

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 822

By: Leewright

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5
6 AS INTRODUCED

7 An Act relating to motor vehicle dealers; amending 47
8 O.S. 2011, Section 562, as amended by Section 1,
9 Chapter 191, O.S.L. 2013 (47 O.S. Supp. 2020, Section
10 562), which relates to definitions; modifying
11 definitions; amending 47 O.S. 2011, Section 564, as
12 last amended by Section 1, Chapter 79, O.S.L. 2019
13 (47 O.S. Supp. 2020, Section 564), which relates to
14 licenses; disallowing certain authorization;
15 authorizing certain fee; providing for application
16 for certain license; providing requirements and
17 limitations of licensee; requiring certain license
18 for delivery; providing for misdemeanor offense;
19 providing for guidelines for consumer data; providing
20 certain indemnify; authorizing certain data
21 disclosure; amending 47 O.S. 2011, Section 565, as
22 last amended by Section 2, Chapter 79, O.S.L. 2019
23 (47 O.S. Supp. 2020, Section 565), which relates to
24 denial, revocation or suspension of license;
25 requiring certain adherence; prohibiting certain
26 performance methods; providing for calculation;
27 providing for exclusions for certain rate
28 calculation; requiring written notice; requiring
29 criteria for validation; requiring certain factory
30 compensation; disallowing allocation requirements;
31 allowing for certain construction or renovation;
32 providing certain rebuttable presumption; limiting
33 license for distribution; amending 47 O.S. 2011,
34 Section 565.1, as amended by Section 2, Chapter 402,
35 O.S.L. 2014 (47 O.S. Supp. 2020, Section 565.1),
36 which relates to succession dealerships; clarifying
37 language; requiring certain adherence; amending 47
38 O.S. 2011, Section 565.2, as amended by Section 3,
39 Chapter 402, O.S.L. 2014 (47 O.S. Supp. 2020, Section
40 565.2), which relates to termination, cancellation or
41 nonrenewal of franchise; requiring certain

1 compensation; amending 47 O.S. 2011, Section 565.3,
2 as amended by Section 4, Chapter 402, O.S.L. 2014 (47
3 O.S. Supp. 2020, Section 565.3), which relates to
4 notice of proposed sale; limiting evaluations;
5 amending 47 O.S. 2011, Section 572, which relates to
6 venue in damage actions; awarding certain fees and
7 costs; amending 47 O.S. 2011, Section 578.1, which
8 relates to procedures for relocation or
9 establishment; modifying definition; providing for
10 codification; and providing an effective date.

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

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

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

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

- 23 a. recreational vehicles, as defined in the Recreational
24 Vehicle Franchise Act, or
- 25 b. all-terrain vehicles, utility vehicles, and
26 motorcycles used exclusively for off-road use which
27 are sold by a retail implement dealer;

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

1 pursuant to the terms of a franchise and motor vehicle
2 manufacturer's warranty and recall policies. ~~However, the term~~
3 ~~shall not include premises or facilities at which a new motor~~
4 ~~vehicle dealer or dealers within the area of responsibility of such~~
5 ~~dealer or dealers as defined in the manufacturer's franchise~~
6 ~~agreement of such dealer or dealers performs motor vehicle repairs~~
7 ~~pursuant to the terms of a franchise and motor vehicle~~

8 manufacturer's warranty. For the purpose of Sections 561 through
9 567, 572, 578.1, 579 and 579.1 of this title, the terms "new motor
10 vehicle dealer" and "new motor vehicle dealership" shall be
11 synonymous. The term "new motor vehicle dealer" does not include:

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

21 3. "Motor vehicle salesperson" means any person who, for gain
22 or compensation of any kind, either directly or indirectly,
23 regularly or occasionally, by any form of agreement or arrangement,
24

1 sells or negotiates for the sale of any new motor vehicle for any
2 new motor vehicle dealer to any one or more third parties;

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

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

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

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

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

23 9. "Factory representative" means any officer or agent engaged
24 as a representative of a manufacturer of motor vehicles or by a
25

1 factory branch, for the purpose of making or promoting the sale of
2 its motor vehicles, or for supervising or contacting its dealers or
3 prospective dealers;

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

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

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

23 13. "Area of responsibility" means the geographical area, as
24 designated by the manufacturer, factory branch, factory

1 representative, distributor, distributor branch or distributor
2 representative, in which the new motor vehicle dealer is held
3 responsible for the promotion and development of sales and rendering
4 of service for the make of motor vehicle for which the motor vehicle
5 dealer holds a franchise or selling agreement;

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

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

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

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

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

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

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

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

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

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

8 24. "Consumer data" means 'nonpublic personal information' as
9 such term is defined in 15 U.S.C Section 6809(4) as it existed on
10 January 1, 2020, that is:

- 11 a. collected by a dealer, and
12 b. provided by the dealer directly to a manufacturer or
13 third party acting on behalf of a manufacturer. Such
14 term shall not include the same or similar data
15 obtained by a manufacturer from any source other than
16 the dealer or dealer's data management system; and

17 25. "Data management system" means a computer hardware or
18 software system that:

- 19 a. is owned, leased or licensed by a dealer including a
20 system or web-based applications, computer software or
21 computer hardware,
22 b. is located at the dealership or hosted remotely, and
23 c. stores and provides access to consumer data collected
24 or store by a dealer.

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

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

6 Section 564. A. It shall be unlawful for any person, firm,
7 association, corporation or trust to engage in business as, or serve
8 in the capacity of, or act as a motor vehicle dealer or manufacturer
9 or distributor of new motor vehicles, or factory branch, distributor
10 branch or factory representative or distributor representative, as
11 ~~such~~ defined in Section 562 of this title, in this state without
12 first obtaining a license therefor as provided for by law. Any
13 person, firm, association, corporation or trust engaging in more
14 than one of such capacities or having more than one place where such
15 business is carried on or conducted shall be required to obtain and
16 hold a current license for each thereof. Provided that, a new motor
17 vehicle dealer's license shall authorize one person to sell in the
18 event such person shall be the owner of a proprietorship, or the
19 person designated as principal in the dealer's franchise or the
20 managing officer or one partner if no principal person is named in
21 the franchise. Further, provided that a factory or an entity
22 affiliated by any ownership or control by the factory shall not be
23 permitted to be licensed as a motor vehicle dealer.

1 B. Applications for licenses required to be obtained under
2 provisions of Section 561 et seq. of this title shall be verified by
3 the oath or affirmation of the applicant and shall be on forms
4 prescribed by the Oklahoma Motor Vehicle Commission and furnished to
5 such applicants, and shall contain such information as the
6 Commission deems necessary to enable it to fully determine the
7 qualifications and eligibility of the several applicants to receive
8 the license or licenses applied for. The Commission shall require
9 in such application, or otherwise, information relating to the
10 applicant's financial standing, the applicant's business integrity,
11 whether the applicant has an established place of business and is
12 primarily engaged in the pursuit, avocation or business for which a
13 license, or licenses, are applied for, and whether the applicant is
14 able to properly conduct the business for which a license, or
15 licenses, are applied for, and such other pertinent information
16 consistent with the safeguarding of the public interest and the
17 public welfare. All such applications for license or licenses shall
18 be accompanied by the appropriate fee or fees therefor in accordance
19 with the schedule thereof hereinafter set out. In the event any
20 such application is denied and the license applied for is not
21 issued, the entire license fee shall be returned to the applicant.
22 All licenses issued under the provisions of Section 561 et seq. of
23 this title shall expire on June 30, following the date of issue and
24 shall be nontransferable. All applications for renewal of a license

1 for a new motor vehicle dealer, manufacturer, distributor or
2 manufacturer's or distributor's representative shall be submitted by
3 June 1 of each year, and such license or licenses will be issued by
4 July 1. If applications have not been made for renewal of licenses
5 at the times described in this subsection, it shall be illegal for
6 any person to represent himself or herself and act as a dealer,
7 manufacturer, distributor or manufacturer's or distributor's
8 representative. Motor license agents will be notified not to accept
9 such dealers' titles until such time as licenses have been issued by
10 the Commission.

11 C. The schedule of license fees to be charged and received by
12 the Commission for the licenses issued hereunder shall be as
13 follows:

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

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

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

22 4. For each new motor vehicle dealer, except powersports
23 vehicle dealers, initial fee of Three Hundred Dollars (\$300.00) per
24 franchise sold at each location licensed, with an annual renewal fee

1 of One Hundred Dollars (\$100.00) per franchise sold at each location
2 per year; ~~and~~

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

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

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

21 Every motor vehicle factory representative or distributor
22 representative if an individual shall physically possess the license
23 when engaged in business, and shall display same upon request. The
24 name of the employer of such factory representative or distributor

1 representative shall be stated on the license and, in case of a
2 change of employer, the holder of such license shall immediately
3 mail same to the Commission for its endorsement of such change
4 thereon. The Commission shall endorse each such change of employer
5 on licenses for a fee of Ten Dollars (\$10.00).

6 E. The powersports dealer license shall only allow the sale of
7 the specific types of powersports vehicles authorized by the
8 manufacturer and agreed to by the powersports dealer.

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

12 A. A person who is licensed in its state of domicile as a
13 franchised new motor vehicle dealer, and which is not affiliated by
14 ownership or control of a manufacturer, distributor, factory branch,
15 factory representative, distributor branch or distributor
16 representative, as defined in Section 562 of this title, may apply
17 to the Commission for a motor vehicle direct shipper license. Only
18 a person holding a direct shipper license may ship a new motor
19 vehicle from out of the state to a person, association or entity who
20 is an Oklahoma resident. A motor vehicle dealer licensed in the
21 state shall not be required to obtain a direct shipper license to
22 ship a new motor vehicle to a person, association or entity who is
23 an Oklahoma resident. Any person who ships less than three (3) new
24 motor vehicles per year from out of the state to a person,

1 association or entity who is an Oklahoma resident shall not be
2 required to obtain a direct shipper license. The license fee for a
3 direct shipper shall be determined by the Commissioner. The amount
4 of the fee must approximate and reasonably reflect the costs
5 necessary to defray the expenses of the Commissioner's service and
6 activities in connection with this section.

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

14 C. A person that sells and ships a new motor vehicle directly
15 from any person, association or corporation to a resident of the
16 State of Oklahoma without holding a valid motor vehicle direct
17 shipper's license, upon conviction, shall be guilty of a
18 misdemeanor.

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

22 A. With respect to consumer data, a factory or third party
23 acting on behalf of a factory:
24
25

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

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

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

17 4. May not require that a dealer grant the factory or a third
18 party acting on behalf of a factory direct or indirect access to
19 such dealer's data management system to obtain consumer data. A
20 factory or a third party acting on behalf of a factory shall permit
21 a dealer to furnish consumer data in a widely accepted file format,
22 such as comma delimited, and through a third-party vendor selected
23 by the dealer. However, a factory or a third party acting on behalf
24 of a factory may access or obtain consumer data directly from a

1 dealer's data management system with the express written consent of
2 the dealer. The consent shall be in the form of a standalone
3 written document that is executed by the dealer principal/operator
4 and may be withdrawn by the dealer upon thirty (30) days' written
5 notice to the factory as applicable. Such consent shall not be
6 required as a condition to a new motor vehicle dealer's
7 participation in an incentive program unless such consent is
8 necessary to obtain consumer data to implement the program; and

9 5. Shall indemnify the dealer for any third-party claims
10 asserted against or damages incurred by the dealer to the extent
11 caused by access to, use of, or disclosure of consumer data in
12 violation of this section by the factory or a third party to whom
13 the factory has provided consumer data. Nothing contained in this
14 section shall limit the ability of the factory to require that the
15 dealer provide, or use in accordance with the law, such customer
16 information related solely to such factory's own vehicle makes to
17 the extent necessary to do any of the following:

- 18 a. satisfy any safety or recall notice obligations or
19 other legal notice obligations on the part of the
20 manufacturer,
- 21 b. complete the sale and delivery of a new motor vehicle
22 to a customer,
- 23 c. validate and pay customer or dealer incentives, or

1 d. submit to the factory claims for any services supplied
2 by the dealer for any claim for warranty parts or
3 repair.

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

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

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

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

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

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

1 5. Being a new motor vehicle dealer who:

- 2 a. has required a purchaser of a new motor vehicle, as a
3 condition of sale and delivery thereof, to also
4 purchase special features, appliances, accessories or
5 equipment not desired or requested by the purchaser
6 and installed by the dealer,
- 7 b. uses any false or misleading advertising in connection
8 with business as a new motor vehicle dealer,
- 9 c. has committed any unlawful act which resulted in the
10 revocation of any similar license in another state,
- 11 d. has failed or refused to perform any written agreement
12 with any retail buyer involving the sale of a motor
13 vehicle,
- 14 e. has been convicted of a crime involving moral
15 turpitude,
- 16 f. has committed a fraudulent act in selling, purchasing
17 or otherwise dealing in new motor vehicles or has
18 misrepresented the terms and conditions of a sale,
19 purchase or contract for sale or purchase of a new
20 motor vehicle or any interest therein including an
21 option to purchase such vehicle,
- 22 g. has failed to meet or maintain the conditions and
23 requirements necessary to qualify for the issuance of
24 a license, or
25

1 h. completes any sale or transaction of an extended
2 service contract, extended maintenance plan, or
3 similar product using contract forms that do not
4 conspicuously disclose the identity of the service
5 contract provider;

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

8 7. Being a new motor vehicle dealer who:

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

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

20 c. does not hold a franchise in effect with a
21 manufacturer or distributor of new or unused motor
22 vehicles for the sale of the same and is not
23 authorized by the manufacturer or distributor to
24 render predelivery preparation of such vehicles sold

1 to purchasers and to perform any authorized post-sale
2 work pursuant to the manufacturer's or distributor's
3 warranty,

4 d. employs or utilizes the services of used motor vehicle
5 lots or dealers or other unlicensed persons in
6 connection with the sale of new motor vehicles,

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

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

15 8. Being a factory that has:

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

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

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

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

9 b. induced under threat or discrimination by the
10 withholding from delivery to a motor vehicle dealer
11 certain models of motor vehicles, changing or amending
12 unilaterally the dealer's allotment of motor vehicles
13 and/or withholding and delaying delivery of such
14 vehicles out of the ordinary course of business, in
15 order to induce by such coercion any such dealer to
16 participate or contribute to any local or national
17 advertising fund controlled directly or indirectly by
18 the factory or for any other purposes such as contest,
19 "give-aways" or other so-called sales promotional
20 devices and/or change of quotas in any sales contest;
21 or has required motor vehicle dealers, as a condition
22 to receiving their vehicle allotment, to order a
23 certain percentage of the vehicles with optional
24 equipment not specified by the new motor vehicle

1 dealer; however, nothing in this section shall
2 prohibit a factory from supporting an advertising
3 association which is open to all dealers on the same
4 basis,

5 c. used or proposed to use an unreasonable, arbitrary or
6 unfair sales or other standard to measure a dealer's
7 performance under any factory program, policy or the
8 franchise agreement. It shall be considered
9 unreasonable, arbitrary and unfair for the factory to
10 fail to take into account the dealer's specific and
11 market circumstances in establishing the sales or
12 other standard,

13 d. failed or refused to sell, or offer for sale, new and
14 used motor vehicles to all of its same line-make
15 franchised dealers at the same price for a comparably
16 equipped motor vehicle, on the same terms, with no
17 differential in discount, allowance, credit or bonus,

18 e. failed to reimburse a dealer in full for the actual
19 cost of providing a loaner vehicle to any customer who
20 is having a vehicle serviced at the dealership if the
21 provision of such a loaner vehicle is required by the
22 factory. For purposes of this provision, actual cost
23 shall not exceed the average cost in the dealer's

1 region for the rental of a substantially similar make
2 and model as the vehicle being serviced;

3 9. Being a factory that:

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

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

1 for the diagnosis and performance of repair work shall
2 be reasonable and adequate for the work to be
3 performed. Adequate and fair compensation for parts
4 and/or labor shall be established by the dealer
5 submitting to the manufacturer or distributor one
6 hundred sequential nonwarranty customer-paid service
7 repair orders which contain warranty-like ~~parts~~
8 repairs, or ninety (90) consecutive days of
9 nonwarranty customer-paid service repair orders which
10 contain warranty-like ~~parts~~ repairs, whichever is
11 less, covering repairs made no more than one hundred
12 eighty (180) days before the submission and declaring
13 the average percentage markup. The dealer shall
14 calculate its labor rate by dividing the amount of the
15 dealer's total labor sales from the qualified repair
16 orders by the total labor hours that generated those
17 sales. The dealer shall calculate its parts rate by
18 determining the total charges for parts from the
19 qualified repair orders submitted, dividing that
20 amount by the dealer's total cost of the purchase of
21 those parts, subtracting one, and multiplying by 100
22 to produce a percentage. ~~Adequate and fair~~
23 ~~compensation for labor shall be established by the~~
24 ~~dealer submitting to the manufacturer or distributor~~

1 ~~one hundred sequential customer-paid service repair~~
2 ~~orders which contain labor charges, or ninety (90)~~
3 ~~consecutive days of customer-paid service repair~~
4 ~~orders which contain labor charges, whichever is less.~~

5 When submitting repair orders to ~~calculate~~ establish a
6 parts and/or labor rate, a dealer need not include
7 ~~repair orders~~ repairs for:

8 (1) routine maintenance including, but not limited
9 to, the replacement of bulbs, fluids, filters,
10 batteries and belts that are not provided in the
11 course of and related to a repair,

12 (2) factory special events, specials or promotional
13 discounts for retail customer repairs,

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

15 (4) factory approved goodwill or policy repairs or
16 replacements;

17 (5) repairs with aftermarket parts, when calculating
18 the retail parts rate but not the retail labor
19 rate,

20 (6) repairs on aftermarket parts,

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

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

1 (9) engine and/or transmission assemblies,
2 (10) vehicle reconditioning, or
3 (11) items that do not have individual part numbers
4 including, but not limited to, nuts, bolts and
5 fasteners. A manufacturer or distributor may,
6 not later than thirty (30) days after submission,
7 rebut that declared rate in writing by reasonably
8 substantiating that the rate is inaccurate or
9 ~~unreasonable in light of the practices of all~~
10 ~~other franchised motor vehicle dealers in an~~
11 ~~economically similar part of the state offering~~
12 ~~the same line make vehicles~~ not established in
13 accordance with this provision. A manufacturer
14 or distributor shall not deny the dealer's
15 submission to establish the labor rate, retail
16 parts rate or both, under this provision, and
17 instead, must approve or rebut as provided
18 herein. The retail rate shall go into effect
19 thirty (30) days following the approval by the
20 manufacturer, subject to audit of the submitted
21 repair orders by the franchisor and a rebuttal of
22 the declared rate as described above. If the
23 declared rate is rebutted, the manufacturer or
24 distributor shall provide written notice stating

1 the specific reasons for the rebuttal, a full
2 explanation of any and all reasons for the
3 allegation, evidence substantiating the
4 manufacturer or distributor's position, a copy of
5 all calculations used by the franchisor in
6 determining the manufacturer or distributor's
7 position and propose an adjustment in writing of
8 the average percentage markup based on that
9 rebuttal not later than thirty (30) days after
10 submission. If the dealer does not agree with
11 the proposed average percentage markup, the
12 dealer may file a protest with the Commission not
13 later than thirty (30) days after receipt of that
14 proposal by the manufacturer or distributor. In
15 the event a protest is filed, the manufacturer or
16 distributor shall have the burden of proof to
17 establish the new motor vehicle dealer's
18 submitted rate was inaccurate or ~~unreasonable in~~
19 ~~light of the practices of all other franchised~~
20 ~~motor vehicle dealers in an economically similar~~
21 ~~part of the state~~ not established in accordance
22 with this provision. A manufacturer or
23 distributor may not retaliate against any new
24 motor vehicle dealer seeking to exercise its

1 rights under this provision. A manufacturer or
2 distributor may require a dealer to submit repair
3 orders in accordance with this section in order
4 to validate a dealer's retail rate for parts or
5 labor not more often than once every twelve (12)
6 months. Any validation of the rate as permitted
7 herein must use the same criteria for
8 establishment of the rate in this provision. A
9 manufacturer or distributor may not otherwise
10 recover its costs from dealers within this state
11 including an increase in the wholesale price of a
12 vehicle or surcharge imposed on a dealer solely
13 intended to recover the cost of reimbursing a
14 dealer for parts and labor pursuant to this
15 provision; provided, a manufacturer or
16 distributor shall not be prohibited from
17 increasing prices for vehicles or parts in the
18 normal course of business. All claims made by
19 dealers for compensation for delivery,
20 preparation and ~~warranty~~ repair work shall be
21 paid within thirty (30) days after approval and
22 shall be approved or disapproved within thirty
23 (30) days after receipt. When any claim is
24 disapproved, the dealer shall be notified in

1 writing of the grounds for disapproval. The
2 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 dealer
9 compensation or any charge-backs for warranty
10 parts or service compensation. Except in cases
11 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
14 manufacturer shall reserve the right to
15 reasonable, periodic audits to determine the
16 validity of paid claims for dealer compensation
17 or any charge-backs for consumer or dealer
18 incentives. Except in cases of suspected fraud,
19 audits of incentive payments shall only be for a
20 one-year period immediately following the date of
21 the payment. A factory shall not deny a claim or
22 charge a new motor vehicle dealer back subsequent
23 to the payment of the claim unless the factory
24 can show that the claim was false or fraudulent

1 or that the new motor vehicle dealer failed to
2 reasonably substantiate the claim by the written
3 reasonable procedures of the factory. The
4 factory shall provide written notice to a dealer
5 of a proposed charge-back that is the result of
6 an audit along with the specific audit results
7 and proposed charge-back amount. A dealer that
8 receives notice of a proposed charge-back
9 pursuant to a factory's audit has the right to
10 file a protest with the Commission within thirty
11 (30) days after receipt of the notice of the
12 charge-back or audit results, whichever is later.
13 The factory is prohibited from implementing the
14 charge-back or debiting the dealer's account
15 until either the time frame for filing a protest
16 has passed or a final adjudication is rendered by
17 the Commission, whichever is later, unless the
18 dealer has agreed to the charge-back or charge-
19 backs,

20 c. fails to compensate the new motor vehicle dealer for a
21 used motor vehicle:

22 (1) that is of the same make and model manufactured,
23 imported or distributed by the manufacturer,
24

1 (2) that is subject to a recall notice issued by the
2 manufacturer, distributor or an authorized
3 governmental agency, regardless of whether the
4 vehicle is identified by its vehicle
5 identification number,

6 (3) that is held by the new motor vehicle dealer in
7 the dealer's inventory at the time the recall
8 notice is issued or that is taken by the new
9 motor vehicle dealer into the dealer's inventory
10 after the recall notice as a result of a retail
11 consumer trade-in or a lease return to the dealer
12 inventory in accordance with an applicable lease
13 contract,

14 (4) that cannot be repaired due to the
15 unavailability, within 30 days after issuance of
16 the recall notice, of a remedy or parts necessary
17 for the new motor vehicle dealer to make the
18 recall repair, and

19 (5) for which the factory has not issued a written
20 statement to the new motor vehicle dealer
21 indicating that the used motor vehicle may be
22 sold or delivered to a retail customer before
23 completion of the recall repair. The purpose of
24 such written statement is to provide notice to

1 the new motor vehicle dealer that the vehicle may
2 be sold or delivered based solely on the specific
3 recall notice and is not intended to address any
4 other aspect of the vehicle unrelated to the
5 recall notice.

6 (a) the factory shall pay the compensation
7 required under this subsection within 30
8 days after the motor vehicle dealer's
9 application for payment,

10 (b) compensation under this section must be the
11 greater of:

12 i. payment at a rate of at least 1.5
13 percent per month of the motor vehicle
14 value, as determined by the average
15 Black Book value of the corresponding
16 model year vehicle of average
17 condition, of each eligible used motor
18 vehicle in the new motor vehicle
19 dealer's inventory for each month that
20 the dealer does not receive a remedy
21 and parts to complete the required
22 recall repair. Such payment must be
23 prorated for any period less than one
24 month based on the number of days

1 during the month each eligible used
2 motor vehicle is in the motor vehicle
3 dealer's inventory, or

4 ii. payment under a national program
5 applicable to all motor vehicle dealers
6 holding a franchise agreement with the
7 manufacturer for the motor vehicle
8 dealer's costs associated with holding
9 the eligible used motor vehicles,

10 d. unreasonably fails or refuses to offer to its same
11 line-make franchised dealers a reasonable supply and
12 mix of all models manufactured for that line-make, or
13 unreasonably requires a dealer to pay any extra fee,
14 purchase unreasonable advertising displays or other
15 materials, enter into a separate agreement, or
16 remodel, renovate, or recondition the dealer's
17 existing facilities as a prerequisite to receiving a
18 model or series of vehicles. It shall be a violation
19 of this provision for new vehicle allocation to be
20 withheld subject to any requirement to purchase or
21 sell any number of used or off-lease vehicles. The
22 failure to deliver any such new motor vehicle shall
23 not be considered a violation of ~~the section~~ this
24 provision if the failure is not arbitrary or is due to

1 lack of manufacturing capacity or to a strike or labor
2 difficulty, a shortage of materials, a freight embargo
3 or other cause over which the manufacturer has no
4 control. However, ~~this~~ for vehicles planned for
5 limited production, each dealer shall receive at least
6 one (1) such vehicle and otherwise shall receive a
7 reasonable and proportional share of such vehicle
8 allocation. This subparagraph shall not apply to
9 recreational vehicles or limited production model
10 vehicles,

11 ~~d.~~

12 e. except as necessary to comply with a health or safety
13 law, or to comply with a technology requirement which
14 is necessary to sell or service a motor vehicle that
15 the franchised motor vehicle dealer is authorized or
16 licensed by the franchisor to sell or service,
17 requires a new motor vehicle dealer to provide any
18 service or take any action or to construct a new
19 facility or substantially renovate the new motor
20 vehicle dealer's existing facility, in order to
21 receive all models manufactured for that line-make,

22 f. except as necessary to comply with a health or safety
23 law, or to comply with a technology requirement which
24 is necessary to sell or service a motor vehicle that

1 the franchised motor vehicle dealer is authorized or
2 licensed by the franchisor to sell or service,
3 requires a new motor vehicle dealer to construct a new
4 facility or substantially renovate the new motor
5 vehicle dealer's existing facility unless the facility
6 construction or renovation is justified by the
7 economic conditions existing at the time, as well as
8 the reasonably foreseeable projections, in the
9 dealer's market and in the automotive industry.

10 However, this subparagraph shall not apply if the
11 dealer voluntarily agrees to facility construction or
12 renovation in exchange for ~~factory provides~~ money,
13 credit, allowance, reimbursement, except for payments
14 on a per vehicle basis, or additional vehicle
15 allocation to a dealer from the factory to compensate
16 the dealer for the cost of, or a portion of the cost
17 of, the facility construction or renovation. Except
18 as necessary to comply with a health or safety law, or
19 to comply with a technology requirement which is
20 necessary to sell or service a motor vehicle that the
21 franchised motor vehicle dealer is authorized or
22 licensed by the franchisor to sell or service, a
23 dealer which completes a facility construction or
24 renovation pursuant to factory requirements shall not

1 be required to construct a new facility or renovate
2 the existing facility for ten (10) years during which
3 time the dealer will be considered in compliance with
4 any new facility program for purposes of being
5 entitled to all incentive or bonus payments offered to
6 same line-make dealers,

7 ~~e.~~

8 g. requires a new motor vehicle dealer to establish an
9 exclusive facility, unless supported by reasonable
10 business, market and economic considerations;
11 provided, that this provision shall not restrict the
12 terms of any agreement for such exclusive facility
13 voluntarily entered into and supported by valuable
14 consideration separate from the new motor vehicle
15 dealer's right to sell and service motor vehicles for
16 the franchisor,

17 ~~f.~~

18 h. requires a new motor vehicle dealer to enter into a
19 site-control agreement covering any or all of the new
20 motor vehicle dealer's facilities or premises;
21 provided, that this provision shall not restrict the
22 terms of any site-control agreement voluntarily
23 entered into and supported by valuable consideration
24 separate from the new motor vehicle dealer's right to

1 sell and service motor vehicles for the franchisor.
2 Notwithstanding the foregoing or the terms of any
3 site-control agreement, a site-control agreement
4 automatically extinguishes if all of the factory's
5 franchises that operated from the location that are
6 the subject of the site-control agreement are
7 terminated by the factory as part of the
8 discontinuance of a product line, ~~or~~

9 ~~g.~~

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

22 j. requires a new motor vehicle dealer to purchase goods
23 or services for the construction, renovation, or
24 improvement of the dealer's facility from a vendor

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

17 10. Being a factory that:

- 18 a. establishes a system of motor vehicle allocation or
19 distribution which is unfair, inequitable or
20 unreasonably discriminatory. Upon the request of any
21 dealer franchised by it, a factory shall disclose in
22 writing to the dealer the basis upon which new motor
23 vehicles are allocated, scheduled and delivered among
24 the dealers of the same line-make for that factory, or

1 b. changes an established plan or system of motor vehicle
2 distribution. A motor vehicle dealer franchise
3 agreement shall continue in full force and operation
4 notwithstanding a change, in whole or in part, of an
5 established plan or system of distribution of the
6 motor vehicles offered or previously offered for sale
7 under such franchise agreement. The appointment of a
8 new importer or distributor for motor vehicles offered
9 for sale under such franchise agreement shall be
10 deemed to be a change of an established plan or system
11 of distribution. Upon the occurrence of such change,
12 the manufacturer or distributor shall be prohibited
13 from obtaining a license to distribute vehicles under
14 the new plan or system of distribution unless the
15 manufacturer or distributor offers to each motor
16 vehicle dealer who is a party to the franchise
17 agreement a new franchise agreement containing
18 substantially the same provisions which were contained
19 in the previous franchise agreement;

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

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

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

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

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

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

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

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

22 (4) This paragraph does not prohibit a factory from
23 owning, directly or indirectly, a minority
24 interest in an entity that owns, operates or
25

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

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

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

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

22 (d) during any period in which the manufacturer
23 has such an ownership interest, the
24 manufacturer has no more than three
25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. by an act or statement from the factory that will in any manner adversely impact the dealer,
- b. by measuring the dealer's performance under the franchise based on the sale of extended service contracts, extended maintenance plans or similar

1 products offered, endorsed or sponsored by the
2 manufacturer or distributor.

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

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

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

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

23 4. The factory agrees to pay the reasonable expenses, including
24 attorney fees which do not exceed the usual, customary and
25

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

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

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

21 a. any motor vehicle sold by that person is limited to
22 used motor vehicles that have been previously used
23 exclusively and regularly by that person in the
24

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

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

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

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

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

15 Section 565.1. Notwithstanding the terms of any franchise
16 agreement, and subject to the following conditions contained in
17 paragraphs 1 through 5 of this section, any manufacturer or
18 distributor who prevents or refuses to honor the succession to the
19 operation of a dealership by any legal heir or devisee under the
20 will of a new motor vehicle dealer or under the laws of descent and
21 distribution of this state, or designated successor to a departing
22 dealership operator, without good cause or good faith, as defined in
23 this section, shall be subject to the following procedure:

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

8 2. Within thirty (30) days of receipt of the legal heir's, ~~or~~
9 devisee's or successor's timely written notice, the manufacturer may
10 request, and the legal heir, ~~or~~ devisee or successor shall, within a
11 reasonable time, provide any information which is reasonably
12 necessary for the manufacturer to evaluate the proposed successor
13 dealer and dealership, ~~including, but not limited to, applications,~~
14 ~~proposals for facilities and financing;~~

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

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

23 5. Within ten (10) days of its receipt of the manufacturer's
24 notice of disapproval, the ~~legal heir or devisee~~ proposed successor

1 may file a protest of the manufacturer's decision with the Oklahoma
2 Motor Vehicle Commission and request a hearing. Such hearing shall
3 be heard in a substantially similar manner as provided by Section
4 566 of this title, except that the Commission shall render a final
5 decision within sixty (60) days of the filing of the protest. The
6 manufacturer shall have the burden of proof to show that its
7 disapproval was for a good cause and in good faith. A denial shall
8 not be for good cause and in good faith unless the factory
9 establishes that the ~~legal heir or devisee~~ proposed successor, or
10 the ~~legal heir or devisee's~~ proposed successor's controlling
11 executive management, is not of good moral character or fails to
12 meet the written, reasonable and uniformly applied requirements of
13 the manufacturer or distributor relating to financial
14 qualifications, general business experience, and other requirements
15 relating to prospective franchisees. However, a legal heir that is
16 of good moral character in accordance with the reasonable factory's
17 qualifications and meets the factory's financial qualifications may
18 rely on controlling executive management that is of good moral
19 character and meets the factory's qualifications for general
20 business experience ~~and other requirements relating to prospective~~
21 franchises. Any denial of the proposed successor based upon a
22 failure to agree to terms different than contained in the existing
23 franchise agreement shall not be considered good cause for such
24 denial. The disapproval by the manufacturer shall be final if the

1 ~~legal heir or devisee~~ proposed successor or dealership fails to file
2 a timely protest of such disapproval. In the event that the
3 Commission finds that the manufacturer's disapproval was not made
4 for good cause, then it shall issue a final order requiring the
5 manufacturer to honor the successor designated in the notice sent by
6 the legal heir or devisee. Notwithstanding anything to the contrary
7 in this section, a new motor vehicle dealer may designate any person
8 as successor by filing a written instrument pursuant to the
9 franchise with the manufacturer during the new motor vehicle
10 dealer's lifetime. In such a case, the written instrument and
11 franchise shall govern the dealership succession.

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

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

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

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

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

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

22 2. The new motor vehicle dealer has received written
23 notification of failure to comply with the manufacturer's reasonable
24 sales performance standards, capitalization requirements, facility

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

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

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

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

- 19 a. insolvency of the new motor vehicle dealer, or the
20 filing of any petition by or against the motor vehicle
21 dealer under any bankruptcy or receivership 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
25

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; and

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

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

18 D. Upon the affected new motor vehicle dealer's receipt of the
19 aforementioned notice of termination, cancellation or nonrenewal,
20 the new motor vehicle dealer shall have the right to file a protest
21 of such threatened termination, cancellation or nonrenewal with the
22 Commission within thirty (30) days and request a hearing. Such
23 hearing shall be held in accordance with the provisions of the
24 Administrative Procedures Act, Sections 301 through 326 of Title 75

1 of the Oklahoma Statutes, to determine if the threatened
2 cancellation, termination or nonrenewal of the franchise has been
3 for good cause and if the factory has complied with its obligations
4 pursuant to subsections A, B and C of this section and the factory
5 shall have the burden of proof. If the Commission finds that the
6 threatened cancellation, termination or nonrenewal of the franchise
7 has not been for good cause or violates subsection A, B or C of this
8 section, then it shall issue a final order stating that the
9 threatened termination is wrongful. A factory shall have the right
10 to appeal such order. During the pendency of the hearing and after
11 the decision, the franchise shall remain in full force and effect,
12 including the right to transfer the franchise. If the Commission
13 finds that the threatened cancellation, termination or nonrenewal is
14 for good cause and does not violate subsection A, B or C of this
15 section, the new motor vehicle dealer shall have the right to an
16 appeal. During the pendency of the action, including the final
17 decision or appeal, the franchise shall remain in full force and
18 effect, including the right to transfer the franchise. If the new
19 motor vehicle dealer prevails in the threatened termination action,
20 the Commission shall award to the new motor vehicle dealer the
21 attorney fees and costs incurred to defend the action.

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

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

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

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

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

16 a. For the purposes of paragraph 1 of this subsection,
17 fair and reasonable compensation shall be no less than
18 the net acquisition price of the vehicle paid by the
19 new motor vehicle dealer.

20 b. For the purposes of paragraphs 2, 3 and 4 of this
21 subsection, fair and reasonable compensation shall be
22 the net acquisition price paid by the new motor
23 vehicle dealer less a twenty-percent (20%) straight-
24 line depreciation for each year following the dealer's

1 acquisition of the supplies, parts, equipment,
2 furnishings and/or special tools.

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

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

12 a. used solely for performance in accordance with the
13 franchise. If the facility is used for the operation
14 of more than one franchise, the reasonable rent shall
15 be paid based upon the portion of the facility
16 utilized by the franchise being terminated, canceled
17 or nonrenewed, and

18 b. not substantially in excess of facilities recommended
19 by the manufacturer.

20 2. If the facilities are owned by the new motor vehicle dealer,
21 within ninety (90) days following the effective date of the
22 termination, cancellation or nonrenewal the manufacturer will
23 either:
24

- a. locate a qualified purchaser who will offer to purchase the dealership facilities at a reasonable price,
- b. locate a qualified lessee who will offer to lease the premises for the remaining lease term at the rent set forth in the lease, or
- c. failing the foregoing, lease the dealership facilities at a reasonable rental value for the portion of the facility that is recognized in the franchise agreement for one (1) year.

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

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

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

- a. fails to accept a bona fide offer from a prospective purchaser, subleases or assignee,
- b. refuses to execute a settlement agreement with the lessor if such agreement with the lessor would be without cost to the dealer, or
- c. fails to make written request for assistance under this section within ninety (90) days after the effective date of the termination, cancellation or nonrenewal.

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

H. In addition to the repurchase requirements set forth in subsections E and G of this section, in the event the termination or cancellation is the result of a discontinuance of a product line, the manufacturer or distributor shall compensate the new motor vehicle dealer in an amount equivalent to the fair market value of the terminated franchise as of the date ~~of~~ immediately preceding the manufacturer's or distributor's announcement or provide the new motor vehicle dealer with a replacement franchise on substantially similar terms and conditions as those offered to other same line-make dealers. The dealer may immediately request payment under this provision following the announcement in exchange for cancelling any further franchise rights, except payments owed to the dealer in the ordinary course of business, or may request payment under this

1 provision upon the final termination, cancellation or nonrenewal of
2 the franchise. In either case, payment under this provision shall
3 be made not later than ninety (90) days after the fair market value
4 is determined. If the factory and dealer cannot agree on the fair
5 market value of the terminated franchise or agree to a process to
6 determine the fair market value, then the factory and dealer shall
7 utilize a neutral third party mediator to resolve the disagreement.

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

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

22 B. The approval by the manufacturer or distributor of the sale,
23 transfer, or assignment shall not be unreasonably withheld unless
24 the transferee is not of good moral character or fails to meet the
25

1 written, reasonable, and uniformly applied requirements of the
2 manufacturer or distributor relating to prospective franchisees.
3 Approval of the transfer shall not be made contingent upon the
4 transferee meeting ~~unreasonable~~ facility requirements or
5 performance standards, different than contained in the transferor's
6 franchise agreement, but may be made contingent upon the transferee
7 meeting reasonable written requirements. The burden of proof shall
8 be upon the manufacturer or distributor to show good cause existed
9 to withhold approval. The manufacturer or distributor that has made
10 such a determination shall send a letter by certified mail to the
11 dealer and the applicant of its refusal to approve the proposal,
12 which shall include a statement of the specific grounds for refusal,
13 within sixty (60) days after the later of:

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

16 2. Receipt by the manufacturer or distributor of the
17 information requested from the transferee pursuant to subsection A
18 of this section if the manufacturer or distributor has requested
19 such information within fifteen (15) days of receipt of written
20 notice of the proposed sale, transfer, or assignment.

21 C. Failure of the manufacturer or distributor to send its
22 notice of refusal pursuant to subsection B of this section shall
23 mean that the application for the proposed sale, transfer, or
24 assignment is approved.

1 D. If the proposed sale, transfer or assignment is to an
2 existing owner's family member or other existing owner then the
3 manufacturer or distributor's evaluation of such proposal is limited
4 to the written, reasonable and uniformly applied requirements of the
5 manufacturer or distributor relating to good moral character and
6 financial qualifications.

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

22 SECTION 9. AMENDATORY 47 O.S. 2011, Section 572, is
23 amended to read as follows:
24

1 Section 572. Any action brought to recover any damages that may
2 be sustained by any motor vehicle dealer may be brought in the
3 county in which said dealer is located and in addition to the action
4 for damages he shall be entitled to sue for and have injunctive
5 relief against the threatened loss, damage or injury to his business
6 or property because of any violation of Sections 565 through 566 and
7 579 of this title or the threatened cancellation, termination or
8 failure to renew any franchise agreement between any factory and
9 said dealer, and the court may grant such injunctive relief,
10 including temporary restraining orders, as it deems just and proper,
11 and award attorney fees and costs to a dealer which prevails,
12 notwithstanding any other provisions of law, and in addition to any
13 other remedy which may be afforded under any other statute of this
14 state.

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

17 Section 578.1. A. Notwithstanding the terms of a franchise and
18 notwithstanding the terms of a waiver, if a factory intends or
19 proposes to enter into a franchise to establish an additional new
20 motor vehicle dealer or to relocate an existing new motor vehicle
21 dealer within or into a relevant market area in which the same line-
22 make of motor vehicle is currently represented, the factory shall
23 provide at least sixty (60) days advance written notice to the
24 Commission and to each new motor vehicle dealer of the same line-

1 make in the relevant market area, of the intention of the factory to
2 establish an additional new motor vehicle dealer or to relocate an
3 existing new motor vehicle dealer within or into the relevant market
4 area. For purposes of this section, the "relevant market area"
5 means the area within a radius of fifteen (15) miles ~~of~~ around the
6 site of the proposed new motor vehicle dealership measured from the
7 property boundary. The notice shall be sent by certified mail to
8 each party and shall include the following information:

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

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

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

16 4. The names and addresses of the person intended to be
17 franchised as the proposed additional or relocated motor vehicle
18 dealership, the principal investors in the proposed additional or
19 relocated motor vehicle dealership, and the proposed dealer operator
20 of the proposed additional or relocated motor vehicle dealership;
21 and

22 5. The specific grounds or reasons for the proposed
23 establishment of an additional motor vehicle dealer or relocation of
24 an existing dealer.

1 B. This section does not apply:

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

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

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

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

18 C. Within thirty (30) days after receipt of the notice, or
19 within thirty (30) days after the end of an appeal procedure
20 provided by the factory, whichever is greater, a new motor vehicle
21 dealer so notified or entitled to notice may file a petition with
22 the Commission protesting the proposed establishment or relocation.
23 The petition shall contain a short statement setting forth the
24 reasons for the objection of the dealer to the proposed

1 establishment or relocation. Upon filing of a protest, the
2 Commission shall promptly notify the factory that a timely protest
3 has been filed and shall schedule a hearing, which shall be held
4 within one hundred twenty (120) days of the filing of a timely
5 protest. The factory shall not establish or relocate the new motor
6 vehicle dealer until the Commission has held a hearing and has
7 determined that there is good cause for permitting the proposed
8 establishment or relocation. When more than one protest is filed
9 against the establishment or relocation of the same dealer, the
10 Commission shall consolidate the hearings to expedite disposition of
11 the matter.

12 D. The burden of proof to establish that good cause exists for
13 permitting the proposed establishment of a new motor vehicle dealer
14 or relocating an existing new motor vehicle dealership shall be on
15 the applicant who seeks to establish a new motor vehicle dealership
16 or the relocation of an existing new motor vehicle dealership.

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

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