles from an established place of business within the same county but  
20 other than the original or principal place of business for which the license  
21 was issued.

22 4. "Broker" means a person who for any fee, commission or other  
23 valuable consideration offers to provide, provides or represents that the  
24 person will provide a service of arranging or assisting in effecting the  
25 purchase of a motor vehicle and who is not:

26 (a) A new motor vehicle dealer or an employee or agent of a new motor  
27 vehicle dealer.

28 (b) A used motor vehicle dealer or an employee or agent of a used  
29 motor vehicle dealer.

30 (c) A manufacturer or employee or agent of a manufacturer.

31 (d) An auctioneer or engaged in the auto auction business.

32 (e) A wholesale motor vehicle dealer.

33 5. "Community" means the relevant market area. For the purposes of  
34 this paragraph, "relevant market area" means the incorporated city or town in  
35 which the franchise is located.

36 6. "Distributor" means a person who either:

37 (a) Sells or distributes new motor vehicles to new motor vehicle  
38 dealers in this state.

39 (b) Maintains distributor representatives in this state.

40 7. "Distributor branch" means a branch office maintained or availed of  
41 by a distributor for either:

42 (a) The sale of new motor vehicles to new motor vehicle dealers in  
43 this state.

44 (b) Directing or supervising its representatives in this state.

1           8. "Established place of business":

2           (a) Means a permanent enclosed building or structure that is owned  
3 either in fee or leased with sufficient space to display two or more motor  
4 vehicles of a kind and type that the dealer is licensed to sell and that is  
5 devoted principally to the use of a motor vehicle dealer in the conduct of  
6 the business of the dealer.

7           (b) In the case of a used motor vehicle dealer, trailer dealer or  
8 semitrailer dealer:

9           (i) Need not be a permanent building or structure or part of a  
10 permanent building or structure.

11           (ii) May be a vacant lot or part of a vacant lot.

12           (iii) Does not mean or include a residence, tent, temporary stand or  
13 temporary quarters or permanent quarters occupied pursuant to a temporary  
14 arrangement.

15           (c) In the case of an automotive recycler, means a permanent site or  
16 location at which the business of an automotive recycler is or will be  
17 conducted.

18           9. "Exhibitor" means a manufacturer of new motor homes that exhibits  
19 new motor homes at a special event.

20           10. "Factory branch" means a branch office maintained or availed of by  
21 a manufacturer for either:

22           (a) The sale of new motor vehicles to distributors or the sale of new  
23 motor vehicles to new motor vehicle dealers in this state.

24           (b) Directing or supervising its representatives in this state.

25           11. "Financial institution" means a bank, trust company, savings and  
26 loan association, credit union, consumer lender, international banking  
27 facility or holding company that is licensed, regulated or insured by the  
28 department of financial institutions, the federal deposit insurance  
29 corporation, the office of thrift supervision, the comptroller of the  
30 currency, the national credit union share insurance fund or the national  
31 credit union administration.

32           12. "Franchise" means a contract between two or more persons if all of  
33 the following conditions are included:

34           (a) A commercial relationship of definite duration or continuing  
35 indefinite duration is involved.

36           (b) The franchisee is granted the right to offer, sell and service in  
37 this state new motor vehicles manufactured or distributed by the franchisor.

38           (c) The franchisee, as a separate business, constitutes a component of  
39 the franchisor's distribution system.

40           (d) The operation of the franchisee's business is substantially  
41 associated with the franchisor's trademark, service mark, trade name,  
42 advertising or other commercial symbol designating the franchisor.

43           (e) The operation of the franchisee's business is substantially  
44 reliant on the franchisor for the continued supply of new motor vehicles,  
45 parts and accessories.

1 13. "Franchisee" means a person who both:

2 (a) Receives new motor vehicles from the franchisor under a franchise.

3 (b) Offers and sells to and services new motor vehicles for the  
4 general public.

5 14. "Franchisor" means a person who both:

6 (a) Manufactures or distributes new motor vehicles.

7 (b) May enter into a franchise.

8 15. "Importer" means a person who transports or arranges for the  
9 transportation of a foreign manufactured new motor vehicle into the United  
10 States for sale in this state.

11 16. "Lead" means any retail consumer who satisfies all of the  
12 following:

13 (a) Responds to a factory-directed program that obtains consumer  
14 contact information and that provides such information to one or more  
15 dealers.

16 (b) Expresses an interest to the factory in purchasing, leasing or  
17 acquiring any vehicle or product, service or financing available from the  
18 dealers of that factory.

19 (c) Does not qualify for any reasonable factory sponsored employee,  
20 retiree or vendor new vehicle purchase program or any other reasonable  
21 similar factory new vehicle purchase program.

22 17. "Line-make" means those motor vehicles that are offered for sale,  
23 lease or distribution under a common name, trademark, service mark or brand  
24 name of the manufacturer of those same motor vehicles.

25 18. "Major component part" includes a motor vehicle or vehicle part  
26 that the manufacturer has assigned any factory, motor, serial or other  
27 identification number or mark.

28 19. "Manufacturer" means any person who either:

29 (a) Manufactures or assembles new motor vehicles.

30 (b) Manufactures or installs on previously assembled truck chassis  
31 special bodies or equipment that when installed forms an integral part of the  
32 new motor vehicle and that constitutes a major manufacturing alteration,  
33 excluding the installation of a camper on a pickup truck.

34 20. "Motor home" means a motor vehicle that is primarily designed as  
35 temporary living quarters and that:

36 (a) Is built onto as an integral part of, or is permanently attached  
37 to, a motor vehicle chassis.

38 (b) Contains at least four of the following independent life support  
39 systems if each is permanently installed and designed to be removed only for  
40 purposes of repair or replacement:

41 (i) A cooking facility with an on board fuel source.

42 (ii) A gas or electric refrigerator.

43 (iii) A toilet with exterior evacuation.

1 (iv) A heating or air conditioning system with an on board power or  
2 fuel source separate from the vehicle engine.

3 (v) A potable water supply system that includes at least a sink, a  
4 faucet and a water tank with an exterior service supply connection.

5 (vi) A 110-125 volt electric power supply.

6 21. "Motor vehicle" means an automobile, motor bus, motorcycle, truck  
7 or truck tractor or any other self-propelled vehicle, trailer or semitrailer.

8 22. "Motor vehicle dealer" means a new motor vehicle dealer, a used  
9 motor vehicle dealer, a broker or a wholesale motor vehicle auction dealer,  
10 excluding a person who comes into possession of a motor vehicle as an  
11 incident to the person's regular business and who sells, AUCTIONS or  
12 exchanges the motor vehicle.

13 23. "New house trailer dealer" means a person who buys, sells,  
14 exchanges or offers or attempts to negotiate a sale or exchange of an  
15 interest in, or who is engaged in the business of selling, new house trailers  
16 or used house trailers taken in trade on new house trailers. For the  
17 purposes of this paragraph, "house trailer" means a vehicle, other than a  
18 motor vehicle, that is built on a chassis designed for being drawn on the  
19 highways by a motor vehicle and that is designed for human habitation.

20 24. "New motor vehicle" means a motor vehicle, other than a used motor  
21 vehicle, that is held either for:

22 (a) Sale by the franchisee who first acquired the vehicle from the  
23 manufacturer or distributor of the vehicle.

24 (b) Sale by another franchisee of the same line-make.

25 25. "New motor vehicle dealer" means a person who buys, sells,  
26 exchanges or offers or attempts to negotiate a sale or exchange of an  
27 interest in, or who is engaged in the business of selling, new motor vehicles  
28 or used motor vehicles taken in trade on new motor vehicles or used vehicles  
29 purchased for resale.

30 26. "Off-premises display and sales" means a promotion or sale of motor  
31 vehicles for a period of time as specified by the director that both:

32 (a) Is sponsored by a licensed motor vehicle dealer, the licensed  
33 motor vehicle dealer's agents or the manufacturer.

34 (b) Takes place at a location within the same county but not at the  
35 licensee's established place of business.

36 27. "Off-premises exhibition" means the exhibition of a motor vehicle  
37 for a period of time as specified by the director at a location within the  
38 same county but not at the established place of business of a licensed motor  
39 vehicle dealer and at which a solicitation or sale does not occur.

40 28. "Provisional automotive recycler's license" means a license that  
41 both:

42 (a) Is issued by the department only in conjunction with an  
43 application for an automotive recycler's license.

1 (b) Permits the applicant or applicants to conduct the business of an  
2 automotive recycler regulated by this chapter pending completion of the  
3 criminal records check pursuant to section 28-4361.

4 29. "Provisional dealer's license" means a license that both:

5 (a) Is issued by the department only in conjunction with an  
6 application for a dealer's license.

7 (b) Permits the applicant or applicants to conduct the business of a  
8 motor vehicle dealer regulated by this chapter pending completion of the  
9 criminal records check pursuant to section 28-4361.

10 30. "Retail consumer" means any person purchasing, leasing or acquiring  
11 or possibly purchasing, leasing or acquiring a vehicle or product, service or  
12 financing not for resale.

13 31. "Service" means any service that is sold, leased or provided to  
14 retail consumers and that directly relates to the ownership or leasing of a  
15 new or used motor vehicle, including extended service contracts or motor  
16 vehicle warranty and nonwarranty repairs or maintenance, including both parts  
17 and labor.

18 32. "Special event" means an exhibition of new motor homes by a motor  
19 vehicle dealer licensed to sell new motor homes or an exhibitor for a period  
20 of time specified by the director at a location in this state other than the  
21 licensee's or exhibitor's established place of business.

22 33. "Used motor vehicle" means a motor vehicle that has been sold,  
23 bargained, exchanged or given away or the title to the motor vehicle has been  
24 transferred from the person who first acquired the vehicle from the  
25 manufacturer, or importer, dealer or agent of the manufacturer or importer,  
26 and that has been placed in bona fide consumer use. For the purposes of this  
27 paragraph, "bona fide consumer use" means actual operation by an owner who  
28 acquired a new motor vehicle both:

29 (a) For use in the owner's business or for pleasure or otherwise.

30 (b) For which a certificate of title has been issued or that has been  
31 registered as provided by law.

32 34. "Used motor vehicle dealer" means a person, other than a new motor  
33 vehicle dealer, who buys, sells, AUCTIONS, exchanges or offers or attempts to  
34 negotiate a sale or exchange of an interest in, or who is engaged in the  
35 business of selling, four or more used motor vehicles in a continuous twelve  
36 month period. Used motor vehicle dealer does not include a ~~person who buys,~~  
37 ~~sells, exchanges or offers or attempts to negotiate a sale of or exchange an~~  
38 ~~interest in a classic car as defined in section 28-2483 or a historic vehicle~~  
39 ~~as defined in section 28-2484~~ WHOLESAL MOTOR VEHICLE AUCTION DEALER.

40 35. "Wholesale motor vehicle auction dealer" means a person who both:  
41 (a) Is in the business of providing auction services solely in  
42 wholesale transactions to motor vehicle dealers licensed by this state or any  
43 other jurisdiction.

1 (b) Does not buy, sell or own the motor vehicles the auction dealer  
2 auctions in the ordinary course of business.

3 36. "Wholesale motor vehicle dealer" means a person who sells used  
4 motor vehicles only to licensed motor vehicle dealers.

5 Sec. 2. Section 28-4308, Arizona Revised Statutes, is amended to read:  
6 28-4308. Prohibition; applicability

7 A. A manufacturer, distributor, factory branch, distributor branch,  
8 motor vehicle dealer or automotive recycler shall not engage in business  
9 except in accordance with the requirements of law.

10 B. This chapter does not apply to:

11 1. A public officer engaged in the discharge of the officer's official  
12 duties.

13 2. Any trustee, receiver or other officer acting under the  
14 jurisdiction of a court.

15 3. A financial institution disposing of a repossessed vehicle.

16 4. A person disposing of the person's personal vehicles.

17 5. A SELF-SERVICE STORAGE FACILITY DISPOSING OF A VEHICLE PURSUANT TO  
18 SECTION 33-1704.

19 C. The provisions of this chapter regulating and licensing  
20 manufacturers, distributors, factory branches, distributor branches and  
21 franchisors only apply to those manufacturers, distributors, factory  
22 branches, distributor branches and franchisors of passenger cars, trucks,  
23 buses, motorcycles, trailers and semitrailers.

24 D. Sections of this chapter that:

25 1. Refer to a motor vehicle dealer apply to a new house trailer  
26 dealer.

27 2. Refer to a motor vehicle dealer apply to a used house trailer  
28 dealer as defined in section 28-4332.

29 Sec. 3. Section 28-4531, Arizona Revised Statutes, is amended to read:  
30 28-4531. Definitions

31 In this article, unless the context otherwise requires:

32 1. "Cargo" means commercial or industrial items but does not include  
33 personal items such as luggage and camping equipment.

34 2. "Dealer" means a new motor vehicle dealer, a used motor vehicle  
35 dealer or a wholesale motor vehicle dealer.

36 3. "Employee of the dealer" means ANY OF THE FOLLOWING:

37 (a) An employee who is paid compensation and who appears on the  
38 records of the dealer as an employee for whom social security, withholding  
39 taxes and all other deductions required by law for employees are made and for  
40 whom all applicable payroll taxes are paid by the dealer.

41 (b) AN INDEPENDENT CONTRACTOR WHO APPEARS ON THE RECORDS OF THE DEALER  
42 AND WHO IS PAID COMPENSATION FOR SPECIFIC SERVICES THAT ARE PERFORMED FOR THE  
43 DEALER AND THAT REQUIRE THE OPERATION OF DEALER OWNED VEHICLES.

44 (c) AN IMMEDIATE FAMILY MEMBER OF THE DEALER WHO APPEARS ON THE  
45 RECORDS OF THE DEALER AND WHO IS PAID COMPENSATION FOR SPECIFIC SERVICES THAT

1 ARE PERFORMED FOR THE DEALER AND THAT REQUIRE THE OPERATION OF DEALER OWNED  
2 VEHICLES. FOR THE PURPOSES OF THIS SUBDIVISION, "IMMEDIATE FAMILY MEMBER"  
3 MEANS A SPOUSE OR A PARENT, CHILD, BROTHER OR SISTER WHETHER RELATED BY  
4 ADOPTION OR BLOOD.

5 4. "Employee of the manufacturer" means an employee who is paid  
6 compensation and who appears on the records of the manufacturer as an  
7 employee for whom social security, withholding taxes and all other deductions  
8 required by law for employees are made and for whom all applicable payroll  
9 taxes are paid by the manufacturer.

10 5. "Full-time employee of the dealer" means a person who qualifies as  
11 an employee of the dealer and who works at least twenty-four hours each week  
12 for the dealer.

13 6. "Full-time employee of the manufacturer" means a person who  
14 qualifies as an employee of the manufacturer and who works at least  
15 twenty-four hours each week for the manufacturer.

16 7. "Manufacturer" means a person engaged in the business of  
17 manufacturing motor vehicles, trailers or semitrailers or a person engaged in  
18 the manufacture of integrated automotive systems and modules that are being  
19 tested at or in conjunction with a facility located in this state.

20 8. "Modules" means groups of component parts that are arranged in  
21 close physical proximity to each other within a vehicle and that may be  
22 assembled by the supplier and shipped to the manufacturer for installation in  
23 a vehicle as a unit.

24 9. "Systems" means groups of component parts that are located  
25 throughout a vehicle and that operate together to provide a specific vehicle  
26 function.

27 Sec. 4. Section 28-4532, Arizona Revised Statutes, is amended to read:  
28 28-4532. Dealer owned vehicles; registration exemption; use of  
29 dealer plates; civil penalty

30 A. A vehicle that is owned by a dealer and that is otherwise required  
31 to be registered is exempt from registration while the vehicle is owned by  
32 the dealer. A vehicle owned by a dealer may be operated under owner  
33 responsibility on public highways and streets according to the following  
34 provisions:

35 1. The vehicle displays a license plate issued to the owner as  
36 provided in this article in the manner prescribed in section 28-2354.

37 2. The owner, an employee of the dealer or a prospective buyer may  
38 operate the vehicle according to subsection C of this section.

39 B. Dealers' plates shall not be used on the following dealer owned  
40 vehicles:

41 1. A work or service vehicle.

42 2. A leased or rented vehicle owned by a dealer.

43 3. A laden vehicle designed for the transportation of cargo unless the  
44 cargo consists of no more than three vehicles that are owned by the dealer

1 and the laden vehicle and the cargo are being operated or transported by the  
2 dealer for resale.

3 4. A vehicle that has been sold.

4 C. Except as provided in subsection B of this section, a dealer plate  
5 may be used on a dealer owned vehicle as follows:

6 1. When operated by the dealer or by an employee of the dealer in  
7 connection with the dealer's business. The vehicle may be operated as  
8 personal use transportation if it is assigned to a dealer or full-time  
9 employee of the dealer on a full-time use basis and if a record of the  
10 assignment is made as specified in section 28-4535. The authorized use  
11 applies to dealers or employees solely and does not apply to any other person  
12 as operator.

13 2. When operated by a prospective buyer for demonstration purposes for  
14 a period of not more than forty-eight hours for passenger vehicles and  
15 seventy-two hours for unladen pickups and trucks.

16 D. A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO A CIVIL PENALTY OF  
17 UP TO FIVE HUNDRED DOLLARS.

18 Sec. 5. Effective date

19 Section 28-4301, Arizona Revised Statutes, as amended by Laws 2004,  
20 chapter 188, section 26 and this act, is effective from and after  
21 December 31, 2005.

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 7, 2005,

by the following vote: 54 Ayes,

by the following vote: 28 Ayes,

0 Nays, 6 Not Voting

1 Nays, 1 Not Voting

[Signature]  
Speaker of the House

[Signature]  
President of the Senate

[Signature]  
Chief Clerk of the House

[Signature]  
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~~

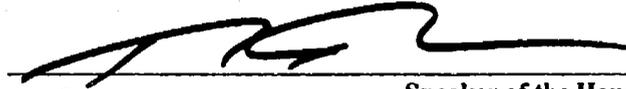
H.B. 2129

HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

April 12, 2005,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

  
\_\_\_\_\_  
Speaker of the House  
Pro Tempore  
Herman 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

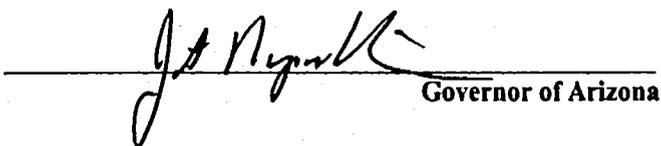
at 12:00 o'clock P. M.

Weniger Ybarra  
Secretary to the Governor

Approved this 18 day of

April, 2005,

at 1:45 o'clock P. M.

  
\_\_\_\_\_  
Governor of Arizona

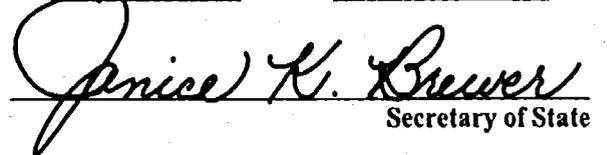
H.B. 2129

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.

  
\_\_\_\_\_  
Secretary of State