

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR

5 SENATE BILL 2022

By: Thompson (Roger) of the
Senate

and

Dobrinski of the House

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10 COMMITTEE SUBSTITUTE

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

1 taken when a factory terminates, cancels, or does not
2 renew a franchise; modifying actions required to be
3 taken when a factory terminates, cancels, or does not
4 renew due to a discontinuance of product line;
5 requiring certain purchase at certain value; setting
6 certain valuation; setting process if parties cannot
7 agree; allowing for certain sole ownership,
8 possession, use, and control of certain property;
9 requiring payment of reasonable rent if certain
10 conditions are met; requiring compensation for
11 certain pecuniary loss; requiring certain documents
12 be provided for payment to be made; providing for
13 appraisal process; requiring certain oath be taken;
14 requiring certain average be taken to determine
15 value; allowing for appointment of third appraiser to
16 determine fair market value if certain conditions are
17 met; requiring appraisers make certain valuation;
18 requiring payment within certain time frame; and
19 providing an effective date.

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

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

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

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

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

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

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

1 accordance with the safety standards prescribed by the manufacturer.
2 The term includes premises or facilities at which a person engages
3 only in the repair of motor vehicles if repairs are performed
4 pursuant to the terms of a franchise and motor vehicle
5 manufacturer's warranty. For the purpose of Sections 561 through
6 567, 572, 578.1, 579, and 579.1 of this title, the terms new motor
7 vehicle dealer and "new motor vehicle dealership" shall be
8 synonymous. The term new motor vehicle dealer does not include:

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

19 3. "Motor vehicle salesperson" means any person who, for gain
20 or compensation of any kind, either directly or indirectly,
21 regularly or occasionally, by any form of agreement or arrangement,
22 assists or offers assistance to customers in selecting a vehicle;
23 explains product performance, application, and benefits to
24 customers; describes optional equipment available on the vehicle;

1 offers or coordinates test drives to customers; explains the
2 operating features of a vehicle, or paperwork to the customer; or
3 sells or negotiates for the sale, lease, or conveyance ~~or arranges~~
4 ~~the financing of any new motor vehicle as an employee for any new~~
5 ~~motor vehicle dealer to any one or more third parties.~~ Provided,
6 this definition does not apply to employees of any manufacturer or
7 distributor who has new motor vehicle sales and service agreements
8 with new motor vehicle dealers in this state and does not sell motor
9 vehicles directly to consumers;

10 4. "Commission" means the Oklahoma New Motor Vehicle
11 Commission;

12 5. "Manufacturer" means any person, firm, association,
13 corporation, or trust, resident or nonresident, that manufactures or
14 assembles new and unused motor vehicles or that engages in the
15 fabrication or assembly of motorized vehicles of a type required to
16 be registered in this state;

17 6. "Distributor" means any person, firm, association,
18 corporation, or trust, resident or nonresident, that, being
19 authorized by the original manufacturer, in whole or in part sells
20 or distributes new and unused motor vehicles to new motor vehicle
21 dealers, or that maintains distributor representatives;

22 7. "Factory branch" means any branch office maintained by a
23 person, firm, association, corporation, or trust that manufactures
24 or assembles motor vehicles for the sale of motor vehicles to

1 distributors, or for the sale of motor vehicles to new motor vehicle
2 dealers, or for directing or supervising, in whole or in part, its
3 representatives;

4 8. "Distributor branch" means any branch office similarly
5 maintained by a distributor for the same purposes a factory branch
6 is maintained;

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

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

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

23 12. "New or unused motor vehicle" means a vehicle which is in
24 the possession of the manufacturer or distributor or has been sold

1 only to the holder of a valid franchise granted by the manufacturer
2 or distributor for the sale of that make of new vehicle so long as
3 the manufacturer's statement of origin has not been assigned to
4 anyone other than a licensed franchised new motor vehicle dealer of
5 the same line-make;

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

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

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

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

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

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

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

5 20. "Factory" means a manufacturer, distributor, factory
6 branch, distributor branch, factory representative, or distributor
7 representative, which manufactures or distributes vehicle products;

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

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

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

17 24. "Consumer data" means nonpublic personal information as
18 defined in 15 U.S.C., Section 6809(4) as it existed on January 1,
19 2023, that is:

- 20 a. collected by a new motor vehicle dealer, and
- 21 b. provided by the new motor vehicle dealer directly to a
22 manufacturer or third party acting on behalf of a
23 manufacturer.

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

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

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

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

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

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

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

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

3 5. Being a new motor vehicle dealer who:

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

3 g. has failed to meet or maintain the conditions and
4 requirements necessary to qualify for the issuance of
5 a license, or

6 h. completes any sale or transaction of an extended
7 service contract, extended maintenance plan, or
8 similar product using contract forms that do not
9 conspicuously disclose the identity of the service
10 contract provider;

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

13 7. Being a new motor vehicle dealer who:

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

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

- 1 c. does not hold a franchise in effect with a
2 manufacturer or distributor of new or unused motor
3 vehicles for the sale of the same and is not
4 authorized by the manufacturer or distributor to
5 render predelivery preparation of such vehicles sold
6 to purchasers and to perform any authorized post-sale
7 work pursuant to the manufacturer's or distributor's
8 warranty,
- 9 d. employs a person without obtaining a certificate of
10 registration for the person, or utilizes the services
11 of used motor vehicle lots or dealers or other
12 unlicensed persons in connection with the sale of new
13 motor vehicles,
- 14 e. does not properly service a new motor vehicle before
15 delivery of same to the original purchaser thereof, or
- 16 f. fails to order and stock a reasonable number of new
17 motor vehicles necessary to meet consumer demand for
18 each of the new motor vehicles included in the new
19 motor vehicle dealer's franchise agreement, unless the
20 new motor vehicles are not readily available from the
21 manufacturer or distributor due to limited production;

22 8. Being a factory that has:
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1 a. either induced or attempted to induce by means of
2 coercion or intimidation, any new motor vehicle
3 dealer:

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

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

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

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

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

14 c. used a performance standard, sales objective, or
15 program for measuring dealer performance that may have
16 a material effect on a right of the dealer to vehicle
17 allocation; or payment under any incentive or
18 reimbursement program that is unfair, unreasonable,
19 inequitable, and not based on accurate information,

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

23 (1) is unfair, unreasonable, arbitrary, or
24 inequitable, and

1 (2) does not consider the relevant and material local
2 and state or regional criteria, ~~including~~
3 prevailing economic conditions affecting the
4 sales or service performance of a vehicle dealer,
5 vehicle allocation from the manufacturer, ~~or~~ and
6 any relevant and material data and facts
7 presented by the dealer in writing within thirty
8 (30) days of the written notice of the
9 manufacturer to the dealer of its intention to
10 cancel, terminate, or not renew the dealer's
11 franchise agreement,

12 e. failed or refused to sell, or offer for sale, new
13 motor vehicles to all of its authorized same line-make
14 franchised new motor vehicle dealers at the same price
15 for a comparably equipped motor vehicle, on the same
16 terms, with no differential in functionally available
17 discount, allowance, credit, or bonus, except as
18 provided in subparagraph e of paragraph 9 of this
19 subsection,

20 f. failed to provide reasonable compensation to a new
21 motor vehicle dealer substantially equivalent to the
22 actual cost of providing a manufacturer required
23 loaner or rental vehicle to any consumer who is having
24 a vehicle serviced at the dealership. For purposes of

1 this paragraph, actual cost is the average cost in the
2 new motor vehicle dealer's region for the rental of a
3 substantially similar make and model as the vehicle
4 being serviced, or

- 5 g. failed to make available to its new motor vehicle
6 dealers a fair and proportional share of all new
7 vehicles distributed to same line-make dealers in this
8 state, subject to the same reasonable terms, including
9 any vehicles distributed from a common new vehicle
10 inventory pool outside of the factory's ordinary
11 allocation process such as any vehicles the factory
12 reserves to distribute on a discretionary basis;

13 9. Being a factory that:

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

1 with the dealer's delivery and preparation obligations
2 according to the agreements on file with the
3 Commission which must be found by the Commission to be
4 reasonable, or has failed to adequately and fairly
5 compensate its dealers for labor, parts, and other
6 expenses incurred by the dealer to perform under and
7 comply with manufacturer's warranty agreements and
8 recall repairs which shall include diagnostic work as
9 applicable and assistance requested by a consumer
10 whose vehicle was subjected to an over-the-air or
11 remote change, repair, or update to any part, system,
12 accessory, or function by the manufacturer and
13 performed by the dealer in order to satisfy the
14 consumer. Time allowances for the diagnosis and
15 performance of repair work shall be reasonable and
16 adequate for the work to be performed. Adequate and
17 fair compensation, which under this provision shall be
18 no less than the rates customarily charged for retail
19 consumer repairs as calculated herein, for parts and
20 labor for warranty and recall repairs shall, at the
21 option of the new motor vehicle dealer, be established
22 by the new motor vehicle dealer submitting to the
23 manufacturer or distributor one hundred sequential
24 nonwarranty consumer-paid service repair orders which

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

- 1 (1) routine maintenance including but not limited to
2 the replacement of bulbs, fluids, filters,
3 batteries, and belts that are not provided in the
4 course of and related to a repair,
- 5 (2) factory special events, specials, or promotional
6 discounts for retail consumer repairs,
- 7 (3) parts sold or repairs performed at wholesale,
- 8 (4) factory-approved goodwill or policy repairs or
9 replacements,
- 10 (5) repairs with aftermarket parts, when calculating
11 the retail parts rate but not the retail labor
12 rate,
- 13 (6) repairs on aftermarket parts,
- 14 (7) replacement of or work on tires including front-
15 end alignments and wheel or tire rotations,
- 16 (8) repairs of motor vehicles owned by the new motor
17 vehicle dealer or employee thereof at the time of
18 the repair,
- 19 (9) vehicle reconditioning, or
- 20 (10) items that do not have individual part numbers
21 including, but not limited to, nuts, bolts, and
22 fasteners.

23 A manufacturer or distributor may, not later than
24 forty-five (45) days after submission, rebut that

1 declared retail parts and labor rate in writing by
2 reasonably substantiating that the rate is not
3 accurate or is incomplete pursuant to the provisions
4 of this section. If the manufacturer or distributor
5 determines the set of repair orders submitted by the
6 new motor vehicle dealer pursuant to this section for
7 a retail labor rate or retail parts markup rate is
8 substantially higher than the new motor vehicle
9 dealer's current warranty rates, the manufacturer or
10 distributor may request, in writing, within forty-five
11 (45) days after the manufacturer's or distributor's
12 receipt of the new motor vehicle dealer's initial
13 submission, all repair orders closed within the period
14 of thirty (30) days immediately preceding, or thirty
15 (30) days immediately following, the set of repair
16 orders initially submitted by the new motor vehicle
17 dealer. All time periods under this section shall be
18 suspended until the supplemental repair orders are
19 provided. If the manufacturer or distributor requests
20 supplemental repair orders, the manufacturer or
21 distributor may, within thirty (30) days after
22 receiving the supplemental repair orders and in
23 accordance with the formula described in this
24 subsection, calculate a proposed adjusted retail labor

1 rate or retail parts markup rate, as applicable, based
2 upon any set of the qualified repair orders submitted
3 by the franchisee and following the formula set forth
4 herein to establish the rate. The retail labor and
5 parts rates shall go into effect thirty (30) days
6 following the approval by the manufacturer or
7 distributor. If the declared rate is rebutted, the
8 manufacturer or distributor shall provide written
9 notice stating the reasons for the rebuttal, an
10 explanation of the reasons for the rebuttal, and a
11 copy of all calculations used by the franchisor in
12 determining the manufacturer or distributor's position
13 and propose an adjustment in writing of the average
14 percentage markup or labor rate based on that rebuttal
15 not later than forty-five (45) days after submission.
16 If the new motor vehicle dealer does not agree with
17 the proposed average percentage markup or labor rate,
18 the new motor vehicle dealer may file a protest with
19 the Commission not later than thirty (30) days after
20 receipt of that proposal by the manufacturer or
21 distributor. In the event a protest is filed, the
22 manufacturer or distributor shall have the burden of
23 proof to establish the new motor vehicle dealer's
24 submitted parts markup rate or labor rate was

1 inaccurate or not complete pursuant to the provisions
2 of this section. A manufacturer or distributor may
3 not retaliate against any new motor vehicle dealer
4 seeking to exercise its rights under this section. A
5 manufacturer or distributor may require a dealer to
6 submit repair orders in accordance with this section
7 in order to validate the reasonableness of a dealer's
8 retail rate for parts or labor not more often than
9 once every twelve (12) months. A manufacturer or
10 distributor may not otherwise recover its costs from
11 new motor vehicle dealers within this state including
12 a surcharge imposed on a new motor vehicle dealer
13 solely intended to recover the cost of reimbursing a
14 new motor vehicle dealer for parts and labor pursuant
15 to this section; provided, a manufacturer or
16 distributor shall not be prohibited from increasing
17 prices for vehicles or parts in the normal course of
18 business or from auditing and charging back claims in
19 accordance with this section. All claims made by
20 dealers for compensation for delivery, preparation,
21 warranty, or recall repair work shall be paid within
22 thirty (30) days after approval and shall be approved
23 or disapproved within thirty (30) days after receipt.
24 When any claim is disapproved, the dealer shall be

1 notified in writing of the grounds for disapproval.
2 The dealer's delivery, preparation, and warranty
3 obligations as filed with the Commission shall
4 constitute the dealer's sole responsibility for
5 product liability as between the dealer and
6 manufacturer. A factory may reasonably and
7 periodically audit a new motor vehicle dealer to
8 determine the validity of paid claims for new motor
9 vehicle dealer compensation or any charge-backs for
10 warranty parts or service compensation. Except in
11 cases of suspected fraud, audits of warranty payments
12 shall only be for the one-year period immediately
13 following the date of the payment. A manufacturer
14 shall reserve the right to reasonable, periodic audits
15 to determine the validity of paid claims for dealer
16 compensation or any charge-backs for consumer or
17 dealer incentives. Except in cases of suspected
18 fraud, audits of incentive payments shall only be for
19 a one-year period immediately following the date of
20 the payment. A factory shall not deny a claim or
21 charge a new motor vehicle dealer back subsequent to
22 the payment of the claim unless the factory can show
23 that the claim was false or fraudulent or that the new
24 motor vehicle dealer failed to reasonably substantiate

1 the claim by the written reasonable procedures of the
2 factory. A factory shall not deny a claim or
3 implement a charge-back against a new motor vehicle
4 dealer after payment of a claim in the event a
5 purchaser of a new vehicle that is the subject of a
6 claim fails to comply with titling or registration
7 laws of this state and is not prevented from
8 compliance by any action of the new motor vehicle
9 dealer; provided, that the factory may require the new
10 motor vehicle dealer to provide, within thirty (30)
11 days of notice of charge-back, withholding of payment,
12 or denial of claim, the documentation to demonstrate
13 the vehicle sale, delivery, and customer qualification
14 for an incentive as reported, including consumer name
15 and address and written attestation signed by the
16 dealer operator or general manager stating the
17 consumer was not on the export control list and the
18 dealer did not know or have reason to know the vehicle
19 was being exported or resold.

20 The factory shall provide written notice to a dealer
21 of a proposed charge-back that is the result of an
22 audit along with the specific audit results and
23 proposed charge-back amount. A dealer that receives
24 notice of a proposed charge-back pursuant to a

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

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

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

21 (3) that is held by the new motor vehicle dealer in
22 the dealer's inventory at the time the stop-sale
23 or do-not-drive order is issued or that is taken
24 by the new motor vehicle dealer into the dealer's

1 inventory after the recall notice as a result of
2 a retail consumer trade-in or a lease return to
3 the dealer inventory in accordance with an
4 applicable lease contract,

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

10 (5) that is not at least in the prorated amount of
11 one percent (1.00%) of the value of the vehicle
12 per month beginning on the date that is thirty
13 (30) days after the date on which the stop-sale
14 order was provided to the new motor vehicle
15 dealer until the earlier of either of the
16 following:

17 (a) the date the recall remedy or parts are made
18 available, or

19 (b) the date the new motor vehicle dealer sells,
20 trades, or otherwise disposes of the
21 affected used motor vehicle.

22 For the purposes of division (5) of this subparagraph,
23 the value of a used vehicle shall be the average Black
24 Book value for the year, make, and model of the

1 recalled vehicle. A factory may direct the manner and
2 method in which a new motor vehicle dealer must
3 demonstrate the inventory status of an affected used
4 motor vehicle to determine eligibility under this
5 subparagraph; provided, that the manner and method may
6 not be unduly burdensome and may not require
7 information that is unduly burdensome to provide. All
8 reimbursement claims made by new motor vehicle dealers
9 pursuant to this section for recall remedies or
10 repairs, or for compensation where no part or repair
11 is reasonably available and the vehicle is subject to
12 a stop-sale or do-not-drive order, shall be subject to
13 the same limitations and requirements as a warranty
14 reimbursement claim made under subparagraph b of this
15 paragraph. In the alternative, a manufacturer may
16 compensate its franchised new motor vehicle dealers
17 under a national recall compensation program;
18 provided, the compensation under the program is equal
19 to or greater than that provided under division (5) of
20 this subparagraph, or as the manufacturer and new
21 motor vehicle dealer otherwise agree. Nothing in this
22 section shall require a factory to provide total
23 compensation to a new motor vehicle dealer which would
24 exceed the total average Black Book value of the

1 affected used motor vehicle as originally determined
2 under division (5) of this subparagraph. Any remedy
3 provided to a new motor vehicle dealer under this
4 subparagraph is exclusive and may not be combined with
5 any other state or federal compensation remedy,

6 d. unreasonably fails or refuses to offer to its same
7 line-make franchised dealers a reasonable supply and
8 mix of all models manufactured for that line-make, or
9 unreasonably requires a dealer to pay any extra fee,
10 purchase unreasonable advertising displays or other
11 materials, or enter into a separate agreement which
12 adversely alters the rights or obligations contained
13 within the new motor vehicle dealer's existing
14 franchise agreement or which waives any right of the
15 new motor vehicle dealer as protected by Section 561
16 et seq. of this title, or remodel, renovate, or
17 recondition the new motor vehicle dealer's existing
18 facilities as a prerequisite to receiving a model or
19 series of vehicles, except as may be necessary to sell
20 or service the model or series of vehicles as provided
21 by subparagraph e of this paragraph. It shall be a
22 violation of this section for new vehicle allocation
23 to be withheld subject to any requirement to purchase
24 or sell any number of used or off-lease vehicles. The

1 failure to deliver any such new motor vehicle shall
2 not be considered a violation of the section if the
3 failure is not arbitrary or is due to lack of
4 manufacturing capacity or to a strike or labor
5 difficulty, a shortage of materials, a freight
6 embargo, or other cause over which the manufacturer
7 has no control. However, this subparagraph shall not
8 apply to recreational vehicles, limited production
9 model vehicles, a vehicle not advertised by the
10 factory for sale in this state, vehicles that are
11 subject to allocation affected by federal
12 environmental laws or environmental laws of this
13 state, or vehicles allocated in response to an
14 unforeseen event or circumstance,

15 e. except as necessary to comply with a health or safety
16 law, or to comply with a technology requirement which
17 is necessary to sell or service a motor vehicle that
18 the franchised new motor vehicle dealer is authorized
19 or licensed by the franchisor to sell or service,
20 requires a new motor vehicle dealer to construct a new
21 facility or substantially renovate the new motor
22 vehicle dealer's existing facility unless the facility
23 construction or renovation is justified by the
24 economic conditions existing at the time, as well as

1 the reasonably foreseeable projections, in the new
2 motor vehicle dealer's market and in the automotive
3 industry. However, this subparagraph shall not apply
4 if the new motor vehicle dealer voluntarily agrees to
5 facility construction or renovation in exchange for
6 money, credit, allowance, reimbursement, or additional
7 vehicle allocation to a new motor vehicle dealer from
8 the factory to compensate the new motor vehicle dealer
9 for the cost of, or a portion of the cost of, the
10 facility construction or renovation. Except as
11 necessary to comply with a health or safety law, or to
12 comply with a technology or safety requirement which
13 is necessary to sell or service a motor vehicle that
14 the franchised new motor vehicle dealer is authorized
15 or licensed by the franchisor to sell or service, a
16 new motor vehicle dealer which completes a facility
17 construction or renovation pursuant to factory
18 requirements shall not be required to construct a new
19 facility or renovate the existing facility if the same
20 area of the facility or premises has been constructed
21 or substantially altered within the last ten (10)
22 years and the construction or alteration was approved
23 by the manufacturer as a part of a facility upgrade
24 program, standard, or policy. For purposes of this

1 subparagraph, "substantially altered" means to perform
2 an alteration that substantially impacts the
3 architectural features, characteristics, or integrity
4 of a structure or lot. The term shall not include
5 routine maintenance reasonably necessary to maintain a
6 dealership in attractive condition. If a facility
7 upgrade program, standard, or policy under which the
8 dealer completed a facility construction or
9 substantial alteration does not contain a specific
10 time period during which the manufacturer or
11 distributor shall provide payments or benefits to a
12 participating dealer, or the time frame specified
13 under the program is reduced or canceled prematurely
14 in the unilateral discretion of the manufacturer or
15 distributor, the manufacturer or distributor shall not
16 deny the participating dealer any payment or benefit
17 under the terms of the program, standard, or policy as
18 it existed when the dealer began to perform under the
19 program, standard, or policy for the balance of the
20 ten-year period, regardless of whether the
21 manufacturer's or distributor's program, standard, or
22 policy has been changed or canceled, unless the
23 manufacturer and dealer agree, in writing, to the
24 change in payment or benefit. During the ten-year

1 period following facility construction or substantial
2 alteration, the manufacturer shall not withhold from
3 the dealer its proportionate share of vehicles
4 distributed to dealers of the same line-make, subject
5 to the same reasonable terms, including vehicles
6 distributed from a common new vehicle inventory pool
7 outside of the factory's ordinary allocation process,
8 such as any vehicles the factory reserves to
9 distribute on a discretionary basis,

10 f. requires a new motor vehicle dealer to establish an
11 exclusive facility or to change the location of the
12 dealership, unless supported by reasonable business,
13 market, and economic considerations; provided, that
14 this section shall not restrict the terms of any
15 agreement for such exclusive facility voluntarily
16 entered into and supported by valuable consideration
17 separate from the new motor vehicle dealer's right to
18 sell and service motor vehicles for the franchisor.
19 If a dealer is required by the manufacturer or
20 distributor to change a previously approved location
21 of the dealership and has not sold its existing
22 dealership facility and real estate within the later
23 of one hundred eighty (180) days of listing the
24 property for sale or ninety (90) days after the

1 facility relocation, then, upon the written request of
2 the dealer, the manufacturer or distributor shall
3 purchase the existing dealership facility of the
4 dealer and real estate. The facility and real estate
5 shall be valued as if a new motor vehicle dealership
6 continues to operate on the property. If the factory
7 and dealer cannot agree on the value of the terminated
8 franchise, then the factory and dealer shall utilize
9 the process described in paragraph 6 of subsection G
10 of Section 565.2 of this title. If a manufacturer or
11 distributor purchases a dealership facility and real
12 estate, then it shall be entitled to sole ownership,
13 possession, use, and control of any items, buildings,
14 or property that were included in the contract to
15 purchase,

- 16 g. requires a new motor vehicle dealer to enter into a
17 site-control agreement covering any or all of the new
18 motor vehicle dealer's facilities or premises;
19 provided, that this section shall not restrict the
20 terms of any site-control agreement voluntarily
21 entered into and supported by valuable consideration
22 separate from the new motor vehicle dealer's right to
23 sell and service motor vehicles for the franchisor.
24 Notwithstanding the foregoing or the terms of any

1 site-control agreement, a site-control agreement
2 automatically extinguishes if all of the factory's
3 franchises that operated from the location that are
4 the subject of the site-control agreement are
5 terminated by the factory as part of the
6 discontinuance of a product line,

7 h. refuses to pay, or claims reimbursement from, a new
8 motor vehicle dealer for sales, incentives, or other
9 payments related to a motor vehicle sold by the new
10 motor vehicle dealer because the purchaser of the
11 motor vehicle exported or resold the motor vehicle in
12 violation of the policy of the factory unless the
13 factory can show that, at the time of the sale, the
14 new motor vehicle dealer knew or reasonably should
15 have known of the purchaser's intention to export or
16 resell the motor vehicle. There is a rebuttable
17 presumption that the new motor vehicle dealer did not
18 know or could not have known that the vehicle would be
19 exported if the vehicle is titled and registered in
20 any state of the United States, or

21 i. requires a new motor vehicle dealer to purchase goods
22 or services for the construction, renovation, or
23 improvement of the new motor vehicle dealer's facility
24 from a vendor chosen by the factory if goods or

1 services available from other sources are of
2 substantially similar quality and design and comply
3 with all applicable laws; provided, however, that such
4 goods are not subject to the factory's intellectual
5 property or trademark rights and the new motor vehicle
6 dealer has received the factory's approval, which
7 approval may not be unreasonably withheld. Nothing in
8 this subparagraph may be construed to allow a new
9 motor vehicle dealer to impair or eliminate a
10 factory's intellectual property, trademark rights, or
11 trade dress usage guidelines. Nothing in this section
12 prohibits the enforcement of a voluntary agreement
13 between the factory and the new motor vehicle dealer
14 where separate and valuable consideration has been
15 offered and accepted;

16 10. Being a factory that:

- 17 a. establishes a system of motor vehicle allocation or
18 distribution which is unfair, inequitable, or
19 unreasonably discriminatory. A manufacturer and
20 distributor shall maintain for three (3) years records
21 that describe its methods or formula of allocation and
22 distribution of its motor vehicles and records of its
23 actual allocation and distribution of motor vehicles
24 to its motor vehicle dealers. Upon the written

1 request of any new motor vehicle dealer franchised by
2 ~~it~~ the manufacturer or distributor, received by the
3 manufacturer or distributor within thirty (30) days of
4 the written notice from the manufacturer or
5 distributor to the dealer of the intention to cancel
6 or terminate, or written notice from the manufacturer
7 or distributor of a sales performance deficiency
8 requiring the dealer to take action to cure the
9 alleged performance deficiency, a ~~factory~~ manufacturer
10 or distributor shall disclose in writing to the new
11 motor vehicle dealer the basis upon which new motor
12 vehicles are allocated, scheduled, and delivered, by
13 vehicle model, to ~~among~~ the new motor vehicle dealers
14 of the same line-make for that ~~factory~~ manufacturer or
15 distributor for the prior three (3) years, and the
16 basis upon which the current allocation or
17 distribution is being made or will be made to such
18 dealer, or

19 b. changes an established plan or system of motor vehicle
20 distribution. A new motor vehicle dealer franchise
21 agreement shall continue in full force and operation
22 notwithstanding a change, in whole or in part, of an
23 established plan or system of distribution of the
24 motor vehicles offered or previously offered for sale

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

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

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

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

- 18 (1) owns any ownership interest or has any financial
19 interest in a new motor vehicle dealer or any
20 person who sells products or services pursuant to
21 the terms of the franchise agreement,
22 (2) operates or controls a new motor vehicle dealer,
23 or
24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 a. by an act or statement from the factory that will in
7 any manner adversely impact the new motor vehicle
8 dealer, or

9 b. by measuring the new motor vehicle dealer's
10 performance under the franchise based on the sale of
11 extended service contracts, extended maintenance
12 plans, or similar products offered, endorsed, or
13 sponsored by the manufacturer or distributor.

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

22 1. To exercise its right of first refusal, the factory must
23 notify the new motor vehicle dealer in writing within sixty (60)
24

1 days of receipt of the completed proposal for the proposed sale
2 transfer;

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

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

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

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

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

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

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

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

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

24 D. As used in this section:

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

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

9 E. Nothing in this section shall prohibit a manufacturer or
10 distributor from requiring a dealer to be in compliance with the
11 franchise agreement and authorized to sell a make and model based on
12 applicable reasonable standards and requirements that include but
13 are not limited to any facility, technology, or training
14 requirements necessary to sell or service a vehicle, in order to be
15 eligible for delivery or allotment of a make or model of a new motor
16 vehicle or an incentive.

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

20 Section 565.2. A. Irrespective of the terms, provisions, or
21 conditions of any franchise, or the terms or provisions of any
22 waiver, no manufacturer shall terminate, cancel, or fail to renew
23 any franchise with a licensed new motor vehicle dealer unless the
24 manufacturer has satisfied the notice requirements as provided in

1 this section and has good cause for cancellation, termination, or
2 nonrenewal. The manufacturer shall not attempt to cancel or fail to
3 renew the franchise agreement of a new motor vehicle dealer in this
4 state unfairly and without just provocation or without due regard to
5 the equities of the dealer or without good faith as defined herein.
6 As used herein, "good faith" means the duty of each party to any
7 franchise agreement to act in a fair and equitable manner toward
8 each other, with freedom from coercion or intimidation or threats
9 thereof from each other.

10 B. Irrespective of the terms, provisions, or conditions of any
11 franchise, or the terms or provisions of any waiver, good cause
12 shall exist for the purpose of a termination, cancellation, or
13 nonrenewal when:

14 1. The new motor vehicle dealer has failed to comply with a
15 provision of the franchise, which provision is both reasonable and
16 of material significance to the franchise relationship, or the new
17 motor vehicle dealer has failed to comply with reasonable
18 performance criteria for sales or service established by the
19 manufacturer, and the new motor vehicle dealer has been notified by
20 written notice from the manufacturer; and

21 2. The new motor vehicle dealer has received written
22 notification of failure to comply with the manufacturer's reasonable
23 sales performance standards, capitalization requirements, facility
24 commitments, business-related equipment acquisitions, or other such

1 remediable failings exclusive of those reasons enumerated in
2 paragraph 1 of subsection C of this section, and the new motor
3 vehicle dealer has been afforded a reasonable opportunity of not
4 less than six (6) months to comply with such a provision or
5 criteria.

6 C. Irrespective of the terms, provisions, or conditions of any
7 franchise agreement prior to the termination, cancellation, or
8 nonrenewal of any franchise, the manufacturer shall furnish
9 notification of such termination, cancellation, or nonrenewal to the
10 new motor vehicle dealer and the Oklahoma New Motor Vehicle
11 Commission as follows:

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

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

18 a. insolvency of the new motor vehicle dealer, or the
19 filing of any petition by or against the new motor
20 vehicle dealer under any bankruptcy or receivership
21 law,

22 b. failure of the new motor vehicle dealer to conduct its
23 customary sales and service operations during its
24 customary business hours for seven (7) consecutive

1 business days, provided that such failure to conduct
2 business shall not be due to an act of God or
3 circumstances beyond the direct control of the new
4 motor vehicle dealer, or

5 c. conviction of the new motor vehicle dealer of any
6 felony which is punishable by imprisonment or a
7 violation of the ~~Federal Odometer Act~~ federal odometer
8 law, 49 U.S.C., Section 32701 et seq.; and

9 3. Not less than one hundred eighty (180) days prior to the
10 effective date of the termination or cancellation where the
11 manufacturer or distributor is discontinuing the sale of the product
12 line.

13 The notification required by this subsection shall be by
14 certified mail, return receipt requested, and shall contain a
15 statement of intent to terminate, to cancel, or to not renew the
16 franchise, a statement of the reasons for the termination,
17 cancellation, or nonrenewal and the date the termination shall take
18 effect.

19 D. Upon the affected new motor vehicle dealer's receipt of the
20 aforementioned notice of termination, cancellation, or nonrenewal,
21 the new motor vehicle dealer shall have the right to file a protest
22 of such threatened termination, cancellation, or nonrenewal with the
23 Commission within thirty (30) days and request a hearing. The
24 hearing shall be held within one hundred eighty (180) days of the

1 date of the timely protest by the dealer and in accordance with the
2 provisions of the Administrative Procedures Act, Sections 250
3 through 323 of Title 75 of the Oklahoma Statutes, to determine if
4 the threatened cancellation, termination, or nonrenewal of the
5 franchise has been for good cause and if the factory has complied
6 with its obligations pursuant to subsections A, B, and C of this
7 section and the factory shall have the burden of proof. Either
8 party may request an additional one-hundred-eighty-day extension of
9 the hearing date from the Commission. Approval of the requested
10 extension may not be unreasonably withheld or delayed. If the
11 Commission finds that the threatened cancellation, termination, or
12 nonrenewal of the franchise has not been for good cause or violates
13 subsection A, B, or C of this section, then it shall issue a final
14 order stating that the threatened termination is wrongful. A
15 factory shall have the right to appeal such order. During the
16 pendency of the hearing and after the decision, through any appeal,
17 the franchise shall remain in full force and effect, including the
18 right to transfer the franchise. If the Commission finds that the
19 threatened cancellation, termination, or nonrenewal is for good
20 cause and does not violate subsection A, B, or C of this section,
21 the new motor vehicle dealer shall have the right to an appeal.
22 During the pendency of the action, including the final decision or
23 appeal, the franchise shall remain in full force and effect,
24 including the right to transfer the franchise. If the new motor

1 vehicle dealer prevails in the threatened termination action, the
2 Commission shall award to the new motor vehicle dealer the attorney
3 fees and costs incurred to defend the action.

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

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

11 2. Supplies and parts which have been acquired from the
12 manufacturer, for the purpose of this section, limited to any and
13 all supplies and parts that are listed on the current parts price
14 sheet available to the new motor vehicle dealer;

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

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

23 a. For the purposes of paragraph 1 of this subsection,
24 fair and reasonable compensation shall be no less than

1 the net acquisition price of the vehicle paid by the
2 new motor vehicle dealer.

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

10 F. 1. If a factory prevails in an action to terminate, cancel,
11 or not renew any franchise and the new motor vehicle dealer is
12 leasing the dealership facilities, the manufacturer shall pay a
13 reasonable rent to the lessor in accordance with and subject to the
14 provisions of this subsection ~~G of this section~~. Nothing in this
15 section shall be construed to relieve a new motor vehicle dealer of
16 its duty to mitigate damages.

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

20 a. used solely for performance in accordance with the
21 franchise. If the facility is used for the operation
22 of more than one franchise, the reasonable rent shall
23 be paid based upon the portion of the facility
24

1 utilized by the franchise being terminated, canceled,
2 or nonrenewed, and

- 3 b. not substantially in excess of facilities recommended
4 by the manufacturer.

5 2. If the facilities are owned by the new motor vehicle dealer,
6 an entity considered a relationship as defined in 26 U.S.C., Section
7 267(b), or a member, partner, or shareholder of the dealership,
8 within ninety (90) days following the effective date of the
9 termination, cancellation, or nonrenewal, at the option of the
10 dealer or related entity, the manufacturer ~~will~~ shall either:

- 11 a. ~~locate a qualified purchaser who will offer to~~
12 ~~purchase the dealership facilities at a reasonable~~
13 ~~price,~~
- 14 b. ~~locate a qualified lessee who will offer to lease the~~
15 ~~premises for the remaining lease term at the rent set~~
16 ~~forth in the lease, or~~
- 17 c. ~~failing the foregoing, lease the dealership facilities~~
18 ~~at a reasonable rental value for the portion of the~~
19 ~~facility that is recognized in the franchise agreement~~
20 ~~for one (1) year~~
- 21 purchase the existing dealership facility of the
22 dealer and real estate at its fair market value. If
23 the factory and dealer cannot agree on the fair market
24 value of the terminated franchise or agree to a

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

9 b. locate a qualified purchaser who will offer to
10 purchase the dealership facilities and property at a
11 reasonable price.

12 3. If the facilities are leased by the new motor vehicle dealer
13 from an entity other than an entity considered a relationship as
14 defined in 26 U.S.C., Section 267(b), or a member, partner or
15 shareholder of the dealership, within ninety (90) days following the
16 effective date of the termination, cancellation, or nonrenewal the
17 manufacturer will either:

18 a. locate a tenant or tenants satisfactory to the lessor,
19 who will sublet or assume the balance of the lease,

20 b. arrange with the lessor for the cancellation of the
21 lease without penalty to the new motor vehicle dealer,
22 or

23 c. failing the foregoing, lease the dealership facilities
24 at a reasonable rent for the portion of the facility

1 that is recognized in the franchise agreement for one
2 (1) year or the remainder of the lease, whichever is
3 less.

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

- 6 a. fails to accept a bona fide offer from a prospective
7 purchaser, sublessee, or assignee,
8 b. refuses to execute a settlement agreement with the
9 manufacturer or lessor if such agreement with the
10 manufacturer or lessor would be without cost to the
11 new motor vehicle dealer, or
12 c. fails to make written request for assistance under
13 this section within ninety (90) days after the
14 effective date of the termination, cancellation, or
15 nonrenewal.

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

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

23 1. In an amount equivalent to the fair market value of the
24 terminated franchise as of the date immediately preceding the

1 manufacturer's or distributor's announcement or provide the new
2 motor vehicle dealer with a replacement franchise on substantially
3 similar terms and conditions as those offered to other same line-
4 make dealers-;

5 2. If the facilities are owned by the new motor vehicle dealer
6 or an entity considered a relationship as defined in 26 U.S.C.,
7 Section 267(b), or a member, partner, or shareholder of the
8 dealership, and the owner has not sold the existing dealership
9 facility and real estate within the later of one hundred eighty
10 (180) days of listing the property for sale or ninety (90) days
11 after the effective date of the termination, then, upon the written
12 request of the dealer, the manufacturer or distributor shall
13 purchase the existing dealership facility of the dealer and real
14 estate. The facility and real estate shall be valued as if a new
15 motor vehicle dealership continues to operate on the property. If
16 the factory and dealer cannot agree on the value of the terminated
17 franchise or agree to a process to determine the value, then the
18 factory and dealer shall utilize the process described in paragraph
19 6 of this subsection. If a manufacturer or distributor purchases a
20 dealership facility and real estate, then it shall be entitled to
21 sole ownership, possession, use, and control of any items,
22 buildings, or property that were included in the contract to
23 purchase;

24

1 3. If the facilities are leased by the new motor vehicle dealer
2 from an entity other than an entity considered a relationship as
3 defined in 26 U.S.C., Section 267(b), or a member, partner, or
4 shareholder of the dealership, lease the dealership facilities at a
5 reasonable rent for the remainder of the lease;

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

10 5. The new motor vehicle dealer may immediately request payment
11 under this section following the announcement in exchange for
12 canceling any further franchise rights, except payments owed to the
13 new motor vehicle dealer in the ordinary course of business, or may
14 request payment under this section upon the final termination,
15 cancellation, or nonrenewal of the franchise. In either case,
16 payment under this section shall be made not later than ninety (90)
17 days after the ~~fair market~~ value is determined, the lease agreement
18 is provided, or other reasonable documentation is provided to the
19 manufacturer or distributor supporting other pecuniary losses; and

20 6. If the factory and new motor vehicle dealer cannot agree on
21 the ~~fair market~~ value of the terminated franchise or real estate, or
22 agree to a process to determine the fair market value, then, within
23 thirty (30) days of a written request by dealer, the factory and ~~new~~
24 ~~motor vehicle dealer shall utilize a neutral third party mediator to~~

1 ~~resolve the disagreement~~ shall select one appraiser, and the dealer
2 shall select one appraiser who shall make an independent appraisal.
3 The appraisers shall be state-certified general real estate
4 appraisers and in good standing with the Real Estate Appraiser
5 Board. Before entering upon their duties, such appraisers shall
6 take and subscribe an oath, before a notary public or some other
7 person authorized to administer oaths, that they will perform their
8 duties faithfully and impartially to the best of their ability. If
9 the appraisals are within ten percent (10%) of each other, the
10 average of the two appraisals shall constitute the value. If the
11 two appraisals differ by more than ten percent (10%), the two
12 appraisers may appoint a third appraiser who shall review the two
13 appraisals. The third appraisal, when taken with the first two
14 appraisals and averaged among the three, shall establish the value.
15 The cost of the third appraiser shall be shared equally by the
16 factory and dealer. The appraisers shall make a valuation and
17 determine the amount of compensation to be paid by the factory to
18 the dealer. The factory will then have ninety (90) days to complete
19 the transaction, unless otherwise agreed to by the parties. The
20 factory and the dealer shall each be responsible for the costs of
21 their retained appraisers.

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

23

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