

2nd

OKLAHOMA STATE SENATE
CONFERENCE
COMMITTEE REPORT

May 15, 2014

Mr. President:

Mr. Speaker:

The Conference Committee, to which was rereferred

SB 387

By: Newberry and Mazzei of the Senate and Sears of the House

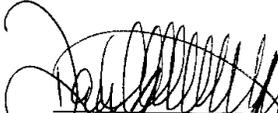
Title: Background investigations; authorizing the Speaker of the House of Representatives and the President Pro Tempore of the Senate to initiate. Effective date.

together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the House recede from all Amendments.
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

SENATE CONFEREES



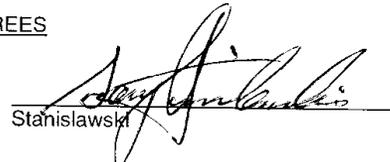
Newberry



Mazzei



Brinkley



Stanislawski

Sparks

McAffrey

HOUSE CONFEREES:

General Conference Committee on Appropriations

ADOPTED & PASSED MAY 21 2014

Senate Action _____ Date _____ House Action _____ Date _____

efc

SB387 CCR2 (A)
HOUSE CONFEREES

Armes, Don



Billy, Lisa J.

Brown, Mike

Christian, Mike

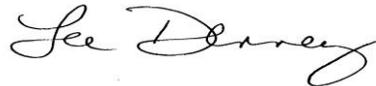


Coody, Ann

Cox, Doug



Denney, Lee



Dorman, Joe

Hoskin, Chuck

Kern, Sally

Martin, Scott



McCullough, Mark



McDaniel,
Jeannie

McNiel, Skye



McPeak, Jerry

Morrisette,
Richard

Nelson, Jason



Newell, Tom

Osborn, Leslie



Ownbey, Pat



Proctor, Eric

Ritze, Mike

Roberts, Sean



Sanders, Mike



Schwartz, Colby



Sears, Earl



Sherrer, Ben

Watson, Weldon

Wesselhoft, Paul

Paul Wesselhoft

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 2nd CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 387

6 By: Newberry and Mazzei of the
7 Senate

8 and

9 Sears of the House

10 2nd CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to motor vehicles; amending 47 O.S.
12 2011, Sections 565, 565.1, 565.2 and 565.3, which
13 relate to license violations; adding certain license
14 violation, succession, termination and franchise
15 agreement transfer; establishing procedures for fair
16 compensation; setting time for rebuttal of certain
17 rate; prohibiting retaliation; providing certain
18 exception to audit periods; establishing procedure to
19 notify of charge-backs; prohibiting certain
20 construction, exclusive facility or site-control
21 agreement; construing intellectual property;
22 providing for relocation notice, approval and denial;
23 prohibiting certain advertising, free association or
24 products; modifying certain provisions dealing with
new motor vehicle dealers succession and termination;
setting time frame and procedures for terminations
and transfers; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 2011, Section 565, is
amended to read as follows:

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

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

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

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

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

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

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

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

24

- 1 b. uses any false or misleading advertising in connection
2 with business as a new motor vehicle dealer or vehicle
3 salesperson,
4 c. has committed any unlawful act which resulted in the
5 revocation of any similar license in another state,
6 d. has failed or refused to perform any written agreement
7 with any retail buyer involving the sale of a motor
8 vehicle,
9 e. has been convicted of a crime involving moral
10 turpitude,
11 f. has committed a fraudulent act in selling, purchasing
12 or otherwise dealing in new motor vehicles or has
13 misrepresented the terms and conditions of a sale,
14 purchase or contract for sale or purchase of a new
15 motor vehicle or any interest therein including an
16 option to purchase such vehicle, ~~or~~
17 g. has failed to meet or maintain the conditions and
18 requirements necessary to qualify for the issuance of
19 a license; or
20 h. completes any sale or transaction of an extended
21 service contract, extended maintenance plan, or
22 similar product using contract forms that do not
23 conspicuously disclose the identity of the service
24 contract provider;

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

3 7. Being a new motor vehicle dealer who:

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

5 b. does not provide for a suitable repair shop separate
6 from the display room with ample space to repair or
7 recondition one or more vehicles at the same time, and
8 which is equipped with such parts, tools and equipment
9 as may be requisite for the servicing of motor
10 vehicles in such a manner as to make them comply with
11 the safety laws of this state and to properly fulfill
12 the dealer's or manufacturer's warranty obligation,

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

21 d. employs unlicensed salespersons, or employs or
22 utilizes the services of used motor vehicle lots or
23 dealers or other unlicensed persons in connection with
24 the sale of new motor vehicles,

- 1 e. does not properly service a new motor vehicle before
2 delivery of same to the original purchaser thereof, or
3 f. fails to order and stock a reasonable number of new
4 motor vehicles necessary to meet customer demand for
5 each of the new motor vehicles included in the new
6 motor vehicle dealer's franchise agreement, unless the
7 new motor vehicles are not readily available from the
8 manufacturer or distributor due to limited production;

9 8. Being a factory that has:

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

- 13 (1) to accept delivery of any motor vehicle or
14 vehicles, parts or accessories therefor, or any
15 other commodities including advertising material
16 which shall not have been ordered by the new
17 motor vehicle dealer,
18 (2) to order or accept delivery of any motor vehicle
19 with special features, appliances, accessories or
20 equipment not included in the list price of the
21 motor vehicles as publicly advertised by the
22 manufacturer thereof, or
23
24

1 (3) to order or accept delivery of any parts,
2 accessories, equipment, machinery, tools,
3 appliances or any commodity whatsoever, or
4 b. induced under threat or discrimination by the
5 withholding from delivery to a motor vehicle dealer
6 certain models of motor vehicles, changing or amending
7 unilaterally the dealer's allotment of motor vehicles
8 and/or withholding and delaying delivery of such
9 vehicles out of the ordinary course of business, in
10 order to induce by such coercion any such dealer to
11 participate or contribute to any local or national
12 advertising fund controlled directly or indirectly by
13 the factory or for any other purposes such as contest,
14 "give-aways" or other so-called sales promotional
15 devices and/or change of quotas in any sales contest;
16 or has required motor vehicle dealers, as a condition
17 to receiving their vehicle allotment, to order a
18 certain percentage of the vehicles with optional
19 equipment not specified by the new motor vehicle
20 dealer; however, nothing in this section shall
21 prohibit a factory from supporting an advertising
22 association which is open to all dealers on the same
23 basis;

24 9. Being a factory that:

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

10 b. has failed to compensate its dealers for the work and
11 services they are required to perform in connection
12 with the dealer's delivery and preparation obligations
13 according to the agreements on file with the
14 Commission which must be found by the Commission to be
15 reasonable, or fail to adequately and fairly
16 compensate its dealers for labor, parts and other
17 expenses incurred by such dealer to perform under and
18 comply with manufacturer's warranty agreements. ~~In~~
19 ~~determining whether the warranty compensation is~~
20 ~~adequate~~ Adequate and fair, ~~the Commission shall~~
21 ~~consider the amount that is charged by the dealer or~~
22 ~~dealers in their areas of responsibility to their~~
23 ~~nonwarranty work of like kind~~ compensation for parts
24 shall be established by the dealer submitting to the

1 manufacturer or distributor one hundred sequential
2 nonwarranty customer-paid service repair orders which
3 contain warranty-like parts, or ninety (90)
4 consecutive days of nonwarranty customer-paid service
5 repair orders which contain warranty-like parts,
6 whichever is less, covering repairs made no more than
7 one hundred eighty (180) days before the submission
8 and declaring the average percentage markup. Adequate
9 and fair compensation for labor shall be established
10 by the dealer submitting to the manufacturer or
11 distributor one hundred sequential customer-paid
12 service repair orders which contain labor charges, or
13 ninety (90) consecutive days of customer-paid service
14 repair orders which contain labor charges, whichever
15 is less. When submitting repair orders to calculate a
16 labor rate, a dealer need not include repair orders
17 for routine maintenance. A manufacturer or
18 distributor may, not later than thirty (30) days after
19 submission, rebut that declared rate in writing by
20 reasonably substantiating that the rate is inaccurate
21 or unreasonable in light of the practices of all other
22 franchised motor vehicle dealers in an economically
23 similar part of the state offering the same line-make
24 vehicles. The retail rate shall go into effect thirty

1 (30) days following the approval by the manufacturer,
2 subject to audit of the submitted repair orders by the
3 franchisor and a rebuttal of the declared rate as
4 described above. If the declared rate is rebutted,
5 the manufacturer or distributor shall propose an
6 adjustment in writing of the average percentage markup
7 based on that rebuttal not later than thirty (30) days
8 after submission. If the dealer does not agree with
9 the proposed average percentage markup, the dealer may
10 file a protest with the Commission not later than
11 thirty (30) days after receipt of that proposal by the
12 manufacturer or distributor. In the event a protest
13 is filed, the manufacturer or distributor shall
14 have the burden of proof to establish the new motor
15 vehicle dealer's submitted rate was inaccurate or
16 unreasonable in light of the practices of all other
17 franchised motor vehicle dealers in an economically
18 similar part of the state. A manufacturer or
19 distributor may not retaliate against any new
20 motor vehicle dealer seeking to exercise its
21 rights under this provision. A manufacturer or
22 distributor may require a dealer to submit repair
23 orders in accordance with this section in order to
24 validate a dealer's retail rate for parts or labor

1 not more often than once every twelve (12) months.

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

1 immediately following the date of the payment. A
2 factory shall not deny a claim or charge a new motor
3 vehicle dealer back subsequent to the payment of the
4 claim unless the factory can show that the claim was
5 false or fraudulent or that the new motor vehicle
6 dealer failed to reasonably substantiate the claim by
7 the written reasonable procedures of the factory. The
8 factory shall provide written notice to a dealer
9 of a proposed charge-back that is the result of an
10 audit along with the specific audit results and
11 proposed charge-back amount. A dealer that
12 receives notice of a proposed charge-back pursuant
13 to a factory's audit has the right to file a protest
14 with the Commission within thirty (30) days after
15 receipt of the notice of the charge-back or audit
16 results, whichever is later. The factory is
17 prohibited from implementing the charge-back or
18 debiting the dealer's account until either the time
19 frame for filing a protest has passed or a final
20 adjudication is rendered by the Commission,
21 whichever is later, unless the dealer has agreed
22 to the charge-back or charge-backs, ~~or~~

23 c. unreasonably fails or refuses to offer to its same
24 line-make franchised dealers all models manufactured

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

15 d. except as necessary to comply with a health or
16 safety law, or to comply with a technology
17 requirement which is necessary to sell or service
18 a motor vehicle that the franchised motor vehicle
19 dealer is authorized or licensed by the franchisor
20 to sell or service, requires a new motor vehicle
21 dealer to construct a new facility or
22 substantially renovate the new motor vehicle
23 dealer's existing facility unless the facility
24 construction or renovation is justified by the

1 economic conditions existing at the time, as well
2 as the reasonably foreseeable projections, in the
3 automotive industry. However, this subparagraph
4 shall not apply if the factory provides money,
5 credit, allowance, reimbursement, or additional
6 vehicle allocation to a dealer to compensate the
7 dealer for the cost of, or a portion of the cost
8 of, the facility construction or renovation,
9 e. requires a new motor vehicle dealer to establish
10 an exclusive facility, unless supported by
11 reasonable business, market and economic
12 considerations; provided, that this provision
13 shall not restrict the terms of any agreement for
14 such exclusive facility voluntarily entered into
15 and supported by valuable consideration separate
16 from the new motor vehicle dealer's right to sell
17 and service motor vehicles for the franchisor,
18 f. requires a new motor vehicle dealer to enter into
19 a site-control agreement covering any or all of
20 the new motor vehicle dealer's facilities or
21 premises; provided, that this provision shall not
22 restrict the terms of any site-control agreement
23 voluntarily entered into and supported by valuable
24 consideration separate from the new motor vehicle

1 dealer's right to sell and service motor vehicles
2 for the franchisor. Notwithstanding the foregoing or
3 the terms of any site-control agreement, a site-
4 control agreement automatically extinguishes if all of
5 the factory's franchises that operated from the
6 location that are the subject of the site-control
7 agreement are terminated by the factory as part of the
8 discontinuance of a product line, or

9 g. requires a new motor vehicle dealer to purchase
10 goods or services for the construction,
11 renovation, or improvement of the dealer's
12 facility from a vendor chosen by the factory if
13 goods or services available from other sources are
14 of substantially similar quality and design and
15 comply with all applicable laws; provided,
16 however, that such goods are not subject to the
17 factory's intellectual property or trademark
18 rights and the new motor vehicle dealer has
19 received the factory's approval, which approval
20 may not be unreasonably withheld. Nothing in this
21 subparagraph may be construed to allow a new motor
22 vehicle dealer to impair or eliminate a factory's
23 intellectual property, trademark rights or trade
24 dress usage guidelines. Nothing in this section

1 prohibits the enforcement of a voluntary agreement
2 between the factory and the new motor vehicle
3 dealer where separate and valuable consideration
4 has been offered and accepted;

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

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

23 12. a. Being a factory which directly or indirectly:
24

- 1 (1) owns any ownership interest or has any financial
- 2 interest in a new motor vehicle dealer or any
- 3 person who sells products or services to the
- 4 public,
- 5 (2) operates or controls a new motor vehicle dealer,
- 6 or
- 7 (3) acts in the capacity of a new motor vehicle
- 8 dealer.

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

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

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

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

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

20 (a) all of the motor vehicle dealerships selling
21 the motor vehicles of that manufacturer in
22 this state trade exclusively in the line-
23 make of that manufacturer,
24

1 (b) all of the franchise agreements of the
2 manufacturer confer rights on the dealer of
3 the line-make to develop and operate, within
4 a defined geographic territory or area, as
5 many dealership facilities as the dealer and
6 manufacturer shall agree are appropriate,

7 (c) at the time the manufacturer first acquires
8 an ownership interest or assumes operation,
9 the distance between any dealership thus
10 owned or operated and the nearest
11 unaffiliated motor vehicle dealership
12 trading in the same line-make is not less
13 than seventy (70) miles,

14 (d) during any period in which the manufacturer
15 has such an ownership interest, the
16 manufacturer has no more than three
17 franchise agreements with new motor vehicle
18 dealers licensed by the Oklahoma Motor
19 Vehicle Commission to do business within the
20 state, and

21 (e) prior to January 1, 2000, the factory shall
22 have furnished or made available to
23 prospective motor vehicle dealers an
24 offering-circular in accordance with the

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

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

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

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

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

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

- 4 a. the facility and the proposed new location satisfies
5 or meets the written reasonable guidelines of the
6 factory. Reasonable guidelines do not include site
7 control unless agreed to as set forth in subparagraphs
8 e and f of paragraph 9 of this subsection, and
- 9 b. the proposed new location is within the area of
10 responsibility of the new motor vehicle dealer
11 pursuant to Section 578.1 of this title, and
- 12 c. the factory has sixty (60) days from receipt of the
13 new motor vehicle dealer's relocation request to
14 approve or deny the request. The failure to approve
15 or deny the request within the sixty-day time frame
16 shall constitute approval of the request;

17 17. Being a factory which prohibits a new motor vehicle dealer
18 from adding additional line-makes to its existing facility, if,
19 after adding the additional line-makes, the facility satisfies the
20 written reasonable capitalization standards and facility guidelines
21 of the each factory. Reasonable facility guidelines do not include
22 a requirement to maintain site control unless agreed to by the
23 dealer as set forth in subparagraphs e and f of paragraph 9 of this
24 subsection; and

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

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

19 19. Being a factory that requires a new motor vehicle dealer to
20 participate monetarily in an advertising campaign or contest, or
21 purchase any promotional materials, showroom or other display
22 decoration or materials at the expense of the new motor vehicle
23 dealer without consent of the dealer, which consent shall not be
24 unreasonably withheld;

1 20. Being a factory that denies any new motor vehicle dealer
2 the right of free association with any other new motor vehicle
3 dealer for any lawful purpose, unless otherwise permitted by this
4 chapter; or

5 21. Being a factory that requires a new motor vehicle dealer to
6 sell, offer to sell or sell exclusively an extended service contact,
7 extended maintenance plan or similar product, such as gap products
8 offered, endorsed or sponsored by the factory by the following
9 means:

- 10 a. by an act or statement from the factory that will in
11 any manner adversely impact the dealer,
- 12 b. by measuring the dealer's performance under the
13 franchise based on the sale of extended service
14 contracts, extended maintenance plans or similar
15 products offered, endorsed or sponsored by the
16 manufacturer or distributor.

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

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

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

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

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

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

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

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

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

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

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

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

3 SECTION 2. AMENDATORY 47 O.S. 2011, Section 565.1, is
4 amended to read as follows:

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

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

19 2. Within thirty (30) days of receipt of the legal heir's or
20 devisee's timely written notice, the manufacturer may request, and
21 the legal heir or devisee shall, within a reasonable time, provide
22 any information which is reasonably necessary for the manufacturer
23 to evaluate the proposed successor dealer and dealership, including,
24

1 but not limited to, applications, proposals for facilities and
2 financing;

3 3. Within sixty (60) days of receipt of such information, the
4 manufacturer shall approve or disapprove the proposed successor
5 dealership, and in case of disapproval shall communicate in writing
6 such disapproval and grounds for disapproval to the legal heir or
7 devisee;

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

11 5. Within ten (10) days of its receipt of the manufacturer's
12 notice of disapproval, the legal heir or devisee may file a protest
13 of the manufacturer's decision with the Oklahoma Motor Vehicle
14 Commission and request a hearing. Such hearing shall be heard in a
15 substantially similar manner as provided by Section 566 of this
16 title, except that the Commission shall render a final decision
17 within sixty (60) days of the filing of the protest. The
18 manufacturer shall have the burden of proof to show that its
19 disapproval was for a good cause and in good faith. A denial shall
20 not be for good cause and in good faith unless the factory
21 establishes that the legal heir or devisee, or the legal heir or
22 devisee's controlling executive management, is not of good moral
23 character or fails to meet the written, reasonable and uniformly
24 applied requirements of the manufacturer or distributor relating to

1 financial qualifications, general business experience, and other
2 requirements relating to prospective franchisees. However, a legal
3 heir that is of good moral character in accordance with the
4 factory's qualifications and meets the factory's financial
5 qualifications may rely on controlling executive management that is
6 of good moral character and meets the factory's qualifications for
7 general business experience and other requirements relating to
8 prospective franchises. The disapproval by the manufacturer shall
9 be final if the legal heir or devisee fails to file a timely protest
10 of such disapproval. In the event that the Commission finds that
11 the manufacturer's disapproval was not made for good cause, then it
12 shall issue a final order requiring the manufacturer to honor the
13 successor designated in the notice sent by the legal heir or
14 devisee. Notwithstanding anything to the contrary in this section,
15 a new motor vehicle dealer may designate any person as successor by
16 filing a written instrument pursuant to the franchise with the
17 manufacturer during the new motor vehicle dealer's lifetime. In
18 such a case, the written instrument and franchise shall govern the
19 dealership succession.

20 The suspension, revocation or refusal to issue or renew a
21 license or the imposition of any other penalty by the Commission
22 shall be in addition to any penalty which might be imposed upon any
23 licensee upon judgment or conviction in a court of competent
24

1 jurisdiction for any violation of the provisions of Sections 561
2 through 567, 572, 578.1, 579 and 579.1 of this title.

3 SECTION 3. AMENDATORY 47 O.S. 2011, Section 565.2, is
4 amended to read as follows:

5 Section 565.2. A. Irrespective of the terms, provisions or
6 conditions of any franchise, or the terms or provisions of any
7 waiver, no manufacturer shall terminate, cancel or fail to renew any
8 franchise with a licensed new motor vehicle dealer unless the
9 manufacturer has satisfied the notice requirements as provided in
10 this section and has good cause for cancellation, termination or
11 nonrenewal. The manufacturer shall not attempt to cancel or fail to
12 renew the franchise agreement of a new motor vehicle dealer in this
13 state unfairly and without just provocation or without due regard to
14 the equities of the dealer or without good faith as defined herein.
15 As used herein, "good faith" means the duty of each party to any
16 franchise agreement to act in a fair and equitable manner toward
17 each other, with freedom from coercion or intimidation or threats
18 thereof from each other.

19 B. Irrespective of the terms, provisions or conditions of any
20 franchise, or the terms or provisions of any waiver, good cause
21 shall exist for the purpose of a termination, cancellation, or
22 nonrenewal when:

23 1. The new motor vehicle dealer has failed to comply with a
24 provision of the franchise, which provision is both reasonable and

1 of material significance to the franchise relationship, or the new
2 motor vehicle dealer has failed to comply with reasonable
3 performance criteria for sales or service established by the
4 manufacturer, and the dealer has been notified by written notice
5 from the manufacturer; and

6 2. The new motor vehicle dealer has received written
7 notification of failure to comply with the manufacturer's reasonable
8 sales performance standards, capitalization requirements, facility
9 commitments, business related equipment acquisitions or other such
10 remediable failings exclusive of those reasons enumerated in
11 paragraph 1 of subsection C of this section, and the new motor
12 vehicle dealer has been afforded a reasonable opportunity of not
13 less than six (6) months to comply with such a provision or
14 criteria.

15 C. Irrespective of the terms, provisions or conditions of any
16 franchise agreement prior to the termination, cancellation or
17 nonrenewal of any franchise, the manufacturer shall furnish
18 notification of such termination, cancellation or nonrenewal to the
19 new motor vehicle dealer and the Oklahoma Motor Vehicle Commission
20 as follows:

21 1. Not less than ninety (90) days prior to the effective date
22 of such termination, cancellation or nonrenewal unless for a cause
23 described in paragraph 2 of this subsection;

24

1 2. Not less than fifteen (15) days prior to the effective date
2 of such termination, cancellation or nonrenewal with respect to any
3 of the following:

- 4 a. insolvency of the new motor vehicle dealer, or the
5 filing of any petition by or against the motor vehicle
6 dealer under any bankruptcy or receivership law,
- 7 b. failure of the new motor vehicle dealer to conduct its
8 customary sales and service operations during its
9 customary business hours for seven (7) consecutive
10 business days, provided that such failure to conduct
11 business shall not be due to an act of God or
12 circumstances beyond the direct control of the new
13 motor vehicle dealer, or
- 14 c. conviction of the new motor vehicle dealer of any
15 felony which is punishable by imprisonment or a
16 violation of the Federal Odometer Act; and

17 3. Not less than one hundred eighty (180) days prior to the
18 effective date of such termination or cancellation where the
19 manufacturer or distributor is discontinuing the sale of the product
20 line.

21 The notification required by this subsection shall be by
22 certified mail, return receipt requested, and shall contain a
23 statement of intent to terminate, to cancel or to not renew the
24 franchise, a statement of the reasons for the termination,

1 cancellation or nonrenewal and the date the termination shall take
2 effect.

3 D. Upon the affected new motor vehicle dealer's receipt of the
4 aforementioned notice of termination, cancellation or nonrenewal,
5 the new motor vehicle dealer shall have the right to file a protest
6 of such threatened termination, cancellation or nonrenewal with the
7 Commission within thirty (30) days and request a hearing. Such
8 hearing shall be held in accordance with the provisions of the
9 Administrative Procedures Act, Sections 301 through 326 of Title 75
10 of the Oklahoma Statutes, to determine if the threatened
11 cancellation, termination or nonrenewal of the franchise has been
12 for good cause and if the factory has complied with its obligations
13 pursuant to subsections A, B and C of this section and the factory
14 shall have the burden of proof. If the Commission finds that the
15 threatened cancellation, termination or nonrenewal of the franchise
16 has not been for good cause or violates subsection A, B or C of this
17 section, then it shall issue a final order stating that the
18 threatened termination is wrongful. A factory shall have the right
19 to appeal such order. During the pendency of the hearing and after
20 the decision, the franchise shall remain in full force and effect,
21 including the right to transfer the franchise. If the Commission
22 finds that the threatened cancellation, termination or nonrenewal is
23 for good cause and does not violate subsection A, B or C of this
24 section, the new motor vehicle dealer shall have the right to an

1 appeal. During the pendency of the action, including the final
2 decision or appeal, the franchise shall remain in full force and
3 effect, including the right to transfer the franchise. If the new
4 motor vehicle dealer prevails in the threatened termination action,
5 the Commission shall award to the new motor vehicle dealer the
6 attorney fees and costs incurred to defend the action.

7 E. If the factory prevails in an action to terminate, cancel or
8 not renew any franchise, the new motor vehicle dealer shall be
9 allowed fair and reasonable compensation by the manufacturer for:

10 1. New current and previous model year vehicle inventory which
11 has been acquired from the manufacturer, and which is unused and has
12 not been damaged or altered while in the dealer's possession;

13 2. Supplies and parts which have been acquired from the
14 manufacturer, for the purpose of this section, limited to any and
15 all supplies and parts that are listed on the current parts price
16 sheet available to the dealer;

17 3. Equipment and furnishings, provided the new motor vehicle
18 dealer purchased them from the manufacturer or its approved sources;
19 and

20 4. Special tools, with such fair and reasonable compensation to
21 be paid by the manufacturer within ninety (90) days of the effective
22 date of the termination, cancellation or nonrenewal, provided the
23 new motor vehicle dealer has clear title to the inventory and other
24 items and is in a position to convey that title to the manufacturer.

1 a. For the purposes of paragraph 1 of this subsection,
2 fair and reasonable compensation shall be no less than
3 the net acquisition price of the vehicle paid by the
4 new motor vehicle dealer.

5 b. For the purposes of paragraphs 2, 3 and 4 of this
6 subsection, fair and reasonable compensation shall be
7 the net acquisition price paid by the new motor
8 vehicle dealer less a twenty-percent (20%) straight-
9 line depreciation for each year following the dealer's
10 acquisition of the supplies, parts, equipment,
11 furnishings and/or special tools.

12 F. If a factory prevails in an action to terminate, cancel or
13 not renew any franchise and the new motor vehicle dealer is leasing
14 the dealership facilities, the manufacturer shall pay a reasonable
15 rent to the lessor in accordance with and subject to the provisions
16 of subsection G of this section. Nothing in this section shall be
17 construed to relieve a dealer of its duty to mitigate damages.

18 G. 1. Such reasonable rental value shall be paid only to the
19 extent the dealership premises are recognized in the franchise and
20 only if they are:

21 a. used solely for performance in accordance with the
22 franchise. If the facility is used for the operation
23 of more than one franchise, the reasonable rent shall
24 be paid based upon the portion of the facility

1 utilized by the franchise being terminated, canceled
2 or nonrenewed, and

- 3 b. not substantially in excess of facilities recommended
4 by the manufacturer~~†~~.

5 2. If the facilities are owned by the new motor vehicle dealer,
6 within ninety (90) days following the effective date of the
7 termination, cancellation or nonrenewal the manufacturer will
8 either:

- 9 a. locate a qualified purchaser who will offer to
10 purchase the dealership facilities at a reasonable
11 price,

- 12 b. locate a qualified lessee who will offer to lease the
13 premises for ~~a reasonable~~ the remaining lease term at
14 ~~reasonable~~ the rent set forth in the lease, or

- 15 c. failing the foregoing, lease the dealership facilities
16 at a reasonable rental value for the portion of the
17 facility that is recognized in the franchise agreement
18 for one (1) year~~†~~.

19 3. If the facilities are leased by the new motor vehicle
20 dealer, within ninety (90) days following the effective date of the
21 termination, cancellation or nonrenewal the manufacturer will
22 either:

- 23 a. locate a tenant or tenants satisfactory to the lessor,
24 who will sublet or assume the balance of the lease,

- 1 b. arrange with the lessor for the cancellation of the
2 lease without penalty to the dealer, or
3 c. failing the foregoing, lease the dealership facilities
4 at a reasonable rent for the portion of the facility
5 that is recognized in the franchise agreement for one
6 (1) year; ~~and.~~

7 4. The manufacturer shall not be obligated to provide
8 assistance under this section if the new motor vehicle dealer:

- 9 a. fails to accept a bona fide offer from a prospective
10 purchaser, subleases or assignee,
11 b. refuses to execute a settlement agreement with the
12 lessor if such agreement with the lessor would be
13 without cost to the dealer, or
14 c. fails to make written request for assistance under
15 this section within ~~one (1) month~~ ninety (90) days
16 after ~~receiving an order from the Commission affirming~~
17 the ~~proposed~~ effective date of the termination,
18 cancellation or nonrenewal.

19 5. The manufacturer shall be entitled to occupy and use any
20 space for which it pays rent required by this section.

21 H. In addition to the repurchase requirements set forth in
22 subsections E and G of this section, in the event the termination or
23 cancellation is the result of a discontinuance of a product line,
24 the manufacturer or distributor shall compensate the new motor

1 vehicle dealer in an amount equivalent to the fair market value of
2 the terminated franchise as of the date of the manufacturer's or
3 distributor's announcement or provide the new motor vehicle dealer
4 with a replacement franchise on substantially similar terms and
5 conditions as those offered to other same line-make dealers. The
6 dealer may immediately request payment under this provision
7 following the announcement in exchange for cancelling any further
8 franchise rights, except payments owed to the dealer in the ordinary
9 course of business, or may request payment under this provision upon
10 the final termination, cancellation or nonrenewal of the franchise.
11 In either case, payment under this provision shall be made not later
12 than ninety (90) days after the fair market value is determined. If
13 the factory and dealer cannot agree on the fair market value of the
14 terminated franchise or agree to a process to determine the fair
15 market value, then the factory and dealer shall utilize a neutral
16 third party mediator to resolve the disagreement.

17 SECTION 4. AMENDATORY 47 O.S. 2011, Section 565.3, is
18 amended to read as follows:

19 Section 565.3. A. A franchised vehicle dealer proposing a
20 sale, transfer, or assignment of a franchise agreement or the
21 business and assets of a dealership or an interest in a dealership
22 to another person, hereinafter transferee, shall notify the
23 manufacturer or distributor whose vehicles the dealer is franchised
24 to sell of the proposed action of the dealer. The manufacturer or

1 distributor may make written request to the transferee to submit
2 completed application forms and related information generally
3 utilized by a manufacturer to evaluate such a proposal and a copy of
4 all agreements related to the proposed sale, transfer, or
5 assignment.

6 B. The approval by the manufacturer or distributor of the sale,
7 transfer, or assignment shall not be unreasonably withheld unless
8 the transferee is not of good moral character or fails to meet the
9 written, reasonable, and uniformly applied requirements of the
10 manufacturer or distributor relating to prospective franchisees.
11 Approval of the transfer shall not be made contingent upon the
12 transferee meeting unreasonable facility requirements or
13 performance standards, but may be made contingent upon the
14 transferee meeting reasonable written requirements. The burden of
15 proof shall be upon the manufacturer or distributor to show good
16 cause existed to withhold approval. The manufacturer or distributor
17 that has made such a determination shall send a letter by certified
18 mail to the dealer and the applicant of its refusal to approve the
19 proposal, which shall include a statement of the specific grounds
20 for refusal, within sixty (60) days after the later of:

21 1. Receipt by the manufacturer or distributor of the notice of
22 the proposed sale, transfer, or assignment; or

23 2. Receipt by the manufacturer or distributor of the
24 information requested from the transferee pursuant to subsection A

1 of this section if the manufacturer or distributor has requested
2 such information within fifteen (15) days of receipt of written
3 notice of the proposed sale, transfer, or assignment.

4 C. Failure of the manufacturer or distributor to send its
5 notice of refusal pursuant to subsection B of this section shall
6 mean that the application for the proposed sale, transfer, or
7 assignment is approved.

8 D. A dealer receiving notice of refusal of the sale, transfer,
9 or assignment shall have the right to file a protest with the
10 Commission within thirty (30) days of receipt of the refusal. A
11 dealer receiving notice that the sale, transfer or assignment is
12 contingent upon the transferee meeting facility and/or performance
13 standards shall have the right to file a protest with the Commission
14 within thirty (30) days of receipt of the notice. In the event a
15 protest is filed, the manufacturer or distributor shall have the
16 burden of proof to establish the transferee or the transferee's
17 controlling executive management is not of good moral character or
18 fails to meet the written reasonable and uniformly applied
19 requirements of the manufacturer or distributor relating to
20 prospective franchisees or that the facility requirements are not
21 reasonable based on the reasons set forth in subparagraph d of
22 paragraph 9 of Section 565 of this title.

23 SECTION 5. This act shall become effective November 1, 2014.

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