

REFERENCE TITLE: motor vehicle dealers; compensation

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

HB 2348

Introduced by
Representative Gray

AN ACT

AMENDING SECTIONS 28-4451 AND 28-4460, ARIZONA REVISED STATUTES; RELATING TO
MOTOR VEHICLE DEALERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 28-4451, Arizona Revised Statutes, is amended to
3 read:

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

6 A. Each manufacturer shall file with the director a copy of the
7 delivery and preparation obligations required to be performed by a NEW MOTOR
8 VEHICLE dealer before delivery of new motor vehicles to buyers. These
9 delivery and preparation obligations constitute the NEW MOTOR VEHICLE
10 dealer's only responsibility for the product liability as between the NEW
11 MOTOR VEHICLE dealers and the manufacturer. THE NEW MOTOR VEHICLE DEALER
12 SHALL FURNISH THE BUYER OF A NEW MOTOR VEHICLE WITH A SIGNED COPY OF THE
13 MANUFACTURER'S OR DISTRIBUTOR'S DELIVERY AND PREPARATION REQUIREMENTS
14 INDICATING THAT ALL OF THE REQUIREMENTS HAVE IN FACT BEEN PERFORMED.

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

18 C. The manufacturer OR DISTRIBUTOR shall ~~reasonably~~ compensate an
19 authorized NEW MOTOR VEHICLE dealer who performs work to rectify the
20 manufacturer's OR DISTRIBUTOR'S product DEFECT or warranty ~~defects~~
21 OBLIGATIONS, INCLUDING ANY RECALL OBLIGATIONS or delivery and preparation
22 obligations.

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

26 ~~E. The manufacturer shall pay the cost of the manufacturer's delivery,~~
27 ~~warranty and preparation requirements.~~

28 D. THE COMPENSATION THAT THE MANUFACTURER OR DISTRIBUTOR PAYS TO A NEW
29 MOTOR VEHICLE DEALER FOR DIAGNOSTIC WORK, REPAIR SERVICE AND LABOR SHALL BE
30 FAIR AND REASONABLE AS DETERMINED PURSUANT TO SUBSECTION E OF THIS SECTION.
31 TIME ALLOWANCES FOR THE DIAGNOSIS AND PERFORMANCE OF WARRANTY WORK AND
32 SERVICE SHALL BE REASONABLE AND ADEQUATE FOR THE WORK OR SERVICES TO BE
33 PERFORMED. THE COMPENSATION THAT THE MANUFACTURER OR DISTRIBUTOR PAYS TO THE
34 NEW MOTOR VEHICLE DEALER FOR PARTS USED IN WARRANTY OR RECALL RELATED SERVICE
35 SHALL BE FAIR AND REASONABLE AS DETERMINED PURSUANT TO SUBSECTION F OF THIS
36 SECTION.

37 E. THE NEW MOTOR VEHICLE DEALER SHALL ESTABLISH THE RETAIL RATE THAT
38 IT CUSTOMARILY CHARGES FOR LABOR BY SUBMITTING TO THE MANUFACTURER OR
39 DISTRIBUTOR ALL NONWARRANTY CUSTOMER PAID SERVICE REPAIR ORDERS COVERING
40 REPAIRS MADE DURING THE MONTH BEFORE THE SUBMISSION AND DIVIDING THE AMOUNT
41 OF THE DEALER'S TOTAL LABOR SALES BY THE NUMBER OF TOTAL LABOR HOURS THAT
42 GENERATED THOSE SALES. THE RESULTING AVERAGE LABOR RATE IS PRESUMED TO BE
43 FAIR AND REASONABLE EXCEPT THAT A MANUFACTURER OR DISTRIBUTOR, WITHIN THIRTY
44 DAYS AFTER SUBMISSION, MAY REBUT THE PRESUMPTION BY REASONABLY SUBSTANTIATING
45 THAT THE RATE IS UNFAIR AND UNREASONABLE COMPARED TO THE PRACTICES OF ALL

1 OTHER FRANCHISED NEW MOTOR VEHICLE DEALERS IN THE VICINITY THAT OFFER THE
2 SAME LINE-MAKE VEHICLES. THE AVERAGE LABOR RATE SHALL GO INTO EFFECT THIRTY
3 DAYS FOLLOWING THE DECLARATION, SUBJECT TO THE RIGHT OF THE MANUFACTURER OR
4 DISTRIBUTOR TO REBUT THE DECLARED RATE. IF THE DECLARED RATE IS REBUTTED,
5 THE MANUFACTURER OR DISTRIBUTOR SHALL PROPOSE AN ADJUSTMENT OF THE AVERAGE
6 LABOR RATE BASED ON THE REBUTTAL WITHIN THIRTY DAYS AFTER SUBMISSION. IF THE
7 NEW MOTOR VEHICLE DEALER DOES NOT AGREE WITH THE PROPOSED AVERAGE LABOR RATE,
8 THE DEALER MAY FILE A PROTEST WITH THE DIRECTOR WITHIN THIRTY DAYS AFTER
9 RECEIPT OF THE MANUFACTURER'S OR DISTRIBUTOR'S PROPOSAL. IF A PROTEST IS
10 TIMELY FILED, THE DIRECTOR SHALL INFORM THE MANUFACTURER OR DISTRIBUTOR THAT
11 A TIMELY PROTEST HAS BEEN FILED AND THAT A HEARING WILL BE HELD ON THE
12 PROTEST. IN A HEARING HELD PURSUANT TO THIS SUBSECTION, THE MANUFACTURER OR
13 DISTRIBUTOR HAS THE BURDEN OF PROVING THAT THE RATE DECLARED BY THE DEALER
14 WAS UNFAIR AND UNREASONABLE AND THAT THE PROPOSED ADJUSTMENT OF THE AVERAGE
15 LABOR RATE IS FAIR AND REASONABLE.

16 F. THE NEW MOTOR VEHICLE DEALER SHALL ESTABLISH THE RETAIL RATE THAT
17 IT CUSTOMARILY CHARGES FOR WARRANTY PARTS BY SUBMITTING TO THE MANUFACTURER
18 OR DISTRIBUTOR ONE HUNDRED SEQUENTIAL NONWARRANTY CUSTOMER PAID SERVICE
19 REPAIR ORDERS THAT CONTAIN WARRANTY-LIKE PARTS OR SIXTY CONSECUTIVE DAYS OF
20 NONWARRANTY CUSTOMER-PAID SERVICE REPAIR ORDERS THAT CONTAIN WARRANTY-LIKE
21 PARTS, WHICHEVER IS LESS, COVERING REPAIRS MADE WITHIN ONE HUNDRED EIGHTY
22 DAYS BEFORE THE SUBMISSION AND SETTING FORTH THE AVERAGE PERCENTAGE MARKUP.
23 THE AVERAGE OF THE MARKUP RATES IS PRESUMED TO BE FAIR AND REASONABLE, EXCEPT
24 THAT A MANUFACTURER OR DISTRIBUTOR, WITHIN THIRTY DAYS AFTER SUBMISSION, MAY
25 REBUT THAT PRESUMPTION BY REASONABLY SUBSTANTIATING THAT THE RATE IS UNFAIR
26 AND UNREASONABLE COMPARED TO THE PRACTICES OF ALL OTHER FRANCHISED MOTOR
27 VEHICLE DEALERS IN THE VICINITY OFFERING THE SAME LINE-MAKE VEHICLES. THE
28 RETAIL RATE SHALL GO INTO EFFECT THIRTY DAYS AFTER THE DECLARATION, SUBJECT
29 TO THE RIGHT OF THE MANUFACTURER OR DISTRIBUTOR TO REBUT THE DECLARED RATE.
30 IF THE DECLARED RATE IS REBUTTED, THE MANUFACTURER OR DISTRIBUTOR SHALL
31 PROPOSE AN ADJUSTMENT OF THE AVERAGE PERCENTAGE MARKUP BASED ON THAT REBUTTAL
32 WITHIN THIRTY DAYS AFTER SUBMISSION. IF THE DEALER DOES NOT AGREE WITH THE
33 PROPOSED AVERAGE PERCENTAGE MARKUP, THE DEALER MAY FILE A PROTEST WITH THE
34 DIRECTOR WITHIN THIRTY DAYS AFTER RECEIPT OF THE MANUFACTURER'S OR
35 DISTRIBUTOR'S PROPOSAL. IF A PROTEST IS TIMELY FILED, THE DIRECTOR SHALL
36 INFORM THE MANUFACTURER OR DISTRIBUTOR THAT A TIMELY PROTEST HAS BEEN FILED
37 AND THAT A HEARING WILL BE HELD ON THE PROTEST. IN A HEARING HELD PURSUANT
38 TO THIS SUBSECTION, THE MANUFACTURER OR DISTRIBUTOR HAS THE BURDEN OF PROVING
39 THAT THE RATE DECLARED BY THE DEALER WAS UNFAIR AND UNREASONABLE AND THAT THE
40 PROPOSED ADJUSTMENT OF THE AVERAGE PERCENTAGE MARKUP IS FAIR AND REASONABLE.

41 G. IN CALCULATING THE RETAIL RATE THAT A DEALER CUSTOMARILY CHARGES
42 FOR PARTS AND LABOR, THE FOLLOWING WORK MAY NOT BE INCLUDED IN THE
43 CALCULATION:

44 1. REPAIRS FOR MANUFACTURER OR DISTRIBUTOR SPECIAL EVENTS, SPECIALS OR
45 PROMOTIONAL DISCOUNTS FOR RETAIL CUSTOMER REPAIRS.

- 1 2. PARTS SOLD AT WHOLESALE.
- 2 3. ENGINE ASSEMBLIES AND TRANSMISSION ASSEMBLIES.
- 3 4. ROUTINE MAINTENANCE NOT COVERED UNDER ANY RETAIL CUSTOMER WARRANTY,
- 4 SUCH AS FLUIDS, FILTERS AND BELTS NOT PROVIDED IN THE COURSE OF REPAIRS.
- 5 5. NUTS, BOLTS, FASTENERS AND SIMILAR ITEMS THAT DO NOT HAVE
- 6 INDIVIDUAL PART NUMBERS.
- 7 6. TIRES.
- 8 7. VEHICLE RECONDITIONING.
- 9 ~~F.~~ H. The manufacturer, factory branch, distributor or distributor
- 10 branch may reasonably and periodically audit a new motor vehicle dealer to
- 11 determine the validity of paid claims for dealer compensation or any
- 12 charge-backs for warranty parts or service compensation. Audits shall only
- 13 be for the six month period immediately following the date of the
- 14 payment. This limitation does not apply if the manufacturer ~~reasonably~~
- 15 ~~suspects-fraud~~ OR DISTRIBUTOR HAS REASONABLE CAUSE TO BELIEVE THAT A CLAIM
- 16 THAT IS SUBMITTED BY A NEW MOTOR VEHICLE DEALER IS INTENTIONALLY FALSE OR
- 17 FRAUDULENT. AS A RESULT OF AN AUDIT THAT IS AUTHORIZED BY THIS SUBSECTION,
- 18 THE MANUFACTURER OR DISTRIBUTOR HAS THE RIGHT TO CHARGE BACK TO THE NEW MOTOR
- 19 VEHICLE DEALER THE AMOUNT OF ANY PREVIOUSLY PAID CLAIM AFTER THE NEW MOTOR
- 20 VEHICLE DEALER HAS HAD NOTICE AND AN OPPORTUNITY TO PARTICIPATE IN ALL
- 21 FRANCHISOR INTERNAL APPELLATE PROCESSES AND ALL LEGAL PROCESSES.
- 22 ~~G.~~ I. The manufacturer, factory branch, distributor or distributor
- 23 branch shall reserve the right to reasonable periodic audits to determine the
- 24 validity of paid claims for dealer compensation or any charge-backs for
- 25 consumer or dealer incentives. Audits shall only be for a one year period
- 26 immediately following the date of the payment. This limitation does not
- 27 apply if the ~~manufacturer-reasonably-suspects-fraud.~~ MANUFACTURER OR
- 28 DISTRIBUTOR HAS REASONABLE CAUSE TO BELIEVE THAT A CLAIM SUBMITTED BY A NEW
- 29 MOTOR VEHICLE DEALER IS INTENTIONALLY FALSE OR FRAUDULENT. AS A RESULT OF AN
- 30 AUDIT AUTHORIZED BY THIS SUBSECTION, THE MANUFACTURER OR DISTRIBUTOR HAS THE
- 31 RIGHT TO CHARGE BACK TO THE NEW MOTOR VEHICLE DEALER THE AMOUNT OF ANY
- 32 PREVIOUSLY PAID CLAIM AFTER THE NEW MOTOR VEHICLE DEALER HAS HAD NOTICE AND
- 33 AN OPPORTUNITY TO PARTICIPATE IN ALL FRANCHISOR INTERNAL APPELLATE PROCESSES
- 34 AND ALL LEGAL PROCESSES.
- 35 J. ALL CLAIMS BY DEALERS UNDER THIS SECTION FOR LABOR AND PARTS AND
- 36 ALL CLAIMS FOR COMPENSATION RELATIVE TO ANY SALES INCENTIVE PROGRAMS SHALL BE
- 37 PAID WITHIN THIRTY DAYS AFTER APPROVAL BY THE MANUFACTURER OR DISTRIBUTOR
- 38 SUBJECT TO THE MANUFACTURER'S OR DISTRIBUTOR'S RIGHT TO AUDIT THE CLAIMS
- 39 PROVIDED IN SUBSECTION H OR I OF THIS SECTION. ALL CLAIMS SHALL BE EITHER
- 40 APPROVED OR DISAPPROVED WITHIN THIRTY DAYS AFTER RECEIPT ON FORMS AND IN THE
- 41 MANNER SPECIFIED BY THE MANUFACTURER OR DISTRIBUTOR. ANY CLAIM NOT
- 42 DISAPPROVED IN WRITING OR BY MEANS OF ELECTRONIC TRANSMISSION WITHIN THIRTY
- 43 DAYS AFTER RECEIPT ARE DEEMED APPROVED AND PAYMENT MUST BE MADE WITHIN THIRTY
- 44 DAYS AFTER APPROVAL.

1 K. IF A MANUFACTURER OR DISTRIBUTOR FURNISHES A PART OR COMPONENT TO A
2 NEW MOTOR VEHICLE DEALER, AT NO COST, TO USE IN PERFORMING REPAIRS UNDER A
3 RECALL, CAMPAIGN SERVICE ACTION OR WARRANTY REPAIR, THE MANUFACTURER OR
4 DISTRIBUTOR SHALL COMPENSATE THE DEALER FOR THE PART OR COMPONENT IN THE SAME
5 MANNER AS WARRANTY PARTS COMPENSATION UNDER THIS SECTION BY COMPENSATING THE
6 DEALER THE AVERAGE MARKUP ON THE COST FOR THE PART OR COMPONENT AS LISTED IN
7 THE MANUFACTURER'S OR DISTRIBUTOR'S PRICE SCHEDULE LESS THE COST FOR THE PART
8 OR COMPONENT.

9 L. A MANUFACTURER OR DISTRIBUTOR MAY NOT REQUIRE A NEW MOTOR VEHICLE
10 DEALER TO ESTABLISH THE RETAIL RATE CUSTOMARILY CHARGED BY THE DEALER FOR
11 PARTS AND LABOR BY AN UNDULY BURDENSOME OR TIME CONSUMING METHOD OR BY
12 REQUIRING INFORMATION THAT IS UNDULY BURDENSOME OR TIME CONSUMING TO PROVIDE
13 CALCULATIONS, INCLUDING PART-BY-PART OR TRANSACTION-BY-TRANSACTION
14 CALCULATIONS. A DEALER MAY NOT DECLARE AN AVERAGE PERCENTAGE MARKUP OR AN
15 AVERAGE LABOR RATE MORE THAN TWICE IN ONE CALENDAR YEAR.

16 M. A MANUFACTURER OR DISTRIBUTOR MAY NOT DENY A CLAIM BY A NEW MOTOR
17 VEHICLE DEALER FOR REIMBURSEMENT OF ANY WARRANTY PARTS OR SERVICE
18 COMPENSATION OR ANY CONSUMER OR DEALER INCENTIVE COMPENSATION BASED SOLELY ON
19 A NEW MOTOR VEHICLE DEALER'S INCIDENTAL FAILURE TO COMPLY WITH A SPECIFIC
20 CLAIM PROCESSING REQUIREMENT, SUCH AS A CLERICAL ERROR OR MISSING SIGNATURES,
21 THAT DOES NOT PUT INTO QUESTION THE LEGITIMACY OF THE CLAIM. IF A CLAIM IS
22 REJECTED FOR A CLERICAL ERROR OR MISSING SIGNATURES, THE NEW MOTOR VEHICLE
23 DEALER MAY RESUBMIT A CORRECTED CLAIM IN A TIMELY MANNER. A NEW MOTOR
24 VEHICLE DEALER MAY CORRECT OR COMPLETE AND RESUBMIT A PREVIOUSLY SUBMITTED
25 WARRANTY OR INCENTIVE CLAIM AT ANY TIME, INCLUDING AFTER THE MANUFACTURER'S
26 OR DISTRIBUTOR'S COMMENCEMENT OF AN AUDIT AUTHORIZED BY SUBSECTION H OR I OF
27 THIS SECTION OR THE MANUFACTURER'S OR DISTRIBUTOR'S REJECTION OF THE CLAIM.

28 ~~H-~~ N. If a NEW MOTOR VEHICLE dealer sells or leases a vehicle to a
29 customer who exports the vehicle to a foreign country, unless the
30 manufacturer, DISTRIBUTOR OR IMPORTER proves that the NEW MOTOR VEHICLE
31 dealer knew or reasonably should have known that the vehicle would be
32 exported, a manufacturer shall not do any of the following:

33 1. Refuse to sell, allocate or deliver new motor vehicles to the NEW
34 MOTOR VEHICLE dealer.

35 2. Charge back to or withhold payments or other things of value from
36 the NEW MOTOR VEHICLE dealer that the NEW MOTOR VEHICLE dealer otherwise
37 would be eligible for under an incentive program or contest.

38 3. Prevent a NEW MOTOR VEHICLE dealer from participating in any sales
39 promotion or program.

40 4. Take an adverse action against a NEW MOTOR VEHICLE dealer,
41 including reducing vehicle allocations or terminating or threatening to
42 terminate a dealer.

43 ~~I-~~ O. There is a rebuttable presumption that the NEW MOTOR VEHICLE
44 dealer described in subsection ~~H-~~ N OF THIS SECTION did not know or should
45 not have reasonably known that the vehicle described in subsection ~~H-~~ N OF

1 THIS SECTION would be exported. The presumption may be rebutted by a
2 preponderance of the evidence that the NEW MOTOR VEHICLE dealer knew or
3 should have reasonably known that the vehicle was to be exported.

4 P. IF A TIMELY PROTEST IS FILED UNDER SUBSECTION E OR F OF THIS
5 SECTION, THE DIRECTOR SHALL:

6 1. ENTER AN ORDER FIXING THE TIME AND PLACE OF A HEARING ON THE
7 PROTEST. THE HEARING SHALL BE HELD WITHIN SEVENTY-FIVE DAYS AFTER THE DATE
8 OF THE ORDER.

9 2. SEND BY CERTIFIED MAIL A COPY OF THE ORDER TO THE DEALER AND THE
10 MANUFACTURER.

11 3. APPOINT A MEMBER OF THE ARIZONA STATE BAR WHO SHALL BE DESIGNATED
12 AS AN ADMINISTRATIVE LAW JUDGE TO CONDUCT THE HEARING AND WHO SHALL BE
13 COMPENSATED UNDER A CONTRACTUAL RELATIONSHIP.

14 Q. PREHEARING DISCOVERY SHALL BE CONDUCTED PURSUANT TO THE ARIZONA
15 RULES OF CIVIL PROCEDURE.

16 R. EVIDENCE THAT WOULD BE ADMISSIBLE UNDER THE ISSUES IN SUCH AN
17 ACTION IN A STATE OR FEDERAL COURT IS ADMISSIBLE IN A HEARING HELD BY THE
18 ADMINISTRATIVE LAW JUDGE. THE ADMINISTRATIVE LAW JUDGE SHALL REASONABLY
19 APPORTION ALL COSTS BETWEEN THE PARTIES, INCLUDING COMPENSATION FOR THE
20 ADMINISTRATIVE LAW JUDGE'S SERVICES. THE ADMINISTRATIVE LAW JUDGE MAY:

21 1. ISSUE SUBPOENAS.

22 2. ADMINISTER OATHS.

23 3. COMPEL THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF BOOKS,
24 PAPERS, DOCUMENTS AND ALL OTHER EVIDENCE.

25 4. APPLY TO THE SUPERIOR COURT IN THE COUNTY IN WHICH THE HEARING IS
26 HELD FOR A COURT ORDER ENFORCING THIS SECTION.

27 S. A TRANSCRIPT OF THE TESTIMONY OF ALL WITNESSES TAKEN AT THE HEARING
28 SHALL BE MADE AND PRESERVED. WITHIN FORTY-FIVE DAYS AFTER THE HEARING THE
29 ADMINISTRATIVE LAW JUDGE SHALL MAKE WRITTEN FINDINGS OF FACT AND CONCLUSIONS
30 OF LAW AND ENTER A FINAL ORDER.

31 T. A PARTY TO THE HEARING BEFORE THE ADMINISTRATIVE LAW JUDGE MAY
32 APPEAL PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6. AN APPEAL OF A DECISION OF
33 AN ADMINISTRATIVE LAW JUDGE HAS PREFERENCE OVER OTHER CIVIL MATTERS AND SHALL
34 BE HEARD AT THE EARLIEST PRACTICABLE DATE.

35 U. AS A CONDITION TO THE APPEAL, THE APPEALING PARTY SHALL FILE A CASH
36 BOND, SUPERSEDEAS BOND OR ITS EQUIVALENT WITH THE DIRECTOR. THE BOND SHALL BE
37 SUFFICIENT IN AMOUNT TO COVER THE DAMAGES INCURRED BY THE PREVAILING PARTY,
38 BUT THE AMOUNT OF THE BOND MAY NOT EXCEED THE LESSER OF FIFTY THOUSAND
39 DOLLARS OR TEN PERCENT OF THE APPEALING PARTY'S NET WORTH. THE APPEALING
40 PARTY MAY FILE ALTERNATIVES TO CASH SUCH AS CERTIFICATES OF DEPOSIT PURCHASED
41 FROM A FINANCIAL INSTITUTION LICENSED TO DO BUSINESS IN THIS STATE PURSUANT
42 TO TITLE 6 OR BONDS OF THE UNITED STATES GOVERNMENT.

43 V. FOR THE PURPOSES OF THIS SECTION, "REASONABLE CAUSE" MEANS A BONA
44 FIDE BELIEF BASED ON EVIDENCE THAT THE ISSUES OF FACT ARE SUCH THAT A PERSON

1 OF ORDINARY CAUTION, PRUDENCE AND JUDGMENT COULD BELIEVE THAT A CLAIM WAS
2 INTENTIONALLY FALSE OR FRAUDULENT.

3 Sec. 2. Section 28-4460, Arizona Revised Statutes, is amended to read:
4 28-4460. Factories; competition or unfair discrimination
5 prohibited; definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (vi) During the acquisition period if the qualified person is paid a
44 management fee, the management fee shall be reasonable and consistent with

1 standard business practices for an individual managing a franchise of similar
2 size and volume of sales and leases of vehicles or products.

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

6 (i) The interest owned by the factory is not more than forty-five ~~per~~
7 ~~cent~~ PERCENT or the percentage interest actually owned by the factory on
8 January 1, 2000, whichever is less.

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

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

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

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

24 (vi) The factory must have owned the interest in at least one
25 dealership selling the line-make manufactured by the factory on January 1,
26 2000.

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

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

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

- 1 2. The factory selling, leasing or providing, or offering to sell,
2 lease or provide, a vehicle or product, service or financing to any retail
3 consumer or lead. This paragraph does not:
- 4 (a) Prohibit a factory from advertising to sell, lease or provide a
5 vehicle or product, service or financing through its dealers.
- 6 (b) Prohibit a factory from selling, leasing or providing or offering
7 to sell, lease or provide a vehicle or product, service or financing through
8 its dealers.
- 9 (c) Prohibit a factory from providing a vehicle or product or service
10 for occasional promotional or charitable uses.
- 11 (d) Prohibit a factory from selling, leasing or providing a vehicle or
12 product, service or financing to an agency of the federal government.
- 13 (e) Prohibit a factory from selling or leasing a vehicle or product,
14 service or financing through its dealers to retail consumers who qualify for
15 any reasonable factory sponsored factory employee, factory retiree or factory
16 vendor new vehicle purchase program or any other reasonable similar factory
17 related new vehicle purchase program.
- 18 (f) Prohibit a factory from providing financing to retail consumers
19 through any used motor vehicle dealer or new motor vehicle dealer of any
20 line-make.
- 21 (g) Prohibit a factory from providing a loan directly to a person or
22 entity if the loan is for a purpose unrelated to the ownership or leasing of
23 a new motor vehicle or a used motor vehicle not for resale.
- 24 (h) Prohibit a factory from providing loans directly to used motor
25 vehicle dealers or new motor vehicle dealers of any line-make for any
26 purpose, including working capital, real estate, construction or motor
27 vehicle or parts inventories.
- 28 (i) Prohibit a factory from arranging or providing emergency roadside
29 service.
- 30 (j) Prohibit a factory from offering factory sponsored extended
31 service contracts to purchasers of new motor vehicles, provided that:
- 32 (i) Such offers shall not take place less than ninety days after the
33 date the retail consumer takes delivery of the new motor vehicle.
- 34 (ii) Such offers are made to retail consumers only at the
35 manufacturer's suggested retail price.
- 36 (k) Prohibit a factory from selling a lease vehicle to the original
37 lessee pursuant to a purchase option set forth in the lease. Such sale may
38 be a credit sale with the factory as the credit seller and may include the
39 direct sale of extended service contracts at the manufacturer's suggested
40 retail price.
- 41 (l) Prohibit a factory, at the request of a motor vehicle lessee, from
42 extending a lease of a motor vehicle.
- 43 (m) Prohibit a factory from offering and approving a retail consumer
44 credit application for the financing or leasing of a motor vehicle provided
45 that both of the following apply:

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

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

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

8 3. The factory controlling any aspect of the final amount charged, the
9 final sales price or the final lease price for any vehicle or product,
10 trade-in or service offered to retail consumers in a dealer's area of
11 responsibility without the written consent of the dealer. The dealer's
12 consent may be withdrawn on forty-five days' notice without retribution or
13 the threat of retribution from the factory. This paragraph does not prohibit
14 a factory from:

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

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

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

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

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

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

25 (d) Establishing the terms of any vehicle warranty.

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

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

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

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

42 4. The factory refusing to unconditionally offer and provide to its
43 same line-make dealers all models, series and editions of new motor vehicles
44 that are publicly advertised for that line-make in Arizona. The failure to
45 deliver any new motor vehicles shall not be considered a violation of this

1 paragraph if the failure is caused by a lack of manufacturing capacity, labor
2 strike, shortage of materials or trade embargo or any other condition over
3 which the factory has no control. A factory may require a dealer to purchase
4 reasonable quantities of advertising materials, purchase reasonable
5 quantities of special tools required to properly service a motor vehicle and
6 undertake reasonable salesperson or service person training related to the
7 motor vehicle as a condition of receiving a motor vehicle. This paragraph
8 does not:

9 (a) Apply to recreational vehicle manufacturers.

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

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

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

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

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

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

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

31 C. Under subsection B, paragraph 6:

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

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

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

39 4. All leads shall be provided or directed in a fair,
40 nondiscriminatory, equitable and timely manner to dealers and, except as
41 provided in subsection D, without charging a fee for those leads.

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

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

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

5 E. A MANUFACTURER OR DISTRIBUTOR MAY NOT RECOVER ALL OR ANY PORTION OF
6 ITS COSTS FOR COMPENSATING A DEALER FOR WARRANTY PARTS AND SERVICE, INCLUDING
7 PARTS AND SERVICE ASSOCIATED WITH VEHICLE RECALLS, EITHER BY REDUCTION IN THE
8 AMOUNT DUE THE DEALER OR BY SEPARATE CHARGE, SURCHARGE, ADMINISTRATIVE FEE OR
9 OTHER IMPOSITION.

10 ~~E.~~ F. For the purposes of this section:

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

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

16 3. "Factory":

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

21 (b) Excludes any new motor vehicle dealer, used motor vehicle dealer
22 or trailer manufacturer.

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

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

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

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

42 4. "Financing":

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

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

4 5. "Parts":

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

7 (b) Does not include any of the following:

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

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

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

13 (iv) Owners' manuals or repair manuals.

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

16 (vi) Motor vehicle keys.

17 6. "Service" means either of the following:

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

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

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