

Conference Engrossed

**FILED**

**MICHELE REAGAN**  
**SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Fifty-third Legislature  
First Regular Session  
2017

CHAPTER 231  
**HOUSE BILL 2331**

AN ACT

AMENDING SECTION 28-4451, ARIZONA REVISED STATUTES; 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 28-4451, Arizona Revised Statutes, is amended to  
3 read:

4 28-4451. Product liability; warranty obligations; audits;  
5 vehicle exports; used vehicle recall obligations;  
6 definition

7 A. Each manufacturer shall file with the director a copy of the  
8 delivery and preparation obligations required to be performed by a new  
9 motor vehicle dealer before delivery of new motor vehicles to buyers.  
10 These delivery and preparation obligations constitute the new motor  
11 vehicle dealer's only responsibility for the product liability as between  
12 the new motor vehicle dealers and the manufacturer. The new motor vehicle  
13 dealer shall furnish the buyer of a new motor vehicle with a signed copy  
14 of the manufacturer's or distributor's delivery and preparation  
15 requirements indicating that all of the requirements have in fact been  
16 performed.

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

20 C. The manufacturer or distributor shall compensate an authorized  
21 new motor vehicle dealer who performs work to rectify the manufacturer's  
22 or distributor's warranty obligations, recall obligations or delivery and  
23 preparation obligations.

24 D. The compensation that the manufacturer or distributor pays to a  
25 new motor vehicle dealer for diagnostic work, repair service and labor  
26 shall be fair and reasonable and, at the option of the new motor vehicle  
27 dealer, may be determined pursuant to subsection E of this section. Time  
28 allowances for the diagnosis and performance of warranty work and service  
29 shall be reasonable and adequate for the work or services to be performed.  
30 The compensation that the manufacturer or distributor pays to the new  
31 motor vehicle dealer for parts used in warranty or recall related service  
32 shall be fair and reasonable and, at the option of the new motor vehicle  
33 dealer, may be determined pursuant to subsection E of this section.

34 E. The new motor vehicle dealer may declare the retail rates that  
35 it customarily charges for parts or labor or both parts and labor by  
36 submitting to the manufacturer or distributor the lesser of one hundred  
37 sequential, nonwarranty, customer-paid service repair orders or ninety  
38 consecutive days of customer-paid service repair orders for warranty-like  
39 repairs made not more than one hundred eighty days before the submission.  
40 The new motor vehicle dealer's retail labor rate shall be determined by  
41 dividing the amount of the dealer's total labor sales contained in the  
42 submitted repair orders by the total number of labor hours that generated  
43 those sales. The new motor vehicle dealer's retail rate for parts shall  
44 be a percentage determined by dividing the total sales for parts in the  
45 submitted repair orders by the new motor vehicle dealer's total cost for

1 those parts, minus one, ~~and then~~ multiplied by one hundred to produce a  
2 percentage. Declared rates are presumed to be fair and reasonable except  
3 that a manufacturer or distributor, within thirty days after receiving the  
4 new motor vehicle dealer's submission, may rebut the presumption by  
5 reasonably substantiating that the rate or rates are inaccurate or  
6 unreasonable compared to other similarly situated same line-make new motor  
7 vehicle dealers in ~~the~~ THIS state. The new motor vehicle dealer's  
8 declared parts, labor or both parts and labor rates shall go into effect  
9 thirty days following the manufacturer's or distributor's receipt of the  
10 declaration, unless the manufacturer or distributor timely sends a  
11 rebuttal of the declared rate or rates to the new motor vehicle dealer.  
12 If any of the declared rates are rebutted, the manufacturer or distributor  
13 shall propose an adjustment of the rebutted rate or rates within thirty  
14 days after receiving the new motor vehicle dealer's submission. If the  
15 new motor vehicle dealer does not agree with the proposed adjusted rate or  
16 rates, it may file a protest with the director within thirty days after  
17 receipt of the manufacturer's or distributor's proposal. If a protest is  
18 timely filed, the director shall inform the manufacturer or distributor  
19 that a timely protest has been filed and that a hearing will be held on  
20 the protest if any available manufacturer or distributor mediation  
21 opportunity has been used and was unsuccessful in reaching an agreement  
22 between the parties.

23 F. In calculating the retail rate or rates that a new motor vehicle  
24 dealer customarily charges for parts or labor, the following work may not  
25 be included in the calculation:

- 26 1. Repairs for manufacturer or distributor special events, specials  
27 or promotional discounts for retail customer repairs.
- 28 2. Parts sold at wholesale.
- 29 3. Engine assemblies and transmission assemblies, if the new motor  
30 vehicle dealer agrees to be compensated for those assemblies with a  
31 handling charge instead of a retail parts markup.
- 32 4. Routine maintenance not covered under any retail customer  
33 warranty, such as fluids, filters and belts not provided in the course of  
34 repairs.
- 35 5. Nuts, bolts, fasteners and similar items that do not have  
36 individual part numbers.
- 37 6. Vehicle reconditioning.

38 G. The manufacturer, factory branch, distributor or distributor  
39 branch may reasonably and periodically audit a new motor vehicle dealer to  
40 determine the validity of paid claims for dealer compensation or any  
41 charge-backs for warranty parts or service compensation. Audits shall  
42 only be for the twelve month period immediately following the date of the  
43 payment. This limitation does not apply if the manufacturer, factory  
44 branch, distributor or distributor branch reasonably suspects fraud. As a  
45 result of an audit that is authorized by this subsection, the manufacturer

1 or distributor has the right to charge back to the new motor vehicle  
2 dealer the amount of any previously paid claim after the new motor vehicle  
3 dealer has had notice and an opportunity to participate in any available  
4 manufacturer or distributor mediation processes and all legal appeals have  
5 been exhausted if mediation failed to result in an agreement.

6 H. The manufacturer, factory branch, distributor or distributor  
7 branch shall reserve the right to reasonable periodic audits to determine  
8 the validity of paid claims for dealer compensation or any charge-backs  
9 for consumer or dealer incentives. Audits shall only be for a one year  
10 period immediately following the date of the payment. This limitation  
11 does not apply if the manufacturer, factory branch, distributor or  
12 distributor branch reasonably suspects fraud. As a result of an audit  
13 authorized by this subsection, the manufacturer or distributor has the  
14 right to charge back to the new motor vehicle dealer the amount of any  
15 previously paid claim after the new motor vehicle dealer has had notice  
16 and an opportunity to participate in any available manufacturer or  
17 distributor mediation processes and all legal appeals have been exhausted  
18 if mediation failed to result in an agreement.

19 I. All claims by new motor vehicle dealers under this section for  
20 labor and parts and all claims for compensation relative to any sales  
21 incentive programs shall be paid within thirty days after approval by the  
22 manufacturer or distributor subject to the manufacturer's or distributor's  
23 right to audit the claims provided in subsection G or H of this section.  
24 All claims shall be either approved or disapproved within thirty days  
25 after receipt on forms and in the manner specified by the manufacturer or  
26 distributor. Any claim not disapproved in writing or by means of  
27 electronic transmission within thirty days after receipt ~~are~~ IS deemed  
28 approved, and payment must be made within thirty days after approval.

29 J. If a manufacturer or distributor furnishes a part or component  
30 to a new motor vehicle dealer, at no cost, to use in performing repairs  
31 under a recall, campaign service action or warranty repair, the  
32 manufacturer or distributor shall compensate the dealer for the part or  
33 component in the same manner as warranty parts compensation under this  
34 section by compensating the dealer the retail parts rate on the wholesale  
35 cost for the part or component as listed in the manufacturer's or  
36 distributor's price schedule, ~~less~~ MINUS the wholesale cost for the part  
37 or component.

38 K. A manufacturer or distributor may not require a new motor  
39 vehicle dealer to establish the retail rates customarily charged by the  
40 dealer for parts or labor by an unduly burdensome or time-consuming method  
41 or by requiring information that is unduly burdensome or time-consuming to  
42 provide calculations, including part-by-part or transaction-by-transaction  
43 calculations. A new motor vehicle dealer may not declare any new retail  
44 rate more than once in any twelve-month period. A manufacturer or  
45 distributor may use the repair orders submitted by a new motor vehicle

1 dealer under subsection E of this section to validate any or all of a new  
2 motor vehicle dealer's current warranty reimbursement rates or require a  
3 new motor vehicle dealer to submit, not more than once every twelve  
4 months, repair orders pursuant to this section to validate the new motor  
5 vehicle dealer's retail rate or rates. If a manufacturer or distributor  
6 finds that any of a new motor vehicle dealer's retail rates have declined,  
7 the manufacturer or distributor may prospectively reduce the respective  
8 warranty reimbursement rate.

9 L. If the new motor vehicle dealer has otherwise properly submitted  
10 the claim pursuant to the manufacturer's or distributor's warranty or  
11 incentive program guidelines, a manufacturer or distributor may not deny a  
12 claim by a new motor vehicle dealer for reimbursement of any warranty  
13 parts or service compensation or any consumer or dealer incentive  
14 compensation based solely on a new motor vehicle dealer's incidental  
15 failure to comply with a specific claim processing requirement that does  
16 not put into question the legitimacy of the claim. If a claim is rejected  
17 for such an incidental requirement the new motor vehicle dealer may  
18 correct or complete and resubmit a previously submitted warranty or  
19 incentive claim for a period of up to sixty days following the new motor  
20 vehicle dealer's receipt of first notice of the failure from the  
21 manufacturer or distributor. A manufacturer or distributor is not  
22 required to approve any such warranty or incentive claim if all claim  
23 processing requirements are not complied with by the new motor vehicle  
24 dealer within the time periods prescribed by this section.

25 M. If a new motor vehicle dealer sells or leases a vehicle to a  
26 customer who exports the vehicle to a foreign country, unless the  
27 manufacturer, distributor or importer proves that the new motor vehicle  
28 dealer knew or reasonably should have known that the vehicle would be  
29 exported, a manufacturer, DISTRIBUTOR OR IMPORTER shall not do any of the  
30 following:

31 1. Refuse to sell, allocate or deliver new motor vehicles to the  
32 new motor vehicle dealer.

33 2. Charge back to or withhold payments or other things of value  
34 from the new motor vehicle dealer that the new motor vehicle dealer  
35 otherwise would be eligible for under an incentive program or contest.

36 3. Prevent a new motor vehicle dealer from participating in any  
37 sales promotion or program.

38 4. Take an adverse action against a new motor vehicle dealer,  
39 including reducing vehicle allocations or terminating or threatening to  
40 terminate a dealer.

41 N. There is a rebuttable presumption that the new motor vehicle  
42 dealer described in subsection M of this section did not know or should  
43 not have reasonably known that the vehicle described in subsection M of  
44 this section would be exported. The presumption may be rebutted by a

1 preponderance of the evidence that the new motor vehicle dealer knew or  
2 should have reasonably known that the vehicle was to be exported.

3 0. If a timely protest is filed under subsection E of this section,  
4 the director shall:

5 1. Enter an order fixing the time and place of a hearing on the  
6 protest. The hearing shall be held within seventy-five days after the  
7 date of the order.

8 2. Send by certified mail a copy of the order to the dealer and the  
9 manufacturer.

10 3. Appoint a member of the Arizona state bar who shall be  
11 designated as an administrative law judge to conduct the hearing and who  
12 shall be compensated under a contractual relationship.

13 P. Prehearing discovery shall be conducted pursuant to the Arizona  
14 rules of civil procedure.

15 Q. Evidence that would be admissible under the issues in such an  
16 action in a state or federal court is admissible in a hearing held by the  
17 administrative law judge. The administrative law judge shall reasonably  
18 apportion all costs between the parties, including compensation for the  
19 administrative law judge's services. The administrative law judge may:

20 1. Issue subpoenas.

21 2. Administer oaths.

22 3. Compel the attendance of witnesses and the production of books,  
23 papers, documents and all other evidence.

24 4. Apply to the superior court in the county in which the hearing  
25 is held for a court order enforcing this section.

26 R. A transcript of the testimony of all witnesses taken at the  
27 hearing shall be made and preserved. Within forty-five days after the  
28 hearing the administrative law judge shall make written findings of fact  
29 and conclusions of law and enter a final order.

30 S. A party to the hearing before the administrative law judge may  
31 appeal pursuant to title 12, chapter 7, article 6. An appeal of a  
32 decision of an administrative law judge has preference over other civil  
33 matters and shall be heard at the earliest practicable date.

34 T. As a condition to the appeal, the appealing party shall file a  
35 cash bond, supersedeas bond or its equivalent with the director. The bond  
36 shall be sufficient in amount to cover the damages incurred by the  
37 prevailing party, but the amount of the bond may not exceed the lesser of  
38 fifty thousand dollars or ten percent of the appealing party's net worth.  
39 The appealing party may file alternatives to cash such as certificates of  
40 deposit purchased from a financial institution licensed to do business in  
41 this state pursuant to title 6 or bonds of the United States government.

42 U. A MANUFACTURER SHALL COMPENSATE ITS NEW MOTOR VEHICLE DEALERS  
43 FOR ALL LABOR AND PARTS THAT ARE REQUIRED TO PERFORM RECALL REPAIRS. THE  
44 COMPENSATION SHALL BE FAIR AND REASONABLE AND, AT THE OPTION OF THE NEW  
45 MOTOR VEHICLE DEALER, MAY BE DETERMINED PURSUANT TO SUBSECTION E OF THIS

1 SECTION. IF PARTS OR A REMEDY IS NOT REASONABLY AVAILABLE TO PERFORM A  
2 RECALL SERVICE OR REPAIR ON A USED MOTOR VEHICLE HELD FOR SALE BY THE NEW  
3 MOTOR VEHICLE DEALER THAT IS AUTHORIZED TO SELL NEW MOTOR VEHICLES OF THE  
4 SAME LINE-MAKE OF THE RECALLED MOTOR VEHICLE WITHIN THIRTY DAYS AFTER THE  
5 MANUFACTURER ISSUES A STOP-SALE OR DO NOT DRIVE NOTIFICATION ON THE USED  
6 MOTOR VEHICLE, THE MANUFACTURER SHALL COMPENSATE THE NEW MOTOR VEHICLE  
7 DEALER AT A RATE OF AT LEAST 1.5 PERCENT OF THE VALUE OF THE USED MOTOR  
8 VEHICLE PER MONTH, OR PRORATED PORTION OF A MONTH WHEN APPLICABLE, UNTIL A  
9 DATE WHEN THE RECALL PARTS OR REMEDY ARE DELIVERED TO THE DEALER OR WHEN  
10 THE VEHICLE IS NO LONGER IN THE NEW MOTOR VEHICLE DEALER'S INVENTORY.

11 V. THE VALUE OF THE USED MOTOR VEHICLE THAT IS SUBJECT TO A  
12 STOP-SALE OR DO NOT DRIVE NOTIFICATION SHALL BE THE AVERAGE TRADE-IN VALUE  
13 FOR USED VEHICLES AS DETERMINED BY REFERENCE TO A NATIONALLY RECOGNIZED  
14 PUBLICATION THAT REPORTS ON USED MOTOR VEHICLE VALUES.

15 W. IT IS A VIOLATION OF THIS SECTION FOR A MANUFACTURER TO REDUCE  
16 THE AMOUNT OF COMPENSATION THAT IS OTHERWISE OWED TO A NEW MOTOR VEHICLE  
17 DEALER, WHETHER THROUGH A CHARGEBACK, REMOVAL FROM AN INCENTIVE PROGRAM,  
18 REDUCTION IN AMOUNT OWED UNDER AN INCENTIVE PROGRAM OR ANY OTHER MEANS,  
19 BECAUSE THE NEW MOTOR VEHICLE DEALER HAS SUBMITTED A CLAIM FOR  
20 COMPENSATION UNDER SUBSECTION U OF THIS SECTION OR WAS OTHERWISE  
21 COMPENSATED FOR A VEHICLE THAT IS SUBJECT TO A RECALL IF A STOP-SALE OR DO  
22 NOT DRIVE NOTIFICATION HAS BEEN ISSUED.

23 X. ALL REIMBURSEMENT CLAIMS THAT ARE MADE BY A NEW MOTOR VEHICLE  
24 DEALER PURSUANT TO SUBSECTION U OF THIS SECTION FOR RECALL REMEDIES OR  
25 REPAIRS OR FOR COMPENSATION IF NO PART OR REPAIR IS REASONABLY AVAILABLE  
26 AND THE USED MOTOR VEHICLE IS SUBJECT TO A STOP-SALE OR DO NOT DRIVE  
27 NOTIFICATION SHALL BE MADE IN COMPLIANCE WITH AT LEAST ONE OF THE  
28 FOLLOWING:

29 1. IN A LIKE MANNER AS A WARRANTY REIMBURSEMENT CLAIM UNDER THIS  
30 SECTION.

31 2. AT A RATE SET FORTH IN A NATIONAL COMPENSATION PROGRAM THAT THE  
32 MANUFACTURER MANAGES IF THE COMPENSATION PROVIDED TO THE NEW MOTOR VEHICLE  
33 DEALER EQUALS OR EXCEEDS THE REIMBURSEMENT LEVEL FOR A CLAIM THAT IS  
34 DETERMINED AS A WARRANTY REIMBURSEMENT CLAIM PURSUANT TO PARAGRAPH 1 OF  
35 THIS SUBSECTION.

36 3. AT THE LEVEL SET FORTH IN THE NATIONAL COMPENSATION PROGRAM  
37 WITHOUT FURTHER CONSIDERATION IF THE MANUFACTURER AND NEW MOTOR VEHICLE  
38 DEALER AGREE.

39 Y. THE MANUFACTURER SHALL APPROVE OR DISAPPROVE A CLAIM WITHIN  
40 THIRTY DAYS AFTER IT IS SUBMITTED TO THE MANUFACTURER IN THE MANNER AND ON  
41 THE FORMS THE MANUFACTURER REASONABLY PRESCRIBES. THE MANUFACTURER SHALL  
42 PAY A CLAIM WITHIN THIRTY DAYS AFTER APPROVAL OF THE CLAIM. ANY CLAIM  
43 THAT IS NOT SPECIFICALLY DISAPPROVED IN WRITING BY THE MANUFACTURER WITHIN  
44 THIRTY DAYS FOLLOWING THE MANUFACTURER'S RECEIPT OF THE CLAIM IS DEEMED  
45 APPROVED.

1           Z. SUBSECTIONS U THROUGH Y OF THIS SECTION APPLY ONLY TO USED MOTOR  
2 VEHICLES THAT ARE SUBJECT TO SAFETY OR EMISSIONS RECALLS PURSUANT TO AND  
3 RECALLED IN ACCORDANCE WITH FEDERAL LAW AND FOR WHICH A STOP-SALE OR DO  
4 NOT DRIVE NOTIFICATION HAS BEEN ISSUED AND TO MOTOR VEHICLE MANUFACTURERS  
5 AND NEW MOTOR VEHICLE DEALERS WITH USED MOTOR VEHICLES OF THE LINE-MAKE  
6 THAT THE NEW MOTOR VEHICLE DEALER IS FRANCHISED TO SELL OR ON WHICH THE  
7 NEW MOTOR VEHICLE DEALER IS AUTHORIZED TO PERFORM RECALL REPAIRS.

8           AA. SUBSECTIONS U THROUGH Y OF THIS SECTION APPLY ONLY TO NEW MOTOR  
9 VEHICLE DEALERS HOLDING AN AFFECTED USED MOTOR VEHICLE FOR SALE THAT WAS  
10 ANY OF THE FOLLOWING:

11           1. IN INVENTORY AT THE TIME THE STOP-SALE OR DO NOT DRIVE  
12 NOTIFICATION WAS ISSUED.

13           2. TAKEN IN THE USED MOTOR VEHICLE INVENTORY OF THE NEW MOTOR  
14 VEHICLE DEALER AS A CONSUMER TRADE-IN INCIDENT TO THE PURCHASE OF A NEW  
15 MOTOR VEHICLE FROM THE NEW MOTOR VEHICLE DEALER AFTER THE STOP-SALE OR DO  
16 NOT DRIVE NOTIFICATION WAS ISSUED.

17           3. PROPERLY TAKEN IN THE USED MOTOR VEHICLE INVENTORY OF THE NEW  
18 MOTOR VEHICLE DEALER AS A LEASE RETURN VEHICLE RETURNED TO THE NEW MOTOR  
19 VEHICLE DEALER IN ACCORDANCE WITH THE TERMS OF THE APPLICABLE CONTRACT.

20           BB. FOR THE PURPOSES OF THIS SECTION, "STOP-SALE OR DO NOT DRIVE  
21 NOTIFICATION" MEANS A NOTIFICATION THAT IS ISSUED BY A MANUFACTURER TO  
22 SOME OR ALL OF ITS FRANCHISED DEALERSHIPS AND THAT STATES THAT CERTAIN  
23 USED MOTOR VEHICLES IN THE DEALERSHIPS' INVENTORIES SHALL NOT BE SOLD OR  
24 LEASED, EITHER AT RETAIL OR WHOLESALE, DUE TO A FEDERAL SAFETY DEFECT OR  
25 NONCOMPLIANCE RECALL OR A FEDERAL OR CALIFORNIA EMISSIONS RECALL.

**APPROVED BY THE GOVERNOR MAY 1, 2017.**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2017.**

Passed the House February 21, 20 17

Passed the Senate March 29, 20 17

by the following vote: 49 Ayes,

by the following vote: 29 Ayes,

9 Nays, 2 Not Voting

0 Nays, 1 Not Voting

[Signature]  
Speaker of the House  
 Pro Tempore

[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 received by the Governor this

           day of           , 20           

at            o'clock            M.

            
Secretary to the Governor

Approved this            day of

          

at            o'clock            M.

            
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this            day of           , 20           

at            o'clock            M.

            
Secretary of State

H.B. 2331

HOUSE FINAL PASSAGE  
as per Joint Conference

SENATE FINAL PASSAGE  
as per Joint Conference

Passed the House April 20, 2017

Passed the Senate April 24, 2017

by the following vote: 45 Ayes,

by the following vote: 29 Ayes,

10 Nays, 4 Not Voting

0 Nays, 1 Not Voting

[Signature]  
Speaker of the House  
 Pro Tempore

[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 received by the Governor this

25 day of April, 2017

at 12:09 o'clock P. M.

[Signature]  
Secretary to the Governor

Approved this 1<sup>st</sup> day of

May 2017

at 3:10 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 1 day of May, 2017

at 7:03 o'clock P. M.

[Signature]  
Secretary of State