

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

CHAPTER 48
HOUSE BILL 2120

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.

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

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

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

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

12 2. The spouse of the driver is with the driver at the time of the
13 arrest.

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

16 (a) Has a valid driver license.

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

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

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

25 5. The spouse drives the vehicle as prescribed by paragraph 4 of this
26 subsection.

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

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

38 Sec. 2. Section 28-4401, Arizona Revised Statutes, is amended to read:

39 28-4401. Off-premises exhibition, off-premises display and
40 sales and special event permits; parking motor
41 vehicle for sale on public property; prohibition;
42 defaced vehicle identification number; mandatory
43 immobilization or impoundment

44 A. A licensed motor vehicle dealer may conduct an off-premises
45 exhibition, an off-premises display and sales or a special event by permit.

1 B. An Arizona franchised new car dealer association may conduct a
2 motor vehicle show by permit.

3 C. An exhibitor that does not have a licensed franchised dealer in
4 this state may conduct a special event by permit. An exhibitor that has a
5 licensed franchised dealer in this state is limited to participating in a
6 special event through the exhibitor's licensed dealer. A licensed motor
7 vehicle dealer or an exhibitor shall not make a solicitation or sale at a
8 special event.

9 D. An applicant for an off-premises exhibition, an off-premises
10 display and sales or a special event permit shall submit proof to the
11 department that the proposed site is in compliance with local zoning
12 ordinances.

13 E. An off-premises exhibition permit, display and sales permit or
14 special event permit is not assignable.

15 F. A special event shall not be held at the same location at which an
16 off-premises exhibition or an off-premises display and sale are held.

17 G. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A MOTOR VEHICLE
18 DEALER OR PERSON ACTING AS A MOTOR VEHICLE DEALER SHALL NOT PARK A MOTOR
19 VEHICLE FOR THE PRIMARY PURPOSE OF DISPLAYING THE VEHICLE FOR SALE OR FOR
20 TRANSFER OF OWNERSHIP ON ANY OF THE FOLLOWING:

21 1. A PUBLIC STREET OR HIGHWAY.

22 2. A PUBLIC PARKING LOT.

23 3. ANY OTHER PUBLIC PROPERTY.

24 4. ANY PRIVATE PROPERTY IF THE PUBLIC MAY LAWFULLY DRIVE A MOTOR
25 VEHICLE ON THE PROPERTY. THIS PARAGRAPH DOES NOT APPLY IF THE PROPERTY IS A
26 MOTOR VEHICLE DEALER'S LOT AND THE MOTOR VEHICLE THAT IS PARKED ON THE
27 PROPERTY IS IN THE MOTOR VEHICLE DEALER'S INVENTORY.

28 H. A VEHICLE THAT IS DISPLAYED FOR SALE WITH A VEHICLE IDENTIFICATION
29 NUMBER THAT HAS BEEN DESTROYED, REMOVED, COVERED, ALTERED OR DEFACED IS
30 SUBJECT TO MANDATORY VEHICLE IMMOBILIZATION OR IMPOUNDMENT PURSUANT TO
31 SECTION 28-3511.

32 Sec. 3. Section 28-4493, Arizona Revised Statutes, is amended to read:
33 28-4493. Cancellation or suspension; grounds

34 A. The director may suspend or cancel the license, off-premises
35 exhibition permit, off-premises display and sales permit or special event
36 permit of any licensee or exhibitor if the director determines that the
37 licensee or exhibitor:

38 1. Has made a material misrepresentation or misstatement in the
39 licensee's or exhibitor's application for a license, off-premises exhibition
40 permit, off-premises display and sales permit or special event permit.

41 2. Has used or is using any false advertising as prescribed by section
42 13-2203.

43 3. Has violated or is violating a law of this state or a rule adopted
44 by the director pursuant to law.

45 4. Has failed or is failing to keep and maintain records required to
46 be kept and maintained by the licensee or exhibitor.

1 5. Has no established place of business or principal place of business
2 as required by this chapter.

3 6. Has knowingly dealt in stolen motor vehicles or parts or
4 accessories of stolen motor vehicles.

5 7. Has failed or is failing or the licensee's or exhibitor's manager,
6 agents or representatives have failed or are failing to devote a substantial
7 portion of time to the business for which the licensee or exhibitor is
8 licensed or to be actively or principally engaged in the business for which
9 the licensee or exhibitor is licensed.

10 8. Has refused to service and fulfill the manufacturer's warranty.

11 9. IS OFFERING FOR PRIVATE SALE A MOTOR VEHICLE IN THE LICENSEE'S OR
12 EXHIBITOR'S INVENTORY.

13 ~~9-~~ 10. Has used or is using a private residence to illegally transact
14 business regulated by this chapter.

15 ~~10-~~ 11. As a manufacturer, factory branch, distributor, field
16 representative, officer or agent or any representative of a manufacturer,
17 factory branch, distributor, field representative, officer or agent without
18 good cause has cancelled or failed to renew the franchise of a new motor
19 vehicle dealer. All existing dealers' franchises continue in full force and
20 operation under a newly appointed distributor on the termination of an
21 existing distributor unless otherwise mutually agreed by the newly appointed
22 distributor and the dealer.

23 B. The director may suspend or cancel a license if the director
24 determines that an individual included in the application for the license:

25 1. Made a misrepresentation, omission or misstatement in the
26 application to conceal a matter that may cause the application to be denied.

27 2. Has been convicted of fraud or an auto related felony in a state,
28 territory or possession of the United States or a foreign country within the
29 past ten years immediately preceding the date a criminal records check is
30 complete.

31 3. Has been convicted of a felony, other than a felony described in
32 paragraph 2 of this subsection, in a state, territory or possession of the
33 United States or a foreign country within the past five years immediately
34 preceding the date a criminal records check is complete.

35 Sec. 4. Section 28-4494, Arizona Revised Statutes, is amended to read:
36 28-4494. License suspension or cancellation; hearing

37 A. On determining that grounds for suspension or cancellation of a
38 license exist, the director shall give notice of the grounds to the licensee
39 in writing and by the notice shall require the licensee to appear before the
40 director at a specified time and place to show cause why the licensee's
41 license should not be suspended or cancelled.

42 B. At the time and place fixed by the director and at least ten days
43 after the notice, the licensee shall appear and be heard and may have other
44 persons the licensee desires be present and testify at the hearing.

45 C. The director shall issue subpoenas to persons as the licensee
46 requests that require them to be present and testify at the hearing. A

1 transcript of the testimony of witnesses taken at the hearing shall be made
2 and preserved.

3 D. Within ten days after the hearing, the director shall make written
4 findings of fact and conclusions and by order either shall suspend or cancel
5 or decline to suspend or cancel the license.

6 E. If the license is subject to suspension or cancellation for a
7 violation of section 28-4493, **SUBSECTION A**, paragraph ~~10~~ 11, the suspension
8 or cancellation is effective for not more than two years and is effective
9 only in the territory formerly served by the unfairly cancelled dealer,
10 except that in a metropolitan area served by several dealers enfranchised to
11 sell the same make of new motor vehicles, the suspension or cancellation
12 order does not affect the relationship of the manufacturer with the remaining
13 dealers in the area.

14 **F. IF THE LICENSE IS SUBJECT TO SUSPENSION OR CANCELLATION FOR A
15 SECOND VIOLATION OF SECTION 28-4493, SUBSECTION A, PARAGRAPH 9, THE
16 SUSPENSION OR CANCELLATION IS EFFECTIVE FOR FIVE YEARS.**

17 ~~F.~~ G. The director may suspend or cancel the license of a licensee,
18 after providing at least thirty days' written notice to the licensee, if any
19 of the following occurs:

20 1. A bond furnished by a licensee pursuant to this chapter is
21 insufficient and the licensee fails to provide any additional or other bond
22 as required by the director.

23 2. The surety on a bond furnished by a licensee pursuant to this
24 chapter requests to be released and discharged and the licensee fails to
25 provide any additional or other bond as required by the director.

26 Sec. 5. Section 28-4496, Arizona Revised Statutes, is amended to read:
27 28-4496. Licensed dealer or automotive recycler; hearing; civil
28 penalty

29 A. Notwithstanding section 28-4495, the director may conduct a hearing
30 pursuant to section 28-4491 if the director alleges that a licensed **MOTOR**
31 **VEHICLE** dealer or automotive recycler refuses or fails to comply with a cease
32 and desist order issued pursuant to section 28-4498.

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

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

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

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

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

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

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

8 Sec. 6. Section 28-4498, Arizona Revised Statutes, is amended to read:
9 28-4498. Licensed dealer and automotive recycler; cease and
10 desist order; request for hearing

11 A. If the director has reasonable cause to believe from an
12 investigation made by the director that a licensed motor vehicle dealer or
13 automotive recycler has violated or is violating a law of this state or rule
14 adopted by the department, the director may immediately issue and serve on
15 the licensee by personal delivery or first class mail at the business address
16 of record a cease and desist order requiring the licensee to immediately
17 cease and desist from further engaging in the business or the prohibited
18 activity, or both, on the receipt of the notice. A licensee who receives a
19 cease and desist order may submit a written request for a hearing to the
20 director. The licensee shall submit the request for a hearing within thirty
21 days after the licensee receives the cease and desist order. On failure of a
22 licensee to comply with the order or after a requested hearing, the director
23 may suspend or cancel the licensee's license or permit pursuant to section
24 28-4493 and section 28-4494 or 28-4495 or may take action pursuant to section
25 28-4496.

26 B. IF THE DIRECTOR CONDUCTS AN INVESTIGATION AND HAS REASONABLE CAUSE
27 TO BELIEVE THAT A LICENSED MOTOR VEHICLE DEALER IS IN VIOLATION OF SECTION
28 28-4493, SUBSECTION A, PARAGRAPH 9, THE DIRECTOR MAY IMMEDIATELY ISSUE AND
29 SERVE ON THE LICENSEE BY PERSONAL DELIVERY OR FIRST CLASS MAIL AT THE
30 BUSINESS ADDRESS OF RECORD A CEASE AND DESIST ORDER REQUIRING THE LICENSEE TO
31 IMMEDIATELY CEASE AND DESIST FROM FURTHER ENGAGING IN THE BUSINESS OR THE
32 PROHIBITED ACTIVITY, OR BOTH, ON THE RECEIPT OF THE NOTICE. THE DIRECTOR
33 SHALL NOTIFY THE LICENSEE THAT A HEARING WILL BE CONDUCTED AND THAT CIVIL
34 PENALTIES MAY BE IMPOSED PURSUANT TO SECTION 28-4501. ON FAILURE OF A
35 LICENSEE TO COMPLY WITH THE ORDER OR AFTER A HEARING, THE DIRECTOR MAY
36 SUSPEND OR CANCEL THE LICENSEE'S LICENSE OR PERMIT PURSUANT TO SECTION
37 28-4493 AND SECTION 28-4494 OR 28-4495 OR MAY TAKE ACTION PURSUANT TO SECTION
38 28-4496.

39 ~~B.~~ C. The director of the department of transportation shall provide
40 a copy of ~~the~~ ANY cease and desist order ISSUED PURSUANT TO THIS SECTION to
41 the director of the department of revenue.

42 Sec. 7. Section 28-4499, Arizona Revised Statutes, is amended to read:
43 28-4499. Unlicensed dealer and automotive recycler; cease and
44 desist order; hearing

45 A. If the director has reasonable cause to believe from information
46 furnished to the director or from an investigation made by the director that

1 a person is engaged in a business regulated by this chapter without being
2 licensed as required by law, the director shall immediately issue and serve
3 on the person by personal delivery or first class mail at the person's last
4 known address a cease and desist order requiring the person to immediately
5 cease and desist from further engaging in the business. ~~A person who~~
6 ~~receives a cease and desist order may submit a written request for a hearing~~
7 ~~to the director. The person shall submit the request for a hearing within~~
8 ~~thirty days after the person receives the cease and desist order~~ AND SHALL
9 NOTIFY THE PERSON THAT A HEARING WILL BE SCHEDULED AND THAT CIVIL PENALTIES
10 MAY BE IMPOSED PURSUANT TO SECTION 28-4501.

11 B. The director of the department of transportation shall provide a
12 copy of the cease and desist order to the director of the department of
13 revenue.

14 Sec. 8. Section 28-4500, Arizona Revised Statutes, is amended to read:
15 28-4500. Unlicensed dealer and automotive recycler; hearing;
16 civil penalty; suspension of motor vehicle
17 registrations; reinstatement fee

18 A. The director ~~may~~ SHALL conduct a hearing pursuant to section
19 28-4491 if an officer authorized to enforce this chapter alleges that a
20 person refuses or fails to comply with a cease and desist order issued
21 pursuant to section 28-4499.

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

- 24 1. A written request for a hearing.
- 25 2. A WRITTEN NOTICE OF HEARING AS PRESCRIBED BY SECTION 28-4498 OR
- 26 28-4499.

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

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

33 ~~2. a determination that~~ the person appearing at the hearing is
34 responsible for the violation.

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

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

42 F. Unless a continuance is granted, if a person who is alleged to be
43 in violation of the dealer or automotive recycler licensing provisions of
44 this chapter fails to appear for a hearing, the director may suspend the
45 registrations of all motor vehicles owned and leased by the person. The
46 director shall not remove the suspension until the person appears for the

1 hearing and pays a fee of fifty dollars to the department for the
2 reinstatement of each motor vehicle registration and license plate.

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

4 28-4501. Licensed or unlicensed dealer and automotive recycler;
5 civil penalty; transaction privilege taxes

6 A. Notwithstanding the suspension authorized by section 28-4500, if
7 the director finds that a person is in violation of the licensing provisions
8 of this chapter, after a hearing conducted pursuant to section 28-4496,
9 28-4498, 28-4499 OR 28-4500, the director:

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

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

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

APPROVED BY THE GOVERNOR APRIL 16, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2014.