

State of Arizona  
House of Representatives  
Fiftieth Legislature  
Second Regular Session  
2012

**CHAPTER 255**  
**HOUSE BILL 2398**

AN ACT

AMENDING SECTIONS 28-4307, 28-5925 AND 44-281, ARIZONA REVISED STATUTES;  
RELATING TO TRANSPORTATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 28-4307, Arizona Revised Statutes, is amended to  
3 read:

4 28-4307. Civil damages; exception

5 A dealer who suffers a pecuniary loss or who is otherwise adversely  
6 affected because of a violation of this chapter by a manufacturer or  
7 distributor has a cause of action against the manufacturer or distributor for  
8 damages and may recover those damages in any court of competent jurisdiction.

9 ~~This section does not apply to a manufacturer or distributor of motorcycles.~~

10 Sec. 2. Section 28-5925, Arizona Revised Statutes, is amended to read:

11 28-5925. Payment; distribution

12 A. The supplier, as shown in the records of the terminal operator, who  
13 removes the taxable gallons shall precollect and remit on behalf of consumers  
14 and users to the department the taxes that are imposed by sections 28-5606  
15 and 28-8344 and that are measured by the invoiced gallons of motor fuel  
16 removed by a licensed supplier from a terminal or refinery in this state  
17 other than a bulk transfer.

18 B. The supplier and each reseller shall list the amount of tax as a  
19 separate line item on all invoices or billings or as a separate billing.

20 ~~A person who imposes an added charge to cover the tax levied by this article~~  
21 ~~or a charge that is identified as being imposed to cover a tax shall not~~  
22 ~~remit less than the amount collected to the department.~~

23 C. The motor fuel tax that is accrued in any calendar month shall be  
24 paid on or before the twenty-seventh day of the next succeeding calendar  
25 month to the director.

26 D. A supplier shall remit any late taxes remitted to the supplier by  
27 an eligible purchaser and shall notify the department in a timely manner of  
28 any late remittances if that supplier has previously given notice to the  
29 department of an uncollectible tax amount pursuant to section 28-5639,  
30 subsection B.

31 E. On payment, the director shall promptly:

32 1. Distribute the amount of money collected as a tax on sales of motor  
33 vehicle fuel used in propelling watercraft pursuant to section 28-5926  
34 beginning with the month following the conclusion of the survey conducted  
35 pursuant to section 28-5926.

36 2. Deposit, pursuant to sections 35-146 and 35-147, all remaining  
37 monies in the Arizona highway user revenue fund or the state aviation fund as  
38 determined from the reports filed pursuant to section 28-5618.

39 F. The director shall deduct all exemptions and refunds before  
40 depositing the monies.

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

42 44-281. Definitions

43 In this article, unless the context otherwise requires:

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

45 2. "Cash sale price" means the price stated in a retail installment  
46 contract for which the seller would have sold to the buyer, and the buyer

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

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

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

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

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

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

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

29 (i) Tractors.

30 (ii) Buses.

31 (iii) Trucks.

32 (iv) Power shovels.

33 (v) Road machinery.

34 (vi) Agricultural machinery.

35 7. "Person" means an individual, partnership, association, trust,  
36 corporation, or other legal entity.

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

40 9. "Retail installment contract" or "contract":

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

45 (b) Includes:

1 (i) A conditional sales contract and a contract for the bailment or  
2 leasing of a motor vehicle by which the bailee or lessee contracts to pay as  
3 compensation for its use a sum substantially equivalent to or in excess of  
4 its value and by which it is agreed that the bailee or lessee is bound to  
5 become, or has the option of becoming, the owner of the motor vehicle for no  
6 other or a nominal consideration upon full compliance with the provisions of  
7 the contract.

8 (ii) A secondary motor vehicle finance transaction.

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

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

21 12. "Sales finance company":

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

24 (b) Includes a person engaged, in whole or in part, in the business of  
25 creating or holding retail installment contracts that exceed a total  
26 aggregate outstanding indebtedness of ~~twenty-five~~ FIFTY thousand dollars.

27 (c) Does not include:

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

30 (ii) A DEALER WHO CREATES RETAIL INSTALLMENT CONTRACTS AND ASSIGNS THE  
31 RETAIL INSTALLMENT CONTRACTS TO THIRD PARTY LENDERS OR FINANCIAL INSTITUTIONS  
32 UNLESS THE DEALER HOLDS RETAIL INSTALLMENT CONTRACTS THAT EXCEED A TOTAL  
33 AGGREGATE OUTSTANDING INDEBTEDNESS OF FIFTY THOUSAND DOLLARS.

34 13. "Secondary motor vehicle finance transaction":

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

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

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

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

45 (c) Does not include any commercial transaction as defined in section  
46 44-291.

APPROVED BY THE GOVERNOR APRIL 12, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 12, 2012.