

Senate Engrossed House Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

CHAPTER 289

HOUSE BILL 2608

AN ACT

AMENDING SECTION 28-4301, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 10, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-4410.01; RELATING TO PUBLIC CONSIGNMENT AUCTION 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, is amended to
3 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~~ ONBOARD 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~~ ONBOARD
2 power or 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 PUBLIC CONSIGNMENT AUCTION DEALER, a broker or a
10 wholesale motor vehicle auction dealer, excluding a person who comes into
11 possession of a motor vehicle as an incident to the person's regular business
12 and who sells, auctions or 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. "PUBLIC CONSIGNMENT AUCTION DEALER" MEANS A PERSON WHO AT THE
11 PUBLIC CONSIGNMENT AUCTION DEALER'S ESTABLISHED PLACE OF BUSINESS OR AT AN
12 AUTHORIZED OFF-PREMISES LOCATION PURSUANT TO THE REQUIREMENTS OF SECTION
13 28-4401 IS IN THE BUSINESS OF BOTH OF THE FOLLOWING:

14 (a) CONDUCTING LIVE AUCTIONS WITH A LICENSED AUCTIONEER VERBALLY
15 CALLING FOR AND ACCEPTING BIDS.

16 (b) PROVIDING LIVE AUCTION SERVICES TO THE PUBLIC ON A CONSIGNMENT
17 CONTRACT BASIS.

18 ~~30.~~ 31. "Retail consumer" means any person purchasing, leasing or
19 acquiring or possibly purchasing, leasing or acquiring a vehicle or product,
20 service or financing not for resale.

21 ~~31.~~ 32. "Service" means any service that is sold, leased or provided
22 to retail consumers and that directly relates to the ownership or leasing of
23 a new or used motor vehicle, including extended service contracts or motor
24 vehicle warranty and nonwarranty repairs or maintenance, including both parts
25 and labor.

26 ~~32.~~ 33. "Special event" means an exhibition of new motor homes by a
27 motor vehicle dealer licensed to sell new motor homes or an exhibitor for a
28 period of time specified by the director at a location in this state other
29 than the licensee's or exhibitor's established place of business.

30 ~~33.~~ 34. "Used motor vehicle" means a motor vehicle that has been sold,
31 bargained, exchanged or given away or the title to the motor vehicle has been
32 transferred from the person who first acquired the vehicle from the
33 manufacturer, or importer, dealer or agent of the manufacturer or importer,
34 and that has been placed in bona fide consumer use. For the purposes of this
35 paragraph, "bona fide consumer use" means actual operation by an owner who
36 acquired a new motor vehicle both:

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

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

40 ~~34.~~ 35. "Used motor vehicle dealer" means a person, other than a new
41 motor vehicle dealer, who buys, sells, auctions, exchanges or offers or
42 attempts to negotiate a sale or exchange of an interest in, or who is engaged
43 in the business of selling, four or more used motor vehicles in a continuous
44 twelve month period. Used motor vehicle dealer does not include a wholesale
45 motor vehicle auction dealer OR A PUBLIC CONSIGNMENT AUCTION DEALER.

1 ~~35-~~ 36. "Wholesale motor vehicle auction dealer" means a person who
2 both:

3 (a) Is in the business of providing auction services solely in
4 wholesale transactions to motor vehicle dealers licensed by this state or any
5 other jurisdiction.

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

8 ~~36-~~ 37. "Wholesale motor vehicle dealer" means a person who sells used
9 motor vehicles only to licensed motor vehicle dealers.

10 Sec. 2. Title 28, chapter 10, article 4, Arizona Revised Statutes, is
11 amended by adding section 28-4410.01, to read:

12 28-4410.01. Public consignment auction dealers; exemptions;
13 notices; requirements; payment of taxes;
14 wholesale motor vehicle dealer prohibition

15 A. A PUBLIC CONSIGNMENT AUCTION DEALER IS EXEMPT FROM THE FOLLOWING:

16 1. AN IMPLIED WARRANTY OF MERCHANTABILITY DESCRIBED IN SECTION
17 28-4412, SUBSECTION B AND SECTION 44-1267.

18 2. AN EMISSIONS INSPECTION PURSUANT TO SECTION 49-542, SUBSECTION D.

19 B. A PUBLIC CONSIGNMENT AUCTION DEALER SHALL POST AT THE PUBLIC
20 CONSIGNMENT AUCTION DEALER'S ESTABLISHED PLACE OF BUSINESS A SIGN INDICATING
21 THAT THE PUBLIC CONSIGNMENT AUCTION DEALER IS EXEMPT FROM THE PROVISIONS
22 DESCRIBED IN SUBSECTION A OF THIS SECTION.

23 C. A PUBLIC CONSIGNMENT AUCTION DEALER, ON TRANSFERRING A MOTOR
24 VEHICLE BY SALE, SHALL GIVE WRITTEN NOTICE TO THE DEPARTMENT WITHIN FIFTEEN
25 DAYS AFTER THE TRANSFER ON A FORM PRESCRIBED BY THE DIRECTOR THAT INCLUDES:

- 26 1. THE DATE OF THE TRANSFER.
27 2. THE NAME AND ADDRESS OF THE SELLER.
28 3. THE NAME AND ADDRESS OF THE PURCHASER.
29 4. THE VEHICLE IDENTIFICATION NUMBER OF THE MOTOR VEHICLE.
30 5. THE MAKE AND MODEL OF THE MOTOR VEHICLE.
31 6. THE SUCCESSFUL BID PRICE AND ANY PREMIUMS OR COMMISSIONS PAID
32 ASSOCIATED WITH THE AUCTION OF THE MOTOR VEHICLE.
33 7. NOTICE AS TO WHETHER THE VEHICLE IS A SALVAGE VEHICLE.

34 D. A PUBLIC CONSIGNMENT AUCTION DEALER WHO FAILS TO PROVIDE WRITTEN
35 NOTICE TO THE DEPARTMENT WITHIN FIFTEEN DAYS AFTER TRANSFERRING A MOTOR
36 VEHICLE, AS PRESCRIBED BY SUBSECTION C OF THIS SECTION, SHALL PAY THE
37 DEPARTMENT A PENALTY OF EIGHT DOLLARS FOR THE FIRST MONTH AND FOUR DOLLARS
38 FOR EACH ADDITIONAL MONTH THAT THE NOTICE IS NOT PROVIDED, NOT TO EXCEED A
39 TOTAL OF ONE HUNDRED DOLLARS.

40 E. A PUBLIC CONSIGNMENT AUCTION DEALER, ON TRANSFERRING A MOTOR
41 VEHICLE BY SALE, SHALL GIVE WRITTEN NOTICE TO THE PURCHASER AT THE TIME OF
42 DELIVERY OF THE MOTOR VEHICLE TO THE PURCHASER IN THE FORM OF AN INVOICE OR
43 ON A FORM PRESCRIBED BY THE DIRECTOR THAT INCLUDES:

- 44 1. THE DATE OF THE TRANSFER.
45 2. THE VEHICLE IDENTIFICATION NUMBER OF THE MOTOR VEHICLE.

- 1 3. THE MAKE AND MODEL OF THE MOTOR VEHICLE.
- 2 4. THE SUCCESSFUL BID PRICE AND ANY PREMIUMS OR COMMISSIONS PAID
- 3 ASSOCIATED WITH THE AUCTION OF THE MOTOR VEHICLE.
- 4 5. NOTICE AS TO WHETHER THE VEHICLE IS A SALVAGE VEHICLE.
- 5 F. A PUBLIC CONSIGNMENT AUCTION DEALER SHALL KEEP AND MAINTAIN AT THE
- 6 PUBLIC CONSIGNMENT AUCTION DEALER'S ESTABLISHED PLACE OF BUSINESS A PERMANENT
- 7 RECORD IN A FORM PRESCRIBED BY THE DIRECTOR. THE PERMANENT RECORD SHALL
- 8 INCLUDE THE INFORMATION PRESCRIBED BY SUBSECTION C OF THIS SECTION AND
- 9 CONTAIN A DESCRIPTION OF ALL MOTOR VEHICLE TRANSFERS AND SALES. THE PUBLIC
- 10 CONSIGNMENT AUCTION DEALER SHALL MAKE THE PERMANENT RECORD AVAILABLE FOR
- 11 INSPECTION BY THE DEPARTMENT OF TRANSPORTATION, THE DEPARTMENT OF REVENUE OR
- 12 ANY PEACE OFFICER.
- 13 G. A PUBLIC CONSIGNMENT AUCTION DEALER SHALL DO ALL OF THE FOLLOWING:
- 14 1. INFORM THE PURCHASER OF A MOTOR VEHICLE THAT THE PURCHASER IS
- 15 RESPONSIBLE FOR THE EMISSION INSPECTION REQUIREMENTS DESCRIBED IN SECTION
- 16 49-542, SUBSECTION D.
- 17 2. COMPLY WITH THE CONSIGNMENT CONTRACT REQUIREMENTS PRESCRIBED IN
- 18 SECTION 28-4410 IF THE MOTOR VEHICLE IS ACQUIRED FROM A PERSON OTHER THAN A
- 19 LICENSEE.
- 20 3. COMPLY WITH THE REQUIREMENTS OF SECTION 28-4409 RELATING TO
- 21 EVIDENCE OF OWNERSHIP IF THE MOTOR VEHICLE IS ACQUIRED FROM ANOTHER LICENSEE.
- 22 4. COMPLY WITH THE REQUIREMENTS OF SECTION 28-2091 RELATING TO SALVAGE
- 23 CERTIFICATES OF TITLE.
- 24 H. THIS SECTION DOES NOT EXEMPT A PUBLIC CONSIGNMENT AUCTION DEALER
- 25 FROM ANY TRANSACTION PRIVILEGE TAX IMPOSED PURSUANT TO TITLE 42, CHAPTER 5.
- 26 I. A WHOLESALE MOTOR VEHICLE DEALER SHALL NOT SELL MOTOR VEHICLES TO A
- 27 PUBLIC CONSIGNMENT AUCTION DEALER.
- 28 Sec. 3. Effective date
- 29 This act is effective from and after September 30, 2011.

APPROVED BY THE GOVERNOR APRIL 27, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 27, 2011.

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 20, 2011,

by the following vote: 55 Ayes,

4 Nays, 1 Not Voting

[Signature]
Speaker of the House

Cheryl Laube
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

20 day of April, 2011,

at 8:30 o'clock A.M.

[Signature]
Secretary to the Governor

Approved this 27th day of

April, 2011,

at 3:09 o'clock P. M.

[Signature]
Governor of Arizona

H.B. 2608

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 27th day of April, 2011,

at 4:45 o'clock P.M.

[Signature]
Secretary of State