

State of Arizona
House of Representatives
Fifty-fourth Legislature
First Regular Session
2019

HOUSE BILL 2418

AN ACT

AMENDING TITLE 28, CHAPTER 10, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 10; RELATING TO MOTOR VEHICLE DEALERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 28, chapter 10, Arizona Revised Statutes, is
3 amended by adding article 10, to read:

4 ARTICLE 10. PROTECTED DATA

5 28-4651. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "AUTHORIZED INTEGRATOR" MEANS A THIRD PARTY WITH WHOM A DEALER
8 ENTERS INTO A CONTRACTUAL RELATIONSHIP TO PERFORM A SPECIFIC FUNCTION FOR
9 A DEALER THAT ALLOWS THE THIRD PARTY TO ACCESS PROTECTED DEALER DATA OR TO
10 WRITE DATA TO A DEALER DATA SYSTEM, OR BOTH, TO CARRY OUT THE SPECIFIED
11 FUNCTION.

12 2. "CYBER RANSOM" MEANS TO ENCRYPT, RESTRICT OR PROHIBIT OR
13 THREATEN OR ATTEMPT TO ENCRYPT, RESTRICT OR PROHIBIT A DEALER'S OR A
14 DEALER'S AUTHORIZED INTEGRATOR'S ACCESS TO PROTECTED DEALER DATA FOR
15 MONETARY GAIN.

16 3. "DEALER DATA SYSTEM":

17 (a) MEANS A SOFTWARE, HARDWARE OR FIRMWARE SYSTEM THAT IS OWNED,
18 LEASED OR LICENSED BY A DEALER, THAT INCLUDES A SYSTEM OF WEB-BASED
19 APPLICATIONS, COMPUTER SOFTWARE OR COMPUTER HARDWARE, WHETHER LOCATED AT
20 THE MOTOR VEHICLE DEALERSHIP OR HOSTED REMOTELY, AND THAT STORES OR
21 PROVIDES ACCESS TO PROTECTED DEALER DATA.

22 (b) INCLUDES DEALERSHIP MANAGEMENT SYSTEMS AND CONSUMER RELATIONS
23 MANAGEMENT SYSTEMS.

24 4. "DEALER DATA VENDOR" MEANS A DEALER MANAGEMENT SYSTEM PROVIDER,
25 CONSUMER RELATIONSHIP MANAGEMENT SYSTEM PROVIDER OR OTHER VENDOR PROVIDING
26 SIMILAR SERVICES THAT PERMISSIBLY STORES PROTECTED DEALER DATA PURSUANT TO
27 A CONTRACT WITH THE DEALER.

28 5. "FEE" MEANS A CHARGE FOR ALLOWING ACCESS TO PROTECTED DEALER
29 DATA BEYOND ANY DIRECT COSTS INCURRED BY THE DEALER DATA VENDOR IN
30 PROVIDING PROTECTED DEALER DATA ACCESS TO AN AUTHORIZED INTEGRATOR OR
31 ALLOWING AN AUTHORIZED INTEGRATOR TO WRITE DATA TO A DEALER DATA SYSTEM.

32 6. "PRIOR EXPRESS WRITTEN CONSENT" MEANS THE DEALER'S EXPRESS
33 WRITTEN CONSENT THAT IS CONTAINED IN A DOCUMENT SEPARATE FROM ANY OTHER
34 CONSENT, CONTRACT, FRANCHISE AGREEMENT OR OTHER WRITING AND THAT CONTAINS:

35 (a) THE DEALER'S CONSENT TO THE DATA SHARING AND IDENTIFICATION OF
36 ALL PARTIES WITH WHOM THE DATA MAY BE SHARED.

37 (b) ALL DETAILS THAT THE DEALER REQUIRES RELATING TO THE SCOPE AND
38 NATURE OF THE DATA TO BE SHARED, INCLUDING THE DATA FIELDS AND THE
39 DURATION FOR WHICH THE SHARING IS AUTHORIZED.

40 (c) ALL PROVISIONS AND RESTRICTIONS THAT ARE REQUIRED UNDER FEDERAL
41 LAW TO ALLOW THE SHARING.

42 7. "PROTECTED DEALER DATA" MEANS ANY:

43 (a) PERSONAL, FINANCIAL OR OTHER DATA RELATING TO A CONSUMER THAT A
44 CONSUMER PROVIDES TO A DEALER OR THAT A DEALER OTHERWISE OBTAINS AND THAT
45 IS STORED IN THE DEALER'S DEALER DATA SYSTEM.

1 (b) MOTOR VEHICLE DIAGNOSTIC DATA THAT IS STORED IN A DEALER DATA
2 SYSTEM. THIS SUBDIVISION DOES NOT GIVE A DEALER ANY OWNERSHIP OR RIGHTS
3 TO SHARE OR USE THE MOTOR VEHICLE DIAGNOSTIC DATA BEYOND WHAT IS NECESSARY
4 TO FULFILL A DEALER'S OBLIGATION TO PROVIDE WARRANTY, REPAIR OR SERVICE
5 WORK TO ITS CONSUMERS.

6 (c) OTHER DATA THAT RELATES TO A DEALER'S BUSINESS OPERATIONS IN
7 THE DEALER'S DEALER DATA SYSTEM.

8 8. "REQUIRED MANUFACTURER DATA" MEANS DATA THAT IS REQUIRED TO BE
9 OBTAINED BY THE MANUFACTURER UNDER FEDERAL OR STATE LAW OR TO COMPLETE OR
10 VERIFY A TRANSACTION BETWEEN THE DEALER AND THE MANUFACTURER.

11 9. "STAR STANDARDS" MEANS THE CURRENT, APPLICABLE SECURITY
12 STANDARDS PUBLISHED BY THE STANDARDS FOR TECHNOLOGY IN AUTOMOTIVE RETAIL.

13 10. "THIRD PARTY":

14 (a) INCLUDES A SERVICE PROVIDER, VENDOR, INCLUDING A DEALER DATA
15 VENDOR AND AUTHORIZED INTEGRATOR, AND ANY OTHER PERSON OTHER THAN THE
16 DEALER.

17 (b) DOES NOT INCLUDE A GOVERNMENTAL ENTITY ACTING PURSUANT TO
18 FEDERAL, STATE OR LOCAL LAW, A THIRD PARTY ACTING PURSUANT TO A VALID
19 COURT ORDER OR A MANUFACTURER.

20 28-4652. Dealer; data submission to manufacturers or third
21 parties

22 A MANUFACTURER OR A THIRD PARTY MAY NOT REQUIRE A DEALER TO GRANT
23 THE MANUFACTURER, THE THIRD PARTY OR ANY PERSON ACTING ON BEHALF OF THE
24 MANUFACTURER OR THIRD PARTY DIRECT OR INDIRECT ACCESS TO THE DEALER'S
25 DEALER DATA SYSTEM. INSTEAD OF PROVIDING A MANUFACTURER OR THIRD PARTY
26 WITH ACCESS TO THE DEALER'S DATA SYSTEM, A DEALER MAY SUBMIT OR PUSH DATA
27 OR INFORMATION TO A MANUFACTURER OR THIRD PARTY THROUGH ANY WIDELY
28 ACCEPTABLE ELECTRONIC FILE FORMAT OR PROTOCOL THAT COMPLIES WITH THE STAR
29 STANDARDS OR OTHER GENERALLY ACCEPTED CYBERSECURITY STANDARDS THAT ARE AT
30 LEAST AS COMPREHENSIVE AS THE STAR STANDARDS.

31 28-4653. Manufacturers and third parties; prohibitions;
32 requirements

33 A. A THIRD PARTY MAY NOT DO ANY OF THE FOLLOWING:

34 1. ACCESS, SHARE, SELL, COPY, USE OR TRANSMIT PROTECTED DEALER DATA
35 WITHOUT PRIOR EXPRESS WRITTEN CONSENT.

36 2. ENGAGE IN ANY ACT OF CYBER RANSOM.

37 3. TAKE ANY ACTION BY CONTRACT, TECHNICAL MEANS OR OTHERWISE TO
38 PROHIBIT OR LIMIT A DEALER'S ABILITY TO PROTECT, STORE, COPY, SHARE OR USE
39 PROTECTED DEALER DATA, INCLUDING ALL OF THE FOLLOWING:

40 (a) IMPOSING ANY FEE OR OTHER RESTRICTION ON THE DEALER OR AN
41 AUTHORIZED INTEGRATOR FOR ACCESSING OR SHARING PROTECTED DEALER DATA OR
42 FOR WRITING DATA TO A DEALER DATA SYSTEM, INCLUDING ANY FEE ON A DEALER
43 THAT CHOOSES TO SUBMIT OR PUSH DATA OR INFORMATION TO THE THIRD PARTY AS
44 PRESCRIBED IN SECTION 28-4652. A THIRD PARTY MUST DISCLOSE A CHARGE TO
45 THE DEALER AND JUSTIFY THE CHARGE BY DOCUMENTARY EVIDENCE OF THE COSTS

1 ASSOCIATED WITH ACCESS OR THE CHARGE WILL BE DEEMED TO BE A FEE PURSUANT
2 TO THIS SUBDIVISION.

3 (b) PROHIBITING A THIRD PARTY THAT HAS SATISFIED OR IS COMPLIANT
4 WITH THE STAR STANDARDS OR OTHER GENERALLY ACCEPTED CYBERSECURITY
5 STANDARDS THAT ARE AT LEAST AS COMPREHENSIVE AS THE STAR STANDARDS AND
6 THAT THE DEALER HAS IDENTIFIED AS ONE OF ITS AUTHORIZED INTEGRATORS FROM
7 INTEGRATING INTO THE DEALER'S DEALER DATA SYSTEM OR PLACING AN
8 UNREASONABLE RESTRICTION ON INTEGRATION BY AN AUTHORIZED INTEGRATOR OR
9 OTHER THIRD PARTY THAT THE DEALER WISHES TO BE AN AUTHORIZED INTEGRATOR.
10 FOR THE PURPOSES OF THIS SUBDIVISION, "UNREASONABLE RESTRICTION" INCLUDES:

11 (i) AN UNREASONABLE LIMITATION OR CONDITION ON THE SCOPE OR NATURE
12 OF THE DATA THAT IS SHARED WITH AN AUTHORIZED INTEGRATOR.

13 (ii) AN UNREASONABLE LIMITATION OR CONDITION ON THE ABILITY OF THE
14 AUTHORIZED INTEGRATOR TO WRITE DATA TO A DEALER DATA SYSTEM.

15 (iii) AN UNREASONABLE LIMITATION OR CONDITION ON A THIRD PARTY THAT
16 ACCESSES OR SHARES PROTECTED DEALER DATA OR THAT WRITES DATA TO A DEALER
17 DATA SYSTEM.

18 (iv) REQUIRING UNREASONABLE ACCESS TO A THIRD PARTY'S SENSITIVE,
19 COMPETITIVE OR OTHER CONFIDENTIAL BUSINESS INFORMATION AS A CONDITION FOR
20 ACCESSING PROTECTED DEALER DATA OR SHARING PROTECTED DEALER DATA WITH AN
21 AUTHORIZED INTEGRATOR.

22 (v) PROHIBITING OR LIMITING A DEALER'S ABILITY TO STORE, COPY,
23 SECURELY SHARE OR USE PROTECTED DEALER DATA OUTSIDE OF THE DEALER DATA
24 SYSTEM IN ANY MANNER AND FOR ANY REASON.

25 (vi) ALLOWING ACCESS TO OR ACCESSING PROTECTED DEALER DATA WITHOUT
26 PRIOR EXPRESS WRITTEN CONSENT.

27 B. PRIOR EXPRESS WRITTEN CONSENT MAY:

28 1. BE UNILATERALLY REVOKED OR AMENDED BY THE DEALER WITH THIRTY
29 DAYS' NOTICE WITHOUT CAUSE AND IMMEDIATELY FOR CAUSE.

30 2. NOT BE SOUGHT OR REQUIRED AS A CONDITION OF OR FACTOR FOR
31 CONSIDERATION OR ELIGIBILITY FOR ANY MANUFACTURER PROGRAM, STANDARD OR
32 POLICY, INCLUDING THOSE THAT OFFER OR RELATE TO A BONUS, INCENTIVE, REBATE
33 OR OTHER PAYMENT OR BENEFIT TO A DEALER, EXCEPT THAT IF THE BONUS,
34 INCENTIVE, REBATE OR OTHER PAYMENT PROGRAM REQUIRES THE DELIVERY OF THE
35 INFORMATION THAT IS PROTECTED DEALER DATA TO QUALIFY FOR THE PROGRAM AND
36 RECEIVE THE PROGRAM BENEFITS, A DEALER MUST SUPPLY THE INFORMATION TO
37 PARTICIPATE IN THE PROGRAM.

38 C. THIS SECTION DOES NOT PREVENT A DEALER, MANUFACTURER OR THIRD
39 PARTY FROM DISCHARGING ITS OBLIGATIONS AS A SERVICE PROVIDER OR OTHERWISE
40 UNDER FEDERAL, STATE OR LOCAL LAW TO PROTECT AND SECURE PROTECTED DEALER
41 DATA OR TO OTHERWISE LIMIT THOSE RESPONSIBILITIES.

42 D. UNLESS A DEALER GIVES PRIOR WRITTEN CONSENT, A MANUFACTURER MAY
43 NOT ACCESS, SHARE, SELL, COPY, USE OR TRANSMIT OR REQUIRE A DEALER TO
44 SHARE OR PROVIDE ACCESS TO PROTECTED DEALER DATA BEYOND THE REQUIRED

1 MANUFACTURER DATA AND MAY USE ANY REQUIRED MANUFACTURER DATA OBTAINED FROM
2 A DEALER DATA SYSTEM ONLY AS REASONABLY NECESSARY FOR THE FOLLOWING:

- 3 1. TO SATISFY A SAFETY, RECALL OR OTHER LEGAL NOTICE OBLIGATION.
- 4 2. TO PROCESS AND COMPLETE THE SALE AND DELIVERY OF A NEW MOTOR
- 5 VEHICLE OR A CERTIFIED USED MOTOR VEHICLE TO A CONSUMER.
- 6 3. THE VALIDATION AND PAYMENT OF CONSUMER OR DEALER INCENTIVES.
- 7 4. CLAIMS FOR DEALER SUPPLIED SERVICES RELATING TO WARRANTY PARTS
- 8 OR REPAIRS.
- 9 5. THE EVALUATION OF DEALER PERFORMANCE, INCLUDING WITHOUT
- 10 LIMITATION THE EVALUATION OF THE DEALER'S MONTHLY FINANCIAL STATEMENTS AND
- 11 SALES OR SERVICE, CONSUMER SATISFACTION WITH THE DEALER THROUGH DIRECT
- 12 CONSUMER CONTACT OR CONSUMER SURVEYS.
- 13 6. DEALER AND MARKET ANALYTICS.
- 14 7. THE IDENTIFICATION OF THE DEALER THAT SOLD OR LEASED A SPECIFIC
- 15 MOTOR VEHICLE AND THE DATE OF THE TRANSACTION.
- 16 8. MARKETING PURPOSES DESIGNED FOR THE BENEFIT OF OR TO DIRECT
- 17 LEADS TO DEALERS.
- 18 9. MOTOR VEHICLE DIAGNOSTIC DATA.
- 19 10. THE DEVELOPMENT, EVALUATION OR IMPROVEMENT OF THE
- 20 MANUFACTURER'S PRODUCTS OR SERVICES.

21 E. A MANUFACTURER MAY NOT ENGAGE IN AN ACT OF CYBER RANSOM OR TAKE
22 AN ACTION BY CONTRACT, TECHNICAL MEANS OR OTHERWISE TO PROHIBIT OR LIMIT A
23 DEALER'S ABILITY TO PROTECT, STORE, COPY, SHARE OR USE PROTECTED DEALER
24 DATA, INCLUDING ACTIONS DESCRIBED IN SUBSECTION A, PARAGRAPH 3,
25 SUBDIVISION (b) OF THIS SECTION. A MANUFACTURER OR A MANUFACTURER'S
26 SELECTED THIRD PARTY MAY NOT REQUIRE A DEALER TO PAY A FEE FOR THE SHARING
27 OF REQUIRED MANUFACTURER DATA IF THE MANUFACTURER BOTH:

- 28 1. REQUIRES A DEALER TO PROVIDE REQUIRED MANUFACTURER DATA THROUGH
- 29 A SPECIFIC THIRD PARTY THAT THE MANUFACTURER SELECTS.
- 30 2. DOES NOT ALLOW THE DEALER TO SUBMIT THE DATA USING THE DEALER'S
- 31 CHOICE OF A THIRD-PARTY VENDOR AND BOTH OF THE FOLLOWING APPLY:

32 (a) THE DATA IS IN A FORMAT THAT IS COMPATIBLE WITH THE FILE FORMAT
33 REQUIRED BY THE MANUFACTURER.

34 (b) THE THIRD-PARTY VENDOR SATISFIES OR IS IN COMPLIANCE WITH THE
35 STAR STANDARDS OR OTHER GENERALLY ACCEPTED CYBERSECURITY STANDARDS THAT
36 ARE AT LEAST AS COMPREHENSIVE AS THE STAR STANDARDS.

37 F. A MANUFACTURER SHALL INDEMNIFY A DEALER FOR ANY THIRD-PARTY
38 CLAIMS ASSERTED AGAINST OR DAMAGES INCURRED BY THE DEALER TO THE EXTENT
39 CAUSED BY ACCESS TO, USE OF OR DISCLOSURE OF PROTECTED DEALER DATA IN
40 VIOLATION OF THIS SECTION BY THE MANUFACTURER OR A THIRD PARTY ACTING ON
41 BEHALF OF A MANUFACTURER TO WHOM THE MANUFACTURER HAS PROVIDED THE
42 PROTECTED DEALER DATA. A DEALER BRINGING A CAUSE OF ACTION AGAINST A
43 MANUFACTURER FOR A VIOLATION OF THIS SECTION HAS THE BURDEN OF PROOF.

44 G. NOTWITHSTANDING SUBSECTION D OF THIS SECTION AND EXCEPT AS
45 PROVIDED IN SECTION 28-4655, THIS ARTICLE DOES NOT RESTRICT OR LIMIT A

1 MANUFACTURER'S RIGHT TO OBTAIN REQUIRED MANUFACTURER DATA, USE REQUIRED
2 MANUFACTURER DATA FOR THE PURPOSES PRESCRIBED BY SUBSECTION D OF THIS
3 SECTION OR USE OR CONTROL DATA THAT IS PROPRIETARY TO THE MANUFACTURER,
4 CREATED BY THE MANUFACTURER, OBTAINED FROM A SOURCE OTHER THAN THE DEALER
5 OR THAT IS PUBLIC INFORMATION.

6 28-4654. Dealer data vendors; authorized integrators;
7 requirements

8 A. A DEALER DATA VENDOR SHALL:

9 1. ADOPT AND MAKE AVAILABLE A STANDARDIZED FRAMEWORK FOR THE
10 EXCHANGE, INTEGRATION AND SHARING OF DATA FROM DEALER DATA SYSTEMS WITH
11 AUTHORIZED INTEGRATORS AND THE RETRIEVAL OF DATA BY AUTHORIZED INTEGRATORS
12 USING THE STAR STANDARDS OR A STANDARD THAT IS COMPATIBLE WITH THE STAR
13 STANDARDS.

14 2. PROVIDE ACCESS TO OPEN APPLICATION PROGRAMMING INTERFACES TO
15 AUTHORIZED INTEGRATORS. IF THE APPLICATION PROGRAMMING INTERFACES ARE NOT
16 THE REASONABLE COMMERCIAL OR TECHNICAL STANDARD FOR SECURE DATA
17 INTEGRATION, THE DEALER DATA VENDOR MAY PROVIDE A SIMILAR OPEN ACCESS
18 INTEGRATION METHOD IF THAT METHOD PROVIDES THE SAME OR BETTER ACCESS TO
19 AUTHORIZED INTEGRATORS AS AN APPLICATION PROGRAMMING INTERFACE AND USES
20 THE REQUIRED STANDARDIZED FRAMEWORK.

21 B. A DEALER DATA VENDOR AND AUTHORIZED INTEGRATOR:

22 1. MAY ACCESS, USE, STORE OR SHARE PROTECTED DEALER DATA OR ANY
23 OTHER DATA FROM A DEALER DATA SYSTEM ONLY TO THE EXTENT ALLOWED IN THE
24 WRITTEN AGREEMENT WITH THE DEALER.

25 2. MUST MAKE ANY AGREEMENT RELATING TO ACCESS TO, SHARING OR
26 SELLING OF, COPYING, USING OR TRANSMITTING PROTECTED DEALER DATA
27 TERMINABLE ON NINETY DAYS' NOTICE FROM THE DEALER.

28 3. ON NOTICE OF THE DEALER'S INTENT TO TERMINATE THE AGREEMENT, IN
29 ORDER TO PREVENT ANY RISK OF CONSUMER HARM OR INCONVENIENCE, MUST WORK TO
30 ENSURE A SECURE TRANSITION OF ALL PROTECTED DEALER DATA TO A SUCCESSOR
31 DEALER DATA VENDOR OR AUTHORIZED INTEGRATOR, INCLUDING:

32 (a) PROVIDING ACCESS TO OR AN ELECTRONIC COPY OF ALL PROTECTED
33 DEALER DATA AND ALL OTHER DATA STORED IN THE DEALER DATA SYSTEM IN A
34 COMMERCIALLY REASONABLE TIME AND FORMAT THAT A SUCCESSOR DEALER DATA
35 VENDOR OR AUTHORIZED INTEGRATOR CAN ACCESS AND USE.

36 (b) DELETING OR RETURNING TO THE DEALER ALL PROTECTED DEALER DATA
37 BEFORE THE CONTRACT TERMINATES PURSUANT TO THE DEALER'S WRITTEN
38 DIRECTIONS.

39 4. ON A DEALER'S REQUEST, MUST PROVIDE THE DEALER WITH A LISTING OF
40 ALL ENTITIES WITH WHOM IT IS SHARING PROTECTED DEALER DATA OR WITH WHOM IT
41 HAS ALLOWED ACCESS TO PROTECTED DEALER DATA.

42 5. MUST ALLOW A DEALER TO AUDIT THE DEALER DATA VENDOR OR
43 AUTHORIZED INTEGRATOR'S ACCESS TO AND USE OF ANY PROTECTED DEALER DATA.

1 28-4655. Applicability
2 THIS ARTICLE DOES NOT:
3 1. GOVERN, RESTRICT OR APPLY TO DATA THAT EXISTS OUTSIDE OF A
4 DEALER DATA SYSTEM, INCLUDING DATA THAT IS GENERATED BY A MOTOR VEHICLE OR
5 DEVICES THAT A CONSUMER CONNECTS TO A MOTOR VEHICLE.
6 2. AUTHORIZE A DEALER OR THIRD PARTY TO USE DATA THAT IS OBTAINED
7 FROM A PERSON IN A MANNER THAT IS INCONSISTENT WITH EITHER:
8 (a) AN AGREEMENT WITH THE PERSON.
9 (b) THE PURPOSES FOR WHICH THE PERSON PROVIDED THE DATA TO THE
10 DEALER OR THIRD PARTY.