

SB 1654

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THE STATE SENATE
Wednesday, February 20, 2008

Senate Bill No. 1654
As Amended

SENATE BILL NO. 1654 - By: JOHNSON (Mike) of the Senate and THOMPSON of the House.

[motor vehicles - Oklahoma Motor Vehicle Commission - effective date]

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

SECTION 1. AMENDATORY 47 O.S. 2001, Section 565, as amended by Section 1, Chapter 141, O.S.L. 2005 (47 O.S. Supp. 2007, 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;

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,

- 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;
- 12 6. Being a new motor vehicle salesperson who is not employed as
13 such by a licensed new motor vehicle dealer;
- 14 7. Being a new motor vehicle dealer who:
- 15 a. does not have an established place of business,
16 b. does not provide for a suitable repair shop separate
17 from the display room with ample space to repair or
18 recondition one or more vehicles at the same time, and
19 which is equipped with such parts, tools and equipment
20 as may be requisite for the servicing of motor
21 vehicles in such a manner as to make them comply with
22 the safety laws of this state and to properly fulfill
23 the dealer's or manufacturer's warranty obligation,

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

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

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

14 9. Being a factory that:

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

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

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

1 advertising displays or other materials, or remodel,
2 renovate, or recondition the dealer's existing
3 facilities as a prerequisite to receiving a model or
4 series of vehicles. The failure to deliver any such
5 new motor vehicle shall not be considered a violation
6 of the section if the failure is not arbitrary or is
7 due to lack of manufacturing capacity or to a strike
8 or labor difficulty, a shortage of materials, a
9 freight embargo or other cause over which the
10 manufacturer has no control. However, this
11 subparagraph shall not apply to recreational vehicles
12 or limited production model vehicles;

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

19 11. Being a factory that sells directly or indirectly new motor
20 vehicles or services to any retail consumer in the state except
21 through a new motor vehicle dealer holding a franchise for the line-
22 make that includes the new motor vehicle. This paragraph does not
23 apply to factory sales of new motor vehicles to its employees,

1 family members of employees, retirees and family members of
2 retirees, not-for-profit organizations or the federal, state or
3 local governments. The provisions of this paragraph shall not
4 preclude a factory from providing information to a consumer for the
5 purpose of marketing or facilitating a sale of a new motor vehicle
6 or from establishing a program to sell or offer to sell new motor
7 vehicles through participating dealers;

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

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

13 (2) operates or controls a new motor vehicle dealer,
14 or

15 (3) acts in the capacity of a new motor vehicle
16 dealer.

17 b. (1) This paragraph does not prohibit a factory from
18 owning or controlling a new motor vehicle dealer
19 while in a bona fide relationship with a dealer
20 development candidate who has made a substantial
21 initial investment in the franchise and whose
22 initial investment is subject to potential loss.
23 ~~The dealer development candidates' percentage~~

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

20 (2) This paragraph does not prohibit a factory from
21 owning, operating, controlling or acting in the
22 capacity of a motor vehicle dealer for a period
23 not to exceed twelve (12) months during the

1 transition from one dealer to another dealer if
2 the dealership is for sale at a reasonable price
3 and on reasonable terms and conditions to an
4 independent qualified buyer. On showing by a
5 factory of good cause, the Oklahoma Motor Vehicle
6 Commission may extend the time limit set forth
7 above; extensions may be granted for periods not
8 to exceed twelve (12) months.

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

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

20 (a) all of the motor vehicle dealerships selling
21 the motor vehicles of that manufacturer in
22 this state trade exclusively in the line-
23 make of that manufacturer,

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

1 offering-circular in accordance with the
2 Trade Regulation Rule on Franchising of the
3 Federal Trade Commission, and any guidelines
4 and exemptions issued thereunder, which
5 disclose the possibility that the factory
6 may from time to time seek to own or
7 acquire, directly or indirectly, ownership
8 interests in retail dealerships;

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

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

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

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

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

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

9 b. the proposed new location is within the area of
10 responsibility of the new motor vehicle dealer
11 pursuant to Section 578.1 of this title;

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

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

1 purposes of this paragraph. Price changes caused by any of the
2 following shall not be subject to the provisions of this paragraph:

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

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

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

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

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

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

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

21 1. Business activities, including without limitation the
22 dealings with motor vehicle manufacturers and the representatives
23 and affiliates of motor vehicle manufacturers, of any person that is

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

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

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

19 SECTION 2. This act shall become effective November 1, 2008.

20 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & LABOR, dated 2-18-08 -
21 DO PASS, As Amended and Coauthored.