

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL 1654

6 By: Johnson (Mike) of the
7 Senate

8 and

9 Thompson of the House

10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to motor vehicles; amending 47 O.S.
12 2001, Sections 12-410, as amended by Section 61,
13 Chapter 411, O.S.L. 2003, 562, as last amended by
14 Section 2, Chapter 213, O.S.L. 2006, 564.1, as
15 amended by Section 2, Chapter 228, O.S.L. 2005, 565,
16 as amended by Section 1, Chapter 141, O.S.L. 2005 and
17 1137.3, as amended by Section 20, Chapter 326, O.S.L.
18 2007 (47 O.S. Supp. 2007, Sections 12-410, 562,
19 564.1, 565 and 1137.3), which relate to air
20 conditioning equipment, the regulation and licensing
21 of manufacturers, distributors, dealers and
22 salespersons and temporary license plates for a new
23 motor vehicle, travel trailer or commercial trailer;
24 modifying requirements for air conditioning
equipment; modifying definitions; removing licensing
requirement for certain off-premise displays and
sales; modifying conditions for holding certain off-
premise events; modifying a provision relating to the
denial, revocation or suspension of licenses and a
certain bona fide relationship between a factory and
a dealer development candidate; providing exception
to the placement of certain temporary license;
providing for the placement of temporary license
plates for a new cab or chassis truck; and declaring
an emergency

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

1 SECTION 1. AMENDATORY 47 O.S. 2001, Section 12-410, as
2 amended by Section 61, Chapter 411, O.S.L. 2003 (47 O.S. Supp. 2007,
3 Section 12-410), is amended to read as follows:

4 Section 12-410. A. The term "air-conditioning equipment" as
5 used or referred to in this section shall mean mechanical vapor
6 compression refrigeration equipment which is used to cool the
7 driver's or passenger compartment of any motor vehicle.

8 B. Such equipment shall be manufactured, installed and
9 maintained with due regard for the safety of the occupants of the
10 vehicle and the public and shall not contain any refrigerant which
11 is toxic to persons or which is flammable or which is in violation
12 of regulations of the Environmental Protection Agency pursuant to 40
13 C.F.R., Part 82 or which is not included in the list published by
14 the Environmental Protection Agency as a safe alternative motor
15 vehicle air conditioning substitute for chlorofluorocarbon-12,
16 pursuant to 42 U.S.C. 7671 k(c).

17 C. Safety requirements and specifications consistent with the
18 requirements of this section applicable to such equipment shall
19 correlate with and, so far as possible, conform to the current
20 recommended practice or standard applicable to such equipment
21 approved by the Society of Automotive Engineers (SAE).

22 SECTION 2. AMENDATORY 47 O.S. 2001, Section 562, as last
23 amended by Section 2, Chapter 213, O.S.L. 2006 (47 O.S. Supp. 2007,
24 Section 562), is amended to read as follows:

1 Section 562. The following words, terms and phrases, when used
2 in Sections 561 through 567, 572, 578.1, 579 and 579.1 of this
3 title, shall have the meanings respectively ascribed to them in this
4 section, except where the context clearly indicates a different
5 meaning:

6 1. "Motor vehicle" means any motor-driven vehicle required to
7 be registered under the Oklahoma Vehicle License and Registration
8 Act except all-terrain vehicles and motorcycles used exclusively for
9 off-road use;

10 2. "New motor vehicle dealer" means any person, firm,
11 association, corporation or trust not excluded by this paragraph who
12 sells, offers for sale, advertises to sell, leases or displays new,
13 ~~unused or remanufactured~~ motor vehicles and holds a bona fide
14 contract or franchise in effect with a manufacturer, ~~remanufacturer~~
15 or distributor authorized by the manufacturer ~~or remanufacturer~~ to
16 make predelivery preparation of such vehicles sold to purchasers and
17 to perform post-sale work pursuant to the manufacturer's,
18 ~~remanufacturer's~~ or distributor's warranty. As used herein,
19 "authorized predelivery preparation" means the rendition by the
20 dealer of services and safety adjustments on each new, ~~unused or~~
21 ~~remanufactured~~ motor vehicle in accordance with the procedure and
22 safety standards required by the manufacturer ~~or remanufacturer~~ of
23 the vehicle to be made before its delivery to the purchaser.
24 "Performance of authorized post-sale work pursuant to the warranty",

1 as used herein, means the rendition of services which are required
2 by the terms of the warranty that stands extended to the vehicle at
3 the time of its sale and are to be made in accordance with the
4 safety standards prescribed by the manufacturer ~~or remanufacturer~~.
5 The term includes premises or facilities at which a person engages
6 only in the repair of motor vehicles if repairs are performed
7 pursuant to the terms of a franchise and motor vehicle
8 manufacturer's ~~or remanufacturer's~~ warranty. However, the term
9 shall not include premises or facilities at which a new motor
10 vehicle dealer or dealers within the area of responsibility of such
11 dealer or dealers as defined in the manufacturer's ~~or~~
12 ~~remanufacturer's~~ franchise agreement of such dealer or dealers
13 performs motor vehicle repairs pursuant to the terms of a franchise
14 and motor vehicle manufacturer's ~~or remanufacturer's~~ warranty. For
15 the purpose of Sections 561 through 567, 572, 578.1, 579 and 579.1
16 of this title, the terms "new motor vehicle dealer" and "new motor
17 vehicle dealership" shall be synonymous. The term "new motor
18 vehicle dealer" does not include:

- 19 a. receivers, trustees, administrators, executors,
20 guardians or other persons appointed by or acting
21 under judgment or order of any court,
- 22 b. public officers while performing or in operation of
23 their duties, or

24

1 c. employees of persons, corporations or associations
2 enumerated in subparagraph a of this paragraph when
3 engaged in the specific performance of their duties as
4 such employees;

5 3. "Motor vehicle salesperson" means any person who, for gain
6 or compensation of any kind, either directly or indirectly,
7 regularly or occasionally, by any form of agreement or arrangement,
8 sells or negotiates for the sale of any new ~~or unused~~ motor vehicle
9 for any new, ~~unused or remanufactured~~ motor vehicle dealer to any
10 one or more third parties;

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

12 5. "Manufacturer" means any person, firm, association,
13 corporation or trust, resident or nonresident, who manufactures or
14 assembles new and unused motor vehicles or who engages in the
15 fabrication or assembly of motorized vehicles of a type required to
16 be registered in the State of Oklahoma;

17 6. "Distributor" means any person, firm, association,
18 corporation or trust, resident or nonresident, who, being authorized
19 by the original manufacturer, in whole or in part sells or
20 distributes new and unused motor vehicles to motor vehicle dealers,
21 or who maintains distributor representatives;

22 7. "Factory branch" means any branch office maintained by a
23 person, firm, association, corporation or trust who manufactures or
24 assembles motor vehicles for the sale of motor vehicles to

1 distributors, or for the sale of motor vehicles to motor vehicle
2 dealers, or for directing or supervising, in whole or in part, its
3 representatives;

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

7 9. "Factory representative" means any officer or agent engaged
8 as a representative of a manufacturer of motor vehicles or by a
9 factory branch, for the purpose of making or promoting the sale of
10 its motor vehicles, or for supervising or contacting its dealers or
11 prospective dealers;

12 10. "Distributor representative" means any person, firm,
13 association, corporation or trust and each officer and employee
14 thereof engaged as a representative of a distributor or distributor
15 branch of motor vehicles, for the purpose of making or promoting the
16 sale of its motor vehicles, or for supervising or contacting its
17 dealers or prospective dealers;

18 11. "Franchise" means any contract or agreement between a motor
19 vehicle dealer and a manufacturer of a new motor vehicle or its
20 distributor or factory branch by which the dealer is authorized to
21 engage in the business of selling any specified make or makes of new
22 motor vehicles;

23 12. "New or unused motor vehicle" means a vehicle which is in
24 the possession of the manufacturer or distributor or has been sold

1 only to the holder of a valid selling agreement, franchise or
2 contract, granted by the manufacturer or distributor for the sale of
3 that make of new vehicle so long as the manufacturer's statement of
4 origin has not been assigned to anyone other than a licensed
5 franchised new motor vehicle dealer of the same line-make;

6 13. "Area of responsibility" means the geographical area, as
7 designated by the manufacturer, factory branch, factory
8 representative, distributor, distributor branch or distributor
9 representative, in which the new motor vehicle dealer is held
10 responsible for the promotion and development of sales and rendering
11 of service for the make of motor vehicle for which the motor vehicle
12 dealer holds a franchise or selling agreement;

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

15 15. "Sponsoring entity" means any person, firm, association,
16 corporation or trust which has control, either permanently or
17 temporarily, over the real property upon which the off-premise sale
18 or display is conducted;

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

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

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

5 ~~19.~~ 17. "Service" means motor vehicle warranty repairs
6 including both parts and labor;

7 ~~20.~~ 18. "Lead" means a consumer contact in response to a
8 factory program designed to generate interest in purchasing or
9 leasing a new motor vehicle;

10 ~~21.~~ 19. "Sell or sale" means to sell or lease; and

11 ~~22.~~ 20. "Factory" means a manufacturer, distributor, factory
12 branch, distributor branch, factory representative or distributor
13 representative, which manufactures or distributes vehicle products.

14 SECTION 3. AMENDATORY 47 O.S. 2001, Section 564.1, as
15 amended by Section 2, Chapter 228, O.S.L. 2005 (47 O.S. Supp. 2007,
16 Section 564.1), is amended to read as follows:

17 Section 564.1 Licensing of off-premises displays of new motor
18 vehicles and off-premise sales of new motorized recreational
19 vehicles.

20 A. The Oklahoma Motor Vehicle Commission shall provide for
21 ~~licensing of~~ off-premise displays of new motor vehicles and off-
22 premise sales of new motorized recreational vehicles, by currently
23 licensed new motor vehicle dealers as follows:

1 1. An off-premise event may be held for display purposes only
2 under the following conditions:

3 a. ~~the dealer must obtain permits from the Commission~~
4 ~~stating that~~ the motor vehicles are for display
5 purposes only and not for sale, ~~and the permits shall~~
6 ~~be placed on the motor vehicles in a manner to be~~
7 ~~prescribed by the Commission~~ at the off-premise
8 display event,

9 b. no selling activities shall be conducted,

10 c. the display is in dealer's factory-approved area of
11 sales and service responsibility;

12 d. the dealer must obtain written approval from the
13 manufacturer or distributor, and

14 e. ~~the sponsoring entity of the display event~~ dealer is
15 required to obtain ~~a permit~~ approval for the display
16 location from the ~~Commission~~ sponsoring entity; and

17 2. An off-premise event by motorized recreational vehicle
18 dealer or dealers, at which selling activities are conducted, may be
19 held only under the following conditions:

20 a. permits for a sales event described in this paragraph
21 shall be obtained from the Commission at the rate of
22 Fifteen Dollars (\$15.00) per vehicle, per event,

23 b. the permit shall be for a period not to exceed ten
24 (10) consecutive days,

1 c. the sponsoring entity of the sales event shall obtain
2 a license from the Commission at the rate of Two
3 Hundred Dollars (\$200.00) per event,

4 d. new motorized recreational vehicle dealers whose
5 factory-approved area of sales and service
6 responsibility includes the event location would be
7 eligible to participate,

8 e. new motorized recreational vehicle dealers must obtain
9 written approval from the manufacturer or distributor,
10 and

11 f. the off-premise sales event shall be conducted within
12 municipal, county, or state-owned or controlled
13 facilities or within the grounds of any county,
14 district, or state fair.

15 B. The Oklahoma Motor Vehicle Commission is authorized to
16 provide a variance to the distance requirements specified in this
17 section, for any off-premise display event if:

18 1. The off-premise display is conducted within municipal,
19 county, or state-owned or controlled facilities or within the
20 grounds of any county, district, or state fair; and

21 2. The request for the variance must be in writing to the
22 Commission no less than thirty (30) days prior to the off-premise
23 display event.

1 SECTION 4. AMENDATORY 47 O.S. 2001, Section 565, as
2 amended by Section 1, Chapter 141, O.S.L. 2005 (47 O.S. Supp. 2007,
3 Section 565), is amended to read as follows:

4 Section 565. A. The Oklahoma Motor Vehicle Commission may deny
5 an application for a license, or revoke or suspend a license or
6 impose a fine not to exceed Ten Thousand Dollars (\$10,000.00)
7 against a manufacturer or distributor or a fine not to exceed One
8 Thousand Dollars (\$1,000.00) against a dealer per occurrence that
9 any provision of Sections 561 through 567, 572, 578.1, 579 and 579.1
10 of this title is violated or for any of the following reasons:

11 1. On satisfactory proof of unfitness of the applicant in any
12 application for any license under the provisions of Section 561 et
13 seq. of this title;

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

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

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

22 5. Being a new motor vehicle dealer or new motor vehicle
23 salesperson who:
24

- 1 a. has required a purchaser of a new motor vehicle, as a
2 condition of sale and delivery thereof, to also
3 purchase special features, appliances, accessories or
4 equipment not desired or requested by the purchaser
5 and installed by the dealer,
- 6 b. uses any false or misleading advertising in connection
7 with business as a new motor vehicle dealer or vehicle
8 salesperson,
- 9 c. has committed any unlawful act which resulted in the
10 revocation of any similar license in another state,
- 11 d. has failed or refused to perform any written agreement
12 with any retail buyer involving the sale of a motor
13 vehicle,
- 14 e. has been convicted of a crime involving moral
15 turpitude,
- 16 f. has committed a fraudulent act in selling, purchasing
17 or otherwise dealing in new motor vehicles or has
18 misrepresented the terms and conditions of a sale,
19 purchase or contract for sale or purchase of a new
20 motor vehicle or any interest therein including an
21 option to purchase such vehicle, or
- 22 g. has failed to meet or maintain the conditions and
23 requirements necessary to qualify for the issuance of
24 a license;

1 6. Being a new motor vehicle salesperson who is not employed as
2 such by a licensed new motor vehicle dealer;

3 7. Being a new motor vehicle dealer who:

4 a. does not have an established place of business,

5 b. does not provide for a suitable repair shop separate
6 from the display room with ample space to repair or
7 recondition one or more vehicles at the same time, and
8 which is equipped with such parts, tools and equipment
9 as may be requisite for the servicing of motor
10 vehicles in such a manner as to make them comply with
11 the safety laws of this state and to properly fulfill
12 the dealer's or manufacturer's warranty obligation,

13 c. does not hold a franchise in effect with a
14 manufacturer or distributor of new or unused motor
15 vehicles for the sale of the same and is not
16 authorized by the manufacturer or distributor to
17 render predelivery preparation of such vehicles sold
18 to purchasers and to perform any authorized post-sale
19 work pursuant to the manufacturer's or distributor's
20 warranty,

21 d. employs unlicensed salespersons, or employs or
22 utilizes the services of used motor vehicle lots or
23 dealers or other unlicensed persons in connection with
24 the sale of new motor vehicles,

- 1 e. does not properly service a new motor vehicle before
2 delivery of same to the original purchaser thereof, or
3 f. fails to order and stock a reasonable number of new
4 motor vehicles necessary to meet customer demand for
5 each of the new motor vehicles included in the new
6 motor vehicle dealer's franchise agreement, unless the
7 new motor vehicles are not readily available from the
8 manufacturer or distributor due to limited production;

9 8. Being a factory that has:

- 10 a. either induced or attempted to induce by means of
11 coercion or intimidation, any new motor vehicle
12 dealer:

- 13 (1) to accept delivery of any motor vehicle or
14 vehicles, parts or accessories therefor, or any
15 other commodities including advertising material
16 which shall not have been ordered by the new
17 motor vehicle dealer,
18 (2) to order or accept delivery of any motor vehicle
19 with special features, appliances, accessories or
20 equipment not included in the list price of the
21 motor vehicles as publicly advertised by the
22 manufacturer thereof, or
23
24

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

4 b. induced under threat or discrimination by the
5 withholding from delivery to a motor vehicle dealer
6 certain models of motor vehicles, changing or amending
7 unilaterally the dealer's allotment of motor vehicles
8 and/or withholding and delaying delivery of such
9 vehicles out of the ordinary ~~cause~~ course of business,
10 in order to induce by such coercion any such dealer to
11 participate or contribute to any local or national
12 advertising fund controlled directly or indirectly by
13 the factory or for any other purposes such as contest,
14 "give-aways" or other so-called sales promotional
15 devices and/or change of quotas in any sales contest;
16 or has required motor vehicle dealers, as a condition
17 to receiving their vehicle allotment, to order a
18 certain percentage of the vehicles with optional
19 equipment not specified by the new motor vehicle
20 dealer; however, nothing in this section shall
21 prohibit a factory from supporting an advertising
22 association which is open to all dealers on the same
23 basis;

24 9. Being a factory that:

- 1 a. has attempted to coerce or has coerced any new motor
2 vehicle dealer to enter into any agreement or to
3 cancel any agreement, or fails to act in good faith
4 and in a fair, equitable and nondiscriminatory manner;
5 or has directly or indirectly coerced, intimidated,
6 threatened or restrained any motor vehicle dealer; or
7 has acted dishonestly, or has failed to act in
8 accordance with the reasonable standards of fair
9 dealing,
- 10 b. has failed to compensate its dealers for the work and
11 services they are required to perform in connection
12 with the dealer's delivery and preparation obligations
13 according to the agreements on file with the
14 Commission which must be found by the Commission to be
15 reasonable, or fail to adequately and fairly
16 compensate its dealers for labor, parts and other
17 expenses incurred by such dealer to perform under and
18 comply with manufacturer's warranty agreements. In
19 determining whether the warranty compensation is
20 adequate and fair, the Commission shall consider the
21 amount that is charged by the dealer or dealers in
22 their areas of responsibility to their nonwarranty
23 work of like kind. All claims made by dealers for
24 compensation for delivery, preparation and warranty

1 work shall be paid within thirty (30) days after
2 approval and shall be approved or disapproved within
3 thirty (30) days after receipt. When any claim is
4 disapproved, the dealer shall be notified in writing
5 of the grounds for disapproval. The dealer's
6 delivery, preparation and warranty obligations as
7 filed with the Commission shall constitute the
8 dealer's sole responsibility for product liability as
9 between the dealer and manufacturer. A factory may
10 reasonably and periodically audit a new motor vehicle
11 dealer to determine the validity of paid claims for
12 dealer compensation or any charge-backs for warranty
13 parts or service compensation. Audits of warranty
14 payments shall only be for the one-year period
15 immediately following the date of the payment. A
16 manufacturer shall reserve the right to reasonable,
17 periodic audits to determine the validity of paid
18 claims for dealer compensation or any charge-backs for
19 consumer or dealer incentives. Audits of incentive
20 payments shall only be for a ~~two-year~~ one-year period
21 immediately following the date of the payment. A
22 factory shall not deny a claim or charge a new motor
23 vehicle dealer back subsequent to the payment of the
24 claim unless the factory can show that the claim was

1 false or fraudulent or that the new motor vehicle
2 dealer failed to reasonably substantiate the claim by
3 the written reasonable procedures of the factory, or
4 c. unreasonably fails or refuses to offer to its same
5 line-make franchised dealers all models manufactured
6 for that line-make, or unreasonably requires a dealer
7 to pay any extra fee, purchase unreasonable
8 advertising displays or other materials, or remodel,
9 renovate, or recondition the dealer's existing
10 facilities as a prerequisite to receiving a model or
11 series of vehicles. The failure to deliver any such
12 new motor vehicle shall not be considered a violation
13 of the section if the failure is not arbitrary or is
14 due to lack of manufacturing capacity or to a strike
15 or labor difficulty, a shortage of materials, a
16 freight embargo or other cause over which the
17 manufacturer has no control. However, this
18 subparagraph shall not apply to recreational vehicles
19 or limited production model vehicles;

20 10. Being a factory that establishes a system of motor vehicle
21 allocation or distribution which is unfair, inequitable or
22 unreasonably discriminatory. Upon the request of any dealer
23 franchised by it, a factory shall disclose in writing to the dealer
24

1 the basis upon which new motor vehicles are allocated, scheduled and
2 delivered among the dealers of the same line-make for that factory;

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

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

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

24

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

1 ~~solely from the profits or earnings of the~~
2 ~~dealership or new motor vehicle dealer.~~

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

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

19 (4) This paragraph does not prohibit a factory from
20 owning, directly or indirectly, a minority
21 interest in an entity that owns, operates or
22 controls motor vehicle dealerships of the same
23 line-make franchised by the manufacturer,
24

1 provided that each of the following conditions
2 are met:

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

7 (b) all of the franchise agreements of the
8 manufacturer confer rights on the dealer of
9 the line-make to develop and operate, within
10 a defined geographic territory or area, as
11 many dealership facilities as the dealer and
12 manufacturer shall agree are appropriate,

13 (c) at the time the manufacturer first acquires
14 an ownership interest or assumes operation,
15 the distance between any dealership thus
16 owned or operated and the nearest
17 unaffiliated motor vehicle dealership
18 trading in the same line-make is not less
19 than seventy (70) miles,

20 (d) during any period in which the manufacturer
21 has such an ownership interest, the
22 manufacturer has no more than three
23 franchise agreements with new motor vehicle
24 dealers licensed by the Oklahoma Motor

1 Vehicle Commission to do business within the
2 state, and

3 (e) prior to January 1, 2000, the factory shall
4 have furnished or made available to
5 prospective motor vehicle dealers an
6 offering-circular in accordance with the
7 Trade Regulation Rule on Franchising of the
8 Federal Trade Commission, and any guidelines
9 and exemptions issued thereunder, which
10 disclose the possibility that the factory
11 may from time to time seek to own or
12 acquire, directly or indirectly, ownership
13 interests in retail dealerships;

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

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

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

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

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

10 a. the facility and the proposed new location satisfies
11 or meets the written reasonable guidelines of the
12 factory, and

13 b. the proposed new location is within the area of
14 responsibility of the new motor vehicle dealer
15 pursuant to Section 578.1 of this title;

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

20 18. Being a factory that increases prices of new motor vehicles
21 which the new motor vehicle dealer had ordered for retail consumers
22 prior to the dealer's receipt of the written official price increase
23 notification. A sales contract signed by a retail consumer shall
24 constitute evidence of each such order, provided that the vehicle is

1 in fact delivered to the customer. Price differences applicable to
2 new models or series motor vehicles at the time of the introduction
3 of new models or series shall not be considered a price increase for
4 purposes of this paragraph. Price changes caused by any of the
5 following shall not be subject to the provisions of this paragraph:

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

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

- 20 1. To exercise its right of first refusal, the factory must
21 notify the dealer in writing within sixty (60) days of receipt of
22 the completed proposal for the proposed sale transfer;
- 23 2. The exercise of the right of first refusal will result in
24 the dealer and the owner of the dealership receiving the same or

1 greater consideration as they have contracted to receive in
2 connection with the proposed change of ownership or transfer;

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

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

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

23 1. Business activities, including without limitation the
24 dealings with motor vehicle manufacturers and the representatives

1 and affiliates of motor vehicle manufacturers, of any person that is
2 primarily engaged in the business of short-term, not to exceed
3 twelve (12) months, rental of motor vehicles and industrial and
4 construction equipment and activities incidental to that business,
5 provided that:

6 a. any motor vehicle sold by that person is limited to
7 used motor vehicles that have been previously used
8 exclusively and regularly by that person in the
9 conduct of business and used motor vehicles traded in
10 on motor vehicles sold by that person,

11 b. warranty repairs performed by that person on motor
12 vehicles are limited to those motor vehicles that it
13 owns, previously owned or takes in trade, and

14 c. motor vehicle financing provided by that person to
15 retail consumers for motor vehicles is limited to used
16 vehicles sold by that person in the conduct of
17 business; or

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

20 SECTION 5. AMENDATORY 47 O.S. 2001, Section 1137.3, as
21 amended by Section 20, Chapter 326, O.S.L. 2007 (47 O.S. Supp. 2007,
22 Section 1137.3), is amended to read as follows:

23 Section 1137.3 The purchaser of every new motor vehicle, travel
24 trailer or commercial trailer shall register or license the same

1 within thirty (30) days from the date of purchase. It shall be the
2 responsibility of the selling dealer to place a temporary license
3 plate, in size similar to the permanent Oklahoma license plate but
4 of a weatherproof plastic-impregnated substance approved by the
5 Oklahoma Motor Vehicle Commission, upon a new motor vehicle, travel
6 trailer or commercial trailer when a transaction is completed for
7 the sale of said vehicle or trailer. The Except for cab and chassis
8 trucks, the temporary license plate under this section shall be
9 placed at the location provided for the permanent motor vehicle
10 license plate. The purchaser of a new cab and chassis truck may
11 place the temporary license plate under this section in the rear
12 window. Said temporary license plate shall show the dealer's
13 license number which is issued to him or her each year by the
14 Oklahoma Tax Commission, the date the new motor vehicle, travel
15 trailer or commercial trailer was purchased and the company name of
16 the selling dealer. The Oklahoma Motor Vehicle Commission is hereby
17 directed to develop a temporary license plate design to incorporate
18 these requirements in a manner that will permit law enforcement
19 personnel to readily identify the dealer license number and date of
20 the vehicle purchase. The Motor Vehicle Commission is further
21 authorized to develop additional requirements and parameters
22 designed to discourage or prevent illegal duplication and use of the
23 temporary license plate. On or before thirty (30) days from the
24 date of purchase of a new motor vehicle, travel trailer or

1 commercial trailer, said temporary license plate shall be removed
2 and replaced with a permanent, current Oklahoma license plate. Use
3 of said temporary license plate by a licensed dealer for other than
4 the purpose of normally doing business shall constitute grounds for
5 revocation of the dealer's license.

6 It shall be unlawful for any licensed dealer of new motor
7 vehicles, travel trailers or commercial trailers to procure the
8 registration and licensing of any new motor vehicle, travel trailer
9 or commercial trailer sold by such licensed dealer or to act as the
10 agent for such purchaser in the procurement of said registration and
11 licensing. The license of any licensed dealer of new motor
12 vehicles, travel trailers or commercial trailers violating the
13 provisions of this section shall be revoked.

14 SECTION 6. It being immediately necessary for the preservation
15 of the public peace, health and safety, an emergency is hereby
16 declared to exist, by reason whereof this act shall take effect and
17 be in full force from and after its passage and approval.

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