

COMMITTEE ON COMMERCE, ENERGY AND MILITARY
SENATE AMENDMENTS TO H.B. 2123

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

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:

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

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

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

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

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

18 (vi) During the acquisition period if the qualified person is paid a
19 management fee, the management fee shall be reasonable and consistent with
20 standard business practices for an individual managing a franchise of similar
21 size and volume of sales and leases of vehicles or products.

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

25 (i) The interest owned by the factory is not more than forty-five per
26 cent or the percentage interest actually owned by the factory on January 1,
27 2000, whichever is less.

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

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

4 (iv) All dealerships in which the factory owns the interest shall sell
5 or lease the same line-make of new motor vehicles and parts manufactured by
6 the factory. The dealerships may also sell or lease new motor vehicles and
7 parts of a line-make manufactured by a factory that does not have an
8 ownership interest in the dealership.

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

13 (vi) The factory must have owned the interest in at least one
14 dealership selling the line-make manufactured by the factory on January 1,
15 2000.

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

19 (viii) All automotive related services and financing related to the
20 line-make or the factory owning the interest shall be sold or provided only
21 to owners of vehicles of the line-make, regardless of where the vehicle was
22 purchased, or to any purchasers of any new or used motor vehicles purchased
23 from a dealership in which the factory has an interest. This item shall not
24 preclude that dealership from selling or providing any nonwarranty repairs or
25 maintenance on motor vehicles of any line-make or warranty repairs or
26 maintenance of any line-make of new motor vehicles sold by the dealership and
27 not manufactured by the factory.

28 (ix) All used motor vehicles of a line-make manufactured by the
29 factory, other than the line-make that the dealership sells or leases new,
30 acquired by the dealership, directly or indirectly from the factory, shall be
31 acquired only at wholesale auction open to dealers of all line-makes
32 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:

1 (i) Such offers shall not take place less than ninety days after the
2 date the retail consumer takes delivery of the new motor vehicle.

3 (ii) Such offers are made to retail consumers only at the
4 manufacturer's suggested retail price.

5 (k) Prohibit a factory from selling a lease vehicle to the original
6 lessee pursuant to a purchase option set forth in the lease. Such sale may
7 be a credit sale with the factory as the credit seller and may include the
8 direct sale of extended service contracts at the manufacturer's suggested
9 retail price.

10 (l) Prohibit a factory, at the request of a motor vehicle lessee, from
11 extending a lease of a motor vehicle.

12 (m) Prohibit a factory from offering and approving a retail consumer
13 credit application for the financing or leasing of a motor vehicle provided
14 that both of the following apply:

15 (i) The final transaction takes place through a licensed motor vehicle
16 dealer.

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

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

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

25 (i) THE FACTORY MANUFACTURES ONLY ELECTRIC VEHICLES.

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

28 3. The factory controlling any aspect of the final amount charged, the
29 final sales price or the final lease price for any vehicle or product,
30 trade-in or service offered to retail consumers in a dealer's area of
31 responsibility without the written consent of the dealer. The dealer's
32 consent may be withdrawn on forty-five days' notice without retribution or

1 the threat of retribution from the factory. This paragraph does not prohibit
2 a factory from:

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

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

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

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

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

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

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

14 (e) Establishing reasonable sales, lease or financing terms through
15 its dealers to retail consumers who qualify for any reasonable factory
16 sponsored factory employee, factory retiree or factory vendor new vehicle
17 purchase program or any other reasonable similar factory related new vehicle
18 purchase program.

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

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

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

30 4. The factory refusing to unconditionally offer and provide to its
31 same line-make dealers all models, series and editions of new motor vehicles
32 that are publicly advertised for that line-make in ~~Arizona~~ THIS STATE. The

1 failure to deliver any new motor vehicles shall not be considered a violation
2 of this paragraph if the failure is caused by a lack of manufacturing
3 capacity, labor strike, shortage of materials or trade embargo or any other
4 condition over which the factory has no control. A factory may require a
5 dealer to purchase reasonable quantities of advertising materials, purchase
6 reasonable quantities of special tools required to properly service a motor
7 vehicle and undertake reasonable salesperson or service person training
8 related to the motor vehicle as a condition of receiving a motor vehicle.
9 This paragraph does not:

10 (a) Apply to recreational vehicle manufacturers.

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

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

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

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

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

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

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

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

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

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

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

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

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

16 1. Fees for the program are reasonable and consistent with industry
17 standards.

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

20 E. For the purposes of this section:

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

24 2. "Dealer" or "dealership" means a new motor vehicle dealer or
25 franchisee.

26 3. "Factory":

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

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

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

5 (i) Passenger and commercial motor vehicles sold by the agent,
6 affiliate, representative or subsidiary are limited to used passenger and
7 commercial motor vehicles that have been previously used exclusively and
8 regularly by the agent, affiliate, representative or subsidiary in the
9 conduct of business and used passenger and commercial motor vehicles traded
10 in on motor vehicles sold by the agent, affiliate, representative or
11 subsidiary.

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

16 (iii) Motor vehicle financing provided by the agent, affiliate,
17 representative or subsidiary to retail consumers for passenger and commercial
18 motor vehicles is limited to vehicles sold by the agent, affiliate,
19 representative or subsidiary in the conduct of business.

20 4. "Financing":

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

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

27 5. "Parts":

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

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

31 (i) Parts purchased or provided for use by professional racing
32 enterprises.

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

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

4 (iv) Owners' manuals or repair manuals.

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

7 (vi) Motor vehicle keys.

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

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

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

13 7. "Vehicle or product" means a new motor vehicle, a used motor
14 vehicle or parts."

15 Amend title to conform

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