

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

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

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

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

12 5. Being a new motor vehicle dealer or new motor vehicle
13 salesperson who:

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

19 b. uses any false or misleading advertising in connection
20 with business as a new motor vehicle dealer or vehicle
21 salesperson,

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

24

- d. has failed or refused to perform any written agreement with any retail buyer involving the sale of a motor vehicle,
- e. has been convicted of a crime involving moral turpitude,
- f. has committed a fraudulent act in selling, purchasing or otherwise dealing in new motor vehicles or has misrepresented the terms and conditions of a sale, purchase or contract for sale or purchase of a new motor vehicle or any interest therein including an option to purchase such vehicle, or
- g. has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license;

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

7. Being a new motor vehicle dealer who:

- a. does not have an established place of business,
- b. does not provide for a suitable repair shop separate from the display room with ample space to repair or recondition one or more vehicles at the same time, and which is equipped with such parts, tools and equipment as may be requisite for the servicing of motor vehicles in such a manner as to make them comply with

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

23 8. Being a factory that has:
24

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
24 participate or contribute to any local or national

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

13 9. Being a factory that:

- 14 a. has attempted to coerce or has coerced any new motor
15 vehicle dealer to enter into any agreement or to
16 cancel any agreement, or fails to act in good faith
17 and in a fair, equitable and nondiscriminatory manner;
18 or has directly or indirectly coerced, intimidated,
19 threatened or restrained any motor vehicle dealer; or
20 has acted dishonestly, or has failed to act in
21 accordance with the reasonable standards of fair
22 dealing,
- 23 b. has failed to compensate its dealers for the work and
24 services they are required to perform in connection

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

1 dealer compensation or any charge-backs for warranty
2 parts or service compensation. Audits of warranty
3 payments shall only be for the one-year period
4 immediately following the date of the payment. A
5 manufacturer shall reserve the right to reasonable,
6 periodic audits to determine the validity of paid
7 claims for dealer compensation or any charge-backs for
8 consumer or dealer incentives. Audits of incentive
9 payments shall only be for a one-year period
10 immediately following the date of the payment. A
11 factory shall not deny a claim or charge a new motor
12 vehicle dealer back subsequent to the payment of the
13 claim unless the factory can show that the claim was
14 false or fraudulent or that the new motor vehicle
15 dealer failed to reasonably substantiate the claim by
16 the written reasonable procedures of the factory;
17 provided, however, a manufacturer shall not charge
18 back a dealer upon audit or otherwise for failure of
19 the dealer to substantiate that a purchaser completed
20 title and vehicle registration following taking
21 possession of a new vehicle upon sale if the dealer
22 has written proof of sale of the vehicle, or
23 c. unreasonably fails or refuses to offer to its same
24 line-make franchised dealers all models manufactured

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

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

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

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

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

- 10 (1) owns any ownership interest or has any financial
11 interest in a new motor vehicle dealer or any
12 person who sells products or services to the
13 public,
14 (2) operates or controls a new motor vehicle dealer,
15 or
16 (3) acts in the capacity of a new motor vehicle
17 dealer.

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

1 expect to acquire full ownership of a new motor
2 vehicle dealer within a reasonable period of time
3 not to exceed ten (10) years and on reasonable
4 terms and conditions. The ten-year acquisition
5 period may be expanded for good cause shown.

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

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

22 (4) This paragraph does not prohibit a factory from
23 owning, directly or indirectly, a minority
24 interest in an entity that owns, operates or

1 controls motor vehicle dealerships of the same
2 line-make franchised by the manufacturer,
3 provided that each of the following conditions
4 are met:

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

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

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

22 (d) during any period in which the manufacturer
23 has such an ownership interest, the
24 manufacturer has no more than three

1 franchise agreements with new motor vehicle
2 dealers licensed by the Oklahoma Motor
3 Vehicle Commission to do business within the
4 state, and

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

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

22 a. any information derived from monthly financial
23 statements provided to the factory, and
24

1 b. any information regarding any aspect of the
2 profitability of a particular new motor vehicle
3 dealer;

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

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

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

13 a. the facility and the proposed new location satisfies
14 or meets the written reasonable guidelines of the
15 factory, and

16 b. the proposed new location is within the area of
17 responsibility of the new motor vehicle dealer
18 pursuant to Section 578.1 of this title;

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

23 18. Being a factory that increases prices of new motor vehicles
24 which the new motor vehicle dealer had ordered for retail consumers

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

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

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

23
24

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 2. This act shall become effective July 1, 2011.

4 SECTION 3. It being immediately necessary for the preservation
5 of the public peace, health and safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

8
9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04-04-2011 - DO
10 PASS, As Amended.

11
12
13
14
15
16
17
18
19
20
21
22
23
24