STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY
GOVERNOR

EXECUTIVE OFFICE

April 11, 2018

The Honorable Michele Reagan
Secretary of State
1700 W. Washington, 7th Floor
Phoenix, AZ 85007

Dear Secretary Reagan:

I am transmitting to you the following bills from the Fifty-third Legislature, 2nd Regular Session, which I signed on April 11, 2018:

HB 2006 minimum age; marriage (Ugenti-Rita)
HB 2042 insurance coverage; telemedicine; urology (Carter)
HB 2047 workers' compensation; employee definition; LLCs (Livingston)
HB 2152 fingerprinting; joint powers authority (John)
HB 2154 personal information; data security breaches (Shope)
HB 2184 secretary of state; counties; rulemaking (Coleman)
HB 2216 schools; dropout recovery programs; report (Leach)
HB 2238 administrative decisions; review; scope (Farnsworth, E.)
HB 2244 dangerous crimes; children; fictitious age (Farnsworth, E.)
HB 2305 vehicle dealers; franchise regulations (Campbell)
HB 2323 schools; inhalers; contracted nurses (Carter)
HB 2342 off-highway vehicles; definition; user indicia (John)
HB 2464 sale of eggs; expiration date (Norgaard)
SB 1041 residency restrictions; sex offenders; victims (Kavanagh)
SB 1281 street lighting improvement districts; consolidation (Kavanagh)
SB 1355 border security trust fund; repeal (Griffin)
SB 1382 TPT; online lodging marketplace; registration (Kavanagh)
SB 1386 high-tech tax fraud (Farnsworth, D.)
SB 1395 temporary custody without court order (Barto)
SB 1421 environmental quality; amendments (Griffin)
SB 1436 prohibition; criminal history; occupational regulation (Burges)
SB 1465 sober living homes; certification (Brophy McGee)

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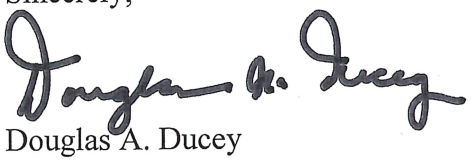
Sincerely,



Douglas A. Ducey
Governor
State of Arizona

cc: Senate Secretary
Chief Clerk of the House of Representatives
Arizona News Service

Senate Engrossed House Bill

FILED

MICHELE REAGAN

SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 182

HOUSE BILL 2305

AN ACT

AMENDING SECTIONS 28-4458 AND 28-4460, ARIZONA REVISED STATUTES; RELATING TO MOTOR VEHICLE DEALERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 28-4458, Arizona Revised Statutes, is amended to read:

28-4458. Coercion prohibited

A. A manufacturer of new motor vehicles, factory branch, distributor, distributor branch, field representative, officer or agent or any representative of a manufacturer of new motor vehicles, factory branch, distributor, distributor branch, field representative, officer or agent shall not coerce or attempt to coerce a new motor vehicle dealer to ~~either~~ DO ANY OF THE FOLLOWING:

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

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

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

4. Construct, renovate or make substantial alterations to the dealer's facilities unless the manufacturer, factory branch, distributor, distributor branch or representative of the manufacturer, factory branch, distributor or distributor branch is able to demonstrate that the changes are reasonable and justifiable in light of current and reasonably foreseeable economic conditions, the availability of additional vehicle allocation and the dealer's market for the sale of vehicles or unless the alteration is reasonably required to effectively display and service a vehicle based on the technology of the vehicle.

5. Enter into a real property use or site control agreement as a condition of awarding a franchise, adding a line-make or dealer agreement to an existing new motor vehicle dealer, renewing a dealer agreement, approving the sale or transfer of the ownership of a dealership or approving the relocation of a dealership. This paragraph does not apply to a real property use or site control agreement if either of the following is offered to and accepted by the dealer without coercion or condition in exchange for a real property use or site control agreement:

(a) Fair and reasonable monetary consideration.

(b) Separate and valuable consideration that may be calculated to a sum certain.

6. IN CONNECTION WITH THE SALE OF A USED MOTOR VEHICLE, OTHER THAN A USED MOTOR VEHICLE SOLD PURSUANT TO A FACTORY'S CERTIFIED PRE-OWNED PROGRAM, REQUIRE THE USE OF ONLY PARTS AND ACCESSORIES MANUFACTURED BY THE MANUFACTURER, FACTORY BRANCH, DISTRIBUTOR, DISTRIBUTOR BRANCH OR IMPORTER.

THIS PARAGRAPH DOES NOT APPLY TO PARTS USED TO PERFORM REPAIRS PURSUANT TO A RECALL OR REPAIRS PERFORMED PURSUANT TO A MANUFACTURER, FACTORY BRANCH, DISTRIBUTOR, DISTRIBUTOR BRANCH OR IMPORTER'S WARRANTY.

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

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

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

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

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

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

2. To a law enforcement agency, except that this exception does not apply to personal financial information.

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

F. A manufacturer, factory branch, distributor, distributor branch or field representative or an officer, agent or representative of a manufacturer, factory branch, distributor, distributor branch or field representative shall not require a dealer or condition the awarding of a franchise, the addition of a line-make, the renewal of a franchise, the

approval of the relocation of a franchise or the approval of a sale or transfer of a franchise on the willingness of a dealer or a proposed dealer or owner of an interest in the dealership facility to construct, renovate or maintain exclusive facilities, personnel or showroom area dedicated to a particular line-make if the imposition of such a requirement would be unreasonable in light of the existing circumstances, including the manufacturer's reasonable business considerations, present economic and market conditions and forecasts for future economic and market conditions in the dealer's retail territory. The manufacturer, factory branch, distributor, distributor branch or field representative has the burden of proof to demonstrate that its demand for exclusivity is justified by reasonable business considerations and is reasonable in light of the dealer's circumstances. This subsection does not apply to a voluntary agreement between a dealer and a manufacturer if separate and valuable consideration was offered and accepted. The renewal of a franchise agreement does not, by itself, constitute separate and valuable consideration. The manufacturer has the burden of proof to show by a preponderance of the evidence that the dealer entered into a voluntary agreement regarding exclusivity.

G. Any condition, stipulation or provision in a franchise or distributorship agreement purporting to bind any person acquiring or holding a franchise or distributorship to waive compliance with any provision of this chapter or any other law of this state is void except that a person who is acquiring or holding a franchise or distributorship is not prohibited under this section from electing in writing, at or after the time a dispute arises, from using any voluntary dispute resolution procedure, from entering into any voluntary agreement to settle legitimate disputes between the disputed parties or from entering into any agreement waiving any provision of this chapter or any other law of this state for which the franchisee receives separate and valid consideration at the time of the execution of the waiver.

Sec. 2. Section 28-4460, Arizona Revised Statutes, is amended to read:

28-4460. <u>Factories; competition or unfair discrimination prohibited; definitions</u>

A. A factory shall not directly or indirectly compete with or unfairly discriminate among its dealers.

B. Competing with or unfair discrimination includes any one of the following:

1. The factory having an ownership interest or franchise interest in, or operating or acting in the capacity of, a new motor vehicle dealer or a used motor vehicle dealer, except that:

(a) A factory is not prohibited from owning or operating as a new motor vehicle dealer for a temporary period if either of the following ~~apply~~ APPLIES:

(i) The temporary period is not more than twelve months during the transition from one dealer to another dealer if the dealership is for sale and is being actively marketed by the factory at a bona fide reasonable price and on reasonable terms and conditions to any independent qualified buyer.

(ii) The factory submits evidence that disposition of its interest will result in financial loss to the factory or dealership.

The temporary period may be extended in one year increments if either of the requirements of this subdivision are met.

(b) A factory is not prohibited from temporarily owning a dealership while in a bona fide relationship with a qualified person. A bona fide relationship with a person who is qualified requires that:

(i) The total sales price of the dealership is not less than an amount that is consistent with standard business practices.

(ii) The independent qualified person make a substantial unencumbered bona fide initial investment in the dealership that is reasonable and consistent with standard business practices.

(iii) The bona fide initial investment of the qualified person is subject to potential loss. The qualified person's percentage share of any potential dealership losses shall not be less than the person's percentage share of ownership of the dealership at the time of the loss.

(iv) The qualified person buy substantial portions of the factory's remaining ownership interest in substantial regular periodic payments throughout the acquisition period.

(v) The qualified person can expect to acquire and retain full and complete ownership of the dealership within a reasonable period of time that is not longer than ten years and on reasonable terms and conditions that are consistent with standard business practices. The ~~ten year~~ TEN-YEAR acquisition period may be extended for good cause shown by the qualified person.

(vi) During the acquisition period if the qualified person is paid a management fee, the management fee shall be reasonable and consistent with standard business practices for an individual managing a franchise of similar size and volume of sales and leases of vehicles or products.

(c) A factory is not prohibited from owning on a permanent basis a minority interest in a dealership if all of the following conditions are satisfied:

(i) The interest owned by the factory is not more than forty-five percent or the percentage interest actually owned by the factory on January 1, 2000, whichever is less.

(ii) Any dealership in which the factory owns the interest shall not be less than seventy-five miles from the nearest dealership of the same line-make in which the factory does not own the interest.

(iii) All dealerships in which the factory owns the interest shall not sell or lease more than one of the line-makes of new motor vehicles and parts manufactured by the factory.

(iv) All dealerships in which the factory owns the interest shall sell or lease the same line-make of new motor vehicles and parts manufactured by the factory. The dealerships may also sell or lease new motor vehicles and parts of a line-make manufactured by a factory that does not have an ownership interest in the dealership.

(v) The factory or an entity in which the factory has the interest must have been licensed in this state as a new motor vehicle dealer on January 1, 2000 selling the line-make of new motor vehicle manufactured by the factory.

(vi) The factory must have owned the interest in at least one dealership selling the line-make manufactured by the factory on January 1, 2000.

(vii) The factory or an entity in which the factory has the interest shall not sell any line-make of new motor vehicle that it was not selling in this state before January 1, 2000.

(viii) All automotive related services and financing related to the line-make or the factory owning the interest shall be sold or provided only to owners of vehicles of the line-make, regardless of where the vehicle was purchased, or to any purchasers of any new or used motor vehicles purchased from a dealership in which the factory has an interest. This item shall not preclude that dealership from selling or providing any nonwarranty repairs or maintenance on motor vehicles of any line-make or warranty repairs or maintenance of any line-make of new motor vehicles sold by the dealership and not manufactured by the factory.

(ix) All used motor vehicles of a line-make manufactured by the factory, other than the line-make that the dealership sells or leases new, acquired by the dealership, directly or indirectly from the factory, shall be acquired only at wholesale auction open to dealers of all line-makes manufactured by the factory.

2. The factory selling, leasing or providing, or offering to sell, lease or provide, a vehicle or product, service or financing to any retail consumer or lead. This paragraph does not:

(a) Prohibit a factory from advertising to sell, lease or provide a vehicle or product, service or financing through its dealers.

(b) Prohibit a factory from selling, leasing or providing or offering to sell, lease or provide a vehicle or product, service or financing through its dealers.

(c) Prohibit a factory from providing a vehicle or product or service for occasional promotional or charitable uses.

(d) Prohibit a factory from selling, leasing or providing a vehicle or product, service or financing to an agency of the federal government.

(e) Prohibit a factory from selling or leasing a vehicle or product, service or financing through its dealers to retail consumers who qualify for any reasonable factory sponsored factory employee, factory retiree or factory vendor new vehicle purchase program or any other reasonable similar factory related new vehicle purchase program.

(f) Prohibit a factory from providing financing to retail consumers through any used motor vehicle dealer or new motor vehicle dealer of any line-make.

(g) Prohibit a factory from providing a loan directly to a person or entity if the loan is for a purpose unrelated to the ownership or leasing of a new motor vehicle or a used motor vehicle not for resale.

(h) Prohibit a factory from providing loans directly to used motor vehicle dealers or new motor vehicle dealers of any line-make for any purpose, including working capital, real estate, construction or motor vehicle or parts inventories.

(i) Prohibit a factory from arranging or providing emergency roadside service.

(j) Prohibit a factory from offering factory sponsored extended service contracts to purchasers of new motor vehicles, provided that:

(i) Such offers shall not take place less than ninety days after the date the retail consumer takes delivery of the new motor vehicle.

(ii) Such offers are made to retail consumers only at the manufacturer's suggested retail price.

(k) Prohibit a factory from selling a lease vehicle to the original lessee pursuant to a purchase option set forth in the lease. Such sale may be a credit sale with the factory as the credit seller and may include the direct sale of extended service contracts at the manufacturer's suggested retail price.

(l) Prohibit a factory, at the request of a motor vehicle lessee, from extending a lease of a motor vehicle.

(m) Prohibit a factory from offering and approving a retail consumer credit application for the financing or leasing of a motor vehicle ~~provided that~~ IF both of the following apply:

(i) The final transaction takes place through a licensed motor vehicle dealer.

(ii) The factory does not establish or quote any interest rate, finance rate or lease rate in association with a credit application.

(n) Prohibit a factory from renewing or charging any subscription or connection fees for any in-vehicle electronic wireless communication, information or entertainment services.

3. The factory controlling any aspect of the final amount charged, the final sales price or the final lease price for any vehicle or product, trade-in or service offered to retail consumers in a dealer's area of responsibility without the written consent of the dealer. The dealer's consent may be withdrawn on forty-five days' notice without retribution or

the threat of retribution from the factory. This paragraph does not prohibit a factory from:

(a) Changing dealer cost or establishing any of the following:

(i) Manufacturer's suggested retail price pursuant to 15 United States Code section 1232.

(ii) Factory's suggested retail price for parts.

(iii) Factory's suggested retail price for service.

(b) Establishing from time to time reasonable sales, lease or financing promotions of reasonable and limited duration. ~~, provided that~~ Programs up to a year are presumed to be of reasonable and limited duration.

(c) Establishing reasonable standard feature option packages or vehicle option content in any way.

(d) Establishing the terms of any vehicle warranty.

(e) Establishing reasonable sales, lease or financing terms through its dealers to retail consumers who qualify for any reasonable factory sponsored factory employee, factory retiree or factory vendor new vehicle purchase program or any other reasonable similar factory related new vehicle purchase program.

(f) Linking the factory's internet site to internet sites maintained by its dealers or third parties, or to internet sites maintained jointly by the factory and its dealers and made available to all of the factory's dealers of the same line-make, provided that the factory shall not dictate, limit, establish, set or endorse as a basis for a retail transaction any price other than the manufacturer's suggested retail price.

(g) Establishing the price at which the lessee of a motor vehicle may purchase or re-lease that motor vehicle on expiration or termination of that lessee's lease.

(h) Operating or facilitating a program or system through which individual dealers may provide quotes or offers to individual consumers.

4. The factory refusing to unconditionally offer and provide to its same line-make dealers all models, series and editions of new motor vehicles that are publicly advertised for that line-make in ~~Arizona~~ THIS STATE. The failure to deliver any new motor vehicles shall not be considered a violation of this paragraph if the failure is caused by a lack of manufacturing capacity, labor strike, shortage of materials or trade embargo or any other condition over which the factory has no control. A factory may require a dealer to purchase reasonable quantities of advertising materials, purchase reasonable quantities of special tools required to properly service a motor vehicle and undertake reasonable salesperson or service person training related to the motor vehicle as a condition of receiving a motor vehicle. This paragraph does not:

(a) Apply to recreational vehicle manufacturers.

(b) Prohibit a factory from providing monetary, financial or optional equipment incentives to fleet purchasers for new motor vehicles not for resale.

5. The factory denying to any dealer any price reduction, rebate, incentive payment or similar pricing device relating to the sale or offer to sell a new motor vehicle to a dealer, pursuant to a program that discriminates among dealers of the same line-make in ~~Arizona~~ THIS STATE, when the dealer cannot qualify or receive the benefits of the program for reasons other than the dealer's failure to use reasonable effort to qualify and the terms of the program are such that a failure to qualify or receive its benefits would constitute the constructive termination of the dealer.

6. The factory failing to provide or direct a lead relating to a particular line-make either:

(a) To the dealer with whom the lead has a preexisting relationship.

(b) To the dealer of the same line-make that is located closest to where the lead resides, or to the local business address if the lead is a business.

(c) To the dealer of the same line-make in whose assigned area of responsibility the lead resides, or the local business address if the lead is a business.

(d) According to the lead's voluntary preference.

C. Under subsection B, paragraph 6 OF THIS SECTION:

1. The factory need not provide or direct a lead to a dealer who does not sell the vehicle or product, service or financing in which the lead expresses an interest.

2. The factory is responsible only for providing to the dealer information that it possesses concerning the lead.

3. The factory is not precluded from providing or directing leads to any other dealer of the same line-make.

4. All leads ~~shall be~~ ARE provided or directed in a fair, nondiscriminatory, equitable and timely manner to dealers and, except as provided in subsection D OF THIS SECTION, without charging a fee for those leads.

D. Subsection B, paragraph 6 OF THIS SECTION does not apply to any factory sponsored internet-based program specifically designed to provide retail consumers with internet access to dealer quotations on vehicles, products, financing or services~~, provided that~~ IF:

1. Fees for the program are reasonable and consistent with industry standards.

2. Dealer participation is not conditioned on participation in any other program or on ratings derived from customer surveys.

E. A manufacturer or distributor may not recover all or any portion of its costs for compensating a dealer for warranty parts and service,

including parts and service associated with vehicle recalls, either by reduction in the amount due the dealer or by separate charge, surcharge, administrative fee or other imposition. This subsection does not prohibit a manufacturer or distributor from increasing the wholesale price of a vehicle or part in the ordinary course of business.

F. For the purposes of this section:

1. "Controlling" means dictating, limiting, establishing, setting or endorsing as a basis for a retail transaction any price other than the manufacturer's suggested retail price.

2. "Dealer" or "dealership" means a new motor vehicle dealer or franchisee.

3. "Factory":

(a) Means a manufacturer, importer or distributor or any legal entity in which a manufacturer, importer or distributor owns a majority interest or has direct or indirect power to direct or cause the direction of the management whether through voting securities, contract or otherwise.

(b) INCLUDES SUCCESSORS IN INTEREST TO ALL ENTITIES DESCRIBED IN SUBDIVISION (a) OF THIS PARAGRAPH THAT CONTINUE RETAIL OPERATIONS SELLING OR SERVICING THE SAME LINE-MAKE AS ANY MOTOR VEHICLE DEALER THAT HAS, AS OF THE EFFECTIVE DATE OF SUCH SUCCESSION, A FRANCHISE TO SELL AND SERVICE SUCH LINE-MAKE, INCLUDING SUCCESSORS THAT ACQUIRE THE INTERESTS BY PURCHASE, MERGER OR CONVERSION.

~~(b)~~ (c) Excludes any new motor vehicle dealer, used motor vehicle dealer or trailer manufacturer.

~~(c)~~ (d) Excludes any agent, affiliate, representative or subsidiary that is primarily engaged in the business of rental of passenger and commercial motor vehicles and industrial and construction equipment and activities incidental to that business if all of the following conditions are satisfied:

(i) Passenger and commercial motor vehicles sold by the agent, affiliate, representative or subsidiary are limited to used passenger and commercial motor vehicles that have been previously used exclusively and regularly by the agent, affiliate, representative or subsidiary in the conduct of business and used passenger and commercial motor vehicles traded in on motor vehicles sold by the agent, affiliate, representative or subsidiary.

(ii) Warranty repairs performed by the agent, affiliate, representative or subsidiary on passenger and commercial motor vehicles are limited to those passenger and commercial motor vehicles that it owns, previously owned or takes in trade.

(iii) Motor vehicle financing provided by the agent, affiliate, representative or subsidiary to retail consumers for passenger and commercial motor vehicles is limited to vehicles sold by the agent, affiliate, representative or subsidiary in the conduct of business.

4. "Financing":

(a) Means the financial service of providing retail consumers the ability to pay for a purchase or lease of a new or used motor vehicle, parts or services over an extended period of time.

(b) Does not include the furnishing of credit cards capable of general use in retail transactions or the provision of any loans secured by real estate.

5. "Parts":

(a) Means all items that are designed to be incorporated within or attached to or used to operate, maintain or service a motor vehicle.

(b) Does not include any of the following:

(i) Parts purchased or provided for use by professional racing enterprises.

(ii) Parts no longer included in the current factory price schedule.

(iii) Specialized parts for research vehicles or other similar uses of limited application.

(iv) Owners' manuals or repair manuals.

(v) Parts that are provided by an automotive recycler in the normal course of business for an automotive recycler.

(vi) Motor vehicle keys.

6. "Service" means either of the following:

(a) Motor vehicle warranty and nonwarranty repairs or maintenance, including both parts and labor.

(b) Extended warranties, vehicle mechanical maintenance insurance and similar vehicle repair service contracts.

7. "Vehicle or product" means a new motor vehicle, a used motor vehicle or parts.

APPROVED BY THE GOVERNOR APRIL 11, 2018

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 2018

Passed the House February 21, 2018

by the following vote: 60 Ayes,

0 Nays, 0 Not Voting

Speaker of the House

☐ Pro Tempore

Chief Clerk of the House

Passed the Senate March 28, 2018

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

President of the Senate

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. 2305

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 5, 2018,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Speaker of the House

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

5th day of April, 2018,

at 3:12 o'clock P. M.

Secretary to the Governor

Approved this 11th day of

April, 2018,

at 2:12 o'clock P M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 11 day of April, 2018,

at 4:50 o'clock P. M.

Michele Reagan
Secretary of State

H.B. 2305