

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 902

By: Marlatt

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5
6 AS INTRODUCED

7 An Act relating to recreational vehicles; declaring
8 legislative findings; creating the Recreational
9 Vehicle Franchise Act; providing short title;
10 defining terms; making certain acts unlawful;
11 providing fee schedule for certain licenses;
12 prohibiting sale of recreational vehicles by
13 unlicensed manufacturers and dealers; requiring
14 dealer agreements between manufacturers and dealers;
15 providing conditions for the area of sales
16 responsibility of dealers; prohibiting dealers from
17 conducting sales outside the designated area of sales
18 responsibility; providing for the off-premise sale of
19 recreational vehicles under certain circumstances;
20 authorizing the sale of recreational vehicles on
21 certain day; requiring dealer agreements to include a
22 designated principal; directing manufacturers to
23 periodically publish prices, charges and terms of
24 sale for recreational vehicles; prohibiting
inconsistent practices; prohibiting imposition of
certain dealer requirements; prohibiting
manufacturers from terminating or not renewing a
dealer agreement without good cause; providing list
of factors to be considered when determining good
cause; requiring manufacturer to provide certain
notice; providing notice procedures; authorizing
manufacturer to repurchase certain items after
termination of dealer agreement; authorizing return
of certain items; providing list of categories for
good cause; prohibiting dealers from terminating
dealer agreement without good cause; requiring dealer
to provide certain notice; providing list of
conditions to be considered when determining good
cause; providing list of categories for good cause;
requiring manufacturer to repurchase certain items
upon request of the dealer; allowing dealers to sell

1 certain line-make vehicles after termination of a
2 dealer agreement; providing conditions to be met when
3 ownership of a dealership has changed; providing
4 conditions to be met when the death, incapacity or
5 retirement of a dealer occurs; specifying obligations
6 for warrantors; requiring certain notice; authorizing
7 warrantors to conduct certain audits; providing
8 procedures for warranty claims; prohibiting
9 warrantors from certain acts; directing warrantor to
10 indemnify dealers under certain circumstances;
11 defining terms; prohibiting dealers from certain
12 acts; directing dealers to indemnify warrantors under
13 certain circumstances; providing procedures for
14 dealers who receive damaged recreational vehicles;
15 authorizing rejection of recreational vehicles under
16 certain circumstances; prohibiting manufacturers from
17 coercive practices; defining term; authorizing the
18 Oklahoma Motor Vehicle Commission to deny, revoke or
19 suspend licenses and assess fines under certain
20 circumstances; allowing civil actions to be filed for
21 certain violations; providing for venue; requiring
22 demand for mediation be served prior to filing suit;
23 providing procedures for mediation; authorizing
24 parties to request an injunction or other equitable
relief; prohibiting courts from requiring bond;
prohibiting licensees from using false or misleading
advertising; providing list of examples; authorizing
the Oklahoma Motor Vehicle Commission to investigate
certain allegations; deeming advertising rule
violations a violation of certain rules, regulations
and state laws; amending 21 O.S. 2001, Section 918,
as amended by Section 1, Chapter 228, O.S.L. 2005 (21
O.S. Supp. 2010, Section 918), which relates to the
sale of motor vehicles on Sunday; modifying statutory
reference; amending 47 O.S. 2001, Sections 562, as
last amended by Section 7, Chapter 182, O.S.L. 2009
and 564.1, as last amended by Section 3, Chapter 315,
O.S.L. 2008 (47 O.S. Supp. 2010, Sections 562 and
564.1), which relate to definitions and licensing of
motor vehicle manufacturers, distributors and
dealers; providing statutory reference; deleting
conditions concerning off-premise sales events by
recreational vehicle dealers; providing for
codification; providing for noncodification; and
providing an effective date.

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

2 SECTION 1. NEW LAW A new section of law not to be
3 codified in the Oklahoma Statutes reads as follows:

4 The Legislature finds and declares that the distribution and
5 sale of recreational vehicles in the State of Oklahoma vitally
6 affects the general economy of the state and the public interest and
7 the public welfare, and that in order to promote the public interest
8 and the public welfare, and in the exercise of its police powers, it
9 is necessary to regulate and to license recreational vehicle
10 manufacturers, distributors, representatives, dealers and
11 salespersons of recreational vehicles doing business in Oklahoma, in
12 order to prevent frauds, impositions and other abuses upon its
13 citizens and to protect and preserve the investments and properties
14 of the citizens of this state, and in order to avoid undue control
15 of the recreational vehicle dealer by the recreational vehicle
16 manufacturing and distributing organizations, and in order to foster
17 and keep alive vigorous and healthy competition by prohibiting
18 unfair practices by which fair and honest competition is destroyed
19 or prevented, and to protect the public against the creation or
20 perpetuation of monopolies and practices detrimental to the public
21 welfare, to prevent the practice of requiring the buying of special
22 features, appliances and equipment not desired or requested by the
23 dealer or purchaser, to prevent false and misleading advertising, to
24 prevent unfair practices by recreational vehicle dealers,

1 manufacturers and distributing organizations, to promote the public
2 safety and prevent disruption of the franchise system of
3 distribution of recreation vehicles to the public and prevent
4 deterioration of facilities for servicing recreational vehicles and
5 keeping same safe and properly functioning, and prevent bankrupting
6 of recreational vehicle dealers, who might otherwise be caused to
7 fail because of such unfair practices.

8 SECTION 2. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 596 of Title 47, unless there is
10 created a duplication in numbering, reads as follows:

11 Sections 2 through 19 of this act shall be known and may be
12 cited as the "Recreational Vehicle Franchise Act".

13 SECTION 3. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 596.1 of Title 47, unless there
15 is created a duplication in numbering, reads as follows:

16 As used in this act:

17 1. "Area of sales responsibility" means a geographical area
18 agreed to by a dealer and the manufacturer in a dealer agreement in
19 which the dealer has the exclusive right to display or sell the new
20 recreational vehicles of a manufacturer of a particular line-make to
21 the public;

22 2. "Camping trailer" means a vehicular unit that is mounted on
23 wheels and constructed with collapsible partial side walls that fold
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1 for towing by another vehicle and unfold at the campsite to provide
2 temporary living quarters for recreational, camping or travel use;

3 3. "Dealer" means any person, firm, corporation, or business
4 entity licensed or required to be licensed pursuant to the
5 provisions of this act to sell new recreational vehicles;

6 4. "Dealer agreement" means a written agreement or contract
7 entered into between a manufacturer and a dealer that establishes
8 the legal rights and obligations of the parties to that agreement or
9 contract and pursuant to which the dealer is authorized to sell new
10 recreational vehicles manufactured or distributed by the
11 manufacturer;

12 5. "Established place of business" means a permanently enclosed
13 building or structure, easily accessible to the public, with a paved
14 or graveled lot for customer parking and for the showing and storage
15 of vehicles. Established place of business shall not mean tents,
16 temporary stands, lots, or other temporary quarters. The
17 established place of business shall have a sign visible from the
18 outside of the business which identifies the recreational vehicle
19 dealership. The established place of business shall have an indoor
20 office with public areas sufficient to conduct sales transactions
21 with customers and have restroom facilities available for the
22 public. The established place of business shall include a service
23 and parts area, separated from the public areas, equipped with

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1 tools, equipment, and replacement parts necessary for reasonably
2 expected warranty and service needs;

3 6. "Factory campaign" means an effort by a warrantor to contact
4 recreational vehicle owners or recreational vehicle dealers in order
5 to address an issue concerning a recreational vehicle problem,
6 defective part or equipment;

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

12 8. "Family member" means any of the following:

- 13 a. a spouse of an individual,
- 14 b. a child, grandchild, parent, sibling, niece, or nephew
15 of an individual, or
- 16 c. the spouse of a child, grandchild, parent, sibling,
17 niece, or nephew of an individual;

18 9. "Fifth wheel trailer" means a vehicular unit mounted on
19 wheels that is designed to provide temporary living quarters for
20 recreational, camping or travel use of such size and weight as to
21 not require a special highway movement permit and is designed to be
22 towed by a motorized vehicle that contains a towing mechanism that
23 is mounted above or forward of the rear axle of the tow vehicle;

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1 10. "Line-make" means a specific series of recreational vehicle
2 products that meet all of the following:

3 a. are identified by a common series trade name or
4 trademark,

5 b. are targeted to a particular market segment based on
6 the decor, features, equipment, size, weight, and
7 price range,

8 c. have dimensions and interior floor plans that
9 distinguish the recreational vehicles from
10 recreational vehicles that have substantially the same
11 decor, features, equipment, weight, and price,

12 d. belong to a single, distinct classification of
13 recreational vehicle product type that has a
14 substantial degree of commonality in the construction
15 of the chassis, frame, and body, and

16 e. are authorized for sale by the dealer in the dealer
17 agreement;

18 11. "Manufacturer" means a person that manufactures or
19 wholesales recreational vehicles or that distributes or wholesales
20 recreational vehicles to dealers;

21 12. "Motor home" means a motorized, vehicular unit designed to
22 provide temporary living quarters for recreational, camping or
23 travel use;

24 13. "OMVC" means the Oklahoma Motor Vehicle Commission;

1 14. "Person" means an individual, partnership, corporation,
2 limited liability company, association, trust, estate, or other
3 legal entity;

4 15. "Proprietary part" means a recreational vehicle part
5 manufactured by or for a manufacturer and sold exclusively by a
6 manufacturer;

7 16. "Recreational vehicle" means a vehicle that:

- 8 a. is primarily designed as a vehicle that also provides
9 temporary living quarters for noncommercial,
10 recreational or camping use,
- 11 b. is built to the standards of the American National
12 Standards Institute and National Fire Protection
13 Association for recreational vehicles,
- 14 c. has its own motive power or is mounted on or towed by
15 another vehicle,
- 16 d. is regulated by the National Highway Traffic Safety
17 Administration as a vehicle or vehicle equipment,
- 18 e. does not require a special highway use permit for
19 operation on the highways, and
- 20 f. an individual can easily transport and set up on a
21 daily basis.

22 Recreational vehicles includes motor homes, travel trailers, fifth-
23 wheel travel trailers, folding camping trailers and truck campers;

1 17. "Recreational vehicle salesperson" means any person who,
2 for gain or compensation of any kind, either directly or indirectly,
3 regularly or occasionally, by any form of agreement or arrangement,
4 sells or negotiates for the sale of any new recreational vehicle for
5 any new recreational vehicle dealer to any one or more third
6 parties;

7 18. "Transient customer" means a person who:

- 8 a. owns a recreational vehicle,
- 9 b. is temporarily traveling through the area of sales
10 responsibility of a dealer, and
- 11 c. engages the dealer to perform service work on that
12 recreational vehicle;

13 19. "Travel trailer" means a vehicular unit mounted on wheels
14 that is designed to provide temporary living quarters for
15 recreational, camping or travel use of such size and weight as to
16 not require a special highway movement permit when towed by a
17 motorized vehicle;

18 20. "Truck camper" means a portable unit that is constructed to
19 provide temporary living quarters for recreational, camping or
20 travel use and consists of a roof, floor and sides and is designed
21 to be loaded onto and unloaded from the back of a pickup truck; and

22 21. "Warrantor" means a manufacturer or any other person that
23 provides a warranty to the consumer in connection with a new
24 recreational vehicle or parts, accessories, or components of a new

1 recreational vehicle. The term does not include a person that
2 provides a service contract, mechanical or other insurance, or an
3 extended warranty sold for separate consideration by a dealer or
4 other person not controlled by a warrantor.

5 SECTION 4. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 596.2 of Title 47, unless there
7 is created a duplication in numbering, reads as follows:

8 A. It shall be unlawful for any person, firm, association,
9 corporation or trust to engage in business as, or serve in the
10 capacity of, or act as a new recreational vehicle dealer, or new
11 recreational vehicle salesperson in this state without first
12 obtaining a license as provided for by law.

13 B. The schedule of license fees to be charged and received by
14 the OMVC for the licenses issued hereunder shall be as follows:

15 1. For each manufacturer or distributor of new recreational
16 vehicles, an initial fee of Four Hundred Dollars (\$400.00) with an
17 annual renewal fee of Three Hundred Dollars (\$300.00);

18 2. For each factory representative, an initial fee of One
19 Hundred Dollars (\$100.00) with an annual renewal fee of One Hundred
20 Dollars (\$100.00);

21 3. For each new motor home dealer, an initial fee of Three
22 Hundred Dollars (\$300.00) per franchise sold at each licensed
23 location with an annual renewal fee of One Hundred Dollars (\$100.00)
24 per franchise sold at each licensed location;

1 4. For each fifth wheel trailer, travel trailer, camping
2 trailer and truck camper dealer, an initial fee of Three Hundred
3 Dollars (\$300.00) per manufacturer represented at each licensed
4 location with an annual renewal fee of One Hundred Dollars (\$100.00)
5 per manufacturer represented at each location; and

6 5. For each salesperson, an initial fee of Twenty-five Dollars
7 (\$25.00) with an annual renewal fee of Twenty-five Dollars (\$25.00).

8 C. A manufacturer shall not sell or display for sale a
9 recreational vehicle in this state except to a dealer or through a
10 dealer that is licensed by the OMVC to sell recreational vehicles in
11 the State of Oklahoma. The manufacturer shall also be required to
12 have a dealer agreement with the dealer that meets the requirements
13 of this act and is signed by both parties.

14 D. A dealer shall not sell or display for sale a new
15 recreational vehicle in this state unless the dealer is licensed by
16 the OMVC to sell recreational vehicles in the State of Oklahoma.
17 The dealer shall also be required to have a dealer agreement with
18 the manufacturer of the recreational vehicle that meets the
19 requirements of this act and is signed by both parties.

20 SECTION 5. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 596.3 of Title 47, unless there
22 is created a duplication in numbering, reads as follows:
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1 A. All of the following conditions shall apply to the area of
2 sales responsibility of a dealer included in a dealer agreement
3 between a manufacturer and a dealer:

4 1. The manufacturer shall designate in the dealer agreement the
5 area of sales responsibility exclusively assigned to the dealer;

6 2. The manufacturer shall not change the area of sales
7 responsibility of a dealer or establish another dealer for the same
8 line-make in that area during the term of the dealer agreement;

9 3. If, while the dealer agreement is in place, the dealer
10 enters into an agreement to sell any recreational vehicles that
11 compete with the recreational vehicles included in the dealer
12 agreement or enters into an agreement to increase a preexisting
13 commitment to sell any recreational vehicles that compete with the
14 recreational vehicles included in the dealer agreement, the dealer
15 shall, within a reasonable amount of time, notify the manufacturers
16 with whom the dealer currently holds dealer agreements of such new
17 circumstances; and

18 4. The area of sales responsibility may not be reviewed or
19 changed without the consent of both parties until one (1) year after
20 the execution of the dealer agreement.

21 B. A dealer may not conduct sales activity or display for sale
22 recreational vehicles outside of its designated area of sales
23 responsibility.

1 C. A dealer may sell off-premise within the area of sales
2 responsibility of the dealer under the following circumstances:

3 1. At sanctioned recreational vehicle shows where the sales
4 event is held off-premise and at least sixty-seven percent (67%) of
5 the recreational vehicle dealers that are located within a sixty-
6 mile radius of the location of the show participate in the show. A
7 sanctioned recreational vehicle show may be held only under the
8 following conditions:

9 a. the sponsoring entity of the sales event shall obtain
10 a permit from the OMVC at the rate of Two Hundred
11 Dollars (\$200.00) per event. The permit shall be for
12 a period not to exceed ten (10) consecutive days,

13 b. dealer permits for a sanctioned recreational vehicle
14 show described in this paragraph shall be obtained
15 from the OMVC at a rate of Fifteen (\$15.00) for each
16 motor home per sanctioned recreational vehicle show,

17 c. new recreational vehicle dealers whose manufacturer-
18 approved area of responsibility includes the event
19 location shall be eligible to participate in the
20 sanctioned recreational vehicle show,

21 d. new recreational vehicle dealers shall obtain written
22 approval from the manufacturer or distributor to
23 participate in the sanctioned recreational vehicle
24 show, and

1 e. the sanctioned recreational vehicle show shall be
2 conducted within municipal, county, or state-owned or
3 controlled facilities or within the grounds of any
4 county, district, or state fair; and

5 2. At nonsanctioned recreational vehicle shows where one or
6 more dealers may sell recreational vehicles off-premise under the
7 following conditions:

8 a. dealer permits for a nonsanctioned recreational
9 vehicle show described in this paragraph shall be
10 obtained from the OMVC at a rate of Fifteen Dollars
11 (\$15.00) for each recreational vehicle per
12 nonsanctioned recreational vehicle show,

13 b. the location of the nonsanctioned recreational vehicle
14 show shall be within the manufacturer-approved area of
15 responsibility,

16 c. the nonsanctioned recreational vehicle show shall
17 occur no more than five (5) consecutive days per
18 event, excluding county, district, or state fairs,

19 d. each dealer may participate in no more than eight
20 nonsanctioned recreational vehicle shows per calendar
21 year, and

22 e. nonsanctioned recreational vehicle shows shall be held
23 on privately owned property no closer than two and
24 one-half (2.5) miles to any other recreational vehicle

1 dealer; provided, however a nonsanctioned recreational
2 vehicle show may be held on county or municipally
3 owned property with no mileage barrier restriction.

4 D. A dealer may display a recreational vehicle within the
5 designated area of responsibility of the dealer for promotional
6 purposes. At an off-premise display event, no sales activities
7 shall be conducted including, but not limited to, negotiations,
8 financing and accepting credit applications. Sales or finance
9 personnel shall not be permitted to participate at an off-premise
10 display event. A permit for the off-premise display event shall not
11 be required.

12 E. A dealer may sell recreational vehicles on Sunday only at a
13 sanctioned or nonsanctioned show.

14 F. A dealer agreement shall include a designated principal of
15 the dealer. A dealer agreement may identify a family member as the
16 successor of the principal or include a succession plan of the
17 dealer. A dealer may at any time change a designation or succession
18 plan made in the dealer agreement by providing written notice to the
19 manufacturer.

20 SECTION 6. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 596.4 of Title 47, unless there
22 is created a duplication in numbering, reads as follows:

23 A. A manufacturer shall from time to time publish the prices,
24 charges, and terms of sale of the manufacturer for recreational

1 vehicles and may only sell a recreational vehicle to a dealer in
2 accordance with the published prices, charges, and terms of sale in
3 effect at the time of sale.

4 B. In a renewal of a dealer agreement, the manufacturer may not
5 impose on the dealer stocking requirements or retail sales targets
6 that are inconsistent with market growth or contraction in the area
7 of sales responsibility of the dealer.

8 SECTION 7. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 596.5 of Title 47, unless there
10 is created a duplication in numbering, reads as follows:

11 A. A manufacturer, directly or through any officer, agent, or
12 employee, shall not terminate or not renew a dealer agreement
13 without good cause.

14 B. A manufacturer has the burden of showing good cause for
15 terminating or not renewing a dealer agreement. All of the
16 following factors shall be considered in determining whether there
17 is good cause for a proposed termination or nonrenewal of a dealer
18 agreement by a manufacturer:

19 1. The extent of the penetration of the dealer in the relevant
20 market area;

21 2. The extent and quality of the service of the dealer under
22 recreational vehicle warranties;

23 3. The nature and extent of the investment of the dealer in
24 business of the dealer;

1 4. The adequacy of the service facilities, equipment, parts,
2 supplies, and personnel of the dealer;

3 5. The effect of the proposed action on the community;

4 6. Whether the dealer fails to follow agreed-upon procedures or
5 standards related to the overall operation of the dealership; and

6 7. The performance by the dealer under the terms of dealer
7 agreement.

8 C. Except as otherwise provided in this section, a manufacturer
9 shall provide a dealer with written notice of a termination or
10 nonrenewal of a dealer agreement. All of the following conditions
11 apply to a notice described in this subsection:

12 1. Except as provided in paragraph 4 or 5 of this subsection,
13 the manufacturer shall provide written notice at least ninety (90)
14 days before the effective date of the termination or nonrenewal of
15 the dealer agreement;

16 2. The notice shall state all of the reasons for the
17 termination or nonrenewal of the dealer agreement;

18 3. The notice shall state that if the dealer provides to the
19 manufacturer a written notification of the intent of the dealer to
20 cure all claimed deficiencies within thirty (30) days after the
21 dealer receives the notice, the dealer shall have one hundred twenty
22 (120) days after the date of the notice to correct the claimed
23 deficiencies. If all of the deficiencies are corrected within the
24 one-hundred-twenty-day time period, the notice shall be deemed void

1 and the manufacturer shall not terminate or not renew the dealer
2 agreement because of the claimed deficiencies stated in the notice.
3 If the dealer does not provide a notification of intent to cure
4 deficiencies within the thirty-day time period, the termination or
5 nonrenewal of the dealer agreement shall take effect sixty (60) days
6 after the dealer received the notice from the manufacturer;

7 4. A manufacturer may reduce the notice period described in
8 paragraph 1 of this subsection from ninety (90) days to thirty (30)
9 days and shall not be required to allow the dealer an opportunity to
10 correct the deficiencies if the grounds for termination or
11 nonrenewal of the dealer agreement by the manufacturer are any of
12 the specific categories of good cause described in subsection F of
13 this section; and

14 5. A manufacturer shall not be required to provide notice or an
15 opportunity to correct deficiencies under this subsection if the
16 grounds for termination or nonrenewal of the dealer agreement by the
17 manufacturer includes one of the following:

- 18 a. the dealer becomes insolvent,
- 19 b. the dealer is bankrupt, or
- 20 c. the dealer makes an assignment for the benefit of
21 creditors.

22 D. If a manufacturer terminates or does not renew a dealer
23 agreement for good cause under this section the manufacturer, at its
24 option, may repurchase any of the following from the dealer:

1 1. All new, untitled recreational vehicles that were acquired
2 from the manufacturer within eighteen (18) months before the
3 effective date of the notice of termination of the dealer agreement
4 that have not been used, except for demonstration purposes and have
5 not been altered or damaged, may be repurchased at one hundred
6 percent (100%) of the net invoice cost of the recreational vehicles,
7 including transportation, less applicable rebates and discounts to
8 the dealer;

9 2. All current and undamaged accessories and proprietary parts
10 sold to the dealer for resale within the eighteen (18) months prior
11 to the effective date of the termination of the dealer agreement
12 that are accompanied by the original invoice may be repurchased at
13 one hundred five percent (105%) of the original net price paid to
14 the manufacturer to compensate the dealer for handling, packing, and
15 shipping the accessories and parts; and

16 3. Any properly functioning diagnostic equipment, special
17 tools, current signage, and other equipment and machinery, purchased
18 by the dealer within the five (5) years prior to the effective date
19 of the termination of the dealer agreement at the request of the
20 manufacturer, if such equipment or machinery cannot be used in the
21 normal course of the ongoing business of the dealer, may be
22 repurchased at one hundred percent (100%) of the net cost of the
23 dealer, plus freight, destination, delivery, and distribution
24 charges and sales taxes.

1 E. The dealer shall promptly return or arrange for the return
2 of all of the items the manufacturer is required to repurchase under
3 subsection D of this section at the expense of the manufacturer.

4 F. As used in this section, "good cause" includes, but is not
5 limited to, any of the following:

6 1. A conviction of a felony or a plea of guilty or nolo
7 contendere to a felony by a dealer or an owner of a dealer of a
8 crime that was committed during the time frame of the current dealer
9 agreement; provided, there is full disclosure, in writing, of any
10 felony conviction or plea of guilty or nolo contendere to any such
11 felony crime that occurred within ten (10) years of entering into
12 such dealer agreement;

13 2. Abandonment or permanent closing of the business operations
14 of a dealer for twenty-one (21) consecutive business days without
15 contacting the manufacturer prior to the closing unless the closing
16 is due to an act of God, strike, labor difficulty, or other cause
17 over which the dealer has no control;

18 3. A material misrepresentation to a manufacturer by a dealer
19 that severely affects the business relationship between the dealer
20 and the manufacturer;

21 4. Suspension or revocation of the license of a dealer or
22 refusal to renew the license of the dealer by the OMVC;

23 5. A material violation of any of the provisions of the
24 Recreational Vehicle Franchise Act by a dealer; or

1 6. The dealer becomes insolvent, is bankrupt, or makes an
2 assignment for the benefit of creditors.

3 SECTION 8. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 596.6 of Title 47, unless there
5 is created a duplication in numbering, reads as follows:

6 A. A dealer may not terminate a dealer agreement with a
7 manufacturer without good cause. A dealer that terminates a dealer
8 agreement shall provide the manufacturer with written notice at
9 least ninety (90) days prior to the effective date of the
10 termination of the dealer agreement.

11 B. All of the following conditions shall apply to a termination
12 of a dealer agreement under this section for good cause:

13 1. The notice described in subsection A of this section shall
14 state all reasons for the proposed termination;

15 2. The notice described in subsection A of this section shall
16 state that if the manufacturer provides to the dealer a written
17 notification of intent to cure all claimed deficiencies within
18 thirty (30) days after the manufacturer receives the notice, the
19 manufacturer shall have one hundred twenty (120) days after the date
20 of the notice to correct the deficiencies. If all of the
21 deficiencies are corrected within the one-hundred-twenty-day period,
22 the notice shall be deemed void and the dealer shall not terminate
23 the dealer agreement because of the claimed deficiencies stated in
24 the notice. If the manufacturer does not provide a notification of

1 intent to cure deficiencies within thirty (30) days of receiving the
2 notice to terminate the dealer agreement, the termination shall take
3 effect sixty (60) days after the manufacturer received from the
4 dealer the notice to terminate;

5 3. A dealer may reduce the notice period described in
6 subsection A of this section from ninety (90) days to thirty (30)
7 days and shall not be required to allow the manufacturer an
8 opportunity to correct the deficiencies if the grounds for
9 termination or nonrenewal of the dealer agreement by the dealer are
10 any of the specific categories of good cause described in subsection
11 C of this section; and

12 4. A dealer is not required to provide notice or an opportunity
13 to correct deficiencies under this section if the grounds for
14 termination or nonrenewal of the dealer agreement by the dealer
15 includes one of the following:

- 16 a. the manufacturer becomes insolvent,
- 17 b. the manufacturer is bankrupt, or
- 18 c. the manufacturer makes an assignment for the benefit
19 of creditors.

20 C. The dealer has the burden of showing good cause. Any one of
21 the following categories is considered good cause for a proposed
22 termination of a dealer agreement by a dealer:

- 23 1. A conviction of a felony or a plea of guilty or nolo
24 contendere to a felony by a manufacturer of a crime that was

1 committed during the time frame of the current dealer agreement;
2 provided, there is full disclosure, in writing, of any felony
3 conviction or plea of guilty or nolo contendere to any such felony
4 crime that occurred within ten (10) years of entering into such
5 dealer agreement;

6 2. Abandonment or permanent closing of the business operations
7 of the manufacturer for twenty-one (21) consecutive business days
8 without contacting the dealer prior to the closing unless the
9 closing is due to an act of God, strike, labor difficulty, or other
10 cause over which the manufacturer has no control;

11 3. A material misrepresentation to the dealer by the
12 manufacturer that severely affects the business relationship between
13 the dealer and manufacturer;

14 4. A material violation of any of the provisions of the
15 Recreational Vehicle Franchise Act by the manufacturer;

16 5. A material breach of the dealer agreement by the
17 manufacturer; or

18 6. The manufacturer becomes insolvent, is bankrupt, or makes an
19 assignment for the benefit of creditors.

20 D. If the manufacturer fails to cure any claimed deficiencies
21 pursuant to subsection B of this section, the dealer may require
22 that the manufacturer repurchase any of the following from the
23 dealer:

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1 1. All new, untitled recreational vehicles that were acquired
2 from the manufacturer within eighteen (18) months prior to the
3 effective date of the notice of termination of the dealer agreement
4 that have not been used, except for demonstration purposes, and that
5 have not been altered or damaged, may be repurchased at one hundred
6 percent (100%) of the net invoice cost of the recreational vehicles,
7 including transportation, less applicable rebates and discounts to
8 the dealer;

9 2. All current and undamaged accessories and proprietary parts
10 sold to the dealer for resale within eighteen (18) months prior to
11 the effective date of the termination of the dealer agreement that
12 are accompanied by the original invoice may be repurchased at one
13 hundred five percent (105%) of the original net price paid to the
14 manufacturer to compensate the dealer for handling, packing, and
15 shipping the accessories and parts; and

16 3. Any properly functioning diagnostic equipment, special
17 tools, current signage, and other equipment and machinery, purchased
18 by the dealer within five (5) years prior to the effective date of
19 the termination of the dealer agreement if such equipment or
20 machinery cannot be used in the normal course of the ongoing
21 business of the dealer, may be repurchased at one hundred percent
22 (100%) of the net cost of the dealer, plus freight, destination,
23 delivery, and distribution charges and sales taxes.

24

1 E. The dealer shall promptly return or arrange for the return
2 of all of the items the manufacturer is required to repurchase under
3 subsection D of this section at the expense of the manufacturer.

4 SECTION 9. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 596.7 of Title 47, unless there
6 is created a duplication in numbering, reads as follows:

7 The OMVC may not prohibit a dealer from selling a particular
8 line-make after a dealer agreement has been terminated or not
9 renewed pursuant to the provisions of Section 7 or 8 of this act.
10 If recreational vehicles of a line-make are not returned or required
11 to be returned to the manufacturer, the dealer may continue to sell
12 all line-makes that were subject to the dealer agreement and are
13 currently in stock until those line-makes are no longer in the
14 dealer inventory.

15 SECTION 10. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 596.8 of Title 47, unless there
17 is created a duplication in numbering, reads as follows:

18 A. All of the following conditions shall apply to a proposed
19 sale of the business assets, transfer of the stock, or other
20 transaction that will result in a change of ownership of a dealer,
21 except a transaction described in subsection B of this section:

22 1. The dealer shall provide written notice to the manufacturer
23 at least ninety (90) days prior to the proposed closing of the
24 transaction;

1 2. If the dealer is not in breach of the dealer agreement or in
2 violation of the provisions of this act at the time the dealer
3 provides the notice described in paragraph 1 of this subsection, the
4 manufacturer shall not object to the proposed transaction, unless
5 the prospective transferee meets one or more of the following:

6 a. the prospective transferee was previously a party to a
7 dealer agreement with the manufacturer that the
8 manufacturer terminated,

9 b. in the preceding ten (10) years, the prospective
10 transferee was convicted of a felony crime or any
11 crime of fraud, deceit or moral turpitude,

12 c. the prospective transferee does not have an
13 application for a recreational vehicle dealer license
14 pending with the OMVC or a tentative dealer agreement
15 with a recreational vehicle manufacturer to conduct
16 business as a dealer in this state,

17 d. the prospective transferee does not have an active
18 line of credit sufficient to purchase recreational
19 vehicles from the manufacturer according to the terms
20 of the dealer agreement, or

21 e. in the preceding ten (10) years, the prospective
22 transferee was bankrupt or insolvent, made a general
23 assignment for the benefit of creditors, or a
24 receiver, trustee, or conservator was appointed to

1 take possession of the business or property of the
2 prospective transferee;

3 3. If the manufacturer objects to the proposed transaction, the
4 manufacturer shall give written notice of an objection, including
5 the reasons by the manufacturer for objecting, to the dealer within
6 thirty (30) days after receiving the notice described in paragraph 1
7 of this subsection. If the manufacturer does not give notice of an
8 objection within the thirty-day time period, the proposed
9 transaction shall be considered approved by the manufacturer; and

10 4. For purposes of paragraph 3 of this subsection, the
11 manufacturer has the burden of demonstrating why the manufacturer
12 objects to the proposed transaction.

13 B. All of the following conditions apply concerning the death,
14 incapacity, or retirement of the designated principal of a dealer:

15 1. The manufacturer shall provide the dealer an opportunity to
16 designate, in writing, a family member as a successor to the dealer
17 in the event of the death, incapacity, or retirement of the
18 designated principal;

19 2. The manufacturer shall not prevent or refuse to honor the
20 succession to a dealership by a family member of the deceased,
21 incapacitated, or retired designated principal of that dealer unless
22 the manufacturer previously provided written notice to the dealer of
23 any objections to the succession plan of the dealer within thirty
24

1 (30) days after receiving the succession plan of the dealer or any
2 modification of the succession plan of the dealer;

3 3. Except as provided in paragraph 5 of this subsection, unless
4 the dealer is in breach of the dealer agreement, a manufacturer
5 shall not object to the succession to a dealership by a family
6 member of the deceased, incapacitated, or retired designated
7 principal, unless the successor meets one or more of the following:

- 8 a. in the preceding ten (10) years, the successor was
9 convicted of a felony crime or any crime of fraud,
10 deceit or moral turpitude,
- 11 b. in the preceding ten (10) years, the successor was
12 bankrupt, insolvent, or made an assignment for the
13 benefit of creditors,
- 14 c. the successor was previously a party to a dealer
15 agreement with the manufacturer that the manufacturer
16 terminated for a breach of a dealer agreement,
- 17 d. the successor does not have an active line of credit
18 sufficient to purchase recreational vehicles from the
19 manufacturer according to the terms of the dealer
20 agreement, or
- 21 e. the successor does not have an application for a
22 recreational vehicle dealer license pending with the
23 OMVC or a tentative dealer agreement with a
24

1 recreational vehicle manufacturer to conduct business
2 as a dealer in this state;

3 4. The manufacturer has the burden of proof regarding any
4 objection to the succession to a dealership by a family member of
5 the deceased, incapacitated, or retired designated principal; and

6 5. The consent of the manufacturer shall be required for the
7 succession to a dealership by a family member of the deceased,
8 incapacitated, or retired designated principal if the succession
9 involves a relocation of the business or an alteration of the terms
10 and conditions of the dealer agreement.

11 SECTION 11. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 596.9 of Title 47, unless there
13 is created a duplication in numbering, reads as follows:

14 A. A warrantor has all of the following obligations to each
15 dealer engaged in the sale or lease of products that are covered by
16 a warranty from that warrantor:

17 1. To specify in writing to the dealer the obligations of the
18 dealer, if any, for preparation, delivery, and warranty service on
19 its products;

20 2. To compensate the dealer for warranty service required of
21 the dealer by the warrantor;

22 3. To provide the dealer with a schedule of compensation the
23 warrantor will pay for warranty work and the time allowances of the
24 warrantor for the performance of that work. All of the following

1 conditions apply to the schedule of compensation required under this
2 paragraph:

3 a. reasonable compensation for diagnostic work and
4 warranty labor,

5 b. time allowances in the schedule for the diagnosis and
6 performance of warranty labor shall be reasonable for
7 the work to be performed, and

8 c. the compensation of a dealer for warranty labor shall
9 be the actual retail labor rates charged by the dealer
10 in the community in which the dealer is doing
11 business;

12 4. To reimburse the dealer for warranty parts at actual
13 wholesale cost, plus a minimum thirty percent (30%) handling charge
14 and any freight costs to return warranty parts to the warrantor; and

15 5. To deny dealer claims for warranty compensation only for
16 cause, including, but not limited to, performance of nonwarranty
17 repairs, material noncompliance with the published policies and
18 procedures of the warrantor, lack of material documentation of
19 claims, fraud, or misrepresentation.

20 B. A warrantor may conduct audits of the records of a dealer
21 that sells or leases its warranted products on a reasonable basis.

22 C. A dealer shall submit warranty claims to a warrantor within
23 sixty (60) days after completing all warranty work on a warranted
24 product.

1 D. A dealer shall notify the warrantor in writing if the dealer
2 is unable to perform material or repetitive warranty repairs as soon
3 as is reasonably possible.

4 E. A warrantor shall approve or disapprove a warranty claim on
5 a warranted product in writing within thirty (30) days after the
6 date the dealer submits the claim, if the claim is submitted in the
7 manner and in the form prescribed by the warrantor. If a claim that
8 is properly submitted is not specifically disapproved in writing by
9 a warrantor within the thirty-day time period, the claim shall be
10 considered approved by the warrantor and the warrantor shall pay the
11 amount of the claim to the dealer within sixty (60) days after the
12 dealer submitted the claim.

13 SECTION 12. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 596.10 of Title 47, unless there
15 is created a duplication in numbering, reads as follows:

16 A. A warrantor shall not do any of the following:

17 1. Fail to perform all of its warranty obligations with respect
18 to a warranted product;

19 2. In any written notice of a factory campaign to recreational
20 vehicle owners and dealers, fail to include the expected date by
21 which necessary parts and equipment, including tires and chassis or
22 chassis parts if required, will be available to dealers to perform
23 the factory campaign work. The warrantor shall provide sufficient
24 parts to the dealer to perform the factory campaign work. If the

1 number of parts provided to the dealer pursuant to this paragraph
2 exceed the requirements of the dealer to perform the factory
3 campaign work, the dealer may return unused parts to the warrantor
4 for credit after completion of the factory campaign;

5 3. Subject to the provisions of Section 14 of this act, fail to
6 compensate a dealer for authorized repairs of warranted products
7 damaged during the manufacturing process or damaged while in transit
8 to the dealer if the warrantor selected the carrier;

9 4. Fail to compensate a dealer for authorized warranty service
10 under this section in accordance with the applicable schedule of
11 compensation provided to the dealer pursuant to Section 11 of this
12 act if the warranty service is performed in a timely and competent
13 manner;

14 5. Intentionally misrepresent in any way to a purchaser of a
15 warranted product that any warranty concerning the manufacture,
16 performance, or design of the warranted product is made by the
17 dealer either as a warrantor or cowarrantor; or

18 6. Require a dealer to make warranties to customers in any
19 manner related to the manufacture of a warranted product.

20 B. A warrantor shall indemnify the dealer for any money paid or
21 costs incurred by a dealer in connection with a claim or cause of
22 action asserted against the dealer to the extent that payment or
23 costs incurred are based on the negligence or intentional misconduct
24 of the warrantor. A warrantor shall not limit the obligation to

1 indemnify described in this subsection by agreement with the dealer.
2 The dealer shall provide a warrantor with a copy of any claim or
3 complaint in which an allegation described in this subsection is
4 made within ten (10) days after receiving that claim or complaint.

5 C. As used in this section and Section 13 of this act:

6 1. "Products" mean new recreational vehicles or parts,
7 accessories, or components of new recreational vehicles; and

8 2. "Warranted products" mean products subject to a warranty
9 from a specific warrantor.

10 SECTION 13. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 596.11 of Title 47, unless there
12 is created a duplication in numbering, reads as follows:

13 A. A dealer shall not do any of the following:

14 1. Fail to perform predelivery inspection of products, if
15 required, in a competent and timely manner;

16 2. If a transient customer requests service work on a
17 recreational vehicle of a line-make that the dealer is authorized to
18 display and sell, fail to perform any warranty service work
19 authorized by a warrantor in a reasonably competent and timely
20 manner without good cause;

21 3. Make a fraudulent warranty claim to a warrantor; or

22 4. Misrepresent the terms of any warranty.

23 B. A dealer shall indemnify a warrantor for any money paid or
24 costs incurred by a warrantor in connection with a claim or cause of

1 action asserted against the warrantor to the extent that payment or
2 costs incurred are based on the negligence or intentional misconduct
3 of the dealer. A dealer shall not limit the obligation to indemnify
4 described in this subsection by agreement with the warrantor. The
5 warrantor shall provide a dealer with a copy of any claim or
6 complaint in which an allegation described in this subsection is
7 made within ten (10) days after receiving the claim or complaint.

8 SECTION 14. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 596.12 of Title 47, unless there
10 is created a duplication in numbering, reads as follows:

11 A. All of the following conditions apply if a new recreational
12 vehicle is damaged before it is shipped to a dealer, or is damaged
13 in transit to the dealer and the manufacturer selected the carrier
14 or means of transportation:

15 1. The dealer shall notify the manufacturer of the damage
16 within the time period specified in the dealer agreement and do one
17 of the following:

18 a. in the notice, request authorization to replace the
19 components, parts, and accessories damaged, or
20 otherwise correct the damage, from the manufacturer,
21 or

22 b. reject the recreational vehicle within the time period
23 specified in the dealer agreement;

24

1 2. If the manufacturer refuses or fails to authorize repair of
2 the damage within ten (10) days after receiving notice under
3 paragraph 1 of this subsection or if the dealer rejects the
4 recreational vehicle because of the damage within the time period
5 specified in the dealer agreement, ownership of the recreational
6 vehicle reverts to the manufacturer; and

7 3. The dealer shall exercise due care in the custody of the
8 damaged recreational vehicle; provided, the dealer shall have no
9 financial or other obligation with respect to that recreational
10 vehicle.

11 B. A dealer agreement shall include a time period for
12 inspection and rejection of damaged recreational vehicles under
13 subsection A of this section that is not less than two (2) business
14 days after the physical delivery of the recreational vehicle to the
15 dealer.

16 C. If a dealer determines that a new recreational vehicle has
17 an unreasonable number of miles on the odometer at the time the
18 recreational vehicle is delivered to the dealer, the dealer may
19 reject the recreational vehicle and said ownership of the
20 recreational vehicle shall revert to the manufacturer. However, if
21 the number of miles on the odometer of the recreational vehicle is
22 less than the sum of the distance between the dealer and the factory
23 of the manufacturer or point of distribution plus one hundred (100)

1 miles, the dealer may not consider the number of miles on the
2 odometer unreasonable for purposes of this subsection.

3 SECTION 15. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 596.13 of Title 47, unless there
5 is created a duplication in numbering, reads as follows:

6 A. A manufacturer shall not coerce or attempt to coerce a
7 dealer to purchase a product or service that the dealer did not
8 order.

9 B. A manufacturer shall not coerce or attempt to coerce a
10 dealer to enter into any agreement with the manufacturer.

11 C. A manufacturer shall not coerce or attempt to coerce a
12 dealer to enter into an agreement with the manufacturer or any other
13 person that requires the dealer to submit any disputes by the dealer
14 to binding arbitration or otherwise waive the rights or
15 responsibilities of the dealer under the provisions of this act.

16 D. As used in this section, the term "coerce" includes, but is
17 not limited to:

18 1. Threatening to terminate or not renew a dealer agreement
19 without good cause;

20 2. Threatening to withhold line-makes or other product lines
21 the dealer is entitled to display and sell under the dealer
22 agreement; or

23 3. Delay delivery of recreational vehicles as an inducement to
24 amend the dealer agreement.

1 SECTION 16. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 596.14 of Title 47, unless there
3 is created a duplication in numbering, reads as follows:

4 The Oklahoma Motor Vehicle Commission may deny an application
5 for a license, revoke or suspend a license, impose a fine against a
6 manufacturer or distributor in an amount not to exceed Ten Thousand
7 Dollars (\$10,000.00) per occurrence, or impose a fine against a
8 dealer in an amount not to exceed One Thousand Dollars (\$1,000.00)
9 per occurrence if any provision of the Recreational Vehicle
10 Franchise Act of Title 47 of the Oklahoma Statutes is violated or
11 for any of the following reasons:

12 1. On satisfactory proof of unfitness of the applicant in any
13 application for any license under the provisions of the Recreational
14 Vehicle Franchise Act;

15 2. For any material misstatement made by an applicant in any
16 application for any license under the provisions of the Recreational
17 Vehicle Franchise Act;

18 3. For any failure to comply with any provision of the
19 Recreational Vehicle Franchise Act or any rule promulgated by the
20 OMVC under authority vested to the OMVC pursuant to the Recreational
21 Vehicle Franchise Act;

22 4. A change of condition after a license is granted resulting
23 in the failure to maintain the qualifications for a license;

24

1 5. Being a new recreational vehicle dealer or new recreational
2 vehicle salesperson who:

- 3 a. has required a purchaser of a new recreational
4 vehicle, as a condition of sale and delivery thereof,
5 to also purchase special features, appliances,
6 accessories or equipment not desired or requested by
7 the purchaser and installed by the dealer,
- 8 b. uses any false or misleading advertising in connection
9 with business as a new recreational vehicle dealer or
10 vehicle salesperson,
- 11 c. has committed any unlawful act which resulted in the
12 revocation of any similar license in another state,
- 13 d. has failed or refused to perform any written agreement
14 with any retail buyer involving the sale of a
15 recreational vehicle,
- 16 e. has been convicted of a crime involving moral
17 turpitude,
- 18 f. has committed a fraudulent act in selling, purchasing
19 or otherwise dealing in new recreational vehicles or
20 has misrepresented the terms and conditions of a sale,
21 purchase or contract for sale or purchase of a new
22 recreational vehicle or any interest therein including
23 an option to purchase such vehicle, or

24

1 g. has failed to meet or maintain the conditions and
2 requirements necessary to qualify for the issuance of
3 a license;

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

6 7. Being a new recreational vehicle dealer who:

7 a. does not have an established place of business,

8 b. does not provide for a suitable repair shop separate

9 from the display room with ample space to repair or

10 recondition one or more recreational vehicles at the

11 same time and equipped with tools, equipment, and

12 replacement parts as may be necessary for the

13 servicing of recreational vehicles in such a manner as

14 to make such vehicles comply with the safety laws of

15 this state and properly fulfill the warranty

16 obligation of the dealer or manufacturer,

17 c. does not hold a dealer agreement in effect with a

18 manufacturer or distributor of new or unused

19 recreational vehicles for the sale of the same and is

20 not authorized by the manufacturer or distributor to

21 render predelivery preparation of such vehicles sold

22 to purchasers and perform authorized postsale work

23 pursuant to the warranty of the manufacturer or

24 distributor,

- 1 d. employs unlicensed salespersons or employs or utilizes
2 the services of used recreational vehicle lots,
3 dealers or other unlicensed persons in connection with
4 the sale of new recreational vehicles,
5 e. does not properly service a new recreational vehicle
6 before delivery of same to the original purchaser of
7 the recreational vehicle, or
8 f. fails to order and stock a reasonable number of new
9 recreational vehicles necessary to meet customer
10 demand for each of the new recreational vehicles
11 included in the new recreational vehicle franchise
12 agreement of the dealer, unless the new recreational
13 vehicles are not readily available from the
14 manufacturer or distributor due to limited production;
15 or

16 8. Being a factory that has:

- 17 a. induced or attempted to induce by means of coercion or
18 intimidation any new recreational vehicle dealer:
19 (1) to accept delivery of any recreational vehicle or
20 vehicles, parts or accessories for recreational
21 vehicles, or any other commodities including
22 advertising material which shall not have been
23 ordered by the new recreational vehicle dealer,
24

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

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

- 10 b. induced under threat or discrimination by the
11 withholding from delivery to a recreational vehicle
12 dealer certain models of recreational vehicles,
13 changing or amending unilaterally the allotment of
14 recreational vehicles of a dealer or withholding and
15 delaying delivery of such vehicles out of the ordinary
16 course of business, in order to induce a dealer by
17 such coercion to participate or contribute to any
18 local or national advertising fund controlled directly
19 or indirectly by the factory or for any other purposes
20 including contests, giveaways, other sales promotional
21 devices, or change of quotas in any sales contest, or
- 22 c. required recreational vehicle dealers, as a condition
23 of receiving the vehicle allotment of the dealer, to
24 order a certain percentage of the recreational

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

6 SECTION 17. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 596.15 of Title 47, unless there
8 is created a duplication in numbering, reads as follows:

9 A. A dealer, manufacturer, or warrantor injured by another
10 party who has violated a provision of this act may bring a civil
11 action in court for the recovery of actual damages. The court shall
12 award attorney fees and costs to the prevailing party in a civil
13 action under this section.

14 B. Venue for a civil action filed pursuant to this section
15 shall be the county in which the business of the dealer is located.
16 In an action involving more than one dealer, any county in which the
17 business of any dealer that is party to the action is located is a
18 proper venue for that action.

19 C. Before bringing a civil action under this section, the party
20 bringing suit for an alleged violation of this act shall serve a
21 written demand for mediation on the offending party. The demand for
22 mediation shall include a brief statement of the dispute and the
23 relief sought by the party making the demand. The party making the
24

1 demand for mediation shall serve the demand by certified mail to one
2 of the following addresses:

3 1. In an action between a dealer and a manufacturer, the
4 address stated in the dealer agreement between the parties;

5 2. In an action between a dealer and a warrantor that is not a
6 manufacturer, the address stated in any agreement between the
7 parties; or

8 3. In an action between two dealers, the address of the
9 offending dealer in the records of the OMVC.

10 D. Within twenty (20) days after a demand for mediation is
11 served under subsection C of this section, the parties shall
12 mutually select an independent mediator who is approved by the OMVC,
13 and meet with that mediator for the purpose of attempting to resolve
14 the dispute at a location in this state selected by the mediator.
15 The mediator may extend the date of the meeting for good cause shown
16 by either party or if the parties agree to the extension.

17 E. The service of a demand for mediation under subsection C of
18 this section tolls the time for the filing of any complaint,
19 petition, protest, or other action under this act until
20 representatives of both parties have met with the mediator selected
21 pursuant to subsection D of this section for the purpose of
22 attempting to resolve the dispute. If a complaint, petition,
23 protest, or other action is filed before that meeting, the court
24 shall enter an order suspending the proceeding or action until the

1 mediation meeting has occurred and may, if all of the parties to the
2 proceeding or action stipulate in writing that they wish to continue
3 to mediate under this section, enter an order suspending the
4 proceeding or action for as long a period as the court considers
5 appropriate. The court may modify, extend, or revoke a suspension
6 order issued under this subsection if it considers that action
7 appropriate.

8 F. Each of the parties to the mediation under this section is
9 responsible for its own attorney fees. The parties shall equally
10 divide the cost of the mediator.

11 SECTION 18. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 596.16 of Title 47, unless there
13 is created a duplication in numbering, reads as follows:

14 A. In addition to any remedy available under the provisions of
15 this act or otherwise available by law, a manufacturer, warrantor,
16 or dealer may apply to the court for the grant, after a hearing and
17 for cause shown, of a temporary or permanent injunction or other
18 equitable relief restraining any person from doing any of the
19 following:

20 1. Acting as a dealer without a proper license;

21 2. Violating or continuing to violate the provisions of this

22 act. A single violation of the provisions of this act shall be a

23 sufficient basis for the court to grant equitable relief under this

24 section; or

1 3. Failing or refusing to comply with any requirement of the
2 provisions of this act.

3 B. The court may not require a bond as a condition to the grant
4 of equitable relief under this section.

5 C. If, on January 1, 2011, a dealership does not meet the
6 requirements of the definition of "established place of business" as
7 defined in Section 3 of this act, the dealership shall be eligible
8 for licensing by the OMVC for that location. If the dealership
9 moves the dealership to a new location, the new dealership shall
10 comply with the requirements of the definition of "established place
11 of business" as defined in Section 3 of this act.

12 SECTION 19. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 596.17 of Title 47, unless there
14 is created a duplication in numbering, reads as follows:

15 A. A licensee shall not use false or misleading advertising.
16 The following statements are presumptively false and misleading and
17 the burden of proving otherwise shall be on the advertiser or
18 licensee:

19 1. Statements such as "everybody financed", "no credit
20 rejected", "guaranteed approval", "you are preapproved", and other
21 similar statements representing or implying that no prospective
22 credit purchaser will be rejected because of the inability of the
23 credit purchaser to qualify for credit;

1 2. Statements such as "no other dealer grants greater
2 allowances for trade-ins", however stated, unless such is the case;

3 3. Statements such as "due to the large sales volume of the
4 dealer, the dealer is able to purchase vehicles for less than
5 another dealer selling the same line-make of vehicles" unless such
6 is the case;

7 4. Statements such as "factory direct prices", "wholesale
8 prices", "factory sale", and other similar statements that create
9 the impression that the vehicle is being offered for sale by the
10 manufacturer or distributor of the vehicle, are prohibited. Dealers
11 may use terms such as "factory authorized sale" only in conjunction
12 with factory sponsored promotions or advertising campaigns.

13 Statements such as "we have been selected", "we have been chosen",
14 and other similar statements, which imply that the dealership has
15 exclusive arrangements not available to other dealers, are also
16 prohibited;

17 5. A savings claim or discount offer is prohibited except to
18 advertise specific new or demonstrator vehicles. Statements such as
19 "up to", "as much as", "from", shall not be used in connection with
20 savings or discount claims, unless the recreational vehicle for
21 which the claim is made is clearly identified including stock
22 number;

23

24

1 6. The use of the terms "free", "complimentary", or similar
2 terminology is prohibited if a consumer must make a purchase to
3 obtain the "free" offer;

4 7. The terms "dealer's cost", "invoice", "invoice price" or
5 other reference to the cost of the vehicle to the dealer shall not
6 be used;

7 8. No trade-in amount or range of amounts shall be advertised;

8 9. A used recreational vehicle shall not be advertised in any
9 manner that creates the impression that the recreational vehicle is
10 new;

11 10. Statements such as "we pay tag, tax and license", or
12 statements with similar meaning shall not be used;

13 11. Terms used such as "liquidation", "going out of business",
14 or statements with similar meaning, are prohibited unless a dealer
15 is actually going out of business and ceasing operations at the
16 licensed location. If a dealer is going out of business, these
17 terms can only be advertised during the period between the execution
18 of a buy-sell with the proposed buyer and written factory approval;

19 12. An offer of a buy-down rate is prohibited without the
20 following disclaimer: "This is a buy-down rate. The amount of the
21 buy-down may affect the price of the vehicle"; and

22 13. Terms used such as "we will pay off your trade no matter
23 how much you owe" or statements with similar meaning shall not be
24 used, unless accompanied by a disclaimer indicating that payoff

1 amount is added into the contract and is dependent upon approved
2 credit.

3 B. Upon an allegation by the OMVC, a person or entity, that an
4 advertisement may be in violation of the provisions of subsection A
5 of this section, the Executive Director of the OMVC, or designee,
6 shall investigate the allegation to determine if the advertisement
7 is a potential violation. The Executive Director, or designee,
8 shall determine the action to be taken, which may include:

9 1. Correspondence to the dealer;

10 2. An offer to enter into a proposed agreed settlement
11 requiring acceptance by the OMVC; or

12 3. Scheduling a hearing in accordance with permanent Rule OAC
13 465:1-7-3.

14 The OMVC has the authority, under the provisions of Sections 565 and
15 566 of Title 47 of the Oklahoma Statutes, to schedule a hearing at
16 any time concerning alleged advertising violations.

17 C. The violation of an advertising rule shall be considered by
18 the OMVC as a violation of rules and regulations of the Oklahoma
19 Motor Vehicle Commission, created pursuant to Section 563 of Title
20 47 of the Oklahoma Statutes. In addition to the specific
21 advertising regulations provided in this section, any other
22 advertising or advertising practices found by the OMVC to be false
23 or misleading shall be deemed a violation of the law and shall also
24 be considered violations of the general prohibition.

1 SECTION 20. AMENDATORY 21 O.S. 2001, Section 918, as
2 amended by Section 1, Chapter 228, O.S.L. 2005 (21 O.S. Supp. 2010,
3 Section 918), is amended to read as follows:

4 Section 918. No person, firm or corporation, whether owner,
5 proprietor, agent or employee, shall keep open, operate or assist in
6 keeping open or operating any place or premises or residences
7 whether open or closed, for the purpose of selling, bartering, or
8 exchanging, or offering for sale, barter, or exchange, any motor
9 vehicle or motor vehicles, whether new, used or second hand, on the
10 first day of the week, commonly called Sunday, except as otherwise
11 provided in this section; and provided, however, that this act shall
12 not apply to the opening of an establishment or place of business on
13 the first day of the week for other purposes, such as the sale of
14 petroleum products, tires, automobile accessories, or for the
15 purpose of operating and conducting a motor vehicle repair shop, or
16 for the purpose of supplying such services as towing or wrecking.
17 Antique, classic, or special interest automobiles sold, bartered,
18 auctioned, or exchanged by any person, firm, or corporation are
19 exempt from the provisions of this section, as well as off-premise
20 sales of new motorized recreational vehicles approved by the
21 Oklahoma Motor Vehicle Commission pursuant to ~~Section 564.1 of Title~~
22 ~~47 of the Oklahoma Statutes~~ the provisions of the Recreational
23 Vehicle Franchise Act.

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1 SECTION 21. AMENDATORY 47 O.S. 2001, Section 562, as
2 last amended by Section 7, Chapter 182, O.S.L. 2009 (47 O.S. Supp.
3 2010, Section 562), is amended to read as follows:

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

9 1. "Motor vehicle" means any motor-driven vehicle required to
10 be registered under the Oklahoma Vehicle License and Registration
11 Act except recreational vehicles, as defined in the Recreational
12 Vehicle Franchise Act, all-terrain vehicles, utility vehicles, and
13 motorcycles used exclusively for off-road use;

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

1 vehicle to be made before its delivery to the purchaser.

2 "Performance of authorized post-sale work pursuant to the warranty",
3 as used herein, means the rendition of services which are required
4 by the terms of the warranty that stands extended to the vehicle at
5 the time of its sale and are to be made in accordance with the
6 safety standards prescribed by the manufacturer. The term includes
7 premises or facilities at which a person engages only in the repair
8 of motor vehicles if repairs are performed pursuant to the terms of
9 a franchise and motor vehicle manufacturer's warranty. However, the
10 term shall not include premises or facilities at which a new motor
11 vehicle dealer or dealers within the area of responsibility of such
12 dealer or dealers as defined in the manufacturer's franchise
13 agreement of such dealer or dealers performs motor vehicle repairs
14 pursuant to the terms of a franchise and motor vehicle
15 manufacturer's warranty. For the purpose of Sections 561 through
16 567, 572, 578.1, 579 and 579.1 of this title, the terms "new motor
17 vehicle dealer" and "new motor vehicle dealership" shall be
18 synonymous. The term "new motor vehicle dealer" does not include:

- 19 a. receivers, trustees, administrators, executors,
20 guardians or other persons appointed by or acting
21 under judgment or order of any court,
- 22 b. public officers while performing or in operation of
23 their duties, or

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1 c. employees of persons, corporations or associations
2 enumerated in subparagraph a of this paragraph when
3 engaged in the specific performance of their duties as
4 such employees;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 16. "Product" means new motor vehicles and new motor vehicle
19 parts;

20 17. "Service" means motor vehicle warranty repairs including
21 both parts and labor;

22 18. "Lead" means a consumer contact in response to a factory
23 program designed to generate interest in purchasing or leasing a new
24 motor vehicle;

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

2 20. "Factory" means a manufacturer, distributor, factory
3 branch, distributor branch, factory representative or distributor
4 representative, which manufactures or distributes vehicle products.

5 SECTION 22. AMENDATORY 47 O.S. 2001, Section 564.1, as
6 last amended by Section 3, Chapter 315, O.S.L. 2008 (47 O.S. Supp.
7 2010, Section 564.1), is amended to read as follows:

8 Section 564.1 Licensing of off-premises displays of new motor
9 vehicles and off-premise sales of new motorized recreational
10 vehicles.

11 A. The Oklahoma Motor Vehicle Commission shall provide for off-
12 premise displays of new motor vehicles ~~and off-premise sales of new~~
13 ~~motorized recreational vehicles,~~ by currently licensed new motor
14 vehicle dealers ~~as follows:~~.

15 ~~1.~~ An off-premise event may be held for display purposes only
16 under the following conditions:

17 ~~a.~~ ~~the~~ 1. The motor vehicles are for display purposes only
18 and not for sale at the off-premise display event~~;~~i

19 ~~b.~~ ~~no~~ 2. No selling activities shall be conducted~~;~~i

20 ~~c.~~ ~~the~~ 3. The display is in dealer's factory-approved area of
21 sales and service responsibility;

22 ~~d.~~ ~~the~~ 4. The dealer must obtain written approval from the
23 manufacturer or distributor~~;~~i and

1 e. ~~the 5.~~ The dealer is required to obtain approval for the
2 display location from the sponsoring entity, ~~and~~

3 ~~2. An off-premise event by motorized recreational vehicle~~
4 ~~dealer or dealers, at which selling activities are conducted, may be~~
5 ~~held only under the following conditions:~~

6 a. ~~permits for a sales event described in this paragraph~~
7 ~~shall be obtained from the Commission at the rate of~~
8 ~~Fifteen Dollars (\$15.00) per vehicle, per event,~~

9 b. ~~the permit shall be for a period not to exceed ten~~
10 ~~(10) consecutive days,~~

11 c. ~~the sponsoring entity of the sales event shall obtain~~
12 ~~a license from the Commission at the rate of Two~~
13 ~~Hundred Dollars (\$200.00) per event,~~

14 d. ~~new motorized recreational vehicle dealers whose~~
15 ~~factory approved area of sales and service~~
16 ~~responsibility includes the event location would be~~
17 ~~eligible to participate,~~

18 e. ~~new motorized recreational vehicle dealers must obtain~~
19 ~~written approval from the manufacturer or distributor,~~
20 ~~and~~

21 f. ~~the off-premise sales event shall be conducted within~~
22 ~~municipal, county, or state owned or controlled~~
23 ~~facilities or within the grounds of any county,~~
24 ~~district, or state fair.~~

1 B. The Oklahoma Motor Vehicle Commission is authorized to
2 provide a variance to the distance requirements specified in this
3 section, for any off-premise display event if:

4 1. The off-premise display is conducted within municipal,
5 county, or state-owned or controlled facilities or within the
6 grounds of any county, district, or state fair; and

7 2. The request for the variance must be in writing to the
8 Commission no less than thirty (30) days prior to the off-premise
9 display event.

10 SECTION 23. This act shall become effective January 1, 2012.

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