

SB 245

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THE STATE SENATE  
Thursday, February 17, 2005

Senate Bill No. 245

As Amended

SENATE BILL NO. 245 - By: JOHNSON of the Senate and WILT of the House.

[ motor vehicles - providing certain exemptions -  
emergency ]

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

SECTION 1. 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 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;

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

4           4. A change of condition after license is granted resulting in  
5 failure to maintain the qualifications for license;

6           5. Being a new motor vehicle dealer or new motor vehicle  
7 salesperson who:

8           a. has required a purchaser of a new motor vehicle, as a  
9 condition of sale and delivery thereof, to also  
10 purchase special features, appliances, accessories or  
11 equipment not desired or requested by the purchaser  
12 and installed by the dealer,

13           b. uses any false or misleading advertising in connection  
14 with business as a new motor vehicle dealer or vehicle  
15 salesperson,

16           c. has committed any unlawful act which resulted in the  
17 revocation of any similar license in another state,

18           d. has failed or refused to perform any written agreement  
19 with any retail buyer involving the sale of a motor  
20 vehicle,

21           e. has been convicted of a crime involving moral  
22 turpitude,

- 1           f.    has committed a fraudulent act in selling, purchasing  
2                    or otherwise dealing in new motor vehicles or has  
3                    misrepresented the terms and conditions of a sale,  
4                    purchase or contract for sale or purchase of a new  
5                    motor vehicle or any interest therein including an  
6                    option to purchase such vehicle, or
- 7            g.    has failed to meet or maintain the conditions and  
8                    requirements necessary to qualify for the issuance of  
9                    a license;
- 10         6.    Being a new motor vehicle salesperson who is not employed as  
11    such by a licensed new motor vehicle dealer;
- 12         7.    Being a new motor vehicle dealer who:
- 13            a.    does not have an established place of business,  
14            b.    does not provide for a suitable repair shop separate  
15                    from the display room with ample space to repair or  
16                    recondition one or more vehicles at the same time, and  
17                    which is equipped with such parts, tools and equipment  
18                    as may be requisite for the servicing of motor  
19                    vehicles in such a manner as to make them comply with  
20                    the safety laws of this state and to properly fulfill  
21                    the dealer's or manufacturer's warranty obligation,  
22            c.    does not hold a franchise in effect with a  
23                    manufacturer or distributor of new or unused motor

1 vehicles for the sale of the same and is not  
2 authorized by the manufacturer or distributor to  
3 render pre-delivery preparation of such vehicles sold  
4 to purchasers and to perform any authorized post-sale  
5 work pursuant to the manufacturer's or distributor's  
6 warranty,  
7 d. employs unlicensed salespersons, or employs or  
8 utilizes the services of used motor vehicle lots or  
9 dealers or other unlicensed persons in connection with  
10 the sale of new motor vehicles,  
11 e. does not properly service a new motor vehicle before  
12 delivery of same to the original purchaser thereof, or  
13 f. fails to order and stock a reasonable number of new  
14 motor vehicles necessary to meet customer demand for  
15 each of the new motor vehicles included in the new  
16 motor vehicle dealer's franchise agreement, unless the  
17 new motor vehicles are not readily available from the  
18 manufacturer or distributor due to limited production;  
19 8. Being a factory that has:  
20 a. either induced or attempted to induce by means of  
21 coercion or intimidation, any new motor vehicle  
22 dealer:

- 1 (1) to accept delivery of any motor vehicle or  
2 vehicles, parts or accessories therefor, or any  
3 other commodities including advertising material  
4 which shall not have been ordered by the new  
5 motor vehicle dealer,
- 6 (2) to order or accept delivery of any motor vehicle  
7 with special features, appliances, accessories or  
8 equipment not included in the list price of the  
9 motor vehicles as publicly advertised by the  
10 manufacturer thereof, or
- 11 (3) to order or accept delivery of any parts,  
12 accessories, equipment, machinery, tools,  
13 appliances or any commodity whatsoever, or
- 14 b. induced under threat or discrimination by the  
15 withholding from delivery to a motor vehicle dealer  
16 certain models of motor vehicles, changing or amending  
17 unilaterally the dealer's allotment of motor vehicles  
18 and/or withholding and delaying delivery of such  
19 vehicles out of the ordinary cause of business, in  
20 order to induce by such coercion any such dealer to  
21 participate or contribute to any local or national  
22 advertising fund controlled directly or indirectly by  
23 the factory or for any other purposes such as contest,

1 "give-aways" or other so-called sales promotional  
2 devices and/or change of quotas in any sales contest;  
3 or has required motor vehicle dealers, as a condition  
4 to receiving their vehicle allotment, to order a  
5 certain percentage of the vehicles with optional  
6 equipment not specified by the new motor vehicle  
7 dealer; however, nothing in this section shall  
8 prohibit a factory from supporting an advertising  
9 association which is open to all dealers on the same  
10 basis;

11 9. Being a factory that:

12 a. has attempted to coerce or has coerced any new motor  
13 vehicle dealer to enter into any agreement or to  
14 cancel any agreement, or fails to act in good faith  
15 and in a fair, equitable and nondiscriminatory manner;  
16 or has directly or indirectly coerced, intimidated,  
17 threatened or restrained any motor vehicle dealer; or  
18 has acted dishonestly, or has failed to act in  
19 accordance with the reasonable standards of fair  
20 dealing,

21 b. has failed to compensate its dealers for the work and  
22 services they are required to perform in connection  
23 with the dealer's delivery and preparation obligations

1 according to the agreements on file with the  
2 Commission which must be found by the Commission to be  
3 reasonable, or fail to adequately and fairly  
4 compensate its dealers for labor, parts and other  
5 expenses incurred by such dealer to perform under and  
6 comply with manufacturer's warranty agreements. In  
7 determining whether the warranty compensation is  
8 adequate and fair, the Commission shall consider the  
9 amount that is charged by the dealer or dealers in  
10 their areas of responsibility to their nonwarranty  
11 work of like kind. All claims made by dealers for  
12 compensation for delivery, preparation and warranty  
13 work shall be paid within thirty (30) days after  
14 approval and shall be approved or disapproved within  
15 thirty (30) days after receipt. When any claim is  
16 disapproved, the dealer shall be notified in writing  
17 of the grounds for disapproval. The dealer's  
18 delivery, preparation and warranty obligations as  
19 filed with the Commission shall constitute the  
20 dealer's sole responsibility for product liability as  
21 between the dealer and manufacturer. A factory may  
22 reasonably and periodically audit a new motor vehicle  
23 dealer to determine the validity of paid claims for

1 dealer compensation or any charge-backs for warranty  
2 parts or service compensation. Audits of warranty  
3 payments shall only be for the one-year period  
4 immediately following the date of the payment. A  
5 manufacturer shall reserve the right to reasonable,  
6 periodic audits to determine the validity of paid  
7 claims for dealer compensation or any charge-backs for  
8 consumer or dealer incentives. Audits of incentive  
9 payments shall only be for a two-year period  
10 immediately following the date of the payment. A  
11 factory shall not deny a claim or charge a new motor  
12 vehicle dealer back subsequent to the payment of the  
13 claim unless the factory can show that the claim was  
14 false or fraudulent or that the new motor vehicle  
15 dealer failed to reasonably substantiate the claim by  
16 the written reasonable procedures of the factory, or  
17 c. unreasonably fails or refuses to offer to its same  
18 line-make franchised dealers all models manufactured  
19 for that line-make, or unreasonably requires a dealer  
20 to pay any extra fee, purchase unreasonable  
21 advertising displays or other materials, or remodel,  
22 renovate, or recondition the dealer's existing  
23 facilities as a prerequisite to receiving a model or

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

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

16 11. Being a factory that sells directly or indirectly new motor  
17 vehicles or services to any retail consumer in the state except  
18 through a new motor vehicle dealer holding a franchise for the line-  
19 make that includes the new motor vehicle. This paragraph does not  
20 apply to factory sales of new motor vehicles to its employees,  
21 family members of employees, retirees and family members of  
22 retirees, not-for-profit organizations or the federal, state or  
23 local governments. The provisions of this paragraph shall not

1 preclude a factory from providing information to a consumer for the  
2 purpose of marketing or facilitating a sale of a new motor vehicle  
3 or from establishing a program to sell or offer to sell new motor  
4 vehicles through participating dealers;

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

6 (1) owns any ownership interest or has any financial  
7 interest in a new motor vehicle dealer or any  
8 person who sells products or services to the  
9 public,

10 (2) operates or controls a new motor vehicle dealer,  
11 or

12 (3) acts in the capacity of a new motor vehicle  
13 dealer.

14 b. (1) This paragraph does not prohibit a factory from  
15 owning or controlling a new motor vehicle dealer  
16 while in a bona fide relationship with a dealer  
17 development candidate who has made a substantial  
18 initial investment in the franchise and whose  
19 initial investment is subject to potential loss.  
20 The dealer development candidates' percentage  
21 share of any potential dealership losses shall  
22 not be less than the percentage share of  
23 ownership of the dealership of the person at the

1 time of the loss. The dealer development  
2 candidate can reasonably expect to acquire full  
3 ownership of a new motor vehicle dealer within a  
4 reasonable period of time not to exceed ten (10)  
5 years and on reasonable terms and conditions.  
6 The ten-year acquisition period may be expanded  
7 for good cause shown. It shall be presumed  
8 unreasonable for the terms and conditions not to  
9 require the dealer development candidate to buy  
10 the remaining ownership interests of the dealer  
11 development candidate in periodic payments over  
12 the acquisition period. It shall be presumed  
13 unreasonable to require the dealer development  
14 candidate to acquire the remaining interests  
15 solely from the profits or earnings of the  
16 dealership or new motor vehicle dealer.

17 (2) This paragraph does not prohibit a factory from  
18 owning, operating, controlling or acting in the  
19 capacity of a motor vehicle dealer for a period  
20 not to exceed twelve (12) months during the  
21 transition from one dealer to another dealer if  
22 the dealership is for sale at a reasonable price  
23 and on reasonable terms and conditions to an

1 independent qualified buyer. On showing by a  
2 factory of good cause, the Oklahoma Motor Vehicle  
3 Commission may extend the time limit set forth  
4 above; extensions may be granted for periods not  
5 to exceed twelve (12) months.

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

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

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

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

1 a defined geographic territory or area, as  
2 many dealership facilities as the dealer and  
3 manufacturer shall agree are appropriate,  
4 (c) at the time the manufacturer first acquires  
5 an ownership interest or assumes operation,  
6 the distance between any dealership thus  
7 owned or operated and the nearest  
8 unaffiliated motor vehicle dealership  
9 trading in the same line-make is not less  
10 than seventy (70) miles,  
11 (d) during any period in which the manufacturer  
12 has such an ownership interest, the  
13 manufacturer has no more than three  
14 franchise agreements with new motor vehicle  
15 dealers licensed by the Oklahoma Motor  
16 Vehicle Commission to do business within the  
17 state, and  
18 (e) prior to January 1, 2000, the factory shall  
19 have furnished or made available to  
20 prospective motor vehicle dealers an  
21 offering-circular in accordance with the  
22 Trade Regulation Rule on Franchising of the  
23 Federal Trade Commission, and any guidelines

1 and exemptions issued thereunder, which  
2 disclose the possibility that the factory  
3 may from time to time seek to own or  
4 acquire, directly or indirectly, ownership  
5 interests in retail dealerships;

6 13. Being a factory which directly or indirectly makes  
7 available for public disclosure any proprietary information provided  
8 to the factory by a new motor vehicle dealer, other than in  
9 composite form to dealers in the same line-make or in response to a  
10 subpoena or order of the Commission or a court. Proprietary  
11 information includes, but is not limited to, information based on:

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

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

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

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

4            a. the facility and the proposed new location satisfies  
5 or meets the written reasonable guidelines of the  
6 factory, and

7            b. the proposed new location is within the area of  
8 responsibility of the new motor vehicle dealer  
9 pursuant to Section 578.1 of this title; ~~and~~

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

14        18. Being a factory that increases prices of new motor vehicles  
15 which the new motor vehicle dealer had ordered for retail consumers  
16 prior to the dealer's receipt of the written official price increase  
17 notification. A sales contract signed by a retail consumer shall  
18 constitute evidence of each such order, provided that the vehicle is  
19 in fact delivered to the customer. Price differences applicable to  
20 new models or series motor vehicles at the time of the introduction  
21 of new models or series shall not be considered a price increase for  
22 purposes of this paragraph. Price changes caused by any of the  
23 following shall not be subject to the provisions of this paragraph:

- 1           a. the addition to a motor vehicle of required or  
2                   optional equipment pursuant to state or federal law,  
3           b. revaluation of the United States dollar in the case of  
4                   foreign-made vehicles or components, or  
5           c. an increase in transportation charges due to increased  
6                   rates imposed by common or contract carriers.

7           B. Notwithstanding the terms of any franchise agreement, in the  
8 event of a proposed sale or transfer of a dealership, the  
9 manufacturer or distributor shall be permitted to exercise a right  
10 of first refusal to acquire the assets or ownership interest of the  
11 dealer of the new vehicle dealership, if such sale or transfer is  
12 conditioned upon the manufacturer or dealer entering into a dealer  
13 agreement with the proposed new owner or transferee, only if all the  
14 following requirements are met:

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

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

22           3. The proposed sale or transfer of the assets of the  
23 dealership does not involve the transfer or sale to a member or

1 members of the family of one or more dealer owners, or to a  
2 qualified manager or a partnership or corporation controlled by such  
3 persons; and

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

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

19 1. Business activities, including without limitation the  
20 dealings with motor vehicle manufacturers and the representatives  
21 and affiliates of motor vehicle manufacturers, of any person that is  
22 primarily engaged in the business of short-term, not to exceed  
23 twelve (12) months, rental of motor vehicles and industrial and

1 construction equipment and activities incidental to that business,  
2 provided that:

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

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

17 **SECTION 2. It being immediately necessary for the preservation**  
18 **of the public peace, health and safety, an emergency is hereby**  
19 **declared to exist, by reason whereof this act shall take effect and**  
20 **be in full force from and after its passage and approval.**

21 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND LABOR, dated 2-7-05 -  
22 DO PASS, As Amended and Coauthored.