

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 1591

By: Johnson

COMMITTEE SUBSTITUTE

[motor vehicles - amending 47 O.S. 1991, Section 562
- unlawful manufacturer activities - codification -
effective date]

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 562, as amended by Section 1, Chapter 269, O.S.L. 1998 (47 O.S. Supp. 1999, 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, 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 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, 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 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~~ premises" 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;

17. "Product" means new motor vehicles, used motor vehicles, new motor vehicle parts, used motor vehicle parts, motor vehicle financing, credit insurance, service contracts, or motor vehicle insurance;

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

19. "Lead" means a consumer expressing any interest to the factory in purchasing or leasing or possibly purchasing or leasing any motor vehicle, product, or service;

20. "Sell or sale" means to sell or lease or provide or transact in any way; and

21. "Factory" means a manufacturer, distributor, factory branch, distributor branch, factory representative, or distributor representative, which manufactures or distributes vehicle products, and their affiliates, representatives, subsidiaries including both wholly and partially owned, their agents, or persons controlled by or under common control with the person who manufactures or distributes vehicle products.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 562.1 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. The performance, whether by act or omission, by a factory of the following activities is hereby declared unlawful, and it shall be a violation of this act for a factory to, directly or indirectly:

1. Own any ownership interest or have any financial interest in a new motor vehicle dealer or any person who sells products or services to the public;

2. Operate or control a new motor vehicle dealer or used motor vehicle dealer; or

3. Act in the capacity of a new motor vehicle dealer or used motor vehicle dealer.

B. Nothing in this section shall be construed as prohibiting a factory from owning or controlling a new motor vehicle dealer while in a bona fide relationship with an economically disadvantaged person who has made a bone fide, unencumbered initial investment in the franchise of at least fifteen percent (15%) of the total sales price. Such sales price shall be fair market value based on an independent appraisal and which is subject to loss. The economically disadvantaged person can reasonably expect to acquire full ownership of the new motor vehicle dealer within a reasonable period of time, not to exceed ten (10) years and on reasonable terms and conditions. The fifteen-percent initial investment and 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 economically disadvantaged person to buy his or her remaining ownership interests in periodic payments over the acquisition period. It shall be presumed unreasonable to require the economically disadvantaged person to acquire the remaining interests solely from the profits or earnings of the dealership or new motor vehicle dealer. During the acquisition period, if the economically disadvantaged person is paid a management fee, such fee shall be based on reasonable business practices considering franchises of similar size and volume of sales and leases of products and services.

SECTION 3. This act shall become effective November 1, 2000.

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