

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 2244

By: Dobrinski

5
6
7 COMMITTEE SUBSTITUTE

8 An Act relating to motor vehicles; defining terms;
9 authorizing dealer management system providers
10 perform certain actions; prohibiting dealer
11 management system providers from certain actions;
12 making conflicting term or condition of contracts
13 void and unenforceable; requiring certain actions of
14 authorized integrators; allowing dealers to withdraw,
15 revoke or amend certain express written authorization
16 under certain circumstances; requiring certain
17 obligations to secure and prevent unauthorized access
18 to certain information; stating certain parties not
19 liable for certain actions; requiring indemnification
20 for certain claims; confining certain judgments to
21 operations of this act directly involved in the
22 controversy in which judgment is rendered; requiring
23 manufacturers to allow new motor vehicle dealers to
24 make certain offers to consumers; making certain
exceptions; amending 47 O.S. 2021, Section 562, which
relates to definitions; modifying definitions;
defining terms; amending 47 O.S. 2021, Section 564,
which relates to licenses; disallowing certain
authorization; making certain exception; amending 47
O.S. 2021, Section 565, as last amended by Section 3,
Chapter 192, O.S.L. 2022 (47 O.S. Supp. 2022, Section
565), which relates to denial, revocation, or
suspension of license; modifying entity subject to
license denial, revocation, suspension, or fine;
modifying reasons for license denial, revocation,
suspension, or punishment by fine; prohibiting
certain standards to measure performance; requiring
certain vehicles be offered at same price; requiring
certain reimbursement for rental cars; making certain
exception; requiring new vehicles be distributed in

1 certain manner; limiting dealers to one part or labor
2 rate request per year; providing for certain
3 calculation; providing for exclusions for certain
4 rate calculation; modifying reasons for certain
5 rebuttal; allowing certain written request; allowing
6 certain adjustments; requiring certain written
7 notice; prohibiting certain recovery of costs;
8 prohibiting factory denial of certain claims and
9 implementation of certain charge-backs; requiring
10 certain documentation and written attestation;
11 providing for certain compensation calculation;
12 requiring certain method for used vehicle
13 calculations; allowing factory to direct dealer in
14 certain manner and method; requiring certain
15 reimbursement claims be subject to certain
16 limitations and requirements; placing certain limit
17 on total compensation; disallowing certain remedy
18 combinations; disallowing the use of certain
19 agreements; making certain exception; providing for
20 certain violation; allowing for certain construction
21 or renovation; providing certain rebuttable
22 presumption; prohibiting factories from changing
23 certain plans or systems; limiting license for
24 distribution; amending 47 O.S. 2021, Section 565.1,
which relates to succession dealerships; defining
term; clarifying language; requiring adherence to
certain agreement; requiring certain changes be in
compliance with existing law; amending 47 O.S. 2021,
Section 565.2, which relates to termination,
cancellation, or nonrenewal of franchise; requiring
certain compensation; amending 47 O.S. 2021, Section
565.3, which relates to notice of proposed sale;
requiring use of certain standards; requiring certain
changes be in compliance with existing law; limiting
certain evaluations; deleting certain protest right;
amending 47 O.S. 2021, Section 578.1, which relates
to procedures for relocation or establishment;
modifying definition; amending 47 O.S. 2021, Section
580.2, which relates to insurance coverage on loan
vehicles; defining term; making certain liability
policy coverage distinction; providing for
noncodification; providing for codification; and
providing an effective date.

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

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

5 A. As used in this section:

6 1. "Access fee" means a requirement to pay money for access to
7 protected dealer data.

8 2. "Authorized integrator" means a person with which a dealer
9 has a contractual relationship or to which the dealer otherwise
10 gives express written authorization to have access to protected
11 dealer data stored on a dealer data system or to write protected
12 dealer data to the dealer data system for the purpose of performing
13 a specific function for the dealer.

14 3. "Dealer data system" means software, hardware or firmware
15 that a dealer leases or rents from a dealer management system
16 provider for the purpose of storing protected dealer data.

17 4. "Dealer management system provider" means a person that for
18 compensation maintains and provides access to a dealer data system
19 in which a dealer stores protected dealer data.

20 5. "Protected dealer data" means:

21 a. personal data or financial data about a consumer that
22 a dealer generated or that the consumer provided to
23 the dealer that is not otherwise publicly available
24 and which the consumer has not otherwise provided

1 consent or acknowledgment permitting his or her
2 information may be shared, and

- 3 b. any other personal or financial data in connection
4 with the dealer's daily business operations to which a
5 dealer has rights in a dealer data system.

6 6. "Authorized integrator" and "dealer management system
7 provider" do not include:

- 8 a. a manufacturer, distributor or importer or any entity
9 that is a subsidiary or affiliate of, or acts on
10 behalf of, a manufacturer, distributor or importer, or
11 b. a governmental body or other person that is acting in
12 accordance with federal, state or local law or a valid
13 court order.

14 B. A dealer management system provider may:

15 1. Condition a dealer's or authorized integrator's access and
16 ability to receive, share, copy, use, write or transmit protected
17 dealer data from or to a dealer data system on the dealer's or
18 authorized integrator's compliance with security standards;

19 2. Require an authorized integrator to have express written
20 authorization from a dealer before allowing the authorized
21 integrator to gain access to, receive, share, copy, use or transmit
22 protected dealer data; and

23 3. Deny access to a dealer data system to a dealer if the
24 dealer fails to pay an amount due to the dealer management system

1 provider under a lease, contract or other agreement concerning the
2 dealer's access to or use of the dealer data system.

3 C. Except as provided in subsection B of this section, a dealer
4 management system provider shall not take any action that would
5 limit or prohibit a dealer's or an authorized integrator's ability
6 to receive, protect, store, copy, share or use protected dealer data
7 using means that include, but are not limited to:

8 1. Imposing an access fee on a dealer or authorized integrator;
9 and

10 2. Restricting a dealer or an authorized integrator from
11 sharing protected dealer data or writing data or having access to a
12 dealer data system. Examples of restrictions this paragraph does
13 not permit include, but are not limited to:

14 a. limits on the scope or nature of protected dealer data
15 to which a dealer or authorized integrator has access
16 or may share or write to a dealer data system, and

17 b. a requirement for a dealer or authorized integrator to
18 provide sensitive or confidential business information
19 or information that a dealer or authorized integrator
20 uses for competitive purposes in return for access to
21 protected dealer data or an authorization to share or
22 write protected dealer data to a dealer data system.

23 D. Except as otherwise provided in this section, any term or
24 condition of a contract with a dealer management system provider

1 that conflicts with the requirements set forth in subsection C of
2 this section is void and unenforceable to the extent of the
3 conflict.

4 E. 1. An authorized integrator shall:

5 a. obtain express written authorization from a dealer
6 before gaining access to, receiving, sharing, copying,
7 using, writing or transmitting protected dealer data,
8 and

9 b. comply with security standards in gaining access to,
10 receiving, sharing, copying, using, writing or
11 transmitting protected dealer data.

12 2. Allow a dealer to withdraw, revoke or amend any express
13 written authorization the dealer provides under subparagraph a of
14 paragraph 1 of this subsection:

15 a. at the dealer's sole discretion, if the dealer gives
16 30 days' prior notice to an authorized integrator, or
17 b. immediately, for good cause.

18 F. 1. This section does not prevent a dealer, a dealer
19 management system provider or an authorized integrator from
20 discharging the dealer's, dealer management system provider's or
21 authorized integrator's obligations under federal, state or local
22 law to secure and prevent unauthorized access to protected dealer
23 data, or from limiting the scope of the obligations, in accordance
24 with federal, state or local law.

1 2. A dealer management system provider is not liable for any
2 action that a dealer takes directly with respect to securing or
3 preventing unauthorized access to protected dealer data, or for
4 actions that an authorized integrator takes in appropriately
5 following the dealer's written instructions for securing or
6 preventing unauthorized access to protected dealer data, to the
7 extent that the actions prevent the dealer management system
8 provider from meeting a legal obligation to secure or prevent
9 unauthorized access to protected dealer data.

10 3. A dealer is not liable for any action that an authorized
11 integrator takes directly with respect to securing or preventing
12 unauthorized access to protected dealer data, or for actions that
13 the authorized integrator takes in appropriately following the
14 dealer's written instructions for securing or preventing
15 unauthorized access to protected dealer data, to the extent that the
16 actions prevent the dealer from meeting a legal obligation to secure
17 or prevent unauthorized access to protected dealer data.

18 4. An authorized integrator is not liable for any action that a
19 dealer takes directly with respect to securing or preventing
20 unauthorized access to protected dealer data, or for actions that
21 the dealer takes in appropriately following the authorized
22 integrator's written instructions for securing or preventing
23 unauthorized access to protected dealer data, to the extent that the
24 actions prevent the authorized integrator from meeting a legal

1 obligation to secure or prevent unauthorized access to protected
2 dealer data.

3 5. A manufacturer, distributor or importer or any entity that
4 is a subsidiary or affiliate of, or acts on behalf of, a
5 manufacturer, distributor or importer is not liable for any action
6 that a dealer, dealer management system provider, authorized
7 integrator, or other third party takes directly with respect to
8 securing or preventing unauthorized access to protected dealer data,
9 or for actions that an authorized integrator, dealer management
10 system provider, or other third party takes in appropriately
11 following the dealer's written instructions for securing or
12 preventing unauthorized access to protected dealer data.

13 6. Notwithstanding any other agreement, an authorized
14 integrator shall indemnify and hold the new motor vehicle dealer
15 harmless from any third-party claims asserted against or damages
16 incurred by the new motor vehicle dealer to the extent caused by
17 access to, use of, or disclosure of consumer data in violation of
18 this section.

19 7. Notwithstanding any other agreement, a manufacturer,
20 distributor or importer or any entity that is a subsidiary or
21 affiliate of, or acts on behalf of, a manufacturer, distributor or
22 importer shall indemnify the dealer for any third-party claims
23 asserted against or damages incurred by the dealer to the extent the
24 claims or damages are caused by the access to and unlawful

1 disclosure of protected dealer data resulting from a breach caused
2 by the manufacturer or distributor or a third party to which the
3 manufacturer or distributor has provided the protected dealer data
4 in violation of this section, the written consent granted by the
5 dealer, or other applicable state or federal law.

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

9 If any part or provision of this act or the application thereof
10 to any person or circumstance be adjudged invalid by any court of
11 competent jurisdiction, such judgment shall be confined in its
12 operation to the part, provision, or application directly involved
13 in the controversy in which such judgment shall have been rendered
14 and shall not affect or impair the validity of the remainder of this
15 act or the application thereof to other persons or circumstances.

16 SECTION 3. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 565.4 of Title 47, unless there
18 is created a duplication in numbering, reads as follows:

19 Any manufacturer or distributor who has new motor vehicle sales
20 and service contracts with new motor vehicles dealers shall allow
21 its new motor vehicle dealers to offer consumers any remote software
22 upgrade or change to vehicle functions and features to a new motor
23 vehicle which is of a line-make the new motor vehicle dealer holds
24 an active sales and service contract for, at the same price and for

1 a reasonable profit as any offered to consumers by the manufacturer
2 or distributor, and such upgrade or change shall be available for an
3 authorized new motor vehicle dealer to offer to consumers at any
4 time during the life cycle of the vehicle, provided the same
5 continues to be made available and offered to consumers by the
6 manufacturer or distributor. This section does not apply to remote
7 software upgrades or changes related solely to the safety, cyber
8 security, or recall of the new motor vehicle.

9 SECTION 4. AMENDATORY 47 O.S. 2021, Section 562, is
10 amended to read as follows:

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

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

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

24

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

1 ~~pursuant to the terms of a franchise and motor vehicle~~
2 ~~manufacturer's warranty.~~ For the purpose of Sections 561 through
3 567, 572, 578.1, 579 and 579.1 of this title, the terms "new motor
4 vehicle dealer" and "new motor vehicle dealership" shall be
5 synonymous. The term "new motor vehicle dealer" does not include:

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

16 3. "Motor vehicle salesperson" means any person who, for gain
17 or compensation of any kind, either directly or indirectly,
18 regularly or occasionally, by any form of agreement or arrangement,
19 sells or negotiates for the sale, lease, or conveyance or arranges
20 the financing of any new motor vehicle ~~for~~ as an employee of any new
21 motor vehicle dealer to any one or more third parties;

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

23 5. "Manufacturer" means any person, firm, association,
24 corporation or trust, resident or nonresident, ~~who~~ that manufactures

1 or assembles new and unused motor vehicles or ~~who~~ that engages in
2 the fabrication or assembly of motorized vehicles of a type required
3 to be registered in the State of Oklahoma;

4 6. "Distributor" means any person, firm, association,
5 corporation or trust, resident or nonresident, ~~who~~ that, being
6 authorized by the original manufacturer, in whole or in part sells
7 or distributes new and unused motor vehicles to new motor vehicle
8 dealers, or ~~who~~ that maintains distributor representatives;

9 7. "Factory branch" means any branch office maintained by a
10 person, firm, association, corporation or trust ~~who~~ that
11 manufactures or assembles motor vehicles for the sale of motor
12 vehicles to distributors, or for the sale of motor vehicles to new
13 motor vehicle dealers, or for directing or supervising, in whole or
14 in part, its representatives;

15 8. "Distributor branch" means any branch office similarly
16 maintained by a distributor for the same purposes a factory branch
17 is maintained;

18 9. "Factory representative" means any officer or agent engaged
19 as a representative of a manufacturer of motor vehicles or by a
20 factory branch, for the purpose of making or promoting the sale of
21 its motor vehicles, or for supervising or contacting its dealers or
22 prospective dealers;

23 10. "Distributor representative" means any person, firm,
24 association, corporation or trust and each officer and employee

1 thereof engaged as a representative of a distributor or distributor
2 branch of motor vehicles, for the purpose of making or promoting the
3 sale of its motor vehicles, or for supervising or contacting its
4 dealers or prospective dealers;

5 11. "Franchise" means any contract or agreement between a new
6 motor vehicle dealer and a manufacturer of a new motor vehicle or
7 its distributor or factory branch by which the new motor vehicle
8 dealer is authorized to engage in the ~~business of selling any~~
9 ~~specified make or makes of new motor vehicles~~ activities of a new
10 motor vehicle dealer as defined by this section;

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

18 13. "Area of responsibility" means the geographical area, as
19 designated by the manufacturer, factory branch, factory
20 representative, distributor, distributor branch or distributor
21 representative, in which the new motor vehicle dealer is held
22 responsible for the promotion and development of sales and rendering
23 of service for the make of motor vehicle for which the new motor
24 vehicle dealer holds a franchise or selling agreement;

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

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

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

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

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

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

15 20. "Factory" means a manufacturer, distributor, factory
16 branch, distributor branch, factory representative or distributor
17 representative, which manufactures or distributes vehicle products;

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

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

23 23. "Retail implement dealer" means a business engaged
24 primarily in the sale of farm tractors as defined in Section 1-118

1 of this title or implements of husbandry as defined in Section 1-125
2 of this title or a combination thereof;

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

- 6 a. collected by a new motor vehicle dealer, and
- 7 b. provided by the new motor vehicle dealer directly to a
8 manufacturer or third party acting on behalf of a
9 manufacturer.

10 Such term shall not include the same or similar data obtained by
11 a manufacturer from any source other than the new motor vehicle
12 dealer or new motor vehicle dealer's data management system;

13 25. "Data management system" means a computer hardware or
14 software system that:

- 15 a. is owned, leased, or licensed by a new motor vehicle
16 dealer including a system or web-based applications,
17 computer software or computer hardware,
- 18 b. is located at the dealership or hosted remotely, and
- 19 c. stores and provides access to consumer data collected
20 or stored by a new motor vehicle dealer.

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

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

1 SECTION 5. AMENDATORY 47 O.S. 2021, Section 564, is
2 amended to read as follows:

3 Section 564. A. It shall be unlawful for any person, firm,
4 association, corporation or trust to engage in business as, or serve
5 in the capacity of, or act as a new motor vehicle dealer or
6 manufacturer or distributor of new motor vehicles, or factory
7 branch, distributor branch or factory representative or distributor
8 representative, as ~~such~~ defined in Section 562 of this title, in
9 this state without first obtaining a license therefor as provided
10 for by law. Any person, firm, association, corporation or trust
11 engaging in more than one of such capacities or having more than one
12 place where such business is carried on or conducted shall be
13 required to obtain and hold a current license for each thereof.
14 Provided that, a new motor vehicle dealer's license shall authorize
15 one person to sell in the event such person shall be the owner of a
16 proprietorship, or the person designated as principal in the
17 dealer's franchise or the managing officer or one partner if no
18 principal person is named in the franchise. It is further provided
19 that a factory or an entity affiliated by any ownership or control
20 by the factory shall not be permitted to be licensed as a new motor
21 vehicle dealer in this state, except as provided by subparagraph b
22 of paragraph 12 of Section 565 of this title.

23 B. Applications for licenses required to be obtained under
24 provisions of Section 561 et seq. of this title shall be verified by

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

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

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

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

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

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

20 4. For each new motor vehicle dealer, except powersports
21 vehicle dealers, initial fee of Three Hundred Dollars (\$300.00) per
22 franchise sold at each location licensed, with an annual renewal fee
23 of One Hundred Dollars (\$100.00) per franchise sold at each location
24 per year; and

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

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

16 Every motor vehicle factory representative or distributor
17 representative if an individual shall physically possess the license
18 when engaged in business, and shall display same upon request. The
19 name of the employer of such factory representative or distributor
20 representative shall be stated on the license and, in case of a
21 change of employer, the holder of such license shall immediately
22 mail same to the Commission for its endorsement of such change
23 thereon. The Commission shall endorse each such change of employer
24 on licenses for a fee of Ten Dollars (\$10.00).

1 E. The powersports dealer license shall only allow the sale of
2 the specific types of powersports vehicles authorized by the
3 manufacturer and agreed to by the powersports dealer.

4 SECTION 6. AMENDATORY 47 O.S. 2021, Section 565, as
5 amended by Section 3, Chapter 192, O.S.L. 2022 (47 O.S. Supp. 2022,
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 against any person or entity, not to exceed Ten
10 Thousand Dollars (\$10,000.00) ~~against a manufacturer or distributor~~
11 ~~or a fine not to exceed One Thousand Dollars (\$1,000.00) against a~~
12 ~~dealer~~ per occurrence, that violates any provision of Sections 561
13 through 567, 572, 578.1, 579 and 579.1 of this title ~~is violated~~ or
14 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;

24

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
24

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 new motor vehicle dealer's
24 or manufacturer's 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 ~~customer~~ consumer
18 demand for each of the new motor vehicles included in
19 the new motor vehicle dealer's franchise agreement,
20 unless the new motor vehicles are not readily
21 available from the manufacturer or distributor due to
22 limited production;

23 8. Being a factory that has:
24

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

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

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

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

17 b. induced under threat or discrimination by the
18 withholding from delivery to a 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 such vehicles out of the ordinary
23 course of business, in order to induce by such
24 coercion any such new motor vehicle dealer to

1 participate or contribute to any local or national
2 advertising fund controlled directly or indirectly by
3 the factory or for any other purposes such as contest,
4 ~~"give-aways"~~ "giveaways" or other so-called sales
5 promotional devices and/or change of quotas in any
6 sales contest; or has required new motor vehicle
7 dealers, as a condition to receiving their vehicle
8 allotment, to order a certain percentage of the
9 vehicles with optional equipment not specified by the
10 new motor vehicle dealer; however, nothing in this
11 section shall prohibit a factory from supporting an
12 advertising association which is open to all new motor
13 vehicle 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 dealer's right 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 vehicle dealer under
22 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 or any relevant and material data and facts
6 presented by the dealer in writing within thirty
7 (30) days of the manufacturer's written notice to
8 the dealer of its intention to cancel, terminate,
9 or not renew the dealer's franchise agreement.

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

18 f. failed to provide reasonable compensation to a new
19 motor vehicle dealer substantially equivalent to the
20 actual cost of providing a manufacturer required
21 loaner or rental vehicle to any consumer who is having
22 a vehicle serviced at the dealership. For purposes of
23 this paragraph, actual cost is the average cost in the
24 new motor vehicle dealer's region for the rental of a

1 substantially similar make and model as the vehicle
2 being serviced, or

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

11 9. Being a factory that:

12 a. has attempted to coerce or has coerced any new motor
13 vehicle dealer to enter into any agreement or to
14 cancel any agreement, or fails to act in good faith
15 and in a fair, equitable and nondiscriminatory manner;
16 or has directly or indirectly coerced, intimidated,
17 threatened or restrained any new motor vehicle dealer;
18 or has acted dishonestly, or has failed to act in
19 accordance with the reasonable standards of fair
20 dealing,

21 b. has failed to compensate its dealers for the work and
22 services they are required to perform in connection
23 with the dealer's delivery and preparation obligations
24 according to the agreements on file with the

1 Commission which must be found by the Commission to be
2 reasonable, or ~~fail~~ has failed to adequately and
3 fairly compensate its dealers for labor, parts and
4 other expenses incurred by such dealer to perform
5 under and comply with manufacturer's warranty
6 agreements, and recall repairs which shall include
7 diagnostic work as applicable and assistance requested
8 by a consumer whose vehicle was subjected to an over-
9 the-air or remote change, repair, or update to any
10 part, system, accessory, or function by the
11 manufacturer and performed by the dealer in order to
12 satisfy the consumer. Time allowances for the
13 diagnosis and performance of repair work shall be
14 reasonable and adequate for the work to be performed.
15 Adequate and fair compensation, which under this
16 provision shall be no less than the rates customarily
17 charged for retail consumer repairs as calculated
18 herein, for parts and/or labor for warranty and recall
19 repairs shall, at the option of the new motor vehicle
20 dealer, be established by the new motor vehicle dealer
21 submitting to the manufacturer or distributor one
22 hundred sequential nonwarranty ~~customer-paid~~ consumer-
23 paid service repair orders which contain warranty-like
24 ~~parts~~ repairs, or ninety (90) consecutive days of

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

1 dealer's total labor sales from the qualified repair
2 orders by the total labor hours charged for those
3 sales. When submitting repair orders to ~~calculate~~
4 establish a retail parts and/or labor rate, a new
5 motor vehicle dealer need not include ~~repair orders~~
6 repairs for:

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

1 (9) vehicle reconditioning, or

2 (10) items that do not have individual part numbers
3 including, but not limited to, nuts, bolts and
4 fasteners.

5 A manufacturer or distributor may, not later than thirty
6 (30) days after submission, rebut that declared retail
7 parts and/or labor rate in writing by reasonably
8 substantiating that the rate is ~~inaccurate or unreasonable~~
9 ~~in light of the practices of all other franchised motor~~
10 ~~vehicle dealers in an economically similar part of the~~
11 ~~state offering the same line-make vehicles~~ not accurate or
12 is incomplete pursuant to the provisions of this section.
13 If the manufacturer or distributor determines from the new
14 motor vehicle dealer's set of repair orders submitted
15 pursuant to this section that the new motor vehicle
16 dealer's submission for a retail labor rate or retail parts
17 markup is substantially higher than the new motor vehicle
18 dealer's current warranty rates, the manufacturer or
19 distributor may request, in writing, within thirty (30)
20 days after the manufacturer's or distributor's receipt of
21 the new motor vehicle dealer's initial submission, all
22 repair orders closed within the period of thirty (30) days
23 immediately preceding, or thirty (30) days immediately
24 following, the set of repair orders initially submitted by

1 the new motor vehicle dealer. All time periods under this
2 section shall be suspended until the supplemental repair
3 orders are provided. If the manufacturer or distributor
4 requests supplemental repair orders, the manufacturer or
5 distributor may, within thirty (30) days after receiving
6 the supplemental repair orders and in accordance with the
7 formula described in this subsection, calculate a proposed
8 adjusted retail labor rate or retail parts markup, as
9 applicable, based upon any set of the qualified repair
10 orders submitted by the franchisee and following the
11 formula set forth herein to establish the rate. The retail
12 rate labor and parts rates shall go into effect thirty (30)
13 days following the approval by the manufacturer, ~~subject to~~
14 ~~audit of the submitted repair orders by the franchisor and~~
15 ~~a rebuttal of the declared rate as described above or~~
16 ~~distributor.~~ If the declared rate is rebutted, the
17 manufacturer or distributor shall provide written notice
18 stating the reasons for the rebuttal, an explanation of the
19 reasons for the rebuttal, and a copy of all calculations
20 used by the franchisor in determining the manufacturer or
21 distributor's position and propose an adjustment in writing
22 of the average percentage markup or labor rate based on
23 that rebuttal not later than thirty (30) days after
24 submission. If the new motor vehicle dealer does not agree

1 with the proposed average percentage markup or labor rate,
2 the new motor vehicle dealer may file a protest with the
3 Commission not later than thirty (30) days after receipt of
4 that proposal by the manufacturer or distributor. In the
5 event a protest is filed, the manufacturer or distributor
6 shall have the burden of proof to establish the new motor
7 vehicle dealer's submitted parts markup rate or labor rate
8 was inaccurate or ~~unreasonable in light of the practices of~~
9 ~~all other franchised motor vehicle dealers in an~~
10 ~~economically similar part of the state~~ is not complete
11 pursuant to the provisions of this section. A manufacturer
12 or distributor may not retaliate against any new motor
13 vehicle dealer seeking to exercise its rights under this
14 ~~provision~~ section. A manufacturer or distributor may
15 require a dealer to submit repair orders in accordance with
16 this section in order to validate the reasonableness of a
17 dealer's retail rate for parts or labor not more often than
18 once every twelve (12) months. A manufacturer or
19 distributor may not otherwise recover its costs from new
20 motor vehicle dealers within this state including a
21 surcharge imposed on a new motor vehicle dealer solely
22 intended to recover the cost of reimbursing a new motor
23 vehicle dealer for parts and labor pursuant to this
24 section; provided, a manufacturer or distributor shall not

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

1 factory shall not deny a claim or charge a new motor
2 vehicle dealer back subsequent to the payment of the claim
3 unless the factory can show that the claim was false or
4 fraudulent or that the new motor vehicle dealer failed to
5 reasonably substantiate the claim by the written reasonable
6 procedures of the factory. A factory shall not deny a
7 claim or implement a charge-back against a new motor
8 vehicle dealer after payment of a claim in the event a
9 purchaser of a new vehicle that is the subject of a claim
10 fails to comply with titling or registration laws of this
11 state and is not prevented from compliance by any action of
12 the new motor vehicle dealer; provided, that the factory
13 may require the new motor vehicle dealer to provide, within
14 thirty (30) days of notice of chargeback, withholding of
15 payment, or denial of claim, the following:

- 16 (1) documentation to demonstrate the vehicle sale and
17 delivery as reported, including consumer name and
18 address, and
19 (2) written attestation signed by the dealer operator
20 or general manager stating the consumer was not
21 on the export control list and the dealer did not
22 know or have reason to know the vehicle was being
23 exported or resold.

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

14 c. fails to compensate the new motor vehicle dealer for a
15 used motor vehicle:

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

22 (2) that is subject to a stop-sale or do-not-drive
23 notice issued by the factory or an authorized
24 governmental agency,

1 (3) that is held by the new motor vehicle dealer in
2 the dealer's inventory at the time the stop-sale
3 or do-not-drive notice is issued or that is taken
4 by the new motor vehicle dealer into the dealer's
5 inventory after the recall notice as a result of
6 a retail consumer trade-in or a lease return to
7 the dealer inventory in accordance with an
8 applicable lease contract,

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

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

21 (a) the date the recall remedy or parts are made
22 available, or

1 (b) the date the new motor vehicle dealer sells,
2 trades, or otherwise disposes of the
3 affected used motor vehicle.

4 For the purposes of division (5) of this subparagraph, the value
5 of a used vehicle shall be the average Black Book value for the
6 year, make, and model of the recalled vehicle.

7 A factory may direct the manner and method in which a new motor
8 vehicle dealer must demonstrate the inventory status of an affected
9 used motor vehicle to determine eligibility under this subparagraph;
10 provided, that the manner and method may not be unduly burdensome
11 and may not require information that is unduly burdensome to
12 provide.

13 All reimbursement claims made by new motor vehicle dealers
14 pursuant to this section for recall remedies or repairs, or for
15 compensation where no part or repair is reasonably available and the
16 vehicle is subject to a stop-sale or do-not-drive order, shall be
17 subject to the same limitations and requirements as a warranty
18 reimbursement claim made under subparagraph b of this paragraph. In
19 the alternative, a manufacturer may compensate its franchised new
20 motor vehicle dealers under a national recall compensation program;
21 provided, the compensation under the program is equal to or greater
22 than that provided under division (5) of this subparagraph, or as
23 the manufacturer and new motor vehicle dealer otherwise agree.

1 Nothing in this section shall require a factory to provide total
2 compensation to a new motor vehicle dealer which would exceed the
3 total average Black Book value of the affected used motor vehicle as
4 originally determined under division (5) of this subparagraph.

5 Any remedy provided to a new motor vehicle dealer under this
6 subparagraph is exclusive and may not be combined with any other
7 state or federal compensation remedy.

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

1 to be withheld subject to any requirement to purchase
2 or sell any number of used or off-lease vehicles. The
3 failure to deliver any such new motor vehicle shall
4 not be considered a violation of the section if the
5 failure is not arbitrary or is due to lack of
6 manufacturing capacity or to a strike or labor
7 difficulty, a shortage of materials, a freight embargo
8 or other cause over which the manufacturer has no
9 control. However, this subparagraph shall not apply
10 to recreational vehicles, ~~or~~ limited production model
11 vehicles, or a vehicle not advertised by the factory
12 for sale in this state,

13 ~~d.~~

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

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

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

1 e.

2 f. requires a new motor vehicle dealer to establish an
3 exclusive facility, unless supported by reasonable
4 business, market and economic considerations;
5 provided, that this ~~provision~~ section shall not
6 restrict the terms of any agreement for such exclusive
7 facility voluntarily entered into and supported by
8 valuable consideration separate from the new motor
9 vehicle dealer's right to sell and service motor
10 vehicles for the franchisor,

11 ~~f.~~

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

1 terminated by the factory as part of the
2 discontinuance of a product line, ~~or~~

3 ~~g.~~

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

18 i. requires a new motor vehicle dealer to purchase goods
19 or services for the construction, renovation, or
20 improvement of the dealer's facility from a vendor
21 chosen by the factory if goods or services available
22 from other sources are of substantially similar
23 quality and design and comply with all applicable
24 laws; provided, however, that such goods are not

1 subject to the factory's intellectual property or
2 trademark rights and the new motor vehicle dealer has
3 received the factory's approval, which approval may
4 not be unreasonably withheld. Nothing in this
5 subparagraph may be construed to allow a new motor
6 vehicle dealer to impair or eliminate a factory's
7 intellectual property, trademark rights or trade dress
8 usage guidelines. Nothing in this section prohibits
9 the enforcement of a voluntary agreement between the
10 factory and the new motor vehicle dealer where
11 separate and valuable consideration has been offered
12 and accepted;

13 10. Being a factory that:

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

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

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

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

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

22 (1) owns any ownership interest or has any financial
23 interest in a new motor vehicle dealer or any
24

1 person who sells products or services pursuant to
2 the ~~public~~ terms of the franchise agreement,

- 3 (2) operates or controls a new motor vehicle dealer,
4 or
5 (3) acts in the capacity of a new motor vehicle
6 dealer.

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

19 (2) This paragraph does not prohibit a factory from
20 owning, operating, controlling or acting in the
21 capacity of a new motor vehicle dealer for a
22 period not to exceed twelve (12) months during
23 the transition from one independent dealer to
24 another independent dealer if the dealership is

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

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

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

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

23 (b) all of the franchise agreements of the
24 manufacturer confer rights on the dealer of

1 the line-make to develop and operate, within
2 a defined geographic territory or area, as
3 many dealership facilities as the dealer and
4 manufacturer shall agree are appropriate,

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

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

19 (e) prior to January 1, 2000, the factory shall
20 have furnished or made available to
21 prospective new motor vehicle dealers an
22 offering-circular in accordance with the
23 Trade Regulation Rule on Franchising of the
24 Federal Trade Commission, and any guidelines

1 and exemptions issued thereunder, which
2 disclose the possibility that the factory
3 may from time to time seek to own or
4 acquire, directly or indirectly, ownership
5 interests in retail dealerships;

6 13. Being a factory which directly or indirectly makes
7 available for public disclosure any proprietary information provided
8 to the factory by a new motor vehicle dealer, other than in
9 composite form to new motor vehicle dealers in the same line-make or
10 in response to a subpoena or order of the Commission or a court.

11 Proprietary information includes, but is not limited to,
12 information:

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

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

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

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

- 4 a. the facility and the proposed new location satisfies
5 or meets the written reasonable guidelines of the
6 factory. Reasonable guidelines do not include
7 exclusivity or site control unless agreed to as set
8 forth in subparagraphs e f and f g of paragraph 9 of
9 this subsection,
- 10 b. the proposed new location is within the area of
11 responsibility of the new motor vehicle dealer
12 pursuant to Section 578.1 of this title, and
- 13 c. the factory has sixty (60) days from receipt of the
14 new motor vehicle dealer's relocation request to
15 approve or deny the request. The failure to approve
16 or deny the request within the sixty-day time frame
17 shall constitute approval of the request;

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

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

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

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

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

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

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

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

12 a. by an act or statement from the factory that will in
13 any manner adversely impact the new motor vehicle
14 dealer,

15 b. by measuring the new motor vehicle dealer's
16 performance under the franchise based on the sale of
17 extended service contracts, extended maintenance plans
18 or similar products offered, endorsed or sponsored by
19 the manufacturer or distributor.

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

1 is conditioned upon the manufacturer or dealer entering into a
2 dealer agreement with the proposed new owner or transferee, only if
3 all the following requirements are met:

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

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

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

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

1 submitted an accounting of those expenses within thirty (30) days of
2 receipt of the written request of the factory for such an
3 accounting. The accounting may be requested by a factory before
4 exercising its right of first refusal.

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

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

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

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

22 c. motor vehicle financing provided by that person to
23 retail consumers for motor vehicles is limited to used
24

1 vehicles sold by that person in the conduct of
2 business; or

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

5 D. As used in this section:

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

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

14 SECTION 7. AMENDATORY 47 O.S. 2021, Section 565.1, is
15 amended to read as follows:

16 Section 565.1 A. For the purposes of this section, "designated
17 successor" means a person who the new motor vehicle dealer has
18 designated to take over operation of the dealership or legal heir or
19 devisee under the will of a new motor vehicle dealer or under the
20 laws of descent and distribution of this state.

21 B. Notwithstanding the terms of any franchise agreement, and
22 subject to the following conditions contained in paragraphs 1
23 through 5 of this ~~section~~ subsection, any manufacturer or
24 distributor who prevents or refuses to honor the succession to the

1 ~~operation of a dealership by any legal heir or devisee under the~~
2 ~~will of a new motor vehicle dealer or under the laws of descent and~~
3 ~~distribution of this state, a designated successor,~~ without good
4 cause or good faith, as defined in this section, shall be subject to
5 the following procedure:

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

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

20 3. Within sixty (60) days of receipt of such information, the
21 manufacturer shall approve or disapprove the ~~proposed~~ designated
22 successor ~~dealership~~ dealer, and in case of disapproval shall
23 communicate in writing such disapproval and grounds for disapproval
24 to the ~~legal heir or devisee~~ designated successor;

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

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

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

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

7 SECTION 8. AMENDATORY 47 O.S. 2021, Section 565.2, is
8 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 market value, then the factory and dealer shall utilize a neutral
2 ~~third party~~ third-party mediator to resolve the disagreement.

3 SECTION 9. AMENDATORY 47 O.S. 2021, Section 565.3, is
4 amended to read as follows:

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

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

1 agreements, and any written notices provided to the existing dealer
2 prior to the manufacturer's or distributor's receipt of any written
3 notice from the existing dealer of the proposed transfer. However,
4 to be valid, any proposed change to the franchise pursuant to
5 written notice from the manufacturer or distributor shall be in
6 compliance with existing law. The burden of proof shall be upon the
7 manufacturer or distributor to show good cause existed to withhold
8 approval. The manufacturer or distributor that has made such a
9 determination shall send a letter by certified mail to the dealer
10 and the applicant of its refusal to approve the proposal, which
11 shall include a statement of the specific grounds for refusal,
12 within sixty (60) days after the later of:

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

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

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

24

1 D. If the proposed sale, transfer, or assignment is to an
2 existing owner's family member or other existing owner, the
3 manufacturer or distributor's evaluation of such proposal is limited
4 to the written, reasonable, and uniformly applied requirements of
5 the manufacturer or distributor relating to good moral character and
6 financial qualifications. Notwithstanding the provisions of this
7 subsection, a change in dealer operation shall be addressed pursuant
8 to the provisions of Section 565.1 of this title.

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

1 paragraph 9 of Section 565 of this title different than those
2 contained in the transferor's franchise agreement.

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

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

- 22 1. The specific location at which the additional or relocated
23 new motor vehicle dealer will be established;

24

1 2. The date on or after which the additional or relocated new
2 motor vehicle dealer intends to commence business at the proposed
3 location;

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

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

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

17 B. This section does not apply:

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

22 2. To a proposed additional new motor vehicle dealer which is
23 to be established at or within two (2) miles of a location at which
24 a former licensed new motor vehicle dealer for the same line-make of

1 new motor vehicle had ceased operating within the previous two (2)
2 years;

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

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

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

1 against the establishment or relocation of the same dealer, the
2 Commission shall consolidate the hearings to expedite disposition of
3 the matter.

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

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

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

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

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

15 SECTION 12. This act shall become effective November 1, 2023.

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