

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
HOUSE BILL NO. 2051

By: Glover, Benson, Hefner,  
Adair, Thomas, Kirby,  
Langmacher, Corn, Braddock,  
Seikel, Webb, Ostrander,  
Covey, Pope (Clay), Askins,  
Easley, Morgan, Ferguson,  
Beutler, Smith (Hopper),  
Kinnamon, Collins, Sellers,  
Maddux, Lindley, Turner,  
McCarter, Frame and Gilbert  
of the House

and

Morgan, Weedn and Henry of  
the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to motor vehicles; amending 47 O.S. 1991, Sections 562, as last amended by Section 1 of Enrolled Senate Bill No. 1557 of the 2nd Session of the 47th Oklahoma Legislature, 565, as amended by Section 3, Chapter 269, O.S.L. 1998, 565.2, 572, 579 and 579.1, as last amended by Section 4, Chapter 269, O.S.L. 1998 (47 O.S. Supp. 1999, Sections 565 and 579.1), which relate to regulation of new motor vehicle dealers; modifying and adding definitions; modifying maximum amount of fines which may be imposed by the Oklahoma Motor Vehicle Commission for certain violations; modifying terms; modifying and adding conduct which may result in discipline by the Oklahoma Motor Vehicle Commission against a manufacturer or dealer; providing exceptions; modifying time period for filing protest of termination, cancellation or renewal by Oklahoma Motor Vehicle Commission; establishing rights of new motor vehicle dealer while action or appeal is pending; authorizing the award of attorney fees and costs under certain circumstances; specifying when certain written requests for assistance should be made; establishing procedures to be followed by a factory attempting to establish or relocate a new motor vehicle dealer within certain areas; defining term; providing exceptions; specifying time period for certain notices; assigning burden of proof for permitting establishment or relocation of new motor vehicle dealer; adding exception to definition of broker; repealing 47 O.S. 1991, Section 578, which relates to establishing new or relocating existing

new motor vehicle dealerships; providing for codification; 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, as last amended by Section 1 of Enrolled Senate Bill No. 1557 of the 2nd Session of the 47th Oklahoma Legislature, is amended to read as follows:

Section 562. The following words, terms and phrases, when used in Sections 561 through 567, 572, 578, 579, and 579.1 of this title, 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, unused, or remanufactured motor vehicles and holds a bona fide contract or franchise in effect with a manufacturer, remanufacturer, or distributor authorized by the manufacturer or remanufacturer to make predelivery preparation of such vehicles sold to purchasers and to perform post-sale work pursuant to the manufacturer's, remanufacturer'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, unused, or remanufactured motor vehicle in accordance with the procedure and safety standards required by the manufacturer or remanufacturer 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 or remanufacturer. 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 or remanufacturer'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 or remanufacturer's franchise agreement of such dealer or dealers performs motor vehicle repairs pursuant to the terms of a franchise and motor vehicle manufacturer's or remanufacturer's warranty. For the purpose of Sections 561 through 567, 572, 578, 579, and 579.1 of this title, 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, unused, or remanufactured 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~~ premises" means at a location other than the address designated on the new motor vehicle dealer's license;

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;

17. "Remanufactured vehicle" means a motor vehicle which has been assembled by a vehicle remanufacturer using a new body and which may include original, reconditioned, or remanufactured parts, and which is not a salvage, rebuilt, or junked vehicle as defined by paragraphs 1, 2, and 5, respectively, of subsection A of Section 1105 of this title; ~~and~~

18. "Vehicle remanufacturer" means a commercial entity which assembles remanufactured vehicles;

19. "Product" means new motor vehicles and new motor vehicle parts;

20. "Service" means motor vehicle warranty repairs including both parts and labor;

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

22. "Sell or sale" means to sell or lease; and

23. "Factory" means a manufacturer, distributor, factory branch, distributor branch, factory representative, or distributor representative, which manufactures or distributes vehicle products.

SECTION 2. AMENDATORY 47 O.S. 1991, Section 565, as amended by Section 3, Chapter 269, O.S.L. 1998 (47 O.S. Supp. 1999, Section 565), is amended to read as follows:

Section 565. A. 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)~~ One Thousand Dollars (\$1,000.00) against a dealer ~~for each day per occurrence~~ that any provision of Sections 561 through 567, 572, 578, 579, and 579.1 of this title 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,
- 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~~ factory that 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 course 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~~ factory 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~~ factory 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 factory that:

- 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,
- 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~~ factory 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~~ A factory shall not deny a claim or charge a new motor vehicle dealer back subsequent to the payment of the claim unless the factory can show that the claim was false or fraudulent or that the new motor vehicle dealer failed to reasonably substantiate the claim by the written reasonable procedures of the factory,

- 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. The failure to deliver any such new motor vehicle shall not be considered a violation of the section if the failure is not arbitrary or is due to lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo, or other cause over which the manufacturer has no control. However, this subparagraph shall not apply to recreational vehicles or limited production model vehicles-;

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

11. Being a factory that sells directly or indirectly new motor vehicles or services to any retail consumer in the state except through a new motor vehicle dealer holding a franchise for the line-make that includes the new motor vehicle. This paragraph does not apply to factory sales of new motor vehicles to its employees, family members of employees, retirees and family members of retirees, not-for-profit organizations or the federal, state or local governments. The provisions of this paragraph shall not preclude a factory from providing information to a consumer for the purpose of marketing or facilitating a sale of a new motor vehicle or from establishing a program to sell or offer to sell new motor vehicles through participating dealers;

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

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

b. (1) This paragraph does not prohibit a factory from owning or controlling a new motor vehicle dealer while in a bona fide relationship with a dealer development candidate who has made a substantial initial investment in the franchise and whose initial investment is subject to potential loss. The dealer development candidates' percentage share of any potential dealership losses shall not be less than the percentage share of ownership of the dealership of the person at the time of the loss. The dealer development candidate can reasonably expect to acquire full ownership of a new motor vehicle dealer within a reasonable period of time not to exceed ten (10) years and on reasonable terms and conditions. The ten-year acquisition period may be expanded for good cause shown. It shall be presumed unreasonable for the terms and conditions not to require the dealer development candidate to buy the remaining ownership interests of the dealer development candidate in periodic payments over the acquisition period. It shall be presumed unreasonable to require the dealer development candidate to acquire the remaining interests

solely from the profits or earning of the dealership or new motor vehicle dealer.

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

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

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

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

(b) all of the franchise agreements of the manufacturer confer rights on the dealer of the line-make to develop and operate, within

- a defined geographic territory or area, as many dealership facilities as the dealer and manufacturer shall agree are appropriate,
- (c) at the time the manufacturer first acquires an ownership interest or assumes operation, the distance between any dealership thus owned or operated and the nearest unaffiliated motor vehicle dealership trading in the same line-make is not less than seventy (70) miles,
- (d) during any period in which the manufacturer has such an ownership interest, the manufacturer has no more than three (3) franchise agreements with new motor vehicle dealers licensed by the Oklahoma Motor Vehicle Commission to do business within the state, and
- (e) prior to January 1, 2000, the factory shall have furnished or made available to prospective motor vehicle dealers an offering-circular in accordance with the Trade Regulation Rule on Franchising of the Federal Trade Commission, and any guidelines and exemptions issued thereunder, which disclose the possibility that the factory may from time to time seek to own or acquire, directly or indirectly, ownership interests in retail dealerships;

13. Being a factory which directly or indirectly makes available for public disclosure any proprietary information provided to the factory by a new motor vehicle dealer, other than in composite form to dealers in the same line-make or in response to a

subpoena or order of the Commission or a court. Proprietary information includes, but is not limited to, information based on:

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

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

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

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

- a. the facility and the proposed new location satisfies or meets the written reasonable guidelines of the factory, and
- b. the proposed new location is within the area of responsibility of the new motor vehicle dealer pursuant to Section 578 of this title; and

17. Being a factory which prohibits a new motor vehicle dealer from adding additional line-makes to its existing facility, if, after adding the additional line-makes, the facility satisfies the written reasonable facility guidelines of the factory.

B. Notwithstanding the terms of any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the assets or ownership interest of the dealer of the new vehicle dealership, if such sale or transfer is conditioned upon the manufacturer or dealer entering into a dealer

agreement with the proposed new owner or transferee, only if all the following requirements are met:

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

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

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

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

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

1. Business activities, including without limitation the dealings with motor vehicle manufacturers and the representatives and affiliates of motor vehicle manufacturers, of any person that is

primarily engaged in the business of short-term, not to exceed twelve (12) months, rental of motor vehicles and industrial and construction equipment and activities incidental to that business, provided that:

- a. any motor vehicle sold by that person is limited to used motor vehicles that have been previously used exclusively and regularly by that person in the conduct of business and used motor vehicles traded in on motor vehicles sold by that person,
- b. warranty repairs performed by that person on motor vehicles are limited to those motor vehicles that it owns, previously owned, or takes in trade, and
- c. motor vehicle financing provided by that person to retail consumers for motor vehicles is limited to used vehicles sold by that person in the conduct of business; or

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

SECTION 3. AMENDATORY 47 O.S. 1991, Section 565.2, is amended to read as follows:

Section 565.2 A. Irrespective of the terms, provisions or conditions of any franchise, or the terms or provisions of any waiver, no manufacturer shall terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements as provided in this section and has good cause for cancellation, termination or nonrenewal. The manufacturer shall not attempt to cancel or fail to renew the franchise agreement of a new motor vehicle dealer in this state unfairly and without just provocation or without due regard to the equities of the dealer or without good faith as defined herein. As used herein, "good faith" means the duty of each party to any franchise agreement to act in a fair and equitable manner toward

each other, with freedom from coercion or intimidation or threats thereof from each other.

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

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

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

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

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

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

- a. insolvency of the new motor vehicle dealer, or the filing of any petition by or against the motor vehicle dealer under any bankruptcy or receivership law,
- b. failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven (7) consecutive business days, provided that such failure to conduct business shall not be due to act of God or circumstances beyond the direct control of the new motor vehicle dealer, or
- c. conviction of the new motor vehicle dealer of any felony which is punishable by imprisonment or a violation of the Federal Odometer Act; and

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

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

D. Upon the affected new motor vehicle dealer's receipt of the aforementioned notice of termination, cancellation or nonrenewal, the new motor vehicle dealer shall have the right to file a protest of such threatened termination, cancellation or nonrenewal with the Commission within ~~ten (10)~~ thirty (30) days and request a hearing. Such hearing shall be held in accordance with the provisions of the

Administrative Procedures Act, Sections 301 through 326 of Title 75 of the Oklahoma Statutes, to determine if the threatened cancellation, termination or nonrenewal of the franchise has been for good cause and if the ~~manufacturer or distributor~~ factory has complied with its ~~obligation~~ obligations pursuant to subsections ~~D~~ A, ~~E~~ B and ~~F~~ C of this section and the factory shall have the burden of proof. If the Commission finds that the threatened cancellation, termination or nonrenewal of the franchise has not been for good cause ~~pursuant to the provisions of~~ or violates subsection A, B or C of this section ~~or that the manufacturer or distributor has failed to comply with the provisions of subsections D, E and F of this section,~~ then it ~~may~~ shall issue a final order ~~requiring the manufacturer or distributor to pay sufficient monies to the terminated, canceled or nonrenewed new motor vehicle dealer so that he will be in the same position as if the manufacturer or distributor had fully complied with subsections D, E and F of this section or issue a final order rescinding said cancellation, termination or nonrenewal.~~ The manufacturer or distributor must ~~timely comply with these orders or may be subject to sanctions as provided for in Sections 564 and 565 of Title 47 of the Oklahoma Statutes~~ stating that the threatened termination is wrongful. A factory shall have the right to appeal such order. During the pendency of the hearing and after the decision, the franchise shall remain in full force and effect, including the right to transfer the franchise. If the Commission finds that the threatened cancellation, termination or nonrenewal is for good cause and does not violate subsection A, B or C of this section, the new motor vehicle dealer shall have the right to an appeal. During the pendency of the action, including the final decision or appeal, the franchise shall remain in full force and effect, including the right to transfer the franchise. If the new motor vehicle dealer prevails in the threatened termination action, the Commission shall award to

the new motor vehicle dealer the attorney fees and costs incurred to defend the action.

E. ~~Upon termination, cancellation or nonrenewal of~~ If the factory prevails in an action to terminate, cancel or not renew any franchise by the manufacturer, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for:

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

2. Supplies and parts which have been acquired from the manufacturer, for the purpose of ~~Section 10 of this act~~ this section, limited to any and all supplies and parts that are listed on the current parts price sheet available to the dealer;

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

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

F. ~~In the event of a termination, cancellation or nonrenewal under this section,~~ If a factory prevails in an action to terminate, cancel or not renew any franchise and the new motor vehicle dealer is leasing the dealership facilities, the manufacturer shall pay a reasonable rent to the lessor in accordance with and subject to the provisions of subsection G of this section.

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

- a. used solely for performance in accordance with the franchise, and
- b. not substantially in excess of facilities recommended by the manufacturer;

2. If the facilities are owned by the new motor vehicle dealer, the manufacturer will either:

- a. locate a qualified purchaser who will offer to purchase the dealership facilities at a reasonable price,
- b. locate a qualified lessee who will offer to lease the premises for a reasonable term at reasonable rent, or
- c. failing the foregoing, lease the dealership facilities at a reasonable rental value for one (1) year;

3. If the facilities are leased by the new motor vehicle dealer, the manufacturer will either:

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

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

- a. fails to accept a bona fide offer from a prospective purchaser, subleases or assignee,
- b. refuses to execute a settlement agreement with the lessor if such agreement with the lessor would be without cost to the dealer, or
- c. fails to make written request for assistance under this section within one (1) month ~~of notice of~~ after receiving an order from the Commission affirming the proposed termination, cancellation or nonrenewal.

SECTION 4. AMENDATORY 47 O.S. 1991, Section 572, is amended to read as follows:

Section 572. Any action brought to recover any damages that may be sustained by any motor vehicle dealer may be brought in the county in which said dealer is located and in addition to the action for damages he shall be entitled to sue for and have injunctive relief against the threatened loss, damage or injury to his business or property because of any violation of ~~this act~~ Sections 565 through 566 and 579 of this title or the threatened cancellation, termination or failure to renew any franchise agreement between any ~~manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative,~~ factory and said dealer, and the court may grant such injunctive relief, including temporary restraining orders, as it deems just and proper, notwithstanding any other provisions of law, and in addition to any other remedy which may be afforded under any other statute of this state.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 578.1 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding the terms of a franchise and notwithstanding the terms of a waiver, if a factory intends or proposes to enter into a franchise to establish an additional new motor vehicle dealer or to relocate an existing new motor vehicle dealer within or into a relevant market area in which the same line-make of motor vehicle is currently represented, the factory shall provide at least sixty (60) days advance written notice to the Commission and to each new motor vehicle dealer of the same line-make in the relevant market area, of the intention of the factory to establish an additional new motor vehicle dealer or to relocate an existing new motor vehicle dealer within or into the relevant market area. For purposes of this section, the "relevant market area" means the area within a radius

of fifteen (15) miles of the site of the proposed new motor vehicle dealership. The notice shall be sent by certified mail to each party and shall include the following information:

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

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

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

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

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

B. This section does not apply:

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

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

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

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

C. Within thirty (30) days after receipt of the notice, or within thirty (30) days after the end of a appeal procedure provided by the factory, whichever is greater, a new motor vehicle dealer so notified or entitled to notice may file a petition with the Commission protesting the proposed establishment or relocation. The petition shall contain a short statement setting forth the reasons for the objection of the dealer to the proposed establishment or relocation. Upon filing of a protest, the Commission shall promptly notify the factory that a timely protest has been filed and shall schedule a hearing, which shall be held within one hundred twenty (120) days of the filing of a timely protest. The factory shall not establish or relocate the new motor vehicle dealer until the Commission has held a hearing and has determined that there is good cause for permitting the proposed establishment or relocation. When more than one protest is filed against the establishment or relocation of the same dealer, the Commission shall consolidate the hearings to expedite disposition of the matter.

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

SECTION 6. AMENDATORY 47 O.S. 1991, Section 579, is amended to read as follows:

Section 579. In determining whether good cause has been established for ~~not entering into or relocating~~ permitting the proposed establishment or relocation of an additional franchise for the same line-make, the Oklahoma Motor Vehicle Commission shall take

into consideration, and must be persuaded, that good cause exists for entering into or relocating an additional franchise for the same line-make by the greater weight of facts and the existing circumstances, including, but not limited to:

1. Permanency of the investment of the proposed dealership;
2. Effect on the retail new motor vehicle business and the consuming public in the relevant market area;
3. Whether it is injurious to the public welfare for an additional new motor vehicle dealership to be established;
4. Whether the new motor vehicle dealers of the same line-make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel; and
5. Whether the establishment of an additional new motor vehicle dealership would increase competition, and therefore be in the public interest.

SECTION 7. AMENDATORY 47 O.S. 1991, Section 579.1, as last amended by Section 4, Chapter 269, O.S.L. 1998 (47 O.S. Supp. 1999, 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;
2. A distributor or employee of such a distributor; ~~or~~
3. A motor vehicle manufacturer or employee of such a manufacturer; or
4. An auctioneer or any other person engaged in the auto auction business.

However, an individual shall not be deemed to be a broker if ~~he~~  
~~or she~~ the individual 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 8. REPEALER 47 O.S. 1991, Section 578, is hereby  
repealed.

SECTION 9. This act shall become effective November 1, 2000.

47-2-9589 LAC 6/11/15