

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2542

By: McCullough

4
5 AS INTRODUCED

6 An Act relating to motor vehicles; amending 47 O.S.
7 2011, Sections 561, 562, 563, 564, 565, 565.1, 566,
8 572, 573, 578.1, 579 and 579.1, which relate to the
9 Oklahoma Motor Vehicle Commission; expanding duties
10 to include licensing and regulation of powersports
11 vehicle dealers; modifying definitions; defining
12 terms; updating language to include powersports
13 vehicle dealers; defining terms; providing for
14 reimbursement upon termination; requiring
15 reimbursement within certain period; providing
16 inventory procedures; providing reimbursement for
17 cost of storage; allowing immediate possession;
18 providing liability for nonpayment; providing
19 exemptions from reimbursement; prohibiting required
20 arbitration; prohibiting certain requirements of
21 dealer; prohibiting certain discrimination; requiring
22 reimbursement for cost of recall; prohibiting certain
23 financing practices; requiring notice of denial;
24 providing denial protest procedures; prohibiting
certain practices; requiring reasonable delivery
time; providing exceptions; requiring notice of
termination; providing termination procedures;
defining term; requiring certain notice; requiring
inclusion of certain statement; providing grounds for
termination; allowing for protest and hearing;
requiring establishment of franchise upon
termination; requiring mediation; providing detailed
specifications for mediation; amending 47 O.S. 2011,
Section 1102, which relates to registration;
modifying definitions; providing for codification;
and providing an effective date.

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

2 SECTION 1. AMENDATORY 47 O.S. 2011, Section 561, is
3 amended to read as follows:

4 Section 561. The Legislature finds and declares that the
5 distribution and sale of powersports vehicles and new motor vehicles
6 in the State of Oklahoma vitally affects the general economy of the
7 state and the public interest and the public welfare, and that in
8 order to promote the public interest and the public welfare, and in
9 the exercise of its police powers, it is necessary to regulate and
10 to license powersports vehicle and motor vehicle manufacturers,
11 distributors, representatives, powersports vehicle and new motor
12 vehicle dealers and salespersons of powersports vehicles and new
13 motor vehicles doing business in Oklahoma, in order to prevent
14 frauds, impositions and other abuses upon its citizens and to
15 protect and preserve the investments and properties of the citizens
16 of this state, and in order to avoid undue control of the
17 independent powersports vehicle and motor vehicle dealer by the
18 powersports vehicle and motor vehicle manufacturing and distributing
19 organizations, and in order to foster and keep alive vigorous and
20 healthy competition by prohibiting unfair practices by which fair
21 and honest competition is destroyed or prevented, and to protect the
22 public against the creation or perpetuation of monopolies and
23 practices detrimental to the public welfare, to prevent the practice
24 of requiring the buying of special features, appliances and

1 equipment not desired or requested by the purchaser, to prevent
2 false and misleading advertising, to prevent unfair practices by
3 powersports vehicle and motor vehicle dealers, manufacturers and
4 distributing organizations, to promote the public safety and prevent
5 disruption of the franchise system of distribution of powersports
6 vehicles and motor vehicles to the public and prevent deterioration
7 of facilities for servicing powersports vehicles and motor vehicles
8 and keeping same safe and properly functioning, and prevent
9 bankrupting of powersports vehicle and motor vehicle dealers, who
10 might otherwise be caused to fail because of such unfair practices.

11 SECTION 2. AMENDATORY 47 O.S. 2011, Section 562, is
12 amended to read as follows:

13 Section 562. The following words, terms and phrases, when used
14 in Sections 561 through 567, 572, 578.1, 579, ~~and 579.1,~~ 580 and
15 580.2 of this title and Sections 14 through 30 of this act, shall
16 have the meanings respectively ascribed to them in this section,
17 except where the context clearly indicates a different meaning:

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

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

1 ~~sells, offers for sale, advertises to sell, leases or displays new~~
2 ~~motor vehicles and holds a bona fide contract or franchise in effect~~
3 ~~with a manufacturer or distributor authorized by the manufacturer to~~
4 ~~make predelivery preparation of such vehicles sold to purchasers and~~
5 ~~to perform post-sale work pursuant to the manufacturer's or~~
6 ~~distributor's warranty. As used herein, "authorized predelivery~~
7 ~~preparation" means the rendition by the dealer of services and~~
8 ~~safety adjustments on each new motor vehicle in accordance with the~~
9 ~~procedure and safety standards required by the manufacturer of the~~
10 ~~vehicle to be made before its delivery to the purchaser.~~
11 ~~"Performance of authorized post-sale work pursuant to the warranty",~~
12 ~~as used herein, means the rendition of services which are required~~
13 ~~by the terms of the warranty that stands extended to the vehicle at~~
14 ~~the time of its sale and are to be made in accordance with the~~
15 ~~safety standards prescribed by the manufacturer. The term includes~~
16 ~~premises or facilities at which a person engages only in the repair~~
17 ~~of motor vehicles if repairs are performed pursuant to the terms of~~
18 ~~a franchise and motor vehicle manufacturer's warranty. However, the~~
19 ~~term shall not include premises or facilities at which a new motor~~
20 ~~vehicle dealer or dealers within the area of responsibility of such~~
21 ~~dealer or dealers as defined in the manufacturer's franchise~~
22 ~~agreement of such dealer or dealers performs motor vehicle repairs~~
23 ~~pursuant to the terms of a franchise and motor vehicle~~
24 ~~manufacturer's warranty. For the purpose of Sections 561 through~~

1 ~~567, 572, 578.1, 579 and 579.1 of this title, the terms "new motor~~
2 ~~vehicle dealer" and "new motor vehicle dealership" shall be~~
3 ~~synonymous. The term "new motor vehicle dealer" does not include:~~

4 a. ~~receivers, trustees, administrators, executors,~~
5 ~~guardians or other persons appointed by or acting~~
6 ~~under judgment or order of any court,~~

7 b. ~~public officers while performing or in operation of~~
8 ~~their duties, or~~

9 c. ~~employees of persons, corporations or associations~~
10 ~~enumerated in subparagraph a of this paragraph when~~
11 ~~engaged in the specific performance of their duties as~~
12 ~~such employees;~~

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

18 4. ~~"Commission" means the Oklahoma Motor Vehicle Commission;~~

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

1 ~~6. "Distributor" means any person, firm, association,~~
2 ~~corporation or trust, resident or nonresident, who, being authorized~~
3 ~~by the original manufacturer, in whole or in part sells or~~
4 ~~distributes new and unused motor vehicles to motor vehicle dealers,~~
5 ~~or who maintains distributor representatives;~~

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

12 ~~8. "Distributor branch" means any branch office similarly~~
13 ~~maintained by a distributor for the same purposes a factory branch~~
14 ~~is maintained;~~

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

20 ~~10. "Distributor representative" means any person, firm,~~
21 ~~association, corporation or trust and each officer and employee~~
22 ~~thereof engaged as a representative of a distributor or distributor~~
23 ~~branch of motor vehicles, for the purpose of making or promoting the~~
24

1 ~~sale of its motor vehicles, or for supervising or contacting its~~
2 ~~dealers or prospective dealers;~~

3 ~~11. "Franchise" means any contract or agreement between a motor~~
4 ~~vehicle dealer and a manufacturer of a new motor vehicle or its~~
5 ~~distributor or factory branch by which the dealer is authorized to~~
6 ~~engage in the business of selling any specified make or makes of new~~
7 ~~motor vehicles;~~

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

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

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

24

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

5 ~~16. "Product" means new motor vehicles and new motor vehicle~~
6 ~~parts;~~

7 ~~17. "Service" means motor vehicle warranty repairs including~~
8 ~~both parts and labor;~~

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

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

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

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

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

22 4. "Distributor branch" means any branch office similarly
23 maintained by a distributor for the same purposes a factory branch
24 is maintained;

1 5. "Distributor representative" means any person, firm,
2 association, corporation or trust and each officer and employee
3 thereof engaged as a representative of a distributor or distributor
4 branch of motor vehicles, for the purpose of making or promoting the
5 sale of its motor vehicles, or for supervising or contacting its
6 dealers or prospective dealers;

7 6. "Factory" means a manufacturer, distributor, factory branch,
8 distributor branch, factory representative or distributor
9 representative, which manufactures or distributes vehicle products;

10 7. "Factory branch" means any branch office maintained by a
11 person, firm, association, corporation or trust who manufactures or
12 assembles motor vehicles for the sale of motor vehicles to
13 distributors, or for the sale of motor vehicles to motor vehicle
14 dealers, or for directing or supervising, in whole or in part, its
15 representatives;

16 8. "Factory representative" means any officer or agent engaged
17 as a representative of a manufacturer of motor vehicles or by a
18 factory branch, for the purpose of making or promoting the sale of
19 its motor vehicles, or for supervising or contacting its dealers or
20 prospective dealers;

21 9. "Franchise" means any contract or agreement between a motor
22 vehicle dealer and a manufacturer of a new motor vehicle or its
23 distributor or factory branch by which the dealer is authorized to
24

1 engage in the business of selling any specified make or makes of new
2 motor vehicles;

3 10. "Lead" means a consumer contact in response to a factory
4 program designed to generate interest in purchasing or leasing a new
5 motor vehicle;

6 11. "Manufacturer" means any person, firm, association,
7 corporation or trust, resident or nonresident, who manufactures or
8 assembles new and unused motor vehicles or who engages in the
9 fabrication or assembly of motorized vehicles of a type required to
10 be registered in the State of Oklahoma;

11 12. "Mediation" means a nonbinding forum in which an impartial
12 mediator facilitates communication between parties to promote
13 reconciliation, settlement, or understanding between the parties;

14 13. "Motor vehicle" means any motor-driven vehicle required to
15 be registered under the Oklahoma Vehicle License and Registration
16 Act except recreational vehicles, as defined in the Recreational
17 Vehicle Franchise Act, powersports vehicles as defined in this
18 section, and all-terrain vehicles, utility vehicles, and motorcycles
19 used exclusively for off-road use and sold by a retail implement
20 dealer;

21 14. "Motor vehicle salesperson" means any person who, for gain
22 or compensation of any kind, either directly or indirectly,
23 regularly or occasionally, by any form of agreement or arrangement,
24

1 sells or negotiates for the sale of any new motor vehicle for any
2 new motor vehicle dealer to any one or more third parties;

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

15 "Performance of authorized post-sale work pursuant to the warranty",
16 as used herein, means the rendition of services which are required
17 by the terms of the warranty that stands extended to the vehicle at
18 the time of its sale and are to be made in accordance with the
19 safety standards prescribed by the manufacturer. The term includes
20 premises or facilities at which a person engages only in the repair
21 of motor vehicles if repairs are performed pursuant to the terms of
22 a franchise and motor vehicle manufacturer's warranty. However, the
23 term shall not include premises or facilities at which a new motor
24 vehicle dealer or dealers within the area of responsibility of such

1 dealer or dealers as defined in the manufacturer's franchise
2 agreement of such dealer or dealers performs motor vehicle repairs
3 pursuant to the terms of a franchise and motor vehicle
4 manufacturer's warranty. For the purpose of Sections 561 through
5 567, 572, 578.1, 579, 579.1, 580 and 580.2 of this title and
6 Sections 14 through 30 of this act, the terms "new motor vehicle
7 dealer" and "new motor vehicle dealership" shall be synonymous. The
8 term "new motor vehicle dealer" does not include:

- 9 a. receivers, trustees, administrators, executors,
10 guardians or other persons appointed by or acting
11 under judgment or order of any court,
- 12 b. public officers while performing or in operation of
13 their duties, or
- 14 c. employees of persons, corporations or associations
15 enumerated in subparagraph a of this paragraph when
16 engaged in the specific performance of their duties as
17 such employees;

18 16. "New or unused motor vehicle" means a vehicle which is in
19 the possession of the manufacturer or distributor or has been sold
20 only to the holder of a valid selling agreement, franchise or
21 contract, granted by the manufacturer or distributor for the sale of
22 that make of new vehicle so long as the manufacturer's statement of
23 origin has not been assigned to anyone other than a licensed
24 franchised new motor vehicle dealer of the same line-make;

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

3 18. "Powersports vehicle" means motorcycles, scooters, mopeds,
4 all-terrain vehicles, and utility vehicles;

5 19. "Powersports vehicle dealer" means any person, firm, or
6 corporation who is in the business of selling any new and unused or
7 used, or both new and used powersports vehicles except for retail
8 implement dealers;

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

11 21. "Retail implement dealer" means a business engaged
12 primarily in the sale of farm tractors as defined in Section 1-118
13 of this title or implements of husbandry as defined in Section 1-125
14 of this title or a combination thereof;

15 22. "Sell or sale" means to sell or lease;

16 23. "Service" means motor vehicle warranty repairs including
17 both parts and labor; and

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

22 SECTION 3. AMENDATORY 47 O.S. 2011, Section 563, is
23 amended to read as follows:

1 Section 563. A. There is hereby created the Oklahoma Motor
2 Vehicle Commission, to be composed of nine (9) members. Seven of
3 the members shall have been engaged in the manufacture, distribution
4 or sale of powersports vehicles or new motor vehicles and two
5 members shall be lay members, all to be appointed by the Governor of
6 the State of Oklahoma, with the advice and consent of the State
7 Senate. Such appointments shall be made within thirty (30) days
8 after the effective date of this section. Each of the Commissioners
9 thus appointed shall, at the time of the appointment, be a resident
10 in good faith of the State of Oklahoma, shall be of good moral
11 character, and each of the industry-related Commissioners shall have
12 been actually engaged in the manufacture, distribution or sale of
13 such powersports vehicles or new motor vehicles for not less than
14 ten (10) years next preceding such appointment. The members of the
15 Commission shall serve at the pleasure of the Governor.

16 B. 1. The Commissioners shall elect a Chairman from amongst
17 them whose term shall be for one (1) year with the right to succeed
18 him or herself.

19 2. There shall be three at large members of the Commission.
20 Six members of the Commission shall be appointed from the following
21 geographical areas with at least one member from each area:

22 a. four areas of the state shall be the northwest,
23 northeast, southwest and southeast sections designated
24 by Interstate 35 dividing the state east and west and

1 Interstate 40 dividing the state north and south,
2 excluding Oklahoma County and Tulsa County, and

3 b. two additional areas shall be Oklahoma County and
4 Tulsa County.

5 There shall not be more than two members of the Commission from any
6 one area.

7 C. The terms of office of the members first appointed to the
8 Commission shall be as follows:

9 1. The members appointed from the northwest, northeast and
10 southwest areas shall serve until June 30, 1987;

11 2. The members appointed from the southeast area and Oklahoma
12 County and Tulsa County shall serve until June 30, 1989; and

13 3. The members appointed at large shall serve until June 30,
14 1991.

15 Each member shall serve until a successor is appointed and
16 qualifies. Thereafter, the term of office of each member of the
17 Commission shall be for six (6) years. The term of office of any
18 member will automatically expire if the member moves out of the
19 geographical area from which the member was appointed. In event of
20 death, resignation, removal, or term automatically expiring, of any
21 person serving on the Commission, the vacancy shall be filled by
22 appointment as provided for the unexpired portion of the term. The
23 Commission shall meet at Oklahoma City and complete its organization
24 immediately after the membership thereof has been appointed and has

1 qualified. The Chairman and each member of the Commission shall
2 take and subscribe to the oath of office required of public
3 officers.

4 D. The members of the Commission shall receive reimbursement
5 for subsistence and traveling expenses necessarily incurred in the
6 performance of their duties as provided by the State Travel
7 Reimbursement Act.

8 E. The Commission shall appoint a qualified person to serve as
9 Executive Director thereof, which person shall have had not less
10 than ten (10) years of experience in the powersports vehicle or
11 motor vehicle industry. The Executive Director shall be appointed
12 for a term of six (6) years, and shall not be subject to dismissal
13 or removal without cause. The Commission shall fix the salary and
14 prescribe the duties of the Executive Director. The Executive
15 Director shall devote such time as necessary to fulfill the duties
16 thereof, and before entering upon such duties shall take and
17 subscribe to the oath of office. The Executive Director may employ
18 such clerical, technical and other help and legal services and incur
19 such expenses as may be necessary for the proper discharge of the
20 duties of the Executive Director under this act. The Commission
21 shall maintain its office and transact its business in Oklahoma
22 City, and it is authorized to adopt and use a seal. The Executive
23 Director is hereby authorized to hire, retain or otherwise acquire
24 the services of an attorney to represent the Commission in any and

1 all state and federal courts, and assist the Commission in any and
2 all business or legal matters that may come before it. The attorney
3 so representing the Commission shall discharge the duties under the
4 direction of the Executive Director.

5 F. The Commission is hereby vested with the powers necessary to
6 enable it to fully and effectively carry out the provisions and
7 objects of this act, and is hereby authorized and empowered to make
8 and enforce all reasonable rules and to adopt and prescribe all
9 forms necessary to accomplish such purpose. All forms used by a
10 powersports vehicle or new motor vehicle dealer to facilitate the
11 delivery of a vehicle pending approval of financing shall be
12 approved by the Commission.

13 G. All fees, charges and fines collected under the provisions
14 of this act shall be deposited by the Executive Director in the
15 State Treasury in accordance with the depository laws of this state
16 in a special fund to be known as the "Oklahoma Motor Vehicle
17 Commission Fund", which is hereby created, and except as hereinafter
18 provided the monies in the fund shall be used by the Commission for
19 the purpose of carrying out and enforcing the provisions of this
20 act. Expenditures from the fund shall be made upon vouchers
21 approved by the Commission or its authorized officers.

22 At the close of each fiscal year, the Commission shall file with
23 the Governor and the State Auditor and Inspector a true and correct
24 report of all fees, fines and charges collected and received by it

1 during the preceding fiscal year and shall at the same time pay into
2 the General Revenue Fund of the state a sum equal to ten percent
3 (10%) of the fees, fines and charges so collected and received.

4 All expenses incurred by the Commission in carrying out the
5 provisions of this act, including but not limited to per diem,
6 wages, salaries, rent, postage, advertising, supplies, bond
7 premiums, travel and subsistence for the Commissioners, the
8 Executive Director, employees, and legal counsel, and printing and
9 utilities, shall be a proper charge against such fund, exclusive of
10 the portion thereof to be paid into the General Revenue Fund as
11 above set out. In no event shall liability ever accrue hereunder
12 against this state in any sum whatsoever, or against the Oklahoma
13 Motor Vehicle Commission Fund, in excess of the ninety percent (90%)
14 of the fees, fines and charges deposited therein.

15 SECTION 4. AMENDATORY 47 O.S. 2011, Section 564, is
16 amended to read as follows:

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

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

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

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

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

24

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

4 1. For each factory branch or distributor branch, Four Hundred
5 Dollars (\$400.00) initial fee with annual renewal fee of Three
6 Hundred Dollars (\$300.00);

7 2. For each manufacturer or distributor of powersports vehicles
8 or new motor vehicles, Four Hundred Dollars (\$400.00) initial fee
9 with annual renewal fee of Three Hundred Dollars (\$300.00);

10 3. For each factory representative or distributor
11 representative, One Hundred Dollars (\$100.00) annually;

12 4. For each powersports vehicle or new motor vehicle dealer,
13 initial fee of Three Hundred Dollars (\$300.00) per franchise sold at
14 each location licensed, with an annual renewal fee of One Hundred
15 Dollars (\$100.00) per franchise sold at each location per year; and

16 5. For each salesperson, Twenty-five Dollars (\$25.00) renewed
17 annually.

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

1 vehicle dealer pursuant to the provisions of Section 578.1 of this
2 title. The license of each dealer shall be posted in a conspicuous
3 place in the dealer's place or places of business.

4 Every powersports vehicle or motor vehicle salesperson, factory
5 representative or distributor representative if an individual shall
6 physically possess the license when engaged in business, and shall
7 display same upon request. The name of the employer of such
8 salesperson, factory representative or distributor representative
9 shall be stated on the license and, in case of a change of employer,
10 the holder of such license shall immediately mail same to the
11 Commission for its endorsement of such change thereon. The
12 Commission shall endorse each such change of employer on licenses
13 for a fee of Ten Dollars (\$10.00).

14 SECTION 5. AMENDATORY 47 O.S. 2011, Section 565, is
15 amended to read as follows:

16 Section 565. A. The Oklahoma Motor Vehicle Commission may deny
17 an application for a license, or revoke or suspend a license or
18 impose a fine not to exceed Ten Thousand Dollars (\$10,000.00)
19 against a manufacturer or distributor or a fine not to exceed One
20 Thousand Dollars (\$1,000.00) against a dealer per occurrence that
21 any provision of Sections 561 through 567, 572, 578.1, 579 and,
22 579.1, 580 and 580.2 of this title and Sections 14 through 30 of
23 this act is violated or for any of the following reasons:

24

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 powersports vehicle or new motor vehicle dealer or
13 powersports vehicle or new motor vehicle salesperson who:

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

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

24

- 1 c. has committed any unlawful act which resulted in the
2 revocation of any similar license in another state,
3 d. has failed or refused to perform any written agreement
4 with any retail buyer involving the sale of a
5 powersports vehicle or new motor vehicle,
6 e. has been convicted of a crime involving moral
7 turpitude,
8 f. has committed a fraudulent act in selling, purchasing
9 or otherwise dealing in powersports vehicles or new
10 motor vehicles or has misrepresented the terms and
11 conditions of a sale, purchase or contract for sale or
12 purchase of a powersports vehicle or new motor vehicle
13 or any interest therein including an option to
14 purchase such vehicle, or
15 g. has failed to meet or maintain the conditions and
16 requirements necessary to qualify for the issuance of
17 a license;

18 6. Being a powersports vehicle or new motor vehicle salesperson
19 who is not employed as such by a licensed powersports vehicle or new
20 motor vehicle dealer;

- 21 7. Being a powersports vehicle or new motor vehicle dealer who:
22 a. does not have an established place of business,
23 b. does not provide for a suitable repair shop separate
24 from the display room with ample space to repair or

1 recondition one or more vehicles at the same time, and
2 which is equipped with such parts, tools and equipment
3 as may be requisite for the servicing of powersports
4 vehicles or motor vehicles in such a manner as to make
5 them comply with the safety laws of this state and to
6 properly fulfill the dealer's or manufacturer's
7 warranty obligation,

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

16 d. employs unlicensed salespersons, or employs or
17 utilizes the services of used motor vehicle lots or
18 dealers or other unlicensed persons in connection with
19 the sale of powersports vehicles or new motor
20 vehicles,

21 e. does not properly service a powersports vehicle or new
22 motor vehicle before delivery of same to the original
23 purchaser thereof, or

1 f. fails to order and stock a reasonable number of
2 powersports vehicles or new motor vehicles necessary
3 to meet customer demand for each of the powersports
4 vehicles or new motor vehicles included in the
5 powersports vehicle or new motor vehicle dealer's
6 franchise agreement, unless the powersports vehicles
7 or new motor vehicles are not readily available from
8 the manufacturer or distributor due to limited
9 production;

10 8. Being a factory that has:

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

14 (1) to accept delivery of any powersports vehicle or
15 vehicles or motor vehicle or vehicles, parts or
16 accessories therefor, or any other commodities
17 including advertising material which shall not
18 have been ordered by the powersports vehicle or
19 new motor vehicle dealer,

20 (2) to order or accept delivery of any powersports
21 vehicle or motor vehicle with special features,
22 appliances, accessories or equipment not included
23 in the list price of the powersports vehicles or
24

1 motor vehicles as publicly advertised by the
2 manufacturer thereof, or

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

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

1 in this section shall prohibit a factory from
2 supporting an advertising association which is open to
3 all dealers on the same basis;

4 9. Being a factory that:

5 a. has attempted to coerce or has coerced any powersports
6 vehicle or new motor vehicle dealer to enter into any
7 agreement or to cancel any agreement, or fails to act
8 in good faith and in a fair, equitable and
9 nondiscriminatory manner; or has directly or
10 indirectly coerced, intimidated, threatened or
11 restrained any powersports vehicle or new motor
12 vehicle dealer; or has acted dishonestly, or has
13 failed to act in accordance with the reasonable
14 standards of fair dealing,

15 b. has failed to compensate its dealers for the work and
16 services they are required to perform in connection
17 with the dealer's delivery and preparation obligations
18 according to the agreements on file with the
19 Commission which must be found by the Commission to be
20 reasonable, or fail to adequately and fairly
21 compensate its dealers for labor, parts and other
22 expenses incurred by such dealer to perform under and
23 comply with manufacturer's warranty agreements. In
24 determining whether the warranty compensation is

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

1 Audits of incentive payments shall only be for a one-
2 year period immediately following the date of the
3 payment. A factory shall not deny a claim or charge a
4 powersports vehicle or new motor vehicle dealer back
5 subsequent to the payment of the claim unless the
6 factory can show that the claim was false or
7 fraudulent or that the powersports vehicle or new
8 motor vehicle dealer failed to reasonably substantiate
9 the claim by the written reasonable procedures of the
10 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 powersports vehicle or new motor vehicle shall not be
20 considered a violation of the section if the failure
21 is not arbitrary or is due to lack of manufacturing
22 capacity or to a strike or labor difficulty, a
23 shortage of materials, a freight embargo or other
24 cause over which the manufacturer has no control.

1 However, this subparagraph shall not apply to
2 recreational vehicles or limited production model
3 vehicles;

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

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

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

2 (1) owns any ownership interest or has any financial
3 interest in a powersports vehicle or new motor
4 vehicle dealer or any person who sells products
5 or services to the public,

6 (2) operates or controls a powersports vehicle or new
7 motor vehicle dealer, or

8 (3) acts in the capacity of a powersports vehicle or
9 new motor vehicle dealer.

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

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

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

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

- 1 (a) all of the powersports vehicle or new motor
2 vehicle dealerships selling the powersports
3 vehicle or new motor vehicle of that
4 manufacturer in this state trade exclusively
5 in the line-make of that manufacturer,
6 (b) all of the franchise agreements of the
7 manufacturer confer rights on the dealer of
8 the line-make to develop and operate, within
9 a defined geographic territory or area, as
10 many dealership facilities as the dealer and
11 manufacturer shall agree are appropriate,
12 (c) at the time the manufacturer first acquires
13 an ownership interest or assumes operation,
14 the distance between any dealership thus
15 owned or operated and the nearest
16 unaffiliated powersports vehicle or new
17 motor vehicle dealership trading in the same
18 line-make is not less than seventy (70)
19 miles,
20 (d) during any period in which the manufacturer
21 has such an ownership interest, the
22 manufacturer has no more than three
23 franchise agreements with powersports
24 vehicle or new motor vehicle dealers

1 licensed by the Oklahoma Motor Vehicle
2 Commission to do business within the state,
3 and

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

15 13. Being a factory which directly or indirectly makes
16 available for public disclosure any proprietary information provided
17 to the factory by a powersports vehicle or new motor vehicle dealer,
18 other than in composite form to dealers in the same line-make or in
19 response to a subpoena or order of the Commission or a court.

20 Proprietary information includes, but is not limited to, information
21 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 powersports vehicle or
3 new motor vehicle 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
9 powersports vehicle or new motor vehicle dealer for the purpose of
10 unfairly competing with dealers;

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

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

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

21 17. Being a factory which prohibits a powersports vehicle or
22 new motor vehicle dealer from adding additional line-makes to its
23 existing facility, if, after adding the additional line-makes, the
24

1 facility satisfies the written reasonable facility guidelines of the
2 factory; and

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

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

22 B. Notwithstanding the terms of any franchise agreement, in the
23 event of a proposed sale or transfer of a dealership, the
24 manufacturer or distributor shall be permitted to exercise a right

1 of first refusal to acquire the assets or ownership interest of the
2 dealer of the new vehicle dealership, if such sale or transfer is
3 conditioned upon the manufacturer or dealer entering into a dealer
4 agreement with the proposed new owner or transferee, only if all the
5 following requirements are met:

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

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

13 3. The proposed sale or transfer of the assets of the
14 dealership does not involve the transfer or sale to a member or
15 members of the family of one or more dealer owners, or to a
16 qualified manager or a partnership or corporation controlled by such
17 persons; and

18 4. The factory agrees to pay the reasonable expenses, including
19 attorney fees which do not exceed the usual, customary and
20 reasonable fees charged for similar work done for other clients
21 incurred by the proposed new owner and transferee prior to the
22 exercise by the factory of its right of first refusal in negotiating
23 and implementing the contract for the proposed sale or transfer of
24 the dealership or dealership assets. Notwithstanding the foregoing,

1 no payment of expenses and attorney fees shall be required if the
2 proposed new dealer or transferee has not submitted or caused to be
3 submitted an accounting of those expenses within thirty (30) days of
4 receipt of the written request of the factory for such an
5 accounting. The accounting may be requested by a factory before
6 exercising its right of first refusal.

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

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

17 a. any motor vehicle sold by that person is limited to
18 used motor vehicles that have been previously used
19 exclusively and regularly by that person in the
20 conduct of business and used motor vehicles traded in
21 on motor vehicles sold by that person,

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

1 c. motor vehicle financing provided by that person to
2 retail consumers for motor vehicles is limited to used
3 vehicles sold by that person in the conduct of
4 business; or

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

7 SECTION 6. AMENDATORY 47 O.S. 2011, Section 565.1, is
8 amended to read as follows:

9 Section 565.1 Notwithstanding the terms of any franchise
10 agreement, and subject to the following conditions contained in
11 paragraphs 1 through 5 of this section, any manufacturer or
12 distributor who prevents or refuses to honor the succession to a
13 dealership by any legal heir or devisee under the will of a
14 powersports vehicle or new motor vehicle dealer or under the laws of
15 descent and distribution of this state without good cause or good
16 faith, as defined in this section, shall be subject to the following
17 procedure:

18 1. Within one hundred twenty (120) days after the death of the
19 powersports vehicle or new motor vehicle dealer, the manufacturer
20 shall receive a written notice from any legal heir or devisee who
21 intends to establish a successor dealership. If timely notice is
22 not so received, then this paragraph shall not apply, and any
23 succession shall be governed solely by the terms of the franchise;

1 2. Within thirty (30) days of receipt of the legal heir's or
2 devisee's timely written notice, the manufacturer may request, and
3 the legal heir or devisee shall, within a reasonable time, provide
4 any information which is reasonably necessary for the manufacturer
5 to evaluate the proposed successor dealer and dealership, including,
6 but not limited to, applications, proposals for facilities and
7 financing;

8 3. Within sixty (60) days of receipt of such information, the
9 manufacturer shall approve or disapprove the proposed successor
10 dealership, and in case of disapproval shall communicate in writing
11 such disapproval and grounds for disapproval to the legal heir or
12 devisee;

13 4. Failure of the manufacturer to act in a timely manner with
14 respect to any time period described above shall constitute a waiver
15 of the manufacturer's right to disapprove the proposed succession;

16 5. Within ten (10) days of its receipt of the manufacturer's
17 notice of disapproval, the legal heir or devisee may file a protest
18 of the manufacturer's decision with the Oklahoma Motor Vehicle
19 Commission and request a hearing. Such hearing shall be heard in a
20 substantially similar manner as provided by Section 566 of this
21 title, except that the Commission shall render a final decision
22 within sixty (60) days of the filing of the protest. The
23 manufacturer shall have the burden of proof to show that its
24 disapproval was for a good cause and in good faith. The disapproval

1 by the manufacturer shall be final if the legal heir or devisee
2 fails to file a timely protest of such disapproval. In the event
3 that the Commission finds that the manufacturer's disapproval was
4 not made for good cause, then it shall issue a final order requiring
5 the manufacturer to honor the successor designated in the notice
6 sent by the legal heir or devisee. Notwithstanding anything to the
7 contrary in this section, a powersports vehicle or new motor vehicle
8 dealer may designate any person as successor by filing a written
9 instrument pursuant to the franchise with the manufacturer during
10 the powersports vehicle or new motor vehicle dealer's lifetime. In
11 such a case, the written instrument and franchise shall govern the
12 dealership succession.

13 The suspension, revocation or refusal to issue or renew a
14 license or the imposition of any other penalty by the Commission
15 shall be in addition to any penalty which might be imposed upon any
16 licensee upon judgment or conviction in a court of competent
17 jurisdiction for any violation of the provisions of Sections 561
18 through 567, 572, 578.1, 579 ~~and~~, 579.1, 580 and 580.2 of this title
19 or Sections 14 through 30 of this act.

20 SECTION 7. AMENDATORY 47 O.S. 2011, Section 566, is
21 amended to read as follows:

22 Section 566. The Commission may deny any application for
23 license, or suspend or revoke a license issued or impose a fine,
24 only after a hearing of which the applicant, or licensee affected,

1 shall be given at least ten (10) days' written notice specifying the
2 reason for denying the applicant a license, or, in the case of a
3 revocation or suspension or imposition of a fine, the offenses of
4 which the licensee is charged. Such notices may be served as
5 provided by law for the service of notices, or mailing a copy by
6 registered mail to the last-known residence or business address of
7 such applicant or licensee. The hearing on such charges shall be at
8 such time and place as the Commission may prescribe and the
9 aforementioned notice shall further specify the time and place. If
10 such applicant or licensee is a powersports vehicle or motor vehicle
11 salesperson, factory representative or distributor representative,
12 the Commission shall in like manner also notify the person, firm,
13 association, corporation or trust with whom he or she is associated,
14 or in whose association he or she is about to enter. The Commission
15 shall have the power to compel the production of all records, papers
16 and other documents which may be deemed relevant to the proceeding
17 bearing upon the complaints. The Commission shall have the power to
18 subpoena and bring before it any person, or take testimony of any
19 such person by deposition, with the same fees and mileage and in the
20 same manner as prescribed in proceedings before courts of the state
21 in civil cases. Any party to such hearing shall have the right to
22 the attendance of witnesses in his behalf upon designating to the
23 Commission the person or persons sought to be subpoenaed.

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1 SECTION 8. AMENDATORY 47 O.S. 2011, Section 572, is
2 amended to read as follows:

3 Section 572. Any action brought to recover any damages that may
4 be sustained by any powersports vehicle or motor vehicle dealer may
5 be brought in the county in which said dealer is located and in
6 addition to the action for damages he shall be entitled to sue for
7 and have injunctive relief against the threatened loss, damage or
8 injury to his business or property because of any violation of
9 Sections 565 through 566 and 579 of this title or the threatened
10 cancellation, termination or failure to renew any franchise
11 agreement between any factory and said dealer, and the court may
12 grant such injunctive relief, including temporary restraining
13 orders, as it deems just and proper, notwithstanding any other
14 provisions of law, and in addition to any other remedy which may be
15 afforded under any other statute of this state.

16 SECTION 9. AMENDATORY 47 O.S. 2011, Section 573, is
17 amended to read as follows:

18 Section 573. All provisions in this chapter shall be liberally
19 interpreted to protect the public from fraud in the business of
20 purchasing or selling powersports vehicles or motor vehicles and to
21 protect the investments of its citizens in powersports vehicles or
22 motor vehicles and dealerships and to protect the transportation
23 system of the state and shall further be interpreted to affect
24 existing as well as future franchise agreements.

1 SECTION 10. AMENDATORY 47 O.S. 2011, Section 578.1, is
2 amended to read as follows:

3 Section 578.1 A. Notwithstanding the terms of a franchise and
4 notwithstanding the terms of a waiver, if a factory intends or
5 proposes to enter into a franchise to establish an additional
6 powersports vehicle or new motor vehicle dealer or to relocate an
7 existing powersports vehicle or new motor vehicle dealer within or
8 into a relevant market area in which the same line-make of
9 powersports vehicle or motor vehicle is currently represented, the
10 factory shall provide at least sixty (60) days advance written
11 notice to the Commission and to each powersports vehicle or new
12 motor vehicle dealer of the same line-make in the relevant market
13 area, of the intention of the factory to establish an additional
14 powersports vehicle or new motor vehicle dealer or to relocate an
15 existing powersports vehicle or new motor vehicle dealer within or
16 into the relevant market area. For purposes of this section, the
17 "relevant market area" means the area within a radius of fifteen
18 (15) miles of the site of the proposed powersports vehicle or new
19 motor vehicle dealership. The notice shall be sent by certified
20 mail to each party and shall include the following information:

21 1. The specific location at which the additional or relocated
22 powersports vehicle or motor vehicle dealer will be established;

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1 2. The date on or after which the additional or relocated
2 powersports vehicle or motor vehicle intends to commence business at
3 the proposed location;

4 3. The identity of all powersports vehicle or motor vehicle
5 dealers who are franchised to sell the same line-make vehicles as
6 the proposed dealer and who have licensed locations within the
7 relevant market area;

8 4. The names and addresses of the person intended to be
9 franchised as the proposed additional or relocated powersports
10 vehicle or motor vehicle dealership, the principal investors in the
11 proposed additional or relocated powersports vehicle or motor
12 vehicle dealership, and the proposed dealer operator of the proposed
13 additional or relocated powersports vehicle or motor vehicle
14 dealership; and

15 5. The specific grounds or reasons for the proposed
16 establishment of an additional powersports vehicle or motor vehicle
17 dealer or relocation of an existing dealer.

18 B. This section does not apply:

19 1. To the relocation of an existing powersports vehicle or new
20 motor vehicle dealer within the relevant market area of that dealer;
21 provided, that the relocation not be at a site within ten (10) miles
22 of a licensed powersports vehicle or new motor vehicle dealer for
23 the same line-make of powersports vehicle or motor vehicle;

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1 2. To a proposed additional powersports vehicle or new motor
2 vehicle dealer which is to be established at or within two (2) miles
3 of a location at which a former licensed powersports vehicle or new
4 motor vehicle dealer for the same line-make of powersports vehicle
5 or new motor vehicle had ceased operating within the previous two
6 (2) years;

7 3. To the relocation of an existing powersports vehicle or new
8 motor vehicle dealer within two (2) miles of the existing site of
9 the powersports vehicle or new motor vehicle dealership; or

10 4. To the relocation of an existing powersports vehicle or new
11 motor vehicle dealer if the proposed site of the relocated
12 powersports vehicle or new motor vehicle dealership is farther away
13 from all other powersports vehicle or new motor vehicle dealers of
14 the same line-make in that relevant market area.

15 C. Within thirty (30) days after receipt of the notice, or
16 within thirty (30) days after the end of an appeal procedure
17 provided by the factory, whichever is greater, a powersports vehicle
18 or new motor vehicle dealer so notified or entitled to notice may
19 file a petition with the Commission protesting the proposed
20 establishment or relocation. The petition shall contain a short
21 statement setting forth the reasons for the objection of the dealer
22 to the proposed establishment or relocation. Upon filing of a
23 protest, the Commission shall promptly notify the factory that a
24 timely protest has been filed and shall schedule a hearing, which

1 shall be held within one hundred twenty (120) days of the filing of
2 a timely protest. The factory shall not establish or relocate the
3 powersports vehicle or new motor vehicle dealer until the Commission
4 has held a hearing and has determined that there is good cause for
5 permitting the proposed establishment or relocation. When more than
6 one protest is filed against the establishment or relocation of the
7 same dealer, the Commission shall consolidate the hearings to
8 expedite disposition of the matter.

9 D. The burden of proof to establish that good cause exists for
10 permitting the proposed establishment of a powersports vehicle or
11 new motor vehicle dealer or relocating an existing powersports
12 vehicle or new motor vehicle dealership shall be on the applicant
13 who seeks to establish a powersports vehicle or new motor vehicle
14 dealership or the relocation of an existing powersports vehicle or
15 new motor vehicle dealership.

16 SECTION 11. AMENDATORY 47 O.S. 2011, Section 579, is
17 amended to read as follows:

18 Section 579. In determining whether good cause has been
19 established for permitting the proposed establishment or relocation
20 of an additional franchise for the same line-make, the Oklahoma
21 Motor Vehicle Commission shall take into consideration, and must be
22 persuaded, that good cause exists for entering into or relocating an
23 additional franchise for the same line-make by the greater weight of
24 facts and the existing circumstances, including, but not limited to:

- 1 1. Permanency of the investment of the proposed dealership;
- 2 2. Effect on the retail powersports vehicle or new motor
3 vehicle business and the consuming public in the relevant market
4 area;
- 5 3. Whether it is injurious to the public welfare for an
6 additional powersports vehicle or new motor vehicle dealership to be
7 established;
- 8 4. Whether the powersports vehicle or new motor vehicle dealers
9 of the same line-make in that relevant market area are providing
10 adequate competition and convenient consumer care for the
11 powersports vehicle or motor vehicle sales and service facilities,
12 equipment, supply of powersports vehicle or motor vehicle parts, and
13 qualified service personnel; and
- 14 5. Whether the establishment of an additional powersports
15 vehicle or new motor vehicle dealership would increase competition,
16 and therefore be in the public interest.

17 SECTION 12. AMENDATORY 47 O.S. 2011, Section 579.1, is
18 amended to read as follows:

19 Section 579.1 A. It shall be unlawful to be a broker.

20 B. For the purposes of this section, "broker" means a person
21 who, for a fee, commission or other valuable consideration, arranges
22 or offers to arrange a transaction involving the sale of a
23 powersports vehicle or new motor vehicle, and who is not:
24

- 1 1. A powersports vehicle or new motor vehicle dealer or
2 employee of such a dealer;
- 3 2. A distributor or employee of such a distributor;
- 4 3. A powersports vehicle or motor vehicle manufacturer or
5 employee of such a manufacturer; or
- 6 4. An auctioneer or any other person engaged in the auto
7 auction business.

8 However, an individual shall not be deemed to be a broker if the
9 individual is the owner of the new or used powersports vehicle or
10 motor vehicle which is the object of the brokering transaction.

11 C. Any person convicted of being a broker as defined by this
12 section shall, upon conviction, be guilty of a misdemeanor
13 punishable by imprisonment in the county jail for not more than one
14 (1) year and a fine of not more than One Thousand Dollars
15 (\$1,000.00). Any person convicted of a second or subsequent offense
16 shall be guilty of a ~~Schedule G felony offense~~, and the fine for a
17 ~~felony~~ violation of this section shall be not less than One Thousand
18 Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00).

19 SECTION 13. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 580.3 of Title 47, unless there
21 is created a duplication in numbering, reads as follows:

22 A. As used in this section:
23
24

1 1. "Net cost" means the franchised powersports vehicle dealer
2 cost for a new, unsold, undamaged, and complete powersports vehicle
3 in a powersports vehicle dealer's inventory:

4 a. plus any charges by the manufacturer, distributor, or
5 representative for distribution, delivery, and
6 taxes, and

7 b. less all allowances paid to the franchised powersports
8 vehicle dealer by the manufacturer, distributor, or
9 representative; and

10 2. "Net discount value" is the net cost multiplied by the total
11 mileage, exclusive of mileage placed on the powersports vehicle
12 before it was delivered to the powersports vehicle dealer, divided
13 by one hundred thousand (100,000).

14 B. Notwithstanding the terms of any franchise, after the
15 termination of a franchise, a manufacturer, distributor, or
16 representative shall pay to a franchised powersports vehicle dealer
17 or any lienholder, in accordance with the interest of each, the
18 following amounts:

19 1. The powersports vehicle dealer cost of each new powersports
20 vehicle in the powersports vehicle dealer's inventory with mileage
21 of five thousand (5,000) miles or less, exclusive of mileage placed
22 on the vehicle before it was delivered to the powersports vehicle
23 dealer, reduced by the net discount value of each vehicle, except
24 that if a vehicle cannot be reduced by the net discount value, the

1 manufacturer or distributor shall pay the powersports vehicle dealer
2 the net cost of the vehicle;

3 2. The powersports vehicle dealer cost of each new, unused,
4 undamaged, and unsold part or accessory that:

5 a. is in the current parts catalogue and is still in the
6 original, resalable merchandising package and in an
7 unbroken lot, except in the case of sheet metal, a
8 comparable substitute for the original package may be
9 used, and

10 b. was purchased by the powersports vehicle dealer either
11 directly from the manufacturer or distributor or from
12 an outgoing authorized powersports vehicle dealer as a
13 part of the powersports vehicle dealer's initial
14 inventory;

15 3. The fair market value of each undamaged sign owned by the
16 powersports vehicle dealer that bears a trademark or tradename used
17 or claimed by the manufacturer, distributor, or representative and
18 that was purchased from or at the request of the manufacturer,
19 distributor, or representative;

20 4. The fair market value of all special tools, data processing
21 equipment, and automotive service equipment owned by the powersports
22 vehicle dealer that:

23 a. were recommended in writing and designated as special
24 tools and equipment,

1 b. were purchased from or at the request of the
2 manufacturer, distributor, or representative, and

3 c. are in usable and good condition except for reasonable
4 wear and tear; and

5 5. The cost of transporting, handling, packing, storing, and
6 loading any property subject to repurchase under this section.

7 C. An amount described by subsection B of this section is due:

8 1. For property described by paragraph 1 of subsection B of
9 this section, not later than within sixty (60) days of the date a
10 franchise is terminated; and

11 2. For all other property described by subsection B of this
12 section, within ninety (90) days of the date a franchise is
13 terminated.

14 D. As a condition of payment, a franchised powersports vehicle
15 dealer must comply with reasonable requirements provided by the
16 franchise regarding the return of inventory.

17 E. A manufacturer or distributor shall reimburse a franchised
18 powersports vehicle dealer for the powersports vehicle dealer's cost
19 for storing any property covered by this section:

20 1. Beginning on the ninety-first day after the date the
21 franchise is terminated; or

22 2. Before the date described by paragraph 1 of this subsection,
23 if the powersports vehicle dealer notifies the manufacturer or
24

1 distributor of the commencement of storage charges within that
2 period.

3 F. On receipt of notice under paragraph 2 of subsection E of
4 this section, a manufacturer or distributor may immediately take
5 possession of the property by repurchase under this section.

6 G. A manufacturer, distributor, or representative who fails to
7 pay an amount within the time required by this section, or at the
8 time the powersports vehicle dealer and any lienholder proffer good
9 title before the time required for payment, is liable to the
10 powersports vehicle dealer for:

11 1. The powersports vehicle dealer cost, fair market value, or
12 current price of the inventory, whichever amount is highest;

13 2. Interest on the amount due computed at the rate applicable
14 to a judgment of a court; and

15 3. Reasonable attorney fees and costs.

16 H. Notwithstanding any other law, this section does not require
17 a manufacturer, distributor, or representative to repurchase a
18 powersports vehicle that:

19 1. At the time of termination of the franchise had been in the
20 powersports vehicle dealer's inventory for at least twenty-four (24)
21 months after the date the powersports vehicle dealer took delivery
22 of the vehicle; or

23 2. The powersports vehicle dealer purchased not more than
24 thirty (30) days before the date of termination of the franchise

1 solely in anticipation of the termination and, in the ordinary
2 course of business, would not have purchased.

3 I. For purposes of this section, a sale of the assets or stock
4 of a powersports vehicle dealership to a buyer who continues the
5 operation of the powersports vehicle dealership is not a termination
6 of a franchise.

7 SECTION 14. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 580.4 of Title 47, unless there
9 is created a duplication in numbering, reads as follows:

10 A. Notwithstanding the terms of any franchise, a manufacturer,
11 distributor, or representative may not require a franchised
12 powersports vehicle dealer to submit to arbitration on any issue
13 unless the powersports vehicle dealer and the manufacturer,
14 distributor, or representative and their respective counsel agree to
15 the arbitration after a controversy arises.

16 B. An arbitrator shall apply the provisions of this act in
17 resolving a controversy. Either party may appeal to the Oklahoma
18 Motor Vehicle Commission a decision of an arbitrator on the ground
19 that the arbitrator failed to apply the provisions of this act.

20 SECTION 15. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 580.5 of Title 47, unless there
22 is created a duplication in numbering, reads as follows:

23 A. Notwithstanding the terms of any franchise, a manufacturer,
24 distributor, or representative may not:

1 1. Require adherence to unreasonable sales or service
2 standards; or

3 2. Unreasonably require a franchised powersports vehicle dealer
4 to purchase special tools or equipment.

5 B. Notwithstanding the terms of any franchise, a manufacturer,
6 distributor, or representative may not unreasonably require a
7 franchised powersports vehicle dealer to relocate, or to replace or
8 substantially change, alter, or remodel the powersports vehicle
9 dealer's facilities. For purposes of this subsection, an act is
10 reasonable if it is justifiable in light of current and reasonably
11 foreseeable projections of economic conditions, financial
12 expectations, and the market for new powersports vehicles in the
13 relevant market area.

14 C. The prohibitions under this section apply to the
15 relationship between a manufacturer and:

16 1. A current franchisee of the manufacturer; or

17 2. A franchised powersports vehicle dealer who is seeking to
18 become a franchisee of the manufacturer.

19 SECTION 16. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 580.6 of Title 47, unless there
21 is created a duplication in numbering, reads as follows:

22 A manufacturer, distributor, or representative may not:

23 1. Notwithstanding the terms of any franchise, directly or
24 indirectly discriminate against a franchised powersports vehicle

1 dealer or otherwise treat franchised powersports vehicle dealers
2 differently as a result of a formula or other computation or process
3 intended to gauge the performance of a powersports vehicle
4 dealership; or

5 2. Discriminate unreasonably between or among franchisees in
6 the sale of a powersports vehicle owned by the manufacturer or
7 distributor.

8 SECTION 17. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 580.7 of Title 47, unless there
10 is created a duplication in numbering, reads as follows:

11 Notwithstanding the terms of any franchise, a manufacturer,
12 distributor, or representative shall compensate a franchised
13 powersports vehicle dealer for all costs incurred by the powersports
14 vehicle dealer as required by the manufacturer in complying with a
15 product recall by the manufacturer or distributor, including any
16 costs incurred by the powersports vehicle dealer in notifying
17 vehicle owners of the existence of the recall.

18 SECTION 18. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 580.8 of Title 47, unless there
20 is created a duplication in numbering, reads as follows:

21 A manufacturer, distributor, or representative may not directly
22 or indirectly, or through a subsidiary or agent, require as a
23 condition for obtaining financing for a powersports vehicle that:

24

1 1. The purchaser of the vehicle purchase any product other than
2 the powersports vehicle from the manufacturer, the distributor, or
3 an entity owned or controlled by the manufacturer or distributor;
4 or

5 2. An insurance policy or service contract bought by the
6 purchaser be from a specific source.

7 SECTION 19. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 580.9 of Title 47, unless there
9 is created a duplication in numbering, reads as follows:

10 A. A manufacturer, distributor, or representative may not:

11 1. Compel a franchised powersports vehicle dealer through a
12 financing subsidiary of the manufacturer or distributor to agree to
13 unreasonable operating requirements; or

14 2. Directly or indirectly terminate a franchise through the
15 actions of a financing subsidiary of the manufacturer or
16 distributor.

17 B. This section does not limit the right of a financing entity
18 to engage in business practices in accordance with the usage of
19 trade in retail and wholesale powersports vehicle financing.

20 SECTION 20. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 580.10 of Title 47, unless there
22 is created a duplication in numbering, reads as follows:

23 A. Notwithstanding the terms of any franchise, a manufacturer,
24 distributor, or representative may not deny or withhold approval of

1 a franchised powersports vehicle dealer's application to add a line-
2 make or parts or products related to that line-make unless:

3 1. The manufacturer or distributor provides written notice of
4 the denial or withholding of approval to the applicant within sixty
5 (60) days of the date the application is received; and

6 2. If the applicant files a protest under this section, the
7 Oklahoma Motor Vehicle Commission upholds the denial or withholding
8 of approval.

9 B. After receiving notice under paragraph 1 of subsection A of
10 this section, a powersports vehicle dealer may file a protest with
11 the Commission.

12 C. If the powersports vehicle dealer files a protest, the board
13 may uphold the manufacturer's or distributor's decision to deny or
14 withhold approval of the addition of the line-make only if the
15 manufacturer or distributor establishes by a preponderance of the
16 evidence that the denial or withholding of approval was reasonable.

17 D. In determining whether a manufacturer or distributor has
18 established that the denial or withholding of approval is
19 reasonable, the Commission shall consider all existing
20 circumstances, including:

21 1. The powersports vehicle dealer's sales in relation to the
22 sales in the market;

23 2. The powersports vehicle dealer's investment and obligations;

24 3. Injury or benefit to the public;

1 4. The adequacy of the powersports vehicle dealer's sales and
2 service facilities, equipment, parts, and personnel in relation to
3 those of other powersports vehicle dealers of new powersports
4 vehicles of the same line-make;

5 5. Whether warranties are being honored by the powersports
6 vehicle dealer agreement;

7 6. The parties' compliance with the franchise, except to the
8 extent that the franchise conflicts with the provisions of this act;

9 7. The enforceability of the franchise from a public policy
10 standpoint, including issues of the reasonableness of the
11 franchise's terms, oppression, adhesion, and the parties' relative
12 bargaining power;

13 8. Whether the powersports vehicle dealer complies with
14 reasonable capitalization requirements or will be able to comply
15 with reasonable capitalization requirements within a reasonable
16 time;

17 9. Any harm to the manufacturer or distributor if the denial or
18 withholding of approval is not upheld;

19 10. Any harm to the powersports vehicle dealer if the denial or
20 withholding of approval is upheld;

21 11. The manufacturer's or distributor's investment and
22 obligations; and

23 12. Whether the denial or withholding of approval is justified
24 in light of current and reasonably foreseeable projections of

1 economic conditions, financial expectations, and the market for new
2 powersports vehicles in the relevant market area.

3 SECTION 21. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 580.11 of Title 47, unless there
5 is created a duplication in numbering, reads as follows:

6 A manufacturer, distributor, or representative may not:

7 1. Fail or refuse to offer to its same line-make franchised
8 powersports vehicle dealers all models manufactured for that line-
9 make; or

10 2. Require as a prerequisite to receiving a model or series of
11 vehicles that a franchised powersports vehicle dealer:

12 a. pay an extra fee,

13 b. purchase unreasonable advertising displays or other
14 materials, or

15 c. remodel, renovate, or recondition the powersports
16 vehicle dealer's existing facilities.

17 SECTION 22. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 580.12 of Title 47, unless there
19 is created a duplication in numbering, reads as follows:

20 A. A manufacturer, distributor, or representative may not
21 require a franchised powersports vehicle dealer to compensate the
22 manufacturer or distributor for any court costs, attorney fees, or
23 other expenses incurred in an administrative or civil proceeding
24 arising under the provisions of this act.

1 B. This section does not prohibit a manufacturer and a
2 franchised powersports vehicle dealer from entering into an
3 agreement to share costs in a proceeding in which the powersports
4 vehicle dealer and manufacturer have the same or similar interests.

5 SECTION 23. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 580.13 of Title 47, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Except as provided by subsection B of this section, after
9 the first anniversary of the ending date of a manufacturer or
10 distributor incentive program, a manufacturer or distributor may
11 not:

12 1. Charge back to a powersports vehicle dealer money paid by
13 the manufacturer or distributor as a result of the incentive
14 program;

15 2. Charge back to a powersports vehicle dealer the cash value
16 of a prize or other thing of value awarded to the powersports
17 vehicle dealer as a result of the incentive program; or

18 3. Audit the records of a powersports vehicle dealer to
19 determine compliance with the terms of the incentive program, unless
20 the manufacturer or distributor has reasonable grounds to believe
21 the powersports vehicle dealer committed fraud with respect to the
22 incentive program.

23 B. A manufacturer or distributor may make charge-backs to a
24 powersports vehicle dealer if, after an audit, the manufacturer or

1 distributor has reasonable grounds to conclude that the powersports
2 vehicle dealer committed fraud with respect to the incentive
3 program.

4 C. Money paid by a manufacturer or distributor under an
5 incentive program may only be paid to a powersports vehicle dealer,
6 unless the powersports vehicle dealer agrees to the payment of the
7 money to another person, including an employee of the powersports
8 vehicle dealer, before the payment is made.

9 SECTION 24. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 580.14 of Title 47, unless there
11 is created a duplication in numbering, reads as follows:

12 A manufacturer or distributor may not require, as a prerequisite
13 to the payment of a claim for reimbursement, that a powersports
14 vehicle dealer file a statement of actual time spent in performance
15 of labor, unless actual time is the basis for reimbursement.

16 SECTION 25. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 580.15 of Title 47, unless there
18 is created a duplication in numbering, reads as follows:

19 A manufacturer, distributor, or representative may not require
20 or attempt to require a franchised powersports vehicle dealer to
21 order, accept delivery of, or pay anything of value, directly or
22 indirectly, for a powersports vehicle or an appliance, part,
23 accessory, or any other commodity unless the powersports vehicle
24 dealer voluntarily ordered or contracted for the item.

1 SECTION 26. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 580.16 of Title 47, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A manufacturer, distributor, or representative shall deliver
5 in a reasonable quantity and within a reasonable time to a
6 franchised powersports vehicle dealer who holds a franchise for a
7 powersports vehicle sold or distributed by the manufacturer,
8 distributor, or representative any new powersports vehicle or part
9 or accessory for a new powersports vehicle as covered by the
10 franchise if the vehicle, part, or accessory is publicly advertised
11 as being available for delivery or is actually being delivered.

12 B. This section does not apply to a delivery prevented by:

- 13 1. An act of God;
- 14 2. A work stoppage or delay because of a strike or labor
15 dispute;
- 16 3. A freight embargo; or
- 17 4. Another cause beyond the control of the manufacturer,
18 distributor, or representative.

19 SECTION 27. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 580.17 of Title 47, unless there
21 is created a duplication in numbering, reads as follows:

22 A. Notwithstanding the terms of any franchise, a manufacturer,
23 distributor, or representative may not terminate or discontinue a
24 franchise with a franchised powersports vehicle dealer or directly

1 or indirectly force or attempt to force a franchised powersports
2 vehicle dealer to relocate or discontinue a line-make or parts or
3 products related to that line-make unless the manufacturer,
4 distributor, or representative provides notice of the termination or
5 discontinuance as required by subsection C of this section and:

6 1. The manufacturer, distributor, or representative receives
7 the powersports vehicle dealer's informed written consent;

8 2. The appropriate time for the powersports vehicle dealer to
9 file a protest under subsection E of this section has expired; or

10 3. The Oklahoma Motor Vehicle Commission makes a determination
11 of good cause under subsection G of this section.

12 B. A termination or discontinuance to which this section
13 applies includes a termination or discontinuance of a franchise that
14 results from a change by a manufacturer, distributor, or
15 representative of its:

16 1. Distributor;

17 2. Method of distribution of its products in this state; or

18 3. Business structure or ownership.

19 C. Except as provided by subsection D of this section, the
20 manufacturer, distributor, or representative must provide written
21 notice by registered or certified mail to the powersports vehicle
22 dealer and the Commission stating the specific grounds for the
23 termination or discontinuance. The notice must:

24

1 1. Be received within sixty (60) days of the effective date of
2 the termination or discontinuance; and

3 2. Contain on its first page a conspicuous statement that
4 reads: "NOTICE TO POWERSPORTS VEHICLE DEALER: YOU MAY BE ENTITLED
5 TO FILE A PROTEST WITH THE OKLAHOMA MOTOR VEHICLE COMMISSION IN
6 OKLAHOMA CITY, OKLAHOMA, AND HAVE A HEARING IN WHICH YOU MAY PROTEST
7 THE PROPOSED TERMINATION OR DISCONTINUANCE OF YOUR FRANCHISE, IF YOU
8 OPPOSE THIS ACTION."

9 D. A minimum of fifteen (15) days' notice shall be provided
10 prior to the date of termination or discontinuance of a licensed
11 powersports vehicle dealer for failing to conduct its customary
12 sales and service operations during its customary business hours for
13 seven (7) consecutive business days. This subsection does not apply
14 if the failure is caused by:

15 1. An act of God;

16 2. A work stoppage or delay because of a strike or labor
17 dispute;

18 3. An order of the Commission; or

19 4. Another cause beyond the control of the powersports vehicle
20 dealer.

21 E. A franchised powersports vehicle dealer may file a protest
22 with the Commission of the termination or discontinuance not later
23 than the latter of:
24

1 1. Sixty (60) days after the date of the receipt of the notice
2 of termination or discontinuance; or

3 2. The time specified in the notice.

4 F. After a timely protest is filed under subsection E of this
5 section, the Commission shall notify the party seeking the
6 termination or discontinuance that:

7 1. A timely protest has been filed;

8 2. A hearing is required under the provisions of this act; and

9 3. The party may not terminate or discontinue the franchise
10 until the Commission issues its final order or decision.

11 G. After a hearing, the Commission shall determine whether the
12 party seeking the termination or discontinuance has established by a
13 preponderance of the evidence that there is good cause for the
14 proposed termination or discontinuance.

15 H. If a franchise is terminated or discontinued, the
16 manufacturer, distributor, or representative shall establish another
17 franchise in the same line-make within a reasonable time unless it
18 is shown to the Commission by a preponderance of the evidence that
19 the community or trade area cannot reasonably support such a
20 powersports vehicle dealership. If this showing is made, a license
21 may not be issued for a franchised powersports vehicle dealer in the
22 same area until a change in circumstances is established.

23 I. A manufacturer that changes its distributor or the method of
24 distribution of its products in this state in a manner that results

1 in unlawful termination or discontinuance of a franchise without
2 good cause may not directly or indirectly distribute its products in
3 this state.

4 SECTION 28. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 580.18 of Title 47, unless there
6 is created a duplication in numbering, reads as follows:

7 A. In an action brought against a manufacturer or distributor
8 pursuant to the provisions of this act by a franchised powersports
9 vehicle dealer whose franchise provides for arbitration in
10 compliance with the provisions of this act, the Oklahoma Motor
11 Vehicle Commission shall order the parties to submit the dispute to
12 mediation in the manner provided by the provisions of this act.

13 B. Subsection A of this section applies only if the powersports
14 vehicle dealer's franchise does not contain an arbitration provision
15 in conflict with the provisions of this act. In a dispute
16 concerning whether subsection A of this section applies, the
17 Commission shall enter an order either that the franchise contains a
18 provision in conflict with the provisions of this act or that it
19 does not. If the Commission determines that the franchise does not
20 contain an arbitration provision that conflicts with the provisions
21 of this act, the Commission shall order the parties to proceed to
22 mediation.

23 C. An order issued under subsection B of this section is not
24 appealable.

1 D. This section does not apply to an action brought by the
2 Commission to enforce the provisions of this act.

3 SECTION 29. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 580.19 of Title 47, unless there
5 is created a duplication in numbering, reads as follows:

6 A. By agreement, the parties shall select and compensate a
7 mediator who is qualified to serve pursuant to the Dispute
8 Resolution Act.

9 B. Sections 1801 through 1813 of Title 12 of the Oklahoma
10 Statutes shall apply to any mediator employed pursuant to this act.

11 C. A mediator may not impose the mediator's own judgment on the
12 issues for that of the parties.

13 SECTION 30. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 580.20 of Title 47, unless there
15 is created a duplication in numbering, reads as follows:

16 A. The parties by agreement shall select a venue and schedule
17 for mediation under this act. If the parties are unable to agree on
18 a venue and schedule, the mediator shall select a venue and
19 schedule.

20 B. Except by written agreement of all parties, mediation must
21 be held in this state.

22 C. Mediation must be completed within sixty (60) days after the
23 date the Oklahoma Motor Vehicle Commission orders the parties to
24

1 mediate. The deadline may be extended by the Commission at the
2 request of all parties.

3 SECTION 31. AMENDATORY 47 O.S. 2011, Section 1102, is
4 amended to read as follows:

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

7 1. "All-terrain vehicle" means a vehicle manufactured and used
8 exclusively for off-highway use traveling on four or more non-
9 highway tires, and having a seat designed to be straddled by the
10 operator and handlebars for steering;

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

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

19 4. "Chips and oil" or the term "road oil and crushed rock"
20 means, with respect to materials authorized for use in the surfacing
21 of roads or highways in this title or in any equivalent statute
22 pertaining to road or highway surfacing in the State of Oklahoma,
23 any asphaltic materials. Wherever chips and oil or road oil and
24 crushed rock are authorized for use in the surfacing of roads or

1 highways in this state, whether by the Department of Transportation,
2 or by the county commissioners, or other road building authority
3 subject to the Oklahoma Vehicle License and Registration Act,
4 asphaltic materials are also authorized for use in such surfacing
5 and construction;

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

11 6. "Commercial trailer" means any trailer, as defined in
12 Section 1-180 of this title, or semitrailer, as defined in Section
13 1-162 of this title, when such trailer or semitrailer is used
14 primarily for business or commercial purposes;

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

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

1 shall be in sharp contrast to the background and shall be of
2 sufficient shape and color as to be readily legible during daylight
3 hours, from a distance of fifty (50) feet while the vehicle is not
4 in motion;

5 9. "Commission" or "Tax Commission" means the Oklahoma Tax
6 Commission;

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

12 11. "Mini-truck" means a foreign-manufactured import or
13 domestic-manufactured vehicle powered by an internal combustion
14 engine with a piston or rotor displacement of one thousand cubic
15 centimeters (1,000 cu cm) or less, which is sixty-seven (67) inches
16 or less in width, with an unladen dry weight of three thousand four
17 hundred (3,400) pounds or less, traveling on four or more tires,
18 having a top speed of approximately fifty-five (55) miles per hour,
19 equipped with a bed or compartment for hauling, and having an
20 enclosed passenger cab;

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

24

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

6 14. "Local authorities" means every county, municipality or
7 local board or body having authority to adopt police regulations
8 under the Constitution and laws of this state;

9 15. "Low-speed electrical vehicle" means any four-wheeled
10 electrical vehicle that is powered by an electric motor that draws
11 current from rechargeable storage batteries or other sources of
12 electrical current and whose top speed is greater than twenty (20)
13 miles per hour but not greater than twenty-five (25) miles per hour
14 and is manufactured in compliance with the National Highway Traffic
15 Safety Administration standards for low-speed vehicles in 49 C.F.R.
16 571.500;

17 16. "Manufactured home" means a residential dwelling built in
18 accordance with the National Manufactured Housing Construction and
19 Safety Standards Act of 1974, 42 U.S.C., Section 5401 et seq., and
20 rules promulgated pursuant thereto and the rules promulgated by the
21 Oklahoma Used Motor Vehicle and Parts Commission pursuant to Section
22 582 of this title;

23 17. "Manufactured home dealer" means any person, firm or
24 corporation engaged in the business of selling any new and unused,

1 or used, or both new and used manufactured homes. Such information
2 and a valid franchise letter as proof of authorization to sell any
3 such new manufactured home product line or lines shall be attached
4 to the application for a dealer license to sell manufactured homes.
5 "Manufactured home dealer" shall not include any person, firm or
6 corporation who sells or contracts for the sale of the dealer's own
7 personally titled manufactured home or homes. No person, firm or
8 corporation shall be considered a manufactured home dealer as to any
9 manufactured home purchased or acquired by such person, firm or
10 corporation for purposes other than resale; provided, that the
11 restriction set forth in this sentence shall not prevent an
12 otherwise qualified person, firm or corporation from utilizing a
13 single manufactured home as a sales office;

14 18. "Medium-speed electrical vehicle" means any self-propelled,
15 electrically powered four-wheeled motor vehicle, equipped with a
16 roll cage or crush-proof body design, whose speed attainable in one
17 (1) mile is more than thirty (30) miles per hour but not greater
18 than thirty-five (35) miles per hour;

19 19. "Motor license agent" means any person appointed,
20 designated or authorized by the Oklahoma Tax Commission to collect
21 the fees and to enforce the provisions provided for in the Oklahoma
22 Vehicle License and Registration Act;

23 20. "New vehicle" or "unused vehicle" means a vehicle which has
24 been in the possession of the manufacturer, distributor or

1 wholesaler or has been sold only by the manufacturer, distributor or
2 wholesaler to a dealer;

3 21. "Nonresident" means any person who is not a resident of
4 this state;

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

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

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

17 25. "Powersports vehicle" means ~~motorcycles, scooters, mopeds,~~
18 ~~all-terrain vehicles, and utility vehicles~~ "powersports vehicle" as
19 defined in Section 562 of this title;

20 26. "Powersports vehicle dealer" means ~~any person, firm, or~~
21 ~~corporation who is in the business of selling any new and unused or~~
22 ~~used, or both new and used powersports vehicles except for those~~
23 ~~dealers engaged principally in agricultural or farm implement sales~~

24

1 "powersports vehicle dealer" as defined in Section 562 of this
2 title;

3 27. "Rebodied vehicle" means a vehicle:

- 4 a. which has been assembled using a new body or new major
5 component which is of the identical type as the
6 original vehicle and is licensed by the manufacturer
7 of the original vehicle and other original, new or
8 reconditioned parts. For purposes of this paragraph,
9 "new body or new major component" means a new body,
10 cab, frame, front end clip or rear end clip, and
11 b. which is not a salvage, rebuilt, or junked vehicle as
12 defined by paragraph 1, 2, or ~~5~~ 6 of subsection A of
13 Section 1105 of this title, and
14 c. for which the Tax Commission has assigned or will
15 assign a new identifying number;

16 28. "Recreational off-highway vehicle" means a vehicle
17 manufactured and used exclusively for off-highway use, traveling on
18 four or more nonhighway tires, having nonstraddle seating and which
19 is steered by a steering wheel;

20 29. "Recreational vehicle" means every vehicle which is built
21 on or permanently attached to a self-propelled motor chassis or
22 chassis cab which becomes an integral part of the completed vehicle
23 and is capable of being operated on the highways. In order to
24 qualify as a recreational vehicle pursuant to this paragraph such

1 vehicle shall be permanently constructed and equipped for human
2 habitation, having its own sleeping and kitchen facilities,
3 including permanently affixed cooking facilities, water tanks and
4 holding tank with permanent toilet facilities. Recreational vehicle
5 shall not include manufactured homes or any vehicle with portable
6 sleeping, toilet and kitchen facilities which are designed to be
7 removed from such vehicle;

8 30. "Remanufactured vehicle" means a vehicle which has been
9 assembled by a vehicle remanufacturer using a new body and which may
10 include original, reconditioned, or remanufactured parts, and which
11 is not a salvage, rebuilt, or junked vehicle as defined by
12 paragraphs 1, 2, and ~~5~~ 6, respectively, of subsection A of Section
13 1105 of this title;

14 31. "Rental trailer" means all small or utility trailers or
15 semitrailers constructed and suitable for towing by a passenger
16 automobile and designed only for carrying property, when the
17 trailers or semitrailers are owned by, or are in the possession of,
18 any person engaged in renting or leasing such trailers or
19 semitrailers for intrastate or interstate use or combined intrastate
20 and interstate use;

21 32. "Special mobilized machinery" means special purpose
22 machines or devices, either self-propelled or drawn as trailers or
23 semitrailers, which derive no revenue from the transportation of
24 persons or property, whose use of the highway is only incidental,

1 and whose useful revenue producing service is performed at
2 destinations in an area away from the traveled surface of an
3 established open highway;

4 33. "State" means the State of Oklahoma;

5 34. "Station wagon" means any passenger vehicle which does not
6 have a separate luggage compartment or trunk and which does not have
7 open beds, and has one or more rear seats readily lifted out or
8 folded, whether same is called a station wagon or ranch wagon;

9 35. "Travel trailer" means any vehicular portable structure
10 built on a chassis, used as a temporary dwelling for travel,
11 recreational or vacation use, and, when factory-equipped for the
12 road, it shall have a body width not exceeding eight (8) feet and an
13 overall length not exceeding forty (40) feet, including the hitch or
14 coupling;

15 36. "Travel trailer dealer" means any person, firm or
16 corporation engaged in the business of selling any new and unused,
17 or used, or both new and used travel trailers. Such information and
18 a valid franchise letter as proof of authorization to sell any such
19 new travel trailer product line or lines shall be attached to the
20 application for a dealer license to sell travel trailers. "Travel
21 trailer dealer" shall not include any person, firm or corporation
22 who sells or contracts for the sale of his or her own personally
23 titled travel trailer or trailers. No person, firm or corporation
24 shall be considered as a travel trailer dealer as to any travel

1 trailer purchased or acquired by such person, firm or corporation
2 for purposes other than resale;

3 37. "Used motor vehicle dealer" means "used motor vehicle
4 dealer" as defined in Section 581 of this title;

5 38. "Used vehicle" means any vehicle which has been sold,
6 bargained, exchanged or given away, or used to the extent that it
7 has become what is commonly known, and generally recognized, as a
8 "secondhand" vehicle. This shall also include any vehicle other
9 than a remanufactured vehicle, regardless of age, owned by any
10 person who is not a dealer;

11 39. "Utility vehicle" means a vehicle powered by an internal
12 combustion engine, manufactured and used exclusively for off-highway
13 use, equipped with seating for two or more people and a steering
14 wheel, traveling on four or more wheels;

15 40. "Vehicle" means any type of conveyance or device in, upon
16 or by which a person or property is or may be transported from one
17 location to another upon the avenues of public access within the
18 state. "Vehicle" does not include bicycles, trailers except travel
19 trailers and rental trailers, or implements of husbandry as defined
20 in Section 1-125 of this title. All implements of husbandry used as
21 conveyances shall be required to display the owner's driver license
22 number or license plate number of any vehicle owned by the owner of
23 the implement of husbandry on the rear of the implement in numbers
24 not less than two (2) inches in height. The use of the owner's

1 social security number on the rear of the implement of husbandry
2 shall not be required; and

3 41. "Vehicle remanufacturer" means a commercial entity which
4 assembles remanufactured vehicles.

5 SECTION 32. This act shall become effective November 1, 2012.

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