

House Engrossed Senate Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

CHAPTER 100

SENATE BILL 1241

AN ACT

AMENDING SECTIONS 28-4412, 28-4451, 28-4457 AND 28-4458, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 10, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 28-4461, 28-4462 AND 28-4463; 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 28-4412, Arizona Revised Statutes, is amended to
3 read:

4 28-4412. Guaranty disclosure; used motor vehicles; definition

5 A. Before the consummation of the sale of a used motor vehicle, a
6 motor vehicle dealer shall:

7 1. Provide each purchaser with a written statement that:

8 (a) Indicates whether or not an express warranty or guaranty is
9 associated with the used motor vehicle.

10 (b) Is distinguished from the body of the sales agreement through the
11 use of either bold-faced type or bold-faced type of a color other than that
12 used in the body of the agreement.

13 (c) States "as is -- not expressly warranted or guaranteed", if the
14 used motor vehicle to be sold is not expressly warranted or guaranteed.

15 (d) Explicitly states the nature and extent of the express warranty or
16 guaranty, if the used motor vehicle to be sold is expressly warranted or
17 guaranteed.

18 (e) States "as is -- not guaranteed to pass vehicle emissions
19 inspection. Vehicle not eligible for certificate of waiver and must be
20 repaired to meet emissions standards", if the used motor vehicle is a
21 disabled vehicle that is offered for sale at a wholesale public auction with
22 an auctioneer who is a licensed used motor vehicle dealer and if the vehicle
23 does not comply with the requirements prescribed in section 49-542.

24 2. Direct the purchaser's attention to the written statement.

25 B. This section does not negate any implied warranties otherwise
26 applicable to the sale of a used motor vehicle, including the implied
27 warranty of merchantability described in section 44-1267.

28 C. Before the seller attempts to sell a motor vehicle the seller shall
29 possess the title to the motor vehicle and the title shall be in the seller's
30 name.

31 D. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION OR TITLE 12,
32 CHAPTER 6, ARTICLE 9, A MOTOR VEHICLE DEALER THAT SELLS A USED MOTOR VEHICLE
33 TO ANOTHER MOTOR VEHICLE DEALER OR FOR THE SOLE PURPOSE OF BEING LEGALLY
34 DESTROYED OR DISMANTLED DOES NOT HAVE A DUTY TO INSPECT A USED MOTOR VEHICLE
35 FOR DEFECTS OR DAMAGE BEFORE THE SALE. THIS SUBSECTION DOES NOT NEGATE ANY
36 DUTIES OWED BY A LICENSED MOTOR VEHICLE DEALER TO ITS RETAIL CUSTOMERS.

37 ~~D.~~ E. For the purposes of this section, "disabled vehicle" means a
38 motor vehicle that cannot operate on its own motive power.

39 Sec. 2. Section 28-4451, Arizona Revised Statutes, is amended to read:

40 28-4451. Product liability; audits; vehicle exports

41 A. Each manufacturer shall file with the director a copy of the
42 delivery and preparation obligations required to be performed by a dealer
43 before delivery of new motor vehicles to buyers. These delivery and
44 preparation obligations constitute the dealer's only responsibility for the
45 product liability as between the dealers and the manufacturer.

1 B. Any mechanical, body or parts defects arising from any express or
2 implied warranties of the manufacturer constitute the manufacturer's product
3 or warranty liability.

4 C. The manufacturer shall reasonably compensate an authorized dealer
5 who performs work to rectify the manufacturer's product or warranty defects
6 or delivery and preparation obligations.

7 D. The dealer shall furnish the purchaser of a new vehicle with a
8 signed copy of the manufacturer's delivery and preparation requirements
9 indicating that all of the requirements have in fact been performed.

10 E. The manufacturer shall pay the cost of the manufacturer's delivery,
11 warranty and preparation requirements.

12 F. The manufacturer, factory branch, distributor or distributor branch
13 may reasonably and periodically audit a new motor vehicle dealer to determine
14 the validity of paid claims for dealer compensation or any charge-backs for
15 warranty parts or service compensation. Audits shall only be for the ~~one~~
16 year SIX MONTH period immediately following the date of the payment. This
17 limitation does not apply if the manufacturer reasonably suspects fraud.

18 G. The manufacturer, factory branch, distributor or distributor branch
19 shall reserve the right to reasonable periodic audits to determine the
20 validity of paid claims for dealer compensation or any charge-backs for
21 consumer or dealer incentives. Audits shall only be for a ~~two~~ ONE year
22 period immediately following the date of the payment. This limitation does
23 not apply if the manufacturer reasonably suspects fraud.

24 H. IF A DEALER SELLS OR LEASES A VEHICLE TO A CUSTOMER WHO EXPORTS THE
25 VEHICLE TO A FOREIGN COUNTRY, UNLESS THE MANUFACTURER PROVES THAT THE DEALER
26 KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE VEHICLE WOULD BE EXPORTED, A
27 MANUFACTURER SHALL NOT DO ANY OF THE FOLLOWING:

28 1. REFUSE TO SELL, ALLOCATE OR DELIVER NEW MOTOR VEHICLES TO THE
29 DEALER.

30 2. CHARGE BACK TO OR WITHHOLD PAYMENTS OR OTHER THINGS OF VALUE FROM
31 THE DEALER THAT THE DEALER OTHERWISE WOULD BE ELIGIBLE FOR UNDER AN INCENTIVE
32 PROGRAM OR CONTEST.

33 3. PREVENT A DEALER FROM PARTICIPATING IN ANY SALES PROMOTION OR
34 PROGRAM.

35 4. TAKE AN ADVERSE ACTION AGAINST A DEALER, INCLUDING REDUCING VEHICLE
36 ALLOCATIONS OR TERMINATING OR THREATENING TO TERMINATE A DEALER.

37 I. THERE IS A REBUTTABLE PRESUMPTION THAT THE DEALER DESCRIBED IN
38 SUBSECTION H DID NOT KNOW OR SHOULD NOT HAVE REASONABLY KNOWN THAT THE
39 VEHICLE DESCRIBED IN SUBSECTION H WOULD BE EXPORTED. THE PRESUMPTION MAY BE
40 REBUTTED BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEALER KNEW OR SHOULD
41 HAVE REASONABLY KNOWN THAT THE VEHICLE WAS TO BE EXPORTED.

1 Sec. 3. Section 28-4457, Arizona Revised Statutes, is amended to read:
2 28-4457. Franchise termination, cancellation or nonrenewal;
3 good cause; changes

4 A. Notwithstanding the terms, provisions or conditions of an agreement
5 or franchise, the following are not good cause for the termination,
6 cancellation or nonrenewal of a franchise:

7 1. The change of ownership of the franchisee's dealership. This
8 paragraph does not authorize a change in ownership that would have the effect
9 of the sale of the franchise without the manufacturer's or distributor's
10 consent. The consent shall not be unreasonably withheld. The burden of
11 establishing the reasonableness is on the franchisor.

12 2. The fact that the franchisee refused to purchase or accept delivery
13 of a new motor vehicle, parts or accessories or any other commodity or
14 service not ordered by the franchisee.

15 ~~B. Notwithstanding the terms, provisions or conditions of an agreement~~
16 ~~or franchise and subject to subsection F, paragraph 2, in the event of the~~
17 ~~sale or transfer of ownership of the franchisee's dealership by sale or~~
18 ~~transfer of the business or by stock transfer to the dealer's qualified~~
19 ~~spouse, son or daughter, the franchisor shall give effect to the change in~~
20 ~~the franchise unless the transfer of the franchisee's license under this~~
21 ~~chapter is denied or the new owner is unable to obtain a license under this~~
22 ~~chapter, as the case may be.~~

23 ~~C.~~ B. If a franchisor enters into or attempts to enter into a
24 franchise, whether on termination or cancellation, on refusal to renew
25 another franchise or on the establishment of an additional new motor vehicle
26 dealership in a community where the same line-make is then represented,
27 without first complying with this chapter, a license under this chapter shall
28 not be issued to that franchisee or proposed franchisee to engage in the
29 business of selling new motor vehicles that are manufactured or distributed
30 by that franchisor.

31 ~~D.~~ C. In determining whether good cause has been established for
32 terminating, canceling or not renewing a franchise, the administrative law
33 judge shall consider the existing circumstances, including the following:

34 1. Amount of business transacted by the franchisee.

35 2. Investment necessarily made and obligations incurred by the
36 franchisee in the performance of the franchisee's part of the franchise.

37 3. Permanency of the investment.

38 4. Whether it is injurious to the public welfare for the business of
39 the franchisee to be discontinued.

40 5. Whether the franchisee has adequate new motor vehicle facilities,
41 equipment, parts and qualified management, sales and service personnel to
42 reasonably provide consumer care for the new motor vehicles sold at retail by
43 the franchisee and any other new motor vehicle of the same line-make.

1 6. Whether the franchisee refuses to honor warranties of the
2 franchisor to be performed by the franchisee if the franchisor reimburses the
3 franchisee for the warranty work performed by the franchisee.

4 7. Except as provided in subsection A:

5 (a) Failure by the franchisee to substantially comply with those
6 requirements of the franchise that are determined by the administrative law
7 judge to be reasonable and material.

8 (b) Bad faith by the franchisee in complying with those terms of the
9 franchise that are determined by the administrative law judge to be
10 reasonable and material.

11 ~~E.~~ D. If failure by the franchisee to substantially comply with a
12 reasonable and material provision of the franchise relates to the performance
13 of sales or service by the franchisee, good cause is established if all of
14 the following are true:

15 1. The franchisor notifies the franchisee of the failure in writing.

16 2. The notice states that it is provided for failure of performance
17 pursuant to this chapter.

18 3. The franchisee is provided a reasonable opportunity in which to
19 exert good faith efforts to carry out the provisions of the franchise. The
20 reasonable opportunity provided shall be over a period of at least one
21 hundred eighty days.

22 4. The franchisee does not demonstrate substantial compliance with the
23 franchisor's performance standards during that period and the failure to
24 demonstrate compliance is not due to factors controlled by the franchisor.

25 ~~F.~~ E. In determining whether good cause has been established for
26 entering into an additional franchise for the same line-make the
27 administrative law judge shall consider the existing circumstances including
28 the following:

29 1. Amount of business transacted by other franchisees of the same
30 line-make in that community.

31 2. Investment necessarily made and obligations incurred by other
32 franchisees of the same line-make in that community in the performance of
33 their part of their franchises.

34 3. Whether the franchisees of the same line-make in that community are
35 providing adequate consumer care for the new motor vehicle products of the
36 line-make, including the adequacy of new motor vehicle dealer sales and
37 service facilities, equipment, supply of parts and qualified management,
38 sales and service personnel.

39 4. The economic impact on existing franchisees of the same
40 line-make due to the addition of a franchise.

41 5. The effect on the retail motor vehicle business and the consuming
42 public.

43 F. ON THE TERMINATION OR NONRENEWAL OF A FRANCHISE FOR ANY REASON,
44 INCLUDING THE CESSATION OF A LINE-MAKE BUT NOT INCLUDING A VOLUNTARY
45 TERMINATION OF THE FRANCHISE AGREEMENT BY THE FRANCHISEE OR A TERMINATION BY

1 THE FRANCHISOR BASED ON GOOD CAUSE AS DETERMINED PURSUANT TO THIS SECTION,
2 THE FRANCHISOR MUST DO ALL OF THE FOLLOWING:

3 1. PAY THE FRANCHISEE BEING TERMINATED THE FAIR MARKET VALUE OF THE
4 FRANCHISE AS OF THE DATE OF THE NOTICE OF TERMINATION OR NONRENEWAL OR TWELVE
5 MONTHS BEFORE THE DATE OF NOTICE, WHICHEVER IS GREATER. THE FAIR MARKET
6 VALUE SHALL BE THE GOODWILL VALUE OF THE FRANCHISEE'S FRANCHISE IN THE
7 FRANCHISEE'S COMMUNITY AS OF THE RELEVANT DATE.

8 2. REIMBURSE THE FRANCHISEE FOR THE COST OF ANY FACILITY UPGRADES AND
9 RENOVATIONS REQUIRED BY THE FRANCHISOR WITHIN THREE YEARS BEFORE THE
10 TERMINATION OR NONRENEWAL LESS ANY OFFSETS ACTUALLY RECEIVED BY THE
11 FRANCHISEE FROM THE FRANCHISOR TOWARD THE UPGRADES OR RENOVATIONS, INCLUDING
12 STIPENDS, CREDITS AND OTHER SUBSIDIES.

13 3. REPURCHASE ANY DATA PROCESSING PROGRAMS, SOFTWARE AND EQUIPMENT
14 REQUIRED BY THE FRANCHISOR FOR COMMUNICATION OF SALES, SERVICE, WARRANTY OR
15 OTHER INFORMATION TO THE FRANCHISOR OR REPORT DATA TO THE FRANCHISOR THAT
16 MEETS THE FOLLOWING CRITERIA:

17 (a) WAS USED BY THE FRANCHISEE EXCLUSIVELY FOR THE LINE-MAKE VEHICLE
18 COVERED BY THE DEALER AGREEMENT BEING TERMINATED OR NOT RENEWED.

19 (b) WAS PURCHASED BY THE FRANCHISEE IN THE THREE YEAR PERIOD BEFORE
20 THE TERMINATION OR NONRENEWAL OF THE DEALER AGREEMENT OR WAS LEASED BY THE
21 FRANCHISEE BEFORE THE EFFECTIVE DATE OF THE TERMINATION OR NONRENEWAL, EXCEPT
22 THAT THE FRANCHISOR SHALL ONLY BE RESPONSIBLE FOR PAYMENTS UNDER THE LEASE
23 FOR A PERIOD NOT TO EXCEED THREE YEARS.

24 4. PAY TO THE FRANCHISEE AN AMOUNT EQUAL TO TWELVE MONTHS RENT AT THE
25 FAIR MARKET RENTAL VALUE FOR THE REAL PROPERTY, EXCEPT THAT IF THE REAL
26 PROPERTY IS LEASED FROM A THIRD PARTY WHO IS UNRELATED TO THE FRANCHISEE, THE
27 AMOUNT TO BE PAID BY THE FRANCHISOR SHALL EQUAL TWELVE MONTHS RENT PURSUANT
28 TO THE CURRENT LEASE OF THE REAL PROPERTY IN EFFECT AT THE TIME OF THE
29 TERMINATION OR NONRENEWAL. IF THE TERMINATION OR NONRENEWAL RELATES TO FEWER
30 THAN ALL OF THE FRANCHISES OPERATED BY THE FRANCHISEE AT A SINGLE LOCATION,
31 THE AMOUNT TO BE PAID BY THE FRANCHISOR PURSUANT TO THIS PARAGRAPH SHALL BE
32 BASED ON THE PERCENTAGE OF THE TOTAL SQUARE FOOTAGE ATTRIBUTED TO THE
33 FRANCHISE BEING TERMINATED OR NOT RENEWED AT THE TIME OF THE TERMINATION OR
34 NONRENEWAL.

35 5. COMPENSATE THE FRANCHISEE FOR ALL NEW, UNUSED AND UNDAMAGED PARTS
36 LISTED IN THE MANUFACTURER'S CURRENT PARTS CATALOG AND STILL IN THE ORIGINAL
37 MERCHANDISING PACKAGING. THE PRICES FOR THE PARTS ARE THE PRICES IN EFFECT
38 AS OF THE EFFECTIVE DATE OF THE TERMINATION OR NONRENEWAL OF THE FRANCHISE,
39 LESS ANY APPLICABLE ALLOWANCES, CREDITS OR SUBSIDIES ACTUALLY RECEIVED BY THE
40 FRANCHISEE FROM THE FRANCHISOR.

41 6. COMPENSATE THE FRANCHISEE FOR THE FAIR MARKET VALUE OF ALL
42 UNDAMAGED, EXCEPT FOR ORDINARY WEAR AND TEAR, AND UNMODIFIED SPECIAL TOOLS,
43 EQUIPMENT AND SIGNAGE THAT ARE REQUIRED BY THE FRANCHISOR AND THAT ARE
44 ACQUIRED BY THE FRANCHISEE WITHIN THE THREE YEAR PERIOD BEFORE THE
45 TERMINATION OR NONRENEWAL.

1 7. COMPENSATE THE FRANCHISEE AT THE DEALER'S NET ACQUISITION COST FOR
2 ALL NEW, UNDAMAGED, UNMODIFIED AND UNSOLD VEHICLE INVENTORY OF THE CURRENT
3 MODEL YEAR AND ONE MODEL YEAR BEFORE THAT IS ACQUIRED FROM THE MANUFACTURER
4 OR FROM ANOTHER SAME LINE-MAKE DEALER IN THE ORDINARY COURSE OF BUSINESS
5 BEFORE THE EFFECTIVE DATE OF THE TERMINATION OR NONRENEWAL IF THE VEHICLE HAS
6 LESS THAN FIVE HUNDRED MILES REGISTERED ON THE ODOMETER.

7 G. PAYMENTS MADE PURSUANT TO SUBSECTION F ARE IN ADDITION TO ANY OTHER
8 PAYMENTS REQUIRED BY THE LAWS OF THIS STATE OR THE APPLICABLE FRANCHISE
9 AGREEMENT. PAYMENTS SHALL BE MADE TO THE FRANCHISEE NO LATER THAN NINETY
10 DAYS AFTER THE EFFECTIVE DATE OF THE TERMINATION OR NONRENEWAL OF THE DEALER
11 AGREEMENT AND A SHOWING THAT THE FRANCHISEE CAN DELIVER GOOD AND CLEAR TITLE
12 TO THE ITEMS DESCRIBED IN SUBSECTION F.

13 Sec. 4. Section 28-4458, Arizona Revised Statutes, is amended to read:
14 28-4458. Coercion prohibited

15 A. A manufacturer of new motor vehicles, factory branch, distributor,
16 distributor branch, field representative, officer or agent or any
17 representative of a manufacturer of new motor vehicles, factory branch,
18 distributor, distributor branch, field representative, officer or agent shall
19 not coerce or attempt to coerce a new motor vehicle dealer to either:

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

23 2. Enter into an agreement with the manufacturer, factory branch,
24 distributor, distributor branch or representative of the manufacturer,
25 factory branch, distributor or distributor branch.

26 3. Do any other act unfair to the dealer by threatening to cancel or
27 not renew a franchise existing between the manufacturer, factory branch,
28 distributor, distributor branch or representative of the manufacturer,
29 factory branch, distributor or distributor branch and the dealer.

30 4. CONSTRUCT, RENOVATE OR MAKE SUBSTANTIAL ALTERATIONS TO THE DEALER'S
31 FACILITIES UNLESS THE MANUFACTURER, FACTORY BRANCH, DISTRIBUTOR, DISTRIBUTOR
32 BRANCH OR REPRESENTATIVE OF THE MANUFACTURER, FACTORY BRANCH, DISTRIBUTOR OR
33 DISTRIBUTOR BRANCH IS ABLE TO DEMONSTRATE THAT THE CHANGES ARE REASONABLE AND
34 JUSTIFIABLE IN LIGHT OF CURRENT AND REASONABLY FORESEEABLE ECONOMIC
35 CONDITIONS, THE AVAILABILITY OF ADDITIONAL VEHICLE ALLOCATION AND THE
36 DEALER'S MARKET FOR THE SALE OF VEHICLES OR UNLESS THE ALTERATION IS
37 REASONABLY REQUIRED TO EFFECTIVELY DISPLAY AND SERVICE A VEHICLE BASED ON THE
38 TECHNOLOGY OF THE VEHICLE.

39 5. ENTER INTO A REAL PROPERTY USE OR SITE CONTROL AGREEMENT AS A
40 CONDITION OF AWARING A FRANCHISE, ADDING A LINE-MAKE OR DEALER AGREEMENT TO
41 AN EXISTING NEW MOTOR VEHICLE DEALER, RENEWING A DEALER AGREEMENT, APPROVING
42 THE SALE OR TRANSFER OF THE OWNERSHIP OF A DEALERSHIP OR APPROVING THE
43 RELOCATION OF A DEALERSHIP. THIS PARAGRAPH DOES NOT APPLY TO A REAL PROPERTY
44 USE OR SITE CONTROL AGREEMENT IF EITHER OF THE FOLLOWING IS OFFERED TO AND

1 ACCEPTED BY THE DEALER WITHOUT COERCION OR CONDITION IN EXCHANGE FOR A REAL
2 PROPERTY USE OR SITE CONTROL AGREEMENT:

3 (a) FAIR AND REASONABLE MONETARY CONSIDERATION.

4 (b) SEPARATE AND VALUABLE CONSIDERATION THAT MAY BE CALCULATED TO A
5 SUM CERTAIN.

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

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

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

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

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

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

26 2. To a law enforcement agency, ~~provided, however,~~ EXCEPT that this
27 exception does not apply to personal financial information.

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

39 F. A MANUFACTURER, FACTORY BRANCH, DISTRIBUTOR, DISTRIBUTOR BRANCH OR
40 FIELD REPRESENTATIVE OR AN OFFICER, AGENT OR REPRESENTATIVE OF A
41 MANUFACTURER, FACTORY BRANCH, DISTRIBUTOR, DISTRIBUTOR BRANCH OR FIELD
42 REPRESENTATIVE SHALL NOT REQUIRE A DEALER OR CONDITION THE AWARDED OF A
43 FRANCHISE, THE ADDITION OF A LINE-MAKE, THE RENEWAL OF A FRANCHISE, THE
44 APPROVAL OF THE RELOCATION OF A FRANCHISE OR THE APPROVAL OF A SALE OR
45 TRANSFER OF A FRANCHISE ON THE WILLINGNESS OF A DEALER OR A PROPOSED DEALER

1 OR OWNER OF AN INTEREST IN THE DEALERSHIP FACILITY TO CONSTRUCT, RENOVATE OR
2 MAINTAIN EXCLUSIVE FACILITIES, PERSONNEL OR SHOWROOM AREA DEDICATED TO A
3 PARTICULAR LINE-MAKE IF THE IMPOSITION OF SUCH A REQUIREMENT WOULD BE
4 UNREASONABLE IN LIGHT OF THE EXISTING CIRCUMSTANCES, INCLUDING THE
5 MANUFACTURER'S REASONABLE BUSINESS CONSIDERATIONS, PRESENT ECONOMIC AND
6 MARKET CONDITIONS AND FORECASTS FOR FUTURE ECONOMIC AND MARKET CONDITIONS IN
7 THE DEALER'S RETAIL TERRITORY. THE MANUFACTURER, FACTORY BRANCH,
8 DISTRIBUTOR, DISTRIBUTOR BRANCH OR FIELD REPRESENTATIVE HAS THE BURDEN OF
9 PROOF TO DEMONSTRATE THAT ITS DEMAND FOR EXCLUSIVITY IS JUSTIFIED BY
10 REASONABLE BUSINESS CONSIDERATIONS AND IS REASONABLE IN LIGHT OF THE DEALER'S
11 CIRCUMSTANCES. THIS SUBSECTION DOES NOT APPLY TO A VOLUNTARY AGREEMENT
12 BETWEEN A DEALER AND A MANUFACTURER IF SEPARATE AND VALUABLE CONSIDERATION
13 WAS OFFERED AND ACCEPTED. THE RENEWAL OF A FRANCHISE AGREEMENT DOES NOT, BY
14 ITSELF, CONSTITUTE SEPARATE AND VALUABLE CONSIDERATION. THE MANUFACTURER HAS
15 THE BURDEN OF PROOF TO SHOW BY A PREPONDERANCE OF THE EVIDENCE THAT THE
16 DEALER ENTERED INTO A VOLUNTARY AGREEMENT REGARDING EXCLUSIVITY.

17 G. ANY CONDITION, STIPULATION OR PROVISION IN A FRANCHISE OR
18 DISTRIBUTORSHIP AGREEMENT PURPORTING TO BIND ANY PERSON ACQUIRING OR HOLDING
19 A FRANCHISE OR DISTRIBUTORSHIP TO WAIVE COMPLIANCE WITH ANY PROVISION OF THIS
20 CHAPTER OR ANY OTHER LAW OF THIS STATE IS VOID EXCEPT THAT A PERSON WHO IS
21 ACQUIRING OR HOLDING A FRANCHISE OR DISTRIBUTORSHIP IS NOT PROHIBITED UNDER
22 THIS SECTION FROM ELECTING IN WRITING, AT OR AFTER THE TIME A DISPUTE ARISES,
23 FROM USING ANY VOLUNTARY DISPUTE RESOLUTION PROCEDURE, FROM ENTERING INTO ANY
24 VOLUNTARY AGREEMENT TO SETTLE LEGITIMATE DISPUTES BETWEEN THE DISPUTED
25 PARTIES OR FROM ENTERING INTO ANY AGREEMENT WAIVING ANY PROVISION OF THIS
26 CHAPTER OR ANY OTHER LAW OF THIS STATE FOR WHICH THE FRANCHISEE RECEIVES
27 SEPARATE AND VALID CONSIDERATION AT THE TIME OF THE EXECUTION OF THE WAIVER.

28 Sec. 5. Title 28, chapter 10, article 5, Arizona Revised Statutes, is
29 amended by adding sections 28-4461, 28-4462 and 28-4463, to read:

30 28-4461. Right of designated family member to succeed in
31 ownership

32 A. ANY OWNER OF A NEW MOTOR VEHICLE DEALER MAY APPOINT BY WILL OR ANY
33 OTHER WRITTEN INSTRUMENT THAT IS APPROVED BY THE MANUFACTURER A DESIGNATED
34 FAMILY MEMBER TO SUCCEED IN THE OWNERSHIP INTEREST OF THE OWNER OF THE NEW
35 MOTOR VEHICLE DEALER.

36 B. UNLESS THERE IS GOOD CAUSE FOR REFUSAL TO HONOR SUCCESSION ON THE
37 PART OF THE MANUFACTURER, ANY DESIGNATED FAMILY MEMBER OF A DECEASED OR
38 INCAPACITATED OWNER OF A NEW MOTOR VEHICLE DEALER MAY SUCCEED TO THE
39 OWNERSHIP INTEREST OF THE OWNER OF THE NEW MOTOR VEHICLE DEALER UNDER THE
40 EXISTING FRANCHISE IF BOTH OF THE FOLLOWING APPLY:

41 1. THE DESIGNATED FAMILY MEMBER GIVES THE MANUFACTURER WRITTEN NOTICE
42 OF THE FAMILY MEMBER'S INTENTION TO SUCCEED TO THE OWNERSHIP INTEREST OF THE
43 OWNER OF THE NEW MOTOR VEHICLE DEALER WITHIN NINETY DAYS AFTER THE OWNER'S
44 DEATH OR INCAPACITY.

Passed the House April 4, 2011,

Passed the Senate March 2, 2011,

by the following vote: 59 Ayes,
0 Nays, 1 Not Voting

by the following vote: 29 Ayes,
1 Nays, 0 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

Cheryl Laube
Chief Clerk of the House

Charmine Bellinger
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~~

S.B. 1241

~~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~~

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 7, 20 11

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

7 day of April, 20 11

at 4:45 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 13th day of

April

at 10:41 o'clock P. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 13th day of April, 20 11

S.B. 1241

at 4:59 o'clock P. M.

[Signature]
Secretary of State