

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3994

 By: Dobrinski

8 COMMITTEE SUBSTITUTE

9 An Act relating to motor vehicle dealers; providing
10 for application for certain license; providing
11 requirements and limitations of licensee; requiring
12 certain license for delivery; providing for
13 misdemeanor and fine for offense; making exception
14 for certain fleet vehicle sales; setting certain
15 guidelines for certain entities regarding consumer
16 data; providing certain indemnification; authorizing
17 certain data disclosure; requiring certain party bear
18 burden of proof; amending 47 O.S. 2021, Section 562,
19 which relates to definitions; modifying definitions;
20 defining terms; amending 47 O.S. 2021, Section 564,
21 which relates to licenses; disallowing certain
22 authorization; making certain exception; authorizing
23 certain fee; amending 47 O.S. 2021, Section 565,
24 which relates to denial, revocation or suspension of
 license; modifying entity which may receive license
 denial, revocation, suspension or receive a fine;
 modifying reasons for license denial, revocation,
 suspension or punishment by fine; requiring certain
 adherence; prohibiting certain performance methods;
 limiting dealers to one part or labor rate request
 per year; providing for certain calculation;
 providing for exclusions for certain rate
 calculation; allowing for the dealers to request
 closure of certain orders; allowing for certain
 adjusted rates for supplemental repair orders;
 requiring written notice; requiring criteria for
 validation; requiring certain factory compensation;
 prohibiting factory denial of certain claims and
 implementation of certain charge-backs; disallowing

1 allocation requirements; allowing for certain
2 construction or renovation; providing certain
3 rebuttable presumption; limiting license for
4 distribution; amending 47 O.S. 2021, Section 565.1,
5 which relates to succession dealerships; clarifying
6 language; requiring certain adherence; amending 47
7 O.S. 2021, Section 565.2, which relates to
8 termination, cancellation or nonrenewal of franchise;
9 requiring certain compensation; amending 47 O.S.
10 2021, Section 565.3, which relates to notice of
11 proposed sale; limiting evaluations; deleting certain
12 protest right; amending 47 O.S. 2021, Section 572,
13 which relates to venue in damage actions; modifying
14 certain legal remedies; awarding certain fees and
15 costs; amending 47 O.S. 2021, Section 578.1, which
16 relates to procedures for relocation or
17 establishment; modifying definition; amending 47 O.S.
18 2021, Section 580.2, which relates to insurance
19 coverage on loan vehicles; defining term; making
20 certain liability policy coverage distinction;
21 providing for codification; and providing an
22 effective date.

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

24 SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 564.3 of Title 47, unless there
is created a duplication in numbering, reads as follows:

A. A person who is licensed in his or her state of domicile as
a franchised new motor vehicle dealer, and who is not affiliated by
ownership or control of a manufacturer, distributor, factory branch,
factory representative, distributor branch or distributor
representative, as defined in Section 562 Title 47 of the Oklahoma
Statutes, may apply to the Oklahoma Motor Vehicle Commission for a

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

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

23 C. A person who sells and ships a new motor vehicle directly
24 from any person, association or corporation to a resident of the

1 State of Oklahoma without holding a valid motor vehicle direct
2 shipper's license, upon conviction, shall be guilty of a misdemeanor
3 and subject to a fine pursuant to Section 565 of Title 47 of the
4 Oklahoma Statutes.

5 D. This section shall not apply to the sale of more than five
6 fleet vehicles at one time to consumers that title and register the
7 vehicle in this state or another state.

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

11 With respect to consumer data, a factory or third party acting
12 on behalf of a factory:

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

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

22 3. Shall, upon the written request of the dealer, provide a
23 written list of the consumer data obtained from the dealer and all
24 persons to whom any consumer data has been provided by the factory

1 or a third party acting on behalf of a factory during the preceding
2 six (6) months. The dealer may make such a request no more than
3 once every six (6) months. The list must indicate the specific
4 fields of consumer data which were provided to each person.

5 Notwithstanding the foregoing, such a list shall not be required to
6 include:

7 a. a person to whom consumer data was provided, or the
8 specific consumer data provided to such person, if the
9 person was, at the time such consumer data was
10 provided, a service provider, subcontractor, or
11 consultant acting in the course of performance of
12 services on behalf of or for the benefit of the
13 factory, third party, or dealer, provided that the
14 factory, third party, or dealer has entered into an
15 agreement with such person requiring that such person
16 comply with the safeguard requirements of applicable
17 state and federal law, including, but not limited to,
18 those established in the Gramm-Leach-Bliley Act, 15
19 U.S.C., Section 6801 et seq.,

20 b. a person to whom consumer data was provided, or the
21 specific consumer data provided to such person, if the
22 dealer has previously consented in writing to such
23 person receiving such consumer data and the dealer has
24 not withdrawn such consent in writing, or

1 c. data collected or received for purposes enumerated in
2 paragraph 5 of this section;

3 4. May not require that a dealer grant the factory or a third
4 party acting on behalf of a factory, or use any incentive that is
5 not paid to all dealers or withhold any benefit from a dealer to
6 obtain, direct or indirect access to such dealer's data management
7 system to obtain consumer data. A factory or a third party acting
8 on behalf of a factory shall permit a dealer to furnish consumer
9 data in a widely accepted file format, such as comma delimited, and
10 through a third-party vendor selected by the dealer. However, a
11 factory or a third party acting on behalf of a factory may access or
12 obtain consumer data directly from a dealer's data management system
13 with the express written consent of the dealer. The consent shall
14 be in the form of a written document that is separate from the
15 franchise agreement and is executed by the dealer principal or
16 operator and may be withdrawn by the dealer upon thirty (30) days'
17 written notice to the factory or third party acting on the factory's
18 behalf, as applicable. For incentive programs beginning on or after
19 November 1, 2022, such consent shall not be required as a condition
20 to a new motor vehicle dealer's participation in an incentive
21 program unless such consent is necessary to obtain consumer data to
22 implement the program;

23 5. Shall indemnify the dealer for any third-party claims
24 asserted against or damages incurred by the dealer to the extent

1 caused by access to, use of, or disclosure of consumer data in
2 violation of this section by the factory or a third party to whom
3 the factory has provided consumer data. Nothing contained in this
4 section shall limit the ability of the factory or a third party
5 acting on the factory's behalf to require that the dealer provide,
6 or use in accordance with the law, such consumer information related
7 solely to such factory's own vehicle makes to the extent necessary
8 to do any of the following:

- 9 a. satisfy any safety or recall notice obligations or
10 other legal notice obligations on the part of the
11 manufacturer,
- 12 b. validate and pay to a dealer a consumer or dealer
13 incentive, or
- 14 c. submit claims to the factory for any services supplied
15 by the dealer for any claim for warranty parts or
16 repair.

17 The factory shall be limited to using consumer data strictly for the
18 purposes listed in this paragraph; and

19 6. In any cause of action against the factory for a violation
20 of this section, the party bringing the action shall have the burden
21 of proof.

22 SECTION 3. AMENDATORY 47 O.S. 2021, Section 562, is
23 amended to read as follows:

24

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

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

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

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

14 2. "New motor vehicle dealer" means any person, firm,
15 association, corporation or trust not excluded by this paragraph ~~who~~
16 that sells, leases, exchanges or otherwise conveys a new motor
17 vehicle at retail, offers for sale, advertises to sell, leases or
18 lease, exchange or other conveyance of a new motor vehicle, arranges
19 for the financing of the sale, lease, or other conveyance of a new
20 motor vehicle, offers through a subscription or like arrangement,
21 displays new motor vehicles, offers vehicle test drives or
22 demonstrations of new motor vehicle functions or features except as
23 otherwise provided for in Section 564.1 of this title, or otherwise
24 engages in any way, in whole or in part, in the business of selling,

1 leasing, exchanging or otherwise conveying new motor vehicles and
2 used motor vehicles, as well as parts, including offering in
3 exchange for payment any software or hardware upgrade or change to
4 vehicle functions and features which are available at the time the
5 new motor vehicle is sold at retail or twelve (12) months
6 thereafter, and holds a bona fide ~~contract~~ or franchise in effect
7 with a manufacturer or distributor authorized by the manufacturer to
8 establish a physical place of business in the state which is of such
9 reasonably sufficient size and accommodation to perform the
10 activities of a new motor vehicle dealer, including vehicle
11 inventory and display, sales activity, ~~make~~ predelivery preparation
12 of ~~such~~ new motor vehicles sold, leased or otherwise conveyed to
13 ~~purchasers~~ consumers, and ~~to perform~~ post-sale work pursuant to the
14 manufacturer's or distributor's warranty and recall policies. As
15 used herein, "authorized predelivery preparation" means the
16 rendition by the dealer of services and safety adjustments on each
17 new motor vehicle in accordance with the procedure and safety
18 standards required by the manufacturer of the vehicle to be made
19 before its delivery to the purchaser. "Performance of authorized
20 post-sale work pursuant to the warranty", as used herein, means the
21 rendition of services which are required by the terms of the
22 warranty that stands extended to the vehicle at the time of its sale
23 and are to be made in accordance with the safety standards
24 prescribed by the manufacturer. The term includes premises or

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

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

23 3. "Motor vehicle salesperson" means any person who, for gain
24 or compensation of any kind, either directly or indirectly,

1 regularly or occasionally, by any form of agreement or arrangement,
2 sells or negotiates for the sale, lease, conveyance or arranges the
3 financing of any new motor vehicle for any new motor vehicle dealer
4 to any one or more third parties;

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

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

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

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

22 8. "Distributor branch" means any branch office similarly
23 maintained by a distributor for the same purposes a factory branch
24 is maintained;

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

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

12 11. "Franchise" means any contract or agreement between a motor
13 vehicle dealer and a manufacturer of a new motor vehicle or its
14 distributor or factory branch by which the dealer is authorized to
15 engage in the ~~business of selling any specified make or makes of new~~
16 ~~motor vehicles~~ activities of a new motor vehicle dealer as defined
17 by this section;

18 12. "New or unused motor vehicle" means a vehicle which is in
19 the possession of the manufacturer or distributor or has been sold
20 only to the holder of a valid ~~selling agreement~~, franchise ~~or~~
21 ~~contract~~, granted by the manufacturer or distributor for the sale of
22 that make of new vehicle so long as the manufacturer's statement of
23 origin has not been assigned to anyone other than a licensed
24 franchised new motor vehicle dealer of the same line-make;

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

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

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

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

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

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

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

22 20. "Factory" means a manufacturer, distributor, factory
23 branch, distributor branch, factory representative or distributor
24 representative, which manufactures or distributes vehicle products;

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

3 22. "Powersports vehicle dealer" means any person, firm, or
4 corporation who is in the business of selling any new powersports
5 vehicles except for retail implement dealers; ~~and~~

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

10 24. "Consumer data" means nonpublic personal information as
11 such term is defined in 15 U.S.C., Section 6809(4) as it existed on
12 January 1, 2022, that is:

13 a. collected by a dealer, and

14 b. provided by the dealer directly to a manufacturer or
15 third party acting on behalf of a manufacturer.

16 Such term shall not include the same or similar data obtained by
17 a manufacturer from any source other than the dealer or dealer's
18 data management system;

19 25. "Data management system" means a computer hardware or
20 software system that:

21 a. is owned, leased or licensed by a dealer including a
22 system or web-based applications, computer software or
23 computer hardware,

24 b. is located at the dealership or hosted remotely, and

1 c. stores and provides access to consumer data collected
2 or stored by a dealer.

3 Such term shall include, but shall not be limited to, dealership
4 management systems and customer relations management systems; and

5 26. "Fleet vehicle" means a new motor vehicle sold and titled
6 or registered to a business and used for business purposes only.

7 SECTION 4. AMENDATORY 47 O.S. 2021, Section 564, is
8 amended to read as follows:

9 Section 564. A. It shall be unlawful for any person, firm,
10 association, corporation or trust to engage in business as, or serve
11 in the capacity of, or act as a motor vehicle dealer or manufacturer
12 or distributor of new motor vehicles, or factory branch, distributor
13 branch or factory representative or distributor representative, as
14 ~~such~~ defined in Section 562 of this title, in this state without
15 first obtaining a license therefor as provided for by law. Any
16 person, firm, association, corporation or trust engaging in more
17 than one of such capacities or having more than one place where such
18 business is carried on or conducted shall be required to obtain and
19 hold a current license for each thereof. Provided that, a new motor
20 vehicle dealer's license shall authorize one person to sell in the
21 event such person shall be the owner of a proprietorship, or the
22 person designated as principal in the dealer's franchise or the
23 managing officer or one partner if no principal person is named in
24 the franchise. It is further provided that a factory or an entity

1 affiliated by any ownership or control by the factory shall not be
2 permitted to be licensed as a motor vehicle dealer in this state,
3 except as provided by subparagraph b of paragraph 12 of Section 565
4 of this title.

5 B. Applications for licenses required to be obtained under
6 provisions of Section 561 et seq. of this title shall be verified by
7 the oath or affirmation of the applicant and shall be on forms
8 prescribed by the Oklahoma Motor Vehicle Commission and furnished to
9 such applicants, and shall contain such information as the
10 Commission deems necessary to enable it to fully determine the
11 qualifications and eligibility of the several applicants to receive
12 the license or licenses applied for. The Commission shall require
13 in such application, or otherwise, information relating to the
14 applicant's financial standing, the applicant's business integrity,
15 whether the applicant has an established place of business and is
16 primarily engaged in the pursuit, avocation or business for which a
17 license, or licenses, are applied for, and whether the applicant is
18 able to properly conduct the business for which a license, or
19 licenses, are applied for, and such other pertinent information
20 consistent with the safeguarding of the public interest and the
21 public welfare. All such applications for license or licenses shall
22 be accompanied by the appropriate fee or fees therefor in accordance
23 with the schedule thereof hereinafter set out. In the event any
24 such application is denied and the license applied for is not

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

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

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

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

24

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
24

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 5. AMENDATORY 47 O.S. 2021, Section 565, is
16 amended to read as follows:

17 Section 565. A. The Oklahoma Motor Vehicle Commission may deny
18 an application for a license, ~~or~~ revoke or suspend a license, or
19 impose a fine against any person, not to exceed Ten Thousand Dollars
20 (\$10,000.00) ~~against a manufacturer or distributor or a fine not to~~
21 ~~exceed One Thousand Dollars (\$1,000.00) against a dealer,~~ per
22 occurrence that, who violates any provision of Sections 561 through
23 567, 572, 578.1, 579 and 579.1 of this title ~~is violated~~ or for any
24 of the following reasons:

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

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

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

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

12 5. Being a new motor vehicle dealer who:

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

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

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

22 d. has failed or refused to perform any written agreement
23 with any retail buyer involving the sale of a motor
24 vehicle,

- e. has been convicted of a crime involving moral turpitude,
- f. has committed a fraudulent act in selling, purchasing or otherwise dealing in new motor vehicles or has misrepresented the terms and conditions of a sale, purchase or contract for sale or purchase of a new motor vehicle or any interest therein including an option to purchase such vehicle,
- g. has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license, or
- h. completes any sale or transaction of an extended service contract, extended maintenance plan, or similar product using contract forms that do not conspicuously disclose the identity of the service contract provider;

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

7. Being a new motor vehicle dealer who:

- a. does not have an established place of business,
- b. does not provide for a suitable repair shop separate from the display room with ample space to repair or recondition one or more vehicles at the same time, and which is staffed with properly trained and qualified

1 repair technicians and is equipped with such parts,
2 tools and equipment as may be requisite for the
3 servicing of motor vehicles in such a manner as to
4 make them comply with the safety laws of this state
5 and to properly fulfill the dealer's or manufacturer's
6 warranty obligation,

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

15 d. employs a person without obtaining a certificate of
16 registration for the person, or utilizes the services
17 of used motor vehicle lots or dealers or other
18 unlicensed persons in connection with the sale of new
19 motor vehicles,

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

22 f. fails to order and stock a reasonable number of new
23 motor vehicles necessary to meet ~~customer~~ consumer
24 demand for each of the new motor vehicles included in

1 the new motor vehicle dealer's franchise agreement,
2 unless the new motor vehicles are not readily
3 available from the manufacturer or distributor due to
4 limited production;

5 8. Being a factory that has:

6 a. either induced or attempted to induce by means of
7 coercion or intimidation, any new motor vehicle
8 dealer:

9 (1) to accept delivery of any motor vehicle or
10 vehicles, parts or accessories therefor, or any
11 other commodities including advertising material
12 which shall not have been ordered by the new
13 motor vehicle dealer,

14 (2) to order or accept delivery of any motor vehicle
15 with special features, appliances, accessories or
16 equipment not included in the list price of the
17 motor vehicles as publicly advertised by the
18 manufacturer thereof, or

19 (3) to order or accept delivery of any parts,
20 accessories, equipment, machinery, tools,
21 appliances or any commodity whatsoever, ~~or~~ except
22 for those necessary to service a vehicle that the
23 new motor vehicle dealer is authorized by the
24 factory to repair,

1 b. induced under threat or discrimination by the
2 withholding from delivery to a motor vehicle dealer
3 certain models of motor vehicles, changing or amending
4 unilaterally the dealer's allotment of motor vehicles
5 and/or withholding and delaying delivery of such
6 vehicles out of the ordinary course of business, in
7 order to induce by such coercion any such dealer to
8 participate or contribute to any local or national
9 advertising fund controlled directly or indirectly by
10 the factory or for any other purposes such as contest,
11 ~~"give-aways"~~ "giveaways" or other so-called sales
12 promotional devices and/or change of quotas in any
13 sales contest; or has required motor vehicle dealers,
14 as a condition to receiving their vehicle allotment,
15 to order a certain percentage of the vehicles with
16 optional equipment not specified by the new motor
17 vehicle dealer; however, nothing in this section shall
18 prohibit a factory from supporting an advertising
19 association which is open to all dealers on the same
20 basis,

21 c. used or proposed to use an unreasonable, arbitrary or
22 unfair sales or other standard to measure a dealer's
23 performance under any factory program, policy or the
24 franchise agreement. It shall be considered

1 unreasonable, arbitrary and unfair for the factory to
2 fail to take into account the dealer's specific and
3 market circumstances in establishing the sales or
4 other standard,

5 d. failed or refused to sell, or offer for sale, new
6 motor vehicles to all of its same line-make franchised
7 dealers at the same price for a comparably equipped
8 motor vehicle, on the same terms, with no differential
9 in discount, allowance, credit or bonus,

10 e. failed to reimburse a dealer in full for the actual
11 cost of providing a loaner vehicle to any consumer who
12 is having a vehicle serviced at the dealership if the
13 provision of such a loaner vehicle is required by the
14 factory. For purposes of this paragraph, actual cost
15 shall not exceed the average cost in the dealer's
16 region for the rental of a substantially similar make
17 and model as the vehicle being serviced;

18 9. Being a factory that:

19 a. has attempted to coerce or has coerced any new motor
20 vehicle dealer to enter into any agreement or to
21 cancel any agreement, or fails to act in good faith
22 and in a fair, equitable and nondiscriminatory manner;
23 or has directly or indirectly coerced, intimidated,
24 threatened or restrained any motor vehicle dealer; or

1 has acted dishonestly, or has failed to act in
2 accordance with the reasonable standards of fair
3 dealing,

- 4 b. has failed to compensate its dealers for the work and
5 services they are required to perform in connection
6 with the dealer's delivery and preparation obligations
7 according to the agreements on file with the
8 Commission which must be found by the Commission to be
9 reasonable, or ~~fail~~ has failed to adequately and
10 fairly compensate its dealers for labor, parts and
11 other expenses incurred by such dealer to perform
12 under and comply with manufacturer's warranty
13 agreements, and recall repairs which shall include
14 diagnostic work as applicable and factory-authorized
15 goodwill repairs. Time allowances for the diagnosis
16 and performance of repair work shall be reasonable and
17 adequate for the work to be performed. Adequate and
18 fair compensation for parts and/or labor for warranty
19 and recall repairs shall be established by the dealer
20 submitting to the manufacturer or distributor one
21 hundred sequential nonwarranty ~~customer-paid~~ consumer-
22 paid service repair orders which contain warranty-like
23 ~~parts~~ repairs, or ninety (90) consecutive days of
24 nonwarranty ~~customer-paid~~ consumer-paid service repair

1 orders which contain warranty-like ~~parts~~ repairs,
2 whichever is less, covering repairs made no more than
3 one hundred eighty (180) days before the submission
4 and declaring the average percentage markup. ~~Adequate~~
5 ~~and fair compensation for labor shall be established~~
6 ~~by the dealer submitting to the manufacturer or~~
7 ~~distributor one hundred sequential customer-paid~~
8 ~~service repair orders which contain labor charges, or~~
9 ~~ninety (90) consecutive days of customer-paid service~~
10 ~~repair orders which contain labor charges, whichever~~
11 ~~is less.~~ A dealer may not submit a request to
12 establish a parts and/or labor rate more than once in
13 a twelve-month period. The dealer shall calculate its
14 retail parts rate by determining the total charges for
15 parts from the qualified repair orders submitted,
16 dividing that amount by the dealer's total cost of the
17 purchase of those parts, subtracting one (1), and
18 multiplying by one hundred (100) to produce a
19 percentage. The dealer shall calculate its retail
20 labor rate by dividing the amount of the dealer's
21 total labor sales from the qualified repair orders by
22 the total labor hours that generated those sales.
23 When submitting repair orders to ~~calculate~~ establish a
24

1 retail parts and/or labor rate, a dealer need not
2 include ~~repair orders~~ repairs for:

3 (1) routine maintenance including, but not limited
4 to, the replacement of bulbs, fluids, filters,
5 batteries and belts that are not provided in the
6 course of and related to a repair,

7 (2) factory special events, specials or promotional
8 discounts for retail consumer repairs,

9 (3) parts sold or repairs performed at wholesale,

10 (4) factory-approved goodwill or policy repairs or
11 replacements,

12 (5) repairs with aftermarket parts, when calculating
13 the retail parts rate but not the retail labor
14 rate,

15 (6) repairs on aftermarket parts,

16 (7) replacement of or work on tires including front-
17 end alignments and wheel or tire rotations,

18 (8) repairs of motor vehicles owned by the dealer or
19 employee thereof at the time of the repair,

20 (9) engine and/or transmission assemblies,

21 (10) vehicle reconditioning, or

22 (11) items that do not have individual part numbers
23 including, but not limited to, nuts, bolts and

24 fasteners. If a franchisor determines from the

1 dealer's set of repair orders submitted pursuant
2 to this section that the dealer's submission for
3 a retail labor rate or retail parts rate is fifty
4 percent (50%) higher than the dealer's current
5 warranty rate, the franchisor may request, in
6 writing, within thirty (30) days after the
7 franchisor's receipt of the dealer's submission,
8 all repair orders closed within the period of
9 thirty (30) days immediately preceding, or thirty
10 (30) days immediately following, the set of
11 repair orders submitted by the dealer. All time
12 periods under this section shall be suspended
13 until the supplemental repair orders are
14 provided. If the franchisor requests
15 supplemental repair orders pursuant to this
16 subsection, the franchisor may calculate a
17 proposed adjusted retail labor rate or retail
18 parts rate, as applicable, using all of the
19 applicable supplemental repair orders and no less
20 than one hundred repair orders submitted by the
21 franchisee, if the franchisor complies by using
22 the same requirements applicable to the
23 franchisee's submission pursuant to this section
24 and by using the formula to calculate retail

1 labor rate or retail parts as provided in this
2 section.

3 A manufacturer or distributor may, not later than ~~thirty~~
4 ~~(30)~~ forty-five (45) days after submission, rebut that
5 declared retail parts and/or labor rate in writing by
6 reasonably substantiating that the rate is inaccurate or
7 ~~unreasonable in light of the practices of all other~~
8 ~~franchised motor vehicle dealers in an economically similar~~
9 ~~part of the state offering the same line-make vehicles~~ not
10 established in accordance with this section. A
11 manufacturer or distributor shall not deny the dealer's
12 submission to establish the retail labor rate, retail parts
13 rate or both, under this section. Instead, the
14 manufacturer or distributor must approve or rebut as
15 provided herein. The retail ~~rate~~ labor and parts rates
16 shall go into effect thirty (30) days following the
17 approval by the manufacturer or distributor, subject to
18 audit of the submitted repair orders by the franchisor and
19 a rebuttal of the declared rate as described above. If the
20 declared rate is rebutted, the manufacturer or distributor
21 shall provide written notice stating the specific reasons
22 for the rebuttal, a full explanation of any and all reasons
23 for the allegation, evidence substantiating the
24 manufacturer or distributor's position, a copy of all

1 calculations used by the franchisor in determining the
2 manufacturer or distributor's position and propose an
3 adjustment in writing of the average percentage markup or
4 labor rate based on that rebuttal not later than thirty
5 (30) days after submission. If the dealer does not agree
6 with the proposed average percentage markup or labor rate,
7 the dealer may file a protest with the Commission not later
8 than thirty (30) days after receipt of that proposal by the
9 manufacturer or distributor. In the event a protest is
10 filed, the manufacturer or distributor shall have the
11 burden of proof to establish the new motor vehicle dealer's
12 submitted parts markup rate or labor rate was inaccurate or
13 ~~unreasonable in light of the practices of all other~~
14 ~~franchised motor vehicle dealers in an economically similar~~
15 ~~part of the state~~ not established in accordance with this
16 section. A manufacturer or distributor may not retaliate
17 against any new motor vehicle dealer seeking to exercise
18 its rights under this ~~provision~~ section. A manufacturer or
19 distributor may require a dealer to submit repair orders in
20 accordance with this section in order to validate a
21 dealer's retail rate for parts or labor not more often than
22 once every twelve (12) months. Any validation of the
23 retail parts and labor rate as permitted herein must use
24 the same criteria for establishment of the rate in this

1 section. A manufacturer or distributor may not otherwise
2 recover its costs from dealers within this state including
3 an increase in the wholesale price of a vehicle or
4 surcharge imposed on a dealer solely intended to recover
5 the cost of reimbursing a dealer for parts and labor
6 pursuant to this section; provided, a manufacturer or
7 distributor shall not be prohibited from increasing prices
8 for vehicles or parts in the normal course of business.

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

1 reserve the right to reasonable, periodic audits to
2 determine the validity of paid claims for dealer
3 compensation or any charge-backs for consumer or dealer
4 incentives. Except in cases of suspected fraud, audits of
5 incentive payments shall only be for a one-year period
6 immediately following the date of the payment. A factory
7 shall not deny a claim or charge a new motor vehicle dealer
8 back subsequent to the payment of the claim unless the
9 factory can show that the claim was false or fraudulent or
10 that the new motor vehicle dealer failed to reasonably
11 substantiate the claim by the written reasonable procedures
12 of the factory. A factory shall not deny a claim or
13 implement a charge-back against a new motor vehicle dealer
14 after payment of a claim in the event a purchaser of a new
15 vehicle that is the subject of a claim fails to comply with
16 titling or registration laws of this state and is not
17 prevented from compliance by any action of the dealer
18 provided that the factory may require the new motor vehicle
19 dealer to establish the sale. The factory shall provide
20 written notice to a dealer of a proposed charge-back that
21 is the result of an audit along with the specific audit
22 results and proposed charge-back amount. A dealer that
23 receives notice of a proposed charge-back pursuant to a
24 factory's audit has the right to file a protest with the

1 Commission within thirty (30) days after receipt of the
2 notice of the charge-back or audit results, whichever is
3 later. The factory is prohibited from implementing the
4 charge-back or debiting the dealer's account until either
5 the time frame for filing a protest has passed or a final
6 adjudication is rendered by the Commission, whichever is
7 later, unless the dealer has agreed to the charge-back or
8 charge-backs,

9 c. fails to compensate the new motor vehicle dealer for a
10 used motor vehicle:

11 (1) that is of the same make and model manufactured,
12 imported or distributed by the factory and is a
13 line-make that the dealer is franchised to sell
14 or on which the dealer is authorized to perform
15 recall repairs,

16 (2) that is subject to a stop-sale or do-not-drive
17 notice issued by the factory,

18 (3) that is held by the new motor vehicle dealer in
19 the dealer's inventory at the time the stop-sale
20 or do-not-drive notice is issued or that is taken
21 by the new motor vehicle dealer into the dealer's
22 inventory after the recall notice as a result of
23 a retail consumer trade-in or a lease return to
24

1 the dealer inventory in accordance with an
2 applicable lease contract,

3 (4) that cannot be repaired due to the
4 unavailability, within thirty (30) days after
5 issuance of the stop-sale or do-not-drive notice,
6 of a remedy or parts necessary for the new motor
7 vehicle dealer to make the recall repair, and

8 (5) for which the factory has not issued a written
9 statement to the new motor vehicle dealer
10 indicating that the used motor vehicle may be
11 sold or delivered to a retail consumer before
12 completion of the recall repair. The purpose of
13 such written statement is to provide notice to
14 the new motor vehicle dealer that the vehicle may
15 be sold or delivered based solely on the specific
16 recall notice and is not intended to address any
17 other aspect of the vehicle unrelated to the
18 recall notice. The factory shall pay the
19 compensation required under this subsection
20 within thirty (30) days after the motor vehicle
21 dealer's application for payment. Compensation
22 under this subsection must be the greater of:
23 (a) payment at a rate of at least one and one-
24 half percent (1.5%) per month of the value

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

14 (b) payment under a national program applicable
15 to all motor vehicle dealers holding a
16 franchise agreement with the manufacturer
17 for the motor vehicle dealer's costs
18 associated with holding the eligible used
19 motor vehicles,

20 d. unreasonably fails or refuses to offer to its same
21 line-make franchised dealers a reasonable supply and
22 mix of all models manufactured for that line-make, or
23 unreasonably requires a dealer to pay any extra fee,
24 purchase unreasonable advertising displays or other

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

24 d.

1 e. except as necessary to comply with a health or safety
2 law, or to comply with a technology requirement which
3 is necessary to sell or service a motor vehicle that
4 the franchised motor vehicle dealer is authorized or
5 licensed by the franchisor to sell or service,
6 requires a new motor vehicle dealer to provide any
7 service or take any action or to construct a new
8 facility or substantially renovate the new motor
9 vehicle dealer's existing facility, in order to
10 receive all models manufactured for that line-make,

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

23 However, this subparagraph shall not apply if the
24 ~~factory provides~~ dealer voluntarily agrees to facility

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

20 e.

21 g. requires a new motor vehicle dealer to establish an
22 exclusive facility, unless supported by reasonable
23 business, market and economic considerations;
24 provided, that this ~~provision~~ section shall not

1 restrict the terms of any agreement for such exclusive
2 facility voluntarily entered into and supported by
3 valuable consideration separate from the new motor
4 vehicle dealer's right to sell and service motor
5 vehicles for the franchisor,

6 ~~f.~~

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

22 ~~g.~~

23 i. refuses to pay, or claim reimbursement from, a dealer
24 for sales, incentives or other payments related to a

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

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

1 usage guidelines. Nothing in this section prohibits
2 the enforcement of a voluntary agreement between the
3 factory and the new motor vehicle dealer where
4 separate and valuable consideration has been offered
5 and accepted;

6 10. Being a factory that:

- 7 a. establishes a system of motor vehicle allocation or
8 distribution which is unfair, inequitable or
9 unreasonably discriminatory. Upon the request of any
10 dealer franchised by it, a factory shall disclose in
11 writing to the dealer the basis upon which new motor
12 vehicles are allocated, scheduled and delivered among
13 the dealers of the same line-make for that factory, or
14 b. changes an established plan or system of motor vehicle
15 distribution. A motor vehicle dealer franchise
16 agreement shall continue in full force and operation
17 notwithstanding a change, in whole or in part, of an
18 established plan or system of distribution of the
19 motor vehicles offered or previously offered for sale
20 under such franchise agreement. The appointment of a
21 new importer or distributor for motor vehicles offered
22 for sale under such franchise agreement shall be
23 deemed to be a change of an established plan or system
24 of distribution. Upon the occurrence of such change,

1 the manufacturer or distributor shall be prohibited
2 from obtaining a license to distribute vehicles under
3 the new plan or system of distribution unless the
4 manufacturer or distributor offers to each motor
5 vehicle dealer who is a party to the franchise
6 agreement a new franchise agreement containing
7 substantially the same provisions which were contained
8 in the previous franchise agreement;

9 11. Being a factory that sells directly or indirectly new motor
10 vehicles to any retail consumer in the state except through a new
11 motor vehicle dealer holding a franchise for the line-make that
12 includes the new motor vehicle. This paragraph does not apply to
13 factory sales of new motor vehicles to its employees, family members
14 of employees, retirees and family members of retirees, not-for-
15 profit organizations or the federal, state or local governments.
16 The provisions of this paragraph shall not preclude a factory from
17 providing information to a consumer for the purpose of marketing or
18 facilitating a sale of a new motor vehicle through its franchised
19 motor vehicle dealers or from establishing a program to sell or
20 offer to sell new motor vehicles through participating dealers
21 subject to the limitations contained in paragraph 2 of Section 562
22 of this title;

23 12. a. Being a factory which directly or indirectly:
24

- 1 (1) owns any ownership interest or has any financial
2 interest in a new motor vehicle dealer or any
3 person who sells products or services to the
4 public,
5 (2) operates or controls a new motor vehicle dealer,
6 or
7 (3) acts in the capacity of a new motor vehicle
8 dealer.

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

- 21 (2) This paragraph does not prohibit a factory from
22 owning, operating, controlling or acting in the
23 capacity of a motor vehicle dealer for a period
24 not to exceed twelve (12) months during the

1 transition from one independent dealer to another
2 independent dealer if the dealership is for sale
3 at a reasonable price and on reasonable terms and
4 conditions to an independent qualified buyer. On
5 showing by a factory of good cause, the Oklahoma
6 Motor Vehicle Commission may extend the time
7 limit set forth above; extensions may be granted
8 for periods not to exceed twelve (12) months.

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

13 (4) This paragraph does not prohibit a factory from
14 owning, directly or indirectly, a minority
15 interest in an entity that owns, operates or
16 controls motor vehicle dealerships of the same
17 line-make franchised by the manufacturer,
18 provided that each of the following conditions
19 are met:

20 (a) all of the motor vehicle dealerships selling
21 the motor vehicles of that manufacturer in
22 this state trade exclusively in the line-
23 make of that manufacturer,
24

- 1 (b) all of the franchise agreements of the
2 manufacturer confer rights on the dealer of
3 the line-make to develop and operate, within
4 a defined geographic territory or area, as
5 many dealership facilities as the dealer and
6 manufacturer shall agree are appropriate,
- 7 (c) at the time the manufacturer first acquires
8 an ownership interest or assumes operation,
9 the distance between any dealership thus
10 owned or operated and the nearest
11 unaffiliated motor vehicle dealership
12 trading in the same line-make is not less
13 than seventy (70) miles,
- 14 (d) during any period in which the manufacturer
15 has such an ownership interest, the
16 manufacturer has no more than three
17 franchise agreements with new motor vehicle
18 dealers licensed by the Oklahoma Motor
19 Vehicle Commission to do business within the
20 state, and
- 21 (e) prior to January 1, 2000, the factory shall
22 have furnished or made available to
23 prospective motor vehicle dealers an
24 offering-circular in accordance with the

1 Trade Regulation Rule on Franchising of the
2 Federal Trade Commission, and any guidelines
3 and exemptions issued thereunder, which
4 disclose the possibility that the factory
5 may from time to time seek to own or
6 acquire, directly or indirectly, ownership
7 interests in retail dealerships;

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

- 14 a. derived from monthly financial statements provided to
15 the factory, and
16 b. regarding any aspect of the profitability of a
17 particular new motor vehicle dealer;

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

22 15. Being a factory which used the ~~customer~~ consumer list of a
23 new motor vehicle dealer for the purpose of unfairly competing with
24 dealers;

1 16. Being a factory which prohibits a new motor vehicle dealer
2 from relocating after a written request by such new motor vehicle
3 dealer if:

4 a. the facility and the proposed new location satisfies
5 or meets the written reasonable guidelines of the
6 factory. Reasonable guidelines do not include
7 exclusivity or site control unless agreed to as set
8 forth in subparagraphs e g and f h of paragraph 9 of
9 this subsection,

10 b. the proposed new location is within the area of
11 responsibility of the new motor vehicle dealer
12 pursuant to Section 578.1 of this title, and

13 c. the factory has sixty (60) days from receipt of the
14 new motor vehicle dealer's relocation request to
15 approve or deny the request. The failure to approve
16 or deny the request within the sixty-day time frame
17 shall constitute approval of the request;

18 17. Being a factory which prohibits a new motor vehicle dealer
19 from adding additional line-makes to its existing facility, if,
20 after adding the additional line-makes, the facility satisfies the
21 written reasonable capitalization standards and facility guidelines
22 of each factory. Reasonable facility guidelines do not include a
23 requirement to maintain exclusivity or site control unless agreed to
24

1 by the dealer as set forth in subparagraphs e g and f h of paragraph
2 9 of this subsection;

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

- 15 a. the addition to a motor vehicle of required or
- 16 optional equipment pursuant to state or federal law,
- 17 b. revaluation of the United States dollar in the case of
- 18 foreign-made vehicles or components, or
- 19 c. an increase in transportation charges due to increased
- 20 rates imposed by common or contract carriers;

21 19. Being a factory that requires a new motor vehicle dealer to
22 participate monetarily in an advertising campaign or contest, or
23 purchase any promotional materials, showroom or other display
24 decoration or materials at the expense of the new motor vehicle

1 dealer without consent of the dealer, which consent shall not be
2 unreasonably withheld;

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

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

- 12 a. by an act or statement from the factory that will in
13 any manner adversely impact the dealer,
- 14 b. by measuring the dealer's performance under the
15 franchise based on the sale of extended service
16 contracts, extended maintenance plans or similar
17 products offered, endorsed or sponsored by the
18 manufacturer or distributor.

19 B. Notwithstanding the terms of any franchise agreement, in the
20 event of a proposed sale or transfer of a dealership, the
21 manufacturer or distributor shall be permitted to exercise a right
22 of first refusal to acquire the assets or ownership interest of the
23 dealer of the new vehicle dealership, if such sale or transfer is
24 conditioned upon the manufacturer or dealer entering into a dealer

1 agreement with the proposed new owner or transferee, only if all the
2 following requirements are met:

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

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

10 3. The proposed sale or transfer ~~of the assets~~ of the
11 dealership does not involve the transfer or sale to a member or
12 members of the family of one or more dealer owners, or to a
13 qualified manager or a partnership or corporation controlled by such
14 persons; and

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

1 receipt of the written request of the factory for such an
2 accounting. The accounting may be requested by a factory before
3 exercising its right of first refusal.

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

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

13 a. any motor vehicle sold by that person is limited to
14 used motor vehicles that have been previously used
15 exclusively and regularly by that person in the
16 conduct of business and used motor vehicles traded in
17 on motor vehicles sold by that person,

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

21 c. motor vehicle financing provided by that person to
22 retail consumers for motor vehicles is limited to used
23 vehicles sold by that person in the conduct of
24 business; or

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

3 SECTION 6. AMENDATORY 47 O.S. 2021, Section 565.1, is
4 amended to read as follows:

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

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

21 2. Within thirty (30) days of receipt of the legal heir's ~~or,~~
22 devisee's or successor's timely written notice, the manufacturer may
23 request, and the legal heir ~~or,~~ devisee or successor shall, within a
24 reasonable time, provide any information which is reasonably

1 necessary for the manufacturer to evaluate the proposed successor
2 dealer and dealership, including, but not limited to, applications,
3 proposals for facilities and financing;

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

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

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

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

24

1 such a case, the written instrument and franchise shall govern the
2 dealership succession.

3 The suspension, revocation or refusal to issue or renew a
4 license or the imposition of any other penalty by the Commission
5 shall be in addition to any penalty which might be imposed upon any
6 licensee upon judgment or conviction in a court of competent
7 jurisdiction for any violation of the provisions of Sections 561
8 through 567, 572, 578.1, 579 and 579.1 of this title.

9 SECTION 7. AMENDATORY 47 O.S. 2021, Section 565.2, is
10 amended to read as follows:

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

1 B. Irrespective of the terms, provisions or conditions of any
2 franchise, or the terms or provisions of any waiver, good cause
3 shall exist for the purpose of a termination, cancellation, or
4 nonrenewal when:

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

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

21 C. Irrespective of the terms, provisions or conditions of any
22 franchise agreement prior to the termination, cancellation or
23 nonrenewal of any franchise, the manufacturer shall furnish
24 notification of such termination, cancellation or nonrenewal to the

1 new motor vehicle dealer and the Oklahoma Motor Vehicle Commission
2 as follows:

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

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

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

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

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

22 3. Not less than one hundred eighty (180) days prior to the
23 effective date of such termination or cancellation where the
24

1 manufacturer or distributor is discontinuing the sale of the product
2 line.

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

9 D. Upon the affected new motor vehicle dealer's receipt of the
10 aforementioned notice of termination, cancellation or nonrenewal,
11 the new motor vehicle dealer shall have the right to file a protest
12 of such threatened termination, cancellation or nonrenewal with the
13 Commission within thirty (30) days and request a hearing. Such
14 hearing shall be held in accordance with the provisions of the
15 Administrative Procedures Act, Sections ~~301~~ 250 through ~~326~~ 323 of
16 Title 75 of the Oklahoma Statutes, to determine if the threatened
17 cancellation, termination or nonrenewal of the franchise has been
18 for good cause and if the factory has complied with its obligations
19 pursuant to subsections A, B and C of this section and the factory
20 shall have the burden of proof. If the Commission finds that the
21 threatened cancellation, termination or nonrenewal of the franchise
22 has not been for good cause or violates subsection A, B or C of this
23 section, then it shall issue a final order stating that the
24 threatened termination is wrongful. A factory shall have the right

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

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

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

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

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

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

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

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

20 F. If a factory prevails in an action to terminate, cancel or
21 not renew any franchise and the new motor vehicle dealer is leasing
22 the dealership facilities, the manufacturer shall pay a reasonable
23 rent to the lessor in accordance with and subject to the provisions
24

1 of subsection G of this section. Nothing in this section shall be
2 construed to relieve a dealer of its duty to mitigate damages.

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

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

12 b. not substantially in excess of facilities recommended
13 by the manufacturer.

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

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

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

24

1 c. failing the foregoing, lease the dealership facilities
2 at a reasonable rental value for the portion of the
3 facility that is recognized in the franchise agreement
4 for one (1) year.

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

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

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

- 19 a. fails to accept a bona fide offer from a prospective
20 purchaser, subleases or assignee,
21 b. refuses to execute a settlement agreement with the
22 lessor if such agreement with the lessor would be
23 without cost to the dealer, or
24

1 c. fails to make written request for assistance under
2 this section within ninety (90) days after the
3 effective date of the termination, cancellation or
4 nonrenewal.

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

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

1 terminated franchise or agree to a process to determine the fair
2 market value, then the factory and dealer shall utilize a neutral
3 third party mediator to resolve the disagreement.

4 SECTION 8. AMENDATORY 47 O.S. 2021, Section 565.3, is
5 amended to read as follows:

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

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

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

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

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

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

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

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 proposed transferee's controlling executive
11 management is not of good moral character or fails to meet the
12 written reasonable and uniformly applied requirements of the
13 manufacturer or distributor relating to prospective franchisees ~~or~~
14 ~~that the facility requirements are not reasonable based on the~~
15 ~~reasons set forth in subparagraph d of paragraph 9 of Section 565 of~~
16 ~~this title.~~

17 SECTION 9. AMENDATORY 47 O.S. 2021, Section 572, is
18 amended to read as follows:

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

1 ~~579 of this title or the threatened cancellation, termination or~~
2 ~~failure to renew any franchise agreement between any factory and~~
3 ~~said dealer, and the court may grant such injunctive relief,~~
4 ~~including temporary restraining orders, as it deems just and~~
5 ~~proper.~~ Notwithstanding the existence of any adequate remedy at
6 law, a dealer is authorized to bring an action in the county in
7 which said dealer is located for the grant, upon a hearing and for
8 cause shown, of a temporary or permanent injunction, or both,
9 restraining any person from acting as a licensee under the terms of
10 Sections 561 through 567, 572, 578.1, 579 and 579.1 of this title
11 without being properly licensed hereunder, or from violating or
12 continuing to violate any of the provisions of Sections 561 through
13 567, 572, 578.1, 579 and 579.1 of this title, or from failing or
14 refusing to comply with the requirements of this law or any rule or
15 regulation adopted hereunder. Such injunction shall be issued
16 without bond. A single act in violation of the provisions of
17 Sections 561 through 567, 572, 578.1, 579 and 579.1 of this
18 title shall be sufficient to authorize the issuance of an
19 injunction. Upon a prima facie showing by the person bringing the
20 action that such a violation by the licensee has occurred, the
21 burden of proof shall then be upon the licensee to prove that such
22 violation or unfair practice did not occur. In any action brought
23 under this section, the court shall award attorney fees and costs to
24 a dealer who prevails, notwithstanding any other provisions of law,

1 and in addition to any other remedy which may be afforded under any
2 other statute of this state.

3 SECTION 10. AMENDATORY 47 O.S. 2021, Section 578.1, is
4 amended to read as follows:

5 Section 578.1 A. Notwithstanding the terms of a franchise and
6 notwithstanding the terms of a waiver, if a factory intends or
7 proposes to enter into a franchise to establish an additional new
8 motor vehicle dealer or to relocate an existing new motor vehicle
9 dealer within or into a relevant market area in which the same line-
10 make of motor vehicle is currently represented, the factory shall
11 provide at least sixty (60) days advance written notice to the
12 Commission and to each new motor vehicle dealer of the same line-
13 make in the relevant market area, of the intention of the factory to
14 establish an additional new motor vehicle dealer or to relocate an
15 existing new motor vehicle dealer within or into the relevant market
16 area. For purposes of this section, the "relevant market area"
17 means the area within a radius of fifteen (15) miles ~~of~~ around the
18 site of the proposed new motor vehicle dealership measured from the
19 property boundary. The notice shall be sent by certified mail to
20 each party and shall include the following information:

- 21 1. The specific location at which the additional or relocated
22 motor vehicle dealer will be established;
- 23 2. The date on or after which the additional or relocated motor
24 vehicle intends to commence business at the proposed location;

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

4 4. The names and addresses of the person intended to be
5 franchised as the proposed additional or relocated motor vehicle
6 dealership, the principal investors in the proposed additional or
7 relocated motor vehicle dealership, and the proposed dealer operator
8 of the proposed additional or relocated motor vehicle dealership;
9 and

10 5. The specific grounds or reasons for the proposed
11 establishment of an additional motor vehicle dealer or relocation of
12 an existing dealer.

13 B. This section does not apply:

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

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

23

24

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

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

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

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1 Commission shall consolidate the hearings to expedite disposition of
2 the matter.

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

8 SECTION 11. AMENDATORY 47 O.S. 2021, Section 580.2, is
9 amended to read as follows:

10 Section 580.2 During the time a person is operating a motor
11 vehicle with the express or implied permission of ~~an authorized~~ a
12 new motor vehicle dealer, as defined in Section 562 of this title,
13 such person's motor vehicle liability policy shall have primary
14 coverage with the motor vehicle liability policy of the dealer
15 having secondary coverage until the vehicle is returned. As used
16 herein, "motor vehicle liability policy" means motor vehicle
17 insurance against legal liability for the death, injury or
18 disability of any human being, or for damage to real or personal
19 property. The motor vehicle liability policy of any person who has
20 been loaned a vehicle by a new motor vehicle dealer pursuant to the
21 terms of this section shall provide primary coverage for any death
22 or injury of any human being or for any real or personal property
23 damage, including damage to the loaned vehicle, with the motor
24 vehicle insurance policy of the dealer having secondary coverage for

1 any death or injury of any human being or for any real or personal
2 property damage, including damage to the loaned vehicle. The change
3 in financial responsibility shall be evidenced by a release signed
4 by the person operating the vehicle with the express or implied
5 permission of the dealer with the release to be returned to the
6 person upon the return of the motor vehicle to the dealer. The
7 motor vehicle liability policy of such person shall meet the minimum
8 financial responsibility requirements found in Section 7-324 of this
9 title.

10 This section shall apply only to the loan of a motor vehicle by
11 ~~an authorized~~ a new motor vehicle dealer which loan occurs without
12 financial remuneration in the form of a fee or lease charge.

13 SECTION 12. This act shall become effective November 1, 2022.

14
15 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE, dated
16 03/02/2022 - DO PASS, As Amended.

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