

1 ENGROSSED SENATE
2 BILL NO. 1727

By: Myers of the Senate

3 and

4 Adkins of the House

5
6 [motor vehicle dealer licenses - penalties - fees -
7 all-terrain vehicles - definition -
8 effective date]

9
10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

11 SECTION 1. AMENDATORY 47 O.S. 2001, Section 562, as last
12 amended by Section 2, Chapter 213, O.S.L. 2006 (47 O.S. Supp. 2007,
13 Section 562), is amended to read as follows:

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

19 1. "Motor vehicle" means any motor-driven vehicle required to
20 be registered under the Oklahoma Vehicle License and Registration
21 Act ~~except~~ including all-terrain vehicles ~~and~~, motorcycles, and
22 utility vehicles used exclusively for off-road use;

23 2. "New motor vehicle dealer" means any person, firm,
24 association, corporation or trust not excluded by this paragraph who

1 sells, offers for sale, advertises to sell, leases or displays new,
2 unused or remanufactured motor vehicles and holds a bona fide
3 contract or franchise in effect with a manufacturer, remanufacturer
4 or distributor authorized by the manufacturer or remanufacturer to
5 make predelivery preparation of such vehicles sold to purchasers and
6 to perform post-sale work pursuant to the manufacturer's,
7 remanufacturer's or distributor's warranty. As used herein,
8 "authorized predelivery preparation" means the rendition by the
9 dealer of services and safety adjustments on each new, unused or
10 remanufactured motor vehicle in accordance with the procedure and
11 safety standards required by the manufacturer or remanufacturer of
12 the vehicle to be made before its delivery to the purchaser.
13 "Performance of authorized post-sale work pursuant to the warranty",
14 as used herein, means the rendition of services which are required
15 by the terms of the warranty that stands extended to the vehicle at
16 the time of its sale and are to be made in accordance with the
17 safety standards prescribed by the manufacturer or remanufacturer.
18 The term includes premises or facilities at which a person engages
19 only in the repair of motor vehicles if repairs are performed
20 pursuant to the terms of a franchise and motor vehicle
21 manufacturer's or remanufacturer's warranty. However, the term
22 shall not include premises or facilities at which a new motor
23 vehicle dealer or dealers within the area of responsibility of such
24 dealer or dealers as defined in the manufacturer's or

1 remanufacturer's franchise agreement of such dealer or dealers
2 performs motor vehicle repairs pursuant to the terms of a franchise
3 and motor vehicle manufacturer's or remanufacturer's warranty. For
4 the purpose of Sections 561 through 567, 572, 578.1, 579 and 579.1
5 of this title, the terms "new motor vehicle dealer" and "new motor
6 vehicle dealership" shall be synonymous. The term "new motor
7 vehicle dealer" does not include:

- 8 a. receivers, trustees, administrators, executors,
9 guardians or other persons appointed by or acting
10 under judgment or order of any court,
- 11 b. public officers while performing or in operation of
12 their duties, ~~or~~
- 13 c. employees of persons, corporations or associations
14 enumerated in subparagraph a of this paragraph when
15 engaged in the specific performance of their duties as
16 such employees, or
- 17 d. sellers of implements of husbandry as described in
18 Section 1-125 of this title, so long as:
 - 19 (1) all-terrain vehicles and/or utility vehicles as
20 defined in Section 1102 of this title do not
21 constitute a majority of the inventory of the
22 seller, and

1 (2) such sellers do not engage in the sale of any
2 other type of motor vehicle including
3 motorcycles;

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

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

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

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

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

1 dealers, or for directing or supervising, in whole or in part, its
2 representatives;

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

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

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

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

22 12. "New or unused motor vehicle" means a vehicle which is in
23 the possession of the manufacturer or distributor or has been sold
24 only to the holder of a valid selling agreement, franchise or

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

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

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

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

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

24

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

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

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

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

14 SECTION 2. AMENDATORY 47 O.S. 2001, Section 564, is
15 amended to read as follows:

16 Section 564. A. It shall be unlawful for any person, firm,
17 association, corporation or trust to engage in business as, or serve
18 in the capacity of, or act as a motor vehicle dealer, or motor
19 vehicle salesperson, or manufacturer or distributor of new motor
20 vehicles, or factory branch, distributor branch or factory
21 representative or distributor representative, as such, in this state
22 without first obtaining a license therefor as provided for by law.
23 Any person, firm, association, corporation or trust engaging in more
24 than one of such capacities or having more than one place where such

1 business is carried on or conducted shall be required to obtain and
2 hold a current license for each thereof. Provided that, a new motor
3 vehicle dealer's license shall authorize one person to sell without
4 a salesperson's license in the event such person shall be the owner
5 of a proprietorship, or the person designated as principal in the
6 dealer's franchise or the managing officer or one partner if no
7 principal person is named in the franchise.

8 B. Applications for licenses required to be obtained under
9 provisions of Section 561 et seq. of this title shall be verified by
10 the oath or affirmation of the applicant and shall be on forms
11 prescribed by the Oklahoma Motor Vehicle Commission and furnished to
12 such applicants, and shall contain such information as the
13 Commission deems necessary to enable it to fully determine the
14 qualifications and eligibility of the several applicants to receive
15 the license or licenses applied for. The Commission shall require
16 in such application, or otherwise, information relating to the
17 applicant's financial standing, the applicant's business integrity,
18 whether the applicant has an established place of business and is
19 primarily engaged in the pursuit, avocation or business for which a
20 license, or licenses, are applied for, and whether the applicant is
21 able to properly conduct the business for which a license, or
22 licenses, are applied for, and such other pertinent information
23 consistent with the safeguarding of the public interest and the
24 public welfare. All such applications for license or licenses shall

1 be accompanied by the appropriate fee or fees therefor in accordance
2 with the schedule thereof hereinafter set out. In the event any
3 such application is denied and the license applied for is not
4 issued, the entire license fee shall be returned to the applicant.
5 All licenses issued under the provisions of Section 561 et seq. of
6 this title shall expire on June 30, following the date of issue and
7 shall be nontransferable. All applications for renewal of a license
8 for a new motor vehicle dealer, salesperson, manufacturer,
9 distributor or manufacturer's or distributor's representative shall
10 be submitted by June 1 of each year, and such license or licenses
11 will be issued by July 1. If applications have not been made for
12 renewal of licenses at the times described in this subsection, it
13 shall be illegal for any person to represent himself or herself and
14 act as a dealer, salesperson, manufacturer, distributor or
15 manufacturer's or distributor's representative. Motor license
16 agents will be notified not to accept such dealers' titles until
17 such time as licenses have been issued by the Commission.

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

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

23 1. For each factory branch or distributor branch, ~~Two Hundred~~
24 ~~Dollars (\$200.00)~~ Four Hundred Dollars (\$400.00) initial fee with

1 annual renewal fee of ~~One Hundred Dollars (\$100.00)~~ Two Hundred
2 Dollars (\$200.00);

3 2. For each manufacturer or distributor of new motor vehicles,
4 ~~Two Hundred Dollars (\$200.00)~~ Four Hundred Dollars (\$400.00) initial
5 fee with annual renewal fee of ~~One Hundred Dollars (\$100.00)~~ Two
6 Hundred Dollars (\$200.00);

7 3. For each factory representative or distributor
8 representative, ~~Sixty Dollars (\$60.00)~~ One Hundred Dollars (\$100.00)
9 annually;

10 4. For each new motor vehicle dealer, initial fee of ~~Two~~
11 ~~Hundred Dollars (\$200.00)~~ Two Hundred Fifty Dollars (\$250.00) per
12 franchise sold at each location licensed, with an annual renewal fee
13 of ~~Sixty Dollars (\$60.00)~~ One Hundred Dollars (\$100.00) per
14 franchise sold at each location per year; and

15 5. For each salesperson, ~~Ten Dollars (\$10.00)~~ Twenty-five
16 Dollars (\$25.00) renewed annually.

17 D. The licenses issued to each new motor vehicle dealer,
18 manufacturer, distributor, factory branch, distributor branch or
19 representative, if a corporation, shall specify the location of the
20 factory, office or branch thereof. In case such location is
21 changed, the Commission may endorse the change of location on the
22 license without charge unless the change of address triggers a
23 relocation of a new motor vehicle dealer pursuant to the provisions
24 of Section 578.1 of this title. The license of each dealer shall be

1 posted in a conspicuous place in the dealer's place or places of
2 business.

3 Every motor vehicle salesperson, factory representative or
4 distributor representative if an individual shall physically possess
5 the license when engaged in business, and shall display same upon
6 request. The name of the employer of such salesperson, factory
7 representative or distributor representative shall be stated on the
8 license and, in case of a change of employer, the holder of such
9 license shall immediately mail same to the Commission for its
10 endorsement of such change thereon. The Commission shall endorse
11 each such change of employer on licenses without charge.

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

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

22 1. On satisfactory proof of unfitness of the applicant in any
23 application for any license under the provisions of Section 561 et
24 seq. of this title;

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

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

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

9 5. Being a new motor vehicle dealer or new motor vehicle
10 salesperson who:

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

16 b. uses any false or misleading advertising in connection
17 with business as a new motor vehicle dealer or vehicle
18 salesperson,

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

21 d. has failed or refused to perform any written agreement
22 with any retail buyer involving the sale of a motor
23 vehicle,

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- 1 e. has been convicted of a crime involving moral
2 turpitude,
- 3 f. has committed a fraudulent act in selling, purchasing
4 or otherwise dealing in new motor vehicles or has
5 misrepresented the terms and conditions of a sale,
6 purchase or contract for sale or purchase of a new
7 motor vehicle or any interest therein including an
8 option to purchase such vehicle, ~~or~~
- 9 g. has failed to meet or maintain the conditions and
10 requirements necessary to qualify for the issuance of
11 a license, or
- 12 h. has knowingly sold an all-terrain vehicle, as defined
13 by Section 1102 of this title:
- 14 (1) to or for the use of any person less than six (6)
15 years of age,
- 16 (2) with a piston or rotor displacement of greater
17 than seventy cubic centimeters (70 cu cm) to or
18 for the use of any person at least six (6) years
19 of age but less than twelve (12) years of age, or
- 20 (3) with a piston or rotor displacement of greater
21 than ninety cubic centimeters (90 cu cm) to or
22 for the use of any person at least twelve (12)
23 years of age but less than sixteen (16) years of
24 age;

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

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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 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
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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.

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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 4. AMENDATORY 47 O.S. 2001, Section 1102, as
21 last amended by Section 1, Chapter 177, O.S.L. 2007 (47 O.S. Supp.
22 2007, Section 1102), is amended to read as follows:

23 Section 1102. As used in the Oklahoma Vehicle License and
24 Registration Act:

1 1. "All-terrain vehicle" means a ~~motorized~~ powered by
2 an internal combustion engine, manufactured and used exclusively for
3 off-highway use ~~which is forty eight (48) inches or less in width,~~
4 ~~with an unladen dry weight of eight hundred (800) pounds or less,~~
5 traveling on ~~two~~ four or more low-pressure tires, and having a seat
6 designed to be straddled by the operator and handlebars for
7 steering;

8 2. "Carrying capacity" means the carrying capacity of a vehicle
9 as determined or declared in tons of cargo or payload by the owner;
10 provided, that such declared capacity shall not be less than the
11 minimum tonnage capacity fixed, listed or advertised by the
12 manufacturer of any vehicle;

13 3. "Certificate of title" means a document which is proof of
14 legal ownership of a motor vehicle as described and provided for in
15 Section 1105 of this title;

16 4. "Chips and oil" or the term "road oil and crushed rock"
17 means, with respect to materials authorized for use in the surfacing
18 of roads or highways in this title or in any equivalent statute
19 pertaining to road or highway surfacing in the State of Oklahoma,
20 any asphaltic materials. Wherever chips and oil or road oil and
21 crushed rock are authorized for use in the surfacing of roads or
22 highways in this state, whether by the Department of Transportation,
23 or by the county commissioners, or other road building authority
24 subject to the Oklahoma Vehicle License and Registration Act,

1 asphaltic materials are also authorized for use in such surfacing
2 and construction;

3 5. "Combined laden weight" means the weight of a truck or
4 station wagon and its cargo or payload transported thereon, or the
5 weight of a truck or truck-tractor plus the weight of any trailers
6 or semitrailers together with the cargo or payload transported
7 thereon;

8 6. "Commercial trailer" means any trailer, as defined in
9 Section 1-180 of this title, or semitrailer, as defined in Section
10 1-162 of this title, when such trailer or semitrailer is used
11 primarily for business or commercial purposes;

12 7. "Commercial trailer dealer" means any person, firm or
13 corporation engaged in the business of selling any new and unused,
14 or used, or both new and used commercial trailers;

15 8. "Commercial vehicle" means any vehicle over eight thousand
16 (8,000) pounds combined laden weight used primarily for business or
17 commercial purposes. Each motor vehicle being registered pursuant
18 to the provisions of this section shall have the name of the
19 commercial establishment or the words "Commercial Vehicle"
20 permanently and prominently displayed upon the outside of the
21 vehicle in letters not less than two (2) inches high. Such letters
22 shall be in sharp contrast to the background and shall be of
23 sufficient shape and color as to be readily legible during daylight

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1 hours, from a distance of fifty (50) feet while the vehicle is not
2 in motion;

3 9. "Commission" or "Tax Commission" means the Oklahoma Tax
4 Commission;

5 10. "Dealer" means any person, firm, association, corporation
6 or trust who sells, solicits or advertises the sale of new and
7 unused motor vehicles and holds a bona fide contract or franchise in
8 effect with a manufacturer or distributor of a particular make of
9 new or unused motor vehicle or vehicles for the sale of same;

10 11. "Interstate commerce" means any commerce moving between any
11 place in a state and any place in another state or between places in
12 the same state through another state;

13 12. "Laden weight" means the combined weight of a vehicle when
14 fully equipped for use and the cargo or payload transported thereon;
15 provided that in no event shall the laden weight be less than the
16 unladen weight of the vehicle fully equipped for use, plus the
17 manufacturer's rated carrying capacity;

18 13. "Local authorities" means every county, municipality or
19 local board or body having authority to adopt police regulations
20 under the Constitution and laws of this state;

21 14. "Low-speed electrical vehicle" means any four-wheeled
22 electrical vehicle that is powered by an electric motor that draws
23 current from rechargeable storage batteries or other sources of
24 electrical current and whose top speed is greater than twenty (20)

1 miles per hour but not greater than twenty-five (25) miles per hour
2 and is manufactured in compliance with the National Highway Traffic
3 Safety Administration standards for low-speed vehicles in 49 C.F.R.
4 571.500;

5 15. "Manufactured home" means a residential dwelling built in
6 accordance with the National Manufactured Housing Construction and
7 Safety Standards Act of 1974, 42 U.S.C., Section 5401 et seq., and
8 rules promulgated pursuant thereto and the rules promulgated by the
9 Oklahoma Used Motor Vehicle and Parts Commission pursuant to Section
10 582 of this title;

11 16. "Manufactured home dealer" means any person, firm or
12 corporation engaged in the business of selling any new and unused,
13 or used, or both new and used manufactured homes. Such information
14 and a valid franchise letter as proof of authorization to sell any
15 such new manufactured home product line or lines shall be attached
16 to said application for a dealer license to sell manufactured homes.
17 "Manufactured home dealer" shall not include any person, firm or
18 corporation who sells or contracts for the sale of the dealer's own
19 personally titled manufactured home or homes. No person, firm or
20 corporation shall be considered a manufactured home dealer as to any
21 manufactured home purchased or acquired by such person, firm or
22 corporation for purposes other than resale; provided, that the
23 restriction set forth in this sentence shall not prevent an
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1 otherwise qualified person, firm or corporation from utilizing a
2 single manufactured home as a sales office;

3 17. "Motor license agent" means any person appointed,
4 designated or authorized by the Oklahoma Tax Commission to collect
5 the fees and to enforce the provisions provided for in the Oklahoma
6 Vehicle License and Registration Act;

7 18. "New vehicle" or "unused vehicle" means a vehicle which has
8 been in the possession of the manufacturer, distributor or
9 wholesaler or has been sold only by the manufacturer, distributor or
10 wholesaler to a dealer;

11 19. "Nonresident" means any person who is not a resident of
12 this state;

13 20. "Off-road motorcycle" means any motorcycle, as defined in
14 Section 1-135 of this title, when such motorcycle has been
15 manufactured for and used exclusively off roads, highways and any
16 other paved surfaces;

17 21. "Owner" means any person owning, operating or possessing
18 any vehicle herein defined;

19 22. "Person" means any individual, copartner, joint venture,
20 association, corporation, limited liability company, estate, trust,
21 business trust, syndicate, the State of Oklahoma, or any county,
22 city, municipality, school district or other political subdivision
23 thereof, or any group or combination acting as a unit, or any
24 receiver appointed by the state or federal court;

1 23. "Recreational vehicle" means every vehicle which is built
2 on or permanently attached to a self-propelled motor chassis or
3 chassis cab which becomes an integral part of the completed vehicle
4 and is capable of being operated on the highways. In order to
5 qualify as a recreational vehicle pursuant to this paragraph such
6 vehicle shall be permanently constructed and equipped for human
7 habitation, having its own sleeping and kitchen facilities,
8 including permanently affixed cooking facilities, water tanks and
9 holding tank with permanent toilet facilities. Recreational vehicle
10 shall not include manufactured homes or any vehicle with portable
11 sleeping, toilet and kitchen facilities which are designed to be
12 removed from such vehicle;

13 24. "Remanufactured vehicle" means a vehicle which has been
14 assembled by a vehicle remanufacturer using a new body and which may
15 include original, reconditioned, or remanufactured parts, and which
16 is not a salvage, rebuilt, or junked vehicle as defined by
17 paragraphs 1, 2, and 5, respectively, of subsection A of Section
18 1105 of this title;

19 25. "Rental trailer" means all small or utility trailers or
20 semitrailers constructed and suitable for towing by a passenger
21 automobile and designed only for carrying property, when said
22 trailers or semitrailers are owned by, or are in the possession of,
23 any person engaged in renting or leasing such trailers or
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1 semitrailers for intrastate or interstate use or combined intrastate
2 and interstate use;

3 26. "Special mobilized machinery" means special purpose
4 machines or devices, either self-propelled or drawn as trailers or
5 semitrailers, which derive no revenue from the transportation of
6 persons or property, whose use of the highway is only incidental,
7 and whose useful revenue producing service is performed at
8 destinations in an area away from the traveled surface of an
9 established open highway;

10 27. "State" means the State of Oklahoma;

11 28. "Station wagon" means any passenger vehicle which does not
12 have a separate luggage compartment or trunk and which does not have
13 open beds, and has one or more rear seats readily lifted out or
14 folded, whether same is called a station wagon or ranch wagon;

15 29. "Travel trailer" means any vehicular portable structure
16 built on a chassis, used as a temporary dwelling for travel,
17 recreational or vacation use, and, when factory-equipped for the
18 road, it shall have a body width not exceeding eight (8) feet and an
19 overall length not exceeding forty (40) feet, including the hitch or
20 coupling;

21 30. "Travel trailer dealer" means any person, firm or
22 corporation engaged in the business of selling any new and unused,
23 or used, or both new and used travel trailers. Such information and
24 a valid franchise letter as proof of authorization to sell any such

1 new travel trailer product line or lines shall be attached to said
2 application for a dealer license to sell travel trailers. "Travel
3 trailer dealer" shall not include any person, firm or corporation
4 who sells or contracts for the sale of his or her own personally
5 titled travel trailer or trailers. No person, firm or corporation
6 shall be considered as a travel trailer dealer as to any travel
7 trailer purchased or acquired by such person, firm or corporation
8 for purposes other than resale;

9 31. "Used motor vehicle dealer" means "used motor vehicle
10 dealer" as defined in Section 581 of this title;

11 32. "Used vehicle" means any vehicle which has been sold,
12 bargained, exchanged or given away, or used to the extent that it
13 has become what is commonly known, and generally recognized, as a
14 "secondhand" vehicle. This shall also include any vehicle other
15 than a remanufactured vehicle, regardless of age, owned by any
16 person who is not a dealer;

17 33. "Utility vehicle" means a vehicle powered by an internal
18 combustion engine, manufactured and used exclusively for off-highway
19 use, traveling on four or more tires, equipped with seating for two
20 or more people and a steering wheel. "Utility vehicle" does not
21 include tractors or implements of husbandry;

22 34. "Vehicle" means any type of conveyance or device in, upon
23 or by which a person or property is or may be transported from one
24 location to another upon the avenues of public access within the

1 state. "Vehicle" does not include bicycles, trailers except travel
2 trailers and rental trailers, or implements of husbandry as defined
3 in Section 1-125 of this title. All implements of husbandry used as
4 conveyances shall be required to display the owner's driver's
5 license number or license plate number of any vehicle owned by the
6 owner of the implement of husbandry on the rear of the implement in
7 numbers not less than two (2) inches in height. The use of the
8 owner's social security number on the rear of the implement of
9 husbandry shall not be required; and

10 ~~34.~~ 35. "Vehicle remanufacturer" means a commercial entity
11 which assembles remanufactured vehicles.

12 SECTION 5. This act shall become effective November 1, 2008.

13 Passed the Senate the 11th day of March, 2008.

14

15

Presiding Officer of the Senate

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Passed the House of Representatives the ____ day of _____,

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2008.

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Presiding Officer of the House
of Representatives

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