

MOTOR VEHICLE DEALER / AUTOMOTIVE RECYCLER ACTIONS / VIOLATIONS

Summary of Changes

Added a new Section F and a bullet to Section I regarding a licensed motor vehicle dealer offering for private sale a vehicle in the licensed motor vehicle dealer's inventory. Reformatted the entire policy to accommodate the changes.

Purpose

To provide guidelines for actions taken by the Division against a licensee who has violated or is violating any law, rule or order enforced or adopted by the Division.

Policy

A. The Division is responsible for licensing, regulating and monitoring the following: motor vehicle dealers, automotive recyclers, manufacturers and distributors. Notwithstanding A.R.S. §§ 28-4494 and 28-4495, in the enforcement of any law pertaining to licensed or unlicensed dealers, the Division may conduct hearings, take testimony and conduct investigations. Decisions are subject to judicial review, pursuant to A.R.S. Title 12, Chapter 7, Article 6.

Cease and Desist Order (A.R.S. Title 28, Chapter 10, Article 6)

B. If there is reasonable cause to believe, from an investigation, that a licensed motor vehicle dealer or automotive recycler has violated or is violating a law of this State or rule adopted by the Arizona Department of Transportation, a Cease and Desist Order may be issued requiring that upon receipt, the licensee must immediately cease and desist from further engaging in the business or the prohibited activity or both.

C. The Division shall provide a copy of the Cease and Desist Order to the Arizona Department of Revenue (ADOR).

D. The Cease and Desist Order is served on the licensee by personal delivery or first class mail at the business address of record. The Cease and Desist Order directs the licensee to immediately cease and desist from further engaging in the business or the prohibited activity, or both, on the receipt of the notice.

E. A licensee who receives a Cease and Desist Order may request a hearing. The licensee shall submit a written request for a hearing to the Executive Hearing Office (EHO) within 30 days after the licensee received the order. On failure of a licensee to comply with the order or after a requested hearing, the Director may suspend or cancel the licensee's license or permit.

F. If after an investigation, the Director has reasonable cause to believe that a licensed motor vehicle dealer is offering for private sale a motor vehicle in the licensee's or exhibitor's inventory, the Director may issue a cease and desist order requiring the licensee to

immediately cease and desist from further engaging in the business and/or the prohibited activity. The Director shall notify the licensee that a hearing will be conducted and that civil penalties may be imposed pursuant to A.R.S. § 28-4501.

- G. If after reviewing the allegations and results of the hearing, it is determined that the licensee failed to comply with the Cease and Desist Order, the Executive Hearing Office (EHO) may impose a civil penalty pursuant to A.R.S. § 28-4501.

License Suspension/Cancellation

- H. The Division may suspend or cancel the license of a licensee if any of the following occurs:
- The bond furnished by a licensee is insufficient and the licensee has failed to provide any additional or other bond as required
 - The surety on a bond furnished by a licensee requests to be released and discharged and the licensee fails to provide any additional or other bond as required
- I. The Division may suspend or cancel the license, off-premises exhibition permit, off-premises display and sales permit or special event permit of any licensee or exhibitor if it is determined that the licensee or exhibitor did any of the following:
- Has made a material misrepresentation or misstatement in the licensee's or exhibitor's application for a license, off-premises exhibition permit, off-premises display and sales permit or special event permit
 - Has used or is using false advertising, as prescribed by A.R.S. § 13-2203
 - Has violated or is violating a law of this state or a rule adopted by the Division pursuant to law
 - Has not complied with A.R.S. §§ 28-4546 through 28-4553
 - Has failed or is failing to keep and maintain records required to be kept and maintained by the licensee or exhibitor
 - Has no established place of business or principal place of business, as required by this A.R.S. Title 28, Chapter Ten
 - Has knowingly dealt in stolen motor vehicles or parts or accessories of stolen motor vehicles
 - Has failed or is failing to devote a substantial portion of time to the business for which the licensee or exhibitor is licensed or to be actively or principally engaged in the business for which the licensee or exhibitor is licensed (includes licensees or exhibitor's manager, agents, and representatives)
 - Has refused to service and fulfill the manufacturer's warranty
 - Is offering for private sale a motor vehicle in the licensee's or exhibitor's inventory
 - Has used or is using a private residence to illegally transact business regulated by A.R.S. Title 28, Chapter Ten
 - Has cancelled or failed to renew the franchise of a new motor vehicle dealer
 - All existing dealers' franchises continue in full force and operation under a newly appointed distributor on the termination of an existing distributor unless otherwise mutually agreed by the newly appointed distributor and the dealer
- J. In addition, the Division may suspend or cancel a license if it is determined that an individual included in the application for the license did any of the following:
- Made a misrepresentation, omission or misstatement in the application to conceal a matter that may have caused the application to be denied

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- Has been convicted of fraud or an auto related felony in a state, territory or possession of the United States (U.S.) or a foreign country within the past 10 years immediately preceding the date that the criminal records check was completed
 - Has been convicted of a felony in a state, territory or possession of the U.S. or a foreign country within the past five years immediately preceding the date that the criminal records check was completed
- K. On determining that grounds for suspension or cancellation of a license exist, the Division shall give notice of the grounds to the licensee in writing and by the notice shall require the licensee to appear at a specified time and place to show cause why the licensee's license should not be suspended or cancelled. The written notice must be sent to the licensee at least 30 days before the suspension/cancellation takes effect.
- L. A licensee whose license was canceled or suspended may request a hearing. If it is determined that the suspension or cancellation action was valid, the suspension or cancellation is effective for not more than two years and only in the territory formerly served by the cancelled dealer.

Civil Penalty

M. If it is determined that a person is in violation of any licensing provision within A.R.S. Title 28 Chapter 10, the Division may impose a civil penalty of at least \$1000, but not more than \$3000, per violation (per cease and desist order) and shall require that the person pay all transaction privilege taxes on motor vehicle sales that were conducted in violation of A.R.S. Title 28, Chapter 10. The person shall pay the civil penalty in full no later than 30 days after the order is final. If the person fails to pay the civil penalty within the designated time frame, the Division shall file an action, in the superior court in the county in which the hearing is held, to collect the civil penalty.

Date

13 July 2014

STACEY K. STANTON
Division Director

Authority: HB2120, Laws 2014, effective July 24, 2014. A.R.S. §§ Title 12, Chapter 7, Article 6, 28-4491 through 28-4501, 28-4546 through 28-4553