

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 SENATE BILL 1017

By: Burrage

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5
6 AS INTRODUCED

7 An Act relating to motor vehicles; making certain
8 definitions apply to certain chapters of law;
9 establishing provisions for manufacturers, dealers
10 and dealerships; defining terms; prohibiting certain
11 site-control agreements between manufacturers and
12 dealers; construing certain authority to enter into
13 agreements; prohibiting certain extended service
14 contracts, GAP products and extended maintenance
15 plans; allowing incentive programs and voluntary
16 agreements; providing for codification; and providing
17 an effective date.

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

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 561A of Title 47, unless there
21 is created a duplication in numbering, reads as follows:

22 A. For purposes of this section and as may apply to the
23 provisions of Chapters 62 and 62A of Title 47 of the Oklahoma
24 Statutes the following terms shall have the meanings as stated in
this section, unless the context and application clearly indicates
otherwise:

1 1. "Dealer" means any person, firm, corporation, or business
2 entity licensed or required to be licensed pursuant to any provision
3 of Section 564 or 596.2 of Title 47 of the Oklahoma Statutes;

4 2. "Dealer agreement" means any person, firm, corporation, or
5 business entity licensed or required to be licensed pursuant to any
6 provision of Section 564 or 596.2 of Title 47 of the Oklahoma
7 Statutes;

8 3. "Dealer's franchise" or "franchise" or "dealership" means
9 any contract or agreement between a dealer and a manufacturer or its
10 distributor or factory branch by which the dealer is authorized to
11 engage in the business of selling any specified make or makes of new
12 motor vehicles or recreational vehicles to the public;

13 4. "Manufacturer" means any person, firm association,
14 corporation or trust, resident or nonresident, who manufactures or
15 assembles new or unused motor vehicles, or who engages in the
16 fabrication or assembly of motorized vehicles of a type required to
17 be registered in this state, or that manufactures or wholesales
18 recreational vehicles or that distributes recreational vehicles to
19 dealers;

20 5. "Distributor" means any person, firm, association,
21 corporation or trust, resident or nonresident, who, being authorized
22 by the original manufacturer, in whole or in part, sells or
23 distributes new and unused motor vehicles or recreational vehicles
24 to dealers, or who maintains distributor representatives;

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

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

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

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

21 10. "Factory representative" means any officer or agent engaged
22 as a representative of a manufacturer of motor vehicles or
23 recreational vehicles or a factory branch for the purpose of making
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1 or promoting the sale of such vehicles or for supervising or
2 contacting dealers or prospective dealers of the manufacturer;

3 11. "Site-control agreement" or "exclusive use agreement" means
4 an agreement that, regardless of its name, title, form or the
5 parties entering into it, has the effect of:

- 6 a. controlling the use and development of the premises of
7 a dealer's franchise or facility,
- 8 b. requiring a dealer to establish or maintain an
9 exclusive dealership facility on the premises of the
10 dealer's franchise or facility,
- 11 c. restricting the power or authority of the dealer or
12 the lessor if the dealer leases the dealership
13 premises, to transfer, sell, lease, develop, redevelop
14 or change the use of the dealership premises, whether
15 by sublease, lease, collateral pledge of lease, right
16 of first refusal to purchase or lease, option to
17 purchase or lease or any similar arrangement, or
- 18 d. establishing a valuation process or formula for the
19 dealership premises that does not allow for the
20 dealership premises to be transferred, sold or leased
21 by the dealer at the highest and best use valuation
22 for the dealership premises.

23 B. It shall be unlawful for any manufacturer, factory branch,
24 distributor, distributor representative, factory representative,

1 officer, agent or any representative whatsoever of such
2 manufacturer, factory branch or distributor licensed pursuant any
3 provision of Section 564 or 596.2 of Title 47 of the Oklahoma
4 Statutes and defined in this section to:

5 1. Directly or indirectly condition any of the following
6 actions on a dealer, prospective dealer or owner of an interest in a
7 dealership or dealer's franchise or facility to enter into a site-
8 control agreement or exclusive use agreement as follows:

- 9 a. awarding of a franchise to a prospective dealer,
- 10 b. adding of a line-make or franchise to an existing
11 dealership, dealer's franchise or facility,
- 12 c. renewing of an existing dealership or dealer's
13 franchise,
- 14 d. approving of the relocation of an existing dealership,
15 dealer's franchise or facility, or
- 16 e. approving of the sale or transfer of a dealership,
17 dealer's franchise or facility.

18 2. Nothing in this subsection prohibits a dealer, prospective
19 dealer or owner of an interest in a dealership, dealer's franchise
20 or facility from voluntarily entering into such an agreement for
21 other considerations. However, a provision contained in an
22 agreement which is not voluntarily entered into by a dealer,
23 prospective dealer or owner of an interest in a dealership, dealer's
24 franchise or facility on or after the effective date of this section

1 that is inconsistent with the provisions of this section shall be a
2 violation of this subsection.

3 C. It shall be unlawful for any manufacturer, factory branch,
4 distributor, distributor representative, factory representative,
5 officer, agent or any representative whatsoever of such
6 manufacturer, factory branch or distributor to require, attempt to
7 require, coerce or attempt to coerce any new vehicle dealer or
8 recreational dealer in this state to:

9 1. Sell, offer to sell or sell exclusively an extended service
10 contract, extended maintenance plan or similar product, such as GAP
11 products, offered, endorsed or sponsored by the manufacturer or
12 distributor by the following means:

13 a. by an act or statement that the manufacturer or
14 distributor will in any manner impact the dealer,
15 whether it is express or implied or made directly or
16 indirectly,

17 b. by a contract, or an express or implied offer of
18 contract, made to the dealer on the condition that the
19 dealer shall sell, offer to sell or sell exclusively
20 an extended service contract, extended maintenance
21 plan or similar product offered, endorsed or sponsored
22 by the manufacturer or distributor,

23 c. by measuring the dealer's performance under the
24 franchise or dealership agreement based on the sale of

1 extended service contracts, extended maintenance plans
2 or similar products offered, endorsed or sponsored by
3 the manufacturer or distributor, or

4 d. by requiring the dealer to actively promote the sale
5 of extended service contracts, extended maintenance
6 plans or similar products offered, endorsed or
7 sponsored by the manufacturer or distributor.

8 2. Nothing in this subsection shall prohibit a manufacturer or
9 distributor from providing incentive programs to a dealer who makes
10 the voluntary decision to offer to sell, sell or sell exclusively an
11 extended service contract, extended maintenance plan or similar
12 product offered, endorsed or sponsored by the manufacturer or
13 distributor.

14 SECTION 2. This act shall become effective November 1, 2013.

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