

## A.R.S. § 28-4301

Current through all 2022 legislation, comprising the 55th Legislature's 2nd Regular session

**LexisNexis® Arizona Annotated Revised Statutes > Title 28 Transportation (Chs. 1 — 32) > Chapter 10 Vehicle Dealers, Automotive Recyclers and Transporters (Arts. 1 — 10) > Article 1. General Provisions (§§ 28-4301 — 28-4308)**

### 28-4301. Definitions

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In this chapter, unless the context otherwise requires:

1. "Area of responsibility" means the area surrounding an individual dealer that the factory designates as that dealer's individual primary geographic territory for the purpose of marketing, promoting, selling and leasing new motor vehicles. In the absence of the factory designated area, the area of responsibility is that geographical area surrounding a dealer that lies closer to that dealer than to other dealers of the same line-make.
2. "Branch license" means a license that is issued by the director to a licensed motor vehicle dealer and that permits the licensee to sell motor vehicles from an established place of business within the same county but other than the original or principal place of business for which the license was issued.
3. "Broker" means a person who for any fee, commission or other valuable consideration offers to provide, provides or represents that the person will provide a service of arranging or assisting in effecting the purchase of a motor vehicle and who is not:
  - (a) A new motor vehicle dealer or an employee or agent of a new motor vehicle dealer.
  - (b) A used motor vehicle dealer or an employee or agent of a used motor vehicle dealer.
  - (c) A manufacturer or employee or agent of a manufacturer.
  - (d) An auctioneer or engaged in the auto auction business.
  - (e) A wholesale motor vehicle dealer.
4. "Community" means the relevant market area. For the purposes of this paragraph, "relevant market area" means the incorporated city or town in which the franchise is located.
5. "Distributor" means a person who either:
  - (a) Sells or distributes new motor vehicles to new motor vehicle dealers in this state.
  - (b) Maintains distributor representatives in this state.
6. "Distributor branch" means a branch office maintained or availed of by a distributor for either:
  - (a) The sale of new motor vehicles to new motor vehicle dealers in this state.
  - (b) Directing or supervising its representatives in this state.
7. "Established place of business":
  - (a) Means a permanent enclosed building or structure that is owned either in fee or leased with sufficient space to display two or more motor vehicles of a kind and type that the dealer is licensed to sell and that is devoted principally to the use of a motor vehicle dealer in the conduct of the business of the dealer.
  - (b) In the case of a used motor vehicle dealer, trailer dealer or semitrailer dealer:

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- (i)** Need not be a permanent building or structure or part of a permanent building or structure.
  - (ii)** May be a vacant lot or part of a vacant lot.
  - (iii)** Does not mean or include a residence, tent, temporary stand or temporary quarters or permanent quarters occupied pursuant to a temporary arrangement.
- (c)** In the case of an automotive recycler, means a permanent site or location at which the business of an automotive recycler is or will be conducted.
- 8.** "Exhibitor" means a manufacturer of new motor homes that exhibits new motor homes at a special event.
- 9.** "Factory branch" means a branch office maintained or availed of by a manufacturer for either:
  - (a)** The sale of new motor vehicles to distributors or the sale of new motor vehicles to new motor vehicle dealers in this state.
  - (b)** Directing or supervising its representatives in this state.
- 10.** "Financial institution" means a bank, trust company, savings and loan association, credit union, consumer lender, international banking facility or holding company that is licensed, regulated or insured by the department of insurance and financial institutions, the federal deposit insurance corporation, the office of thrift supervision, the comptroller of the currency, the national credit union share insurance fund or the national credit union administration.
- 11.** "Franchise" means a contract between two or more persons if all of the following conditions are included:
  - (a)** A commercial relationship of definite duration or continuing indefinite duration is involved.
  - (b)** The franchisee is granted the right to offer, sell and service in this state new motor vehicles manufactured or distributed by the franchisor.
  - (c)** The franchisee, as a separate business, constitutes a component of the franchisor's distribution system.
  - (d)** The operation of the franchisee's business is substantially associated with the franchisor's trademark, service mark, trade name, advertising or other commercial symbol designating the franchisor.
  - (e)** The operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts and accessories.
- 12.** "Franchisee" means a person who both:
  - (a)** Receives new motor vehicles from the franchisor under a franchise.
  - (b)** Offers and sells to and services new motor vehicles for the general public.
- 13.** "Franchisor" means a person who both:
  - (a)** Manufactures or distributes new motor vehicles.
  - (b)** May enter into a franchise.
- 14.** "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.
- 15.** "Lead" means any retail consumer who satisfies all of the following:
  - (a)** Responds to a factory-directed program that obtains consumer contact information and that provides such information to one or more dealers.
  - (b)** Expresses an interest to the factory in purchasing, leasing or acquiring any vehicle or product, service or financing available from the dealers of that factory.

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- (c) Does not qualify for any reasonable factory sponsored employee, retiree or vendor new vehicle purchase program or any other reasonable similar factory new vehicle purchase program.
16. "Line-make" means those motor vehicles that are offered for sale, lease or distribution under a common name, trademark, service mark or brand name of the manufacturer of those same motor vehicles.
17. "Major component part" includes a motor vehicle or vehicle part that the manufacturer has assigned any factory, motor, serial or other identification number or mark.
18. "Manufacturer" means any person who either:
- (a) Manufactures or assembles new motor vehicles.
  - (b) Manufactures or installs on previously assembled truck chassis special bodies or equipment that when installed forms an integral part of the new motor vehicle and that constitutes a major manufacturing alteration, excluding the installation of a camper on a pickup truck.
19. "Motor home" means a motor vehicle that is primarily designed as temporary living quarters and that:
- (a) Is built onto as an integral part of, or is permanently attached to, a motor vehicle chassis.
  - (b) Contains at least four of the following independent life support systems if each is permanently installed and designed to be removed only for purposes of repair or replacement:
    - (i) A cooking facility with an onboard fuel source.
    - (ii) A gas or electric refrigerator.
    - (iii) A toilet with exterior evacuation.
    - (iv) A heating or air conditioning system with an onboard power or fuel source separate from the vehicle engine.
    - (v) A potable water supply system that includes at least a sink, a faucet and a water tank with an exterior service supply connection.
    - (vi) A 110-125 volt electric power supply.
20. "Motor vehicle" means an automobile, motor bus, motorcycle, truck or truck tractor or any other self-propelled vehicle, trailer or semitrailer.
21. "Motor vehicle dealer" means a new motor vehicle dealer, a used motor vehicle dealer, a public consignment auction dealer, a broker or a wholesale motor vehicle auction dealer, excluding a person who comes into possession of a motor vehicle as an incident to the person's regular business and who sells, auctions or exchanges the motor vehicle.
22. "New house trailer dealer" means a person who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged in the business of selling, new house trailers or used house trailers taken in trade on new house trailers. For the purposes of this paragraph, "house trailer" means a vehicle, other than a motor vehicle, that is built on a chassis designed for being drawn on the highways by a motor vehicle and that is designed for human habitation.
23. "New motor vehicle" means a motor vehicle, other than a used motor vehicle, that is held either for:
- (a) Sale by the franchisee who first acquired the vehicle from the manufacturer or distributor of the vehicle.
  - (b) Sale by another franchisee of the same line-make.
24. "New motor vehicle dealer" means a person who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged in the business of selling, new motor

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vehicles or used motor vehicles taken in trade on new motor vehicles or used vehicles purchased for resale.

**25.** “Off-premises display and sales” means a promotion or sale of motor vehicles for a period of time as specified by the director that both:

(a) Is sponsored by a licensed motor vehicle dealer, the licensed motor vehicle dealer’s agents or the manufacturer.

(b) Takes place at a location within the same county but not at the licensee’s established place of business.

**26.** “Off-premises exhibition” means the exhibition of a motor vehicle for a period of time as specified by the director at a location within the same county but not at the established place of business of a licensed motor vehicle dealer and at which a solicitation or sale does not occur.

**27.** “Provisional automotive recycler’s license” means a license that both:

(a) Is issued by the department only in conjunction with an application for an automotive recycler’s license.

(b) Permits the applicant or applicants to conduct the business of an automotive recycler regulated by this chapter pending completion of the criminal records check pursuant to section 28-4361.

**28.** “Provisional dealer’s license” means a license that both:

(a) Is issued by the department only in conjunction with an application for a dealer’s license.

(b) Permits the applicant or applicants to conduct the business of a motor vehicle dealer regulated by this chapter pending completion of the criminal records check pursuant to section 28-4361.

**29.** “Public consignment auction dealer” means a person who at the public consignment auction dealer’s established place of business or at an authorized off-premises location pursuant to the requirements of section 28-4401 is in the business of both of the following:

(a) Conducting live auctions with a licensed auctioneer verbally calling for and accepting bids.

(b) Providing live auction services to the public on a consignment contract basis.

**30.** “Retail consumer” means any person purchasing, leasing or acquiring or possibly purchasing, leasing or acquiring a vehicle or product, service or financing not for resale.

**31.** “Service” means any service that is sold, leased or provided to retail consumers and that directly relates to the ownership or leasing of a new or used motor vehicle, including extended service contracts or motor vehicle warranty and nonwarranty repairs or maintenance, including both parts and labor.

**32.** “Special event” means an exhibition of new motor homes by a motor vehicle dealer licensed to sell new motor homes or an exhibitor for a period of time specified by the director at a location in this state other than the licensee’s or exhibitor’s established place of business.

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

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

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

**34.** “Used motor vehicle dealer” means a person, other than a new motor vehicle dealer, who buys, sells, auctions, exchanges or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged in the business of selling, seven or more used motor vehicles in a continuous twelve

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month period. Used motor vehicle dealer does not include a wholesale motor vehicle auction dealer or a public consignment auction dealer.

**35.** “Wholesale motor vehicle auction dealer” means a person who both:

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

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

**36.** “Wholesale motor vehicle dealer” means a person who sells used motor vehicles only to licensed motor vehicle dealers.

## History

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Recent legislative history: Laws 1998, Ch. 289, § 21; Laws 1999, Ch. 214, § 8; Laws 2000, Ch. 102, § 2; Laws 2002, Ch. 44, § 1; Laws 2003, Ch. 191, § 2; Laws 2004, Ch. 188, § 26; Laws 2005, Ch. 123, § 1; Laws 2011, 1st Reg. Sess., Ch. 289, § 1; Laws 2014, 2nd Reg. Sess., Ch. 81, § 1; 2018 2nd Reg. Sess. Ch. 298, § 6, effective September 30, 2018; 2019 1st Reg. Sess. Ch. 252, § 31.

Annotations

## Notes

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### Prior Law

Laws 1997, 1st Reg. Sess., Ch. 1, § 238.

Laws 1996, 2nd Reg. Sess., Ch. 76, § 182.

Laws 1995, 1st Reg. Sess., Ch. 132, § 3.

Laws 1993, 1st Reg. Sess., Ch. 12, § 1.

### Editor's Notes

Laws 2019, 1st Reg. Sess., Ch. 252, § 67 provides, “All rules adopted by the department of financial institutions remain in full force until amended by the department of insurance and financial institutions.”

For information related to transfer, effect, and succession, see Laws 2019, 1st Reg. Sess., Ch. 252, § 68.

### Conditional Effective Dates

Laws 2018, 2nd Reg. Sess., Ch. 298, § 12 provides that the chapter’s amendment becomes effective when “the department of transportation implements an electronic system for a registered scrap metal dealer or a licensed automotive recyclers to report all vehicle acquisitions electronically within forty-eight hours and verify at the time of a transaction that a motor vehicle offered for sale has not been reported stolen,” and the Arizona Department of Transportation has notified the Arizona Legislative Council that the condition was satisfied as of September 30, 2020.

### Amendment Notes

The 2018 amendment deleted former (2), which read: “ ‘Automotive recycler’ means a person who is engaged in the business of buying or acquiring a motor vehicle solely for the purpose of dismantling, selling or otherwise

disposing of the parts or accessories and who dismantles six or more vehicles in a calendar year”; and made related changes.

The 2019 amendment by Ch. 252, § 31 substituted “department of insurance and financial institutions” for “department of financial institutions” in (10).

## JUDICIAL DECISIONS

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**“Community.”**

**“Motor Home.”**

**Additional Cases of Historical Interest (1955 — 1984)**

**Real Property Law: Estates: Present Estates: Fee Simple Estates**

**Transportation Law: Private Vehicles: Towing**

**Transportation Law: Private Vehicles: Vehicle Registration: General Overview**

**“Community.”**

Existing car dealership lacked standing to object to a car manufacturer’s plan to establish a new same line-make dealership because, despite its physical location within exterior boundaries of city, the old dealership was not within same “community” as the new dealership located on a county island within those same exterior boundaries of the city. *Sanderson Lincoln Mercury, Inc. v. Ford Motor Co.*, 205 Ariz. 202, 68 P.3d 428, 400 Ariz. Adv. Rep. 37, 2003 Ariz. App. LEXIS 68 (Ariz. Ct. App. 2003).

Arizona legislature defined “community” and “relevant market area” in terms of an incorporated city; had it intended “community” and “relevant market area” to apply to a geographic area rather than the legal boundaries of an incorporated entity or had it intended that antitrust principles apply, it could have drafted § 28-4301(5) accordingly. *Sanderson Lincoln Mercury, Inc. v. Ford Motor Co.*, 205 Ariz. 202, 68 P.3d 428, 400 Ariz. Adv. Rep. 37, 2003 Ariz. App. LEXIS 68 (Ariz. Ct. App. 2003).

**“Motor Home.”**

Bankruptcy court found that the married Chapter 7 debtors were entitled to claim a homestead exemption in their motor home where the court held that under Arizona law the motor home satisfied the definition and purpose of the state homestead law. *In re Irwin*, 293 B.R. 28, 2003 Bankr. LEXIS 370 (Bankr. D. Ariz. 2003).

**Additional Cases of Historical Interest (1955 — 1984)**

**Real Property Law: Estates: Present Estates: Fee Simple Estates**

*Killingsworth v. West Way Motors*, 87 Ariz. 74, 347 P.2d 1098, 1959 Ariz. LEXIS 125 (Ariz. 1959).

**Overview:** *A statutory requirement that new car dealers have a permanent building with display space, which was not required of used car dealers, was not reasonably related to fraud prevention and violated the equal protection clause.*

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- Former Ariz. Rev. Stat. § 28-1301 (now Ariz. Rev. Stat. § 28-4301) reads as follows: 2. “Established place of business” means a permanent enclosed building or structure owned either in fee or leased with sufficient space to display two or more motor vehicles of a kind and type which the dealer is licensed to sell and which is devoted principally to the use of a motor vehicle dealer in the conduct of the business of the dealer. In the case of a used motor vehicle dealer, trailer dealer or semi-trailer dealer an established place of business need not be a permanent building or structure or part thereof, but may be a vacant lot or part thereof, but the term shall not mean or include a residence, tent, temporary stand or temporary quarters or permanent quarters occupied pursuant to a temporary arrangement. In the case of a motor dealer or wrecker an established place of business means a permanent site or location at which the business of a motor dealer or wrecker is or will be conducted.

**Transportation Law: Private Vehicles: Towing**

Killingsworth v. West Way Motors, 87 Ariz. 74, 347 P.2d 1098, 1959 Ariz. LEXIS 125 (Ariz. 1959).

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**Transportation Law: Private Vehicles: Vehicle Registration: General Overview**

Killingsworth v. West Way Motors, 87 Ariz. 74, 347 P.2d 1098, 1959 Ariz. LEXIS 125 (Ariz. 1959).

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- Former Ariz. Rev. Stat. § 28-1301 (now Ariz. Rev. Stat. § 28-4301) reads as follows: 5. “Motor vehicle dealer” means a new motor vehicle dealer or a used motor vehicle dealer. 6. “New motor vehicle dealer” means a person who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of any interest in, or who is engaged in the business of selling, new motor vehicles or used motor vehicles taken in trade on new motor vehicles. 8. “Used motor vehicle dealer” means a person, other than a new motor vehicle

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dealer, who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of any interest in, or who is engaged in the business of selling, used motor vehicles.

## Research References & Practice Aids

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### Hierarchy Notes:

A.R.S. Title 28

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## **A.R.S. § 28-4451**

Current through all legislation of the 55th Legislature's 2nd Regular session enacted as of July 5, 2022, including act chapter 365

***LexisNexis® Arizona Annotated Revised Statutes > Title 28 Transportation (Chs. 1 – 32) > Chapter 10 Vehicle Dealers, Automotive Recyclers and Transporters (Arts. 1 – 10) > Article 5. Franchise Regulation (§§ 28-4451 – 28-4463)***

### **28-4451. Product liability; warranty obligations; audits; vehicle exports; used vehicle recall obligations; definition**

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- A.** Each manufacturer shall file with the director a copy of the delivery and preparation obligations required to be performed by a new motor vehicle dealer before delivery of new motor vehicles to buyers. These delivery and preparation obligations constitute the new motor vehicle dealer's only responsibility for the product liability as between the new motor vehicle dealers and the manufacturer. The new motor vehicle dealer shall furnish the buyer of a new motor vehicle with a signed copy of the manufacturer's or distributor's delivery and preparation requirements indicating that all of the requirements have in fact been performed.
- B.** Any mechanical, body or parts defects arising from any express or implied warranties of the manufacturer constitute the manufacturer's product or warranty liability.
- C.** The manufacturer or distributor shall compensate an authorized new motor vehicle dealer who performs work to rectify the manufacturer's or distributor's warranty obligations, recall obligations or delivery and preparation obligations.
- D.** The compensation that the manufacturer or distributor pays to a new motor vehicle dealer for diagnostic work, repair service and labor shall be fair and reasonable and, at the option of the new motor vehicle dealer, may be determined pursuant to subsection E of this section. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work or services to be performed. The compensation that the manufacturer or distributor pays to the new motor vehicle dealer for parts used in warranty or recall related service shall be fair and reasonable and, at the option of the new motor vehicle dealer, may be determined pursuant to subsection E of this section.
- E.** The new motor vehicle dealer may declare the retail rates that it customarily charges for parts or labor or both parts and labor by submitting to the manufacturer or distributor the lesser of one hundred sequential, nonwarranty, customer-paid service repair orders or ninety consecutive days of customer-paid service repair orders for warranty-like repairs made not more than one hundred eighty days before the submission. The new motor vehicle dealer's retail labor rate shall be determined by dividing the amount of the dealer's total labor sales contained in the submitted repair orders by the total number of labor hours that generated those sales. The new motor vehicle dealer's retail rate for parts shall be a percentage determined by

dividing the total sales for parts in the submitted repair orders by the new motor vehicle dealer's total cost for those parts, minus one, multiplied by one hundred to produce a percentage. Declared rates are presumed to be fair and reasonable except that a manufacturer or distributor, within thirty days after receiving the new motor vehicle dealer's submission, may rebut the presumption by reasonably substantiating that the rate or rates are inaccurate or unreasonable compared to other similarly situated same line-make new motor vehicle dealers in this state. The new motor vehicle dealer's declared parts, labor or both parts and labor rates shall go into effect thirty days following the manufacturer's or distributor's receipt of the declaration, unless the manufacturer or distributor timely sends a rebuttal of the declared rate or rates to the new motor vehicle dealer. If any of the declared rates are rebutted, the manufacturer or distributor shall propose an adjustment of the rebutted rate or rates within thirty days after receiving the new motor vehicle dealer's submission. If the new motor vehicle dealer does not agree with the proposed adjusted rate or rates, it may file a protest with the director within thirty days after receipt of the manufacturer's or distributor's proposal. If a protest is timely filed, the director shall inform the manufacturer or distributor that a timely protest has been filed and that a hearing will be held on the protest if any available manufacturer or distributor mediation opportunity has been used and was unsuccessful in reaching an agreement between the parties.

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

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

**G.** The manufacturer, factory branch, distributor or distributor branch may reasonably and periodically audit a new motor vehicle dealer to determine the validity of paid claims for dealer compensation or any charge-backs for warranty parts or service compensation. Audits shall only be for the twelve month period immediately following the date of the payment. This limitation does not apply if the manufacturer, factory branch, distributor or distributor branch reasonably suspects fraud. As a result of an audit that is authorized by this subsection, the manufacturer or distributor has the right to charge back to the new motor vehicle dealer the amount of any previously paid claim after the new motor vehicle dealer has had notice and an opportunity to participate in any available manufacturer or distributor mediation processes and all legal appeals have been exhausted if mediation failed to result in an agreement.

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

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

**J.** If a manufacturer or distributor furnishes a part or component to a new motor vehicle dealer, at no cost, to use in performing repairs under a recall, campaign service action or warranty repair, the manufacturer or distributor shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this section by compensating the dealer the retail parts rate on the wholesale cost for the part or component as listed in the manufacturer's or distributor's price schedule, minus the wholesale cost for the part or component.

**K.** A manufacturer or distributor may not require a new motor vehicle dealer to establish the retail rates customarily charged by the dealer for parts or labor by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time-consuming to provide calculations, including part-by-part or transaction-by-transaction calculations. A new motor vehicle dealer may not declare any new retail rate more than once in any twelve-month period. A manufacturer or distributor may use the repair orders submitted by a new motor vehicle dealer under subsection E of this section to validate any or all of a new motor vehicle dealer's current warranty reimbursement rates or require a new motor vehicle dealer to submit, not more than once every twelve months, repair orders pursuant to this section to validate the new motor vehicle dealer's retail rate or rates. If a manufacturer or distributor finds that any of a new motor vehicle dealer's retail rates have declined, the manufacturer or distributor may prospectively reduce the respective warranty reimbursement rate.

**L.** If the new motor vehicle dealer has otherwise properly submitted the claim pursuant to the manufacturer's or distributor's warranty or incentive program guidelines, a manufacturer or distributor may not deny a claim by a new motor vehicle dealer for reimbursement of any warranty parts or service compensation or any consumer or dealer incentive compensation based solely on a new motor vehicle dealer's incidental failure to comply with a specific claim processing requirement that

does not put into question the legitimacy of the claim. If a claim is rejected for such an incidental requirement the new motor vehicle dealer may correct or complete and resubmit a previously submitted warranty or incentive claim for a period of up to sixty days following the new motor vehicle dealer's receipt of first notice of the failure from the manufacturer or distributor. A manufacturer or distributor is not required to approve any such warranty or incentive claim if all claim processing requirements are not complied with by the new motor vehicle dealer within the time periods prescribed by this section.

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

- 1.** Refuse to sell, allocate or deliver new motor vehicles to the new motor vehicle dealer.
- 2.** Charge back to or withhold payments or other things of value from the new motor vehicle dealer that the new motor vehicle dealer otherwise would be eligible for under an incentive program or contest.
- 3.** Prevent a new motor vehicle dealer from participating in any sales promotion or program.
- 4.** Take an adverse action against a new motor vehicle dealer, including reducing vehicle allocations or terminating or threatening to terminate a dealer.

**N.** There is a rebuttable presumption that the new motor vehicle dealer described in subsection M of this section did not know or should not have reasonably known that the vehicle described in subsection M of this section would be exported. The presumption may be rebutted by a preponderance of the evidence that the new motor vehicle dealer knew or should have reasonably known that the vehicle was to be exported.

**O.** If a timely protest is filed under subsection E of this section, the director shall:

- 1.** Enter an order fixing the time and place of a hearing on the protest. The hearing shall be held within seventy-five days after the date of the order.
- 2.** Send by certified mail a copy of the order to the dealer and the manufacturer.
- 3.** Appoint a member of the Arizona state bar who shall be designated as an administrative law judge to conduct the hearing and who shall be compensated under a contractual relationship.

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

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

- 1.** Issue subpoenas.

- 2.** Administer oaths.
  - 3.** Compel the attendance of witnesses and the production of books, papers, documents and all other evidence.
  - 4.** Apply to the superior court in the county in which the hearing is held for a court order enforcing this section.
- R.** A transcript of the testimony of all witnesses taken at the hearing shall be made and preserved. Within forty-five days after the hearing the administrative law judge shall make written findings of fact and conclusions of law and enter a final order.
- S.** A party to the hearing before the administrative law judge may appeal pursuant to title 12, chapter 7, article 6. An appeal of a decision of an administrative law judge has preference over other civil matters and shall be heard at the earliest practicable date.
- T.** As a condition to the appeal, the appealing party shall file a cash bond, supersedeas bond or its equivalent with the director. The bond shall be sufficient in amount to cover the damages incurred by the prevailing party, but the amount of the bond may not exceed the lesser of fifty thousand dollars or ten percent of the appealing party's net worth. The appealing party may file alternatives to cash such as certificates of deposit purchased from a financial institution licensed to do business in this state pursuant to title 6 or bonds of the United States government.
- U.** A manufacturer shall compensate its new motor vehicle dealers for all labor and parts that are required to perform recall repairs. The compensation shall be fair and reasonable and, at the option of the new motor vehicle dealer, may be determined pursuant to subsection E of this section. If parts or a remedy is not reasonably available to perform a recall service or repair on a used motor vehicle held for sale by the new motor vehicle dealer that is authorized to sell new motor vehicles of the same line-make of the recalled motor vehicle within thirty days after the manufacturer issues a stop-sale or do not drive notification on the used motor vehicle, the manufacturer shall compensate the new motor vehicle dealer at a rate of at least 1.5 percent of the value of the used motor vehicle per month, or prorated portion of a month when applicable, until a date when the recall parts or remedy are delivered to the dealer or when the vehicle is no longer in the new motor vehicle dealer's inventory.
- V.** The value of the used motor vehicle that is subject to a stop-sale or do not drive notification shall be the average trade-in value for used vehicles as determined by reference to a nationally recognized publication that reports on used motor vehicle values.
- W.** It is a violation of this section for a manufacturer to reduce the amount of compensation that is otherwise owed to a new motor vehicle dealer, whether through a chargeback, removal from an incentive program, reduction in amount owed under an incentive program or any other means, because the new motor vehicle dealer has submitted a claim for compensation under subsection U of this section or was otherwise compensated for a vehicle that is subject to a recall if a stop-sale or do not drive notification has been issued.
- X.** All reimbursement claims that are made by a new motor vehicle dealer pursuant to subsection U of this section for recall remedies or repairs or for compensation if no

part or repair is reasonably available and the used motor vehicle is subject to a stop-sale or do not drive notification shall be made in compliance with at least one of the following:

- 1.** In a like manner as a warranty reimbursement claim under this section.
  - 2.** At a rate set forth in a national compensation program that the manufacturer manages if the compensation provided to the new motor vehicle dealer equals or exceeds the reimbursement level for a claim that is determined as a warranty reimbursement claim pursuant to paragraph 1 of this subsection.
  - 3.** At the level set forth in the national compensation program without further consideration if the manufacturer and new motor vehicle dealer agree.
- Y.** The manufacturer shall approve or disapprove a claim within thirty days after it is submitted to the manufacturer in the manner and on the forms the manufacturer reasonably prescribes. The manufacturer shall pay a claim within thirty days after approval of the claim. Any claim that is not specifically disapproved in writing by the manufacturer within thirty days following the manufacturer's receipt of the claim is deemed approved.
- Z.** Subsections U through Y of this section apply only to used motor vehicles that are subject to safety or emissions recalls pursuant to and recalled in accordance with federal law and for which a stop-sale or do not drive notification has been issued and to motor vehicle manufacturers and new motor vehicle dealers with used motor vehicles of the line-make that the new motor vehicle dealer is franchised to sell or on which the new motor vehicle dealer is authorized to perform recall repairs.
- AA.** Subsections U through Y of this section apply only to new motor vehicle dealers holding an affected used motor vehicle for sale that was any of the following:
- 1.** In inventory at the time the stop-sale or do not drive notification was issued.
  - 2.** Taken in the used motor vehicle inventory of the new motor vehicle dealer as a consumer trade-in incident to the purchase of a new motor vehicle from the new motor vehicle dealer after the stop-sale or do not drive notification was issued.
  - 3.** Properly taken in the used motor vehicle inventory of the new motor vehicle dealer as a lease return vehicle returned to the new motor vehicle dealer in accordance with the terms of the applicable contract.
- BB.** For the purposes of this section, "stop-sale or do not drive notification" means a notification that is issued by a manufacturer to some or all of its franchised dealerships and that states that certain used motor vehicles in the dealerships' inventories shall not be sold or leased, either at retail or wholesale, due to a federal safety defect or noncompliance recall or a federal or California emissions recall.

## History

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Recent legislative history: Laws 2011, 1st Reg. Sess., Ch. 100, § 2; 2016 2nd Reg. Sess. Ch. 193, § 1, effective August 6, 2016; 2017 1st Reg. Sess. Ch. 231, § 1, effective August 9, 2017.

Annotations

## Notes

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### Prior Law

Laws 1997, 1st Reg. Sess., Ch. 1, § 246.

Laws 1995, 1st Reg. Sess., Ch. 132, § 3.

### Amendment Notes

The 2016 amendment rewrote the section.

The 2017 amendment, in (E), substituted “minus one, multiplied by” for “minus one, and then multiplied by” in the third sentence and “dealers in this state” for “dealers in the state” in the fourth sentence; substituted “receipt is deemed” for “receipt are deemed” in the last sentence of (I); substituted “minus the wholesale” for “less the whole sale” in (J); added “distributor or importer” preceding “shall not do any” in the introductory language of (M); added (U) through (BB); and made stylistic changes.

## Research References & Practice Aids

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### Hierarchy Notes:

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## **A.R.S. § 28-4452**

Current through all legislation of the 55th Legislature's 2nd Regular session enacted as of July 5, 2022, including act chapter 365

***LexisNexis® Arizona Annotated Revised Statutes > Title 28 Transportation (Chs. 1 – 32) > Chapter 10 Vehicle Dealers, Automotive Recyclers and Transporters (Arts. 1 – 10) > Article 5. Franchise Regulation (§§ 28-4451 – 28-4463)***

### **28-4452. Limitations; franchise establishment, cancellation, termination or nonrenewal**

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**A.** Notwithstanding the terms, provisions or conditions of an agreement or franchise, a franchisor shall not cancel, terminate or refuse to renew a franchise unless the franchisor has good cause for termination or nonrenewal.

**B.** A franchisor shall not enter into a franchise for the purpose of establishing an additional new motor vehicle dealership in a community in which the same line-make is then represented, unless there is good cause for the additional new motor vehicle dealership under the franchise and unless it is in the public interest.

**C.** Notwithstanding any other statute, a franchisor may initiate proceedings under this article to establish a new franchise before naming the particular franchisee and before designating or purchasing the particular site of the new franchise.

### **History**

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Last legislative year: 1997.

Annotations

### **Notes**

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#### **Prior Law**

Laws 1997, 1st Reg. Sess., Ch. 138, § 6.

Laws 1995, 1st Reg. Sess., Ch. 132, § 3.

#### **Additional Cases of Historical Interest (1955 – 1984)**

**Business & Corporate Law: Distributorships & Franchises: Terminations: Good Cause**

**Additional Cases of Historical Interest (1955 – 1984)**



## **Business & Corporate Law: Distributorships & Franchises: Terminations: Good Cause**

Sundown Imports v. Arizona Dep't of Transp., Motor Vehicle Div., 115 Ariz. 428, 565 P.2d 1289, 1977 Ariz. App. LEXIS 623 (Ariz. Ct. App. 1977).

**Overview:** *A franchisee was not entitled to challenge the termination of its franchise by the franchisor where the franchisor had good cause to terminate the agreement, and an administrative hearing officer's findings of fact supported the termination.*

- Former Ariz. Rev. Stat. § 28-1304.02(A) (now Ariz. Rev. Stat. § 28-4452) mandates that notwithstanding the terms of any franchise, no franchisor shall terminate any franchise unless the franchisor has good cause for termination. Former Ariz. Rev. Stat. § 28-1304.02(H) (now Ariz. Rev. Stat. § 28-4457) provides that the franchisor has the burden of proof to establish that good cause exists to terminate the franchise.

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

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## **A.R.S. § 28-4453**

Current through all legislation of the 55th Legislature's 2nd Regular session enacted as of July 5, 2022, including act chapter 365

***LexisNexis® Arizona Annotated Revised Statutes > Title 28 Transportation (Chs. 1 – 32) > Chapter 10 Vehicle Dealers, Automotive Recyclers and Transporters (Arts. 1 – 10) > Article 5. Franchise Regulation (§§ 28-4451 – 28-4463)***

### **28-4453. Franchise; notice of intention**

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- A.** If a franchisor seeks to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, and the franchisee may at any time, file with the director a notice of intention to enter into a franchise for additional representation of the same line-make.
- B.** If the franchisor intends to establish an additional new motor vehicle dealership, the director shall send notice within five days of receipt to all franchisees of the same line-make in the community and to all other franchises located within ten miles of the proposed dealership by the shortest street route, if located outside the community, who are then engaged in the business of offering to sell or selling the same line-make. In counties with a population of less than two hundred thousand persons, the notice additionally shall be sent to all dealers located within twenty miles of the proposed new franchise as determined by the shortest street route. The director shall address copies of notices to the principal place of business of the franchisees.
- C.** The relocation or the reopening of a dealership within two years of the closing within the area of responsibility assigned in the franchise is not considered an additional dealership for purposes of this chapter, provided that the location of the replacement dealership is within one mile of the previous location.
- D.** If a franchisor seeks to terminate, cancel or not renew a franchise, the franchisor shall notify the franchisee and the director in writing by certified mail or personal delivery. The notice shall contain all of the following:
- 1.** A statement of the franchisor's intention to terminate, cancel or not renew the franchise.
  - 2.** A statement of the reasons for the termination, cancellation or nonrenewal.
  - 3.** The date on which the termination, cancellation or nonrenewal is effective.
- E.** This section does not apply to an intended termination, cancellation or nonrenewal of a franchise that the franchisee elects voluntarily, pursuant to a plan established by the franchisor, to submit to binding arbitration.

### **History**

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Recent legislative history: Laws 1999, Ch. 102, § 1.

Annotations

## **Notes**

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### **Prior Law**

Laws 1997, 1st Reg. Sess., Ch. 138, § 7.

Laws 1995, 1st Reg. Sess., Ch. 132, § 3.

## **Research References & Practice Aids**

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## **A.R.S. § 28-4454**

Current through all legislation of the 55th Legislature's 2nd Regular session enacted as of July 5, 2022, including act chapter 365

***LexisNexis® Arizona Annotated Revised Statutes > Title 28 Transportation (Chs. 1 – 32) > Chapter 10 Vehicle Dealers, Automotive Recyclers and Transporters (Arts. 1 – 10) > Article 5. Franchise Regulation (§§ 28-4451 – 28-4463)***

### **28-4454. Objection to approval of notice**

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**A.** A person who receives or is entitled to receive a copy of a notice provided for in section 28-4453 may object to the approval of a notice by filing a written objection with the director within fifteen days from the date the notice was received by the person.

**B.** If there is an objection to the establishment of a new motor vehicle dealership, the objecting new motor vehicle dealer shall submit evidence to the director to establish that:

**1.** The objector is a new motor vehicle dealer located in the same community as the proposed new motor vehicle dealership, or within ten miles by the shortest street route of the proposed dealership, if located outside the community. If the proposed franchise is located in a county with a population of less than two hundred thousand persons, a dealer of the same line-make located within twenty miles, as determined by the shortest street route, also has standing to object pursuant to this section.

**2.** The objector is providing facilities, equipment, parts, capital and personnel in substantial compliance with its contractual obligation to the franchisor.

### **History**

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Recent legislative history: Laws 1999, Ch. 102, § 2.

Annotations

### **Notes**

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#### **Prior Law**

Laws 1997, 1st Reg. Sess., Ch. 138, § 8.

Laws 1995, 1st Reg. Sess., Ch. 132, § 3.

### **Research References & Practice Aids**

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## **A.R.S. § 28-4455**

Current through all legislation of the 55th Legislature's 2nd Regular session enacted as of July 5, 2022, including act chapter 365

***LexisNexis® Arizona Annotated Revised Statutes > Title 28 Transportation (Chs. 1 – 32) > Chapter 10 Vehicle Dealers, Automotive Recyclers and Transporters (Arts. 1 – 10) > Article 5. Franchise Regulation (§§ 28-4451 – 28-4463)***

### **28-4455. Determination of standing; failure to object**

**A.** If the director intends to determine that the objector has established both of the reasons prescribed by section 28-4454, subsection B, the director shall notify the franchisor and allow the franchisor to submit evidence in rebuttal before the director makes a final determination. The director's determination is only for the purpose of establishing standing to object to the establishment of the new motor vehicle dealer franchise.

**B.** If no objection is filed within fifteen days from the date the notice was received by the person or if the objector fails to establish both of the reasons pursuant to section 28-4454, subsection B, the director shall approve the notice.

### **History**

Last legislative year: 1997.

Annotations

### **Notes**

#### **Prior Law**

Laws 1997, 1st Reg. Sess., Ch. 138, § 9.

Laws 1995, 1st Reg. Sess., Ch. 132, § 3.

### **JUDICIAL DECISIONS**

**Standing to Object.**

**—Not Found.**

**Standing to Object.**

**—Not Found.**

Existing car dealership lacked standing to object to a car manufacturer's plan to establish a new same line-make dealership because, despite its physical location within exterior boundaries of city, the old dealership was not within same "community" as the new dealership located on a county island within those same exterior boundaries of the city. *Sanderson Lincoln Mercury, Inc. v. Ford Motor Co.*, 205 Ariz. 202, 68 P.3d 428, 400 Ariz. Adv. Rep. 37, 2003 Ariz. App. LEXIS 68 (Ariz. Ct. App. 2003).

**Research References & Practice Aids**

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## **A.R.S. § 28-4456**

Current through all legislation of the 55th Legislature's 2nd Regular session enacted as of July 5, 2022, including act chapter 365

***LexisNexis® Arizona Annotated Revised Statutes > Title 28 Transportation (Chs. 1 – 32) > Chapter 10 Vehicle Dealers, Automotive Recyclers and Transporters (Arts. 1 – 10) > Article 5. Franchise Regulation (§§ 28-4451 – 28-4463)***

### **28-4456. Hearing on objection; appeal**

**A.** If a timely objection has been filed and, if the objection is to the establishment of a new motor vehicle dealership, the objection meets both of the reasons prescribed by section 28-4454, subsection B, the director shall:

- 1.** Enter an order fixing the time and place of a hearing on the objection. The hearing shall be held within seventy-five days after the date of the order.
- 2.** Send by certified mail with return receipt requested a copy of the order to the same persons entitled to receive a copy of the notice provided for in section 28-4453.
- 3.** Appoint a member of the Arizona state bar who shall be designated as an administrative law judge to conduct the hearing and who shall be compensated under a contractual relationship.

**B.** Prehearing discovery shall be conducted pursuant to the Arizona rules of civil procedure.

**C.** At the hearing the franchisor has the burden of proof to establish that good cause exists to terminate or not renew the franchise. If there is an objection to the establishment of a new motor vehicle dealership, the administrative law judge shall determine that good cause does or does not exist to establish the proposed dealership.

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

**E.** The administrative law judge may:

- 1.** Issue subpoenas.
- 2.** Administer oaths.
- 3.** Compel the attendance of witnesses and the production of books, papers, documents and all other evidence.
- 4.** Apply to the superior court in the county in which the hearing is held for a court order enforcing this article.



## A.R.S. § 28-4456

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

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

**H.** As a condition to the appeal, the appealing party shall file a cash bond, supersedeas bond or its equivalent with the director. The bond shall be sufficient in amount to cover the damages incurred by the prevailing party, but the amount of the bond shall not exceed the lesser of fifty thousand dollars or ten per cent of the appealing party's net worth. The party may file alternatives to cash such as certificates of deposit purchased from a financial institution licensed to do business in this state or bonds of the United States government.

## History

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Recent legislative history: Laws 1999, Ch. 102, § 3.

Annotations

## Notes

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### Prior Law

Laws 1997, 1st Reg. Sess., Ch. 138, § 10.

Laws 1995, 1st Reg. Sess., Ch. 132, § 3.

## Research References & Practice Aids

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## **A.R.S. § 28-4457**

Current through all legislation of the 55th Legislature's 2nd Regular session enacted as of July 5, 2022, including act chapter 365

***LexisNexis® Arizona Annotated Revised Statutes > Title 28 Transportation (Chs. 1 – 32) > Chapter 10 Vehicle Dealers, Automotive Recyclers and Transporters (Arts. 1 – 10) > Article 5. Franchise Regulation (§§ 28-4451 – 28-4463)***

### **28-4457. Franchise termination, cancellation or nonrenewal; good cause; changes**

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

- 1.** The change of ownership of the franchisee's dealership. This paragraph does not authorize a change in ownership that would have the effect of the sale of the franchise without the manufacturer's or distributor's consent. The consent shall not be unreasonably withheld. The burden of establishing the reasonableness is on the franchisor.
- 2.** The fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, parts or accessories or any other commodity or service not ordered by the franchisee.

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

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

- 1.** Amount of business transacted by the franchisee.
- 2.** Investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise.
- 3.** Permanency of the investment.
- 4.** Whether it is injurious to the public welfare for the business of the franchisee to be discontinued.
- 5.** Whether the franchisee has adequate new motor vehicle facilities, equipment, parts and qualified management, sales and service personnel to reasonably

## A.R.S. § 28-4457

provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make.

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

**7.** Except as provided in subsection A:

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

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

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

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

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

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

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

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

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

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

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

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

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

**F.** On the termination or nonrenewal of a franchise for any reason, including the cessation of a line-make but not including a voluntary termination of the franchise

agreement by the franchisee or a termination by the franchisor based on good cause as determined pursuant to this section, the franchisor must do all of the following:

- 1.** Pay the franchisee being terminated the fair market value of the franchise as of the date of the notice of termination or nonrenewal or twelve months before the date of notice, whichever is greater. The fair market value shall be the goodwill value of the franchisee's franchise in the franchisee's community as of the relevant date.
- 2.** Reimburse the franchisee for the cost of any facility upgrades and renovations required by the franchisor within three years before the termination or nonrenewal less any offsets actually received by the franchisee from the franchisor toward the upgrades or renovations, including stipends, credits and other subsidies.
- 3.** Repurchase any data processing programs, software and equipment required by the franchisor for communication of sales, service, warranty or other information to the franchisor or report data to the franchisor that meets the following criteria:
  - (a)** Was used by the franchisee exclusively for the line-make vehicle covered by the dealer agreement being terminated or not renewed.
  - (b)** Was purchased by the franchisee in the three year period before the termination or nonrenewal of the dealer agreement or was leased by the franchisee before the effective date of the termination or nonrenewal, except that the franchisor shall only be responsible for payments under the lease for a period not to exceed three years.
- 4.** Pay to the franchisee an amount equal to twelve months' rent at the fair market rental value for the real property, except that if the real property is leased from a third party who is unrelated to the franchisee, the amount to be paid by the franchisor shall equal twelve months' rent pursuant to the current lease of the real property in effect at the time of the termination or nonrenewal. If the termination or nonrenewal relates to fewer than all of the franchises operated by the franchisee at a single location, the amount to be paid by the franchisor pursuant to this paragraph shall be based on the percentage of the total square footage attributed to the franchise being terminated or not renewed at the time of the termination or nonrenewal.
- 5.** Compensate the franchisee for all new, unused and undamaged parts listed in the manufacturer's current parts catalog and still in the original merchandising packaging. The prices for the parts are the prices in effect as of the effective date of the termination or nonrenewal of the franchise, less any applicable allowances, credits or subsidies actually received by the franchisee from the franchisor.
- 6.** Compensate the franchisee for the fair market value of all undamaged, except for ordinary wear and tear, and unmodified special tools, equipment and signage that are required by the franchisor and that are acquired by the franchisee within the three year period before the termination or nonrenewal.
- 7.** Compensate the franchisee at the dealer's net acquisition cost for all new, undamaged, unmodified and unsold vehicle inventory of the current model year and one model year before that is acquired from the manufacturer or from

## A.R.S. § 28-4457

another same line-make dealer in the ordinary course of business before the effective date of the termination or nonrenewal if the vehicle has less than five hundred miles registered on the odometer.

**G.** Payments made pursuant to subsection F are in addition to any other payments required by the laws of this state or the applicable franchise agreement. Payments shall be made to the franchisee no later than ninety days after the effective date of the termination or nonrenewal of the dealer agreement and a showing that the franchisee can deliver good and clear title to the items described in subsection F.

## History

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Recent legislative history: Laws 2011, 1st Reg. Sess., Ch. 100, § 3.

Annotations

## Notes

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### Prior Law

Laws 1997, 1st Reg. Sess., Ch. 138, § 11.

Laws 1996, 2nd Reg. Sess., Ch. 76, § 187.

Laws 1995, 1st Reg. Sess., Ch. 132, § 3.

### Additional Cases of Historical Interest (1955 – 1984)

**Business & Corporate Law: Distributorships & Franchises: Assignments & Transfers**

**Business & Corporate Law: Distributorships & Franchises: Terminations: Good Cause**

### Additional Cases of Historical Interest (1955 – 1984)

**Business & Corporate Law: Distributorships & Franchises: Assignments & Transfers**

*Sundown Imports v. Arizona Dep't of Transp., Motor Vehicle Div.*, 115 Ariz. 428, 565 P.2d 1289, 1977 Ariz. App. LEXIS 623 (Ariz. Ct. App. 1977).

**Overview:** *A franchisee was not entitled to challenge the termination of its franchise by the franchisor where the franchisor had good cause to terminate the agreement, and an administrative hearing officer's findings of fact supported the termination.*

- Former Ariz. Rev. Stat. § 28-1304.02 (J)(1) (now Ariz. Rev. Stat. § 28-4457) states that the change of ownership of the franchisee's dealership does not constitute good cause for termination of a franchise. The statute, however, goes on to say: This

## A.R.S. § 28-4457

paragraph does not authorize any change in ownership which would have the effect of the sale of the franchise without the manufacturer's or distributor's consent. Such consent shall not be unreasonably withheld. The burden of establishing the reasonableness is on the franchisor.

**Business & Corporate Law: Distributorships & Franchises: Terminations: Good Cause**

Sundown Imports v. Arizona Dep't of Transp., Motor Vehicle Div., 115 Ariz. 428, 565 P.2d 1289, 1977 Ariz. App. LEXIS 623 (Ariz. Ct. App. 1977).

**Overview:** *A franchisee was not entitled to challenge the termination of its franchise by the franchisor where the franchisor had good cause to terminate the agreement, and an administrative hearing officer's findings of fact supported the termination.*

- Former Ariz. Rev. Stat. § 28-1304.02 (J)(1) (now Ariz. Rev. Stat. § 28-4457) states that the change of ownership of the franchisee's dealership does not constitute good cause for termination of a franchise. The statute, however, goes on to say: This paragraph does not authorize any change in ownership which would have the effect of the sale of the franchise without the manufacturer's or distributor's consent. Such consent shall not be unreasonably withheld. The burden of establishing the reasonableness is on the franchisor.

**Research References & Practice Aids**

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**Hierarchy Notes:**

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## **A.R.S. § 28-4458**

Current through all legislation of the 55th Legislature's 2nd Regular session enacted as of July 5, 2022, including act chapter 365

***LexisNexis® Arizona Annotated Revised Statutes > Title 28 Transportation (Chs. 1 – 32) > Chapter 10 Vehicle Dealers, Automotive Recyclers and Transporters (Arts. 1 – 10) > Article 5. Franchise Regulation (§§ 28-4451 – 28-4463)***

### **28-4458. Coercion prohibited**

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- 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 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.

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- 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.

## History

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Recent legislative history: Laws 2002, Ch. 44, § 2; Laws 2011, 1st Reg. Sess., Ch. 100, § 4; 2018 2nd Reg. Sess. Ch. 182, § 1, effective August 3, 2018.

Annotations

## Notes

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### Prior Law

Laws 1997, 1st Reg. Sess., Ch. 138, § 12.

Laws 1995, 1st Reg. Sess., Ch. 132, § 3.

### Amendment Notes

The 2018 amendment added (A)(6) and made stylistic changes.

## Research References & Practice Aids

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**Hierarchy Notes:**

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## **A.R.S. § 28-4459**

Current through all legislation of the 55th Legislature's 2nd Regular session enacted as of July 5, 2022, including act chapter 365

***LexisNexis® Arizona Annotated Revised Statutes > Title 28 Transportation (Chs. 1 – 32) > Chapter 10 Vehicle Dealers, Automotive Recyclers and Transporters (Arts. 1 – 10) > Article 5. Franchise Regulation (§§ 28-4451 – 28-4463)***

### **28-4459. Manufacturer or distributor right of first refusal**

If a change of all, or substantially all, ownership of a new motor vehicle dealership or transfer of all, or substantially all, dealership assets is proposed, a manufacturer or distributor may exercise a right of first refusal to acquire the dealership if all of the following requirements are met:

- 1.** The manufacturer or distributor notifies the dealer in writing within sixty days after receipt of the completed application forms and related information generally used by a manufacturer or distributor to conduct its review and a copy of all agreements regarding the proposed transfer of its intent to exercise its right of first refusal or its rejection of the proposed transfer. If the manufacturer or distributor fails to notify the dealer of its exercise of its right of first refusal or its rejection of the proposed transfer within the sixty day period, the proposed transfer is deemed to be approved by the manufacturer or distributor.
- 2.** The exercise of the right of first refusal results in the dealer receiving the same or greater compensation than the dealer negotiated or contracted to receive in connection with the proposed change of all, or substantially all, ownership of the dealership or transfer of all, or substantially all, dealership assets.
- 3.** The proposed change of all, or substantially all, dealership assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one or more dealer owners to a designated family member or members or the spouse, child, grandchild, spouse of a child or grandchild, brother, sister or parent of the dealer or one or more dealer owners or to a qualified manager, a partnership or a corporation controlled by any of those persons.
- 4.** The manufacturer or distributor agrees to pay the reasonable expenses, including reasonable attorney fees that do not exceed the usual, customary and reasonable fees charged for similar work done for other clients, incurred by the proposed new owner and transferee before the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed change of all, or substantially all, ownership of the dealership or transfer of all, or substantially all, dealership assets. Notwithstanding the provisions of this paragraph, a manufacturer or distributor shall not pay those expenses and attorney fees if the dealer has not submitted or caused to be submitted to the manufacturer or distributor an accounting of those expenses within twenty days after the dealers' receipt of the manufacturer's or distributor's

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written request for the accounting. This accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

## History

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Last legislative year: 1997.

Annotations

## Notes

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### Prior Law

Laws 1997, 1st Reg. Sess., Ch. 138, § 13.

## Research References & Practice Aids

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### Hierarchy Notes:

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## **A.R.S. § 28-4460**

Current through all legislation of the 55th Legislature's 2nd Regular session enacted as of July 5, 2022, including act chapter 365

***LexisNexis® Arizona Annotated Revised Statutes > Title 28 Transportation (Chs. 1 – 32) > Chapter 10 Vehicle Dealers, Automotive Recyclers and Transporters (Arts. 1 – 10) > Article 5. Franchise Regulation (§§ 28-4451 – 28-4463)***

### **28-4460. Factories; competition or unfair discrimination prohibited; definitions**

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- 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 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.

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- (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 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

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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

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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 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. 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.



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**(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 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 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.

## A.R.S. § 28-4460

**4.** All leads 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 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.

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

**(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.

## A.R.S. § 28-4460

**(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.

## History

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Recent legislative history: Laws 2000, Ch. 102, § 5; Laws 2002, Ch. 21, § 1; Laws 2002, Ch. 44, § 3; 2016 2nd Reg. Sess. Ch. 193, § 2, effective August 6, 2016; 2018 2nd Reg. Sess. Ch. 182, § 2, effective August 3, 2018.

Annotations

## Notes

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### Amendment Notes

The 2016 amendment added (E) and redesignated former (E) as (F).

The 2018 amendment added (F)(3)(b) and made related and stylistic changes.

## Research References & Practice Aids

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### Hierarchy Notes:

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## **A.R.S. § 28-4461**

Current through all legislation of the 55th Legislature's 2nd Regular session enacted as of July 5, 2022, including act chapter 365

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### **28-4461. Right of designated family member to succeed in ownership**

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**A.** Any owner of a new motor vehicle dealer may appoint by will or any other written instrument that is approved by the manufacturer a designated family member to succeed in the ownership interest of the owner of the new motor vehicle dealer.

**B.** Unless there is good cause for refusal to honor succession on the part of the manufacturer, any designated family member of a deceased or incapacitated owner of a new motor vehicle dealer may succeed to the ownership interest of the owner of the new motor vehicle dealer under the existing franchise if both of the following apply:

- 1.** The designated family member gives the manufacturer written notice of the family member's intention to succeed to the ownership interest of the owner of the new motor vehicle dealer within ninety days after the owner's death or incapacity.
- 2.** The designated family member agrees to be bound by all terms and conditions of the franchise.

**C.** The manufacturer may request, and a designated family member shall provide within forty-five days after the manufacturer's request, personal financial and business experience data that are reasonably necessary to determine whether the succession should be honored.

### **History**

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Recent legislative history: Laws 2011, 1st Reg. Sess., Ch. 100, § 5.

Annotations

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

A.R.S. Title 28

A.R.S. § 28-4461

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## A.R.S. § 28-4462

Current through all legislation of the 55th Legislature's 2nd Regular session enacted as of July 5, 2022, including act chapter 365

**LexisNexis® Arizona Annotated Revised Statutes > Title 28 Transportation (Chs. 1 – 32) > Chapter 10 Vehicle Dealers, Automotive Recyclers and Transporters (Arts. 1 – 10) > Article 5. Franchise Regulation (§§ 28-4451 – 28-4463)**

### **28-4462. Refusal to honor succession to ownership; notice required**

---

- A.** If a manufacturer believes that good cause exists for refusing to honor the succession to ownership interest of the owner of a new motor vehicle dealer by a family member of a deceased or incapacitated owner of a new motor vehicle dealer under the existing franchise agreement, the manufacturer, not more than sixty days after the receipt of either the notice that is prescribed by section 28-4461, subsection B or any personal or financial data that the manufacturer has requested pursuant to section 28-4461, whichever is received later, may serve on the designated family member notice of its refusal to honor the succession and of its intent to discontinue the existing franchise with the dealer no sooner than one hundred twenty days after the notice is served.
- B.** The notice of refusal and discontinuance must state the specific grounds for the refusal to honor the succession and of the manufacturer's intent to discontinue the existing franchise with the new motor vehicle dealer no sooner than one hundred twenty days after the notice is served.
- C.** If the notice of refusal and discontinuance is not timely served on the designated family member, the franchise shall continue in effect subject to termination only as otherwise permitted by this chapter.
- D.** If there is a conflict between the written instrument filed by the motor vehicle dealer with the manufacturer designating a certain person as the motor vehicle dealer's successor and this section, the written instrument filed with the manufacturer governs.

### **History**

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Recent legislative history: Laws 2011, 1st Reg. Sess., Ch. 100, § 5.

Annotations

### **Research References & Practice Aids**

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**Hierarchy Notes:**

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## **A.R.S. § 28-4463**

Current through all legislation of the 55th Legislature's 2nd Regular session enacted as of July 5, 2022, including act chapter 365

***LexisNexis® Arizona Annotated Revised Statutes > Title 28 Transportation (Chs. 1 – 32) > Chapter 10 Vehicle Dealers, Automotive Recyclers and Transporters (Arts. 1 – 10) > Article 5. Franchise Regulation (§§ 28-4451 – 28-4463)***

### **28-4463. Burden of proof and consideration**

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In determining whether good cause for the refusal to honor the succession exists, the manufacturer:

- 1.** Has the burden of proving that the successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards, including financial standards.
- 2.** Must consider the volume of sales and service of the new motor vehicle dealer using uniformly applied minimum business experience standards in the market area.

### **History**

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Recent legislative history: Laws 2011, 1st Reg. Sess., Ch. 100, § 5.

Annotations

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

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