

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1727

By: Myers

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5
6 AS INTRODUCED

7 An Act relating to motor vehicles; amending 47 O.S.
8 2001, Sections 562, as last amended by Section 2,
Chapter 213, O.S.L. 2006, 564, 565, as amended by
9 Section 1, Chapter 141, O.S.L. 2005, and 1102, as
last amended by Section 1, Chapter 177, O.S.L. 2007
10 (47 O.S. Supp. 2007, Sections 562, 565, and 1102),
which relate to defining terms for motor vehicle
11 dealers, motor vehicle dealer licenses, license
penalties, and defining terms for motor vehicle
12 registration; modifying certain definition; limiting
inventory and sale of certain vehicles by certain
13 sellers; modifying license fees; providing for
penalties against dealers or salespersons who sell
14 certain all-terrain vehicles to certain persons;
modifying certain definition; defining term; and
15 providing an effective date.

16
17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

21 "Performance of authorized post-sale work pursuant to the warranty",
22 as used herein, means the rendition of services which are required
23 by the terms of the warranty that stands extended to the vehicle at
24 the time of its sale and are to be made in accordance with the

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

- 16 a. receivers, trustees, administrators, executors,
17 guardians or other persons appointed by or acting
18 under judgment or order of any court,
- 19 b. public officers while performing or in operation of
20 their duties, ~~or~~
- 21 c. employees of persons, corporations or associations
22 enumerated in subparagraph a of this paragraph when
23 engaged in the specific performance of their duties as
24 such employees, or

1 d. sellers of implements of husbandry as described in
2 Section 1-125 of this title, so long as:

3 (1) all-terrain vehicles and/or utility vehicles as
4 defined in Section 1102 of this title do not
5 constitute a majority of the inventory of the
6 seller, and

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

10 3. "Motor vehicle salesperson" means any person who, for gain
11 or compensation of any kind, either directly or indirectly,
12 regularly or occasionally, by any form of agreement or arrangement,
13 sells or negotiates for the sale of any new or unused motor vehicle
14 for any new, unused or remanufactured motor vehicle dealer to any
15 one or more third parties;

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

17 5. "Manufacturer" means any person, firm, association,
18 corporation or trust, resident or nonresident, who manufactures or
19 assembles new and unused motor vehicles or who engages in the
20 fabrication or assembly of motorized vehicles of a type required to
21 be registered in the State of Oklahoma;

22 6. "Distributor" means any person, firm, association,
23 corporation or trust, resident or nonresident, who, being authorized
24 by the original manufacturer, in whole or in part sells or

1 distributes new and unused motor vehicles to motor vehicle dealers,
2 or who maintains distributor representatives;

3 7. "Factory branch" means any branch office maintained by a
4 person, firm, association, corporation or trust who manufactures or
5 assembles motor vehicles for the sale of motor vehicles to
6 distributors, or for the sale of motor vehicles to motor vehicle
7 dealers, or for directing or supervising, in whole or in part, its
8 representatives;

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

12 9. "Factory representative" means any officer or agent engaged
13 as a representative of a manufacturer of motor vehicles or by a
14 factory branch, for the purpose of making or promoting the sale of
15 its motor vehicles, or for supervising or contacting its dealers or
16 prospective dealers;

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

23 11. "Franchise" means any contract or agreement between a motor
24 vehicle dealer and a manufacturer of a new motor vehicle or its

1 distributor or factory branch by which the dealer is authorized to
2 engage in the business of selling any specified make or makes of new
3 motor vehicles;

4 12. "New or unused motor vehicle" means a vehicle which is in
5 the possession of the manufacturer or distributor or has been sold
6 only to the holder of a valid selling agreement, franchise or
7 contract, granted by the manufacturer or distributor for the sale of
8 that make of new vehicle so long as the manufacturer's statement of
9 origin has not been assigned to anyone other than a licensed
10 franchised new motor vehicle dealer of the same line-make;

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

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

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

24

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

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

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

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

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

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

17 22. "Factory" means a manufacturer, distributor, factory
18 branch, distributor branch, factory representative or distributor
19 representative, which manufactures or distributes vehicle products.

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

22 Section 564. A. It shall be unlawful for any person, firm,
23 association, corporation or trust to engage in business as, or serve
24 in the capacity of, or act as a motor vehicle dealer, or motor

1 vehicle salesperson, or manufacturer or distributor of new motor
2 vehicles, or factory branch, distributor branch or factory
3 representative or distributor representative, as such, in this state
4 without first obtaining a license therefor as provided for by law.
5 Any person, firm, association, corporation or trust engaging in more
6 than one of such capacities or having more than one place where such
7 business is carried on or conducted shall be required to obtain and
8 hold a current license for each thereof. Provided that, a new motor
9 vehicle dealer's license shall authorize one person to sell without
10 a salesperson's license in the event such person shall be the owner
11 of a proprietorship, or the person designated as principal in the
12 dealer's franchise or the managing officer or one partner if no
13 principal person is named in the franchise.

14 B. Applications for licenses required to be obtained under
15 provisions of Section 561 et seq. of this title shall be verified by
16 the oath or affirmation of the applicant and shall be on forms
17 prescribed by the Oklahoma Motor Vehicle Commission and furnished to
18 such applicants, and shall contain such information as the
19 Commission deems necessary to enable it to fully determine the
20 qualifications and eligibility of the several applicants to receive
21 the license or licenses applied for. The Commission shall require
22 in such application, or otherwise, information relating to the
23 applicant's financial standing, the applicant's business integrity,
24 whether the applicant has an established place of business and is

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

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

3 C. The schedule of license fees to be charged and received by
4 the Commission for the licenses issued hereunder shall be as
5 follows:

6 1. For each factory branch or distributor branch, ~~Two Hundred~~
7 ~~Dollars (\$200.00)~~ Four Hundred Dollars (\$400.00) initial fee with
8 annual renewal fee of ~~One Hundred Dollars (\$100.00)~~ Two Hundred
9 Dollars (\$200.00);

10 2. For each manufacturer or distributor of new motor vehicles,
11 ~~Two Hundred Dollars (\$200.00)~~ Four Hundred Dollars (\$400.00) initial
12 fee with annual renewal fee of ~~One Hundred Dollars (\$100.00)~~ Two
13 Hundred Dollars (\$200.00);

14 3. For each factory representative or distributor
15 representative, ~~Sixty Dollars (\$60.00)~~ One Hundred Dollars (\$100.00)
16 annually;

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

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

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1 D. The licenses issued to each new motor vehicle dealer,
2 manufacturer, distributor, factory branch, distributor branch or
3 representative, if a corporation, shall specify the location of the
4 factory, office or branch thereof. In case such location is
5 changed, the Commission may endorse the change of location on the
6 license without charge unless the change of address triggers a
7 relocation of a new motor vehicle dealer pursuant to the provisions
8 of Section 578.1 of this title. The license of each dealer shall be
9 posted in a conspicuous place in the dealer's place or places of
10 business.

11 Every motor vehicle salesperson, factory representative or
12 distributor representative if an individual shall physically possess
13 the license when engaged in business, and shall display same upon
14 request. The name of the employer of such salesperson, factory
15 representative or distributor representative shall be stated on the
16 license and, in case of a change of employer, the holder of such
17 license shall immediately mail same to the Commission for its
18 endorsement of such change thereon. The Commission shall endorse
19 each such change of employer on licenses without charge.

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

23 Section 565. A. The Oklahoma Motor Vehicle Commission may deny
24 an application for a license, or revoke or suspend a license or

1 impose a fine not to exceed Ten Thousand Dollars (\$10,000.00)
2 against a manufacturer or distributor or a fine not to exceed One
3 Thousand Dollars (\$1,000.00) against a dealer per occurrence that
4 any provision of Sections 561 through 567, 572, 578.1, 579 and 579.1
5 of this title is violated or for any of the following reasons:

6 1. On satisfactory proof of unfitness of the applicant in any
7 application for any license under the provisions of Section 561 et
8 seq. of this title;

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

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

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

17 5. Being a new motor vehicle dealer or new motor vehicle
18 salesperson who:

19 a. has required a purchaser of a new motor vehicle, as a
20 condition of sale and delivery thereof, to also
21 purchase special features, appliances, accessories or
22 equipment not desired or requested by the purchaser
23 and installed by the dealer,

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- 1 b. uses any false or misleading advertising in connection
2 with business as a new motor vehicle dealer or vehicle
3 salesperson,
- 4 c. has committed any unlawful act which resulted in the
5 revocation of any similar license in another state,
- 6 d. has failed or refused to perform any written agreement
7 with any retail buyer involving the sale of a motor
8 vehicle,
- 9 e. has been convicted of a crime involving moral
10 turpitude,
- 11 f. has committed a fraudulent act in selling, purchasing
12 or otherwise dealing in new motor vehicles or has
13 misrepresented the terms and conditions of a sale,
14 purchase or contract for sale or purchase of a new
15 motor vehicle or any interest therein including an
16 option to purchase such vehicle, ~~or~~
- 17 g. has failed to meet or maintain the conditions and
18 requirements necessary to qualify for the issuance of
19 a license, or
- 20 h. has knowingly sold an all-terrain vehicle, as defined
21 by Section 1102 of this title:
- 22 (1) to or for the use of any person less than six (6)
23 years of age,
- 24

- 1 (2) with a piston or rotor displacement of greater
2 than seventy cubic centimeters (70 cu cm) to or
3 for the use of any person at least six (6) years
4 of age but less than twelve (12) years of age, or
5 (3) with a piston or rotor displacement of greater
6 than ninety cubic centimeters (90 cu cm) to or
7 for the use of any person at least twelve (12)
8 years of age but less than sixteen (16) years of
9 age;

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

12 7. Being a new motor vehicle dealer who:

- 13 a. does not have an established place of business,
14 b. does not provide for a suitable repair shop separate
15 from the display room with ample space to repair or
16 recondition one or more vehicles at the same time, and
17 which is equipped with such parts, tools and equipment
18 as may be requisite for the servicing of motor
19 vehicles in such a manner as to make them comply with
20 the safety laws of this state and to properly fulfill
21 the dealer's or manufacturer's warranty obligation,
22 c. does not hold a franchise in effect with a
23 manufacturer or distributor of new or unused motor
24 vehicles for the sale of the same and is not

1 authorized by the manufacturer or distributor to
2 render predelivery preparation of such vehicles sold
3 to purchasers and to perform any authorized post-sale
4 work pursuant to the manufacturer's or distributor's
5 warranty,

6 d. employs unlicensed salespersons, or employs or
7 utilizes the services of used motor vehicle lots or
8 dealers or other unlicensed persons in connection with
9 the sale of new motor vehicles,

10 e. does not properly service a new motor vehicle before
11 delivery of same to the original purchaser thereof, or

12 f. fails to order and stock a reasonable number of new
13 motor vehicles necessary to meet customer demand for
14 each of the new motor vehicles included in the new
15 motor vehicle dealer's franchise agreement, unless the
16 new motor vehicles are not readily available from the
17 manufacturer or distributor due to limited production;

18 8. Being a factory that has:

19 a. either induced or attempted to induce by means of
20 coercion or intimidation, any new motor vehicle
21 dealer:

22 (1) to accept delivery of any motor vehicle or
23 vehicles, parts or accessories therefor, or any
24 other commodities including advertising material

1 which shall not have been ordered by the new
2 motor vehicle dealer,

3 (2) to order or accept delivery of any motor vehicle
4 with special features, appliances, accessories or
5 equipment not included in the list price of the
6 motor vehicles as publicly advertised by the
7 manufacturer thereof, or

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

11 b. induced under threat or discrimination by the
12 withholding from delivery to a motor vehicle dealer
13 certain models of motor vehicles, changing or amending
14 unilaterally the dealer's allotment of motor vehicles
15 and/or withholding and delaying delivery of such
16 vehicles out of the ordinary ~~cause~~ course of business,
17 in order to induce by such coercion any such dealer to
18 participate or contribute to any local or national
19 advertising fund controlled directly or indirectly by
20 the factory or for any other purposes such as contest,
21 "give-aways" or other so-called sales promotional
22 devices and/or change of quotas in any sales contest;
23 or has required motor vehicle dealers, as a condition
24 to receiving their vehicle allotment, to order a

1 certain percentage of the vehicles with optional
2 equipment not specified by the new motor vehicle
3 dealer; however, nothing in this section shall
4 prohibit a factory from supporting an advertising
5 association which is open to all dealers on the same
6 basis;

7 9. Being a factory that:

- 8 a. has attempted to coerce or has coerced any new motor
9 vehicle dealer to enter into any agreement or to
10 cancel any agreement, or fails to act in good faith
11 and in a fair, equitable and nondiscriminatory manner;
12 or has directly or indirectly coerced, intimidated,
13 threatened or restrained any motor vehicle dealer; or
14 has acted dishonestly, or has failed to act in
15 accordance with the reasonable standards of fair
16 dealing,
- 17 b. has failed to compensate its dealers for the work and
18 services they are required to perform in connection
19 with the dealer's delivery and preparation obligations
20 according to the agreements on file with the
21 Commission which must be found by the Commission to be
22 reasonable, or fail to adequately and fairly
23 compensate its dealers for labor, parts and other
24 expenses incurred by such dealer to perform under and

1 comply with manufacturer's warranty agreements. In
2 determining whether the warranty compensation is
3 adequate and fair, the Commission shall consider the
4 amount that is charged by the dealer or dealers in
5 their areas of responsibility to their nonwarranty
6 work of like kind. All claims made by dealers for
7 compensation for delivery, preparation and warranty
8 work shall be paid within thirty (30) days after
9 approval and shall be approved or disapproved within
10 thirty (30) days after receipt. When any claim is
11 disapproved, the dealer shall be notified in writing
12 of the grounds for disapproval. The dealer's
13 delivery, preparation and warranty obligations as
14 filed with the Commission shall constitute the
15 dealer's sole responsibility for product liability as
16 between the dealer and manufacturer. A factory may
17 reasonably and periodically audit a new motor vehicle
18 dealer to determine the validity of paid claims for
19 dealer compensation or any charge-backs for warranty
20 parts or service compensation. Audits of warranty
21 payments shall only be for the one-year period
22 immediately following the date of the payment. A
23 manufacturer shall reserve the right to reasonable,
24 periodic audits to determine the validity of paid

1 claims for dealer compensation or any charge-backs for
2 consumer or dealer incentives. Audits of incentive
3 payments shall only be for a two-year period
4 immediately following the date of the payment. A
5 factory shall not deny a claim or charge a new motor
6 vehicle dealer back subsequent to the payment of the
7 claim unless the factory can show that the claim was
8 false or fraudulent or that the new motor vehicle
9 dealer failed to reasonably substantiate the claim by
10 the written reasonable procedures of the factory, or
11 c. unreasonably fails or refuses to offer to its same
12 line-make franchised dealers all models manufactured
13 for that line-make, or unreasonably requires a dealer
14 to pay any extra fee, purchase unreasonable
15 advertising displays or other materials, or remodel,
16 renovate, or recondition the dealer's existing
17 facilities as a prerequisite to receiving a model or
18 series of vehicles. The failure to deliver any such
19 new motor vehicle shall not be considered a violation
20 of the section if the failure is not arbitrary or is
21 due to lack of manufacturing capacity or to a strike
22 or labor difficulty, a shortage of materials, a
23 freight embargo or other cause over which the
24 manufacturer has no control. However, this

1 subparagraph shall not apply to recreational vehicles
2 or limited production model vehicles;

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

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

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

22 (1) owns any ownership interest or has any financial
23 interest in a new motor vehicle dealer or any
24

1 person who sells products or services to the
2 public,

- 3 (2) operates or controls a new motor vehicle dealer,
4 or
5 (3) acts in the capacity of a new motor vehicle
6 dealer.

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

1 require the dealer development candidate to buy
2 the remaining ownership interests of the dealer
3 development candidate in periodic payments over
4 the acquisition period. It shall be presumed
5 unreasonable to require the dealer development
6 candidate to acquire the remaining interests
7 solely from the profits or earnings of the
8 dealership or new motor vehicle dealer.

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

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

1 (4) This paragraph does not prohibit a factory from
2 owning, directly or indirectly, a minority
3 interest in an entity that owns, operates or
4 controls motor vehicle dealerships of the same
5 line-make franchised by the manufacturer,
6 provided that each of the following conditions
7 are met:

8 (a) all of the motor vehicle dealerships selling
9 the motor vehicles of that manufacturer in
10 this state trade exclusively in the line-
11 make of that manufacturer,

12 (b) all of the franchise agreements of the
13 manufacturer confer rights on the dealer of
14 the line-make to develop and operate, within
15 a defined geographic territory or area, as
16 many dealership facilities as the dealer and
17 manufacturer shall agree are appropriate,

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

1 (d) during any period in which the manufacturer
2 has such an ownership interest, the
3 manufacturer has no more than three
4 franchise agreements with new motor vehicle
5 dealers licensed by the Oklahoma Motor
6 Vehicle Commission to do business within the
7 state, and

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

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

- 1 a. any information derived from monthly financial
- 2 statements provided to the factory, and
- 3 b. any information regarding any aspect of the
- 4 profitability of a particular new motor vehicle
- 5 dealer;

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

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

12 16. Being a factory which prohibits a new motor vehicle dealer
13 from relocating after a written request by such new motor vehicle
14 dealer if:

- 15 a. the facility and the proposed new location satisfies
- 16 or meets the written reasonable guidelines of the
- 17 factory, and
- 18 b. the proposed new location is within the area of
- 19 responsibility of the new motor vehicle dealer
- 20 pursuant to Section 578.1 of this title;

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

1 18. Being a factory that increases prices of new motor vehicles
2 which the new motor vehicle dealer had ordered for retail consumers
3 prior to the dealer's receipt of the written official price increase
4 notification. A sales contract signed by a retail consumer shall
5 constitute evidence of each such order, provided that the vehicle is
6 in fact delivered to the customer. Price differences applicable to
7 new models or series motor vehicles at the time of the introduction
8 of new models or series shall not be considered a price increase for
9 purposes of this paragraph. Price changes caused by any of the
10 following shall not be subject to the provisions of this paragraph:

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

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

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

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

8 3. The proposed sale or transfer of the assets of the
9 dealership does not involve the transfer or sale to a member or
10 members of the family of one or more dealer owners, or to a
11 qualified manager or a partnership or corporation controlled by such
12 persons; and

13 4. The factory agrees to pay the reasonable expenses, including
14 attorney fees which do not exceed the usual, customary and
15 reasonable fees charged for similar work done for other clients
16 incurred by the proposed new owner and transferee prior to the
17 exercise by the factory of its right of first refusal in negotiating
18 and implementing the contract for the proposed sale or transfer of
19 the dealership or dealership assets. Notwithstanding the foregoing,
20 no payment of expenses and attorney fees shall be required if the
21 proposed new dealer or transferee has not submitted or caused to be
22 submitted an accounting of those expenses within thirty (30) days of
23 receipt of the written request of the factory for such an
24

1 accounting. The accounting may be requested by a factory before
2 exercising its right of first refusal.

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

5 1. Business activities, including without limitation the
6 dealings with motor vehicle manufacturers and the representatives
7 and affiliates of motor vehicle manufacturers, of any person that is
8 primarily engaged in the business of short-term, not to exceed
9 twelve (12) months, rental of motor vehicles and industrial and
10 construction equipment and activities incidental to that business,
11 provided that:

12 a. any motor vehicle sold by that person is limited to
13 used motor vehicles that have been previously used
14 exclusively and regularly by that person in the
15 conduct of business and used motor vehicles traded in
16 on motor vehicles sold by that person,

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

20 c. motor vehicle financing provided by that person to
21 retail consumers for motor vehicles is limited to used
22 vehicles sold by that person in the conduct of
23 business; or
24

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

3 SECTION 4. AMENDATORY 47 O.S. 2001, Section 1102, as
4 last amended by Section 1, Chapter 177, O.S.L. 2007 (47 O.S. Supp.
5 2007, Section 1102), is amended to read as follows:

6 Section 1102. As used in the Oklahoma Vehicle License and
7 Registration Act:

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

15 2. "Carrying capacity" means the carrying capacity of a vehicle
16 as determined or declared in tons of cargo or payload by the owner;
17 provided, that such declared capacity shall not be less than the
18 minimum tonnage capacity fixed, listed or advertised by the
19 manufacturer of any vehicle;

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

23 4. "Chips and oil" or the term "road oil and crushed rock"
24 means, with respect to materials authorized for use in the surfacing

1 of roads or highways in this title or in any equivalent statute
2 pertaining to road or highway surfacing in the State of Oklahoma,
3 any asphaltic materials. Wherever chips and oil or road oil and
4 crushed rock are authorized for use in the surfacing of roads or
5 highways in this state, whether by the Department of Transportation,
6 or by the county commissioners, or other road building authority
7 subject to the Oklahoma Vehicle License and Registration Act,
8 asphaltic materials are also authorized for use in such surfacing
9 and construction;

10 5. "Combined laden weight" means the weight of a truck or
11 station wagon and its cargo or payload transported thereon, or the
12 weight of a truck or truck-tractor plus the weight of any trailers
13 or semitrailers together with the cargo or payload transported
14 thereon;

15 6. "Commercial trailer" means any trailer, as defined in
16 Section 1-180 of this title, or semitrailer, as defined in Section
17 1-162 of this title, when such trailer or semitrailer is used
18 primarily for business or commercial purposes;

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

22 8. "Commercial vehicle" means any vehicle over eight thousand
23 (8,000) pounds combined laden weight used primarily for business or
24 commercial purposes. Each motor vehicle being registered pursuant

1 to the provisions of this section shall have the name of the
2 commercial establishment or the words "Commercial Vehicle"
3 permanently and prominently displayed upon the outside of the
4 vehicle in letters not less than two (2) inches high. Such letters
5 shall be in sharp contrast to the background and shall be of
6 sufficient shape and color as to be readily legible during daylight
7 hours, from a distance of fifty (50) feet while the vehicle is not
8 in motion;

9 9. "Commission" or "Tax Commission" means the Oklahoma Tax
10 Commission;

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

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

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

24

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

4 14. "Low-speed electrical vehicle" means any four-wheeled
5 electrical vehicle that is powered by an electric motor that draws
6 current from rechargeable storage batteries or other sources of
7 electrical current and whose top speed is greater than twenty (20)
8 miles per hour but not greater than twenty-five (25) miles per hour
9 and is manufactured in compliance with the National Highway Traffic
10 Safety Administration standards for low-speed vehicles in 49 C.F.R.
11 571.500;

12 15. "Manufactured home" means a residential dwelling built in
13 accordance with the National Manufactured Housing Construction and
14 Safety Standards Act of 1974, 42 U.S.C., Section 5401 et seq., and
15 rules promulgated pursuant thereto and the rules promulgated by the
16 Oklahoma Used Motor Vehicle and Parts Commission pursuant to Section
17 582 of this title;

18 16. "Manufactured home dealer" means any person, firm or
19 corporation engaged in the business of selling any new and unused,
20 or used, or both new and used manufactured homes. Such information
21 and a valid franchise letter as proof of authorization to sell any
22 such new manufactured home product line or lines shall be attached
23 to said application for a dealer license to sell manufactured homes.
24 "Manufactured home dealer" shall not include any person, firm or

1 corporation who sells or contracts for the sale of the dealer's own
2 personally titled manufactured home or homes. No person, firm or
3 corporation shall be considered a manufactured home dealer as to any
4 manufactured home purchased or acquired by such person, firm or
5 corporation for purposes other than resale; provided, that the
6 restriction set forth in this sentence shall not prevent an
7 otherwise qualified person, firm or corporation from utilizing a
8 single manufactured home as a sales office;

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

13 18. "New vehicle" or "unused vehicle" means a vehicle which has
14 been in the possession of the manufacturer, distributor or
15 wholesaler or has been sold only by the manufacturer, distributor or
16 wholesaler to a dealer;

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

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

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

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

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

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

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

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

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

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

20 29. "Travel trailer" means any vehicular portable structure
21 built on a chassis, used as a temporary dwelling for travel,
22 recreational or vacation use, and, when factory-equipped for the
23 road, it shall have a body width not exceeding eight (8) feet and an
24

1 overall length not exceeding forty (40) feet, including the hitch or
2 coupling;

3 30. "Travel trailer dealer" means any person, firm or
4 corporation engaged in the business of selling any new and unused,
5 or used, or both new and used travel trailers. Such information and
6 a valid franchise letter as proof of authorization to sell any such
7 new travel trailer product line or lines shall be attached to said
8 application for a dealer license to sell travel trailers. "Travel
9 trailer dealer" shall not include any person, firm or corporation
10 who sells or contracts for the sale of his or her own personally
11 titled travel trailer or trailers. No person, firm or corporation
12 shall be considered as a travel trailer dealer as to any travel
13 trailer purchased or acquired by such person, firm or corporation
14 for purposes other than resale;

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

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

23 33. "Utility vehicle" means a vehicle powered by an internal
24 combustion engine, manufactured and used exclusively for off-highway

1 use, traveling on four or more tires, equipped with seating for two
2 or more people and a steering wheel. "Utility vehicle" does not
3 include tractors or implements of husbandry;

4 34. "Vehicle" means any type of conveyance or device in, upon
5 or by which a person or property is or may be transported from one
6 location to another upon the avenues of public access within the
7 state. "Vehicle" does not include bicycles, trailers except travel
8 trailers and rental trailers, or implements of husbandry as defined
9 in Section 1-125 of this title. All implements of husbandry used as
10 conveyances shall be required to display the owner's driver's
11 license number or license plate number of any vehicle owned by the
12 owner of the implement of husbandry on the rear of the implement in
13 numbers not less than two (2) inches in height. The use of the
14 owner's social security number on the rear of the implement of
15 husbandry shall not be required; and

16 ~~34.~~ 35. "Vehicle remanufacturer" means a commercial entity
17 which assembles remanufactured vehicles.

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

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