

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 59th Legislature (2024)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3104

By: Dobrinski

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to franchise auto dealers; 47 O.S.
10 2021, Section 562, as amended by Section 3, Chapter
11 29, O.S.L. 2023 (47 O.S. Supp. 2023, Section 562),
12 which relates to definitions; modifying definition;
13 amending 47 O.S. 2021, Section 565, as last amended
14 by Section 8, Chapter 29, O.S.L. 2023 (47 O.S. Supp.
15 2023, Section 565), which relates to denial,
16 revocation, or suspension of license; modifying
17 entity subject to license denial, revocation,
18 suspension, or fine; modifying reasons for license
19 denial, revocation, suspension, or fine; prohibiting
20 certain withholding of proportionate share of
21 vehicles; requiring certain considerations for
22 location of dealership change; requiring purchase of
23 dealership if certain conditions are met; setting
24 value for purchase; setting process if parties cannot
 agree; requiring certain maintenance of records
 period of time; requiring certain written requests be
 received within certain time frame; requiring written
 requests contain certain information; amending 47
 O.S. 2021, Section 565.2, as amended by Section 10,
 Chapter 29, O.S.L. 2023 (47 O.S. Supp. 2023, Section
 565.2), which relates to termination, cancellation,
 or nonrenewal of new motor vehicle dealer franchise;
 allowing franchise to remain in full force and effect
 through any appeal; modifying actions required to be
 taken when a factory terminates, cancels, or does not
 renew a franchise; modifying actions required to be
 taken when a factory terminates, cancels, or non-
 renews due to a discontinuance of product line;
 requiring certain purchase at fair market value;

1 setting certain valuation; setting process if parties
2 cannot agree; allowing for certain sole ownership,
3 possession, usage, and control of certain property;
4 requiring payment of reasonable rent if certain
5 conditions are met; requiring compensation for
6 certain pecuniary loss; requiring certain documents
7 be provided for payment to be made; providing for
8 appraisal process; requiring certain oath be taken;
9 requiring certain average be taken to determine
10 value; allowing for appointment of third appraiser to
11 determine value if certain conditions are met;
12 requiring appraisers make certain valuation;
13 requiring payment within certain time frame; and
14 providing an effective date.

15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 47 O.S. 2021, Section 562, as
17 amended by Section 3, Chapter 29, O.S.L. 2023 (47 O.S. Supp. 2023,
18 Section 562), is amended to read as follows:

19 Section 562. The following words, terms, and phrases, when used
20 in Sections 561 through 567, 572, 578.1, 579, and 579.1 of this
21 title, shall have the meanings respectively ascribed to them in this
22 section, except where the context clearly indicates a different
23 meaning:

24 1. "Motor vehicle" means any motor-driven vehicle required to
be registered under the Oklahoma Vehicle License and Registration
Act. The term motor vehicle does not include:

- a. recreational vehicles, as defined in the Recreational
Vehicle Franchise Act, or

1 b. all-terrain vehicles, utility vehicles, and
2 motorcycles used exclusively for off-road use which
3 are sold by a retail implement dealer;

4 2. "New motor vehicle dealer" means any person, firm,
5 association, corporation, or trust not excluded by this paragraph
6 who sells, offers for sale, advertises to sell, leases, or displays
7 new motor vehicles and holds a bona fide contract or franchise in
8 effect with a manufacturer or distributor authorized by the
9 manufacturer to make predelivery preparation of such vehicles sold
10 to purchasers and to perform post-sale work pursuant to the
11 manufacturer's or distributor's warranty. As used herein,
12 "authorized predelivery preparation" means the rendition by the
13 dealer of services and safety adjustments on each new motor vehicle
14 in accordance with the procedure and safety standards required by
15 the manufacturer of the vehicle to be made before its delivery to
16 the purchaser. "Performance of authorized post-sale work pursuant
17 to the warranty", as used herein, means the rendition of services
18 which are required by the terms of the warranty that stands extended
19 to the vehicle at the time of its sale and are to be made in
20 accordance with the safety standards prescribed by the manufacturer.
21 The term includes premises or facilities at which a person engages
22 only in the repair of motor vehicles if repairs are performed
23 pursuant to the terms of a franchise and motor vehicle
24 manufacturer's warranty. For the purpose of Sections 561 through

1 567, 572, 578.1, 579, and 579.1 of this title, the terms new motor
2 vehicle dealer and "new motor vehicle dealership" shall be
3 synonymous. The term new motor vehicle dealer does not include:

- 4 a. receivers, trustees, administrators, executors,
5 guardians, or other persons appointed by or acting
6 under judgment or order of any court,
- 7 b. public officers while performing or in operation of
8 their duties,
- 9 c. employees of persons, corporations, or associations
10 enumerated in subparagraph a of this paragraph when
11 engaged in the specific performance of their duties as
12 such employees, or
- 13 d. a powersports vehicle dealer;

14 3. "Motor vehicle salesperson" means any person who, for gain
15 or compensation of any kind, either directly or indirectly,
16 regularly or occasionally, by any form of agreement or arrangement,
17 assists or offers assistance to customers in selecting a vehicle,
18 explains product performance, application, and benefits to
19 customers, describes optional equipment available on the vehicle,
20 offers or coordinates test driver to customers, explains the
21 vehicle's operating features, or paperwork to the customer, or sells
22 or negotiates for the sale, lease, or conveyance ~~or arranges the~~
23 ~~financing of any new motor vehicle as an employee for any new motor~~
24 ~~vehicle dealer to any one or more third parties.~~ However, this

1 definition does not apply to employees of any manufacturer or
2 distributor who has new motor vehicle sales and service agreements
3 with new motor vehicle dealers in the state and does not sell motor
4 vehicles directly to consumers;

5 4. "Commission" means the Oklahoma New Motor Vehicle
6 Commission;

7 5. "Manufacturer" means any person, firm, association,
8 corporation, or trust, resident or nonresident, that manufactures or
9 assembles new and unused motor vehicles or that engages in the
10 fabrication or assembly of motorized vehicles of a type required to
11 be registered in this state;

12 6. "Distributor" means any person, firm, association,
13 corporation, or trust, resident or nonresident, that, being
14 authorized by the original manufacturer, in whole or in part sells
15 or distributes new and unused motor vehicles to new motor vehicle
16 dealers, or that maintains distributor representatives;

17 7. "Factory branch" means any branch office maintained by a
18 person, firm, association, corporation, or trust that manufactures
19 or assembles motor vehicles for the sale of motor vehicles to
20 distributors, or for the sale of motor vehicles to new motor vehicle
21 dealers, or for directing or supervising, in whole or in part, its
22 representatives;

23

24

1 8. "Distributor branch" means any branch office similarly
2 maintained by a distributor for the same purposes a factory branch
3 is maintained;

4 9. "Factory representative" means any officer or agent engaged
5 as a representative of a manufacturer of motor vehicles or by a
6 factory branch, for the purpose of making or promoting the sale of
7 its motor vehicles, or for supervising or contacting its dealers or
8 prospective dealers;

9 10. "Distributor representative" means any person, firm,
10 association, corporation, or trust and each officer and employee
11 thereof engaged as a representative of a distributor or distributor
12 branch of motor vehicles, for the purpose of making or promoting the
13 sale of its motor vehicles, or for supervising or contacting its
14 dealers or prospective dealers;

15 11. "Franchise" means any contract or agreement between a new
16 motor vehicle dealer and a manufacturer of a new motor vehicle or
17 its distributor or factory branch by which the new motor vehicle
18 dealer is authorized to engage in the activities of a new motor
19 vehicle dealer as defined by this section;

20 12. "New or unused motor vehicle" means a vehicle which is in
21 the possession of the manufacturer or distributor or has been sold
22 only to the holder of a valid franchise granted by the manufacturer
23 or distributor for the sale of that make of new vehicle so long as
24 the manufacturer's statement of origin has not been assigned to

1 anyone other than a licensed franchised new motor vehicle dealer of
2 the same line-make;

3 13. "Area of responsibility" means the geographical area, as
4 designated by the manufacturer, factory branch, factory
5 representative, distributor, distributor branch, or distributor
6 representative, in which the new motor vehicle dealer is held
7 responsible for the promotion and development of sales and rendering
8 of service for the make of motor vehicle for which the new motor
9 vehicle dealer holds a franchise or selling agreement;

10 14. "Off premises" means at a location other than the address
11 designated on the new motor vehicle dealer's license;

12 15. "Sponsoring entity" means any person, firm, association,
13 corporation, or trust which has control, either permanently or
14 temporarily, over the real property upon which the off-premises sale
15 or display is conducted;

16 16. "Product" means new motor vehicles and new motor vehicle
17 parts;

18 17. "Service" means motor vehicle warranty repairs including
19 both parts and labor;

20 18. "Lead" means a consumer contact in response to a factory
21 program designed to generate interest in purchasing or leasing a new
22 motor vehicle;

23 19. "Sell" or "sale" means to sell or lease;

24

1 20. "Factory" means a manufacturer, distributor, factory
2 branch, distributor branch, factory representative, or distributor
3 representative, which manufactures or distributes vehicle products;

4 21. "Powersports vehicle" means motorcycles, scooters, mopeds,
5 all-terrain vehicles, and utility vehicles;

6 22. "Powersports vehicle dealer" means any person, firm, or
7 corporation that is in the business of selling any new powersports
8 vehicles except for retail implement dealers;

9 23. "Retail implement dealer" means a business engaged
10 primarily in the sale of farm tractors as defined in Section 1-118
11 of this title or implements of husbandry as defined in Section 1-125
12 of this title or a combination thereof;

13 24. "Consumer data" means nonpublic personal information as
14 defined in 15 U.S.C., Section 6809(4) as it existed on January 1,
15 2023, that is:

- 16 a. collected by a new motor vehicle dealer, and
- 17 b. provided by the new motor vehicle dealer directly to a
18 manufacturer or third party acting on behalf of a
19 manufacturer.

20 The term shall not include the same or similar data obtained by
21 a manufacturer from any source other than the new motor vehicle
22 dealer or new motor vehicle dealer's data management system; and

23 25. "Fleet vehicle" means a new motor vehicle sold and titled
24 or registered to a business and used for business purposes only.

1 SECTION 2. AMENDATORY 47 O.S. 2021, Section 565, as last
2 amended by Section 8, Chapter 29, O.S.L. 2023 (47 O.S. Supp. 2023,
3 Section 565), is amended to read as follows:

4 Section 565. A. The Oklahoma New Motor Vehicle Commission may
5 deny an application for a license, revoke or suspend a license, or
6 impose a fine against any person or entity, not to exceed Ten
7 Thousand Dollars (\$10,000.00) per occurrence, that violates any
8 provision of Sections 561 through 567, 572, 578.1, 579, and 579.1 of
9 this title or for any of the following reasons:

10 1. On satisfactory proof of unfitness of the applicant in any
11 application for any license under the provisions of Section 561 et
12 seq. of this title;

13 2. For any material misstatement made by an applicant in any
14 application for any license under the provisions of Section 561 et
15 seq. of this title;

16 3. For any failure to comply with any provision of Section 561
17 et seq. of this title or any rule promulgated by the Commission
18 under authority vested in it by Section 561 et seq. of this title;

19 4. A change of condition after license is granted resulting in
20 failure to maintain the qualifications for license;

21 5. Being a new motor vehicle dealer who:

22 a. has required a purchaser of a new motor vehicle, as a
23 condition of sale and delivery thereof, to also
24 purchase special features, appliances, accessories, or

- 1 equipment not desired or requested by the purchaser
2 and installed by the new motor vehicle dealer,
- 3 b. uses any false or misleading advertising in connection
4 with business as a new motor vehicle dealer,
- 5 c. has committed any unlawful act which resulted in the
6 revocation of any similar license in another state,
- 7 d. has failed or refused to perform any written agreement
8 with any retail buyer involving the sale of a motor
9 vehicle,
- 10 e. has been convicted of a felony crime that
11 substantially relates to the occupation of a new motor
12 vehicle dealer and poses a reasonable threat to public
13 safety,
- 14 f. has committed a fraudulent act in selling, purchasing,
15 or otherwise dealing in new motor vehicles or has
16 misrepresented the terms and conditions of a sale,
17 purchase or contract for sale or purchase of a new
18 motor vehicle or any interest therein including an
19 option to purchase such vehicle,
- 20 g. has failed to meet or maintain the conditions and
21 requirements necessary to qualify for the issuance of
22 a license, or
- 23 h. completes any sale or transaction of an extended
24 service contract, extended maintenance plan, or

1 similar product using contract forms that do not
2 conspicuously disclose the identity of the service
3 contract provider;

4 6. Being a ~~new~~ motor vehicle salesperson who is not employed as
5 such by a licensed new motor vehicle dealer;

6 7. Being a new motor vehicle dealer who:

7 a. does not have an established place of business,

8 b. does not provide for a suitable repair shop separate
9 from the display room with ample space to repair or
10 recondition one or more vehicles at the same time, and
11 which is staffed with properly trained and qualified
12 repair technicians and is equipped with such parts,
13 tools, and equipment as may be requisite for the
14 servicing of motor vehicles in such a manner as to
15 make them comply with the safety laws of this state
16 and to properly fulfill the dealer's or manufacturer's
17 warranty obligation,

18 c. does not hold a franchise in effect with a
19 manufacturer or distributor of new or unused motor
20 vehicles for the sale of the same and is not
21 authorized by the manufacturer or distributor to
22 render predelivery preparation of such vehicles sold
23 to purchasers and to perform any authorized post-sale
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1 work pursuant to the manufacturer's or distributor's
2 warranty,

3 d. employs a person without obtaining a certificate of
4 registration for the person, or utilizes the services
5 of used motor vehicle lots or dealers or other
6 unlicensed persons in connection with the sale of new
7 motor vehicles,

8 e. does not properly service a new motor vehicle before
9 delivery of same to the original purchaser thereof, or

10 f. fails to order and stock a reasonable number of new
11 motor vehicles necessary to meet consumer demand for
12 each of the new motor vehicles included in the new
13 motor vehicle dealer's franchise agreement, unless the
14 new motor vehicles are not readily available from the
15 manufacturer or distributor due to limited production;

16 8. Being a factory that has:

17 a. either induced or attempted to induce by means of
18 coercion or intimidation, any new motor vehicle
19 dealer:

20 (1) to accept delivery of any motor vehicle or
21 vehicles, parts, or accessories therefor, or any
22 other commodities including advertising material
23 which shall not have been ordered by the new
24 motor vehicle dealer,

1 (2) to order or accept delivery of any motor vehicle
2 with special features, appliances, accessories,
3 or equipment not included in the list price of
4 the motor vehicles as publicly advertised by the
5 manufacturer thereof, or

6 (3) to order or accept delivery of any parts,
7 accessories, equipment, machinery, tools,
8 appliances, or any commodity whatsoever,

9 b. induced under threat or discrimination by the
10 withholding from delivery to a new motor vehicle
11 dealer certain models of motor vehicles, changing or
12 amending unilaterally the new motor vehicle dealer's
13 allotment of motor vehicles, and/or withholding and
14 delaying delivery of the vehicles out of the ordinary
15 course of business, in order to induce by such
16 coercion any new motor vehicle dealer to participate
17 or contribute to any local or national advertising
18 fund controlled directly or indirectly by the factory
19 or for any other purposes such as contest,
20 "giveaways", or other so-called sales promotional
21 devices, and/or change of quotas in any sales contest;
22 or has required new motor vehicle dealers, as a
23 condition to receiving their vehicle allotment, to
24 order a certain percentage of the vehicles with

1 optional equipment not specified by the new motor
2 vehicle dealer; however, nothing in this section shall
3 prohibit a factory from supporting an advertising
4 association which is open to all new motor vehicle
5 dealers on the same basis,

6 c. used a performance standard, sales objective, or
7 program for measuring dealer performance that may have
8 a material effect on a right of the dealer to vehicle
9 allocation; or payment under any incentive or
10 reimbursement program that is unfair, unreasonable,
11 inequitable, and not based on accurate information,

12 d. used a performance standard for measuring sales or
13 service performance of any new motor vehicle dealer
14 under the terms of the franchise agreement which:

15 (1) is unfair, unreasonable, arbitrary, or
16 inequitable, and

17 (2) does not consider the relevant and material local
18 and state or regional criteria, ~~including~~
19 prevailing economic conditions affecting the
20 sales or service performance of a vehicle dealer,
21 vehicle allocation from the manufacturer, or and
22 any relevant and material data and facts
23 presented by the dealer in writing within thirty
24 (30) days of the written notice of the

1 manufacturer to the dealer of its intention to
2 cancel, terminate, or not renew the dealer's
3 franchise agreement,

4 e. failed or refused to sell, or offer for sale, new
5 motor vehicles to all of its authorized same line-make
6 franchised new motor vehicle dealers at the same price
7 for a comparably equipped motor vehicle, on the same
8 terms, with no differential in functionally available
9 discount, allowance, credit, or bonus, except as
10 provided in subparagraph e of paragraph 9 of this
11 subsection,

12 f. failed to provide reasonable compensation to a new
13 motor vehicle dealer substantially equivalent to the
14 actual cost of providing a manufacturer required
15 loaner or rental vehicle to any consumer who is having
16 a vehicle serviced at the dealership. For purposes of
17 this paragraph, actual cost is the average cost in the
18 new motor vehicle dealer's region for the rental of a
19 substantially similar make and model as the vehicle
20 being serviced, or

21 g. failed to make available to its new motor vehicle
22 dealers a fair and proportional share of all new
23 vehicles distributed to same line-make dealers in this
24 state, subject to the same reasonable terms, including

1 any vehicles distributed from a common new vehicle
2 inventory pool outside of the factory's ordinary
3 allocation process such as any vehicles the factory
4 reserves to distribute on a discretionary basis;

5 9. Being a factory that:

6 a. has attempted to coerce or has coerced any new motor
7 vehicle dealer to enter into any agreement or to
8 cancel any agreement; has failed to act in good faith
9 and in a fair, equitable, and nondiscriminatory
10 manner; has directly or indirectly coerced,
11 intimidated, threatened, or restrained any new motor
12 vehicle dealer; has acted dishonestly; or has failed
13 to act in accordance with the reasonable standards of
14 fair dealing,

15 b. has failed to compensate its dealers for the work and
16 services they are required to perform in connection
17 with the dealer's delivery and preparation obligations
18 according to the agreements on file with the
19 Commission which must be found by the Commission to be
20 reasonable, or has failed to adequately and fairly
21 compensate its dealers for labor, parts, and other
22 expenses incurred by the dealer to perform under and
23 comply with manufacturer's warranty agreements and
24 recall repairs which shall include diagnostic work as

1 applicable and assistance requested by a consumer
2 whose vehicle was subjected to an over-the-air or
3 remote change, repair, or update to any part, system,
4 accessory, or function by the manufacturer and
5 performed by the dealer in order to satisfy the
6 consumer. Time allowances for the diagnosis and
7 performance of repair work shall be reasonable and
8 adequate for the work to be performed. Adequate and
9 fair compensation, which under this provision shall be
10 no less than the rates customarily charged for retail
11 consumer repairs as calculated herein, for parts and
12 labor for warranty and recall repairs shall, at the
13 option of the new motor vehicle dealer, be established
14 by the new motor vehicle dealer submitting to the
15 manufacturer or distributor one hundred sequential
16 nonwarranty consumer-paid service repair orders which
17 contain warranty-like repairs, or ninety (90)
18 consecutive days of nonwarranty consumer-paid service
19 repair orders which contain warranty-like repairs,
20 whichever is less, covering repairs made no more than
21 one hundred eighty (180) days before the submission
22 and declaring the average percentage labor rate and/or
23 markup rate. A new motor vehicle dealer may not
24 submit a request to establish its retail rates more

1 than once in a twelve-month period. That request may
2 establish a parts markup rate, labor rate, or both.
3 The new motor vehicle dealer shall calculate its
4 retail parts rate by determining the total charges for
5 parts from the qualified repair orders submitted,
6 dividing that amount by the new motor vehicle dealer's
7 total cost of the purchase of those parts, subtracting
8 one (1), and multiplying by one hundred (100) to
9 produce a percentage. The new motor vehicle dealer
10 shall calculate its retail labor rate by dividing the
11 amount of the new motor vehicle dealer's total labor
12 sales from the qualified repair orders by the total
13 labor hours charged for those sales. When submitting
14 repair orders to establish a retail parts and labor
15 rate, a new motor vehicle dealer need not include
16 repairs for:

- 17 (1) routine maintenance including but not limited to
18 the replacement of bulbs, fluids, filters,
19 batteries, and belts that are not provided in the
20 course of and related to a repair,
- 21 (2) factory special events, specials, or promotional
22 discounts for retail consumer repairs,
- 23 (3) parts sold or repairs performed at wholesale,
24

- 1 (4) factory-approved goodwill or policy repairs or
- 2 replacements,
- 3 (5) repairs with aftermarket parts, when calculating
- 4 the retail parts rate but not the retail labor
- 5 rate,
- 6 (6) repairs on aftermarket parts,
- 7 (7) replacement of or work on tires including front-
- 8 end alignments and wheel or tire rotations,
- 9 (8) repairs of motor vehicles owned by the new motor
- 10 vehicle dealer or employee thereof at the time of
- 11 the repair,
- 12 (9) vehicle reconditioning, or
- 13 (10) items that do not have individual part numbers
- 14 including, but not limited to, nuts, bolts, and
- 15 fasteners.

16 A manufacturer or distributor may, not later than
17 forty-five (45) days after submission, rebut that
18 declared retail parts and labor rate in writing by
19 reasonably substantiating that the rate is not
20 accurate or is incomplete pursuant to the provisions
21 of this section. If the manufacturer or distributor
22 determines the set of repair orders submitted by the
23 new motor vehicle dealer pursuant to this section for
24 a retail labor rate or retail parts markup rate is

1 substantially higher than the new motor vehicle
2 dealer's current warranty rates, the manufacturer or
3 distributor may request, in writing, within forty-five
4 (45) days after the manufacturer's or distributor's
5 receipt of the new motor vehicle dealer's initial
6 submission, all repair orders closed within the period
7 of thirty (30) days immediately preceding, or thirty
8 (30) days immediately following, the set of repair
9 orders initially submitted by the new motor vehicle
10 dealer. All time periods under this section shall be
11 suspended until the supplemental repair orders are
12 provided. If the manufacturer or distributor requests
13 supplemental repair orders, the manufacturer or
14 distributor may, within thirty (30) days after
15 receiving the supplemental repair orders and in
16 accordance with the formula described in this
17 subsection, calculate a proposed adjusted retail labor
18 rate or retail parts markup rate, as applicable, based
19 upon any set of the qualified repair orders submitted
20 by the franchisee and following the formula set forth
21 herein to establish the rate. The retail labor and
22 parts rates shall go into effect thirty (30) days
23 following the approval by the manufacturer or
24 distributor. If the declared rate is rebutted, the

1 manufacturer or distributor shall provide written
2 notice stating the reasons for the rebuttal, an
3 explanation of the reasons for the rebuttal, and a
4 copy of all calculations used by the franchisor in
5 determining the manufacturer or distributor's position
6 and propose an adjustment in writing of the average
7 percentage markup or labor rate based on that rebuttal
8 not later than forty-five (45) days after submission.
9 If the new motor vehicle dealer does not agree with
10 the proposed average percentage markup or labor rate,
11 the new motor vehicle dealer may file a protest with
12 the Commission not later than thirty (30) days after
13 receipt of that proposal by the manufacturer or
14 distributor. In the event a protest is filed, the
15 manufacturer or distributor shall have the burden of
16 proof to establish the new motor vehicle dealer's
17 submitted parts markup rate or labor rate was
18 inaccurate or not complete pursuant to the provisions
19 of this section. A manufacturer or distributor may
20 not retaliate against any new motor vehicle dealer
21 seeking to exercise its rights under this section. A
22 manufacturer or distributor may require a dealer to
23 submit repair orders in accordance with this section
24 in order to validate the reasonableness of a dealer's

1 retail rate for parts or labor not more often than
2 once every twelve (12) months. A manufacturer or
3 distributor may not otherwise recover its costs from
4 new motor vehicle dealers within this state including
5 a surcharge imposed on a new motor vehicle dealer
6 solely intended to recover the cost of reimbursing a
7 new motor vehicle dealer for parts and labor pursuant
8 to this section; provided, a manufacturer or
9 distributor shall not be prohibited from increasing
10 prices for vehicles or parts in the normal course of
11 business or from auditing and charging back claims in
12 accordance with this section. All claims made by
13 dealers for compensation for delivery, preparation,
14 warranty, or recall repair work shall be paid within
15 thirty (30) days after approval and shall be approved
16 or disapproved within thirty (30) days after receipt.
17 When any claim is disapproved, the dealer shall be
18 notified in writing of the grounds for disapproval.
19 The dealer's delivery, preparation, and warranty
20 obligations as filed with the Commission shall
21 constitute the dealer's sole responsibility for
22 product liability as between the dealer and
23 manufacturer. A factory may reasonably and
24 periodically audit a new motor vehicle dealer to

1 determine the validity of paid claims for new motor
2 vehicle dealer compensation or any charge-backs for
3 warranty parts or service compensation. Except in
4 cases of suspected fraud, audits of warranty payments
5 shall only be for the one-year period immediately
6 following the date of the payment. A manufacturer
7 shall reserve the right to reasonable, periodic audits
8 to determine the validity of paid claims for dealer
9 compensation or any charge-backs for consumer or
10 dealer incentives. Except in cases of suspected
11 fraud, audits of incentive payments shall only be for
12 a one-year period immediately following the date of
13 the payment. A factory shall not deny a claim or
14 charge a new motor vehicle dealer back subsequent to
15 the payment of the claim unless the factory can show
16 that the claim was false or fraudulent or that the new
17 motor vehicle dealer failed to reasonably substantiate
18 the claim by the written reasonable procedures of the
19 factory. A factory shall not deny a claim or
20 implement a charge-back against a new motor vehicle
21 dealer after payment of a claim in the event a
22 purchaser of a new vehicle that is the subject of a
23 claim fails to comply with titling or registration
24 laws of this state and is not prevented from

1 compliance by any action of the new motor vehicle
2 dealer; provided, that the factory may require the new
3 motor vehicle dealer to provide, within thirty (30)
4 days of notice of charge-back, withholding of payment,
5 or denial of claim, the documentation to demonstrate
6 the vehicle sale, delivery, and customer qualification
7 for an incentive as reported, including consumer name
8 and address and written attestation signed by the
9 dealer operator or general manager stating the
10 consumer was not on the export control list and the
11 dealer did not know or have reason to know the vehicle
12 was being exported or resold.

13 The factory shall provide written notice to a dealer
14 of a proposed charge-back that is the result of an
15 audit along with the specific audit results and
16 proposed charge-back amount. A dealer that receives
17 notice of a proposed charge-back pursuant to a
18 factory's audit has the right to file a protest with
19 the Commission within thirty (30) days after receipt
20 of the notice of the charge-back or audit results,
21 whichever is later. The factory is prohibited from
22 implementing the charge-back or debiting the dealer's
23 account until either the time frame for filing a
24 protest has passed or a final adjudication is rendered

1 by the Commission, whichever is later, unless the
2 dealer has agreed to the charge-back or charge-backs,
3 c. fails to compensate the new motor vehicle dealer for a
4 used motor vehicle:

5 (1) that is of the same make and model manufactured,
6 imported, or distributed by the factory and is a
7 line-make that the new motor vehicle dealer is
8 franchised to sell or on which the new motor
9 vehicle dealer is authorized to perform recall
10 repairs,

11 (2) that is subject to a stop-sale or do-not-drive
12 order issued by the factory or an authorized
13 governmental agency,

14 (3) that is held by the new motor vehicle dealer in
15 the dealer's inventory at the time the stop-sale
16 or do-not-drive order is issued or that is taken
17 by the new motor vehicle dealer into the dealer's
18 inventory after the recall notice as a result of
19 a retail consumer trade-in or a lease return to
20 the dealer inventory in accordance with an
21 applicable lease contract,

22 (4) that cannot be repaired due to the
23 unavailability, within thirty (30) days after
24 issuance of the stop-sale or do-not-drive order,

1 of a remedy or parts necessary for the new motor
2 vehicle dealer to make the recall repair, and
3 (5) that is not at least in the prorated amount of
4 one percent (1.00%) of the value of the vehicle
5 per month beginning on the date that is thirty
6 (30) days after the date on which the stop-sale
7 order was provided to the new motor vehicle
8 dealer until the earlier of either of the
9 following:

10 (a) the date the recall remedy or parts are made
11 available, or

12 (b) the date the new motor vehicle dealer sells,
13 trades, or otherwise disposes of the
14 affected used motor vehicle.

15 For the purposes of division (5) of this subparagraph,
16 the value of a used vehicle shall be the average Black
17 Book value for the year, make, and model of the
18 recalled vehicle. A factory may direct the manner and
19 method in which a new motor vehicle dealer must
20 demonstrate the inventory status of an affected used
21 motor vehicle to determine eligibility under this
22 subparagraph; provided, that the manner and method may
23 not be unduly burdensome and may not require
24 information that is unduly burdensome to provide. All

1 reimbursement claims made by new motor vehicle dealers
2 pursuant to this section for recall remedies or
3 repairs, or for compensation where no part or repair
4 is reasonably available and the vehicle is subject to
5 a stop-sale or do-not-drive order, shall be subject to
6 the same limitations and requirements as a warranty
7 reimbursement claim made under subparagraph b of this
8 paragraph. In the alternative, a manufacturer may
9 compensate its franchised new motor vehicle dealers
10 under a national recall compensation program;
11 provided, the compensation under the program is equal
12 to or greater than that provided under division (5) of
13 this subparagraph, or as the manufacturer and new
14 motor vehicle dealer otherwise agree. Nothing in this
15 section shall require a factory to provide total
16 compensation to a new motor vehicle dealer which would
17 exceed the total average Black Book value of the
18 affected used motor vehicle as originally determined
19 under division (5) of this subparagraph. Any remedy
20 provided to a new motor vehicle dealer under this
21 subparagraph is exclusive and may not be combined with
22 any other state or federal compensation remedy,
23 d. unreasonably fails or refuses to offer to its same
24 line-make franchised dealers a reasonable supply and

1 mix of all models manufactured for that line-make, or
2 unreasonably requires a dealer to pay any extra fee,
3 purchase unreasonable advertising displays or other
4 materials, or enter into a separate agreement which
5 adversely alters the rights or obligations contained
6 within the new motor vehicle dealer's existing
7 franchise agreement or which waives any right of the
8 new motor vehicle dealer as protected by Section 561
9 et seq. of this title, or remodel, renovate, or
10 recondition the new motor vehicle dealer's existing
11 facilities as a prerequisite to receiving a model or
12 series of vehicles, except as may be necessary to sell
13 or service the model or series of vehicles as provided
14 by subparagraph e of this paragraph. It shall be a
15 violation of this section for new vehicle allocation
16 to be withheld subject to any requirement to purchase
17 or sell any number of used or off-lease vehicles. The
18 failure to deliver any such new motor vehicle shall
19 not be considered a violation of the section if the
20 failure is not arbitrary or is due to lack of
21 manufacturing capacity or to a strike or labor
22 difficulty, a shortage of materials, a freight
23 embargo, or other cause over which the manufacturer
24 has no control. However, this subparagraph shall not

1 apply to recreational vehicles, limited production
2 model vehicles, a vehicle not advertised by the
3 factory for sale in this state, vehicles that are
4 subject to allocation affected by federal
5 environmental laws or environmental laws of this
6 state, or vehicles allocated in response to an
7 unforeseen event or circumstance,

8 e. except as necessary to comply with a health or safety
9 law, or to comply with a technology requirement which
10 is necessary to sell or service a motor vehicle that
11 the franchised new motor vehicle dealer is authorized
12 or licensed by the franchisor to sell or service,
13 requires a new motor vehicle dealer to construct a new
14 facility or substantially renovate the new motor
15 vehicle dealer's existing facility unless the facility
16 construction or renovation is justified by the
17 economic conditions existing at the time, as well as
18 the reasonably foreseeable projections, in the new
19 motor vehicle dealer's market and in the automotive
20 industry. However, this subparagraph shall not apply
21 if the new motor vehicle dealer voluntarily agrees to
22 facility construction or renovation in exchange for
23 money, credit, allowance, reimbursement, or additional
24 vehicle allocation to a new motor vehicle dealer from

1 the factory to compensate the new motor vehicle dealer
2 for the cost of, or a portion of the cost of, the
3 facility construction or renovation. Except as
4 necessary to comply with a health or safety law, or to
5 comply with a technology or safety requirement which
6 is necessary to sell or service a motor vehicle that
7 the franchised new motor vehicle dealer is authorized
8 or licensed by the franchisor to sell or service, a
9 new motor vehicle dealer which completes a facility
10 construction or renovation pursuant to factory
11 requirements shall not be required to construct a new
12 facility or renovate the existing facility if the same
13 area of the facility or premises has been constructed
14 or substantially altered within the last ten (10)
15 years and the construction or alteration was approved
16 by the manufacturer as a part of a facility upgrade
17 program, standard, or policy. For purposes of this
18 subparagraph, "substantially altered" means to perform
19 an alteration that substantially impacts the
20 architectural features, characteristics, or integrity
21 of a structure or lot. The term shall not include
22 routine maintenance reasonably necessary to maintain a
23 dealership in attractive condition. If a facility
24 upgrade program, standard, or policy under which the

1 dealer completed a facility construction or
2 substantial alteration does not contain a specific
3 time period during which the manufacturer or
4 distributor shall provide payments or benefits to a
5 participating dealer, or the time frame specified
6 under the program is reduced or canceled prematurely
7 in the unilateral discretion of the manufacturer or
8 distributor, the manufacturer or distributor shall not
9 deny the participating dealer any payment or benefit
10 under the terms of the program, standard, or policy as
11 it existed when the dealer began to perform under the
12 program, standard, or policy for the balance of the
13 ten-year period, regardless of whether the
14 manufacturer's or distributor's program, standard, or
15 policy has been changed or canceled, unless the
16 manufacturer and dealer agree, in writing, to the
17 change in payment or benefit. During the ten-year
18 period following facility construction or substantial
19 alteration, the manufacturer shall not withhold from
20 the dealer its proportionate share of vehicles
21 distributed to dealers of the same line-make, subject
22 to the same reasonable terms, including vehicles
23 distributed from a common new vehicle inventory pool
24 outside of the factory's ordinary allocation process,

1 such as any vehicles the factory reserves to
2 distribute on a discretionary basis,

3 f. requires a new motor vehicle dealer to establish an
4 exclusive facility or to change the location of the
5 dealership, unless supported by reasonable business,
6 market, and economic considerations; provided, that
7 this section shall not restrict the terms of any
8 agreement for such exclusive facility voluntarily
9 entered into and supported by valuable consideration
10 separate from the new motor vehicle dealer's right to
11 sell and service motor vehicles for the franchisor.
12 If a dealer is required by the manufacturer or
13 distributor to change a previously approved location
14 of the dealership and has not sold its existing
15 dealership facility and real estate within the later
16 of one hundred eighty (180) days of listing the
17 property for sale or ninety (90) days after the
18 facility relocation, then, upon the written request of
19 the dealer, the manufacturer or distributor shall
20 purchase the dealer's existing dealership facility and
21 real estate as if a new motor vehicle dealership
22 continues to operate on the property. If the factory
23 and dealer cannot agree on the value of the terminated
24 franchise, then the factory and dealer shall utilize

1 the process described in paragraph 6 of subsection G
2 of section 565.2 of this title. If a manufacturer or
3 distributor purchases a dealership facility and real
4 estate, then it shall be entitled to sole ownership,
5 possession, use, and control of any items, buildings,
6 or property that were included in the contract to
7 purchase,

- 8 g. requires a new motor vehicle dealer to enter into a
9 site-control agreement covering any or all of the new
10 motor vehicle dealer's facilities or premises;
11 provided, that this section shall not restrict the
12 terms of any site-control agreement voluntarily
13 entered into and supported by valuable consideration
14 separate from the new motor vehicle dealer's right to
15 sell and service motor vehicles for the franchisor.
16 Notwithstanding the foregoing or the terms of any
17 site-control agreement, a site-control agreement
18 automatically extinguishes if all of the factory's
19 franchises that operated from the location that are
20 the subject of the site-control agreement are
21 terminated by the factory as part of the
22 discontinuance of a product line,
- 23 h. refuses to pay, or claims reimbursement from, a new
24 motor vehicle dealer for sales, incentives, or other

1 payments related to a motor vehicle sold by the new
2 motor vehicle dealer because the purchaser of the
3 motor vehicle exported or resold the motor vehicle in
4 violation of the policy of the factory unless the
5 factory can show that, at the time of the sale, the
6 new motor vehicle dealer knew or reasonably should
7 have known of the purchaser's intention to export or
8 resell the motor vehicle. There is a rebuttable
9 presumption that the new motor vehicle dealer did not
10 know or could not have known that the vehicle would be
11 exported if the vehicle is titled and registered in
12 any state of the United States, or

- 13 i. requires a new motor vehicle dealer to purchase goods
14 or services for the construction, renovation, or
15 improvement of the new motor vehicle dealer's facility
16 from a vendor chosen by the factory if goods or
17 services available from other sources are of
18 substantially similar quality and design and comply
19 with all applicable laws; provided, however, that such
20 goods are not subject to the factory's intellectual
21 property or trademark rights and the new motor vehicle
22 dealer has received the factory's approval, which
23 approval may not be unreasonably withheld. Nothing in
24 this subparagraph may be construed to allow a new

1 motor vehicle dealer to impair or eliminate a
2 factory's intellectual property, trademark rights, or
3 trade dress usage guidelines. Nothing in this section
4 prohibits the enforcement of a voluntary agreement
5 between the factory and the new motor vehicle dealer
6 where separate and valuable consideration has been
7 offered and accepted;

8 10. Being a factory that:

- 9 a. establishes a system of motor vehicle allocation or
10 distribution which is unfair, inequitable, or
11 unreasonably discriminatory. A manufacturer and
12 distributor shall maintain for three (3) years records
13 that describe its methods or formula of allocation and
14 distribution of its motor vehicles and records of its
15 actual allocation and distribution of motor vehicles
16 to its motor vehicle dealers. Upon the written
17 request of any new motor vehicle dealer franchised by
18 ~~it~~ the manufacturer or distributor, received by the
19 manufacturer or distributor within thirty (30) days of
20 the manufacturer's or distributor's written notice to
21 the dealer of its intention to cancel or terminate, or
22 written notice from the manufacturer or distributor of
23 a sales performance deficiency requiring the dealer to
24 take action to cure the alleged performance

1 deficiency, a ~~factory~~ manufacturer or distributor
2 shall disclose in writing to the new motor vehicle
3 dealer the basis upon which new motor vehicles are
4 allocated, scheduled, and delivered, by vehicle model,
5 to ~~among~~ the new motor vehicle dealers of the same
6 line-make for that ~~factory~~ manufacturer or distributor
7 for the prior three (3) years, and the basis upon
8 which the current allocation or distribution is being
9 made or will be made to such dealer, or

10 b. changes an established plan or system of motor vehicle
11 distribution. A new motor vehicle dealer franchise
12 agreement shall continue in full force and operation
13 notwithstanding a change, in whole or in part, of an
14 established plan or system of distribution of the
15 motor vehicles offered or previously offered for sale
16 under the franchise agreement. The appointment of a
17 new importer or distributor for motor vehicles offered
18 for sale under the franchise agreement shall be deemed
19 to be a change of an established plan or system of
20 distribution. The discontinuation of a line-make
21 shall not be deemed to be a change of an established
22 plan or system of motor vehicle distribution. The
23 creation of a line-make shall not be deemed to be a
24 change of an established plan or system of motor

1 vehicle distribution as long as the new line-make is
2 not selling the same, or substantially the same
3 vehicle or vehicles previously sold through another
4 line-make by new motor vehicle dealers with an active
5 franchise agreement for the other line-make in the
6 state if such new motor vehicle dealers are no longer
7 authorized to sell the comparable vehicle previously
8 sold through their line-make. Changing a vehicle's
9 powertrain is not sufficient to show it is
10 substantially different. Upon the occurrence of such
11 change, the manufacturer or distributor shall be
12 prohibited from obtaining a license to distribute
13 vehicles under the new plan or system of distribution
14 unless the manufacturer or distributor offers to each
15 new motor vehicle dealer who is a party to the
16 franchise agreement a new franchise agreement
17 containing substantially the same provisions which
18 were contained in the previous franchise agreement;

19 11. Being a factory that sells directly or indirectly new motor
20 vehicles to any retail consumer in the state except through a new
21 motor vehicle dealer holding a franchise for the line-make that
22 includes the new motor vehicle. This paragraph does not apply to
23 factory sales of new motor vehicles to its employees, family members
24 of employees, retirees and family members of retirees, not-for-

1 profit organizations, or the federal, state, or local governments.
2 The provisions of this paragraph shall not preclude a factory from
3 providing information to a consumer for the purpose of marketing or
4 facilitating a sale of a new motor vehicle or from establishing a
5 program to sell or offer to sell new motor vehicles through
6 participating dealers subject to the limitations provided in
7 paragraph 2 of Section 562 of this title;

8 12. a. Being a factory which directly or indirectly:

- 9 (1) owns any ownership interest or has any financial
10 interest in a new motor vehicle dealer or any
11 person who sells products or services pursuant to
12 the terms of the franchise agreement,
13 (2) operates or controls a new motor vehicle dealer,
14 or
15 (3) acts in the capacity of a new motor vehicle
16 dealer.

17 b. (1) This paragraph does not prohibit a factory from
18 owning or controlling a new motor vehicle dealer
19 while in a bona fide relationship with a dealer
20 development candidate who has made a substantial
21 initial investment in the franchise and whose
22 initial investment is subject to potential loss.
23 The dealer development candidate can reasonably
24 expect to acquire full ownership of a new motor

1 vehicle dealer within a reasonable period of time
2 not to exceed ten (10) years and on reasonable
3 terms and conditions. The ten-year acquisition
4 period may be expanded for good cause shown.

5 (2) This paragraph does not prohibit a factory from
6 owning, operating, controlling, or acting in the
7 capacity of a new motor vehicle dealer for a
8 period not to exceed twelve (12) months during
9 the transition from one independent dealer to
10 another independent dealer if the dealership is
11 for sale at a reasonable price and on reasonable
12 terms and conditions to an independent qualified
13 buyer. On showing by a factory of good cause,
14 the Oklahoma New Motor Vehicle Commission may
15 extend the time limit set forth above; extensions
16 may be granted for periods not to exceed twelve
17 (12) months.

18 (3) This paragraph does not prohibit a factory from
19 owning, operating, or controlling or acting in
20 the capacity of a new motor vehicle dealer which
21 was in operation prior to January 1, 2000.

22 (4) This paragraph does not prohibit a factory from
23 owning, directly or indirectly, a minority
24 interest in an entity that owns, operates, or

1 controls motor vehicle dealerships of the same
2 line-make franchised by the manufacturer,
3 provided that each of the following conditions
4 are met:

5 (a) all of the new motor vehicle dealerships
6 selling the motor vehicles of that
7 manufacturer in this state trade exclusively
8 in the line-make of that manufacturer,

9 (b) all of the franchise agreements of the
10 manufacturer confer rights on the dealer of
11 the line-make to develop and operate, within
12 a defined geographic territory or area, as
13 many dealership facilities as the dealer and
14 manufacturer shall agree are appropriate,

15 (c) at the time the manufacturer first acquires
16 an ownership interest or assumes operation,
17 the distance between any dealership thus
18 owned or operated and the nearest
19 unaffiliated new motor vehicle dealership
20 trading in the same line-make is not less
21 than seventy (70) miles,

22 (d) during any period in which the manufacturer
23 has such an ownership interest, the
24 manufacturer has no more than three

1 franchise agreements with new motor vehicle
2 dealers licensed by the Oklahoma New Motor
3 Vehicle Commission to do business within the
4 state, and

5 (e) prior to January 1, 2000, the factory shall
6 have furnished or made available to
7 prospective new motor vehicle dealers an
8 offering circular in accordance with the
9 Trade Regulation Rule on Franchising of the
10 Federal Trade Commission, and any guidelines
11 and exemptions issued thereunder, which
12 disclose the possibility that the factory
13 may from time to time seek to own or
14 acquire, directly or indirectly, ownership
15 interests in retail dealerships;

16 13. Being a factory which directly or indirectly makes
17 available for public disclosure any proprietary information provided
18 to the factory by a new motor vehicle dealer, other than in
19 composite form to new motor vehicle dealers in the same line-make or
20 in response to a subpoena or order of the Commission or a court.
21 Proprietary information includes, but is not limited to,
22 information:

23 a. derived from monthly financial statements provided to
24 the factory, and

1 b. regarding any aspect of the profitability of a
2 particular new motor vehicle dealer;

3 14. Being a factory which does not provide or direct leads in a
4 fair, equitable, and timely manner. Nothing in this paragraph shall
5 be construed to require a factory to disregard the preference of a
6 consumer in providing or directing a lead;

7 15. Being a factory which used the consumer list of a new motor
8 vehicle dealer for the purpose of unfairly competing with dealers;

9 16. Being a factory which prohibits a new motor vehicle dealer
10 from relocating after a written request by such new motor vehicle
11 dealer if:

12 a. the facility and the proposed new location satisfies
13 or meets the written reasonable guidelines of the
14 factory. Reasonable guidelines do not include
15 exclusivity or site control unless agreed to as set
16 forth in subparagraphs f and g of paragraph 9 of this
17 subsection,

18 b. the proposed new location is within the area of
19 responsibility of the new motor vehicle dealer
20 pursuant to Section 578.1 of this title, and

21 c. the factory has sixty (60) days from receipt of the
22 new motor vehicle dealer's relocation request to
23 approve or deny the request. The failure to approve
24

1 or deny the request within the sixty-day time frame
2 shall constitute approval of the request;

3 17. Being a factory which prohibits a new motor vehicle dealer
4 from adding additional line-makes to its existing facility, if,
5 after adding the additional line-makes, the facility satisfies the
6 written reasonable capitalization standards and facility guidelines
7 of each factory. Reasonable facility guidelines do not include a
8 requirement to maintain exclusivity or site control unless agreed to
9 by the dealer as set forth in subparagraphs f and g of paragraph 9
10 of this subsection;

11 18. Being a factory that increases prices of new motor vehicles
12 which the new motor vehicle dealer had ordered for retail consumers
13 and notified the factory prior to the new motor vehicle dealer's
14 receipt of the written official price increase notification. A
15 sales contract signed by a retail consumer accompanied with proof of
16 order submission to the factory shall constitute evidence of each
17 such order, provided that the vehicle is in fact delivered to the
18 consumer. Price differences applicable to new models or series
19 motor vehicles at the time of the introduction of new models or
20 series shall not be considered a price increase for purposes of this
21 paragraph. Price changes caused by any of the following shall not
22 be subject to the provisions of this paragraph:

- 23 a. the addition to a motor vehicle of required or
24 optional equipment pursuant to state or federal law,

- b. revaluation of the United States dollar in the case of foreign-made vehicles or components, or
- c. an increase in transportation charges due to increased rates imposed by common or contract carriers;

19. Being a factory that requires a new motor vehicle dealer to participate monetarily in an advertising campaign or contest, or purchase any promotional materials, showroom, or other display decoration or materials at the expense of the new motor vehicle dealer without consent of the new motor vehicle dealer, which consent shall not be unreasonably withheld;

20. Being a factory that denies any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose, unless otherwise permitted by this chapter; or

21. Being a factory that requires a new motor vehicle dealer to sell, offer to sell, or sell exclusively an extended service contract, extended maintenance plan, or similar product, such as gap products offered, endorsed, or sponsored by the factory by the following means:

- a. by an act or statement from the factory that will in any manner adversely impact the new motor vehicle dealer, or
- b. by measuring the new motor vehicle dealer's performance under the franchise based on the sale of

1 extended service contracts, extended maintenance
2 plans, or similar products offered, endorsed, or
3 sponsored by the manufacturer or distributor.

4 B. Notwithstanding the terms of any franchise agreement, in the
5 event of a proposed sale or transfer of a dealership, the
6 manufacturer or distributor shall be permitted to exercise a right
7 of first refusal to acquire the assets or ownership interest of the
8 dealer of the new motor vehicle dealership, if such sale or transfer
9 is conditioned upon the manufacturer or dealer entering into a
10 dealer agreement with the proposed new owner or transferee, only if
11 all the following requirements are met:

12 1. To exercise its right of first refusal, the factory must
13 notify the new motor vehicle dealer in writing within sixty (60)
14 days of receipt of the completed proposal for the proposed sale
15 transfer;

16 2. The exercise of the right of first refusal will result in
17 the new motor vehicle dealer and the owner of the dealership
18 receiving the same or greater consideration as they have contracted
19 to receive in connection with the proposed change of ownership or
20 transfer;

21 3. The proposed sale or transfer of the dealership does not
22 involve the transfer or sale to a member or members of the family of
23 one or more dealer owners, or to a qualified manager or a
24 partnership or corporation controlled by such persons; and

1 4. The factory agrees to pay the reasonable expenses, including
2 attorney fees which do not exceed the usual, customary, and
3 reasonable fees charged for similar work done for other clients
4 incurred by the proposed new owner and transferee prior to the
5 exercise by the factory of its right of first refusal in negotiating
6 and implementing the contract for the proposed sale or transfer of
7 the dealership or dealership assets. Notwithstanding the foregoing,
8 no payment of expenses and attorney fees shall be required if the
9 proposed new dealer or transferee has not submitted or caused to be
10 submitted an accounting of those expenses within thirty (30) days of
11 receipt of the written request of the factory for such an
12 accounting. The accounting may be requested by a factory before
13 exercising its right of first refusal.

14 C. Nothing in this section shall prohibit, limit, restrict, or
15 impose conditions on:

16 1. Business activities, including without limitation the
17 dealings with motor vehicle manufacturers and the representatives
18 and affiliates of motor vehicle manufacturers, of any person that is
19 primarily engaged in the business of short-term, not to exceed
20 twelve (12) months, rental of motor vehicles and industrial and
21 construction equipment and activities incidental to that business,
22 provided that:

23 a. any motor vehicle sold by that person is limited to
24 used motor vehicles that have been previously used

1 exclusively and regularly by that person in the
2 conduct of business and used motor vehicles traded in
3 on motor vehicles sold by that person,

4 b. warranty repairs performed by that person on motor
5 vehicles are limited to those motor vehicles that the
6 person owns, previously owned, or takes in trade, and

7 c. motor vehicle financing provided by that person to
8 retail consumers for motor vehicles is limited to used
9 vehicles sold by that person in the conduct of
10 business; or

11 2. The direct or indirect ownership, affiliation, or control of
12 a person described in paragraph 1 of this subsection.

13 D. As used in this section:

14 1. "Substantially relates" means the nature of criminal conduct
15 for which the person was convicted has a direct bearing on the
16 fitness or ability to perform one or more of the duties or
17 responsibilities necessarily related to the occupation; and

18 2. "Poses a reasonable threat" means the nature of criminal
19 conduct for which the person was convicted involved an act or threat
20 of harm against another and has a bearing on the fitness or ability
21 to serve the public or work with others in the occupation.

22 E. Nothing in this section shall prohibit a manufacturer or
23 distributor from requiring a dealer to be in compliance with the
24 franchise agreement and authorized to sell a make and model based on

1 applicable reasonable standards and requirements that include but
2 are not limited to any facility, technology, or training
3 requirements necessary to sell or service a vehicle, in order to be
4 eligible for delivery or allotment of a make or model of a new motor
5 vehicle or an incentive.

6 SECTION 3. AMENDATORY 47 O.S. 2021, Section 565.2, as
7 amended by Section 10, Chapter 29, O.S.L. 2023 (47 O.S. Supp. 2023,
8 Section 565.2), is amended to read as follows:

9 Section 565.2 A. Irrespective of the terms, provisions, or
10 conditions of any franchise, or the terms or provisions of any
11 waiver, no manufacturer shall terminate, cancel, or fail to renew
12 any franchise with a licensed new motor vehicle dealer unless the
13 manufacturer has satisfied the notice requirements as provided in
14 this section and has good cause for cancellation, termination, or
15 nonrenewal. The manufacturer shall not attempt to cancel or fail to
16 renew the franchise agreement of a new motor vehicle dealer in this
17 state unfairly and without just provocation or without due regard to
18 the equities of the dealer or without good faith as defined herein.
19 As used herein, "good faith" means the duty of each party to any
20 franchise agreement to act in a fair and equitable manner toward
21 each other, with freedom from coercion or intimidation or threats
22 thereof from each other.

23 B. Irrespective of the terms, provisions, or conditions of any
24 franchise, or the terms or provisions of any waiver, good cause

1 shall exist for the purpose of a termination, cancellation, or
2 nonrenewal when:

3 1. The new motor vehicle dealer has failed to comply with a
4 provision of the franchise, which provision is both reasonable and
5 of material significance to the franchise relationship, or the new
6 motor vehicle dealer has failed to comply with reasonable
7 performance criteria for sales or service established by the
8 manufacturer, and the new motor vehicle dealer has been notified by
9 written notice from the manufacturer; and

10 2. The new motor vehicle dealer has received written
11 notification of failure to comply with the manufacturer's reasonable
12 sales performance standards, capitalization requirements, facility
13 commitments, business-related equipment acquisitions, or other such
14 remediable failings exclusive of those reasons enumerated in
15 paragraph 1 of subsection C of this section, and the new motor
16 vehicle dealer has been afforded a reasonable opportunity of not
17 less than six (6) months to comply with such a provision or
18 criteria.

19 C. Irrespective of the terms, provisions, or conditions of any
20 franchise agreement prior to the termination, cancellation, or
21 nonrenewal of any franchise, the manufacturer shall furnish
22 notification of such termination, cancellation, or nonrenewal to the
23 new motor vehicle dealer and the Oklahoma New Motor Vehicle
24 Commission as follows:

1 1. Not less than ninety (90) days prior to the effective date
2 of the termination, cancellation, or nonrenewal unless for a cause
3 described in paragraph 2 of this subsection;

4 2. Not less than fifteen (15) days prior to the effective date
5 of the termination, cancellation, or nonrenewal with respect to any
6 of the following:

7 a. insolvency of the new motor vehicle dealer, or the
8 filing of any petition by or against the new motor
9 vehicle dealer under any bankruptcy or receivership
10 law,

11 b. failure of the new motor vehicle dealer to conduct its
12 customary sales and service operations during its
13 customary business hours for seven (7) consecutive
14 business days, provided that such failure to conduct
15 business shall not be due to an act of God or
16 circumstances beyond the direct control of the new
17 motor vehicle dealer, or

18 c. conviction of the new motor vehicle dealer of any
19 felony which is punishable by imprisonment or a
20 violation of the Federal Odometer Act; and

21 3. Not less than one hundred eighty (180) days prior to the
22 effective date of the termination or cancellation where the
23 manufacturer or distributor is discontinuing the sale of the product
24 line.

1 The notification required by this subsection shall be by
2 certified mail, return receipt requested, and shall contain a
3 statement of intent to terminate, to cancel, or to not renew the
4 franchise, a statement of the reasons for the termination,
5 cancellation, or nonrenewal and the date the termination shall take
6 effect.

7 D. Upon the affected new motor vehicle dealer's receipt of the
8 aforementioned notice of termination, cancellation, or nonrenewal,
9 the new motor vehicle dealer shall have the right to file a protest
10 of such threatened termination, cancellation, or nonrenewal with the
11 Commission within thirty (30) days and request a hearing. The
12 hearing shall be held within one hundred eighty (180) days of the
13 date of the timely protest by the dealer and in accordance with the
14 provisions of the Administrative Procedures Act, Sections 250
15 through 323 of Title 75 of the Oklahoma Statutes, to determine if
16 the threatened cancellation, termination, or nonrenewal of the
17 franchise has been for good cause and if the factory has complied
18 with its obligations pursuant to subsections A, B, and C of this
19 section and the factory shall have the burden of proof. Either
20 party may request an additional one-hundred-eighty-day extension of
21 the hearing date from the Commission. Approval of the requested
22 extension may not be unreasonably withheld or delayed. If the
23 Commission finds that the threatened cancellation, termination, or
24 nonrenewal of the franchise has not been for good cause or violates

1 subsection A, B, or C of this section, then it shall issue a final
2 order stating that the threatened termination is wrongful. A
3 factory shall have the right to appeal such order. During the
4 pendency of the hearing and after the decision, through any appeal,
5 the franchise shall remain in full force and effect, including the
6 right to transfer the franchise. If the Commission finds that the
7 threatened cancellation, termination, or nonrenewal is for good
8 cause and does not violate subsection A, B, or C of this section,
9 the new motor vehicle dealer shall have the right to an appeal.
10 During the pendency of the action, including the final decision or
11 appeal, the franchise shall remain in full force and effect,
12 including the right to transfer the franchise. If the new motor
13 vehicle dealer prevails in the threatened termination action, the
14 Commission shall award to the new motor vehicle dealer the attorney
15 fees and costs incurred to defend the action.

16 E. If the factory prevails in an action to terminate, cancel,
17 or not renew any franchise, the new motor vehicle dealer shall be
18 allowed fair and reasonable compensation by the manufacturer for:

19 1. New, current, and previous model year vehicle inventory
20 which has been acquired from the manufacturer, and which is unused
21 and has not been damaged or altered while in the new motor vehicle
22 dealer's possession;

23 2. Supplies and parts which have been acquired from the
24 manufacturer, for the purpose of this section, limited to any and

1 all supplies and parts that are listed on the current parts price
2 sheet available to the new motor vehicle dealer;

3 3. Equipment and furnishings, provided the new motor vehicle
4 dealer purchased them from the manufacturer or its approved sources;
5 and

6 4. Special tools, with such fair and reasonable compensation to
7 be paid by the manufacturer within ninety (90) days of the effective
8 date of the termination, cancellation, or nonrenewal, provided the
9 new motor vehicle dealer has clear title to the inventory and other
10 items and is in a position to convey that title to the manufacturer.

11 a. For the purposes of paragraph 1 of this subsection,
12 fair and reasonable compensation shall be no less than
13 the net acquisition price of the vehicle paid by the
14 new motor vehicle dealer.

15 b. For the purposes of paragraphs 2, 3, and 4 of this
16 subsection, fair and reasonable compensation shall be
17 the net acquisition price paid by the new motor
18 vehicle dealer less a twenty-percent (20%) straight-
19 line depreciation for each year following the dealer's
20 acquisition of the supplies, parts, equipment,
21 furnishings, and/or special tools.

22 F. 1. If a factory prevails in an action to terminate, cancel,
23 or not renew any franchise and the new motor vehicle dealer is
24 leasing the dealership facilities, the manufacturer shall pay a

1 reasonable rent to the lessor in accordance with and subject to the
2 provisions of this subsection ~~G of this section~~. Nothing in this
3 section shall be construed to relieve a new motor vehicle dealer of
4 its duty to mitigate damages.

5 ~~G. 1.~~ Such reasonable rental value shall be paid only to the
6 extent the dealership premises are recognized in the franchise and
7 only if they are:

- 8 a. used solely for performance in accordance with the
9 franchise. If the facility is used for the operation
10 of more than one franchise, the reasonable rent shall
11 be paid based upon the portion of the facility
12 utilized by the franchise being terminated, canceled,
13 or nonrenewed, and
14 b. not substantially in excess of facilities recommended
15 by the manufacturer.

16 2. If the facilities are owned by the new motor vehicle dealer,
17 a related entity as defined in 26 U.S.C.A., Section 267(b), or a
18 member, partner or shareholder of the dealership, within ninety (90)
19 days following the effective date of the termination, cancellation,
20 or nonrenewal, at the dealer or related entity's option, the
21 manufacturer ~~will~~ shall either:

- 22 a. ~~locate a qualified purchaser who will offer to~~
23 ~~purchase the dealership facilities at a reasonable~~
24 ~~price,~~

- 1 ~~b. locate a qualified lessee who will offer to lease the~~
2 ~~premises for the remaining lease term at the rent set~~
3 ~~forth in the lease, or~~
- 4 ~~e. failing the foregoing, lease the dealership facilities~~
5 ~~at a reasonable rental value for the portion of the~~
6 ~~facility that is recognized in the franchise agreement~~
7 ~~for one (1) year~~
- 8 a. purchase the dealer's existing dealership facility and
9 real estate at its fair market value. If the factory
10 and dealer cannot agree on the fair market value of
11 the terminated franchise or agree to a process to
12 determine the fair market value, then the factory and
13 dealer shall utilize the process described in
14 paragraph 6 of subsection G of this section. If a
15 manufacturer or distributor purchases a dealership
16 facility and real estate, then it shall be entitled to
17 sole ownership, possession, use, and control of any
18 items, buildings, or property that were included in
19 the contract to purchase; or
- 20 b. locate a qualified purchaser who will offer to
21 purchase the dealership facilities and property at a
22 reasonable price.

23 3. If the facilities are leased by the new motor vehicle dealer
24 from an entity other than a related entity as defined in 26

1 U.S.C.A., Section 267(b), or a member, partner, or shareholder of
2 the dealership, within ninety (90) days following the effective date
3 of the termination, cancellation, or nonrenewal the manufacturer
4 will either:

- 5 a. locate a tenant or tenants satisfactory to the lessor,
6 who will sublet or assume the balance of the lease,
- 7 b. arrange with the lessor for the cancellation of the
8 lease without penalty to the new motor vehicle dealer,
9 or
- 10 c. failing the foregoing, lease the dealership facilities
11 at a reasonable rent for the portion of the facility
12 that is recognized in the franchise agreement for one
13 (1) year or the remainder of the lease, whichever is
14 less.

15 4. The manufacturer shall not be obligated to provide
16 assistance under this section if the new motor vehicle dealer:

- 17 a. fails to accept a bona fide offer from a prospective
18 purchaser, sublessee, or assignee,
- 19 b. refuses to execute a settlement agreement with the
20 manufacturer or lessor if such agreement with the
21 manufacturer or lessor would be without cost to the
22 new motor vehicle dealer, or
- 23 c. fails to make written request for assistance under
24 this section within ninety (90) days after the

1 effective date of the termination, cancellation, or
2 nonrenewal.

3 5. The manufacturer shall be entitled to occupy and use any
4 space for which it pays rent required by this section.

5 ~~H.~~ G. In addition to the repurchase requirements set forth in
6 subsections E and ~~G~~ F of this section, in the event the termination
7 ~~or, cancellation, or nonrenewal~~ is the result of a discontinuance of
8 a product line, the manufacturer or distributor shall compensate the
9 new motor vehicle dealer ~~in~~ as follows:

10 1. In an amount equivalent to the fair market value of the
11 terminated franchise as of the date immediately preceding the
12 manufacturer's or distributor's announcement or provide the new
13 motor vehicle dealer with a replacement franchise on substantially
14 similar terms and conditions as those offered to other same line-
15 make dealers;

16 2. If the facilities are owned by the new motor vehicle dealer
17 or a related entity as defined in 26 U.S.C.A., Section 267(b), or a
18 member, partner, or shareholder of the dealership, and the owner has
19 not sold the existing dealership facility and real estate within the
20 later of one hundred eighty (180) days of listing the property for
21 sale or ninety (90) days after the effective date of the
22 termination, then, upon the written request of the dealer, the
23 manufacturer or distributor shall purchase the dealer's existing
24 dealership facility and real estate. The facility and real estate

1 shall be valued as if a new motor vehicle dealership continues to
2 operate on the property. If the factory and dealer cannot agree on
3 the value of the terminated franchise or agree to a process to
4 determine the value, then the factory and dealer shall utilize the
5 process described in paragraph 6 of this subsection. If a
6 manufacturer or distributor purchases a dealership facility and real
7 estate, then it shall be entitled to sole ownership, possession,
8 use, and control of any items, buildings, or property that were
9 included in the contract to purchase;

10 3. If the facilities are leased by the new motor vehicle dealer
11 from an entity other than a related entity as defined in 26
12 U.S.C.A., Section 267(b), or a member, partner or shareholder of the
13 dealership, lease the dealership facilities at a reasonable rent for
14 the remainder of the lease;

15 4. Any amount of pecuniary loss to the new motor vehicle
16 dealership as a result of the discontinuation of a product line,
17 including, but not limited to, the cost of terminating services such
18 as the dealership management system contract;

19 5. The new motor vehicle dealer may immediately request payment
20 under this section following the announcement in exchange for
21 canceling any further franchise rights, except payments owed to the
22 new motor vehicle dealer in the ordinary course of business, or may
23 request payment under this section upon the final termination,
24 cancellation, or nonrenewal of the franchise. In either case,

1 payment under this section shall be made not later than ninety (90)
2 days after the fair market value is determined~~-, the lease agreement~~
3 is provided or other reasonable documentation is provided to the
4 manufacturer or distributor supporting other pecuniary losses; and

5 6. If the factory and new motor vehicle dealer cannot agree on
6 the ~~fair market~~ value of the terminated franchise or real estate, or
7 agree to a process to determine the ~~fair market~~ value, then, within
8 thirty (30) days of a written request by dealer, the factory and ~~new~~
9 motor vehicle dealer shall utilize a neutral third-party mediator to
10 resolve the disagreement shall select one appraiser, and the dealer
11 shall select one appraiser who shall make an independent appraisal.

12 The appraisers will be state-certified general real estate
13 appraisers and be in good standing with the Oklahoma Real Estate
14 Appraisal Board. Before entering upon their duties, such appraisers
15 shall take and subscribe an oath, before a notary public or some
16 other person authorized to administer oaths, that they will perform
17 their duties faithfully and impartially to the best of their
18 ability. If the appraisals are within ten percent (10%) of each
19 other, the average of the two appraisals shall constitute the value.
20 If the two appraisals differ by more than ten percent (10%), the two
21 appraisers may appoint a third appraiser who shall review the two
22 appraisals. The third appraisal, when taken with the first two
23 appraisals and averaged among the three, shall establish the value.
24 The cost of the third appraiser shall be shared equally by the

1 factory and dealer. The appraisers shall make a valuation and
2 determine the amount of compensation to be paid by the factory to
3 the dealer. The factory will then have ninety (90) days to complete
4 the transaction, unless otherwise agreed to by the parties. The
5 factory and the dealer shall each be responsible for the appraiser
6 it retains.

7 SECTION 4. This act shall become effective November 1, 2024.

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9 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE, dated
10 02/21/2024 - DO PASS, As Amended.

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