

1 **SENATE FLOOR VERSION**

2 February 25, 2021

3 **AS AMENDED**

4 SENATE BILL NO. 822

5 By: Leewright

6  
7 **[ motor vehicle dealers - licenses - fee -**  
8 **calculation - codification - effective date ]**  
9

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

11 SECTION 1. AMENDATORY 47 O.S. 2011, Section 562, as  
12 amended by Section 1, Chapter 191, O.S.L. 2013 (47 O.S. Supp. 2020,  
13 Section 562), is amended to read as follows:

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

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

- 22 a. recreational vehicles, as defined in the Recreational  
23 Vehicle Franchise Act, or  
24

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 who  
6    sells or leases, accepts orders for sale or lease, offers for sale  
7    or lease, advertises to sell, ~~leases~~ or lease, offers through a  
8    subscription or like arrangement, displays ~~new~~ motor vehicles and  
9    ~~holds a bona fide contract or franchise in effect with a~~  
10   ~~manufacturer or distributor authorized by the manufacturer to make~~  
11   or otherwise engages in any way, in whole or in part, in the  
12   business of selling or leasing new motor vehicles and used motor  
13   vehicles makes predelivery preparation of such new motor vehicles  
14   sold, leased or otherwise conveyed to purchasers consumers and to  
15   ~~perform~~ performs post-sale work pursuant to the manufacturer's or  
16   distributor's warranty and recall policies. As used herein,  
17   "authorized predelivery preparation" means the rendition by the  
18   dealer of services and safety adjustments on each new motor vehicle  
19   in accordance with the procedure and safety standards required by  
20   the manufacturer of the vehicle to be made before its delivery to  
21   the purchaser. "Performance of authorized post-sale work pursuant  
22   to the warranty", as used herein, means the rendition of services  
23   which are required by the terms of the warranty that stands extended  
24   to the vehicle at the time of its sale and are to be made in

1 accordance with the safety standards prescribed by the manufacturer.  
2 The term includes premises or facilities at which a person engages  
3 only in the repair of motor vehicles if repairs are performed  
4 pursuant to the terms of a franchise and motor vehicle  
5 manufacturer's warranty. ~~However, the term shall not include~~  
6 ~~premises or facilities at which a new motor vehicle dealer or~~  
7 ~~dealers within the area of responsibility of such dealer or dealers~~  
8 ~~as defined in the manufacturer's franchise agreement of such dealer~~  
9 ~~or dealers performs motor vehicle repairs pursuant to the terms of a~~  
10 ~~franchise and motor vehicle manufacturer's warranty and recall~~  
11 policies. For the purpose of Sections 561 through 567, 572, 578.1,  
12 579 and 579.1 of this title, the terms "new motor vehicle dealer"  
13 and "new motor vehicle dealership" shall be synonymous. The term  
14 "new motor vehicle dealer" does not include:

- 15 a. receivers, trustees, administrators, executors,  
16 guardians or other persons appointed by or acting  
17 under judgment or order of any court,
- 18 b. public officers while performing or in operation of  
19 their duties, or
- 20 c. employees of persons, corporations or associations  
21 enumerated in subparagraph a of this paragraph when  
22 engaged in the specific performance of their duties as  
23 such employees;

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1           3. "Motor vehicle salesperson" means any person who, for gain  
2 or compensation of any kind, either directly or indirectly,  
3 regularly or occasionally, by any form of agreement or arrangement,  
4 sells or negotiates for the sale of any new motor vehicle for any  
5 new motor vehicle dealer to any one or more third parties;

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

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

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

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

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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 motor  
16 vehicle dealer and a manufacturer of a new motor vehicle or its  
17 distributor or factory branch by which the dealer is authorized to  
18 engage in the ~~business of selling any specified make or makes of new~~  
19 ~~motor vehicles~~ activities of a new motor vehicle dealer as defined  
20 herein;

21 12. "New or unused motor vehicle" means a vehicle which is in  
22 the possession of the manufacturer or distributor or has been sold  
23 only to the holder of a valid ~~selling agreement~~, franchise ~~or~~  
24 ~~contract~~, granted by the manufacturer or distributor for the sale of

1 that make of new vehicle so long as the manufacturer's statement of  
2 origin has not been assigned to anyone other than a licensed  
3 franchised new motor vehicle dealer of the same line-make;

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

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

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

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

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

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

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

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 who is in the business of selling any new powersports  
8 vehicles except for retail implement dealers; ~~and~~

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 such term is defined in 15 U.S.C Section 6809(4) as it existed on  
15 January 1, 2020, that is:

16 a. collected by a dealer, and

17 b. provided by the dealer directly to a manufacturer or  
18 third party acting on behalf of a manufacturer. Such  
19 term shall not include the same or similar data  
20 obtained by a manufacturer from any source other than  
21 the dealer or dealer's data management system; and

22 25. "Data management system" means a computer hardware or  
23 software system that:  
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- 1           a. is owned, leased or licensed by a dealer including a  
2           system or web-based applications, computer software or  
3           computer hardware,  
4           b. is located at the dealership or hosted remotely, and  
5           c. stores and provides access to consumer data collected  
6           or stored by a dealer.

7           Such term shall include, but shall not be limited to, dealership  
8 management systems and customer relations management systems.

9           SECTION 2.           AMENDATORY           47 O.S. 2011, Section 564, as last  
10 amended by Section 1, Chapter 79, O.S.L. 2019 (47 O.S. Supp. 2020,  
11 Section 564), is amended to read as follows:

12           Section 564. A. It shall be unlawful for any person, firm,  
13 association, corporation or trust to engage in business as, or serve  
14 in the capacity of, or act as a motor vehicle dealer or manufacturer  
15 or distributor of new motor vehicles, or factory branch, distributor  
16 branch or factory representative or distributor representative, as  
17 ~~such~~ defined in Section 562 of this title, in this state without  
18 first obtaining a license therefor as provided for by law. Any  
19 person, firm, association, corporation or trust engaging in more  
20 than one of such capacities or having more than one place where such  
21 business is carried on or conducted shall be required to obtain and  
22 hold a current license for each thereof. Provided that, a new motor  
23 vehicle dealer's license shall authorize one person to sell in the  
24 event such person shall be the owner of a proprietorship, or the



1 person designated as principal in the dealer's franchise or the  
2 managing officer or one partner if no principal person is named in  
3 the franchise. Further, provided that a factory or an entity  
4 affiliated by any ownership or control by the factory shall not be  
5 permitted to be licensed as a motor vehicle dealer.

6 B. Applications for licenses required to be obtained under  
7 provisions of Section 561 et seq. of this title shall be verified by  
8 the oath or affirmation of the applicant and shall be on forms  
9 prescribed by the Oklahoma Motor Vehicle Commission and furnished to  
10 such applicants, and shall contain such information as the  
11 Commission deems necessary to enable it to fully determine the  
12 qualifications and eligibility of the several applicants to receive  
13 the license or licenses applied for. The Commission shall require  
14 in such application, or otherwise, information relating to the  
15 applicant's financial standing, the applicant's business integrity,  
16 whether the applicant has an established place of business and is  
17 primarily engaged in the pursuit, avocation or business for which a  
18 license, or licenses, are applied for, and whether the applicant is  
19 able to properly conduct the business for which a license, or  
20 licenses, are applied for, and such other pertinent information  
21 consistent with the safeguarding of the public interest and the  
22 public welfare. All such applications for license or licenses shall  
23 be accompanied by the appropriate fee or fees therefor in accordance  
24 with the schedule thereof hereinafter set out. In the event any

1 such application is denied and the license applied for is not  
2 issued, the entire license fee shall be returned to the applicant.  
3 All licenses issued under the provisions of Section 561 et seq. of  
4 this title shall expire on June 30, following the date of issue and  
5 shall be nontransferable. All applications for renewal of a license  
6 for a new motor vehicle dealer, manufacturer, distributor or  
7 manufacturer's or distributor's representative shall be submitted by  
8 June 1 of each year, and such license or licenses will be issued by  
9 July 1. If applications have not been made for renewal of licenses  
10 at the times described in this subsection, it shall be illegal for  
11 any person to represent himself or herself and act as a dealer,  
12 manufacturer, distributor or manufacturer's or distributor's  
13 representative. Motor license agents will be notified not to accept  
14 such dealers' titles until such time as licenses have been issued by  
15 the Commission.

16 C. The schedule of license fees to be charged and received by  
17 the Commission for the licenses issued hereunder shall be as  
18 follows:

19 1. For each factory branch or distributor branch, Four Hundred  
20 Dollars (\$400.00) initial fee with annual renewal fee of Three  
21 Hundred Dollars (\$300.00);

22 2. For each manufacturer or distributor of new motor vehicles,  
23 Four Hundred Dollars (\$400.00) initial fee with annual renewal fee  
24 of Three Hundred Dollars (\$300.00);

1       3. For each factory representative or distributor  
2 representative, One Hundred Dollars (\$100.00) annually;

3       4. For each new motor vehicle dealer, except powersports  
4 vehicle dealers, initial fee of Three Hundred Dollars (\$300.00) per  
5 franchise sold at each location licensed, with an annual renewal fee  
6 of One Hundred Dollars (\$100.00) per franchise sold at each location  
7 per year; ~~and~~

8       5. For each powersports vehicle dealer, initial fee of Three  
9 Hundred Dollars (\$300.00) per manufacturer represented by the dealer  
10 at each location licensed, with an annual renewal fee of One Hundred  
11 Dollars (\$100.00) per manufacturer represented by the dealer at each  
12 location licensed per year; and

13       6. For each motor vehicle direct shipper, initial fee of Three  
14 Hundred Dollars (\$300.00), with an annual renewal fee of One Hundred  
15 Dollars (\$100.00).

16       D. The licenses issued to each new motor vehicle dealer,  
17 manufacturer, distributor, factory branch, distributor branch or  
18 representative, if a corporation, shall specify the location of the  
19 factory, office or branch thereof. In case such location is  
20 changed, the Commission may endorse the change of location on the  
21 license without charge unless the change of address triggers a  
22 relocation of a new motor vehicle dealer pursuant to the provisions  
23 of Section 578.1 of this title. The license of each dealer shall be  
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1 posted in a conspicuous place in the dealer's place or places of  
2 business.

3 Every motor vehicle factory representative or distributor  
4 representative if an individual shall physically possess the license  
5 when engaged in business, and shall display same upon request. The  
6 name of the employer of such factory representative or distributor  
7 representative shall be stated on the license and, in case of a  
8 change of employer, the holder of such license shall immediately  
9 mail same to the Commission for its endorsement of such change  
10 thereon. The Commission shall endorse each such change of employer  
11 on licenses for a fee of Ten Dollars (\$10.00).

12 E. The powersports dealer license shall only allow the sale of  
13 the specific types of powersports vehicles authorized by the  
14 manufacturer and agreed to by the powersports dealer.

15 SECTION 3. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 564.3 of Title 47, unless there  
17 is created a duplication in numbering, reads as follows:

18 A. A person who is licensed in its state of domicile as a  
19 franchised new motor vehicle dealer, and which is not affiliated by  
20 ownership or control of a manufacturer, distributor, factory branch,  
21 factory representative, distributor branch or distributor  
22 representative, as defined in Section 562 of this title, may apply  
23 to the Commission for a motor vehicle direct shipper license. Only  
24 a person holding a direct shipper license may ship a new motor

1 vehicle from out of the state to a person, association or entity who  
2 is an Oklahoma resident. A motor vehicle dealer licensed in the  
3 state shall not be required to obtain a direct shipper license to  
4 ship a new motor vehicle to a person, association or entity who is  
5 an Oklahoma resident. Any person who ships less than three (3) new  
6 motor vehicles per year from out of the state to a person,  
7 association or entity who is an Oklahoma resident shall not be  
8 required to obtain a direct shipper license. The license fee for a  
9 direct shipper shall be determined by the Commissioner. The amount  
10 of the fee must approximate and reasonably reflect the costs  
11 necessary to defray the expenses of the Commissioner's service and  
12 activities in connection with this section.

13 B. It shall be unlawful for common or permit carriers,  
14 operators of trucks, buses or other conveyances or out-of-state  
15 manufacturers or suppliers to make delivery of any new motor vehicle  
16 from without the State of Oklahoma to any person, association or  
17 corporation within the state unless the delivery is made by a person  
18 licensed in this state as a motor vehicle dealer or a motor vehicle  
19 shipper.

20 C. A person that sells and ships a new motor vehicle directly  
21 from any person, association or corporation to a resident of the  
22 State of Oklahoma without holding a valid motor vehicle direct  
23 shipper's license, upon conviction, shall be guilty of a  
24 misdemeanor.

1 SECTION 4. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 564.4 of Title 47, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. With respect to consumer data, a factory or third party  
5 acting on behalf of a factory:

6 1. Shall comply with and shall not cause a dealer to violate  
7 any applicable restrictions on reuse or disclosure of the consumer  
8 data established by federal or state law;

9 2. Shall provide a written statement to the dealer upon request  
10 describing the established procedures adopted by such factory or  
11 third party acting on behalf of the factory which meet or exceed any  
12 federal or state requirements to safeguard the consumer data  
13 including, but not limited to, those established in the Gramm-Leach-  
14 Bliley Act, 15 U.S.C. 6801, et seq.;

15 3. Shall, upon the written request of the dealer, provide a  
16 written list of the consumer data obtained from the dealer and all  
17 persons to whom any consumer data has been provided by the factory  
18 or a third party acting on behalf of a factory during the preceding  
19 six months. The dealer may make such a request no more than once  
20 every six months. The list must indicate the specific fields of  
21 consumer data which were provided to each person;

22 4. May not require that a dealer grant the factory or a third  
23 party acting on behalf of a factory direct or indirect access to  
24 such dealer's data management system to obtain consumer data. A

1 factory or a third party acting on behalf of a factory shall permit  
2 a dealer to furnish consumer data in a widely accepted file format,  
3 such as comma delimited, and through a third-party vendor selected  
4 by the dealer. However, a factory or a third party acting on behalf  
5 of a factory may access or obtain consumer data directly from a  
6 dealer's data management system with the express written consent of  
7 the dealer. The consent shall be in the form of a standalone  
8 written document that is executed by the dealer principal/operator  
9 and may be withdrawn by the dealer upon thirty (30) days' written  
10 notice to the factory as applicable. Such consent shall not be  
11 required as a condition to a new motor vehicle dealer's  
12 participation in an incentive program unless such consent is  
13 necessary to obtain consumer data to implement the program; and

14 5. Shall indemnify the dealer for any third-party claims  
15 asserted against or damages incurred by the dealer to the extent  
16 caused by access to, use of, or disclosure of consumer data in  
17 violation of this section by the factory or a third party to whom  
18 the factory has provided consumer data. Nothing contained in this  
19 section shall limit the ability of the factory to require that the  
20 dealer provide, or use in accordance with the law, such customer  
21 information related solely to such factory's own vehicle makes to  
22 the extent necessary to do any of the following:  
23  
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- a. satisfy any safety or recall notice obligations or other legal notice obligations on the part of the manufacturer,
- b. complete the sale and delivery of a new motor vehicle to a customer,
- c. validate and pay customer or dealer incentives, or
- d. submit to the factory claims for any services supplied by the dealer for any claim for warranty parts or repair.

SECTION 5. AMENDATORY 47 O.S. 2011, Section 565, as last amended by Section 2, Chapter 79, O.S.L. 2019 (47 O.S. Supp. 2020, Section 565), is amended to read as follows:

Section 565. A. The Oklahoma Motor Vehicle Commission may deny an application for a license, or revoke or suspend a license or impose a fine not to exceed Ten Thousand Dollars (\$10,000.00) against a manufacturer or distributor or a fine not to exceed One Thousand Dollars (\$1,000.00) against a dealer per occurrence that any provision of Sections 561 through 567, 572, 578.1, 579 and 579.1 of this title is violated or for any of the following reasons:

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



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

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

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

9           5. Being a new motor vehicle dealer who:

10           a. has required a purchaser of a new motor vehicle, as a  
11 condition of sale and delivery thereof, to also  
12 purchase special features, appliances, accessories or  
13 equipment not desired or requested by the purchaser  
14 and installed by the dealer,

15           b. uses any false or misleading advertising in connection  
16 with business as a new motor vehicle dealer,

17           c. has committed any unlawful act which resulted in the  
18 revocation of any similar license in another state,

19           d. has failed or refused to perform any written agreement  
20 with any retail buyer involving the sale of a motor  
21 vehicle,

22           e. has been convicted of a crime involving moral  
23 turpitude,

24

1 f. has committed a fraudulent act in selling, purchasing  
2 or otherwise dealing in new motor vehicles or has  
3 misrepresented the terms and conditions of a sale,  
4 purchase or contract for sale or purchase of a new  
5 motor vehicle or any interest therein including an  
6 option to purchase such vehicle,

7 g. has failed to meet or maintain the conditions and  
8 requirements necessary to qualify for the issuance of  
9 a license, or

10 h. completes any sale or transaction of an extended  
11 service contract, extended maintenance plan, or  
12 similar product using contract forms that do not  
13 conspicuously disclose the identity of the service  
14 contract provider;

15 6. Being a new motor vehicle salesperson who is not employed as  
16 such by a licensed new motor vehicle dealer;

17 7. Being a new motor vehicle dealer who:

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

19 b. does not provide for a suitable repair shop separate  
20 from the display room with ample space to repair or  
21 recondition one or more vehicles at the same time, and  
22 which is staffed with properly trained repair  
23 technicians and is equipped with such parts, tools and  
24 equipment as may be requisite for the servicing of

1 motor vehicles in such a manner as to make them comply  
2 with the safety laws of this state and to properly  
3 fulfill the dealer's or manufacturer's warranty  
4 obligation,

5 c. does not hold a franchise in effect with a  
6 manufacturer or distributor of new or unused motor  
7 vehicles for the sale of the same and is not  
8 authorized by the manufacturer or distributor to  
9 render predelivery preparation of such vehicles sold  
10 to purchasers and to perform any authorized post-sale  
11 work pursuant to the manufacturer's or distributor's  
12 warranty,

13 d. employs or utilizes the services of used motor vehicle  
14 lots or dealers or other unlicensed persons in  
15 connection with the sale of new motor vehicles,

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

18 f. fails to order and stock a reasonable number of new  
19 motor vehicles necessary to meet customer demand for  
20 each of the new motor vehicles included in the new  
21 motor vehicle dealer's franchise agreement, unless the  
22 new motor vehicles are not readily available from the  
23 manufacturer or distributor due to limited production;

24 8. Being a factory that has:

1 a. either induced or attempted to induce by means of  
2 coercion or intimidation, any new motor vehicle  
3 dealer:

4 (1) to accept delivery of any motor vehicle or  
5 vehicles, parts or accessories therefor, or any  
6 other commodities including advertising material  
7 which shall not have been ordered by the new  
8 motor vehicle dealer,

9 (2) to order or accept delivery of any motor vehicle  
10 with special features, appliances, accessories or  
11 equipment not included in the list price of the  
12 motor vehicles as publicly advertised by the  
13 manufacturer thereof, or

14 (3) to order or accept delivery of any parts,  
15 accessories, equipment, machinery, tools,  
16 appliances or any commodity whatsoever, ~~or~~

17 b. induced under threat or discrimination by the  
18 withholding from delivery to a motor vehicle dealer  
19 certain models of motor vehicles, changing or amending  
20 unilaterally the dealer's allotment of motor vehicles  
21 and/or withholding and delaying delivery of such  
22 vehicles out of the ordinary course of business, in  
23 order to induce by such coercion any such dealer to  
24 participate or contribute to any local or national

1 advertising fund controlled directly or indirectly by  
2 the factory or for any other purposes such as contest,  
3 "give-aways" or other so-called sales promotional  
4 devices and/or change of quotas in any sales contest;  
5 or has required motor vehicle dealers, as a condition  
6 to receiving their vehicle allotment, to order a  
7 certain percentage of the vehicles with optional  
8 equipment not specified by the new motor vehicle  
9 dealer; however, nothing in this section shall  
10 prohibit a factory from supporting an advertising  
11 association which is open to all dealers on the same  
12 basis,

13 c. used or proposed to use an unreasonable, arbitrary or  
14 unfair sales or other standard to measure a dealer's  
15 performance under any factory program, policy or the  
16 franchise agreement. It shall be considered  
17 unreasonable, arbitrary and unfair for the factory to  
18 fail to take into account the dealer's specific and  
19 market circumstances in establishing the sales or  
20 other standard,

21 d. failed or refused to sell, or offer for sale, new and  
22 used motor vehicles to all of its same line-make  
23 franchised dealers at the same price for a comparably  
24 equipped motor vehicle, on the same terms, with no

1 differential in discount, allowance, credit or bonus,  
2 or

3 e. failed to reimburse a dealer in full for the actual  
4 cost of providing a loaner vehicle to any customer who  
5 is having a vehicle serviced at the dealership if the  
6 provision of such a loaner vehicle is required by the  
7 factory. For purposes of this provision, actual cost  
8 shall not exceed the average cost in the dealer's  
9 region for the rental of a substantially similar make  
10 and model as the vehicle being serviced;

11 9. Being a factory that:

- 12 a. has attempted to coerce or has coerced any new motor  
13 vehicle dealer to enter into any agreement or to  
14 cancel any agreement, or fails to act in good faith  
15 and in a fair, equitable and nondiscriminatory manner;  
16 or has directly or indirectly coerced, intimidated,  
17 threatened or restrained any motor vehicle dealer; or  
18 has acted dishonestly, or has failed to act in  
19 accordance with the reasonable standards of fair  
20 dealing,
- 21 b. has failed to compensate its dealers for the work and  
22 services they are required to perform in connection  
23 with the dealer's delivery and preparation obligations  
24 according to the agreements on file with the

1 Commission which must be found by the Commission to be  
2 reasonable, or fail to adequately and fairly  
3 compensate its dealers for labor, parts and other  
4 expenses incurred by such dealer to perform under and  
5 comply with manufacturer's warranty agreements,  
6 extended warranty agreements, maintenance agreements,  
7 recall repairs and similar work, which shall include  
8 diagnostic work and goodwill repairs. Time allowances  
9 for the diagnosis and performance of repair work shall  
10 be reasonable and adequate for the work to be  
11 performed. Adequate and fair compensation for parts  
12 and/or labor shall be established by the dealer  
13 submitting to the manufacturer or distributor one  
14 hundred sequential nonwarranty customer-paid service  
15 repair orders which contain warranty-like ~~parts~~  
16 repairs, or ninety (90) consecutive days of  
17 nonwarranty customer-paid service repair orders which  
18 contain warranty-like ~~parts~~ repairs, whichever is  
19 less, covering repairs made no more than one hundred  
20 eighty (180) days before the submission and declaring  
21 the average percentage markup. ~~Adequate and fair~~  
22 ~~compensation for labor shall be established by the~~  
23 ~~dealer submitting to the manufacturer or distributor~~  
24 ~~one hundred sequential customer-paid service repair~~

1 ~~orders which contain labor charges, or ninety (90)~~  
2 ~~consecutive days of customer-paid service repair~~  
3 ~~orders which contain labor charges, whichever is less~~  
4 The dealer shall calculate its labor rate by dividing  
5 the amount of the dealer's total labor sales from the  
6 qualified repair orders by the total labor hours that  
7 generated those sales. The dealer shall calculate its  
8 parts rate by determining the total charges for parts  
9 from the qualified repair orders submitted, dividing  
10 that amount by the dealer's total cost of the purchase  
11 of those parts, subtracting one, and multiplying by  
12 100 to produce a percentage. When submitting repair  
13 orders to ~~calculate~~ establish a parts and/or labor  
14 rate, a dealer need not include ~~repair orders~~ repairs  
15 for:

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



1           (5) repairs with aftermarket parts, when calculating  
2           the retail parts rate but not the retail labor  
3           rate,  
4           (6) repairs on aftermarket parts,  
5           (7) replacement of or work on tires including front-  
6           end alignments and wheel or tire rotations,  
7           (8) repairs of motor vehicles owned by the dealer or  
8           employee thereof at the time of the repair,  
9           (9) engine and/or transmission assemblies,  
10          (10) vehicle reconditioning, or  
11          (11) items that do not have individual part numbers  
12          including, but not limited to, nuts, bolts and  
13          fasteners. A manufacturer or distributor may,  
14          not later than thirty (30) days after submission,  
15          rebut that declared rate in writing by reasonably  
16          substantiating that the rate is inaccurate or  
17          ~~unreasonable in light of the practices of all~~  
18          ~~other franchised motor vehicle dealers in an~~  
19          ~~economically similar part of the state offering~~  
20          ~~the same line-make vehicles~~ not established in  
21          accordance with this provision. A manufacturer  
22          or distributor shall not deny the dealer's  
23          submission to establish the labor rate, retail  
24          parts rate or both, under this provision, and

1 instead, must approve or rebut as provided  
2 herein. The retail rate shall go into effect  
3 thirty (30) days following the approval by the  
4 manufacturer, subject to audit of the submitted  
5 repair orders by the franchisor and a rebuttal of  
6 the declared rate as described above. If the  
7 declared rate is rebutted, the manufacturer or  
8 distributor shall provide written notice stating  
9 the specific reasons for the rebuttal, a full  
10 explanation of any and all reasons for the  
11 allegation, evidence substantiating the  
12 manufacturer or distributor's position, a copy of  
13 all calculations used by the franchisor in  
14 determining the manufacturer or distributor's  
15 position and propose an adjustment in writing of  
16 the average percentage markup based on that  
17 rebuttal not later than thirty (30) days after  
18 submission. If the dealer does not agree with  
19 the proposed average percentage markup, the  
20 dealer may file a protest with the Commission not  
21 later than thirty (30) days after receipt of that  
22 proposal by the manufacturer or distributor. In  
23 the event a protest is filed, the manufacturer or  
24 distributor shall have the burden of proof to

1 establish the new motor vehicle dealer's  
2 submitted rate was inaccurate or ~~unreasonable in~~  
3 ~~light of the practices of all other franchised~~  
4 ~~motor vehicle dealers in an economically similar~~  
5 ~~part of the state~~ not established in accordance  
6 with this provision. A manufacturer or  
7 distributor may not retaliate against any new  
8 motor vehicle dealer seeking to exercise its  
9 rights under this provision. A manufacturer or  
10 distributor may require a dealer to submit repair  
11 orders in accordance with this section in order  
12 to validate a dealer's retail rate for parts or  
13 labor not more often than once every twelve (12)  
14 months. Any validation of the rate as permitted  
15 herein must use the same criteria for  
16 establishment of the rate in this provision. A  
17 manufacturer or distributor may not otherwise  
18 recover its costs from dealers within this state  
19 including an increase in the wholesale price of a  
20 vehicle or surcharge imposed on a dealer solely  
21 intended to recover the cost of reimbursing a  
22 dealer for parts and labor pursuant to this  
23 provision; provided, a manufacturer or  
24 distributor shall not be prohibited from

1                   increasing prices for vehicles or parts in the  
2                   normal course of business. All claims made by  
3                   dealers for compensation for delivery,  
4                   preparation and ~~warranty~~ repair work shall be  
5                   paid within thirty (30) days after approval and  
6                   shall be approved or disapproved within thirty  
7                   (30) days after receipt. When any claim is  
8                   disapproved, the dealer shall be notified in  
9                   writing of the grounds for disapproval. The  
10                  dealer's delivery, preparation and warranty  
11                  obligations as filed with the Commission shall  
12                  constitute the dealer's sole responsibility for  
13                  product liability as between the dealer and  
14                  manufacturer. A factory may reasonably and  
15                  periodically audit a new motor vehicle dealer to  
16                  determine the validity of paid claims for dealer  
17                  compensation or any charge-backs for warranty  
18                  parts or service compensation. Except in cases  
19                  of suspected fraud, audits of warranty payments  
20                  shall only be for the one-year period immediately  
21                  following the date of the payment. A  
22                  manufacturer shall reserve the right to  
23                  reasonable, periodic audits to determine the  
24                  validity of paid claims for dealer compensation

1 or any charge-backs for consumer or dealer  
2 incentives. Except in cases of suspected fraud,  
3 audits of incentive payments shall only be for a  
4 one-year period immediately following the date of  
5 the payment. A factory shall not deny a claim or  
6 charge a new motor vehicle dealer back subsequent  
7 to the payment of the claim unless the factory  
8 can show that the claim was false or fraudulent  
9 or that the new motor vehicle dealer failed to  
10 reasonably substantiate the claim by the written  
11 reasonable procedures of the factory. The  
12 factory shall provide written notice to a dealer  
13 of a proposed charge-back that is the result of  
14 an audit along with the specific audit results  
15 and proposed charge-back amount. A dealer that  
16 receives notice of a proposed charge-back  
17 pursuant to a factory's audit has the right to  
18 file a protest with the Commission within thirty  
19 (30) days after receipt of the notice of the  
20 charge-back or audit results, whichever is later.  
21 The factory is prohibited from implementing the  
22 charge-back or debiting the dealer's account  
23 until either the time frame for filing a protest  
24 has passed or a final adjudication is rendered by

1 the Commission, whichever is later, unless the  
2 dealer has agreed to the charge-back or charge-  
3 backs,

4 c. fails to compensate the new motor vehicle dealer for a  
5 used motor vehicle:

6 (1) that is of the same make and model manufactured,  
7 imported or distributed by the manufacturer,

8 (2) that is subject to a recall notice issued by the  
9 manufacturer, distributor or an authorized  
10 governmental agency, regardless of whether the  
11 vehicle is identified by its vehicle  
12 identification number,

13 (3) that is held by the new motor vehicle dealer in  
14 the dealer's inventory at the time the recall  
15 notice is issued or that is taken by the new  
16 motor vehicle dealer into the dealer's inventory  
17 after the recall notice as a result of a retail  
18 consumer trade-in or a lease return to the dealer  
19 inventory in accordance with an applicable lease  
20 contract,

21 (4) that cannot be repaired due to the  
22 unavailability, within 30 days after issuance of  
23 the recall notice, of a remedy or parts necessary  
24

1 for the new motor vehicle dealer to make the  
2 recall repair, and

3 (5) for which the factory has not issued a written  
4 statement to the new motor vehicle dealer  
5 indicating that the used motor vehicle may be  
6 sold or delivered to a retail customer before  
7 completion of the recall repair. The purpose of  
8 such written statement is to provide notice to  
9 the new motor vehicle dealer that the vehicle may  
10 be sold or delivered based solely on the specific  
11 recall notice and is not intended to address any  
12 other aspect of the vehicle unrelated to the  
13 recall notice,

14 (a) the factory shall pay the compensation  
15 required under this subsection within 30  
16 days after the motor vehicle dealer's  
17 application for payment,

18 (b) compensation under this section must be the  
19 greater of:

20 i. payment at a rate of at least 1.5  
21 percent per month of the motor vehicle  
22 value, as determined by the average  
23 Black Book value of the corresponding  
24 model year vehicle of average

1 condition, of each eligible used motor  
2 vehicle in the new motor vehicle  
3 dealer's inventory for each month that  
4 the dealer does not receive a remedy  
5 and parts to complete the required  
6 recall repair. Such payment must be  
7 prorated for any period less than one  
8 month based on the number of days  
9 during the month each eligible used  
10 motor vehicle is in the motor vehicle  
11 dealer's inventory, or

12 ii. payment under a national program  
13 applicable to all motor vehicle dealers  
14 holding a franchise agreement with the  
15 manufacturer for the motor vehicle  
16 dealer's costs associated with holding  
17 the eligible used motor vehicles,

18 d. unreasonably fails or refuses to offer to its same  
19 line-make franchised dealers a reasonable supply and  
20 mix of all models manufactured for that line-make, or  
21 unreasonably requires a dealer to pay any extra fee,  
22 purchase unreasonable advertising displays or other  
23 materials, enter into a separate agreement, or  
24 remodel, renovate, or recondition the dealer's



1 existing facilities as a prerequisite to receiving a  
2 model or series of vehicles. It shall be a violation  
3 of this provision for new vehicle allocation to be  
4 withheld subject to any requirement to purchase or  
5 sell any number of used or off-lease vehicles. The  
6 failure to deliver any such new motor vehicle shall  
7 not be considered a violation of ~~the section~~ this  
8 provision if the failure is not arbitrary or is due to  
9 lack of manufacturing capacity or to a strike or labor  
10 difficulty, a shortage of materials, a freight embargo  
11 or other cause over which the manufacturer has no  
12 control. However, ~~this~~ for vehicles planned for  
13 limited production, each dealer shall receive at least  
14 one (1) such vehicle and otherwise shall receive a  
15 reasonable and proportional share of such vehicle  
16 allocation. This subparagraph shall not apply to  
17 recreational vehicles or limited production model  
18 vehicles,

19 ~~d.~~

20 e. except as necessary to comply with a health or safety  
21 law, or to comply with a technology requirement which  
22 is necessary to sell or service a motor vehicle that  
23 the franchised motor vehicle dealer is authorized or  
24 licensed by the franchisor to sell or service,

1 requires a new motor vehicle dealer to provide any  
2 service or take any action or to construct a new  
3 facility or substantially renovate the new motor  
4 vehicle dealer's existing facility, in order to  
5 receive all models manufactured for that line-make,

6 f. except as necessary to comply with a health or safety  
7 law, or to comply with a technology requirement which  
8 is necessary to sell or service a motor vehicle that  
9 the franchised motor vehicle dealer is authorized or  
10 licensed by the franchisor to sell or service,  
11 requires a new motor vehicle dealer to construct a new  
12 facility or substantially renovate the new motor  
13 vehicle dealer's existing facility unless the facility  
14 construction or renovation is justified by the  
15 economic conditions existing at the time, as well as  
16 the reasonably foreseeable projections, in the  
17 dealer's market and in the automotive industry.

18 However, this subparagraph shall not apply if the  
19 dealer voluntarily agrees to facility construction or  
20 renovation in exchange for ~~factory provides~~ money,  
21 credit, allowance, reimbursement, except for payments  
22 on a per vehicle basis or additional vehicle  
23 allocation to a dealer from the factory to compensate  
24 the dealer for the cost of, or a portion of the cost

1 of, the facility construction or renovation. Except  
2 as necessary to comply with a health or safety law, or  
3 to comply with a technology requirement which is  
4 necessary to sell or service a motor vehicle that the  
5 franchised motor vehicle dealer is authorized or  
6 licensed by the franchisor to sell or service, a  
7 dealer which completes a facility construction or  
8 renovation pursuant to factory requirements shall not  
9 be required to construct a new facility or renovate  
10 the existing facility for ten (10) years during which  
11 time the dealer will be considered in compliance with  
12 any new facility program for purposes of being  
13 entitled to all incentive or bonus payments offered to  
14 same line-make dealers,

15 ~~e.~~

16 g. requires a new motor vehicle dealer to establish an  
17 exclusive facility, unless supported by reasonable  
18 business, market and economic considerations;  
19 provided, that this provision shall not restrict the  
20 terms of any agreement for such exclusive facility  
21 voluntarily entered into and supported by valuable  
22 consideration separate from the new motor vehicle  
23 dealer's right to sell and service motor vehicles for  
24 the franchisor,

1 ~~f.~~

2 h. requires a new motor vehicle dealer to enter into a  
3 site-control agreement covering any or all of the new  
4 motor vehicle dealer's facilities or premises;  
5 provided, that this provision shall not restrict the  
6 terms of any site-control agreement voluntarily  
7 entered into and supported by valuable consideration  
8 separate from the new motor vehicle dealer's right to  
9 sell and service motor vehicles for the franchisor.  
10 Notwithstanding the foregoing or the terms of any  
11 site-control agreement, a site-control agreement  
12 automatically extinguishes if all of the factory's  
13 franchises that operated from the location that are  
14 the subject of the site-control agreement are  
15 terminated by the factory as part of the  
16 discontinuance of a product line, ~~or~~

17 ~~g.~~

18 i. refuses to pay, or claim reimbursement from, a dealer  
19 for sales, incentives or other payments related to a  
20 motor vehicle sold by the dealer because the purchaser  
21 of the motor vehicle exported or resold the motor  
22 vehicle in violation of the policy of the factory  
23 unless the factory can show that, at the time of the  
24 sale, the dealer knew or reasonably should have known

1 of the purchaser's intention to export or resell the  
2 motor vehicle. There is a rebuttable presumption that  
3 the dealer did not know or should not have known that  
4 the vehicle would be exported if the vehicle is titled  
5 and registered in any state of the United States, or

6 j. requires a new motor vehicle dealer to purchase goods  
7 or services for the construction, renovation, or  
8 improvement of the dealer's facility from a vendor  
9 chosen by the factory if goods or services available  
10 from other sources are of substantially similar  
11 quality and design and comply with all applicable  
12 laws; provided, however, that such goods are not  
13 subject to the factory's intellectual property or  
14 trademark rights and the new motor vehicle dealer has  
15 received the factory's approval, which approval may  
16 not be unreasonably withheld. Nothing in this  
17 subparagraph may be construed to allow a new motor  
18 vehicle dealer to impair or eliminate a factory's  
19 intellectual property, trademark rights or trade dress  
20 usage guidelines. Nothing in this section prohibits  
21 the enforcement of a voluntary agreement between the  
22 factory and the new motor vehicle dealer where  
23 separate and valuable consideration has been offered  
24 and accepted;

1 10. Being a factory that:

2 a. establishes a system of motor vehicle allocation or  
3 distribution which is unfair, inequitable or  
4 unreasonably discriminatory. Upon the request of any  
5 dealer franchised by it, a factory shall disclose in  
6 writing to the dealer the basis upon which new motor  
7 vehicles are allocated, scheduled and delivered among  
8 the dealers of the same line-make for that factory, or

9 b. changes an established plan or system of motor vehicle  
10 distribution. A motor vehicle dealer franchise  
11 agreement shall continue in full force and operation  
12 notwithstanding a change, in whole or in part, of an  
13 established plan or system of distribution of the  
14 motor vehicles offered or previously offered for sale  
15 under such franchise agreement. The appointment of a  
16 new importer or distributor for motor vehicles offered  
17 for sale under such franchise agreement shall be  
18 deemed to be a change of an established plan or system  
19 of distribution. Upon the occurrence of such change,  
20 the manufacturer or distributor shall be prohibited  
21 from obtaining a license to distribute vehicles under  
22 the new plan or system of distribution unless the  
23 manufacturer or distributor offers to each motor  
24 vehicle dealer who is a party to the franchise

1           agreement a new franchise agreement containing  
2           substantially the same provisions which were contained  
3           in the previous franchise agreement;

4           11. Being a factory that sells directly or indirectly new motor  
5 vehicles to any retail consumer in the state except through a new  
6 motor vehicle dealer holding a franchise for the line-make that  
7 includes the new motor vehicle. This paragraph does not apply to  
8 factory sales of new motor vehicles to its employees, family members  
9 of employees, retirees and family members of retirees, not-for-  
10 profit organizations or the federal, state or local governments.  
11 The provisions of this paragraph shall not preclude a factory from  
12 providing information to a consumer for the purpose of marketing or  
13 facilitating a sale of a new motor vehicle through its franchised  
14 motor vehicle dealers or from establishing a program to sell or  
15 offer to sell new motor vehicles through participating dealers  
16 subject to the limitations contained in Section 562 of this title;

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

18                   (1) owns any ownership interest or has any financial  
19                   interest in a new motor vehicle dealer or any  
20                   person who sells products or services to the  
21                   public,

22                   (2) operates or controls a new motor vehicle dealer,  
23                   or  
24

1 (3) acts in the capacity of a new motor vehicle  
2 dealer.

3 b. (1) This paragraph does not prohibit a factory from  
4 owning or controlling a new motor vehicle dealer  
5 while in a bona fide relationship with a dealer  
6 development candidate who has made a substantial  
7 initial investment in the franchise and whose  
8 initial investment is subject to potential loss.  
9 The dealer development candidate can reasonably  
10 expect to acquire full ownership of a new motor  
11 vehicle dealer within a reasonable period of time  
12 not to exceed ten (10) years and on reasonable  
13 terms and conditions. The ten-year acquisition  
14 period may be expanded for good cause shown.

15 (2) This paragraph does not prohibit a factory from  
16 owning, operating, controlling or acting in the  
17 capacity of a motor vehicle dealer for a period  
18 not to exceed twelve (12) months during the  
19 transition from one independent dealer to another  
20 independent dealer if the dealership is for sale  
21 at a reasonable price and on reasonable terms and  
22 conditions to an independent qualified buyer. On  
23 showing by a factory of good cause, the Oklahoma  
24 Motor Vehicle Commission may extend the time



1 limit set forth above; extensions may be granted  
2 for periods not to exceed twelve (12) months.

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

7 (4) This paragraph does not prohibit a factory from  
8 owning, directly or indirectly, a minority  
9 interest in an entity that owns, operates or  
10 controls motor vehicle dealerships of the same  
11 line-make franchised by the manufacturer,  
12 provided that each of the following conditions  
13 are met:

14 (a) all of the motor vehicle dealerships selling  
15 the motor vehicles of that manufacturer in  
16 this state trade exclusively in the line-  
17 make of that manufacturer,

18 (b) all of the franchise agreements of the  
19 manufacturer confer rights on the dealer of  
20 the line-make to develop and operate, within  
21 a defined geographic territory or area, as  
22 many dealership facilities as the dealer and  
23 manufacturer shall agree are appropriate,  
24

1 (c) at the time the manufacturer first acquires  
2 an ownership interest or assumes operation,  
3 the distance between any dealership thus  
4 owned or operated and the nearest  
5 unaffiliated motor vehicle dealership  
6 trading in the same line-make is not less  
7 than seventy (70) miles,

8 (d) during any period in which the manufacturer  
9 has such an ownership interest, the  
10 manufacturer has no more than three  
11 franchise agreements with new motor vehicle  
12 dealers licensed by the Oklahoma Motor  
13 Vehicle Commission to do business within the  
14 state, and

15 (e) prior to January 1, 2000, the factory shall  
16 have furnished or made available to  
17 prospective motor vehicle dealers an  
18 offering-circular in accordance with the  
19 Trade Regulation Rule on Franchising of the  
20 Federal Trade Commission, and any guidelines  
21 and exemptions issued thereunder, which  
22 disclose the possibility that the factory  
23 may from time to time seek to own or  
24

1                   acquire, directly or indirectly, ownership  
2                   interests in retail dealerships;

3           13.   Being a factory which directly or indirectly makes  
4 available for public disclosure any proprietary information provided  
5 to the factory by a new motor vehicle dealer, other than in  
6 composite form to dealers in the same line-make or in response to a  
7 subpoena or order of the Commission or a court. Proprietary  
8 information includes, but is not limited to, information based on:

- 9           a.   any information derived from monthly financial  
10               statements provided to the factory, and
- 11           b.   any information regarding any aspect of the  
12               profitability of a particular new motor vehicle  
13               dealer;

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

18           15.   Being a factory which used the customer list of a new motor  
19 vehicle dealer for the purpose of unfairly competing with dealers;

20           16.   Being a factory which prohibits a new motor vehicle dealer  
21 from relocating after a written request by such new motor vehicle  
22 dealer if:

- 23           a.   the facility and the proposed new location satisfies  
24               or meets the written reasonable guidelines of the

1 factory. Reasonable guidelines do not include  
2 exclusivity or site control unless agreed to as set  
3 forth in subparagraphs e g and f h of paragraph 9 of  
4 this subsection,

5 b. the proposed new location is within the area of  
6 responsibility of the new motor vehicle dealer  
7 pursuant to Section 578.1 of this title, and

8 c. the factory has sixty (60) days from receipt of the  
9 new motor vehicle dealer's relocation request to  
10 approve or deny the request. The failure to approve  
11 or deny the request within the sixty-day time frame  
12 shall constitute approval of the request;

13 17. Being a factory which prohibits a new motor vehicle dealer  
14 from adding additional line-makes to its existing facility, if,  
15 after adding the additional line-makes, the facility satisfies the  
16 written reasonable capitalization standards and facility guidelines  
17 of each factory. Reasonable facility guidelines do not include a  
18 requirement to maintain exclusivity site control unless agreed to by  
19 the dealer as set forth in subparagraphs e g and f h of paragraph 9  
20 of this subsection;

21 18. Being a factory that increases prices of new motor vehicles  
22 which the new motor vehicle dealer had ordered for retail consumers  
23 and notified the factory prior to the dealer's receipt of the  
24 written official price increase notification. A sales contract

1 signed by a retail consumer accompanied with proof of order  
2 submission to the factory shall constitute evidence of each such  
3 order, provided that the vehicle is in fact delivered to the  
4 customer. Price differences applicable to new models or series  
5 motor vehicles at the time of the introduction of new models or  
6 series shall not be considered a price increase for purposes of this  
7 paragraph. Price changes caused by any of the following shall not  
8 be subject to the provisions of this paragraph:

- 9 a. the addition to a motor vehicle of required or  
10 optional equipment pursuant to state or federal law,
- 11 b. revaluation of the United States dollar in the case of  
12 foreign-made vehicles or components, or
- 13 c. an increase in transportation charges due to increased  
14 rates imposed by common or contract carriers;

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

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

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

- 6            a. by an act or statement from the factory that will in  
7                    any manner adversely impact the dealer,
- 8            b. by measuring the dealer's performance under the  
9                    franchise based on the sale of extended service  
10                    contracts, extended maintenance plans or similar  
11                    products offered, endorsed or sponsored by the  
12                    manufacturer or distributor.

13        B. Notwithstanding the terms of any franchise agreement, in the  
14 event of a proposed sale or transfer of a dealership, the  
15 manufacturer or distributor shall be permitted to exercise a right  
16 of first refusal to acquire the assets or ownership interest of the  
17 dealer of the new vehicle dealership, if such sale or transfer is  
18 conditioned upon the manufacturer or dealer entering into a dealer  
19 agreement with the proposed new owner or transferee, only if all the  
20 following requirements are met:

- 21            1. To exercise its right of first refusal, the factory must  
22 notify the dealer in writing within sixty (60) days of receipt of  
23 the completed proposal for the proposed sale transfer;

24

1           2. The exercise of the right of first refusal will result in  
2 the dealer and the owner of the dealership receiving the same or  
3 greater consideration as they have contracted to receive in  
4 connection with the proposed change of ownership or transfer;

5           3. The proposed sale or transfer ~~of the assets~~ of the  
6 dealership does not involve the transfer or sale to a member or  
7 members of the family of one or more dealer owners, or to a  
8 qualified manager or a partnership or corporation controlled by such  
9 persons; and

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

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

1 1. Business activities, including without limitation the  
2 dealings with motor vehicle manufacturers and the representatives  
3 and affiliates of motor vehicle manufacturers, of any person that is  
4 primarily engaged in the business of short-term, not to exceed  
5 twelve (12) months, rental of motor vehicles and industrial and  
6 construction equipment and activities incidental to that business,  
7 provided that:

8 a. any motor vehicle sold by that person is limited to  
9 used motor vehicles that have been previously used  
10 exclusively and regularly by that person in the  
11 conduct of business and used motor vehicles traded in  
12 on motor vehicles sold by that person,

13 b. warranty repairs performed by that person on motor  
14 vehicles are limited to those motor vehicles that it  
15 owns, previously owned or takes in trade, and

16 c. motor vehicle financing provided by that person to  
17 retail consumers for motor vehicles is limited to used  
18 vehicles sold by that person in the conduct of  
19 business; or

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

22 SECTION 6. AMENDATORY 47 O.S. 2011, Section 565.1, as  
23 amended by Section 2, Chapter 402, O.S.L. 2014 (47 O.S. Supp. 2020,  
24 Section 565.1), is amended to read as follows:



1 Section 565.1. Notwithstanding the terms of any franchise  
2 agreement, and subject to the following conditions contained in  
3 paragraphs 1 through 5 of this section, any manufacturer or  
4 distributor who prevents or refuses to honor the succession to the  
5 operation of a dealership by any legal heir or devisee under the  
6 will of a new motor vehicle dealer or under the laws of descent and  
7 distribution of this state, or designated successor to a departing  
8 dealership operator, without good cause or good faith, as defined in  
9 this section, shall be subject to the following procedure:

10 1. Within one hundred twenty (120) days after the death or  
11 departure of the new motor vehicle dealer, the manufacturer shall  
12 receive a written notice from any legal heir or devisee or designee  
13 successor who intends to ~~establish a~~ become the successor dealership  
14 operator. If timely notice is not so received, then this paragraph  
15 shall not apply, and any succession shall be governed solely by the  
16 terms of the franchise;

17 2. Within thirty (30) days of receipt of the legal heir's, ~~or~~  
18 devisee's or successor's timely written notice, the manufacturer may  
19 request, and the legal heir, ~~or~~ devisee or successor shall, within a  
20 reasonable time, provide any information which is reasonably  
21 necessary for the manufacturer to evaluate the proposed successor  
22 dealer and dealership, ~~including, but not limited to, applications,~~  
23 ~~proposals for facilities and financing;~~

24

1           3. Within sixty (60) days of receipt of such information, the  
2 manufacturer shall approve or disapprove the proposed successor  
3 ~~dealership dealer~~, and in case of disapproval shall communicate in  
4 writing such disapproval and grounds for disapproval to the ~~legal~~  
5 ~~heir or devisee~~ proposed successor;

6           4. Failure of the manufacturer to act in a timely manner with  
7 respect to any time period described above shall constitute a waiver  
8 of the manufacturer's right to disapprove the proposed succession;

9           5. Within ten (10) days of its receipt of the manufacturer's  
10 notice of disapproval, the ~~legal heir or devisee~~ proposed successor  
11 may file a protest of the manufacturer's decision with the Oklahoma  
12 Motor Vehicle Commission and request a hearing. Such hearing shall  
13 be heard in a substantially similar manner as provided by Section  
14 566 of this title, except that the Commission shall render a final  
15 decision within sixty (60) days of the filing of the protest. The  
16 manufacturer shall have the burden of proof to show that its  
17 disapproval was for a good cause and in good faith. A denial shall  
18 not be for good cause and in good faith unless the factory  
19 establishes that the ~~legal heir or devisee~~ proposed successor, or  
20 the ~~legal heir or devisee's~~ proposed successor's controlling  
21 executive management, is not of good moral character or fails to  
22 meet the written, reasonable and uniformly applied requirements of  
23 the manufacturer or distributor relating to financial  
24 qualifications, general business experience, and other requirements

1 relating to prospective franchisees. However, a legal heir that is  
2 of good moral character in accordance with the reasonable factory's  
3 qualifications and meets the factory's financial qualifications may  
4 rely on controlling executive management that is of good moral  
5 character and meets the factory's qualifications for general  
6 business experience ~~and other requirements relating to prospective~~  
7 ~~franchises.~~ Any denial of the proposed successor based upon a  
8 failure to agree to terms different than contained in the existing  
9 franchise agreement shall not be considered good cause for such  
10 denial. The disapproval by the manufacturer shall be final if the  
11 ~~legal heir or devisee~~ proposed successor or dealership fails to file  
12 a timely protest of such disapproval. In the event that the  
13 Commission finds that the manufacturer's disapproval was not made  
14 for good cause, then it shall issue a final order requiring the  
15 manufacturer to honor the successor designated in the notice sent by  
16 the legal heir or devisee. Notwithstanding anything to the contrary  
17 in this section, a new motor vehicle dealer may designate any person  
18 as successor by filing a written instrument pursuant to the  
19 franchise with the manufacturer during the new motor vehicle  
20 dealer's lifetime. In such a case, the written instrument and  
21 franchise shall govern the dealership succession.

22 The suspension, revocation or refusal to issue or renew a  
23 license or the imposition of any other penalty by the Commission  
24 shall be in addition to any penalty which might be imposed upon any

1 licensee upon judgment or conviction in a court of competent  
2 jurisdiction for any violation of the provisions of Sections 561  
3 through 567, 572, 578.1, 579 and 579.1 of this title.

4 SECTION 7. AMENDATORY 47 O.S. 2011, Section 565.2, as  
5 amended by Section 3, Chapter 402, O.S.L. 2014 (47 O.S. Supp. 2020,  
6 Section 565.2), is amended to read as follows:

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

21 B. Irrespective of the terms, provisions or conditions of any  
22 franchise, or the terms or provisions of any waiver, good cause  
23 shall exist for the purpose of a termination, cancellation, or  
24 nonrenewal when:

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

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

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

1        1. Not less than ninety (90) days prior to the effective date  
2 of such 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 such 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 motor vehicle  
9                dealer under any bankruptcy or receivership law,

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

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

20        3. Not less than one hundred eighty (180) days prior to the  
21 effective date of such termination or cancellation where the  
22 manufacturer or distributor is discontinuing the sale of the product  
23 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. Such  
12 hearing shall be held in accordance with the provisions of the  
13 Administrative Procedures Act, Sections 301 through 326 of Title 75  
14 of the Oklahoma Statutes, to determine if the threatened  
15 cancellation, termination or nonrenewal of the franchise has been  
16 for good cause and if the factory has complied with its obligations  
17 pursuant to subsections A, B and C of this section and the factory  
18 shall have the burden of proof. If the Commission finds that the  
19 threatened cancellation, termination or nonrenewal of the franchise  
20 has not been for good cause or violates subsection A, B or C of this  
21 section, then it shall issue a final order stating that the  
22 threatened termination is wrongful. A factory shall have the right  
23 to appeal such order. During the pendency of the hearing and after  
24 the decision, the franchise shall remain in full force and effect,

1 including the right to transfer the franchise. If the Commission  
2 finds that the threatened cancellation, termination or nonrenewal is  
3 for good cause and does not violate subsection A, B or C of this  
4 section, the new motor vehicle dealer shall have the right to an  
5 appeal. During the pendency of the action, including the final  
6 decision or appeal, the franchise shall remain in full force and  
7 effect, including the right to transfer the franchise. If the new  
8 motor vehicle dealer prevails in the threatened termination action,  
9 the Commission shall award to the new motor vehicle dealer the  
10 attorney fees and costs incurred to defend the action.

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

14 1. New current and previous model year vehicle inventory which  
15 has been acquired from the manufacturer, and which is unused and has  
16 not been damaged or altered while in the dealer's possession;

17 2. Supplies and parts which have been acquired from the  
18 manufacturer, for the purpose of this section, limited to any and  
19 all supplies and parts that are listed on the current parts price  
20 sheet available to the dealer;

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

24



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

6 a. For the purposes of paragraph 1 of this subsection,  
7 fair and reasonable compensation shall be no less than  
8 the net acquisition price of the vehicle paid by the  
9 new motor vehicle dealer.

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

17 F. If a factory prevails in an action to terminate, cancel or  
18 not renew any franchise and the new motor vehicle dealer is leasing  
19 the dealership facilities, the manufacturer shall pay a reasonable  
20 rent to the lessor in accordance with and subject to the provisions  
21 of subsection G of this section. Nothing in this section shall be  
22 construed to relieve a dealer of its duty to mitigate damages.

23

24

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

4 a. used solely for performance in accordance with the  
5 franchise. If the facility is used for the operation  
6 of more than one franchise, the reasonable rent shall  
7 be paid based upon the portion of the facility  
8 utilized by the franchise being terminated, canceled  
9 or nonrenewed, and

10 b. not substantially in excess of facilities recommended  
11 by the manufacturer.

12 2. If the facilities are owned by the new motor vehicle dealer,  
13 within ninety (90) days following the effective date of the  
14 termination, cancellation or nonrenewal the manufacturer will  
15 either:

16 a. locate a qualified purchaser who will offer to  
17 purchase the dealership facilities at a reasonable  
18 price,

19 b. locate a qualified lessee who will offer to lease the  
20 premises for the remaining lease term at the rent set  
21 forth in the lease, or

22 c. failing the foregoing, lease the dealership facilities  
23 at a reasonable rental value for the portion of the  
24

1 facility that is recognized in the franchise agreement  
2 for one (1) year.

3 3. If the facilities are leased by the new motor vehicle  
4 dealer, within ninety (90) days following the effective date of the  
5 termination, cancellation or nonrenewal the manufacturer will  
6 either:

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

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, subleases or assignee,
- 19 b. refuses to execute a settlement agreement with the  
20 lessor if such agreement with the lessor would be  
21 without cost to the dealer, or
- 22 c. fails to make written request for assistance under  
23 this section within ninety (90) days after the  
24

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. In addition to the repurchase requirements set forth in  
6 subsections E and G of this section, in the event the termination or  
7 cancellation is the result of a discontinuance of a product line,  
8 the manufacturer or distributor shall compensate the new motor  
9 vehicle dealer in an amount equivalent to the fair market value of  
10 the terminated franchise as of the date ~~of~~ immediately preceding the  
11 manufacturer's or distributor's announcement or provide the new  
12 motor vehicle dealer with a replacement franchise on substantially  
13 similar terms and conditions as those offered to other same line-  
14 make dealers. The dealer may immediately request payment under this  
15 provision following the announcement in exchange for cancelling any  
16 further franchise rights, except payments owed to the dealer in the  
17 ordinary course of business, or may request payment under this  
18 provision upon the final termination, cancellation or nonrenewal of  
19 the franchise. In either case, payment under this provision shall  
20 be made not later than ninety (90) days after the fair market value  
21 is determined. If the factory and dealer cannot agree on the fair  
22 market value of the terminated franchise or agree to a process to  
23 determine the fair market value, then the factory and dealer shall  
24 utilize a neutral third party mediator to resolve the disagreement.

1 SECTION 8. AMENDATORY 47 O.S. 2011, Section 565.3, as  
2 amended by Section 4, Chapter 402, O.S.L. 2014 (47 O.S. Supp. 2020,  
3 Section 565.3), is amended to read as follows:

4 Section 565.3. A. A franchised vehicle dealer proposing a  
5 sale, transfer, or assignment of a franchise agreement or the  
6 business and assets of a dealership or an interest in a dealership  
7 to another person, hereinafter transferee, shall notify the  
8 manufacturer or distributor whose vehicles the dealer is franchised  
9 to sell of the proposed action of the dealer. The manufacturer or  
10 distributor may make written request to the transferee to submit  
11 completed application forms and related information generally  
12 utilized by a manufacturer to evaluate such a proposal and a copy of  
13 all agreements related to the proposed sale, transfer, or  
14 assignment.

15 B. The approval by the manufacturer or distributor of the sale,  
16 transfer, or assignment shall not be unreasonably withheld unless  
17 the transferee is not of good moral character or fails to meet the  
18 written, reasonable, and uniformly applied requirements of the  
19 manufacturer or distributor relating to prospective franchisees.  
20 Approval of the transfer shall not be made contingent upon the  
21 transferee meeting ~~unreasonable~~ facility requirements or  
22 performance standards, different than contained in the transferor's  
23 franchise agreement, but may be made contingent upon the transferee  
24 meeting reasonable written requirements. The burden of proof shall

1 be upon the manufacturer or distributor to show good cause existed  
2 to withhold approval. The manufacturer or distributor that has made  
3 such a determination shall send a letter by certified mail to the  
4 dealer and the applicant of its refusal to approve the proposal,  
5 which shall include a statement of the specific grounds for refusal,  
6 within sixty (60) days after the later of:

7 1. Receipt by the manufacturer or distributor of the notice of  
8 the proposed sale, transfer, or assignment; or

9 2. Receipt by the manufacturer or distributor of the  
10 information requested from the transferee pursuant to subsection A  
11 of this section if the manufacturer or distributor has requested  
12 such information within fifteen (15) days of receipt of written  
13 notice of the proposed sale, transfer, or assignment.

14 C. Failure of the manufacturer or distributor to send its  
15 notice of refusal pursuant to subsection B of this section shall  
16 mean that the application for the proposed sale, transfer, or  
17 assignment is approved.

18 D. If the proposed sale, transfer or assignment is to an  
19 existing owner's family member or other existing owner then the  
20 manufacturer or distributor's evaluation of such proposal is limited  
21 to the written, reasonable and uniformly applied requirements of the  
22 manufacturer or distributor relating to good moral character and  
23 financial qualifications.

24

1        E. A dealer dealership or dealership owner receiving notice of  
2 refusal of the sale, transfer, or assignment shall have the right to  
3 file a protest with the Commission within thirty (30) days of  
4 receipt of the refusal. ~~A dealer receiving notice that the sale,~~  
5 ~~transfer or assignment is contingent upon the transferee meeting~~  
6 ~~facility and/or performance standards shall have the right to file a~~  
7 ~~protest with the Commission within thirty (30) days of receipt of~~  
8 ~~the notice.~~ In the event a protest is filed, the manufacturer or  
9 distributor shall have the burden of proof to establish the proposed  
10 transferee or the transferee's controlling executive management is  
11 not of good moral character or fails to meet the written reasonable  
12 and uniformly applied requirements of the manufacturer or  
13 distributor relating to prospective franchisees ~~or that the facility~~  
14 ~~requirements are not reasonable based on the reasons set forth in~~  
15 ~~subparagraph d of paragraph 9 of Section 565 of this title.~~

16        SECTION 9.        AMENDATORY        47 O.S. 2011, Section 572, is  
17 amended to read as follows:

18        Section 572. Any action brought to recover any damages that may  
19 be sustained by any motor vehicle dealer may be brought in the  
20 county in which said dealer is located and in addition to the action  
21 for damages he shall be entitled to sue for and have injunctive  
22 relief against the threatened loss, damage or injury to his business  
23 or property because of any violation of Sections 565 through 566 and  
24 579 of this title or the threatened cancellation, termination or

1 failure to renew any franchise agreement between any factory and  
2 said dealer, and the court may grant such injunctive relief,  
3 including temporary restraining orders, as it deems just and proper,  
4 and award attorney fees and costs to a dealer which prevails,  
5 notwithstanding any other provisions of law, and in addition to any  
6 other remedy which may be afforded under any other statute of this  
7 state.

8 SECTION 10. AMENDATORY 47 O.S. 2011, Section 578.1, is  
9 amended to read as follows:

10 Section 578.1. A. Notwithstanding the terms of a franchise and  
11 notwithstanding the terms of a waiver, if a factory intends or  
12 proposes to enter into a franchise to establish an additional new  
13 motor vehicle dealer or to relocate an existing new motor vehicle  
14 dealer within or into a relevant market area in which the same line-  
15 make of motor vehicle is currently represented, the factory shall  
16 provide at least sixty (60) days advance written notice to the  
17 Commission and to each new motor vehicle dealer of the same line-  
18 make in the relevant market area, of the intention of the factory to  
19 establish an additional new motor vehicle dealer or to relocate an  
20 existing new motor vehicle dealer within or into the relevant market  
21 area. For purposes of this section, the "relevant market area"  
22 means the area within a radius of fifteen (15) miles ~~of~~ around the  
23 site of the proposed new motor vehicle dealership measured from the  
24



1 property boundary. The notice shall be sent by certified mail to  
2 each party and shall include the following information:

3 1. The specific location at which the additional or relocated  
4 motor vehicle dealer will be established;

5 2. The date on or after which the additional or relocated motor  
6 vehicle intends to commence business at the proposed location;

7 3. The identity of all motor vehicle dealers who are franchised  
8 to sell the same line-make vehicles as the proposed dealer and who  
9 have licensed locations within the relevant market area;

10 4. The names and addresses of the person intended to be  
11 franchised as the proposed additional or relocated motor vehicle  
12 dealership, the principal investors in the proposed additional or  
13 relocated motor vehicle dealership, and the proposed dealer operator  
14 of the proposed additional or relocated motor vehicle dealership;  
15 and

16 5. The specific grounds or reasons for the proposed  
17 establishment of an additional motor vehicle dealer or relocation of  
18 an existing dealer.

19 B. This section does not apply:

20 1. To the relocation of an existing new motor vehicle dealer  
21 within the relevant market area of that dealer; provided, that the  
22 relocation not be at a site within ten (10) miles of a licensed new  
23 motor vehicle dealer for the same line-make of motor vehicle;

24

1           2. To a proposed additional new motor vehicle dealer which is  
2 to be established at or within two (2) miles of a location at which  
3 a former licensed new motor vehicle dealer for the same line-make of  
4 new motor vehicle had ceased operating within the previous two (2)  
5 years;

6           3. To the relocation of an existing new motor vehicle dealer  
7 within two (2) miles of the existing site of the new motor vehicle  
8 dealership; or

9           4. To the relocation of an existing new motor vehicle dealer if  
10 the proposed site of the relocated new motor vehicle dealership is  
11 farther away from all other new motor vehicle dealers of the same  
12 line-make in that relevant market area.

13           C. Within thirty (30) days after receipt of the notice, or  
14 within thirty (30) days after the end of an appeal procedure  
15 provided by the factory, whichever is greater, a new motor vehicle  
16 dealer so notified or entitled to notice may file a petition with  
17 the Commission protesting the proposed establishment or relocation.  
18 The petition shall contain a short statement setting forth the  
19 reasons for the objection of the dealer to the proposed  
20 establishment or relocation. Upon filing of a protest, the  
21 Commission shall promptly notify the factory that a timely protest  
22 has been filed and shall schedule a hearing, which shall be held  
23 within one hundred twenty (120) days of the filing of a timely  
24 protest. The factory shall not establish or relocate the new motor

1 vehicle dealer until the Commission has held a hearing and has  
2 determined that there is good cause for permitting the proposed  
3 establishment or relocation. When more than one protest is filed  
4 against the establishment or relocation of the same dealer, the  
5 Commission shall consolidate the hearings to expedite disposition of  
6 the matter.

7 D. The burden of proof to establish that good cause exists for  
8 permitting the proposed establishment of a new motor vehicle dealer  
9 or relocating an existing new motor vehicle dealership shall be on  
10 the applicant who seeks to establish a new motor vehicle dealership  
11 or the relocation of an existing new motor vehicle dealership.

12 SECTION 11. This act shall become effective November 1, 2021.

13 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM  
14 February 25, 2021 - DO PASS AS AMENDED  
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