Senate Engrossed House Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

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CHAPTER 246

HOUSE BILL 2732

AN ACT

AMENDING SECTIONS 28-2001, 28-2055, 28-2154, 28-2154.01 AND 42-5009, ARIZONA REVISED STATUTES; RELATING TO VEHICLE REGISTRATION REQUIREMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 28-2001, Arizona Revised Statutes, is amended to
3 read:
4 28-2001. Definitions
5 A. "Resident", for the purpose of registration and operation of motor
6 vehicles:
7 1. Except as provided by paragraph 2, means the following:
8 (a) A person who, regardless of domicile, remains in this state for an
9 aggregate period of seven months or more during a calendar year.
10 (b) A person who engages in a trade, profession or occupation in this
11 state or who accepts employment in other than either:
12 (i) Seasonal agricultural work.
13 (ii) Temporary seasonal work for a period of not more than three
14 months if the state in which the temporary seasonal worker is permanently
15 domiciled has a similar exception.
16 (c) A person who places children in a public school without payment of
17 nonresident tuition.
18 (d) A person who declares that the person is a resident of this state
19 for the purpose of obtaining at resident rates a state license or tuition
20 fees at an educational institution maintained by public monies.
21 (e) An individual, partnership, company, firm, corporation or
22 association that maintains a main office, a branch office or warehouse
23 facilities in this state and that bases and operates motor vehicles in this
24 state.
25 (f) An individual, partnership, company, firm, corporation or
26 association that operates motor vehicles in intrastate transportation, for
27 other than seasonal agricultural work.
28 (g) A PERSON WHO IS REGISTERED TO VOTE IN THIS STATE.
29 2. Does not mean:
30 (a) A nonresident owner of a foreign vehicle that is registered and
31 licensed in a state adjoining this state and that is used in this state for
32 other than the transportation of passengers or property for compensation, if
33 the nonresident owner and vehicle are domiciled in an adjoining state but
34 within twenty-five miles of the border of this state and if the state in
35 which the owner resides and in which the vehicle is registered exempts from
36 payment of registration and weight fees like vehicles from this state,
37 regardless of whether the nonresident owner engages in a trade, profession or
38 occupation in this state or accepts employment.
39 (b) An out-of-state student enrolled with seven or more semester hours
40 regardless of whether the student engages in a trade, profession or
41 occupation in this state or accepts employment in this state. For the
42 purposes of this paragraph, "out-of-state student" means either:

(i) A person who is enrolled at an educational institution maintained by public monies and who is not classified as an in-state student under section 15-1802.

(ii) A person who is a student at a private educational institution and who would not be classified as an in-state student under section 15-1802 if the student were attending a public educational institution.

(c) A nonresident daily commuter as defined in section 28-2291.

B. In this chapter, unless the context otherwise requires:

1. "Mobile home" means a structure that is transportable in one or more sections, including the plumbing, heating, air conditioning and electrical systems that are contained in the structure, and that, when erected on site, is either of the following:

(a) More than eight body feet in width, thirty-two body feet or more in length and built on a permanent chassis.

(b) Regardless of the size, used as a single family dwelling or for commercial purposes with or without a permanent foundation.

2. "Serial number" means the number placed on the vehicle by its manufacturer or assigned pursuant to section 28-2165.

Sec. 2. Section 28-2055, Arizona Revised Statutes, is amended to read:

28-2055. Certificate of title; content requirements; delivery

A. The department or an authorized third party shall print the certificate of title, and it shall contain forms for assignment of title or interest and warranty by the owner, with space for notation of liens and encumbrances on the vehicle at the time of transfer. The certificate of title shall also contain the odometer mileage disclosure statement pursuant to section 28-2058.

B. AT THE REQUEST OF THE OWNER AND ON PAYMENT OF A FEE PRESCRIBED BY THE DEPARTMENT BY RULE, THE CERTIFICATE OF TITLE MAY CONTAIN, BY ATTACHMENT, A TRANSFER ON DEATH PROVISION WHERE THE OWNER MAY DESIGNATE A BENEFICIARY OF THE TITLE. THE ATTACHMENT SHALL INCLUDE A NOTICE TO THE OWNER AND ANY BENEFICIARY THAT THE MONETARY LIMITATION ON THE TRANSFER OF PERSONAL PROPERTY IN A DECEDENT'S ESTATE PRESCRIBED IN SECTION 14-3971 MAY APPLY.

~~B.~~ C. If a motor vehicle, trailer or semitrailer has been registered in any other state or country, the department shall retain in its records the name of the state or country in which the prior registration took place.

~~C.~~ D. Except as provided in section 28-2064, the department shall deliver or mail the original certificate of title to:

1. The applicant if there are not any liens or encumbrances on the certificate of title.

2. The holder of the lien or encumbrance first in time on the date of the application if there are liens or encumbrances on the certificate of title.

Sec. 3. Section 28-2154, Arizona Revised Statutes, is amended to read:

28-2154. Special registrations

A. A nonresident who purchases an unregistered vehicle in this state for removal to the state of residence of the purchaser shall obtain a special ninety day nonresident registration permit for the vehicle. The nonresident shall obtain the special ninety day nonresident registration permit by applying to the department, to an authorized third party or to a motor vehicle dealer as defined in section 28-4301 and by paying the fees prescribed by section 28-2003. UNLESS THE NONRESIDENT PURCHASER HAS COMPLETED A FORM PRESCRIBED BY SECTION 42-5009, SUBSECTION I, an affidavit in a form prescribed by the director shall accompany the application and shall contain the following statements:

1. The purchaser is not a resident of this state as defined in section 28-2001. For the purposes of this section and section 28-2154.01, the purchaser shall present to the department, an authorized third party or a motor vehicle dealer a driver license or other evidence prescribed by the director showing that the purchaser is not a resident of this state.

2. The vehicle is purchased to be registered out of state within ninety days after the issuance of the special ninety day nonresident registration permit.

3. The vehicle is not purchased for transfer to a resident of this state.

~~4. The purchaser is liable for any tax, penalty and interest that is due under title 42, chapter 5 if the purchaser registers the vehicle in this state within three hundred sixty-five days after the issuance of the special ninety day nonresident registration permit.~~

~~5.~~ 4. Other information that the director deems necessary.

B. At the time of application for a special ninety day nonresident registration permit, the purchaser shall submit for inspection proper evidence of ownership of the vehicle to be registered. The special ninety day nonresident registration permit is valid for not more than ninety days from the date of issuance and shall be in the form prescribed by the director. A person who obtains a special ninety day nonresident registration permit on a semitrailer that has been manufactured in this state may use the semitrailer for commercial purposes if the semitrailer is being used to transport goods from this state, subject to the payment of any taxes prescribed by this title.

C. An enrolled member of an Indian tribe who resides on the Indian reservation established for that tribe and who purchases an unregistered vehicle in this state for removal to the Indian reservation shall obtain a special ninety day nonresident registration permit for the vehicle. The member may obtain the special ninety day nonresident registration permit by applying to the department, to an authorized third party or to any motor vehicle dealer as defined by section 28-4301 and by payment of the fees prescribed by section 28-2003.

D. A resident who does not have complete documentation for issuance of an Arizona title and registration on a noncommercial vehicle but who has established ownership of the vehicle to the satisfaction of the department may receive a special ninety day resident registration by applying and paying the fee prescribed by section 28-2003 to the department. The basis of assessment for the full annual registration fee and vehicle license tax relates back to the date of issuance of the first special ninety day resident registration.

E. A resident may receive a second consecutive special ninety day resident registration on application and payment of the fee prescribed by section 28-2003 if:

1. The person has applied for a bonded title and the title has not been issued during the first ninety day registration.

2. The person is awaiting settlement of an estate.

3. The person is awaiting lien clearance.

4. The person is awaiting a hearing decision as a result of a title complaint.

5. The person is awaiting the issuance of honorary consular official special license plates.

6. The director determines other circumstances justify the issuance.

F. At the discretion of the director, a resident may receive more than two consecutive special ninety day resident registrations for a vehicle in a twelve month period.

G. If there is a judgment against a resident of this state in another state that requires suspension of the resident's vehicle registration, in lieu of suspension of the resident's vehicle registration the department may issue a special temporary registration for the resident's vehicle that is valid for a period of not more than one hundred eighty days.

Sec. 4. Section 28-2154.01, Arizona Revised Statutes, is amended to read:

28-2154.01. <u>Special ninety day nonresident registration permits; procedures; department of revenue actions</u>

A. A dealer or an authorized third party that issues a special ninety day nonresident registration permit pursuant to section 28-2154 shall send an electronic record of the permit to the department through an authorized third party or through the department's authorized third party electronic service provider.

B. The department, an authorized third party or a dealer shall not:

1. Issue, assign or deliver a special ninety day nonresident registration permit to any person ~~other than a bona fide purchaser or authorized representative of a bona fide purchaser of a vehicle who is not a resident as defined in section 28-2001~~ UNLESS THE PERSON DOES ALL OF THE FOLLOWING:

(a) OBTAINS THE SPECIAL NINETY DAY NONRESIDENT REGISTRATION PERMIT PURSUANT TO SECTION 28-2154.

(b) COMPLETES AN AFFIDAVIT IN A FORM PRESCRIBED BY THE DIRECTOR PURSUANT TO SECTION 28-2154 OR COMPLETES A FORM PRESCRIBED BY SECTION 42-5009, SUBSECTION I.

(c) PRESENTS TO THE DEPARTMENT, AUTHORIZED THIRD PARTY OR MOTOR VEHICLE DEALER A CURRENTLY VALID DRIVER LICENSE ISSUED BY ANOTHER STATE INDICATING AN ADDRESS OUTSIDE OF THIS STATE.

~~2.~~ (d) ~~Issue a special ninety day nonresident registration permit unless the purchaser files an affidavit as prescribed in section 28-2154 and~~ Provides any other information REASONABLY AND UNIFORMLY required by the department of transportation PURSUANT TO SECTION 28-2154 or the department of revenue PURSUANT TO SECTION 42-5009, SUBSECTION I.

~~3.~~ 2. Issue and affix, as prescribed in subsection C of this section, a special ninety day nonresident registration permit unless the permit is recorded in the electronic records of the department.

C. A person who issues a special ninety day nonresident registration permit shall affix or insert, clearly and indelibly, on the face of each permit the dates of issuance and expiration and the make and vehicle identification number of the vehicle. The special ninety day nonresident registration permit shall not bear the name or address of the person who purchased the vehicle in a position that is legible from outside of the vehicle.

D. A dealer or authorized third party who issues a special ninety day nonresident registration permit shall maintain a record, in a form prescribed by the director, of all special ninety day nonresident registration permits issued by the dealer or authorized third party and a record of other information pertaining to the issuance of special ninety day nonresident registration permits that the department of transportation or the department of revenue requires.

E. The dealer or authorized third party shall keep each record for at least three years after the date of entry of the record.

F. A dealer or authorized third party shall allow the director of the department of transportation or the director of the department of revenue full and free access to the records during regular business hours.

G. The electronic record is written notice of the removal of the vehicle from this state for use in the purchaser's state of residence and relieves the dealer or authorized third party of liability in accordance with THE REQUIREMENTS OF section 42-5009.

H. If a purchaser registers the vehicle in this state within three hundred sixty-five days after the issuance of the special ninety day nonresident registration permit, the purchaser is liable in an amount equal to any tax, penalty and interest that the motor vehicle dealer or authorized third party would have been required to pay under title 42, chapter 5 AND UNDER ARTICLES IV AND VI OF THE MODEL CITY TAX CODE AS DEFINED IN

SECTION 42-6051. At the time of issuing the special ninety day nonresident registration permit, a motor vehicle dealer or authorized third party shall inform the purchaser IN WRITING of the PURCHASER'S liability described in this section. SUBSEQUENT REGISTRATION OR USE OF THE VEHICLE IN THIS STATE DOES NOT CREATE A CAUSE OF ACTION AGAINST A DEALER OR AUTHORIZED THIRD PARTY THAT COMPLIES WITH SECTION 28-2154, SUBSECTION A, THIS SECTION AND SECTION 42-5009, SUBSECTION I.

I. The department of transportation and the department of revenue shall jointly develop and prescribe forms for the motor vehicle dealer, the authorized third party and the purchaser to complete for the proper administration and enforcement of this section.

J. Compliance with this section and section 28-2154 allows delivery of the vehicle to a nonresident purchaser in this state and retains the applicable ~~exemptions~~ DEDUCTIONS pursuant to section 42-5061, subsection A, paragraph 28, SUBDIVISION (a) AND SUBSECTION U.

Sec. 5. Section 42-5009, Arizona Revised Statutes, is amended to read:

42-5009. Certificates establishing deductions; liability for making false certificate

A. A person who conducts any business classified under article 2 of this chapter may establish entitlement to the allowable deductions from the tax base of that business by both:

1. Marking the invoice for the transaction to indicate that the gross proceeds of sales or gross income derived from the transaction was deducted from the tax base.

2. Obtaining a certificate executed by the purchaser indicating the name and address of the purchaser, the precise nature of the business of the purchaser, the purpose for which the purchase was made, the necessary facts to establish the appropriate deduction and the tax license number of the purchaser to the extent the deduction depends on the purchaser conducting business classified under article 2 of this chapter and a certification that the person executing the certificate is authorized to do so on behalf of the purchaser. The certificate may be disregarded if the seller has reason to believe that the information contained in the certificate is not accurate or complete.

B. A person who does not comply with subsection A of this section may establish entitlement to the deduction by presenting facts necessary to support the entitlement, but the burden of proof is on that person.

C. The department may prescribe a form for the certificate described in subsection A of this section. Under such rules as it may prescribe, the department may also describe transactions with respect to which a person is not entitled to rely solely on the information contained in the certificate provided for in subsection A of this section but must instead obtain such additional information as required by the rules in order to be entitled to the deduction.

D. If a seller is entitled to a deduction by complying with subsection A of this section, the department may require the purchaser which caused the execution of the certificate to establish the accuracy and completeness of the information required to be contained in the certificate which would entitle the seller to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest which the seller would have been required to pay under this article if the seller had not complied with subsection A of this section. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as ~~a transaction privilege tax to the purchaser and as~~ tax revenues collected from the seller in order to designate the distribution base for purposes of section 42-5029.

E. If a seller is entitled to a deduction by complying with subsection B of this section, the department may require the purchaser to establish the accuracy and completeness of the information provided to the seller that entitled the seller to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest that the seller would have been required to pay under this article if the seller had not complied with subsection B of this section. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as ~~a transaction privilege tax to the purchaser and as~~ tax revenues collected from the seller in order to designate the distribution base for purposes of section 42-5029.

F. The department may prescribe a form for a certificate used to establish entitlement to the deductions described in section 42-5061, subsection A, paragraph 47 and section 42-5063, subsection B, paragraph 3. Under rules the department may prescribe, the department may also require additional information for the seller to be entitled to the deduction. If a seller is entitled to the deductions described in section 42-5061, subsection A, paragraph 47 and section 42-5063, subsection B, paragraph 3, the department may require the purchaser who executed the certificate to establish the accuracy and completeness of the information contained in the certificate that would entitle the seller to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest that the seller would have been required to pay under this article. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as ~~a transaction privilege tax to the purchaser and as~~ tax revenues collected from the seller in order to designate the distribution base for purposes of section 42-5029.

G. If a seller claims a deduction under section 42-5061, subsection A, paragraph 25 and establishes entitlement to the deduction with an exemption letter that the purchaser received from the department and the exemption letter was based on a contingent event, the department may require the purchaser that received the exemption letter to establish the satisfaction of the contingent event within a reasonable time. If the purchaser cannot establish the satisfaction of the event, the purchaser is liable in an amount equal to any tax, penalty and interest that the seller would have been required to pay under this article if the seller had not been furnished the exemption letter. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as ~~a transaction privilege tax to the purchaser and as~~ tax revenues collected from the seller in order to designate the distribution base for purposes of section 42-5029. For the purposes of this subsection, "reasonable time" means a time limitation that the department determines and that does not exceed the time limitations pursuant to section 42-1104.

H. From and after December 31, 2005 through December 31, 2010, the department shall prescribe a form for a certificate used to establish entitlement to the deductions described in section 42-5061, subsection B, paragraph 23, SECTION 42-5066, SUBSECTION B, PARAGRAPH 5, section 42-5070, subsection C, paragraph 2, section 42-5074, subsection B, paragraph 10, section 42-5075, subsection B, paragraph 20 and section 42-5159, subsection B, paragraph 23 relating to motion picture production. The certificate is effective for twelve consecutive calendar months from and after the date of issuance and is subject to the following requirements and conditions:

1. A motion picture production company as defined in section 41-1517 may use a certificate issued pursuant to this subsection only with respect to production costs described in section 41-1517, subsection A, paragraph 2 that are subject to taxation under article 2 or 4 of this chapter.

2. The department shall issue the certificate to a motion picture production company on receiving the company's letter of qualification from the department of commerce, except as otherwise provided in this subsection.

3. The department shall not issue a certificate to a motion picture production company that has a delinquent tax balance owing to the department under this title or title 43.

4. If the department determines that a motion picture production company no longer qualifies for a certificate ~~of exemption~~ or has used the certificate ~~of exemption~~ for unauthorized purposes, the department shall revoke the certificate ~~of exemption~~ and the motion picture production company is liable for an amount equal to the transaction privilege and use taxes that would have been due on taxable transactions during the time the company did not qualify for or improperly used the certificate, with interest and penalties as provided by law.

5. The department shall maintain annual data on the total amount of monies exempted through the use of certificates issued pursuant to this subsection and shall provide those data to the department of commerce on request.

6. The department of revenue, with the cooperation of the department of commerce, shall adopt rules and publish and prescribe forms and procedures as necessary to effectuate the purposes of this subsection.

7. If, after audit, the department determines that a motion picture production company failed to meet any of the requirements prescribed by this subsection, any deductions from taxation from the use of the certificate are subject to recapture and payment by the motion picture production company to the department.

I. THE DEPARTMENT SHALL PRESCRIBE FORMS FOR CERTIFICATES USED TO ESTABLISH THE SATISFACTION OF THE CRITERIA NECESSARY TO QUALIFY THE SALE OF A MOTOR VEHICLE FOR THE DEDUCTIONS DESCRIBED IN SECTION 42-5061, SUBSECTION A, PARAGRAPH 14, PARAGRAPH 28, SUBDIVISION (a) AND PARAGRAPH 45 AND SUBSECTION U. TO ESTABLISH ENTITLEMENT TO THESE DEDUCTIONS, A MOTOR VEHICLE DEALER SHALL RETAIN:

1. A VALID CERTIFICATE AS PRESCRIBED BY THIS SUBSECTION COMPLETED BY THE PURCHASER AND OBTAINED PRIOR TO THE ISSUANCE OF THE NONRESIDENT REGISTRATION PERMIT AUTHORIZED BY SECTION 28-2154.

2. A COPY OF THE NONRESIDENT REGISTRATION PERMIT AUTHORIZED BY SECTION 28-2154.

3. A LEGIBLE COPY OF A CURRENT VALID DRIVER LICENSE ISSUED TO THE PURCHASER BY ANOTHER STATE OR FOREIGN COUNTRY THAT INDICATES AN ADDRESS OUTSIDE OF THIS STATE. FOR THE SALE OF A MOTOR VEHICLE TO A NONRESIDENT ENTITY, THE ENTITY'S REPRESENTATIVE MUST HAVE A CURRENT VALID DRIVER LICENSE ISSUED BY THE SAME JURISDICTION AS THAT IN WHICH THE ENTITY IS LOCATED.

4. FOR THE PURPOSES OF THE DEDUCTION PROVIDED BY SECTION 42-5061, SUBSECTION A, PARAGRAPH 14, A CERTIFICATE DOCUMENTING THE DELIVERY OF THE MOTOR VEHICLE TO AN OUT OF STATE LOCATION.

J. NOTWITHSTANDING SUBSECTION A, PARAGRAPH 2 OF THIS SECTION, IF A MOTOR VEHICLE DEALER HAS ESTABLISHED ENTITLEMENT TO A DEDUCTION BY COMPLYING WITH SUBSECTION I OF THIS SECTION, THE DEPARTMENT MAY REQUIRE THE PURCHASER WHO EXECUTED THE CERTIFICATE TO ESTABLISH THE ACCURACY AND COMPLETENESS OF THE INFORMATION CONTAINED IN THE CERTIFICATE THAT ENTITLED THE MOTOR VEHICLE DEALER TO THE DEDUCTION. IF THE PURCHASER CANNOT ESTABLISH THE ACCURACY AND COMPLETENESS OF THE INFORMATION, THE PURCHASER IS LIABLE IN AN AMOUNT EQUAL TO ANY TAX, PENALTY AND INTEREST THAT THE MOTOR VEHICLE DEALER WOULD HAVE BEEN REQUIRED TO PAY UNDER THIS ARTICLE AND UNDER ARTICLES IV AND V OF THE MODEL CITY TAX CODE AS DEFINED IN SECTION 42-6051. PAYMENT OF THE AMOUNT UNDER THIS SUBSECTION EXEMPTS THE PURCHASER FROM LIABILITY FOR ANY TAX IMPOSED UNDER ARTICLE 4 OF THIS CHAPTER AND ANY TAX IMPOSED UNDER ARTICLE VI OF THE MODEL CITY TAX CODE AS DEFINED IN SECTION 42-6051. THE AMOUNT SHALL

BE TREATED AS TAX REVENUES COLLECTED FROM THE MOTOR VEHICLE DEALER IN ORDER TO DESIGNATE THE DISTRIBUTION BASE FOR PURPOSES OF SECTION 42-5029.

K. NOTWITHSTANDING ANY OTHER LAW, COMPLIANCE WITH SUBSECTION I OF THIS SECTION BY A MOTOR VEHICLE DEALER ENTITLES THE MOTOR VEHICLE DEALER TO THE EXEMPTION PROVIDED IN SECTION 42-6004, SUBSECTION A, PARAGRAPH 4.

Sec. 6. Interim application

A. For the period beginning August 25, 2004, through the effective date of this act, a motor vehicle dealer that has claimed a deduction under section 42-5061, subsection A, paragraph 14, paragraph 28, subdivision (a) or subsection U, Arizona Revised Statutes, or the exemption provided in section 42-6004, subsection A, paragraph 4, Arizona Revised Statutes, and that has obtained all of the following from the purchaser of the motor vehicle shall be deemed to have complied with the requirements documenting a purchaser's nonresident status:

1. An affidavit of the purchaser's nonresident status.

2. A copy of a current valid driver license issued in the name of the purchaser by another state or foreign country that indicates an address outside of this state.

3. A special ninety day nonresident registration permit issued pursuant to section 28-2154, Arizona Revised Statutes.

B. Documentation of delivery of the motor vehicle outside of this state shall substantiate this requirement of the deduction provided in section 42-5061, subsection A, paragraph 14, Arizona Revised Statutes, and the exemption provided in section 42-6004, subsection A, paragraph 4, Arizona Revised Statutes.

C. The subsequent use of the motor vehicle by the purchaser in this state does not disqualify the motor vehicle dealer from the deduction provided by section 42-5061, subsection A, paragraph 14, paragraph 28, subdivision (a) or subsection U, Arizona Revised Statutes, or the exemption provided in section 42-6004, subsection A, paragraph 4, Arizona Revised Statutes.

APPROVED BY THE GOVERNOR MAY 27, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 27, 2008.