STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 3266 By: Braddock

COMMITTEE SUBSTITUTE

An Act relating to motor vehicles; amending 47 O.S. 1991, Sections 562 and 565, which relate to the Oklahoma Motor Vehicle Commission; modifying definition; modifying fine for dealers; adding a new motor vehicle dealer prohibition; limiting certain audits; prohibiting manufacturers from requiring dealers to pay extra fees or meet certain requirements as a prerequisite to receiving certain vehicles; exempting certain limited production model vehicles; 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. 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 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. <u>A manufacturer or distributor may reasonably and periodically audit a new motor vehicle dealer to determine the validity</u>

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 require 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 limited production model vehicles.

SECTION 3. This act shall become effective November 1, 1998.

46-2-9755 SCE