

REFERENCE TITLE: motor vehicle manufacturers; retail sales

State of Arizona  
House of Representatives  
Fifty-second Legislature  
First Regular Session  
2015

## **HB 2216**

Introduced by  
Representatives Petersen, Mitchell: Kern

AN ACT

AMENDING SECTION 28-4460, ARIZONA REVISED STATUTES; RELATING TO VEHICLE  
FRANCHISES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 28-4460, Arizona Revised Statutes, is amended to  
3 read:

4 28-4460. Factories; competition or unfair discrimination  
5 prohibited; definitions

6 A. A factory shall not directly or indirectly compete with or unfairly  
7 discriminate among its dealers.

8 B. Competing with or unfair discrimination includes any one of the  
9 following:

10 1. The factory having an ownership interest or franchise interest in,  
11 or operating or acting in the capacity of, a new motor vehicle dealer or a  
12 used motor vehicle dealer, except that:

13 (a) A factory is not prohibited from owning or operating as a new  
14 motor vehicle dealer for a temporary period if either of the following apply:

15 (i) The temporary period is not more than twelve months during the  
16 transition from one dealer to another dealer if the dealership is for sale  
17 and is being actively marketed by the factory at a bona fide reasonable price  
18 and on reasonable terms and conditions to any independent qualified buyer.

19 (ii) The factory submits evidence that disposition of its interest  
20 will result in financial loss to the factory or dealership.

21 The temporary period may be extended in one year increments if either of the  
22 requirements of this subdivision are met.

23 (b) A factory is not prohibited from temporarily owning a dealership  
24 while in a bona fide relationship with a qualified person. A bona fide  
25 relationship with a person who is qualified requires that:

26 (i) The total sales price of the dealership is not less than an amount  
27 that is consistent with standard business practices.

28 (ii) The independent qualified person make a substantial unencumbered  
29 bona fide initial investment in the dealership that is reasonable and  
30 consistent with standard business practices.

31 (iii) The bona fide initial investment of the qualified person is  
32 subject to potential loss. The qualified person's percentage share of any  
33 potential dealership losses shall not be less than the person's percentage  
34 share of ownership of the dealership at the time of the loss.

35 (iv) The qualified person buy substantial portions of the factory's  
36 remaining ownership interest in substantial regular periodic payments  
37 throughout the acquisition period.

38 (v) The qualified person can expect to acquire and retain full and  
39 complete ownership of the dealership within a reasonable period of time that  
40 is not longer than ten years and on reasonable terms and conditions that are  
41 consistent with standard business practices. The ten-year acquisition period  
42 may be extended for good cause shown by the qualified person.

43 (vi) During the acquisition period if the qualified person is paid a  
44 management fee, the management fee shall be reasonable and consistent with

1 standard business practices for an individual managing a franchise of similar  
2 size and volume of sales and leases of vehicles or products.

3 (c) A factory is not prohibited from owning on a permanent basis a  
4 minority interest in a dealership if all of the following conditions are  
5 satisfied:

6 (i) The interest owned by the factory is not more than forty-five  
7 ~~per-cent~~ PERCENT or the percentage interest actually owned by the factory on  
8 January 1, 2000, whichever is less.

9 (ii) Any dealership in which the factory owns the interest shall not  
10 be less than seventy-five miles from the nearest dealership of the same  
11 line-make in which the factory does not own the interest.

12 (iii) All dealerships in which the factory owns the interest shall not  
13 sell or lease more than one of the line-makes of new motor vehicles and parts  
14 manufactured by the factory.

15 (iv) All dealerships in which the factory owns the interest shall sell  
16 or lease the same line-make of new motor vehicles and parts manufactured by  
17 the factory. The dealerships may also sell or lease new motor vehicles and  
18 parts of a line-make manufactured by a factory that does not have an  
19 ownership interest in the dealership.

20 (v) The factory or an entity in which the factory has the interest  
21 must have been licensed in this state as a new motor vehicle dealer on  
22 January 1, 2000 selling the line-make of new motor vehicle manufactured by  
23 the factory.

24 (vi) The factory must have owned the interest in at least one  
25 dealership selling the line-make manufactured by the factory on January 1,  
26 2000.

27 (vii) The factory or an entity in which the factory has the interest  
28 shall not sell any line-make of new motor vehicle that it was not selling in  
29 this state before January 1, 2000.

30 (viii) All automotive related services and financing related to the  
31 line-make or the factory owning the interest shall be sold or provided only  
32 to owners of vehicles of the line-make, regardless of where the vehicle was  
33 purchased, or to any purchasers of any new or used motor vehicles purchased  
34 from a dealership in which the factory has an interest. This item shall not  
35 preclude that dealership from selling or providing any nonwarranty repairs or  
36 maintenance on motor vehicles of any line-make or warranty repairs or  
37 maintenance of any line-make of new motor vehicles sold by the dealership and  
38 not manufactured by the factory.

39 (ix) All used motor vehicles of a line-make manufactured by the  
40 factory, other than the line-make that the dealership sells or leases new,  
41 acquired by the dealership, directly or indirectly from the factory, shall be  
42 acquired only at wholesale auction open to dealers of all line-makes  
43 manufactured by the factory.

- 1           2. The factory selling, leasing or providing, or offering to sell,  
2 lease or provide, a vehicle or product, service or financing to any retail  
3 consumer or lead. This paragraph does not:
- 4           (a) Prohibit a factory from advertising to sell, lease or provide a  
5 vehicle or product, service or financing through its dealers.
- 6           (b) Prohibit a factory from selling, leasing or providing or offering  
7 to sell, lease or provide a vehicle or product, service or financing through  
8 its dealers.
- 9           (c) Prohibit a factory from providing a vehicle or product or service  
10 for occasional promotional or charitable uses.
- 11           (d) Prohibit a factory from selling, leasing or providing a vehicle or  
12 product, service or financing to an agency of the federal government.
- 13           (e) Prohibit a factory from selling or leasing a vehicle or product,  
14 service or financing through its dealers to retail consumers who qualify for  
15 any reasonable factory sponsored factory employee, factory retiree or factory  
16 vendor new vehicle purchase program or any other reasonable similar factory  
17 related new vehicle purchase program.
- 18           (f) Prohibit a factory from providing financing to retail consumers  
19 through any used motor vehicle dealer or new motor vehicle dealer of any  
20 line-make.
- 21           (g) Prohibit a factory from providing a loan directly to a person or  
22 entity if the loan is for a purpose unrelated to the ownership or leasing of  
23 a new motor vehicle or a used motor vehicle not for resale.
- 24           (h) Prohibit a factory from providing loans directly to used motor  
25 vehicle dealers or new motor vehicle dealers of any line-make for any  
26 purpose, including working capital, real estate, construction or motor  
27 vehicle or parts inventories.
- 28           (i) Prohibit a factory from arranging or providing emergency roadside  
29 service.
- 30           (j) Prohibit a factory from offering factory sponsored extended  
31 service contracts to purchasers of new motor vehicles, provided that:
- 32           (i) Such offers shall not take place less than ninety days after the  
33 date the retail consumer takes delivery of the new motor vehicle.
- 34           (ii) Such offers are made to retail consumers only at the  
35 manufacturer's suggested retail price.
- 36           (k) Prohibit a factory from selling a lease vehicle to the original  
37 lessee pursuant to a purchase option set forth in the lease. Such sale may  
38 be a credit sale with the factory as the credit seller and may include the  
39 direct sale of extended service contracts at the manufacturer's suggested  
40 retail price.
- 41           (l) Prohibit a factory, at the request of a motor vehicle lessee, from  
42 extending a lease of a motor vehicle.
- 43           (m) Prohibit a factory from offering and approving a retail consumer  
44 credit application for the financing or leasing of a motor vehicle provided  
45 that both of the following apply:

1 (i) The final transaction takes place through a licensed motor vehicle  
2 dealer.

3 (ii) The factory does not establish or quote any interest rate,  
4 finance rate or lease rate in association with a credit application.

5 (n) Prohibit a factory from renewing or charging any subscription or  
6 connection fees for any in-vehicle electronic wireless communication,  
7 information or entertainment services.

8 (o) PROHIBIT A FACTORY FROM SELLING, LEASING OR PROVIDING, OR OFFERING  
9 TO SELL, LEASE OR PROVIDE, A VEHICLE OR PRODUCT, SERVICE OR FINANCING TO ANY  
10 RETAIL CONSUMER IF BOTH OF THE FOLLOWING APPLY:

11 (i) THE FACTORY DOES NOT HAVE AN ESTABLISHED BUSINESS RELATIONSHIP  
12 WITH A DEALER ON OR BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS  
13 SECTION.

14 (ii) THE FACTORY HAS A SERVICE CENTER IN THIS STATE TO HANDLE REPAIR,  
15 WARRANTY OR RECALL ISSUES REGARDING THE VEHICLES.

16 3. The factory controlling any aspect of the final amount charged, the  
17 final sales price or the final lease price for any vehicle or product,  
18 trade-in or service offered to retail consumers in a dealer's area of  
19 responsibility without the written consent of the dealer. The dealer's  
20 consent may be withdrawn on forty-five days' notice without retribution or  
21 the threat of retribution from the factory. This paragraph does not prohibit  
22 a factory from:

23 (a) Changing dealer cost or establishing any of the following:

24 (i) Manufacturer's suggested retail price pursuant to 15 United States  
25 Code section 1232.

26 (ii) Factory's suggested retail price for parts.

27 (iii) Factory's suggested retail price for service.

28 (b) Establishing from time to time reasonable sales, lease or  
29 financing promotions of reasonable and limited duration, provided that  
30 programs up to a year are presumed to be of reasonable and limited duration.

31 (c) Establishing reasonable standard feature option packages or  
32 vehicle option content in any way.

33 (d) Establishing the terms of any vehicle warranty.

34 (e) Establishing reasonable sales, lease or financing terms through  
35 its dealers to retail consumers who qualify for any reasonable factory  
36 sponsored factory employee, factory retiree or factory vendor new vehicle  
37 purchase program or any other reasonable similar factory related new vehicle  
38 purchase program.

39 (f) Linking the factory's internet site to internet sites maintained  
40 by its dealers or third parties, or to internet sites maintained jointly by  
41 the factory and its dealers and made available to all of the factory's  
42 dealers of the same line-make, provided that the factory shall not dictate,  
43 limit, establish, set or endorse as a basis for a retail transaction any  
44 price other than the manufacturer's suggested retail price.

1 (g) Establishing the price at which the lessee of a motor vehicle may  
2 purchase or re-lease that motor vehicle on expiration or termination of that  
3 lessee's lease.

4 (h) Operating or facilitating a program or system through which  
5 individual dealers may provide quotes or offers to individual consumers.

6 4. The factory refusing to unconditionally offer and provide to its  
7 same line-make dealers all models, series and editions of new motor vehicles  
8 that are publicly advertised for that line-make in ~~Arizona~~ THIS STATE. The  
9 failure to deliver any new motor vehicles shall not be considered a violation  
10 of this paragraph if the failure is caused by a lack of manufacturing  
11 capacity, labor strike, shortage of materials or trade embargo or any other  
12 condition over which the factory has no control. A factory may require a  
13 dealer to purchase reasonable quantities of advertising materials, purchase  
14 reasonable quantities of special tools required to properly service a motor  
15 vehicle and undertake reasonable salesperson or service person training  
16 related to the motor vehicle as a condition of receiving a motor vehicle.  
17 This paragraph does not:

18 (a) Apply to recreational vehicle manufacturers.

19 (b) Prohibit a factory from providing monetary, financial or optional  
20 equipment incentives to fleet purchasers for new motor vehicles not for  
21 resale.

22 5. The factory denying to any dealer any price reduction, rebate,  
23 incentive payment or similar pricing device relating to the sale or offer to  
24 sell a new motor vehicle to a dealer, pursuant to a program that  
25 discriminates among dealers of the same line-make in ~~Arizona~~ THIS STATE, when  
26 the dealer cannot qualify or receive the benefits of the program for reasons  
27 other than the dealer's failure to use reasonable effort to qualify and the  
28 terms of the program are such that a failure to qualify or receive its  
29 benefits would constitute the constructive termination of the dealer.

30 6. The factory failing to provide or direct a lead relating to a  
31 particular line-make either:

32 (a) To the dealer with whom the lead has a preexisting relationship.

33 (b) To the dealer of the same line-make that is located closest to  
34 where the lead resides, or to the local business address if the lead is a  
35 business.

36 (c) To the dealer of the same line-make in whose assigned area of  
37 responsibility the lead resides, or the local business address if the lead is  
38 a business.

39 (d) According to the lead's voluntary preference.

40 C. Under subsection B, paragraph 6 OF THIS SECTION:

41 1. The factory need not provide or direct a lead to a dealer who does  
42 not sell the vehicle or product, service or financing in which the lead  
43 expresses an interest.

44 2. The factory is responsible only for providing to the dealer  
45 information that it possesses concerning the lead.

1           3. The factory is not precluded from providing or directing leads to  
2 any other dealer of the same line-make.

3           4. All leads shall be provided or directed in a fair,  
4 nondiscriminatory, equitable and timely manner to dealers and, except as  
5 provided in subsection D OF THIS SECTION, without charging a fee for those  
6 leads.

7           D. Subsection B, paragraph 6 OF THIS SECTION does not apply to any  
8 factory sponsored internet-based program specifically designed to provide  
9 retail consumers with internet access to dealer quotations on vehicles,  
10 products, financing or services, provided that:

11           1. Fees for the program are reasonable and consistent with industry  
12 standards.

13           2. Dealer participation is not conditioned on participation in any  
14 other program or on ratings derived from customer surveys.

15           E. For the purposes of this section:

16           1. "Controlling" means dictating, limiting, establishing, setting or  
17 endorsing as a basis for a retail transaction any price other than the  
18 manufacturer's suggested retail price.

19           2. "Dealer" or "dealership" means a new motor vehicle dealer or  
20 franchisee.

21           3. "Factory":

22           (a) Means a manufacturer, importer or distributor or any legal entity  
23 in which a manufacturer, importer or distributor owns a majority interest or  
24 has direct or indirect power to direct or cause the direction of the  
25 management whether through voting securities, contract or otherwise.

26           (b) Excludes any ENTITY THAT IS SOLELY A new motor vehicle dealer,  
27 used motor vehicle dealer or trailer manufacturer.

28           (c) Excludes any agent, affiliate, representative or subsidiary that  
29 is primarily engaged in the business of rental of passenger and commercial  
30 motor vehicles and industrial and construction equipment and activities  
31 incidental to that business if all of the following conditions are satisfied:

32           (i) Passenger and commercial motor vehicles sold by the agent,  
33 affiliate, representative or subsidiary are limited to used passenger and  
34 commercial motor vehicles that have been previously used exclusively and  
35 regularly by the agent, affiliate, representative or subsidiary in the  
36 conduct of business and used passenger and commercial motor vehicles traded  
37 in on motor vehicles sold by the agent, affiliate, representative or  
38 subsidiary.

39           (ii) Warranty repairs performed by the agent, affiliate,  
40 representative or subsidiary on passenger and commercial motor vehicles are  
41 limited to those passenger and commercial motor vehicles that it owns,  
42 previously owned or takes in trade.

43           (iii) Motor vehicle financing provided by the agent, affiliate,  
44 representative or subsidiary to retail consumers for passenger and commercial

1 motor vehicles is limited to vehicles sold by the agent, affiliate,  
2 representative or subsidiary in the conduct of business.

3 4. "Financing":

4 (a) Means the financial service of providing retail consumers the  
5 ability to pay for a purchase or lease of a new or used motor vehicle, parts  
6 or services over an extended period of time.

7 (b) Does not include the furnishing of credit cards capable of general  
8 use in retail transactions or the provision of any loans secured by real  
9 estate.

10 5. "Parts":

11 (a) Means all items that are designed to be incorporated within or  
12 attached to or used to operate, maintain or service a motor vehicle.

13 (b) Does not include any of the following:

14 (i) Parts purchased or provided for use by professional racing  
15 enterprises.

16 (ii) Parts no longer included in the current factory price schedule.

17 (iii) Specialized parts for research vehicles or other similar uses of  
18 limited application.

19 (iv) Owners' manuals or repair manuals.

20 (v) Parts that are provided by an automotive recycler in the normal  
21 course of business for an automotive recycler.

22 (vi) Motor vehicle keys.

23 6. "Service" means either of the following:

24 (a) Motor vehicle warranty and nonwarranty repairs or maintenance,  
25 including both parts and labor.

26 (b) Extended warranties, vehicle mechanical maintenance insurance and  
27 similar vehicle repair service contracts.

28 7. "Vehicle or product" means a new motor vehicle, a used motor  
29 vehicle or parts.