PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2313

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

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

28-4363. Franchises; filing agreement; violation; classification

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

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

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

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

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

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

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

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

1. Utilizes the identical basic agreement for all of its franchised dealers or distributors in this state.
2. Certifies in the certificate of appointment that this blanket agreement is on file and the written agreement with the dealer or distributor, respectively, is identical with the filed blanket agreement.

3. Has filed with the director one such agreement together with a list of franchised dealers or distributors.

D. The manufacturer, distributor or importer shall notify the director at least forty-five days before any proposed revisions of or additions to the basic agreement on file or of any franchisee supplements to the agreement.

E. A manufacturer, other than a manufacturer of a recreational vehicle as defined in section 41-2142, shall not modify a franchise during the term of the franchise or on the renewal of a franchise if the modification substantially and adversely affects the new motor vehicle dealer's rights, obligations, investment or return on the investment without giving at least forty-five days' notice of the proposed modification to the new motor vehicle dealer unless the change is required by law. Within the forty-five day period, the new motor vehicle dealer may file with the director and serve notice on the manufacturer of an objection requesting a determination pursuant to article 5 of this TITLE 44, chapter 36, ARTICLE 1 of whether there is good cause for permitting the proposed modification.

F. Annual renewal of certificates filed as provided in this section is not required.

G. A manufacturer on direct dealerships, a distributor on indirect dealerships or an importer on direct dealerships who has filed with the director an agreement used by all of its franchisees in this state together with a list of all such franchisees and who knowingly fails to notify the director at least forty-five days before any proposed revisions, changes or additions to the materials filed is guilty of a class 2 misdemeanor.

Sec. 2. Section 28-4413, Arizona Revised Statutes, is amended to read:

28-4413. Prohibiting ownership, operation or control of a warranty service facility; exception; objections

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

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

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

CHAPTER 36
MOTOR VEHICLE FRANCHISES
ARTICLE 1. GENERAL PROVISIONS

44-7851. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:
2. “DIRECTOR” MEANS THE DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION.
5. “FRANCHISOR” HAS THE SAME MEANING PRESCRIBED IN SECTION 28-4301.
8. “NEW MOTOR VEHICLE” HAS THE SAME MEANING PRESCRIBED IN SECTION

28-4301.

Sec. 4. Transfer and renumber
A. Title 28, chapter 10, article 5, Arizona Revised Statutes, is
transferred and renumbered for placement in title 44, chapter 36, article 1,
Arizona Revised Statutes, as added by this act. The following sections are transferred and renumbered for placement in title 44, chapter 36, article 1:

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

28-4591. Violation; classification

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

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

44-7854. Franchise; notice of intention

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

B. If the franchisor intends to establish an additional new motor vehicle dealership, the director shall send notice within five days of receipt to all franchisees of the same line-make in the community and to all
other franchises located within ten miles of the proposed dealership by the shortest street route, if located outside the community, who are then engaged in the business of offering to sell or selling the same line-make. In counties with a population of less than two hundred thousand persons, the notice additionally shall be sent to all dealers located within twenty miles of the proposed new franchise as determined by the shortest street route. The director shall address copies of notices to the principal place of business of the franchisees. THE NOTICE REQUIREMENT PRESCRIBED BY THIS SUBSECTION DOES NOT APPLY IF THE PROPOSED NEW MOTOR VEHICLE DEALERSHIP IS A MOTORCYCLE DEALERSHIP.

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

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

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

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

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

E. This section does not apply to an intended termination, cancellation or nonrenewal of a franchise that the franchisee elects voluntarily, pursuant to a plan established by the franchisor, to submit to binding arbitration.
Sec. 7. Section 44-7855, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

44-7855. Objection to approval of notice

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

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

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

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

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

44-7856. Determination of standing; failure to object

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

B. If no objection is filed within fifteen days from the date the notice was received by the person or if the objector fails to establish both
of the reasons pursuant to section 44-7855, subsection B, the
director shall approve the notice.

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

44-7857. Hearing on objection; appeal

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

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

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

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

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

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

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

E. The administrative law judge may:

1. Issue subpoenas.
2. Administer oaths.

3. Compel the attendance of witnesses and the production of books, papers, documents and all other evidence.

4. Apply to the superior court in the county in which the hearing is held for a court order enforcing this article.

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

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

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

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

44-7863. Refusal to honor succession to ownership; notice required

A. If a manufacturer believes that good cause exists for refusing to honor the succession to ownership interest of the owner of a new motor vehicle dealer by a family member of a deceased or incapacitated owner of a new motor vehicle dealer under the existing franchise agreement, the manufacturer, not more than sixty days after the receipt of either the notice that is prescribed by section 28-4461 or any personal or financial data that the manufacturer has requested pursuant to section
28-4461 44-7862, whichever is received later, may serve on the designated family member notice of its refusal to honor the succession and of its intent to discontinue the existing franchise with the dealer no sooner than one hundred twenty days after the notice is served.

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

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

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

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

44-7865. Violation; classification

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

Amend title to conform