

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

SENATE BILL 2022

By: Thompson (Roger)

AS INTRODUCED

An Act relating to motor vehicle dealers, salespersons, distributors, and manufacturers; amending 47 O.S. 2021, Section 565, as last amended by Section 8, Chapter 29, O.S.L. 2023 (47 O.S. Supp. 2023, Section 565), which relates to license application, denial, revocation, and suspension and penalties; requiring certain records of allocation and distribution to be maintained for certain period; modifying certain disclosure requirement; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 2021, Section 565, as last amended by Section 8, Chapter 29, O.S.L. 2023 (47 O.S. Supp. 2023, Section 565), is amended to read as follows:

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

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

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

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

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

12 5. Being a new motor vehicle dealer who:

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

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

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

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

- 1 e. has been convicted of a felony crime that
2 substantially relates to the occupation of a new motor
3 vehicle dealer and poses a reasonable threat to public
4 safety,
- 5 f. has committed a fraudulent act in selling, purchasing,
6 or otherwise dealing in new motor vehicles or has
7 misrepresented the terms and conditions of a sale,
8 purchase or contract for sale or purchase of a new
9 motor vehicle or any interest therein including an
10 option to purchase such vehicle,
- 11 g. has failed to meet or maintain the conditions and
12 requirements necessary to qualify for the issuance of
13 a license, or
- 14 h. completes any sale or transaction of an extended
15 service contract, extended maintenance plan, or
16 similar product using contract forms that do not
17 conspicuously disclose the identity of the service
18 contract provider;

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

21 7. Being a new motor vehicle dealer who:

- 22 a. does not have an established place of business,
23 b. does not provide for a suitable repair shop separate
24 from the display room with ample space to repair or
25

1 recondition one or more vehicles at the same time, and
2 which is staffed with properly trained and qualified
3 repair technicians and is equipped with such parts,
4 tools, and equipment as may be requisite for the
5 servicing of motor vehicles in such a manner as to
6 make them comply with the safety laws of this state
7 and to properly fulfill the dealer's or manufacturer's
8 warranty obligation,

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

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

22 e. does not properly service a new motor vehicle before
23 delivery of same to the original purchaser thereof, or
24

1 f. fails to order and stock a reasonable number of new
2 motor vehicles necessary to meet consumer demand for
3 each of the new motor vehicles included in the new
4 motor vehicle dealer's franchise agreement, unless the
5 new motor vehicles are not readily available from the
6 manufacturer or distributor due to limited production;

7 8. Being a factory that has:

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

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

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

21 (3) to order or accept delivery of any parts,
22 accessories, equipment, machinery, tools,
23 appliances, or any commodity whatsoever,
24

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

- 1 allocation; or payment under any incentive or
2 reimbursement program that is unfair, unreasonable,
3 inequitable, and not based on accurate information,
4 d. used a performance standard for measuring sales or
5 service performance of any new motor vehicle dealer
6 under the terms of the franchise agreement which:
7 (1) is unfair, unreasonable, arbitrary, or
8 inequitable, and
9 (2) does not consider the relevant and material local
10 and state or regional criteria, including
11 prevailing economic conditions affecting the
12 sales or service performance of a vehicle dealer
13 or any relevant and material data and facts
14 presented by the dealer in writing within thirty
15 (30) days of the written notice of the
16 manufacturer to the dealer of its intention to
17 cancel, terminate, or not renew the dealer's
18 franchise agreement,
19 e. failed or refused to sell, or offer for sale, new
20 motor vehicles to all of its authorized same line-make
21 franchised new motor vehicle dealers at the same price
22 for a comparably equipped motor vehicle, on the same
23 terms, with no differential in functionally available
24 discount, allowance, credit, or bonus, except as

1 provided in subparagraph e of paragraph 9 of this
2 subsection,

3 f. failed to provide reasonable compensation to a new
4 motor vehicle dealer substantially equivalent to the
5 actual cost of providing a manufacturer required
6 loaner or rental vehicle to any consumer who is having
7 a vehicle serviced at the dealership. For purposes of
8 this paragraph, actual cost is the average cost in the
9 new motor vehicle dealer's region for the rental of a
10 substantially similar make and model as the vehicle
11 being serviced, or

12 g. failed to make available to its new motor vehicle
13 dealers a fair and proportional share of all new
14 vehicles distributed to same line-make dealers in this
15 state, subject to the same reasonable terms, including
16 any vehicles distributed from a common new vehicle
17 inventory pool outside of the factory's ordinary
18 allocation process such as any vehicles the factory
19 reserves to distribute on a discretionary basis;

20 9. Being a factory that:

21 a. has attempted to coerce or has coerced any new motor
22 vehicle dealer to enter into any agreement or to
23 cancel any agreement; has failed to act in good faith
24 and in a fair, equitable, and nondiscriminatory

1 manner; has directly or indirectly coerced,
2 intimidated, threatened, or restrained any new motor
3 vehicle dealer; has acted dishonestly; or has failed
4 to act in accordance with the reasonable standards of
5 fair dealing,

6 b. has failed to compensate its dealers for the work and
7 services they are required to perform in connection
8 with the dealer's delivery and preparation obligations
9 according to the agreements on file with the
10 Commission which must be found by the Commission to be
11 reasonable, or has failed to adequately and fairly
12 compensate its dealers for labor, parts, and other
13 expenses incurred by the dealer to perform under and
14 comply with manufacturer's warranty agreements and
15 recall repairs which shall include diagnostic work as
16 applicable and assistance requested by a consumer
17 whose vehicle was subjected to an over-the-air or
18 remote change, repair, or update to any part, system,
19 accessory, or function by the manufacturer and
20 performed by the dealer in order to satisfy the
21 consumer. Time allowances for the diagnosis and
22 performance of repair work shall be reasonable and
23 adequate for the work to be performed. Adequate and
24 fair compensation, which under this provision shall be

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

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

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

1 (8) repairs of motor vehicles owned by the new motor
2 vehicle dealer or employee thereof at the time of
3 the repair,

4 (9) vehicle reconditioning, or

5 (10) items that do not have individual part numbers
6 including, but not limited to, nuts, bolts, and
7 fasteners.

8 A manufacturer or distributor may, not later than
9 forty-five (45) days after submission, rebut that
10 declared retail parts and labor rate in writing by
11 reasonably substantiating that the rate is not
12 accurate or is incomplete pursuant to the provisions
13 of this section. If the manufacturer or distributor
14 determines the set of repair orders submitted by the
15 new motor vehicle dealer pursuant to this section for
16 a retail labor rate or retail parts markup rate is
17 substantially higher than the new motor vehicle
18 dealer's current warranty rates, the manufacturer or
19 distributor may request, in writing, within forty-five
20 (45) days after the manufacturer's or distributor's
21 receipt of the new motor vehicle dealer's initial
22 submission, all repair orders closed within the period
23 of thirty (30) days immediately preceding, or thirty
24 (30) days immediately following, the set of repair

1 orders initially submitted by the new motor vehicle
2 dealer. All time periods under this section shall be
3 suspended until the supplemental repair orders are
4 provided. If the manufacturer or distributor requests
5 supplemental repair orders, the manufacturer or
6 distributor may, within thirty (30) days after
7 receiving the supplemental repair orders and in
8 accordance with the formula described in this
9 subsection, calculate a proposed adjusted retail labor
10 rate or retail parts markup rate, as applicable, based
11 upon any set of the qualified repair orders submitted
12 by the franchisee and following the formula set forth
13 herein to establish the rate. The retail labor and
14 parts rates shall go into effect thirty (30) days
15 following the approval by the manufacturer or
16 distributor. If the declared rate is rebutted, the
17 manufacturer or distributor shall provide written
18 notice stating the reasons for the rebuttal, an
19 explanation of the reasons for the rebuttal, and a
20 copy of all calculations used by the franchisor in
21 determining the manufacturer or distributor's position
22 and propose an adjustment in writing of the average
23 percentage markup or labor rate based on that rebuttal
24 not later than forty-five (45) days after submission.

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

1 distributor shall not be prohibited from increasing
2 prices for vehicles or parts in the normal course of
3 business or from auditing and charging back claims in
4 accordance with this section. All claims made by
5 dealers for compensation for delivery, preparation,
6 warranty, or recall repair work shall be paid within
7 thirty (30) days after approval and shall be approved
8 or disapproved within thirty (30) days after receipt.
9 When any claim is disapproved, the dealer shall be
10 notified in writing of the grounds for disapproval.
11 The dealer's delivery, preparation, and warranty
12 obligations as filed with the Commission shall
13 constitute the dealer's sole responsibility for
14 product liability as between the dealer and
15 manufacturer. A factory may reasonably and
16 periodically audit a new motor vehicle dealer to
17 determine the validity of paid claims for new motor
18 vehicle dealer compensation or any charge-backs for
19 warranty parts or service compensation. Except in
20 cases of suspected fraud, audits of warranty payments
21 shall only be for the one-year period immediately
22 following the date of the payment. A manufacturer
23 shall reserve the right to reasonable, periodic audits
24 to determine the validity of paid claims for dealer

1 compensation or any charge-backs for consumer or
2 dealer incentives. Except in cases of suspected
3 fraud, audits of incentive payments shall only be for
4 a one-year period immediately following the date of
5 the payment. A factory shall not deny a claim or
6 charge a new motor vehicle dealer back subsequent to
7 the payment of the claim unless the factory can show
8 that the claim was false or fraudulent or that the new
9 motor vehicle dealer failed to reasonably substantiate
10 the claim by the written reasonable procedures of the
11 factory. A factory shall not deny a claim or
12 implement a charge-back against a new motor vehicle
13 dealer after payment of a claim in the event a
14 purchaser of a new vehicle that is the subject of a
15 claim fails to comply with titling or registration
16 laws of this state and is not prevented from
17 compliance by any action of the new motor vehicle
18 dealer; provided, that the factory may require the new
19 motor vehicle dealer to provide, within thirty (30)
20 days of notice of charge-back, withholding of payment,
21 or denial of claim, the documentation to demonstrate
22 the vehicle sale, delivery, and customer qualification
23 for an incentive as reported, including consumer name
24 and address and written attestation signed by the

1 dealer operator or general manager stating the
2 consumer was not on the export control list and the
3 dealer did not know or have reason to know the vehicle
4 was being exported or resold.

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

21 (1) that is of the same make and model manufactured,
22 imported, or distributed by the factory and is a
23 line-make that the new motor vehicle dealer is
24 franchised to sell or on which the new motor
25

1 vehicle dealer is authorized to perform recall
2 repairs,

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

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

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

19 (5) that is not at least in the prorated amount of
20 one percent (1.00%) of the value of the vehicle
21 per month beginning on the date that is thirty
22 (30) days after the date on which the stop-sale
23 order was provided to the new motor vehicle
24

1 dealer until the earlier of either of the
2 following:

3 (a) the date the recall remedy or parts are made
4 available, or

5 (b) the date the new motor vehicle dealer sells,
6 trades, or otherwise disposes of the
7 affected used motor vehicle.

8 For the purposes of division (5) of this subparagraph,
9 the value of a used vehicle shall be the average Black
10 Book value for the year, make, and model of the
11 recalled vehicle. A factory may direct the manner and
12 method in which a new motor vehicle dealer must
13 demonstrate the inventory status of an affected used
14 motor vehicle to determine eligibility under this
15 subparagraph; provided, that the manner and method may
16 not be unduly burdensome and may not require
17 information that is unduly burdensome to provide. All
18 reimbursement claims made by new motor vehicle dealers
19 pursuant to this section for recall remedies or
20 repairs, or for compensation where no part or repair
21 is reasonably available and the vehicle is subject to
22 a stop-sale or do-not-drive order, shall be subject to
23 the same limitations and requirements as a warranty
24 reimbursement claim made under subparagraph b of this

1 paragraph. In the alternative, a manufacturer may
2 compensate its franchised new motor vehicle dealers
3 under a national recall compensation program;
4 provided, the compensation under the program is equal
5 to or greater than that provided under division (5) of
6 this subparagraph, or as the manufacturer and new
7 motor vehicle dealer otherwise agree. Nothing in this
8 section shall require a factory to provide total
9 compensation to a new motor vehicle dealer which would
10 exceed the total average Black Book value of the
11 affected used motor vehicle as originally determined
12 under division (5) of this subparagraph. Any remedy
13 provided to a new motor vehicle dealer under this
14 subparagraph is exclusive and may not be combined with
15 any other state or federal compensation remedy,

- 16 d. unreasonably fails or refuses to offer to its same
17 line-make franchised dealers a reasonable supply and
18 mix of all models manufactured for that line-make, or
19 unreasonably requires a dealer to pay any extra fee,
20 purchase unreasonable advertising displays or other
21 materials, or enter into a separate agreement which
22 adversely alters the rights or obligations contained
23 within the new motor vehicle dealer's existing
24 franchise agreement or which waives any right of the

1 new motor vehicle dealer as protected by Section 561
2 et seq. of this title, or remodel, renovate, or
3 recondition the new motor vehicle dealer's existing
4 facilities as a prerequisite to receiving a model or
5 series of vehicles, except as may be necessary to sell
6 or service the model or series of vehicles as provided
7 by subparagraph e of this paragraph. It shall be a
8 violation of this section for new vehicle allocation
9 to be withheld subject to any requirement to purchase
10 or sell any number of used or off-lease vehicles. The
11 failure to deliver any such new motor vehicle shall
12 not be considered a violation of the section if the
13 failure is not arbitrary or is due to lack of
14 manufacturing capacity or to a strike or labor
15 difficulty, a shortage of materials, a freight
16 embargo, or other cause over which the manufacturer
17 has no control. However, this subparagraph shall not
18 apply to recreational vehicles, limited production
19 model vehicles, a vehicle not advertised by the
20 factory for sale in this state, vehicles that are
21 subject to allocation affected by federal
22 environmental laws or environmental laws of this
23 state, or vehicles allocated in response to an
24 unforeseen event or circumstance,

1 e. except as necessary to comply with a health or safety
2 law, or to comply with a technology requirement which
3 is necessary to sell or service a motor vehicle that
4 the franchised new motor vehicle dealer is authorized
5 or licensed by the franchisor to sell or service,
6 requires a new motor vehicle dealer to construct a new
7 facility or substantially renovate the new motor
8 vehicle dealer's existing facility unless the facility
9 construction or renovation is justified by the
10 economic conditions existing at the time, as well as
11 the reasonably foreseeable projections, in the new
12 motor vehicle dealer's market and in the automotive
13 industry. However, this subparagraph shall not apply
14 if the new motor vehicle dealer voluntarily agrees to
15 facility construction or renovation in exchange for
16 money, credit, allowance, reimbursement, or additional
17 vehicle allocation to a new motor vehicle dealer from
18 the factory to compensate the new motor vehicle dealer
19 for the cost of, or a portion of the cost of, the
20 facility construction or renovation. Except as
21 necessary to comply with a health or safety law, or to
22 comply with a technology or safety requirement which
23 is necessary to sell or service a motor vehicle that
24 the franchised new motor vehicle dealer is authorized

1 or licensed by the franchisor to sell or service, a
2 new motor vehicle dealer which completes a facility
3 construction or renovation pursuant to factory
4 requirements shall not be required to construct a new
5 facility or renovate the existing facility if the same
6 area of the facility or premises has been constructed
7 or substantially altered within the last ten (10)
8 years and the construction or alteration was approved
9 by the manufacturer as a part of a facility upgrade
10 program, standard, or policy. For purposes of this
11 subparagraph, "substantially altered" means to perform
12 an alteration that substantially impacts the
13 architectural features, characteristics, or integrity
14 of a structure or lot. The term shall not include
15 routine maintenance reasonably necessary to maintain a
16 dealership in attractive condition. If a facility
17 upgrade program, standard, or policy under which the
18 dealer completed a facility construction or
19 substantial alteration does not contain a specific
20 time period during which the manufacturer or
21 distributor shall provide payments or benefits to a
22 participating dealer, or the time frame specified
23 under the program is reduced or canceled prematurely
24 in the unilateral discretion of the manufacturer or

1 distributor, the manufacturer or distributor shall not
2 deny the participating dealer any payment or benefit
3 under the terms of the program, standard, or policy as
4 it existed when the dealer began to perform under the
5 program, standard, or policy for the balance of the
6 ten-year period, regardless of whether the
7 manufacturer's or distributor's program, standard, or
8 policy has been changed or canceled, unless the
9 manufacturer and dealer agree, in writing, to the
10 change in payment or benefit,

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

20 g. requires a new motor vehicle dealer to enter into a
21 site-control agreement covering any or all of the new
22 motor vehicle dealer's facilities or premises;
23 provided, that this section shall not restrict the
24 terms of any site-control agreement voluntarily

1 entered into and supported by valuable consideration
2 separate from the new motor vehicle dealer's right to
3 sell and service motor vehicles for the franchisor.
4 Notwithstanding the foregoing or the terms of any
5 site-control agreement, a site-control agreement
6 automatically extinguishes if all of the factory's
7 franchises that operated from the location that are
8 the subject of the site-control agreement are
9 terminated by the factory as part of the
10 discontinuance of a product line,

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

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

20 10. Being a factory that:

21 a. establishes a system of motor vehicle allocation or
22 distribution which is unfair, inequitable, or
23 unreasonably discriminatory. A manufacturer and
24 distributor shall maintain for three (3) years records

1 that describe methods or the formula of allocation and
2 distribution of motor vehicles of the manufacturer or
3 distributor and records of actual allocation and
4 distribution of motor vehicles to motor vehicle
5 dealers in this state. Upon the request of any new
6 motor vehicle dealer franchised by it, a factory shall
7 disclose in writing to the new motor vehicle dealer
8 the basis upon which new motor vehicles are allocated,
9 scheduled, and delivered, by vehicle model, to each
10 ~~among the new motor vehicle dealers~~ dealer of the same
11 line-make for that factory for the prior three (3)
12 years, and the basis upon which the current allocation
13 or distribution is being made or will be made to the
14 dealer, or

- 15 b. changes an established plan or system of motor vehicle
16 distribution. A new motor vehicle dealer franchise
17 agreement shall continue in full force and operation
18 notwithstanding a change, in whole or in part, of an
19 established plan or system of distribution of the
20 motor vehicles offered or previously offered for sale
21 under the franchise agreement. The appointment of a
22 new importer or distributor for motor vehicles offered
23 for sale under the franchise agreement shall be deemed
24 to be a change of an established plan or system of

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

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

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

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

23 b. (1) This paragraph does not prohibit a factory from
24 owning or controlling a new motor vehicle dealer

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

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

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

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

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

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

22 (c) at the time the manufacturer first acquires
23 an ownership interest or assumes operation,
24 the distance between any dealership thus
25

1 owned or operated and the nearest
2 unaffiliated new motor vehicle dealership
3 trading in the same line-make is not less
4 than seventy (70) miles,

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

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

23 13. Being a factory which directly or indirectly makes
24 available for public disclosure any proprietary information provided

1 to the factory by a new motor vehicle dealer, other than in
2 composite form to new motor vehicle dealers in the same line-make or
3 in response to a subpoena or order of the Commission or a court.

4 Proprietary information includes, but is not limited to,
5 information:

- 6 a. derived from monthly financial statements provided to
7 the factory, and
- 8 b. regarding any aspect of the profitability of a
9 particular new motor vehicle dealer;

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

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

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

- 19 a. the facility and the proposed new location satisfies
20 or meets the written reasonable guidelines of the
21 factory. Reasonable guidelines do not include
22 exclusivity or site control unless agreed to as set
23 forth in subparagraphs f and g of paragraph 9 of this
24 subsection,

- 1 b. the proposed new location is within the area of
2 responsibility of the new motor vehicle dealer
3 pursuant to Section 578.1 of this title, and
4 c. the factory has sixty (60) days from receipt of the
5 new motor vehicle dealer's relocation request to
6 approve or deny the request. The failure to approve
7 or deny the request within the sixty-day time frame
8 shall constitute approval of the request;

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

17 18. Being a factory that increases prices of new motor vehicles
18 which the new motor vehicle dealer had ordered for retail consumers
19 and notified the factory prior to the new motor vehicle dealer's
20 receipt of the written official price increase notification. A
21 sales contract signed by a retail consumer accompanied with proof of
22 order submission to the factory shall constitute evidence of each
23 such order, provided that the vehicle is in fact delivered to the
24 consumer. Price differences applicable to new models or series

1 motor vehicles at the time of the introduction of new models or
2 series shall not be considered a price increase for purposes of this
3 paragraph. Price changes caused by any of the following shall not
4 be subject to the provisions of this paragraph:

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

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

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

21 21. Being a factory that requires a new motor vehicle dealer to
22 sell, offer to sell, or sell exclusively an extended service
23 contract, extended maintenance plan, or similar product, such as gap
24

1 products offered, endorsed, or sponsored by the factory by the
2 following means:

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

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

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

23 2. The exercise of the right of first refusal will result in
24 the new motor vehicle dealer and the owner of the dealership

1 receiving the same or greater consideration as they have contracted
2 to receive in connection with the proposed change of ownership or
3 transfer;

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

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

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

23 1. Business activities, including without limitation the
24 dealings with motor vehicle manufacturers and the representatives

1 and affiliates of motor vehicle manufacturers, of any person that is
2 primarily engaged in the business of short-term, not to exceed
3 twelve (12) months, rental of motor vehicles and industrial and
4 construction equipment and activities incidental to that business,
5 provided that:

- 6 a. any motor vehicle sold by that person is limited to
7 used motor vehicles that have been previously used
8 exclusively and regularly by that person in the
9 conduct of business and used motor vehicles traded in
10 on motor vehicles sold by that person,
- 11 b. warranty repairs performed by that person on motor
12 vehicles are limited to those motor vehicles that the
13 person owns, previously owned, or takes in trade, and
- 14 c. motor vehicle financing provided by that person to
15 retail consumers for motor vehicles is limited to used
16 vehicles sold by that person in the conduct of
17 business; or

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

20 D. As used in this section:

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

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

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

13 SECTION 2. This act shall become effective November 1, 2024.

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