

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1318

By: Davis

AS INTRODUCED

An Act relating to motor vehicles; amending 47 O.S. 2001, Sections 562, 564, 565, 572 and 579.1, which relate to regulation and licensing of motor vehicle manufacturers, distributors, dealers, and salespersons; adding a definition; requiring vehicle lease facilitators to be licensed; providing for renewal of certain license; providing certain fee for license and renewal; providing for revocation or suspension of certain license; providing for a fine; providing that certain activities violate licensure privilege; providing jurisdiction requirement for vehicle lease facilitators; adding certain characteristic to distinguish broker activity; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 2001, Section 562, is amended to read as follows:

Section 562. The following words, terms and phrases, when used in Sections 561 through 567, 572, 578.1, 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 Oklahoma Vehicle License and Registration Act;

2. "New motor vehicle dealer" means any person, firm, association, corporation or trust not excluded by this paragraph 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, 578.1, 579 and 579.1 of this title, the terms "new motor vehicle dealer" and "new motor vehicle dealership" shall be synonymous.

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;

3. "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;

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

5. "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;

6. "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;

7. "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;

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

9. "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;

10. "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;

11. "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;

12. "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 that 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;

13. "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;

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

15. "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;

16. "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;

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

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

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

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

21. "Sell or sale" means to sell or lease; ~~and~~

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

23. "Vehicle lease facilitator" means a person, other than a new motor vehicle dealer, a distributor, a manufacturer, or a bona fide employee of a new motor vehicle dealer, distributor, or manufacturer, who:

- a. holds the person out to any other person as a "motor vehicle leasing company" or "motor vehicle leasing agent", or uses a similar title, to solicit or procure another person to enter into an agreement to become the lessee of a motor vehicle that is not, and will

not be, titled in the name of or registered to the facilitator,

b. otherwise solicits another person to enter into an agreement to become a lessee of a motor vehicle that is not, and will not be, titled in the name of or registered to the facilitator, or

c. is otherwise engaged in the business of securing lessees or prospective lessees of a motor vehicle that is not, and will not be, titled in the name of or registered to the facilitator.

SECTION 2. AMENDATORY 47 O.S. 2001, 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, vehicle lease facilitator, 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 such 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. 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. Applications for licenses required to be obtained under provisions of Section 561 et seq. of this title 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. 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. All licenses issued under the provisions of Section 561 et seq. of this title 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, vehicle lease facilitator, 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. If applications have not been made for renewal of licenses at the times described in this subsection, it shall be illegal for ~~any person~~ persons to represent ~~himself or herself~~ themselves and act as a dealer, salesperson, manufacturer, distributor, vehicle lease facilitator, or manufacturer's or distributor's representative. Motor license agents will be notified not to accept such dealers'

titles until such time as licenses have been issued by the Commission.

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 each new motor vehicle dealer, initial fee of 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 vehicle lease facilitator, Two Hundred Dollars (\$200.00), with an annual renewal fee of Sixty Dollars (\$60.00); and

6. For each salesperson, Ten Dollars (\$10.00) renewed annually.

D. The licenses issued to each new motor vehicle dealer, manufacturer, distributor, factory branch, distributor branch, vehicle lease facilitator, 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 578.1 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 physically possess the license when engaged in business, and shall display same upon request. The name of the employer of such salesperson, factory representative or distributor representative shall be stated on the 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 licenses without charge.

SECTION 3. AMENDATORY 47 O.S. 2001, Section 565, is amended to read as follows:

Section 565. A. The Oklahoma Motor Vehicle 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 One Thousand Dollars (\$1,000.00) against a dealer or vehicle lease facilitator per occurrence that any provision of Sections 561 through 567, 572, 578.1, 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 Section 561 et seq. of this title;

2. For any material misstatement made by an applicant in any application for any license under the provisions of Section 561 et seq. of this title;

3. For any failure to comply with any provision of Section 561 et seq. of this title or any rule promulgated by the Commission under authority vested in it by Section 561 et seq. of this title;

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 business as a 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 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 the 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 the motor vehicles as publicly advertised by the manufacturer thereof, or

(3) to order or accept delivery of any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever, or

b. induced under threat or discrimination by the withholding from delivery to a motor vehicle dealer certain models of motor vehicles, changing or amending unilaterally the dealer's allotment of motor vehicles and/or withholding and delaying delivery of such vehicles out of the ordinary cause of business, in order to induce by such coercion any such dealer to participate or contribute to any local or national advertising fund controlled directly or indirectly by the 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 factory from supporting an advertising association which is open to all dealers on the same basis;

9. Being a 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 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. 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, or

c. unreasonably fails or refuses to offer to its same line-make franchised dealers all models manufactured for that line-make, or unreasonably requires a dealer to pay any extra fee, purchase unreasonable advertising displays or other materials, or remodel, renovate, or recondition the dealer's existing facilities as a prerequisite to receiving a model or series of vehicles. 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 earnings 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 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 578.1 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; and

18. Being a vehicle lease facilitator who is not licensed as a vehicle lease facilitator and acts in the capacity of or engages in the business of a vehicle lease facilitator, holds a person out to any other person as a "leasing company", "leasing agent", "lease facilitator", or similar title, or directly or indirectly engages in the business of a vehicle lease facilitator or otherwise engages in the solicitation or procurement of a prospective lessee for a motor vehicle that is not titled in the name of and registered to the person.

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 4. AMENDATORY 47 O.S. 2001, 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 or vehicle lease facilitator may be brought in the county in which said dealer or facilitator is located and in addition to the action for damages ~~he~~ the person shall be entitled to sue for and have injunctive relief against the threatened loss, damage or injury to ~~his~~ the business or property because of any violation of Sections 565 through 566 and 579 of this title or the threatened cancellation, termination or failure to renew any franchise agreement between any factory and said dealer or facilitator, 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. AMENDATORY 47 O.S. 2001, 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 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;
3. A motor vehicle manufacturer or employee of such a

manufacturer; ~~or~~

4. A vehicle lease facilitator; or

5. An auctioneer or any other person engaged in the auto auction business.

However, an individual shall not be deemed to be a broker if 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 6. This act shall become effective November 1, 2003.

49-1-5474 MD 01/16/03