

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)
2ND CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
HOUSE BILL NO. 3274

By: Braddock of the House

and

Henry and Herbert of the
Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to motor vehicles; amending 47 O.S. 1991, Sections 562, 563, 565 and 579.1, as amended by Section 1, Chapter 324, O.S.L. 1995 (47 O.S. Supp. 1997, Section 579.1), which relate to the Oklahoma Motor Vehicle Commission; modifying definition; requiring certain forms to be approved by the Oklahoma Motor Vehicle Commission; adding violation for which a new motor vehicle dealer may be fined or have license denied, suspended or revoked; permitting manufacturer or distributor to audit new dealer; limiting certain audits; prohibiting manufacturers from requiring dealers to pay extra fee or meet certain requirements as a prerequisite to receiving certain vehicles; exempting certain vehicles; modifying definition; establishing punishment for brokers; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 562, is amended to read as follows:

Section 562. The following words, terms and phrases, when used in Sections 561 through 567, 572, 578 ~~and~~, 579, and 579.1 of this title ~~and Section 17 of this act~~, shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Motor vehicle" means any motor-driven vehicle required to be registered under the "Motor Vehicle License and Registration Act";

2. "New motor vehicle dealer" means any person, firm, association, corporation or trust not excluded by paragraph 3 of

this section who sells, offers for sale, advertises to sell, leases or displays new or unused motor vehicles and holds a bona fide contract or franchise in effect with a manufacturer or distributor authorized by the manufacturer to make predelivery preparation of such vehicles sold to purchasers and to perform post-sale work pursuant to the manufacturer's or distributor's warranty. As used herein, "authorized predelivery preparation" means the rendition by the dealer of services and safety adjustments on each new and unused motor vehicle in accordance with the procedure and safety standards required by the manufacturer of the vehicle to be made before its delivery to the purchaser. "Performance of authorized post-sale work pursuant to the warranty", as used herein, means the rendition of services which are required by the terms of the warranty that stands extended to the vehicle at the time of its sale and are to be made in accordance with the safety standards prescribed by the manufacturer. The term includes premises or facilities at which a person engages only in the repair of motor vehicles if repairs are performed pursuant to the terms of a franchise and motor vehicle manufacturer's warranty. However, the term shall not include premises or facilities at which a new motor vehicle dealer or dealers within the area of responsibility of such dealer or dealers as defined in the manufacturer's franchise agreement of such dealer or dealers performs motor vehicle repairs pursuant to the terms of a franchise and motor vehicle manufacturer's warranty. For the purpose of Sections 561 through 567, 572, 578 ~~and, 579, and 579.1~~ of this title ~~and Section 17 of this act~~, the terms "new motor vehicle dealer" and "new motor vehicle dealership" shall be synonymous;

3. The term "new motor vehicle dealer" does not include:
 - a. receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment or order of any court,
 - b. public officers while performing or in operation of their duties, or

c. employees of persons, corporations or associations enumerated in subparagraph a of this paragraph when engaged in the specific performance of their duties as such employees;

4. "Motor vehicle salesperson" means any person who, for gain or compensation of any kind, either directly or indirectly, regularly or occasionally, by any form of agreement or arrangement, sells or negotiates for the sale of any new or unused motor vehicle for any new or unused motor vehicle dealer to any one or more third parties;

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

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

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

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

9. "Distributor branch" means any branch office similarly maintained by a distributor for the same purposes a factory branch is maintained;

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

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

12. "Franchise" means any contract or agreement between a motor vehicle dealer and a manufacturer of a new motor vehicle or its distributor or factory branch by which the dealer is authorized to engage in the business of selling any specified make or makes of new motor vehicles;

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

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

15. "Off premise" means at a location other than the address designated on the new motor vehicle dealer's license; and

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

SECTION 2. AMENDATORY 47 O.S. 1991, Section 563, is amended to read as follows:

Section 563. A. There is hereby created the Oklahoma Motor Vehicle Commission, to be composed of nine (9) members. Seven of
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the members shall have been engaged in the manufacture, distribution or sale of new motor vehicles and two members shall be lay members, all to be appointed by the Governor of the State of Oklahoma, with the advice and consent of the State Senate. Such appointments shall be made within thirty (30) days after the effective date of this section. Each of the Commissioners thus appointed shall, at the time of ~~his~~ the appointment, be a resident in good faith of the State of Oklahoma; ~~and each,~~ shall be of good moral character, and each of the industry related Commissioners shall have been actually engaged in the manufacture, distribution or sale of such new motor vehicles for not less than ten (10) years next preceding such appointment. The members of ~~said~~ the Commission shall serve at the pleasure of the Governor.

B. 1. The Commissioners shall elect a Chairman from amongst them whose term shall be for one (1) year with the right to succeed him or herself.

2. There shall be three at large members of the Commission. Six members of the Commission shall be appointed from the following geographical areas with at least one member from each area:

- a. four areas of the state shall be the northwest, northeast, southwest and southeast sections designated by Interstate 35 dividing the state east and west and Interstate 40 dividing the state north and south, excluding Oklahoma County and Tulsa County, and
- b. two additional areas shall be Oklahoma County and Tulsa County.

There shall not be more than two members of the Commission from any one area.

C. The terms of office of the members first appointed to the Commission shall be as follows:

1. The members appointed from the northwest, northeast and southwest areas shall serve until June 30, 1987;

2. The members appointed from the southeast area and Oklahoma County and Tulsa County shall serve until June 30, 1989; and

3. The members appointed at large shall serve until June 30, 1991.

Each member shall serve until ~~his~~ a successor is appointed and qualifies. Thereafter, the term of office of each member of the Commission shall be for six (6) years. The term of office of any member will automatically expire if ~~said the~~ the member moves out of the geographical area from which ~~he or she~~ the member was appointed. In event of death, resignation, removal, or term automatically expiring, of any person serving on ~~said the~~ the Commission, the vacancy shall be filled by appointment as ~~aforsaid~~ provided for the unexpired portion of the term. The Commission shall meet at Oklahoma City and complete its organization immediately after the membership thereof has been appointed and has qualified. The Chairman and each member of the Commission shall take and subscribe to the oath of office required of public officers.

D. The members of ~~said the~~ the Commission shall receive reimbursement for subsistence and traveling expenses necessarily incurred in the performance of their duties as provided by the State Travel Reimbursement Act.

E. The Commission shall appoint a qualified person to serve as Executive Director thereof, which person shall have had not less than ten (10) years of experience in the motor vehicle industry. ~~Said The~~ The Executive Director shall be appointed for a term of six (6) years, and shall not be subject to dismissal or removal without cause. The Commission shall fix ~~his or her~~ the salary and prescribe ~~his or her~~ the duties of the Executive Director. The Executive Director shall devote such time as necessary to fulfill the duties thereof, and before entering upon such duties shall take and subscribe to the oath of office. ~~Said The~~ The Executive Director may employ such clerical, technical and other help and legal services and incur such expenses as may be necessary for the proper discharge of ~~his or her~~ the duties of the Executive Director under this act. The Commission shall maintain its office and transact its business in Oklahoma City, and it is authorized to adopt and use a seal. The Executive Director is

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hereby authorized to hire, retain or otherwise acquire the services of an attorney to represent the Commission in any and all state and federal courts, and assist the Commission in any and all business or legal matters that may come before it. The attorney so representing the Commission shall discharge ~~his or her~~ the duties under the direction of the Executive Director.

F. The Commission is hereby vested with the powers necessary to enable it to fully and effectively carry out the provisions and objects of this act, and is hereby authorized and empowered to make and enforce all reasonable rules ~~and regulations~~ and to adopt and prescribe all forms necessary to accomplish ~~said~~ such purpose. All forms used by a new motor vehicle dealer to facilitate the delivery of a vehicle pending approval of financing shall be approved by the Commission.

G. All fees, charges and fines collected under the provisions of this act shall be deposited by the Executive Director in the State Treasury in accordance with the depository laws of this state in a special fund to be known as the "Oklahoma Motor Vehicle Commission Fund", which is hereby created, and except as hereinafter provided the monies in ~~said~~ the fund shall be used by the Commission for the purpose of carrying out and enforcing the provisions of this act; ~~and expenditures.~~ Expenditures from ~~said~~ the fund shall be made upon vouchers approved by the Commission or its authorized officers.

At the close of each fiscal year ~~hereafter~~, ~~said~~ the Commission shall file with the Governor and the State Auditor and Inspector a true and correct report of all fees, fines and charges collected and received by it during the preceding fiscal year and shall at the same time pay into the General Revenue Fund of the state a sum equal to ten percent (10%) of the fees, fines and charges so collected and received.

All expenses incurred by the Commission in carrying out the provisions of this act, including but not limited to per diem, wages, salaries, rent, postage, advertising, supplies, bond premiums, travel and subsistence for the Commissioners, the Executive Director, employees, and legal counsel, and printing and

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utilities, shall be a proper charge against such fund, exclusive of the portion thereof to be paid into the General Revenue Fund as above set out; ~~provided, that in.~~ In no event shall liability ever accrue hereunder against ~~the State of Oklahoma~~ this state in any sum whatsoever, or against ~~said~~ the Oklahoma Motor Vehicle Commission Fund, in excess of the ninety percent (90%) of the fees, fines and charges deposited therein.

SECTION 3. AMENDATORY 47 O.S. 1991, Section 565, is amended to read as follows:

Section 565. The Commission may deny an application for a license, or revoke or suspend a license or impose a fine not to exceed Ten Thousand Dollars (\$10,000.00) against a manufacturer or distributor or a fine not to exceed Five Hundred Dollars (\$500.00) against a dealer for each day that any provision of Sections 561 through 567, 572, 578 ~~and~~, 579, and 579.1 of this title ~~and~~ ~~Section 17 of this act~~ is violated or for any of the following reasons:

1. On satisfactory proof of unfitness of the applicant in any application for any license under the provisions of this act;

2. For any material misstatement made by an applicant in any application for any license under the provisions of this act;

3. For any failure to comply with any provision of this act or any rule or regulation adopted and promulgated by the Commission under authority vested in it by this act;

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

5. Being a new motor vehicle dealer or new motor vehicle salesperson who:

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

b. uses any false or misleading advertising in connection with his business as such new motor vehicle dealer or vehicle salesperson,

- c. has committed any unlawful act which resulted in the revocation of any similar license in another state,
- d. has failed or refused to perform any written agreement with any retail buyer involving the sale of a motor vehicle,
- e. has been convicted of a crime involving moral turpitude,
- f. has committed a fraudulent act in selling, purchasing, or otherwise dealing in new motor vehicles or has misrepresented the terms and conditions of a sale, purchase, or contract for sale or purchase of a new motor vehicle or any interest therein including an option to purchase such vehicle, or
- g. has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license;

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

7. Being a new motor vehicle dealer who:

- a. does not have an established place of business,
- b. does not provide for a suitable repair shop separate from the display room with ample space to repair or recondition one or more vehicles at the same time, and which is equipped with such parts, tools and equipment as may be requisite for the servicing of motor vehicles in such a manner as to make them comply with the safety laws of this state and to properly fulfill the dealer's or manufacturer's warranty obligation,
- c. does not hold a franchise in effect with a manufacturer or distributor of new or unused motor vehicles for the sale of the same and is not authorized by the manufacturer or distributor to render predelivery preparation of such vehicles sold to purchasers and to perform any authorized

post-sale work pursuant to the manufacturer's or distributor's warranty,

- d. employs unlicensed salespersons, or employs or utilizes the services of used motor vehicle lots or dealers or other unlicensed persons in connection with the sale of new motor vehicles, ~~or~~
- e. does not properly service a new motor vehicle before delivery of same to the original purchaser thereof, or
- f. fails to order and stock a reasonable number of new motor vehicles necessary to meet customer demand for each of the new motor vehicles included in the new motor vehicle dealer's franchise agreement, unless the new motor vehicles are not readily available from the manufacturer or distributor due to limited production;

8. Being a manufacturer, distributor, distributor branch or factory branch, or officer, agent or other representative thereof, who has:

- a. either induced or attempted to induce by means of coercion or intimidation, any new motor vehicle dealer:
 - (1) to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities including advertising material which shall not have been ordered by said new motor vehicle dealer,
 - (2) to order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of said motor vehicles as publicly advertised by the manufacturer thereof, or
 - (3) to order or accept delivery of any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever, or

- b. induced under threat or discrimination by the withholding from delivery to a motor vehicle dealer certain models of motor vehicles, changing or amending unilaterally the dealer's allotment of motor vehicles and/or withholding and delaying delivery of such vehicles out of the ordinary cause of business, in order to induce by such coercion any such dealer to participate or contribute to any local or national advertising fund controlled directly or indirectly by the manufacturer or for any other purposes such as contest, "give-aways" or other so-called sales promotional devices and/or change of quotas in any sales contest; or has required motor vehicle dealers, as a condition to receiving their vehicle allotment, to order a certain percentage of the vehicles with optional equipment not specified by the new motor vehicle dealer; however, nothing in this section shall prohibit a manufacturer from supporting an advertising association which is open to all dealers on the same basis;

9. Being a manufacturer, distributor, distributor branch or factory branch, or officer, agent or other representative thereof, who:

- a. has attempted to coerce or has coerced any new motor vehicle dealer to enter into any agreement or to cancel any agreement, or fails to act in good faith and in a fair, equitable and nondiscriminatory manner; or has directly or indirectly coerced, intimidated, threatened or restrained any motor vehicle dealer; or has acted dishonestly, or has failed to act in accordance with the reasonable standards of fair dealing, ~~or~~
- b. has failed to compensate its dealers for the work and services they are required to perform in connection with the dealer's delivery and

preparation obligations according to the agreements on file with the Commission which must be found by the Commission to be reasonable, or fail to adequately and fairly compensate its dealers for labor, parts and other expenses incurred by such dealer to perform under and comply with manufacturer's warranty agreements. In determining whether the warranty compensation is adequate and fair, the Commission shall consider the amount that is charged by the dealer or dealers in their areas of responsibility to their nonwarranty work of like kind. All claims made by dealers for compensation for delivery, preparation and warranty work shall be paid within thirty (30) days after approval and shall be approved or disapproved within thirty (30) days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. The dealer's delivery, preparation and warranty obligations as filed with the Commission shall constitute the dealer's sole responsibility for product liability as between the dealer and manufacturer. A manufacturer or distributor may reasonably and periodically audit a new motor vehicle dealer to determine the validity of paid claims for dealer compensation or any charge-backs for warranty parts or service compensation. Audits of warranty payments shall only be for the one-year period immediately following the date of the payment. A manufacturer shall reserve the right to reasonable, periodic audits to determine the validity of paid claims for dealer compensation or any charge-backs for consumer or dealer incentives. Audits of incentive payments shall only be for a two-year period immediately following the date of the payment. These

limitations shall not apply if the manufacturer or distributor reasonably suspects fraud, or
c. unreasonably fails or refuses to offer to its same line-make franchised dealers all models manufactured for that line-make, or unreasonably requires a dealer to pay any extra fee, purchase unreasonable advertising displays or other materials, or remodel, renovate, or recondition the dealer's existing facilities as a prerequisite to receiving a model or series of vehicles. However, this subparagraph shall not apply to recreational vehicles or limited production model vehicles.

SECTION 4. AMENDATORY 47 O.S. 1991, Section 579.1, as amended by Section 1, Chapter 324, O.S.L. 1995 (47 O.S. Supp. 1997, Section 579.1), is amended to read as follows:

Section 579.1 A. It shall be unlawful to be a broker.

B. For the purposes of this section, "broker" means a person who, for a fee, commission or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle, and who is not:

1. A new motor vehicle dealer or employee of such a dealer;

~~or~~

2. A distributor or employee of such a distributor; or

3. A motor vehicle manufacturer or employee of such a

manufacturer.

However, an individual shall not be deemed to be a broker if he or she is the owner of the new or used motor vehicle which is the object of the brokering transaction.

C. Any person convicted of being a broker as defined by this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year and a fine of not more than One Thousand Dollars (\$1,000.00). Any person convicted of a second or subsequent offense shall be guilty of a Schedule G felony offense, and the fine for a felony violation of this section shall be not less than

One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00).

SECTION 5. This act shall become effective November 1, 1998.

46-2-11614 JAF