

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2313

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 28-4363, Arizona Revised Statutes, is amended to
3 read:

4 28-4363. Franchises: filing agreement: violation:
5 classification

6 A. At the time a franchisee applies for a license, the franchisee
7 shall file with the director a certified copy of the franchisee's written
8 agreement with the manufacturer and a certificate of appointment as dealer or
9 distributor.

10 B. The certificate of appointment shall be signed as follows:

11 1. By an authorized agent of the manufacturer of domestic vehicles on
12 direct manufacturer-dealer agreements.

13 2. If the manufacturer is wholesaling through an appointed
14 distributorship, by an authorized agent of the distributor on indirect
15 distributor-dealer agreements.

16 3. By an authorized agent of the importer on direct importer-dealer
17 agreements of foreign made vehicles.

18 4. By an authorized agent of the distributor on indirect
19 distributor-dealer agreements.

20 5. For a distributor's certificate of appointment, by an authorized
21 agent of the manufacturer of domestically manufactured vehicles or by an
22 authorized agent of the manufacturer or importer of foreign made vehicles.

23 C. A franchisee is not required to file a written agreement or
24 certificate of appointment if the manufacturer on direct dealerships, the
25 distributor on indirect dealerships or the importer on direct dealerships
26 meets all of the following conditions:

27 1. Utilizes the identical basic agreement for all of its franchised
28 dealers or distributors in this state.

1 branch shall not directly or indirectly own, operate or control, except on an
2 emergency or interim basis, a new motor vehicle warranty service facility
3 that is located in this state and that is not part of a franchise dealership.

4 B. Subsection A **OF THIS SECTION** does not apply in a community or
5 county in which a dealer is not available to perform required warranty
6 repairs or if an existing dealer is unable or unwilling to perform the
7 warranty repairs required by the manufacturer. If subsection A **OF THIS**
8 **SECTION** does not apply pursuant to this subsection, a dealer may object to a
9 manufacturer, factory branch, distributor or distributor branch or a
10 subsidiary of a manufacturer, factory branch, distributor or distributor
11 branch directly or indirectly owning, operating or controlling a new motor
12 vehicle warranty service facility as provided in ~~article 5 of this~~ **TITLE 44,**
13 chapter **36, ARTICLE 1.**

14 Sec 3. Title 44, Arizona Revised Statutes, is amended by adding
15 chapter 36, to read:

16 CHAPTER 36

17 MOTOR VEHICLE FRANCHISES

18 ARTICLE 1. GENERAL PROVISIONS

19 **44-7851. Definitions**

20 **IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:**

- 21 1. "DEALER" HAS THE SAME MEANING PRESCRIBED IN SECTION 28-101.
- 22 2. "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION.
- 23 3. "FRANCHISE" HAS THE SAME MEANING PRESCRIBED IN SECTION 28-4301.
- 24 4. "FRANCHISEE" HAS THE SAME MEANING PRESCRIBED IN SECTION 28-4301.
- 25 5. "FRANCHISOR" HAS THE SAME MEANING PRESCRIBED IN SECTION 28-4301.
- 26 6. "LINE-MAKE" HAS THE SAME MEANING PRESCRIBED IN SECTION 28-4301.
- 27 7. "MOTORCYCLE" HAS THE SAME MEANING PRESCRIBED IN SECTION 28-101.
- 28 8. "NEW MOTOR VEHICLE" HAS THE SAME MEANING PRESCRIBED IN SECTION
29 **28-4301.**

30 Sec. 4. **Transfer and renumber**

31 A. Title 28, chapter 10, article 5, Arizona Revised Statutes, is
32 transferred and renumbered for placement in title 44, chapter 36, article 1,

1 Arizona Revised Statutes, as added by this act. The following sections are
2 transferred and renumbered for placement in title 44, chapter 36, article 1:

<u>Former Sections</u>	<u>New Sections</u>
28-4451.....	44-7852
28-4452.....	44-7853
28-4453.....	44-7854
28-4454.....	44-7855
28-4455.....	44-7856
28-4456.....	44-7857
28-4457.....	44-7858
28-4458.....	44-7859
28-4459.....	44-7860
28-4460.....	44-7861
28-4461.....	44-7862
28-4462.....	44-7863
28-4463.....	44-7864

17 Sec. 5. Section 28-4591, Arizona Revised Statutes, is amended to read:

18 28-4591. Violation; classification

19 A person who violates this article or ~~articles~~ ARTICLE 1, ~~through~~ 2, 3,
20 4, 6 OR 7 of this chapter is guilty of a class 3 misdemeanor unless another
21 classification is specifically prescribed in this chapter.

22 Sec. 6. Section 44-7854, Arizona Revised Statutes, as transferred and
23 renumbered, is amended to read:

24 44-7854. Franchise; notice of intention

25 A. If a franchisor seeks to enter into a franchise establishing an
26 additional new motor vehicle dealership of the same line-make, the franchisor
27 shall, and the franchisee may at any time, file with the director a notice of
28 intention to enter into a franchise for additional representation of the same
29 line-make.

30 B. If the franchisor intends to establish an additional new motor
31 vehicle dealership, the director shall send notice within five days of
32 receipt to all franchisees of the same line-make in the community and to all

1 other franchises located within ten miles of the proposed dealership by the
2 shortest street route, if located outside the community, who are then engaged
3 in the business of offering to sell or selling the same line-make. In
4 counties with a population of less than two hundred thousand persons, the
5 notice additionally shall be sent to all dealers located within twenty miles
6 of the proposed new franchise as determined by the shortest street
7 route. The director shall address copies of notices to the principal place
8 of business of the franchisees. THE NOTICE REQUIREMENT PRESCRIBED BY THIS
9 SUBSECTION DOES NOT APPLY IF THE PROPOSED NEW MOTOR VEHICLE DEALERSHIP IS A
10 MOTORCYCLE DEALERSHIP.

11 C. The relocation or the reopening of a dealership within two years of
12 the closing within the area of responsibility assigned in the franchise is
13 not considered an additional dealership for purposes of this chapter,
14 provided that the location of the replacement dealership is within one mile
15 of the previous location.

16 D. If a franchisor seeks to terminate, cancel or not renew a
17 franchise, the franchisor shall notify the franchisee and the director in
18 writing by certified mail or personal delivery. The notice shall contain all
19 of the following:

20 1. A statement of the franchisor's intention to terminate, cancel or
21 not renew the franchise.

22 2. A statement of the reasons for the termination, cancellation or
23 nonrenewal.

24 3. The date on which the termination, cancellation or nonrenewal is
25 effective.

26 E. This section does not apply to an intended termination,
27 cancellation or nonrenewal of a franchise that the franchisee elects
28 voluntarily, pursuant to a plan established by the franchisor, to submit to
29 binding arbitration.

1 Sec. 7. Section 44-7855, Arizona Revised Statutes, as transferred and
2 renumbered, is amended to read:

3 44-7855. Objection to approval of notice

4 A. A person who receives or WHO is entitled to receive a copy of a
5 notice provided for in section ~~28-4453~~ 44-7854 may object to the approval of
6 a notice by filing a written objection with the director within fifteen days
7 from the date the notice was received by the person.

8 B. If there is an objection to the establishment of a new motor
9 vehicle dealership, the objecting new motor vehicle dealer shall submit
10 evidence to the director to establish that:

11 1. The objector is a new motor vehicle dealer located in the same
12 community as the proposed new motor vehicle dealership, or within ten miles
13 by the shortest street route of the proposed dealership, if located outside
14 the community. If the proposed franchise is located in a county with a
15 population of less than two hundred thousand persons, a dealer of the same
16 line-make located within twenty miles, as determined by the shortest street
17 route, also has standing to object pursuant to this section.

18 2. The objector is providing facilities, equipment, parts, capital and
19 personnel in substantial compliance with its contractual obligation to the
20 franchisor.

21 Sec. 8. Section 44-7856, Arizona Revised Statutes, as transferred and
22 renumbered, is amended to read:

23 44-7856. Determination of standing; failure to object

24 A. If the director intends to determine that the objector has
25 established both of the reasons prescribed by section ~~28-4454~~ 44-7855,
26 subsection B, the director shall notify the franchisor and allow the
27 franchisor to submit evidence in rebuttal before the director makes a final
28 determination. The director's determination is only for the purpose of
29 establishing standing to object to the establishment of the new motor vehicle
30 dealer franchise.

31 B. If no objection is filed within fifteen days from the date the
32 notice was received by the person or if the objector fails to establish both

1 of the reasons pursuant to section ~~28-4454~~ 44-7855, subsection B, the
2 director shall approve the notice.

3 Sec. 9. Section 44-7857, Arizona Revised Statutes, as transferred and
4 renumbered, is amended to read:

5 44-7857. Hearing on objection; appeal

6 A. If a timely objection has been filed and, if the objection is to
7 the establishment of a new motor vehicle dealership, the objection meets both
8 of the reasons prescribed by section ~~28-4454~~ 44-7855, subsection B, the
9 director shall:

10 1. Enter an order fixing the time and place of a hearing on the
11 objection. The hearing shall be held within seventy-five days after the date
12 of the order.

13 2. Send by certified mail, ~~with~~ return receipt requested, a copy of
14 the order to the same persons entitled to receive a copy of the notice
15 provided for in section ~~28-4453~~ 44-7854.

16 3. Appoint a member of the Arizona state bar who shall be designated
17 as an administrative law judge to conduct the hearing and who shall be
18 compensated under a contractual relationship.

19 B. Prehearing discovery shall be conducted pursuant to the Arizona
20 rules of civil procedure.

21 C. At the hearing the franchisor has the burden of proof to establish
22 that good cause exists to terminate or not renew the franchise. If there is
23 an objection to the establishment of a new motor vehicle dealership, the
24 administrative law judge shall determine that good cause does or does not
25 exist to establish the proposed dealership.

26 D. Evidence that would be admissible under the issues in such an
27 action in a state or federal court is admissible in a hearing held by the
28 administrative law judge. The administrative law judge shall reasonably
29 apportion all costs between the parties, including compensation for the
30 administrative law judge's services.

31 E. The administrative law judge may:

32 1. Issue subpoenas.

- 1 2. Administer oaths.
- 2 3. Compel the attendance of witnesses and the production of books,
3 papers, documents and all other evidence.
- 4 4. Apply to the superior court in the county in which the hearing is
5 held for a court order enforcing this article.

6 F. A transcript of the testimony of all witnesses taken at the hearing
7 shall be made and preserved. Within forty-five days after the hearing the
8 administrative law judge shall make written findings of fact and conclusions
9 and enter a final order.

10 G. A party to the hearing before the administrative law judge may
11 appeal pursuant to title 12, chapter 7, article 6. An appeal of a decision
12 of an administrative law judge has preference over other civil matters and
13 shall be heard at the earliest practicable date.

14 H. As a condition to the appeal, the appealing party shall file a cash
15 bond, supersedeas bond or its equivalent with the director. The bond shall
16 be sufficient in amount to cover the damages incurred by the prevailing
17 party, but the amount of the bond shall not exceed the lesser of fifty
18 thousand dollars or ten ~~per-cent~~ PERCENT of the appealing party's net
19 worth. The party may file alternatives to cash such as certificates of
20 deposit purchased from a financial institution licensed to do business in
21 this state or bonds of the United States government.

22 Sec. 10. Section 44-7863, Arizona Revised Statutes, as transferred and
23 renumbered, is amended to read:

24 44-7863. Refusal to honor succession to ownership: notice
25 required

26 A. If a manufacturer believes that good cause exists for refusing to
27 honor the succession to ownership interest of the owner of a new motor
28 vehicle dealer by a family member of a deceased or incapacitated owner of a
29 new motor vehicle dealer under the existing franchise agreement, the
30 manufacturer, not more than sixty days after the receipt of either the notice
31 that is prescribed by section ~~28-4461~~ 44-7862, subsection B or any personal
32 or financial data that the manufacturer has requested pursuant to section

1 ~~28-4461~~ 44-7862, whichever is received later, may serve on the designated
2 family member notice of its refusal to honor the succession and of its intent
3 to discontinue the existing franchise with the dealer no sooner than one
4 hundred twenty days after the notice is served.

5 B. The notice of refusal and discontinuance must state the specific
6 grounds for the refusal to honor the succession and of the manufacturer's
7 intent to discontinue the existing franchise with the new motor vehicle
8 dealer no sooner than one hundred twenty days after the notice is served.

9 C. If the notice of refusal and discontinuance is not timely served on
10 the designated family member, the franchise shall continue in effect subject
11 to termination only as otherwise permitted by this chapter.

12 D. If there is a conflict between the written instrument filed by the
13 motor vehicle dealer with the manufacturer designating a certain person as
14 the motor vehicle dealer's successor and this section, the written instrument
15 filed with the manufacturer governs.

16 Sec. 11. Title 44, chapter 36, article 1, Arizona Revised Statutes, as
17 added by this act, is amended by adding section 44-7865, to read:

18 44-7865. Violation; classification

19 A PERSON WHO VIOLATES THIS ARTICLE IS GUILTY OF A CLASS 3 MISDEMEANOR
20 UNLESS ANOTHER CLASSIFICATION IS SPECIFICALLY PRESCRIBED IN THIS CHAPTER."

21 Amend title to conform

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