

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 277
SENATE BILL 1358

AN ACT

AMENDING SECTIONS 6-126, 28-4302, 44-281, 44-282 AND 44-294, ARIZONA REVISED STATUTES; RELATING TO 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 6-126, Arizona Revised Statutes, is amended to
3 read:

4 6-126. Application fees for financial institutions and
5 enterprises

6 A. The following nonrefundable fees are payable to the department with
7 the filing of the following applications:

8 1. To apply for a banking permit, five thousand dollars.

9 2. To apply for an amendment to a banking or savings and loan
10 association permit, one thousand dollars.

11 3. To establish each banking branch office, seven hundred fifty
12 dollars.

13 4. To move a banking office to other than an established office of a
14 bank, one thousand dollars.

15 5. To apply for a savings and loan association permit, five thousand
16 dollars.

17 6. To establish each savings and loan association branch office, one
18 thousand five hundred dollars.

19 7. To move an office of a savings and loan association to other than
20 an established office, one thousand dollars.

21 8. To organize and establish a credit union, one hundred dollars.

22 9. To establish each credit union branch or to move a credit union
23 office to other than an established office of a credit union, two hundred
24 fifty dollars.

25 10. To organize and establish any other financial institutions for
26 which an application or investigation fee is not otherwise provided by law,
27 two thousand five hundred dollars.

28 11. To acquire control of a financial institution, other than a
29 consumer lender, five thousand dollars.

30 12. To apply for a trust company license, five thousand dollars.

31 13. To apply for a commercial mortgage banker, mortgage banker, escrow
32 agent or consumer lender license, one thousand five hundred dollars.

33 14. To apply for a mortgage broker, commercial mortgage broker, sales
34 finance company or debt management company license, eight hundred dollars.

35 15. To apply for a collection agency license, one thousand five
36 hundred dollars.

37 16. To apply for a deferred presentment company license, one thousand
38 dollars.

39 ~~17. To apply for a motor vehicle dealer license, three hundred~~
40 ~~dollars.~~

41 ~~18.~~ 17. To apply for a branch office of an escrow agent, consumer
42 lender, commercial mortgage banker, mortgage banker, trust company, money
43 transmitter, collection agency or deferred presentment company, five hundred
44 dollars.

- 1 ~~19.~~ 18. To apply for a branch office of a mortgage broker, commercial
2 mortgage broker, debt management company or sales finance company, two
3 hundred fifty dollars.
- 4 ~~20.~~ 19. To apply for approval of the articles of incorporation of a
5 business development corporation, five hundred dollars.
- 6 ~~21.~~ 20. To apply for approval for the merger or consolidation of two
7 or more financial institutions, five thousand dollars per institution.
- 8 ~~22.~~ 21. To apply for approval to convert from a national bank or
9 federal savings and loan charter to a state chartered institution, five
10 thousand dollars.
- 11 ~~23.~~ 22. To apply for approval to convert from a federal credit union
12 to a state chartered credit union, one thousand dollars.
- 13 ~~24.~~ 23. To apply for approval to merge or consolidate two or more
14 credit unions, five hundred dollars per credit union.
- 15 ~~25.~~ 24. To move an established office of an enterprise to other than
16 an established office, fifty dollars.
- 17 ~~26.~~ 25. To issue a duplicate or replace a lost enterprise's license,
18 one hundred dollars.
- 19 ~~27.~~ 26. To change a responsible person on a mortgage broker's,
20 commercial mortgage broker's, commercial mortgage banker's or a mortgage
21 banker's license, two hundred fifty dollars.
- 22 ~~28.~~ 27. To change an active manager on a collection agency license or
23 a manager of a money transmitter branch office license, two hundred fifty
24 dollars.
- 25 ~~29.~~ 28. To change the licensee name on a financial institution or
26 enterprise license, not more than two hundred fifty dollars.
- 27 ~~30.~~ 29. To apply for a money transmitter license, one thousand five
28 hundred dollars plus twenty-five dollars for each branch office and
29 authorized delegate to a maximum of four thousand five hundred dollars.
- 30 ~~31.~~ 30. To acquire control of any money transmitter or controlling
31 person pursuant to chapter 12 of this title, two thousand five hundred
32 dollars.
- 33 ~~32.~~ 31. To receive the following publications:
34 (a) Quarterly bank and savings and loan statement of condition, not
35 more than ten dollars per copy.
36 (b) Monthly summary of actions report, not more than five dollars per
37 copy.
38 (c) A list of licensees, a monthly pending actions report and all
39 other in-house prepared reports or listings made available to the public, not
40 more than one dollar per page.
- 41 ~~33.~~ 32. To apply for a loan originator license, an amount to be
42 determined by the superintendent.
- 43 ~~34.~~ 33. To apply for a loan originator license transfer, an amount to
44 be determined by the superintendent.
- 45 ~~35.~~ 34. To apply for a conversion from a mortgage banker license to a
46 mortgage broker license, an amount to be determined by the superintendent.

1 B. On issuance of a license or permit for a financial institution or
2 enterprise, the superintendent shall collect the first year's annual
3 assessment or renewal fee for the financial institution or enterprise
4 prorated according to the number of quarters remaining until the date of the
5 next annual assessment or renewal.

6 C. The following annual renewal fees shall be paid each year:

7 1. For an escrow agent, or trust company, one thousand dollars plus
8 two hundred fifty dollars for each branch office.

9 2. For a debt management company or sales finance company, five
10 hundred dollars plus two hundred dollars for each branch office.

11 3. For a collection agency, six hundred dollars plus two hundred
12 dollars for each branch office.

13 ~~4. For a motor vehicle dealer, one hundred fifty dollars.~~

14 ~~5.~~ 4. For an inactive mortgage broker or commercial mortgage broker,
15 two hundred fifty dollars.

16 ~~6.~~ 5. For a mortgage banker that negotiates or closes in the
17 aggregate one hundred loans or less in the immediately preceding calendar
18 year, seven hundred fifty dollars, and for a mortgage banker that negotiates
19 or closes in the aggregate over one hundred loans in the immediately
20 preceding calendar year, one thousand two hundred fifty dollars. In
21 addition, a mortgage banker shall pay two hundred fifty dollars for each
22 branch office.

23 ~~7.~~ 6. For a commercial mortgage banker, one thousand two hundred
24 fifty dollars. In addition, a commercial mortgage banker shall pay two
25 hundred fifty dollars for each branch office.

26 ~~8.~~ 7. For a mortgage broker or commercial mortgage broker that
27 negotiates or closes in the aggregate fifty loans or less in the immediately
28 preceding calendar year, two hundred fifty dollars and for a mortgage broker
29 or commercial mortgage broker that negotiates or closes in the aggregate more
30 than fifty loans in the immediately preceding calendar year, five hundred
31 dollars. In addition, a mortgage broker or commercial mortgage broker shall
32 pay two hundred dollars for each branch office.

33 ~~9.~~ 8. For a consumer lender, one thousand dollars plus two hundred
34 dollars for each branch office.

35 ~~10.~~ 9. For a money transmitter, five hundred dollars plus twenty-five
36 dollars for each branch office and each authorized delegate to a maximum of
37 two thousand five hundred dollars.

38 ~~11.~~ 10. For a deferred presentment company, four hundred dollars. In
39 addition, a deferred presentment company shall pay two hundred dollars for
40 each branch office.

41 ~~12.~~ 11. For a loan originator, an amount to be determined by the
42 superintendent.

43 ~~13.~~ 12. For an inactive status loan originator, an amount to be
44 determined by the superintendent.

45 D. The license, renewal or branch office permit fee for a premium
46 finance company for each calendar year or part thereof shall not be less than

1 one hundred dollars or more than three hundred dollars as set by the
2 superintendent. If the license is issued or the branch office is opened
3 after June 30 in any year, the fees shall not be less than fifty dollars or
4 more than one hundred fifty dollars for that year.

5 Sec. 2. Section 28-4302, Arizona Revised Statutes, is amended to read:
6 28-4302. Fees; disposition

7 A. The following fees are required:

8 1. For filing each application for a dealer's, manufacturer's,
9 importer's, distributor's, factory branch's, distributor branch's, automotive
10 recycler's or wholesale motor vehicle dealer's license, fifteen dollars.

11 2. For filing each application for a provisional dealer's, automotive
12 recycler's or wholesale motor vehicle dealer's license filed in conjunction
13 with an application for a dealer's or automotive recycler's license, ten
14 dollars.

15 3. For each filing ~~or continuation~~ of a dealer's, manufacturer's,
16 distributor's, importer's, factory branch's, distributor branch's, automotive
17 recycler's or wholesale motor vehicle dealer's license if issued annually,
18 one hundred dollars EXCEPT THAT IF A DEALER HAS A CONTRACTUAL RELATIONSHIP
19 WITH A THIRD PARTY LENDER, THE FEE IS FOUR HUNDRED DOLLARS, OF WHICH THREE
20 HUNDRED DOLLARS SHALL BE DEPOSITED PURSUANT TO SECTIONS 35-146 AND 35-147, IN
21 THE STATE GENERAL FUND AND ONE HUNDRED DOLLARS IN THE ARIZONA HIGHWAY USER
22 REVENUE FUND.

23 4. FOR EACH CONTINUATION OF A DEALER'S LICENSE IF ISSUED ANNUALLY, ONE
24 HUNDRED DOLLARS, EXCEPT THAT IF A DEALER HAS A CONTRACTUAL RELATIONSHIP WITH
25 A THIRD PARTY LENDER, THE FEE IS TWO HUNDRED FIFTY DOLLARS, OF WHICH ONE
26 HUNDRED FIFTY DOLLARS SHALL BE DEPOSITED IN THE STATE GENERAL FUND, PURSUANT
27 TO SECTIONS 35-146 AND 35-147, AND ONE HUNDRED DOLLARS IN THE ARIZONA HIGHWAY
28 USER REVENUE FUND.

29 ~~4-~~ 5. For filing or continuing a dealer's branch license if issued
30 annually, fifty dollars.

31 ~~5-~~ 6. For filing each application for a permit for the off-premises
32 exhibition of motor vehicles, for a motor vehicle show or for a special event
33 to exhibit new motor homes, twenty-five dollars.

34 ~~6-~~ 7. For filing each application for a permit for the off-premises
35 display and sale of motor vehicles, twenty-five dollars.

36 B. Except as otherwise provided by statute, the director shall
37 immediately deposit, pursuant to sections 35-146 and 35-147, fees collected
38 under this section in the Arizona highway user revenue fund.

39 Sec. 3. Section 44-281, Arizona Revised Statutes, is amended to read:
40 44-281. Definitions

41 In this article, unless the context otherwise requires:

42 1. "Administrator" means the superintendent of financial institutions.

43 2. "Cash sale price" means the price stated in a retail installment
44 contract for which the seller would have sold to the buyer, and the buyer
45 would have bought from the seller, the motor vehicle which is the subject
46 matter of the retail installment contract, if such sale had been a sale for

1 cash instead of a retail installment transaction. The cash sale price may
2 include charges for accessories and their installation and for delivery, and
3 servicing, repairing or improving the motor vehicle, and for charges for
4 other costs that are necessary or incidental to the transaction and that the
5 seller furnishes or agrees to pay on behalf of the buyer, including taxes,
6 assessor's fees, license fees and fees for filing, recording or otherwise
7 perfecting or releasing a reserved title or lien, and may include a
8 reasonable charge for the seller's services.

9 ~~3. "Dealer" means any person who in any year sells on a noncash basis~~
10 ~~three or more motor vehicles at retail.~~

11 ~~4.~~ 3. "Finance charge" means the amount agreed upon between the buyer
12 and the seller, as limited herein, which in determining the cost of the motor
13 vehicle is added to the aggregate of the following: The cash sale price and
14 the amount, if any, included for insurance and other benefits where a
15 separate cost is assigned thereto.

16 ~~5.~~ 4. "Holder" of a retail installment contract means the retail
17 seller of the motor vehicle under or subject to the contract or, if the
18 contract is purchased by a sales finance company or other assignee, the sales
19 finance company or other assignee.

20 ~~6.~~ 5. "Motor vehicle" means any self-propelled device in or by which
21 any person or property is or may be transported or drawn on a public highway,
22 except:

23 (a) Devices that move upon or are guided by a track or travel through
24 the air.

25 (b) The following, if not designed primarily for highway
26 transportation, but which may incidentally be operated on a public highway:

27 (i) Tractors.

28 (ii) Buses.

29 (iii) Trucks.

30 (iv) Power shovels.

31 (v) Road machinery.

32 (vi) Agricultural machinery.

33 ~~7.~~ 6. "Person" means an individual, partnership, association, trust,
34 corporation, or other legal entity.

35 ~~8.~~ 7. "Retail buyer" or "buyer" means a person who buys a motor
36 vehicle from a retail seller, not for the purpose of resale, and who executes
37 a retail installment contract in connection therewith.

38 ~~9.~~ 8. "Retail installment contract" or "contract":

39 (a) Means an agreement, entered into in this state, pursuant to which
40 the title to or a lien upon the motor vehicle, which is the subject matter of
41 a retail installment transaction, is retained or taken by a retail seller
42 from a retail buyer as security for the buyer's obligation.

43 (b) Includes:

44 (i) A conditional sales contract and a contract for the bailment or
45 leasing of a motor vehicle by which the bailee or lessee contracts to pay as
46 compensation for its use a sum substantially equivalent to or in excess of

1 its value and by which it is agreed that the bailee or lessee is bound to
2 become, or has the option of becoming, the owner of the motor vehicle for no
3 other or a nominal consideration upon full compliance with the provisions of
4 the contract.

5 (ii) A secondary motor vehicle finance transaction.

6 ~~10-~~ 9. "Retail installment transaction" means any transaction
7 evidenced by a retail installment contract entered into between a retail
8 buyer and a retail seller wherein the retail buyer buys a motor vehicle from
9 the retail seller at a cost payable in one or more deferred installments.
10 The cash sale price of the motor vehicle, the amount included for insurance
11 if a separate charge is made and the finance charge shall together constitute
12 the cost of the motor vehicle.

13 ~~11-~~ 10. "Retail seller" or "seller" means a person who sells a motor
14 vehicle to a retail buyer for purposes other than resale under or subject to
15 a retail installment contract. For the purposes of paragraph ~~13~~ 12 of this
16 section "seller" means a person who sells and retains the use of the motor
17 vehicle.

18 ~~12-~~ 11. "Sales finance company":

19 (a) Means a person engaged, in whole or in part, in the business of
20 purchasing retail installment contracts from one or more retail sellers.

21 (b) Includes a person engaged, in whole or in part, in the business of
22 creating or holding retail installment contracts that exceed a total
23 aggregate outstanding indebtedness of fifty thousand dollars.

24 (c) Does not include:

25 (i) The pledgee of an aggregate number of retail installment contracts
26 to secure a bona fide loan thereon.

27 (ii) A MOTOR VEHICLE dealer who creates retail installment contracts
28 and assigns the retail installment contracts to third party lenders or
29 financial institutions ~~unless the dealer holds retail installment contracts~~
30 ~~that exceed a total aggregate outstanding indebtedness of fifty thousand~~
31 ~~dollars.~~

32 ~~13-~~ 12. "Secondary motor vehicle finance transaction":

33 (a) Means any contract that includes provisions for either:

34 (i) Obtaining a security interest in or lien on a motor vehicle other
35 than in connection with the sale of that motor vehicle.

36 (ii) The sale or conditional sale of a motor vehicle and the seller's
37 right to retain use of the motor vehicle after the sale or conditional sale.

38 (b) Includes any conditional sales contract or contract for the
39 bailment or leasing of a motor vehicle in which the bailee or lessee agrees
40 to pay for use of the motor vehicle and the bailee or lessee is required to
41 become or has the option of becoming the owner of the vehicle for any or no
42 compensation.

43 (c) Does not include any commercial transaction as defined in section
44 44-291.

45 Sec. 4. Section 44-282, Arizona Revised Statutes, is amended to read:

46 ~~44-282.~~ Licensing of sales finance companies required; penalty

1 A. No person shall engage in the business of a sales finance company
2 in this state without a license therefor as provided in this article. ~~No~~
3 ~~dealer shall engage in business in this state without a license issued by the~~
4 ~~administrator.~~ ~~No~~ A MOTOR VEHICLE dealer shall NOT sell or transfer any
5 contract to a person in Arizona not licensed under the terms of this chapter.

6 B. The application for a license shall be in writing, under oath and
7 in the form prescribed by the administrator. The application shall contain
8 the name of the applicant, the date of incorporation if incorporated, the
9 address where the business is or is to be conducted and similar information
10 as to any branch office of the applicant, the name and resident address of
11 the owners or partners or, if a corporation or association, of the directors,
12 trustees and principal officers, and such other pertinent information the
13 administrator may require.

14 C. The license fee for a sales finance company is the fee prescribed
15 in section 6-126. ~~The license fee for each dealer is the fee prescribed in~~
16 ~~section 6-126.~~

17 D. To coincide with the licensing of motor vehicle dealers pursuant to
18 title 28, chapter 10, the administrator may issue a sales finance company
19 license ~~or a dealer license, or both,~~ pursuant to this article with staggered
20 continuation dates to distribute the continuation workload as uniformly as
21 practicable throughout the twelve months of the calendar year. In order to
22 initiate a staggered license continuation system, the administrator may issue
23 a license for more or less than a twelve month period, but not more than
24 eighteen months, and may prorate the license fee.

25 E. A licensee shall submit its renewal application and applicable
26 renewal fees to the department of financial institutions on or before the
27 license continuation date. For the purposes of renewal, the license
28 continuation date is as follows:

29 1. If the licensee is also a licensed motor vehicle dealer pursuant to
30 title 28, chapter 10, the date prescribed by the initial licensing
31 department, either the department of transportation or the department of
32 financial institutions.

33 2. If the licensee is not also a licensed motor vehicle dealer
34 pursuant to title 28, chapter 10, the date prescribed by the department of
35 financial institutions.

36 F. A penalty of twenty-five dollars per day shall be assessed against
37 any licensee for each day after the license continuation date that the
38 licensee's renewal application and fee are not received by the department of
39 financial institutions. Licenses not renewed within thirty days after their
40 license continuation date expire.

41 G. A license shall be obtained for each separate place of business at
42 or from which a licensee transacts business. Each license shall specify the
43 location of the office or branch and must be conspicuously displayed there.
44 In case such location is changed, the administrator shall endorse the change
45 of location on the license on the payment of the fee prescribed in section
46 6-126, subsection A, ~~paragraph 25.~~

1 H. On the filing of the application and the payment of the required
2 fee the administrator shall issue a license to the applicant to engage in the
3 business of a sales finance company ~~or dealer~~ under and in accordance with
4 this article. All licenses issued under this article shall remain in full
5 force and effect until surrendered, revoked, suspended or canceled by failure
6 to renew under this article. No licensee shall transact any business
7 provided for by this article under any other name.

8 I. A license is not transferable or assignable and control of a
9 licensee may not be acquired through a stock purchase or any other device
10 without the prior written consent of the administrator. Written consent
11 shall not be given if the administrator finds that any of the grounds for
12 denial, revocation or suspension of a license as set forth in section 44-283
13 are applicable to the acquiring person. For the purposes of this subsection,
14 "control" means the power to vote more than twenty ~~per cent~~ PERCENT of the
15 outstanding voting shares of a licensed corporation, partnership, association
16 or trust.

17 J. A person doing business under the laws of this state or the United
18 States as a bank, savings bank, savings and loan association or credit union
19 is exempt from the licensing requirements of this section but shall comply
20 with all other requirements of this chapter, except that affiliates of banks,
21 savings banks, savings and loan associations or credit unions shall comply
22 with this section. For the purposes of this subsection, "affiliate" means an
23 entity that directly or indirectly, through one or more intermediaries,
24 controls, is controlled by or is under common control with the entity
25 specified.

26 Sec. 5. Section 44-294, Arizona Revised Statutes, is amended to read:
27 44-294. Records

28 Every ~~dealer, holder,~~ or sales finance company shall maintain in its
29 office, for a period of not less than one year after date of final payment or
30 entry therein, a copy of all retail installment contracts or retail
31 installment transactions entered into under the terms of this chapter.

APPROVED BY THE GOVERNOR MAY 17, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 17, 2016.