

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1591

By: Johnson

AS INTRODUCED

An Act relating to motor vehicles; amending 47 O.S. 1991, Sections 562, as amended by Section 1, Chapter 269, O.S.L. 1998, 564, 565.2, Section 1, Chapter 132, O.S.L. 1999, 572, 578 and 579.1, as last amended by Section 4, Chapter 269, O.S.L. 1998 (47 O.S. Supp. 1999, Sections 562, 565.3, and 579.1), which relate to regulation of new motor vehicle dealers; adding definitions; defining the performance of certain activities as unlawful practices and describing such activities; requiring manufacturer and distributor license applications to include affidavit pertaining to conformance of franchise provisions with certain statutory provisions; deeming statutory provisions as controlling if franchise provisions conflict with statutory provisions; expanding time period for filing protest of termination, cancellation, or nonrenewal of franchise by manufacturer or distributor; placing burden of proof on manufacturer or distributor; deeming franchise and all licenses to be in effect pending final resolution of termination; requiring Oklahoma Motor Vehicle Commission to issue certain final order if cancellation, termination, or nonrenewal of franchise is not for good cause or for finding of noncompliance with certain provisions; deeming such termination to be null and void and making manufacturer or distributor responsible for attorney fees and costs; modifying information to be provided and stating procedures for approving or rejecting proposed franchise sale, transfer, or assignment; allowing certain injunctive relief to be granted without bond; modifying time period for filing and hearing protest of new dealership locating within market area of existing dealership and modifying description of market area; modifying definition of broker; 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 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:

The performance, whether by act or omission, by a factory of any or all of the following activities enumerated in this section are hereby defined as unlawful practices, and it shall be a violation of this act for a factory to:

1. Exercise a right of first refusal over the proposed transfer of a new motor vehicle dealer's assets or stock;

2. Fail to reasonably and timely compensate any new motor vehicle dealer for parts used to rectify the factor's product or warranty defects or parts used in the delivery and preparation obligations. For purposes of this section, reasonable compensation for parts shall be not less than the average amount charged by the new motor vehicle dealer for such part to retail customers for nonwarranty repairs over the last ninety (90) days prior to filing the claim. Compensation not paid within thirty (30) days of receipt or notice of claim to factory shall be presumed untimely;

3. Fail to indemnify and hold harmless its new motor vehicle dealers licensed in this state against any judgment for damages or settlements agreed to by the factory, including, but not limited to, court costs and reasonable attorneys' fees of the new motor vehicle dealer, arising out of complaints, claims or lawsuits, including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or rescission or revocation or acceptance of the sale or a motor vehicle, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly, or design of new motor vehicles, parts or accessories or other functions by the factory, beyond the control of the new motor vehicle dealer;

4. Perform an audit for warranty service compensation for sales incentive, service incentive, rebates or other forms of incentive compensation for any period other than the twelve-month period immediately following the date of the payment of the claim by the factory;

5. Deny a new motor vehicle dealer's claim for warranty parts, labor, sales incentives, service incentives, rebates, or other forms of incentive compensation, reduce the amount to be paid to the new motor vehicle dealer, or charge a new motor vehicle dealer back subsequent to the payment of the claim unless it can be shown that the claim was false or fraudulent or that the new motor vehicle dealer failed to reasonably substantiate the claim either in accordance with the factory's written procedures or by other reasonable means;

6. a. Delay, refuse, or fail to deliver to the new motor vehicle dealer motor vehicles or motor vehicle parts or accessories covered in the franchise or publicly advertised as being available in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's area of responsibility as determined in accordance with reasonably applied economic principles, or within a reasonable time, after receipt of an order from a new motor vehicle dealer.

b. The delivery to another new motor vehicle dealer of a motor vehicle of the same model and similarly equipped as a vehicle ordered by a new motor vehicle dealer who has not received delivery thereof, but who has placed a written order for the vehicle prior to the order of the new motor vehicle dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a new motor vehicle dealer in violation of this section, without cause.

c. Each factory shall allocate its products in a manner that provides each of its new motor vehicle dealers in this state an adequate supply of vehicles by series, product line, and model, to achieve the factory's

minimum sales requirements, planning volume, or sales objectives and that is fair and equitable to all of its new motor vehicle dealers in this state.

Additionally, each factory shall make available to each of its new motor vehicle dealers in this state a minimum of one of each vehicle series, model, or product line that the factory advertises nationally as being available for purchase or lease. In allocating its vehicles to its new motor vehicle dealers in this state, each factory shall give equal weight to:

- (1) each new motor vehicle dealer's past sales by series, model, or product line, and
- (2) the vehicle registrations by series, model, and product line within the new motor vehicle dealer's area of responsibility.

A factory shall not unfairly discriminate among its new motor vehicle dealers in this allocation process;

7. Refuse to disclose to any new motor vehicle dealer, handling the same line-make, the manner and mode of distribution of that line-make within the state;

8. Pressure, require, coerce, or attempt to coerce any new motor vehicle dealer in this state to order or accept delivery of any new motor vehicle with special features, options, accessories or equipment which are either:

- a. not included in the list price of those motor vehicles as publicly advertised by the factory, or
- b. added by the factory at port or at any other time subsequent to the time assembly of the vehicle has been completed by the factory;

9. a. Vary the price charged to any of its new motor vehicle dealers located in this state for new motor vehicles based on:



- (1) the new motor vehicle dealer's purchase of new facilities, supplies, computers, tools, equipment, or other merchandise from the factory or any other person or entity designated, endorsed, or approved by the factory,
- (2) the new motor vehicle dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of new facility,
- (3) the new motor vehicle dealer's willingness or commitment to either establish or maintain exclusive facilities, personnel, or display space,
- (4) the new motor vehicle dealer's willingness to provide loaner vehicles in whole or in part at the new motor vehicle dealer's expense to customers who are having their vehicles serviced at the dealership, or
- (5) the new motor vehicle dealer's participation in training programs or employment or association of one or more consultants which are sponsored, endorsed, or recommended by the factory, the payment for which is in any part the responsibility of the new motor vehicle dealer.

b. The price of the vehicle for purposes of this paragraph shall include the factory's use of rebates, credits, bonuses, or other consideration which has the effect of causing a variance in the cost of new motor vehicles offered to its new motor vehicle dealers located in the state.

c. Notwithstanding the foregoing, nothing in this paragraph shall be deemed to preclude a factory from establishing sales contests or promotions which

provide or award new motor vehicle dealers or consumers rebates or incentives.

d. Nothing contained in this paragraph shall prohibit a factory from providing assistance or encouragement to a new motor vehicle dealer to remodel, renovate, recondition, or relocate the new motor vehicle dealer's existing facilities; provided that this assistance, encouragement, or rewards are not determined on a per-vehicle basis.

e. A factory which at the time of enactment of this act is operating a program or has in effect a policy which would violate this paragraph after the effective date of this act shall discontinue that program or policy prior to the annual renewal of its license to operate in this state. Whether or not a program operated by a factory complies with this paragraph, a factory shall be required to pay or otherwise compensate any new motor vehicle dealer who has earned the right to receive payment or other compensation under a program in accordance with the factory's program or policy;

10. a. Directly or indirectly:

(1) sell or offer for sale to the public, products or services,

(2) 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,

(3) operate or control a new motor vehicle dealer or used motor vehicle dealer, or

(4) act in the capacity of a new motor vehicle dealer or used motor vehicle dealer.

b. This paragraph does not prohibit 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;

11. Directly or indirectly control any aspect of the final sales price of the products or services or trade in values on vehicles or products or services offered for sale in the new motor vehicle dealer's area of responsibility. Nothing in this paragraph shall preclude a factory from establishing the manufacturer's

suggested retail price or from time to time establishing reasonable sales promotions of reasonable and limited duration which provide new motor vehicle dealers of the same line-make or consumers rebates or incentives;

12. Directly or indirectly make available for public disclosure any proprietary information between a factory and its new motor vehicle dealer. Proprietary information includes, but is not limited to, information based on:

- a. any information derived from monthly financial statements provided to the factory,
- b. any information regarding any aspect of the profitability of a new motor vehicle dealer, including, but not limited to, the profit on the sale or lease of a motor vehicle,
- c. any financial information relating to the price a new motor vehicle dealer pays for products or services it obtains from the factory, or
- d. any information regarding the status of a particular new motor vehicle dealer's current or future inventory or products obtained from the factory;

13. Directly or indirectly provide less than all leads or prospective consumers of vehicles or products of a particular line-make to new motor vehicle dealers of the same line-make in whose assigned area of responsibility the lead resides. All leads shall be provided or directed in a fair, nondiscrimintory, equitable and timely manner without conditions, and without directly or indirectly charging a fee for such leads;

14. Use a new motor vehicle dealer's list of customers in any way which may cause economic harm to the new motor vehicle dealer;

15. Prohibit a new motor vehicle dealer from relocating after a written request by such new motor vehicle dealer if:

- a. the facility at the proposed new location satisfies or meets the factory's written, reasonable facility guidelines,
- b. the proposed new location is within the new motor vehicle dealer's area of responsibility and under Section 578 of Title 47 of the Oklahoma Statutes, and
- c. the proposed new location is not protested; and

16. Prohibit a new motor vehicle dealer from adding to additional line-make to its existing facility if, after adding the additional line-make, the facility satisfies the factory's written, reasonable facility guidelines.

SECTION 3. AMENDATORY 47 O.S. 1991, Section 564, is amended to read as follows:

Section 564. A. It shall be unlawful for any person, firm, association, corporation or trust to engage in business as, or serve in the capacity of, or act as a motor vehicle dealer, or motor vehicle salesperson, or manufacturer or distributor of new motor vehicles, or factory branch, distributor branch, or factory representative or distributor representative, as such, in this state without first obtaining a license therefor as provided for by law. Any person, firm, association, corporation or trust engaging in more than one of said capacities or having more than one place where such business is carried on or conducted shall be required to obtain and hold a current license for each thereof in which he, it or they shall be engaged. Provided that, a new motor vehicle dealer's license shall authorize one person to sell without a salesperson's license in the event such person shall be the owner of a proprietorship, or the person designated as principal in the dealer's franchise or the managing officer or one partner if no principal person is named in the franchise.

B. 1. Applications for licenses required to be obtained under provisions of this act shall be verified by the oath or affirmation

of the applicant and shall be on forms prescribed by the Oklahoma Motor Vehicle Commission and furnished to such applicants, and shall contain such information as the Commission deems necessary to enable it to fully determine the qualifications and eligibility of the several applicants to receive the license or licenses applied for. The Commission shall require in such application, or otherwise, information relating to the applicant's financial standing, the applicant's business integrity, whether the applicant has an established place of business and is primarily engaged in the pursuit, avocation or business for which a license, or licenses, are applied for, and whether the applicant is able to properly conduct the business for which a license, or licenses, are applied for, and such other pertinent information consistent with the safeguarding of the public interest and the public welfare.

2. All such applications for license or licenses shall be accompanied by the appropriate fee or fees therefor in accordance with the schedule thereof hereinafter set out. In the event any such application is denied and the license applied for is not issued, the entire license fee shall be returned to the applicant.

3. All licenses issued under the provisions of this act shall expire on June 30, following the date of issue and shall be nontransferable. All applications for renewal of a license for a new motor vehicle dealer, salesperson, manufacturer, distributor or manufacturer's or distributor's representative shall be submitted by June 1 of each year, and such license or licenses will be issued by July 1.

4. Each manufacturer or distributor's license application annual renewal shall be accompanied by an affidavit stating that the terms or provisions of the franchise, or any related document, are not inconsistent with, prohibited by, or contrary to the provisions of Title 62 of the Oklahoma Statutes. In the event a provision of the franchise, or any related documents, are found to be

inconsistent with or a violation of Title 62 of the Oklahoma Statutes the statutory provision shall control.

5. If applications have not been made for renewal of licenses at the times described in this subsection, it shall be illegal for any person to represent himself and act as a dealer, salesperson, manufacturer, distributor or manufacturer's or distributor's representative. Tag agents will be notified not to accept such dealers' titles until such time as licenses have been issued by the Commission.

6. Dealers' payrolls and other evidence will be checked to ascertain that all salespersons for such dealers are licensed.

C. The schedule of license fees to be charged and received by the Commission for the licenses issued hereunder shall be as follows:

1. For each factory branch or distributor branch, Two Hundred Dollars (\$200.00) initial fee with annual renewal fee of One Hundred Dollars (\$100.00);

2. For each manufacturer or distributor of new motor vehicles, Two Hundred Dollars (\$200.00) initial fee with annual renewal fee of One Hundred Dollars (\$100.00);

3. For each factory representative or distributor representative, Sixty Dollars (\$60.00) annually;

4. For the license issued initially to each new motor vehicle dealer, the fee shall be Two Hundred Dollars (\$200.00) per franchise sold at each location licensed, with an annual renewal fee of Sixty Dollars (\$60.00) per franchise sold at each location per year; and

5. For each salesperson's license issued, Ten Dollars (\$10.00) renewed annually.

D. The licenses issued to each new motor vehicle dealer, manufacturer, distributor, factory branch, distributor branch or representative, if a corporation, shall specify the location of the factory, office or branch thereof. In case such location is

changed, the Commission may endorse the change of location on the license without charge unless the change of address triggers a relocation of a new motor vehicle dealer pursuant to the provisions of Section 578 of this title. The license of each dealer shall be posted in a conspicuous place in the dealer's place or places of business.

Every motor vehicle salesperson, factory representative or distributor representative if an individual shall have his or her license upon his or her person when engaged in his or her business, and shall display same upon request. The name of the employer of such salesperson, factory representative or distributor representative shall be stated on said license and, in case of a change of employer, the holder of such license shall immediately mail same to the Commission for its endorsement of such change thereon. The Commission shall endorse each such change of employer on said licenses without charge.

SECTION 4. 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 has complied with its obligation pursuant to subsections D, E and F of this section. The manufacturer or distributor shall have the burden of proof. The franchise and all licenses shall remain in full force and effect, including the right to sell the franchise, pending final resolution, including all appeals, of the proposed termination. If the Commission finds that the cancellation, termination or nonrenewal of the franchise has not been for good cause pursuant to the provisions of subsection B 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~~ so stating and the proposed termination shall be null and void and the manufacturer or distributor shall be responsible for the new motor vehicle dealer's attorney fees and costs. 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~~ this title.

E. Upon termination, cancellation or nonrenewal of 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, 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 5. AMENDATORY Section 1, Chapter 132, O.S.L. 1999 (47 O.S. Supp. 1999, Section 565.3), is amended to read as follows:

Section 565.3 A. 1. A franchised vehicle dealer proposing a sale, transfer, or assignment of a franchise agreement or the business and assets of a dealership or an interest in a dealership to another person, hereinafter transferee, shall notify the manufacturer or distributor whose vehicles the dealer is franchised to sell of the proposed action of the dealer. ~~The manufacturer or distributor may make written request to the transferee to submit completed application forms and related information generally utilized by a manufacturer to evaluate such a proposal and a copy of all agreements related to the proposed sale, transfer, or assignment~~

and provide all necessary information and documents generally used by the manufacturer to conduct its review. The manufacturer shall have sixty (60) days to either approve or reject the proposed transfer.

2. Upon receipt of the notice, information and documents, the manufacturer shall acknowledge in writing to the franchised vehicle dealer the receipt of the information and documents and if the manufacturer or distributor requires additional information or documents to complete its review, the manufacturer or distributor shall notify the franchised vehicle dealer within fifteen (15) days of the receipt of the information and documents. If the manufacturer or distributor fails to request additional information and documents from the franchised vehicle dealer within fifteen (15) days after receipt of the initial forms, the sixty-day time period for approval shall be deemed to run from the initial receipt date. Otherwise, the sixty-day time period for approval shall run from receipt of the supplemental requested information. In no event shall the total time period for approval exceed seventy-five (75) days from the date of the receipt of the initial information and documents.

3. The franchisor's notice of disapproval shall also specify the reasonable standard which the franchisor contends such standard is not satisfied. Failure on the part of the franchisor to provide such notice shall be conclusively deemed an approval by the franchisor of the proposed sale or transfer to the proposed transferee.

4. A franchisee's application for a hearing shall be filed with the administrative hearing commission within twenty (20) days from receipt of such franchisor's notice.

B. The approval by the manufacturer or distributor of the sale, transfer, or assignment shall not be unreasonably withheld. The burden of proof shall be upon the manufacturer or distributor to

show good cause existed to withhold approval. The manufacturer or distributor that has made such a determination shall send a letter by certified mail to the dealer and the applicant of its refusal to approve the proposal, which shall include a statement of the specific grounds for refusal, within sixty (60) days after the later of:

1. Receipt by the manufacturer or distributor of the notice of the proposed sale, transfer, or assignment; or

2. Receipt by the manufacturer or distributor of the information requested from the transferee pursuant to subsection A of this section if the manufacturer or distributor has requested such information within fifteen (15) days of receipt of written notice of the proposed sale, transfer, or assignment.

C. Failure of the manufacturer or distributor to send its notice of refusal pursuant to subsection B of this section shall mean that the application for the proposed sale, transfer, or assignment is approved.

SECTION 6. 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 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, and said dealer, and the court may grant such injunctive relief without bond, 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 7. AMENDATORY 47 O.S. 1991, Section 578, is amended to read as follows:

Section 578. In the event that a manufacturer seeks to enter into a franchise establishing a new motor vehicle dealership or relocating an existing new motor vehicle dealership within or into a relevant market area where the same line-make is then represented, the manufacturer shall in writing first notify the Oklahoma Motor Vehicle Commission and each new motor vehicle dealer of such line-make in the relevant market area of the intention to establish or relocate a dealership within or into that market area. The relevant market area is the area within a radius of fifteen (15) miles of the site of the proposed new motor vehicle dealership. Within ~~fifteen (15)~~ thirty (30) days of receiving such notice such new motor vehicle dealer may file with the Commission a protest to the establishing or relocating of the proposed new motor vehicle dealership. When such a protest is filed, the Commission shall inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealership until the Commission has held a hearing, nor thereafter, if the Commission has determined that there is good cause for not permitting such new motor vehicle dealership. The Commission shall hold a hearing within one hundred eighty (180) days of receiving a notice of protest and shall render a final decision no later than sixty (60) days after the ~~Commission's receipt of the notice of protest~~ hearing. In any hearing held under this section on additional dealerships or relocation of dealerships the ~~protesting dealer or dealers~~ manufacturer or distributor shall have the burden of proof. For the purposes of this section, the reopening in a relevant market area of a new motor vehicle dealership that has not been in operation for two (2) years or more



shall be deemed the establishment of a new motor vehicle dealership. Furthermore, the relocation of an existing dealer within its area of responsibility shall not be subject to this section, provided the proposed relocation site is not within ~~five (5)~~ fifteen (15) miles of an existing dealer of the same line-make. For the purpose of this section, the designation of an additional location in an existing franchise agreement shall be deemed to be the establishment of a new motor vehicle dealership.

SECTION 8. 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, directly or indirectly assists in effecting the sale price of vehicle~~ products to a consumer or lead, or who arranges or offers to arrange or intermediate or represents that it will arrange or intermediate a transaction involving the sale, for purposes other than resale, of a new motor or used 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 used motor vehicle ~~manufacturer~~ dealer or employee of such a ~~manufacturer~~ dealer.

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

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