

REFERENCE TITLE: motor vehicle sales

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

HB 2120

Introduced by
Representative Fann

AN ACT

AMENDING SECTIONS 28-3511, 28-4401, 28-4493, 28-4494, 28-4496, 28-4498, 28-4499, 28-4500 AND 28-4501, ARIZONA REVISED STATUTES; RELATING TO MOTOR VEHICLE SALES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 28-3511, Arizona Revised Statutes, is amended to
3 read:

4 28-3511. Removal and immobilization or impoundment of vehicle

5 A. A peace officer shall cause the removal and either immobilization
6 or impoundment of a vehicle if the peace officer determines that:

7 1. A person is driving the vehicle while any of the following applies:

8 ~~1-~~ (a) Except as otherwise provided in this paragraph, the person's
9 driving privilege is suspended or revoked for any reason. A peace officer
10 shall not cause the removal and either immobilization or impoundment of a
11 vehicle pursuant to this paragraph if the person's privilege to drive is
12 valid in this state.

13 ~~2-~~ (b) The person has not ever been issued a valid driver license or
14 permit by this state and the person does not produce evidence of ever having
15 a valid driver license or permit issued by another jurisdiction. This
16 paragraph does not apply to the operation of an implement of husbandry.

17 ~~3-~~ (c) The person is subject to an ignition interlock device
18 requirement pursuant to chapter 4 of this title and the person is operating a
19 vehicle without a functioning certified ignition interlock device. This
20 paragraph does not apply to the operation of a vehicle due to a substantial
21 emergency as defined in section 28-1464.

22 ~~4-~~ (d) In furtherance of the illegal presence of an alien in the
23 United States and in violation of a criminal offense, the person is
24 transporting or moving or attempting to transport or move an alien in this
25 state in a vehicle if the person knows or recklessly disregards the fact that
26 the alien has come to, has entered or remains in the United States in
27 violation of law.

28 ~~5-~~ (e) The person is concealing, harboring or shielding or attempting
29 to conceal, harbor or shield from detection an alien in this state in a
30 vehicle if the person knows or recklessly disregards the fact that the alien
31 has come to, entered or remains in the United States in violation of law.

32 2. A VEHICLE IS DISPLAYED FOR SALE OR FOR TRANSFER OF OWNERSHIP WITH A
33 VEHICLE IDENTIFICATION NUMBER THAT HAS BEEN DESTROYED, REMOVED, COVERED,
34 ALTERED OR DEFACED.

35 B. A peace officer shall cause the removal and impoundment of a
36 vehicle if the peace officer determines that a person is driving the vehicle
37 and if all of the following apply:

38 1. The person's driving privilege is canceled, suspended or revoked
39 for any reason or the person has not ever been issued a driver license or
40 permit by this state and the person does not produce evidence of ever having
41 a driver license or permit issued by another jurisdiction.

42 2. The person is not in compliance with the financial responsibility
43 requirements of chapter 9, article 4 of this title.

1 3. The person is driving a vehicle that is involved in an accident
2 that results in either property damage or injury to or death of another
3 person.

4 C. Except as provided in subsection D of this section, while a peace
5 officer has control of the vehicle the peace officer shall cause the removal
6 and either immobilization or impoundment of the vehicle if the peace officer
7 has probable cause to arrest the driver of the vehicle for a violation of
8 section 4-244, paragraph 34 or section 28-1382 or 28-1383.

9 D. A peace officer shall not cause the removal and either the
10 immobilization or impoundment of a vehicle pursuant to subsection C of this
11 section if all of the following apply:

12 1. The peace officer determines that the vehicle is currently
13 registered and that the driver or the vehicle is in compliance with the
14 financial responsibility requirements of chapter 9, article 4 of this title.

15 2. The spouse of the driver is with the driver at the time of the
16 arrest.

17 3. The peace officer has reasonable grounds to believe that the spouse
18 of the driver:

19 (a) Has a valid driver license.

20 (b) Is not impaired by intoxicating liquor, any drug, a vapor
21 releasing substance containing a toxic substance or any combination of
22 liquor, drugs or vapor releasing substances.

23 (c) Does not have any spirituous liquor in the spouse's body if the
24 spouse is under twenty-one years of age.

25 4. The spouse notifies the peace officer that the spouse will drive
26 the vehicle from the place of arrest to the driver's home or other place of
27 safety.

28 5. The spouse drives the vehicle as prescribed by paragraph 4 of this
29 subsection.

30 E. Except as otherwise provided in this article, a vehicle that is
31 removed and either immobilized or impounded pursuant to subsection A, B or C
32 of this section shall be immobilized or impounded for thirty days. An
33 insurance company does not have a duty to pay any benefits for charges or
34 fees for immobilization or impoundment.

35 F. The owner of a vehicle that is removed and either immobilized or
36 impounded pursuant to subsection A, B or C of this section, the spouse of the
37 owner and each person identified on the department's record with an interest
38 in the vehicle immediately before the immobilization or impoundment shall be
39 provided with an opportunity for an immobilization or poststorage hearing
40 pursuant to section 28-3514.

- 1 1. Has made a material misrepresentation or misstatement in the
2 licensee's or exhibitor's application for a license, off-premises exhibition
3 permit, off-premises display and sales permit or special event permit.
- 4 2. Has used or is using any false advertising as prescribed by section
5 13-2203.
- 6 3. Has violated or is violating a law of this state or a rule adopted
7 by the director pursuant to law.
- 8 4. Has failed or is failing to keep and maintain records required to
9 be kept and maintained by the licensee or exhibitor.
- 10 5. Has no established place of business or principal place of business
11 as required by this chapter.
- 12 6. Has knowingly dealt in stolen motor vehicles or parts or
13 accessories of stolen motor vehicles.
- 14 7. Has failed or is failing or the licensee's or exhibitor's manager,
15 agents or representatives have failed or are failing to devote a substantial
16 portion of time to the business for which the licensee or exhibitor is
17 licensed or to be actively or principally engaged in the business for which
18 the licensee or exhibitor is licensed.
- 19 8. Has refused to service and fulfill the manufacturer's warranty.
- 20 9. IS OFFERING FOR PRIVATE SALE A MOTOR VEHICLE IN THE LICENSEE'S OR
21 EXHIBITOR'S INVENTORY.
- 22 ~~9.~~ 10. Has used or is using a private residence to illegally transact
23 business regulated by this chapter.
- 24 ~~10.~~ 11. As a manufacturer, factory branch, distributor, field
25 representative, officer or agent or any representative of a manufacturer,
26 factory branch, distributor, field representative, officer or agent without
27 good cause has cancelled or failed to renew the franchise of a new motor
28 vehicle dealer. All existing dealers' franchises continue in full force and
29 operation under a newly appointed distributor on the termination of an
30 existing distributor unless otherwise mutually agreed by the newly appointed
31 distributor and the dealer.
- 32 B. The director may suspend or cancel a license if the director
33 determines that an individual included in the application for the license:
34 1. Made a misrepresentation, omission or misstatement in the
35 application to conceal a matter that may cause the application to be denied.
36 2. Has been convicted of fraud or an auto related felony in a state,
37 territory or possession of the United States or a foreign country within the
38 past ten years immediately preceding the date a criminal records check is
39 complete.
- 40 3. Has been convicted of a felony, other than a felony described in
41 paragraph 2 of this subsection, in a state, territory or possession of the
42 United States or a foreign country within the past five years immediately
43 preceding the date a criminal records check is complete.

1 B. THE DIRECTOR SHALL CONDUCT A HEARING PURSUANT TO SECTION 28-4491 IF
2 THE DIRECTOR ALLEGES THAT A LICENSED MOTOR VEHICLE DEALER HAS VIOLATED
3 SECTION 28-4493, SUBSECTION A, PARAGRAPH 9.

4 ~~B.~~ C. The director shall hold the hearing at least fifteen but not
5 more than thirty days after service of a written notice. The director shall
6 send the notice by personal delivery or certified mail to the address
7 provided to the department in the report alleging the noncompliance.

8 ~~C.~~ D. A finding that a licensed MOTOR VEHICLE dealer or automotive
9 recycler is in violation of this chapter requires that all of the following
10 conditions exist, and the scope of the hearing is limited to the following:

11 1. A determination that the person refuses or fails to comply with the
12 requirements of section 28-4498.

13 2. A determination that the person ordered to appear at the hearing is
14 responsible for the violation.

15 ~~D.~~ E. If after reviewing the allegations and results of the hearing
16 the director determines that the licensed MOTOR VEHICLE dealer or automotive
17 recycler is in violation of this chapter, the director may impose the civil
18 penalty pursuant to section 28-4501.

19 ~~E.~~ F. After consideration of the evidence presented at the hearing,
20 the director shall serve notice of the director's finding and order within
21 five days after the hearing.

22 Sec. 6. Section 28-4498, Arizona Revised Statutes, is amended to read:
23 28-4498. Licensed dealer and automotive recycler; cease and
24 desist order; request for hearing

25 A. If the director has reasonable cause to believe from an
26 investigation made by the director that a licensed motor vehicle dealer or
27 automotive recycler has violated or is violating a law of this state or rule
28 adopted by the department, the director may immediately issue and serve on
29 the licensee by personal delivery or first class mail at the business address
30 of record a cease and desist order requiring the licensee to immediately
31 cease and desist from further engaging in the business or the prohibited
32 activity, or both, on the receipt of the notice. A licensee who receives a
33 cease and desist order may submit a written request for a hearing to the
34 director. The licensee shall submit the request for a hearing within thirty
35 days after the licensee receives the cease and desist order. On failure of a
36 licensee to comply with the order or after a requested hearing, the director
37 may suspend or cancel the licensee's license or permit pursuant to section
38 28-4493 and section 28-4494 or 28-4495 or may take action pursuant to section
39 28-4496.

40 B. IF THE DIRECTOR CONDUCTS AN INVESTIGATION AND HAS REASONABLE CAUSE
41 TO BELIEVE THAT A LICENSED MOTOR VEHICLE DEALER IS IN VIOLATION OF SECTION
42 28-4493, SUBSECTION A, PARAGRAPH 9, THE DIRECTOR MAY IMMEDIATELY ISSUE AND
43 SERVE ON THE LICENSEE BY PERSONAL DELIVERY OR FIRST CLASS MAIL AT THE
44 BUSINESS ADDRESS OF RECORD A CEASE AND DESIST ORDER REQUIRING THE LICENSEE TO
45 IMMEDIATELY CEASE AND DESIST FROM FURTHER ENGAGING IN THE BUSINESS OR THE

1 PROHIBITED ACTIVITY, OR BOTH, ON THE RECEIPT OF THE NOTICE. THE DIRECTOR
2 SHALL NOTIFY THE LICENSEE THAT A HEARING WILL BE CONDUCTED AND THAT CIVIL
3 PENALTIES MAY BE IMPOSED PURSUANT TO SECTION 28-4501. ON FAILURE OF A
4 LICENSEE TO COMPLY WITH THE ORDER OR AFTER A HEARING, THE DIRECTOR MAY
5 SUSPEND OR CANCEL THE LICENSEE'S LICENSE OR PERMIT PURSUANT TO SECTION
6 28-4493 AND SECTION 28-4494 OR 28-4495 OR MAY TAKE ACTION PURSUANT TO SECTION
7 28-4496.

8 ~~B-~~ C. The director of the department of transportation shall provide
9 a copy of ~~the~~ ANY cease and desist order ISSUED PURSUANT TO THIS SECTION to
10 the director of the department of revenue.

11 Sec. 7. Section 28-4499, Arizona Revised Statutes, is amended to read:
12 28-4499. Unlicensed dealer and automotive recycler; cease and
13 desist order; hearing

14 A. If the director has reasonable cause to believe from information
15 furnished to the director or from an investigation made by the director that
16 a person is engaged in a business regulated by this chapter without being
17 licensed as required by law, the director shall immediately issue and serve
18 on the person by personal delivery or first class mail at the person's last
19 known address a cease and desist order requiring the person to immediately
20 cease and desist from further engaging in the business. ~~A person who~~
21 ~~receives a cease and desist order may submit a written request for a hearing~~
22 ~~to the director. The person shall submit the request for a hearing within~~
23 ~~thirty days after the person receives the cease and desist order AND SHALL~~
24 NOTIFY THE PERSON THAT A HEARING WILL BE SCHEDULED AND THAT CIVIL PENALTIES
25 MAY BE IMPOSED PURSUANT TO SECTION 28-4501.

26 B. The director of the department of transportation shall provide a
27 copy of the cease and desist order to the director of the department of
28 revenue.

29 Sec. 8. Section 28-4500, Arizona Revised Statutes, is amended to read:
30 28-4500. Unlicensed dealer and automotive recycler; hearing;
31 civil penalty; suspension of motor vehicle
32 registrations; reinstatement fee

33 A. The director ~~may~~ SHALL conduct a hearing pursuant to section
34 28-4491 if an officer authorized to enforce this chapter alleges that a
35 person refuses or fails to comply with a cease and desist order issued
36 pursuant to section 28-4499.

37 B. The director shall hold the hearing at least fifteen but not more
38 than thirty days after receipt of EITHER OF THE FOLLOWING:

- 39 1. A written request for a hearing.
- 40 2. A WRITTEN NOTICE OF HEARING AS PRESCRIBED BY SECTION 28-4498 OR
41 28-4499.

42 C. A finding that a person is in violation of the dealer or automotive
43 recycler licensing requirements of this chapter requires that ~~both of the~~
44 ~~following conditions exist, and the scope of the hearing is limited to the~~
45 ~~following:~~

1 ~~1. A determination that the person refuses or fails to comply with a~~
2 ~~cease and desist order issued pursuant to section 28-4499.~~

3 ~~2. a determination that~~ the person appearing at the hearing is
4 responsible for the violation.

5 D. If, after reviewing the allegations and results of the hearing, the
6 director determines that the person is in violation of the dealer or
7 automotive recycler licensing provisions of this chapter, the director may
8 impose a civil penalty pursuant to section 28-4501.

9 E. After consideration of the evidence presented at the hearing, the
10 director shall serve notice of the director's finding and order within five
11 days after the hearing.

12 F. Unless a continuance is granted, if a person who is alleged to be
13 in violation of the dealer or automotive recycler licensing provisions of
14 this chapter fails to appear for a hearing, the director may suspend the
15 registrations of all motor vehicles owned and leased by the person. The
16 director shall not remove the suspension until the person appears for the
17 hearing and pays a fee of fifty dollars to the department for the
18 reinstatement of each motor vehicle registration and license plate.

19 Sec. 9. Section 28-4501, Arizona Revised Statutes, is amended to read:

20 28-4501. Licensed or unlicensed dealer and automotive recycler;
21 civil penalty; transaction privilege taxes

22 A. Notwithstanding the suspension authorized by section 28-4500, if
23 the director finds that a person is in violation of the licensing provisions
24 of this chapter, after a hearing conducted pursuant to section 28-4496,
25 28-4498, 28-4499 OR 28-4500, the director:

26 1. May impose a civil penalty of at least one thousand dollars but not
27 more than three thousand dollars PER VIOLATION.

28 2. SHALL REQUIRE THAT THE PERSON PAY ALL TRANSACTION PRIVILEGE TAXES
29 ON MOTOR VEHICLE SALES THAT WERE CONDUCTED IN VIOLATION OF THIS CHAPTER.

30 B. The person shall pay the civil penalty imposed pursuant to this
31 section to the department no later than thirty days after the order is final.
32 If the person fails to pay the civil penalty within thirty days after the
33 order is final, the director shall file an action in the superior court in
34 the county in which the hearing is held to collect the civil penalty.