

REFERENCE TITLE: vehicle manufacturers; customer direct sales

State of Arizona  
House of Representatives  
Fifty-first Legislature  
Second Regular Session  
2014

# HB 2059

Introduced by  
Representative Kavanagh

AN ACT

AMENDING SECTION 28-4460, ARIZONA REVISED STATUTES; RELATING TO FRANCHISES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 28-4460, Arizona Revised Statutes, is amended to  
3 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 or the percentage interest actually owned by the factory on January 1,  
8 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 **IF A DEALER IS LOCATED WITHIN SIXTY MILES OF THE RETAIL**  
4 **CONSUMER OR LEAD**. This paragraph does not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (o) PROHIBIT A FACTORY FROM SELLING, LEASING OR PROVIDING, OR OFFERING  
12 TO SELL, LEASE OR PROVIDE, A VEHICLE OR PRODUCT, SERVICE OR FINANCING TO ANY  
13 RETAIL CONSUMER OR LEAD IF A DEALER IS NOT LOCATED WITHIN SIXTY MILES OF THE  
14 RETAIL CONSUMER OR LEAD.

15 3. The factory controlling any aspect of the final amount charged, the  
16 final sales price or the final lease price for any vehicle or product,  
17 trade-in or service offered to retail consumers in a dealer's area of  
18 responsibility without the written consent of the dealer. The dealer's  
19 consent may be withdrawn on forty-five days' notice without retribution or  
20 the threat of retribution from the factory. This paragraph does not prohibit  
21 a factory from:

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

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

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

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

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

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

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

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

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

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

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

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

18 (a) Apply to recreational vehicle manufacturers.

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

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

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

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

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

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

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

40 C. Under subsection B, paragraph 6:

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

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

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

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

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

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

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

14          E. For the purposes of this section:

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

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

20          3. "Factory":

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

25          (b) Excludes any new motor vehicle dealer, used motor vehicle dealer  
26     or trailer manufacturer.

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

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

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

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

- 1           4. "Financing":  
2           (a) Means the financial service of providing retail consumers the  
3 ability to pay for a purchase or lease of a new or used motor vehicle, parts  
4 or services over an extended period of time.  
5           (b) Does not include the furnishing of credit cards capable of general  
6 use in retail transactions or the provision of any loans secured by real  
7 estate.
- 8           5. "Parts":  
9           (a) Means all items that are designed to be incorporated within or  
10 attached to or used to operate, maintain or service a motor vehicle.  
11           (b) Does not include any of the following:  
12           (i) Parts purchased or provided for use by professional racing  
13 enterprises.  
14           (ii) Parts no longer included in the current factory price schedule.  
15           (iii) Specialized parts for research vehicles or other similar uses of  
16 limited application.  
17           (iv) Owners' manuals or repair manuals.  
18           (v) Parts that are provided by an automotive recycler in the normal  
19 course of business for an automotive recycler.  
20           (vi) Motor vehicle keys.
- 21           6. "Service" means either of the following:  
22           (a) Motor vehicle warranty and nonwarranty repairs or maintenance,  
23 including both parts and labor.  
24           (b) Extended warranties, vehicle mechanical maintenance insurance and  
25 similar vehicle repair service contracts.
- 26           7. "Vehicle or product" means a new motor vehicle, a used motor  
27 vehicle or parts.